

**HOUSE . . . . . No. 1544**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Harold P. Naughton, Jr.**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the establishment of a drug court.

PETITION OF:

NAME:

Harold P. Naughton, Jr.

DISTRICT/ADDRESS:

12th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1613 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### AN ACT RELATIVE TO THE ESTABLISHMENT OF A DRUG COURT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 Massachusetts General Laws Chapter 212, is hereby amended in Section 6 by inserting at the end thereof  
2 the following:—
- 3 (a) The District Court Department for each county of the Commonwealth is hereby authorized to establish  
4 and administer a department to be known as “the Drug Court” whose purpose it shall be to administer and  
5 supervise pretrial substance abuse intervention programs for persons charged with a crime, before or after  
6 any information has been filed or an indictment has been returned in the District Court. Such programs  
7 shall provide appropriate substance abuse counseling, education, supervision, and medical and  
8 psychological treatment as available and when appropriate for the persons released to such programs.
- 9 (b) Any person who (1) has no prior felony conviction and (2) is currently before the court to answer  
10 charges dealing with a nonviolent felony or misdemeanor and (3) has not previously participated in the  
11 aforementioned pretrial intervention program to be established by this act and (4) is not currently being  
12 charged with crimes pertaining to the manufacture, sale, delivery or trafficking of controlled substances of  
13 any classification as defined under the applicable, established laws of the Commonwealth is eligible for  
14 admission into the pretrial substance abuse intervention program upon approval by the chief justice of the  
15 District Court in the presiding county for a period of not less than one year in duration. Admission into  
16 such program can be requested on the motion of either party or on the court’s own motion. However, if  
17 the prosecuting district attorney has reason to believe that the facts and circumstances of the case suggest  
18 the defendant’s involvement in the manufacture, sale, delivery or trafficking of any controlled substance,  
19 the court shall hold a preadmission hearing. If the prosecuting district attorney establishes, by a  
20 preponderance of the evidence at such hearing, that the defendant was involved in the manufacture, sale,  
21 delivery or trafficking of any controlled substance, the court shall deny the defendant’s admission into a  
22 pretrial intervention program.
- 23 As used in this subsection, “nonviolent felony or misdemeanor” excludes arson; sexual battery of any  
24 manner; robbery; kidnapping; aggravated child abuse; aggravated assault; murder; manslaughter;  
25 aggravated battery; and armed burglary. In no case, however, shall any individual be released to the

26 pretrial intervention program unless, after consultation with his attorney or one made available to him if  
27 he or she is indigent, he or she has voluntarily agreed to such program and has knowingly and  
28 intelligently waived his right to a speedy trial for the period of his diversion to the Drug Court.

29 (c) The criminal charges against an individual admitted to the program shall be continued without a final  
30 disposition for a period of ninety days from the date the defendant was released to the pretrial intervention  
31 program, if the defendant's participation in the program is deemed to be satisfactory by the judge  
32 presiding over the case in Drug Court. The criminal charges may be continued without final disposition  
33 for an additional ninety days upon the approval of the court following request by the program  
34 administrator provided that said request be accompanied with the consent of the prosecuting district  
35 attorney and provided that the defendant's participation in the program has been deemed to be satisfactory  
36 by the court following recommendations by the program administrator and district attorney.

37 (d) Resumption of pending criminal charges may be requested by the district attorney at any time if the  
38 intervention program administrator or the prosecuting district attorney has reason to believe that such  
39 defendant is not in strict compliance with the obligations imposed upon the defendant as a condition to  
40 his/her participation in the program or if the public interest so requires.

41 If the district attorney has reason to believe that the defendant is not in strict compliance with program's  
42 guidelines, then he/she shall make a motion to the judge presiding over the Drug Court to initiate normal  
43 prosecutorial procedures. Following the filing of such a motion, a hearing shall be scheduled before the  
44 presiding "Drug Court" judge who shall then issue an order regarding the proposed resumption of  
45 criminal procedure.

46 (e) At the end of the intervention program period, the program administrator shall recommend one of the  
47 following courses of action with regard to the defendant's situation:

48 (1) that the criminal case revert to the established prosecutorial procedures for the particular crime in  
49 question in instances where the defendant's participation in the program has been deemed to be  
50 unsatisfactory;

51 (2) that the defendant is in need of further supervision under the guidelines set forth with the Drug Court;  
52 or

53 (3) that dismissal of charges without prejudice shall be entered in instances in which prosecution is not  
54 deemed necessary.

55 The court shall then consider the recommendation of the program administrator and the recommendation  
56 of the prosecuting district attorney as to the disposition of the pending criminal charges. The court shall  
57 then determine, by written finding, whether the defendant has successfully completed the pretrial  
58 program. If the court finds that the defendant has not successfully completed the pretrial intervention  
59 program, the court may order the defendant to continue in education and treatment for a determined  
60 length or may order that the criminal charges revert to the established prosecutorial procedures for the  
61 particular crime(s) in question. The court shall dismiss the criminal charges upon a finding that the  
62 defendant has successfully completed the pretrial intervention program.

63 (f) The Chief Justice in each District Court may appoint an advisory committee for the pretrial  
64 intervention program composed of the Chief Justice or his/her designee, who shall serve as chairman; the  
65 district attorney, the public defender, and the program administrator, or their designees; and such other  
66 persons as the chairman deems appropriate. The committee may also include persons representing any  
67 other agencies to which defendants released to the pretrial intervention program may be referred.

68 (g) The District Court department may contract for the services and facilities necessary to operate pretrial  
69 intervention programs.