



Testimony submitted to
The Joint Committee on the Judiciary
In Support of S.937/H.1343 An Act relative to treatment, not imprisonment
By Colleen Kirby, LWVMA Specialist, Criminal Justice Reform
October 22, 2019

Thousands of Massachusetts residents suffering from addiction are under court-order to be drug-free while on pretrial release or probation. If they relapse, they can be sent to jail, even if they are working toward long-term recovery with a licensed provider. Incarceration disrupts treatment and often endangers the path to recovery. If our goal is to stop substance addiction, it is better to keep people engaged in treatment when they relapse rather than incarcerate them. Recovery is more likely when people can be honest with their treatment providers because they are no longer in danger of being incarcerated. Importantly, with this legislation, any criminal activity will still be a violation.

In 2018, the Supreme Judicial Court ruled in *Commonwealth v. Eldred* that a judge may jail a person solely for having relapsed while on probation.¹ “Knowing that a relapse leads to a probation violation made it harder for me to talk about my struggles, for fear of being locked up,” said Julie Eldred, the defendant in the case.² According to the Massachusetts Department of Health, the opioid overdose death rate is 120 times higher for those recently released from custody compared to the rest of the population, and nearly one in 11 fatal overdoses are people who were formerly incarcerated.³ John Kelly, a Harvard Medical School psychiatry professor who teaches addiction medicine, said “that relapse is a symptom of the disease and that punishing a person for ‘expressing symptoms’ is unethical.” And “I would argue that you can require someone to remain drug-free, but instead of the threat of jail, you can have the threat of more treatment,” Kelly said.⁴

The League of Women Voters of the United States “believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime” and that “every U.S. resident should have access to a basic level of care.”⁵ In addition, the League of Women Voters of Massachusetts, which represents 47 local Leagues across the Commonwealth, is in favor of “the use of adequately funded and supervised alternative punishments for...offenders where mitigating circumstances exist” and supports “measures to protect the civil and individual rights of the offender and to promote the offender's rehabilitation through individualized treatment” and “sentence lengths that encourage rehabilitation and reintegration into society.”⁶ The League also supports “equal access to quality health care for all” with an “emphasis on preventive medicine, use of alternative settings, and individual responsibility for health maintenance.”

This bill allows judges to order a person to get treatment for an addiction, but does not allow a person to be sent to jail just for having a relapse if they are currently engaged in treatment. According to the National Institute on Drug Abuse, “An undetected relapse can progress to serious drug abuse, but detected use can present opportunities for therapeutic intervention,”⁷



which is why it is important that a relapse, on its own, doesn't lead to custody, but to more monitoring and treatment. Few jails or prisons provide appropriate treatment for those in their care. Fortunately, Massachusetts has many substance addiction treatment alternatives,⁸ and there is plenty of expertise showing that relapsing is often part of the pathway to recovery.

According to the Surgeon General's Spotlight on Opioids, "Medication-assisted treatment (MAT) combined with psychosocial therapies and community-based recovery supports is the gold standard for treating opioid addiction."⁹ When drug courts are involved,¹⁰ they should send people to treatment or community-based supports rather than putting people into custody, because that works better and is far less expensive.¹¹ In New Hampshire, those working with prisoners have found that honesty is key for treatment to work.¹² In Roane County, Tennessee, relapse is treated as a setback, not game over.¹³ Studies in Canada found that the "most important, and consistent, finding to date with respect to substance abuse interventions is the need for 'throughcare' in the prison to aftercare in the community."¹⁴

"All of [the] leading scientific medical experts definitively say that addiction is a chronic disease that impacts the parts of our brain that control choice, reward, and motivation," said Dr. Sarah Wakeman, medical director of the Substance Use Disorders Initiative at Massachusetts General Hospital, who submitted an affidavit supporting Julie Eldred's claim.¹⁵ Dr. Alain A. Chaoui, president of the Massachusetts Medical Society, said the decision to "jail a person for a relapse goes against evidence-based medicine. Penalizing those battling a chronic disease because they have exhibited a symptom perpetuates stigma and undermines efforts to foster empathy and recovery."¹⁵

Passing this bill will make it clear that the Commonwealth is doing everything it can to stop the opioid crisis. Sen. Cindy Friedman, one of the sponsors of this bill, said "drug-free court orders unfairly punish people for a normal condition of substance use disorder that is bound to appear on the path to recovery: relapse."¹⁶ James Pingeon, litigation director at Prisoners' Legal Services of Massachusetts, said the jail environment is often not conducive to recovery because drug use is common and treatment resources are poor. "Drugs are widespread in prisons in general, but they sort of concentrate [on] people who have substance use issues," Pingeon said. "It's hard to get clean when there are so many people using all around you."¹⁶

As long as a person is engaged in treatment with a licensed provider and not involved in criminal behavior, it doesn't make sense to incarcerate him or her for experiencing a relapse, a normal part of the recovery process. This bill encourages probationers who struggle with substance use disorder to engage in treatment authentically and openly, which is the safest way to stem the addiction crisis and promote public health.

Please support this bill. Thank you for your consideration.

1. <https://www.wbur.org/news/2018/07/16/eldred-decision-probation-drug-use>
2. <https://www.nytimes.com/2018/06/04/health/drug-addict-relapse-opioids.html>
3. https://www.masslive.com/politics/2017/08/opioid_overdose_risk_greatest.html
4. <https://www.theatlantic.com/politics/archive/2017/12/opioids-massachusetts-supreme-court/548480/>
5. Impact on Issues <https://lwmvma.org/advocacy/league-postions/>
6. Where We Stand <https://lwmvma.org/advocacy/league-postions/>
7. <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/principles>
8. <https://www.mass.gov/service-details/substance-abuse-services-descriptions>
9. <https://addiction.surgeongeneral.gov/>
10. <https://www.mass.gov/info-details/drug-courts>
11. <http://www.gnmhc.org/health-services/substance-abuse-services/drug-treatment-court/>
12. <https://www.nhpr.org/post/help-addiction-nh-drug-courts-offer-reoffenders-second-chance#stream/0>
13. <https://www.youtube.com/watch?v=i0HdnjI6hZM&index=6&list=PLDuEPDzDod9jFHjS8xRSu-1ChSleOOee3>
14. <https://www.publicsafety.gc.ca/cnt/rsres/pblctns/scl-rntgrtn/index-en.aspx#s17>
15. <https://www.bostonglobe.com/metro/2018/07/16/state-highest-court-rules-that-judges-may-force-defendants-with-drug-addiction-stay-sober/Ue5e5QUpf4vErX1seTYsaL/story.html>
16. <https://dailyfreepress.com/blog/2019/02/07/new-bill-could-prevent-jail-time-for-relapse-in-massachusetts/>