

**HOUSE . . . . . No. 1628**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Thomas M. Stanley*

*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 creating a pilot program to discourage drinking by individuals under the legal drinking age and to provide a non-criminal disposition process for first offenders, including alcohol education.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>

**HOUSE . . . . . No. 1628**

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By Mr. Stanley of Waltham, a petition (accompanied by bill, House, No. 1628) of Thomas M. Stanley, Linda Dorcena Forry and Jason M. Lewis for legislation to establish a pilot program to discourage drinking by individuals under the legal drinking age and to provide a non-criminal disposition process for first offenders, including alcohol education. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1370 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act creating a pilot program to discourage drinking by individuals under the legal drinking age and to provide a non-criminal disposition process for first offenders, including alcohol education.

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

1           PREAMBLE

2   □The General Court finds that chapter 138 of the General Laws governs offenses relating to  
3 alcohol offenses by individuals under the age of 21 and that many such offenders are not aware  
4 of the serious issues which may arise from the use and abuse of alcohol. Therefore, the General  
5 Court is establishing a pilot program designed to provide a new method of dealing with  
6 individuals under the age of 21 who could otherwise be charged criminally with violations of  
7 chapter 138. The General Court states that the purpose of the program is to provide education to  
8 individuals under the legal drinking age who have been charged for the first time with violating  
9 laws relating to procurement, possession or use of alcoholic beverages. The General Court has  
10 determined that the program shall only be applicable to first time violators under the age of 21  
11 who have not previously been convicted under chapter 138 of an offense involving alcohol. The  
12 program shall not limit the ability of the court to impose additional penalties upon or require  
13 restitution from those program participants who have also been charged with a separate crime for

14 causing personal injury or personal or real property damage during the commission of any  
15 offense under sections 34 through 34D, inclusive.

16 SECTION 1. Chapter 138 of the General Laws is hereby amended by adding the following 2  
17 sections:-

18 Section 34E. (a) There shall be established within the commonwealth a pilot program for a  
19 period of three years from the effective date of this section to study the effectiveness of  
20 mandatory alcohol education programs on individuals under the age of 21, subject to the  
21 exception identified below in subsection (b), who have been charged with first-time violations of  
22 sections 34 through 34D, inclusive, of this chapter.

23  (b) Any individual under the age of 21 who is charged, for the first time, with a violation of  
24 any provision of section 34 to 34D, inclusive, subsequent to the effective date of this section  
25 shall have said charges treated as a non-criminal matter under the pilot program. If such  
26 individual under the age of 21 is also charged with and found to have caused personal injury or  
27 personal or real property damage during the commission of a violation under section 34 to 34D,  
28 inclusive, the court shall retain the authority to impose additional penalties or require restitution  
29 for such injury or damage in accordance with the applicable law; provided, further, that an  
30 individual under the age of 21 convicted of any offense under section 34 to 34D, inclusive, prior  
31 to the effective date of this section shall not be eligible for participation in said program.

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34  (c) Any violations of section 34 to 34D arising from a single event shall be considered part of  
35 the first-time non-criminal matter, hereinafter a "first time offender event". Violations arising  
36 from the same event other than those under this chapter shall be treated separately under the  
37 applicable statutes.

38  (d) The police officer shall give to such first time offender at the time and place of the offense,  
39 a written notice to appear before the clerk of the district court having jurisdiction thereof at any  
40 time during office hours, not later than 21 days after the date of such notice. Such written notice  
41 shall be in triplicate and shall contain the name and address, if known, of the offender, the  
42 specific offense charged, and the time and place for his required appearance. Such notice shall be  
43 signed by the police officer and shall be signed by the offender whenever practicable in  
44 acknowledgment that such notice has been received.

45  If it is not possible to deliver a copy of said notice to the offender at the time and place of the  
46 offense, the copy shall be mailed by first class mail, or delivered by the police officer, or by his  
47 commanding officer or by any person authorized by such commanding officer, to the offender's  
48 last known address, within 15 days after said violation. The notice as so mailed shall be deemed  
49 a sufficient notice, and a certificate of the person so mailing such notice that it has been mailed  
50 in accordance with this section shall be prima facie evidence thereof.

51  At or before the completion of each tour of duty, or at the beginning of the first subsequent  
52 tour of duty, the police officer shall give to his commanding officer a copy of each notice of an  
53 offense he has taken cognizance of during such tour which has not already been delivered or

54 mailed by him as aforesaid. The commanding officer shall retain and safely preserve 1 copy and  
55 shall, at a time not later than the next court day after such delivery or mailing, deliver the other  
56 copy to the clerk of the court before which the offender has been notified to appear. The clerk of  
57 each district court shall maintain a separate docket of such notices to appear.

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59 The chief of police in each city or town shall direct the department's liquor enforcement officer  
60 or another appropriate member of the police department to act as a liaison between the  
61 department and the clerk's office of the district court having jurisdiction of such offenses.

62  (e) In addition to the notice requirement provided above, an additional copy of the violation  
63 notice mailed or delivered to a person under the age of 18 shall be mailed or delivered to at least  
64 1 parent or legal guardian of the person. Whenever practicable, department shall also be  
65 responsible for making a telephone call to a parent or legal guardian of a person under the age of  
66 18 for the purpose of notification.

67  (f) Any person notified to appear before the clerk of a district court as provided may so appear  
68 and make an admission of having violated one of the provisions of section 34 to 34D as charged.  
69 Said admission may be given personally or through a duly authorized agent. This shall not be  
70 deemed a criminal proceeding. Upon appearance and admission to the section 34 to 34D offense  
71 charged, the individual under the age of 21 shall pay into the fund established in section 34F, a  
72 fine of \$300 for each such separately identified violation of sections 34 to 34D included in the  
73 first-time

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77 offender event and he shall agree to attend an approved alcohol awareness program as  
78 described below. For any first-time violation of section 34A or 34C, the court shall report the  
79 same to the registrar of motor vehicles and the offender's license or right to operate a motor  
80 vehicle shall be suspended as provided in the applicable section.

81 If any person so notified to appear desires to contest the section 34 to 34D offense alleged in  
82 the notice to appear and also to avail himself of the procedure established pursuant to this  
83 paragraph, he may, within 21 days after the date of the notice, request a hearing in writing. Such  
84 hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall  
85 direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the section 34 to  
86 34D offense occurred and that it was committed by the person so notified to appear, the person  
87 so notified shall be permitted to a disposition of the case by paying into the fund established in  
88 section 34F a fine of \$300 for each such section 34 to 34D offense included in the first-time  
89 offender event and he shall attend an approved alcohol awareness program as set forth in this  
90 section. For any first-time violation of section 34A or 34C, the court shall report the same to the  
91 registrar of motor vehicles and the offender's license or right to operate a motor vehicle shall be  
92 suspended as provided in the applicable section. Any proceeding held under this paragraph shall  
93 not be deemed a criminal proceeding.

94  If the judge, clerk, or assistant clerk shall, after a hearing, find that the section 34 to 34D  
95 offense alleged did not occur or was not committed by the person notified to appear, that finding  
96 shall be entered in the docket, which shall operate as a final disposition of the case. Any  
97 proceeding held under this paragraph shall not be deemed to be a criminal proceeding.

98  (g) The alcohol awareness program must provide at least 4 hours of classroom instruction and  
99 1 hour of group discussion; provided, further, that said program shall also require 10 hours of  
100 community service. The subject matter of any such alcohol awareness program shall be specific  
101 to the use and abuse of alcohol with particular emphasis on early detection and prevention of  
102 alcohol abuse. Such program must also incorporate a component specifically addressing the issue  
103 of alcohol use by individuals under the age of 21 and the particular pressures exerted on such  
104 individuals with respect to alcohol. Notice of completion of the alcohol awareness program by  
105 each participant shall be provided in writing by the approved program to the court.

106  (h) Any alcohol awareness program in which an individual wishes to complete his required  
107 attendance must be included on a list to be established and approved by the state bureau of  
108 educational services within the department of youth services or any successor to said bureau.

109  (i) Any fines assessed under subsection (f) shall be paid within 2 months of the date of  
110 admission or finding; provided, further, that attendance at the required alcohol awareness  
111 program shall be completed within 1 year of the date of the admission or finding.

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115  (j) If the individual under the age of 21 completes the alcohol awareness program and pays the  
116 fine as provided in subsection (f) within the time period set forth in subsection (i), those offenses  
117 shall not become part of the individual's criminal record. However, records shall be maintained  
118 separately by the criminal history systems board showing the name, address, section 34 to 34D  
119 offense and age at the time of offense of each individual who has participated in the pilot  
120 program and has successfully completed it. Such records shall be available to police departments  
121 and courts for the purpose of determining eligibility to participate in the pilot program. Such  
122 records shall also be available to police departments and courts for the purpose of charging  
123 subsequent violations of section 34 to 34D by the same individuals as second or subsequent  
124 offenses under said sections; or charging individuals as second or subsequent offenders under  
125 any other provisions of the General Laws which would otherwise treat the first-time offenses  
126 under section 34-34D as the first offense in a statute which imposes greater penalties for second  
127 and subsequent offenses.

128  (k) An admission by an individual under the age of 18 or a finding of a violation of a section  
129 34 to 34D offense may be considered factually in a CHINS petition against an individual subject  
130 to such petition under sections 21 to 51H of chapter 119 or any other federal or state statute  
131 relating to children in need of services.

132  (l) Upon the failure of a person under the age of 21 to pay the required fines and complete the  
133 alcohol awareness program, the registrar of motor vehicles shall suspend the offender's license or

134 permit to operate for 180 days. This suspension shall be separate from any suspension set forth in  
135 this section for a violation of sections 34A or 34C.

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137 Section 34F. There is hereby established a Alcohol Awareness Education Fund, hereinafter  
138 “the Fund”. One hundred dollars of any first-time section 34 to34D fine imposed against an  
139 individual under the age of 21 pursuant to the pilot program established in section 34E shall be  
140 deposited into this fund with the remainder deposited into the General Fund. Each such section  
141 34 to 34D fine imposed for a separate violation of any provision any of those sections shall be  
142 considered a separate fine. Monies accumulated in the Fund shall be made available by the  
143 department of public safety and security in the form of grants to municipal police departments to  
144 aid in the development of additional programs in the public schools and to address the issues of  
145 alcohol use and abuse prevention.

146 SECTION 2. Six months prior to the end of the third year of the pilot program, each police  
147 department within the commonwealth shall provide to the General Court a report on the  
148 effectiveness of the pilot program, including the number of participants and the recidivism rate  
149 for those persons under the age of 21 who have participated therein. The General Court shall  
150 then determine whether such pilot program should be extended. If the General Court does not so  
151 extend the pilot program, said program shall automatically terminate at the end of the third year.

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