

SENATE No. 1035

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

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 adoption of the accompanying bill:

An Act relative to treatment, not imprisonment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/23/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/16/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/23/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/23/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/25/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/25/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/26/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/24/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/1/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/1/2021</i>

SENATE No. 1035

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 1035) of Cindy F. Friedman, Jason M. Lewis, Christopher Hendricks, Maria Duaine Robinson and other members of the General Court for legislation relative to treatment, not imprisonment. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 937 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to treatment, not imprisonment.

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

1 SECTION 1. Section 58A of chapter 276 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by adding after subsection (8) the following subsection:-

3 (9) If, after a hearing under subsection (4), pretrial release subject to conditions under
4 subsection (2) is ordered, and if the person is ordered to refrain from the excessive use of alcohol
5 or use of a narcotic drug or other controlled substance as a condition of release or if drug or
6 alcohol testing is ordered as a condition of release, the judicial officer shall not order drug or
7 alcohol testing to occur more than 4 times per month. Upon motion of the person, the judicial
8 officer shall consider whether the person has an alcohol or substance use disorder in need of
9 treatment. If the person has an alcohol or substance use disorder in need of treatment, the person
10 shall be ordered to engage in such treatment in accordance with clause (x) of paragraph (B) of

11 subsection (2) with a mental health clinic or alcohol or substance use disorder program licensed
12 by the department of public health under chapters 17, 111, 111B, or 111E or a behavioral,
13 alcohol use disorder, substance use disorder, or mental health professional who is licensed under
14 chapters 111J and 112 and accredited or certified to provide services consistent with law.

15 If a person is engaged in treatment, the person shall not be required to submit to any drug
16 or alcohol testing that is not required by such treatment program, and any positive test result or
17 any other indicator of relapse shall not be considered a violation of the person's conditions of
18 release. For the purposes of this section, a person shall be considered engaged in treatment if the
19 person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
20 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
21 program and transitions into a new treatment program or regimen within a reasonable period of
22 time; or (iv) is on a waiting list for a treatment program or regimen.

23 If a person is not engaged in treatment, a positive test result may, but does not have to, be
24 considered a violation of conditions of release.

25 If a person has completed treatment and remains subject to pretrial conditions of release,
26 and tests positive for drugs or alcohol, upon motion of the person, the court shall again consider
27 the person's treatment needs. If the person has an alcohol or substance use disorder in need of
28 treatment, the person shall be ordered to resume treatment with a mental health clinic or alcohol
29 or substance use disorder program licensed by the department of public health under chapters 17,
30 111, 111B, or 111E or a behavioral, alcohol use disorder, substance use disorder, or mental
31 health professional who is licensed under chapters 111J and 112 and accredited or certified to

32 provide services consistent with law, and the positive drug or alcohol test shall not be considered
33 a violation of conditions of release.

34 SECTION 2. Section 87A of said chapter 276, as so appearing, is hereby amended by
35 inserting after the first paragraph the following paragraphs:-

36 If a person is ordered to refrain from the use of alcohol or a narcotic drug or other
37 controlled substance as a condition of probation or if drug or alcohol testing is ordered as a
38 condition of probation, the court shall not order drug or alcohol testing to occur more than 4
39 times per month. Upon motion of the person, the court shall consider whether the person has an
40 alcohol or substance use disorder in need of treatment. If the person has an alcohol or substance
41 use disorder in need of treatment, the person shall be ordered to engage in such treatment with a
42 mental health clinic or alcohol or substance use disorder program licensed by the department of
43 public health under chapters 17, 111, 111B, or 111E or a behavioral, alcohol use disorder,
44 substance use disorder, or mental health professional who is licensed under chapters 111J and
45 112 and accredited or certified to provide services consistent with law.

46 If a person is engaged in treatment, the person shall not be required to submit to any drug
47 or alcohol testing that is not required by such treatment program, and any positive test result or
48 any other indicator of relapse shall not be considered a violation of the person's conditions of
49 probation. For the purposes of this section, a person shall be considered engaged in treatment if
50 the person: (i) is attending a treatment program or regimen; (ii) switches treatment programs
51 voluntarily or at the direction of a health care provider; (iii) is discharged from a treatment
52 program and transitions into a new treatment program or regimen within a reasonable period of
53 time; or (iv) is on a waiting list for a treatment program or regimen.

54 If a person is not engaged in treatment, a positive test result may, but does not have to, be
55 considered a violation of conditions of probation.

56 If a person has completed treatment and remains subject to conditions of probation, and
57 tests positive for drugs or alcohol, upon motion of the person, the court shall again consider the
58 person's treatment needs. If the person has an alcohol or substance use disorder in need of
59 treatment, the person shall be ordered to resume treatment with a mental health clinic or alcohol
60 or substance use disorder program licensed by the department of public health under chapters 17,
61 111, 111B, or 111E or a behavioral, alcohol use disorder, substance use disorder, or mental
62 health professional who is licensed under chapters 111J and 112 and accredited or certified to
63 provide services consistent with law, and the positive drug or alcohol test shall not be considered
64 a violation of conditions of probation.