

SENATE, NO. 2492

[Senate, June 21, 2010 - New draft of Senate, Nos. 749, 754, 2155 and 2281 and House Nos. 1961 and 3479 reported from the committee on Health Care Financing.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT RELATIVE TO SUBSTANCE ABUSE EDUCATION AND PREVENTION.

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.** Chapter 15 of the General Laws is hereby amended by adding the
2 following section:-

3 Section 67. Each school district shall adopt a substance abuse education and prevention
4 policy, pursuant to guidelines established by the commissioner, in consultation with the
5 commissioner of public health. Each school district shall involve students, parents, guardians,
6 teachers, administrators, school staff, community representatives, and local law enforcement
7 agencies in the development of the policy. The policy shall be in writing and formally adopted

8 by the school committee as a school district policy. The written policy shall include the phone
9 number of the helpline established under section 18 chapter 17 of the General Laws, and contact
10 information for other substance abuse resources as determined by the school district. A copy of
11 the policy shall be distributed to each student and their parents or legal guardian by October 1st
12 of each year, and shall be provided to any person upon request by the principal of every school
13 within the district. A copy of each school district's policy as adopted shall be sent to the
14 commissioner who shall periodically review each policy for compliance with established
15 guidelines.

16 As part of any substance abuse educational programming resulting from the policy, there
17 shall be presentations to students by recovering addicts.

18 **SECTION 2.** Chapter 17 of the General Laws is hereby amended by adding the
19 following 2 sections:-

20 Section 18. (a) There shall be a bureau of substance abuse services within the
21 department.

22 (b) The bureau shall establish and advertise a free, anonymous, and confidential toll-free
23 telephone helpline that shall provide comprehensive, accurate, and current information and
24 referrals related to addiction treatment and prevention services. The administration of the
25 helpline shall be coordinated with the other departments and agencies of the commonwealth in
26 order to prevent the duplication of similar services. The operation of the helpline may be
27 contracted to third parties; provided that any such contracts shall be performance-based and
28 subject to approval by the commissioner.

29 Section 19. The department shall promulgate regulations relative to discharge plans for
30 substance abuse treatment programs subject to licensure or approval under sections 24 and 24D
31 of chapter 90, sections 6 and 6A of chapter 111B, and section 7 of chapter 111E. A discharge
32 plan shall be issued for each client leaving a licensed substance abuse treatment program, and
33 shall include follow-up treatment, contact information for shelters in the area, additional
34 resources for substance abuse treatment and workforce options.

35 **SECTION 3.** Section 22 of chapter 32A of the General Laws, as appearing in the 2008
36 Official Edition, is hereby amended by inserting after the word “setting”, in line 85, the
37 following words: - and, for persons under the age of 19, shall include collateral services

38 **SECTION 4.** Subsection (i) of said section 22 of said chapter 32A, as so appearing, is
39 hereby amended by striking out the last paragraph.

40 **SECTION 5.** Said section 22 of said chapter 32A, as so appearing, is hereby amended
41 by adding the following subsection:-

42 Under this section, the following words shall have the following meanings unless the
43 context requires otherwise:-

44 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
45 duration, by a licensed mental health professional with parties determined by the licensed mental
46 health professional to be necessary to make a diagnosis, and develop and implement a treatment
47 plan. A licensed mental health professional shall not seek or receive reimbursement for more
48 than four episodes of collateral services per patient, per month.

49 “Licensed mental health professional”, a licensed physician who specializes in the
50 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
51 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

52 **SECTION 6.** The first sentence of subsection (b) of section 91 of chapter 71 of the
53 General Laws, as inserted by section 65 of chapter 27 of the acts of 2009, is hereby amended by
54 striking out the words “chapter 70” and inserting in place thereof the following words:-
55 foundation budget.

56 **SECTION 7.** Section 18 of chapter 94C of the General Laws, as appearing in the 2008
57 Official Edition, is hereby amended by adding the following subsection:-

58 (e) Practitioners who prescribe controlled substances, except veterinarians, shall be
59 required, as a prerequisite to obtaining or renewing their professional license, to complete
60 appropriate training relative to: (i) effective pain management; (ii) identification of patients at
61 high risk for substance abuse, and (iii) counseling patients about the side effects, addictive
62 nature, and proper storage and disposal of their prescription medications. The boards of
63 registration for each professional license that requires such training shall develop the standards
64 for appropriate training programs.

65 **SECTION 8.** Said chapter 94C is hereby amended by striking out section 24, as so
66 appearing, and inserting in place thereof the following section:-

67 Section 24. (a) Within the department, there shall be an electronic reporting and
68 prescription monitoring program for all prescriptions for controlled substances under schedule II,
69 schedule III, schedule IV, and schedule V.

70 (b) If the commissioner determines that a research subject or patient is receiving a
71 controlled substance from more than 1 source and in quantities which he determines to be
72 harmful to the health of such research subject or patient, the commissioner shall so notify the
73 practitioners who have dispensed the controlled substance.

74 (c) In order to prevent the dispensing of controlled substances to the same individual
75 from multiple sources or the unlawful diversion of controlled substances, the commissioner shall,
76 pursuant to chapter 30A, adopt rules and regulations for carrying out the provisions of this
77 section.

78 **SECTION 9.** Said chapter 94C hereby further amended by inserting after section 44 the
79 following section:-

80 Section 44A. (a) Any person, who in good faith, seeks medical assistance for someone
81 who is or there is reason to believe is experiencing a drug related overdose shall not be charged
82 or prosecuted for possession of a controlled substance, pursuant to this chapter, if the evidence
83 for the charge of or prosecution for possession of a controlled substance was obtained as a result
84 of the seeking of medical assistance.

85 (b) Any person who experiences or has reason to believe he or she is experiencing a drug-
86 related overdose and is in need of medical assistance shall not be charged or prosecuted for
87 possession of a controlled substance, pursuant to this chapter, if the evidence for the charge of or
88 prosecution for possession of a controlled substance was obtained as a result of the seeking of
89 medical assistance.

90 (c) Nothing in this section shall prohibit a charge or prosecution for possession with
91 intent to manufacture, distribute or dispense a controlled substance or the entry of a plea or

92 verdict of guilty for possession of a controlled substance as a lesser included offense of a
93 complaint or indictment charging possession of a controlled substance with intent to
94 manufacture, distribute, or dispense.

95 (d) The act of seeking medical assistance for someone who is or there is reason to
96 believe is experiencing a drug-related overdose shall be admissible as evidence if proffered by a
97 defendant in a criminal prosecution pursuant to this chapter, if the evidence for the charge or
98 prosecution was obtained as a result of the seeking of medical assistance.

99 **SECTION 10.** Section 12F of chapter 112 of the General Laws, as so appearing, is
100 hereby amended by striking out, in lines 37 and 38, the words “upon the written consent of the
101 minor or a proper judicial order” and inserting in place thereof the following words: - : (i) the
102 written consent of the minor, (ii) a proper judicial order or (iii) if the information or records
103 relate to a minor’s treatment for a drug or alcohol overdose, as defined by department of public
104 health in its regulations, and are being provided to the minor’s parents or legal guardian.

105 **SECTION 11.** Said chapter 112 is hereby further amended by inserting after section 12F
106 the following section:-

107 Section 12F ½. The department of public health shall produce a pamphlet with contact
108 information for its bureau of substance abuse services and its substance abuse helpline and with
109 information on the benefits and availability of treatment and on the prevention of future
110 overdoses.

111 Any physician or hospital that treats a person under the age of 18 for a drug or alcohol
112 overdose, as defined by department of public health in its regulations, shall notify the minor’s

113 parents or legal guardian of the overdose as part of the discharge planning process and provide
114 them with the pamphlet.

115 **SECTION 12.** Chapter 118E of the General Laws, as so appearing, is amended by
116 inserting after section 10F the following section:-

117 Section 10G. (a) The division shall provide coverage for collateral services performed by
118 a licensed mental health professional for persons under 19 years of age. Nothing contained in this
119 section shall be construed to abrogate any obligation to provide coverage for mental health
120 services pursuant to any law or regulation of the commonwealth or the United States or under the
121 terms or provisions of any policy, contract, or certificate.

122 (b) Under this section, the following words shall have the following meanings unless the
123 context requires otherwise:-

124 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
125 duration, by a licensed mental health professional with parties determined by the licensed mental
126 health professional to be necessary to make a diagnosis, and develop and implement a treatment
127 plan. A licensed mental health professional shall not seek or receive reimbursement for more
128 than four episodes of collateral services per patient, per month.

129 “Licensed mental health professional”, a licensed physician who specializes in the
130 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
131 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

132 **SECTION 13.** Section 47B of chapter 175 of the General Laws, as so appearing, is
133 hereby amended by inserting after the word “setting”, in lines 98 and 99, the following words: -
134 and, for persons under the age of 19, shall include collateral services.

135 **SECTION 14.** Subsection (i) of said chapter 47B of said chapter 175, as so appearing, is
136 hereby amended by striking out the second and third paragraphs.

137 **SECTION 15.** Said section 47B of said chapter 175, as so appearing, is hereby further
138 amended by adding the following 2 subsections:—

139 (k) Under this section, the following words shall have the following meanings unless the
140 context requires otherwise:-

141 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
142 duration, by a licensed mental health professional with parties determined by the licensed mental
143 health professional to be necessary to make a diagnosis, and develop and implement a treatment
144 plan. A licensed mental health professional shall not seek or receive reimbursement for more
145 than four episodes of collateral services per patient, per month.

146 “Licensed mental health professional”, a licensed physician who specializes in the
147 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
148 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

149 (l) For the purposes of this section, psychopharmacological services and
150 neuropsychological assessment services shall be treated as a medical benefit and shall be covered
151 in a manner identical to all other medical services.

152 **SECTION 16.** Section 8A of chapter 176A of the General Laws, as so appearing, is
153 hereby amended by inserting after the word “setting”, in lines 92 and 93, the following words: -
154 and, for persons under the age of 19, shall include collateral services.

155 **SECTION 17.** Subsection (i) of said section 8A of said chapter 176A, as so appearing,
156 is hereby amended by striking out the second and third paragraphs.

157 **SECTION 18.** Said section 8A of said chapter 176A, as so appearing, is hereby further
158 amended by adding the following 2 subsections:—

159 (j) Under this section, the following words shall have the following meaning unless the
160 context requires otherwise:-

161 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
162 duration, by a licensed mental health professional with parties determined by the licensed mental
163 health professional to be necessary to make a diagnosis, and develop and implement a treatment
164 plan. A licensed mental health professional shall not seek or receive reimbursement for more
165 than four episodes of collateral services per patient, per month.

166 “Licensed mental health professional”, a licensed physician who specializes in the
167 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
168 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

169 (k) For the purposes of this section, psychopharmacological services and
170 neuropsychological assessment services shall be treated as a medical benefit and shall be covered
171 in a manner identical to all other medical services.

172 **SECTION 19.** Section 4A of chapter 176B of the General Laws, as so appearing, is
173 hereby amended by inserting after the word “setting”, in lines 95 and 96, the following words: -
174 and, for persons under the age of 19, shall include collateral services.

175 **SECTION 20.** Subsection (i) of said section 4A of said chapter 176B, as so appearing, is
176 hereby amended by striking out the second and third paragraphs.

177 **SECTION 21.** Said section 4A of said chapter 176B, as so appearing, is hereby further
178 amended by adding the following 2 subsections:—

179 (j) Under this section, the following words shall have the following meanings unless the
180 context requires otherwise:-

181 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
182 duration, by a licensed mental health professional with parties determined by the licensed mental
183 health professional to be necessary to make a diagnosis, and develop and implement a treatment
184 plan. A licensed mental health professional shall not seek or receive reimbursement for more
185 than four episodes of collateral services per patient, per month.

186 “Licensed mental health professional”, a licensed physician who specializes in the
187 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
188 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

189 (k) For the purposes of this section, psychopharmacological services and
190 neuropsychological assessment services shall be treated as a medical benefit and shall be covered
191 in a manner identical to all other medical services.

192 **SECTION 22.** Section 4M of chapter 176G of the General Laws, as so appearing, is
193 hereby amended by inserting after the word “setting”, in lines 89 and 90, the following words: -
194 and, for persons under the age of 19, shall include collateral services.

195 **SECTION 23.** Subsection (i) of said section 4M of said chapter 176G, as so appearing,
196 is hereby amended by striking out the second and third paragraphs.

197 **SECTION 24.** Said section 4M of said chapter 176G of the General Laws, as so
198 appearing, is hereby further amended by adding the following 2 subsections:-

199 (j) Under this section, the following words shall have the following meanings unless the
200 context requires otherwise:-

201 “Collateral services”, face-to-face or telephonic consultation, of at least 15 minutes in
202 duration, by a licensed mental health professional with parties determined by the licensed mental
203 health professional to be necessary to make a diagnosis, and develop and implement a treatment
204 plan. A licensed mental health professional shall not seek or receive reimbursement for more
205 than four episodes of collateral services per patient, per month.

206 “Licensed mental health professional”, a licensed physician who specializes in the
207 practice of psychiatry, a licensed psychologist, a licensed independent clinical social worker, a
208 licensed mental health counselor, or a licensed nurse mental health clinical specialist.

209 (k) For the purposes of this section, psychopharmacological services and
210 neuropsychological assessment services shall be treated as a medical benefit and shall be covered
211 in a manner identical to all other medical services.

212 **SECTION 25.** The department of probation, in consultation with the criminal history
213 systems board shall conduct a study on rehabilitation. That study shall include an examination
214 of:

215 (a) enabling a person convicted of or adjudicated delinquent by reason of any felony or
216 misdemeanor charges in the Commonwealth or a person who has been charged with a crime in
217 the Commonwealth but which charges did not result in a conviction to petition the superior court
218 of the trial court department in the county in which he then resides for a certificate of
219 rehabilitation, or a certificate of recovery and rehabilitation if the charges were a consequence of

220 substance abuse, for ascertainment and declaration of the fact of his rehabilitation or recovery
221 and rehabilitation if certain conditions are met, for example if the person: (1) has not been
222 sentenced to incarceration since being discharged from a felony or misdemeanor or since the
223 termination of any ancillary proceedings related to such felony or misdemeanor including, but
224 not limited to, any period of probation, parole or continuation; (2) is not the subject of a
225 probationary or parole term for the commission of any other felony or misdemeanor; (3) presents
226 satisfactory evidence of 2 years residence in the commonwealth prior to the filing of the petition;
227 (4) has demonstrated a period of rehabilitation, as defined by the department of probation, and
228 (5) in the case of a person seeking a certificate of recovery and rehabilitation, has completed a
229 substance abuse treatment program approved by the bureau of substance abuse treatment services
230 within the department of public health;

231 (b) the standard the petitioner must demonstrate his rehabilitation or recovery;

232 (c) the duration of rehabilitation required to be eligible for a certificate of rehabilitation or
233 recovery;

234 (d) any recommended provision of notice of the filing of a petition to the district attorney of the
235 county in which a petition is filed, to the district attorney of the county in which the petitioner
236 was convicted of an offense, to the attorney general and to the governor;

237 (e) whether a petitioner for a certification of rehabilitation or recovery may be represented by
238 counsel and whether the court shall appoint counsel for certain petitioners;

239 (f) whether the court in which the petition is filed may require such testimony as it deems
240 necessary, and who should be required to produce and pay for the cost of production of all
241 records and reports relating to the petitioner and the offense for which he was charged;

242 (g) which information the court may request upon the filing of the application for a certificate,
243 from the district attorney in which the petition was filed including, but not limited to: the place of
244 residence of the petitioner; the criminal record of the petitioner as shown by the records of the
245 Department of Justice; any representation made to the court by the petitioner; the conduct of the
246 petitioner during his period of rehabilitation; and any other information the court may deem
247 necessary in making its determination;

248 (h) under what conditions a court should deny a petition for a certificate of rehabilitation or
249 recovery;

250 (i) under what conditions a court should issue a certificate of rehabilitation or recovery and
251 whether such a certificate should become a part of the petitioner's criminal offender record
252 information;

253 (j) to whom the court should forward such a certificate and whether any recommendations should
254 be included;

255 (k) whether such a certificate should be provided to any person lawfully seeking information
256 relative to the offense for which a petitioner has received a certificate;

257 (l) whether any forms would be required to effectuate such a process and who should develop
258 them;

259 (m) any notice requirements that are recommended for defendants or individuals being released
260 from custody, discharged from probation or parole, or concluding substance abuse treatment;

261 (n) any other factors that may or may not be included within the determination of whether to
262 issue a benefit granted by the awarding of such a certificate;

263 (o) any rights that an individual who has been denied the benefits of attaining a certificate of
264 rehabilitation or recovery should have, including the right to appeal such a decision;

265 (p) what the appropriate forum should be for such an appeal; and

266 (q) any punishments that should be levied against an individual who fraudulently uses such a
267 certificate.

268 The department shall report its findings to the clerks of the house and senate by July 1, 2011 who
269 shall forward that report to the chairmen of the house committee on ways and means, the senate
270 committee on ways and means and the joint committee on mental health and substance abuse.

271 **SECTION 26.** Chapter 138 of the General Laws, as appearing in the 2008 Official
272 Edition, is hereby amended by inserting after section 34D, the following new section:-

273 Section 34E. Persons under 21 years of age; consumption of alcohol; department of
274 public health youth alcohol education program. Whoever, being under 21 years of age and not
275 accompanied by a parent or legal guardian, is visibly intoxicated or has a detectable blood
276 alcohol content of .02 or is in violation of Section 34A or 34C of this chapter, may be issued a
277 civil citation by a police officer imposing a fine of three hundred dollars; provided, however, that
278 this section shall not apply to the possession or consumption of alcohol for religious purposes
279 protected by the first amendment to the United States Constitution or for lawful medicinal
280 purposes. This section shall not apply to any person with a prior criminal record or to any person
281 who causes serious personal injury or death of another person. In lieu of said fine, such minor
282 and parent or guardian of such person may consent to enroll in a youth alcohol education
283 program as provided herein. Said youth alcohol education program shall be certified by the
284 department of public health to prevent and significantly reduce alcohol and controlled substance
285 use and shall be specifically designed for the individual education, assessment and treatment of
286 youth at risk of alcohol and controlled substance use. Youth alcohol education program providers
287 utilized under the provisions of this section shall be certified by the department of public health

288 as in compliance with a standard assessment tool approved by the department for the initial
289 assessment of youth, and include age specific standards and performance measures that the
290 department adopts. Any licensed professional, public or private out-patient clinic, hospital,
291 employer or union sponsored program, or any other organization, facility, service or internet
292 accessible program which the department has accepted as appropriate for the purposes of this
293 section may be certified as a youth alcohol education program provider. The department of
294 public health shall make a list of certified youth alcohol education program providers available to
295 the public. Enrollment in said program and satisfactory completion of its conditions, including
296 substance abuse screening if deemed appropriate, may be in lieu of any conviction, adjudication
297 or motor vehicle license penalty ordinarily imposed by Section 34A or 34C of this chapter. The
298 registrar of motor vehicles shall not consider citations issued under this section a violation of the
299 motor vehicle laws.

300 **SECTION 27.** Notwithstanding the provisions of any general or special law to the
301 contrary, the bureau of substance abuse services, in consultation with the department of public
302 health, shall conduct a study of alcohol and substance free housing, known as “sober homes”, to
303 examine how best to provide oversight by exploring the feasibility of licensing, regulating,
304 registering, or certifying sober homes and/or operators. Said study shall also document the
305 number of sober homes operating in the state, the standards and requirements necessary to
306 protect the health and safety of the home’s residents, and any problems created by the operation
307 of sober homes, including impacts on neighborhoods and surrounding areas.

308 The bureau shall report to the general court the results of its study and its recommendations, if
309 any, together with drafts of legislation necessary to carry its recommendations into effect by

310 filing the same with the clerk of the senate, the joint committee on mental health and substance
311 abuse and the senate and house committees on ways and means no later than December 31, 2010.

312 **SECTION 28.** The commissioner of elementary and secondary education, in
313 consultation with the commissioner of public health, shall establish a pilot program for the
314 purpose of providing substance abuse training in at least 1 middle school and at least 1 high
315 school in each county of the commonwealth. All teachers, guidance counselors, and school
316 nurses in each school selected for the pilot program shall be trained to recognize signs of
317 substance abuse. In addition, parents and legal guardians of students shall be offered a training
318 to recognize the signs of substance abuse. A teacher, guidance counselor, or school nurse in each
319 school selected for the pilot program shall be trained to: (i) conduct an initial screening of those
320 students identified as potential substance abusers, (ii) provide intervention services and (iii)
321 provide referrals for subsequent comprehensive assessment and appropriate treatment.

322 **SECTION 29.** Section 16 of chapter 211B of the General Laws, as so appearing, is
323 hereby amended by adding the following paragraph:

324 The institute, in consultation with the bureau of substance abuse services within the department
325 of public health, shall provide substance abuse training that identifies substance abuse treatment
326 resources for persons charged with or convicted of a crime or adjudicated delinquent who could
327 benefit from such services.

328 **SECTION 30.** The department of public health shall promulgate regulations to include
329 all prescriptions for controlled substances under schedule II, schedule III, schedule IV, and
330 schedule V in the electronic reporting and prescription monitoring program, established under
331 section 24 of chapter 94C, within 90 days of the passage of this act.

332 **SECTION 31.** The department of public health shall submit a report to the clerks of the
333 house of representatives and senate, the chairs of the joint committee on public health, the chairs
334 of the joint committee on health care financing, and the chairs of the joint committee on public
335 safety and homeland security relative to the department's efforts to update the electronic
336 reporting and prescription monitoring program, established under section 24 of chapter 94C, by
337 streamlining case reporting, expanding proactive reporting, increasing the flow of information to
338 prescribing physicians and law enforcement personnel, including additional prescription
339 schedules, increasing reporting frequency, implementing an online system accessible to
340 prescribers, pharmacies and law enforcement personnel, reducing Medicaid fraud, and improving
341 interstate operability. The report shall include specific timelines to achieve the goals stated in
342 the report. The report shall be issued within 90 days of the passage of this act.

343 **SECTION 32.** The department of labor and workforce development, in consultation
344 with the department of public health, shall conduct an investigation and study on the feasibility
345 of a post treatment job skills training program and/or re-entry program for individuals recovering
346 from substance use disorders. The study shall include information on best practices for similar
347 job training programs, guidelines by which the commonwealth can use to establish an effective
348 job skills training program, projected costs of such a program, and types of job skills that can be
349 utilized by a program. Results of the study shall be filed with the clerk of the house of
350 representatives and the clerk of the senate and, the joint committee on mental health and
351 substance abuse, and the joint committee on labor and workforce development by July 15, 2011.

352 **SECTION 33.** The department of public health shall submit a report on the status of this
353 act to the general court by filing it with the clerk of the house of representatives and the clerk of
354 the senate on or before July 15, 2011.

355 **SECTION 34.** The bureau of substance abuse services within the department of public
356 health shall establish a means for measuring the potential effects of this act either through rates
357 of substance abuse, drug related overdoses, drug related crime or some other measure or
358 measures as determined by the bureau within one year of the effective date of this act.

359 **SECTION 35.** Revenue generated by section 55 of chapter 27 of the acts of 2009 shall
360 be allocated in part towards the costs incurred by the commonwealth under this act.