

**SENATE . . . . . No. 731**

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The Commonwealth of Massachusetts

PRESENTED BY:

***William N. Brownsberger***

*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 protecting the rights of probationers in drug courts.

PETITION OF:

NAME:

*William N. Brownsberger*

DISTRICT/ADDRESS:

*Second Suffolk and Middlesex*

**SENATE . . . . . No. 731**

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By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 731) of William N. Brownsberger for legislation to protect the rights of probationers in drug courts. The Judiciary.

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The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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An Act protecting the rights of probationers in drug courts.

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

1 The General Laws are amended by adding the following new chapter:

2 Chapter 276B: Drug Courts

3 Section 1: Definitions

4 As used in this Chapter, the following terms shall have the following meanings:

5 “Drug Court Eligible Offender”, a person with a current addiction to a substance who has  
6 been convicted of at least two felonies in the past ten years which may include the present  
7 offense.

8 “Drug Court Judge”, a judge who in addition to being a member of the bar has a master’s  
9 degree in social work, a master’s degree in psychology, is a doctor of medicine, or bears similar  
10 advanced credentials relevant to the treatment of addiction, or who has successfully completed a  
11 course of drug court training.

12 “Drug Court Probation”, a sentence to a term of probation with conditions that include (a)  
13 remaining drug and alcohol free; (b) submitting to regular testing for substance metabolites; (c)  
14 participation in drug or alcohol treatment; and (d) participation in drug court sessions with a  
15 judge.

16 “Drug Court Session”, a session of a court in which a list of offenders on drug court  
17 probation is called and each offender engages in colloquies with the judge related to his or her  
18 compliance with probation and his or her progress in drug or alcohol treatment.

19 “Drug Court Training”, a course of training to be developed and approved by the Chief  
20 Justice of the Trial Court in consultation with the National Association of Drug Court  
21 Professionals.

## 22 Section 2: Qualifications of Judges Sitting in Drug Courts

23 No judge shall (a) preside in a drug court session; (b) find a defendant to be drug court  
24 eligible; (c) sentence an offender to drug court probation; or (d) sentence an offender on drug  
25 court probation for a violation of probation, unless he or she has been approved as a drug court  
26 judge by the Chief Justice of the Trial Court.

## 27 Section 3: Sentencing to Drug Court Probation

28 No person shall be sentenced to drug court probation unless he or she has been found to  
29 be drug court eligible.

## 30 Section 4: Information for Defendants Prior to Entry Into Drug Court Probation

31 A defendant shall not be sentenced to drug court, unless the court is satisfied that the  
32 defendant has been previously informed of the rules and procedures governing drug court  
33 probation, including an explanation of his or her rights pursuant to section 6.

34 Section 5: Limitation of Sanctions in Drug Court

35 No person sentenced to drug court probation shall be held overnight or for any longer  
36 period, whether in a jail or a house of correction or state prison, based on a preliminary or final  
37 finding that he or she has violated his or her probation solely by using alcohol or drugs, nor shall  
38 overnight detention be imposed because no treatment bed is available. The Chief Justice of the  
39 Trial Court shall promulgate sanctioning guidelines for drug court probation that are consistent  
40 with this section and with emerging research on effective approaches to sanctioning drug court  
41 offenders.

42 Section 6: Oversight of Drug Courts

43 If the prosecution or the defense or a person sentenced to drug court probation perceives  
44 that a drug court judge has with undue frequency departed from the sanctioning guidelines for  
45 drug court probation developed pursuant to Section 5, he or she may complain to the Chief  
46 Justice of the Trial Court on a form to be developed by the Chief Justice. His or her complaint  
47 need not pertain to his or her own case or to any case still pending in the drug court, but must  
48 allege departures occurring within the past twelve months. The right to complain under this  
49 section shall be in addition to, not in lieu of, other rights of appeal available to persons sentenced  
50 to drug court probation.

51 Section 7: Effective Dates and Transition Rules

52           Sections 3 and 4 of this act shall apply only to defendants sentenced to drug court  
53 probation after the effective date of this act. The first sentence of section 5 shall apply to all  
54 defendants on drug court probation as of the effective date of this act and to all defendants  
55 sentenced to drug court probation after the effective date of this act. Sections 2 and 6 and the  
56 second sentence of section 5 shall take effect 12 months from the effective date of this act.