HOUSE DOCKET, NO. 1228 FILED ON: 1/20/2011

HOUSE . . . . . No. 1370

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. Stanley and John Hart, Jr.

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:

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:
Thomas M. Stanley	*9th Middlesex*
Jennifer L. Flanagan	☐ *[District]* ☐
James J. Dwyer	*30th Middlesex*
John P. Fresolo	*16th Worcester*
Sean Garballey	*23rd Middlesex*
Dennis A. Rosa	*4th Worcester*
Martin J. Walsh	*13th Suffolk*
Alice K. Wolf	*25th Middlesex*
John J. Binienda	*17th Worcester*
William N. Brownsberger	☐ *[District]* ☐
Michael A. Costello	*1st Essex*
Susan Williams Gifford	*2nd Plymouth*

Michael F. Kane	*5th Hampden*
John D. Keenan	*7th Essex*
David M. Nangle	*17th Middlesex*
Frank I. Smizik	*15th Norfolk*
David M. Torrisi	*14th Essex*
Cleon H. Turner	*1st Barnstable*
Brian M. Ashe	*2nd Hampden*
Cory Atkins	*14th Middlesex*
Demetrius J. Atsalis	*2nd Barnstable*
Ruth B. Balser	*12th Middlesex*
Matthew A. Beaton	*11th Worcester*
Christine E. Canavan	*10th Plymouth*
Nick Collins	*4th Suffolk*
Edward F. Coppinger	*10th Suffolk*
Geraldine M. Creedon	*11th Plymouth*
Marcos A. Devers	*16th Essex*
Christopher G. Fallon	*33rd Middlesex*
Linda Dorcena Forry	*12th Suffolk*
Patricia A. Haddad	*5th Bristol*
Carlos Henriquez	*5th Suffolk*
Paul McMurtry	*11th Norfolk*
Kevin J. Murphy	*18th Middlesex*
William Smitty Pignatelli	*4th Berkshire*
Denise Provost	*27th Middlesex*
Kathi-Anne Reinstein	*16th Suffolk*
John W. Scibak	*2nd Hampshire*
Joyce A. Spiliotis	*12th Essex*
Jason M. Lewis	*31st Middlesex*
Paul J. Brasco	*Waltham City Council President* *19 Crestview Rd.* *Waltham, MA 02451*

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HOUSE . . . . . No. 1370

By Mr. Stanley of Waltham and Senator Hart, a joint petition (accompanied by bill, House, No. 1370) of Thomas M. Stanley and others 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.

The Commonwealth of Massachusetts

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:

PREAMBLE

The General Court finds that chapter 138 of the General Laws governs offenses relating to alcohol offenses by individuals under the age of 21 and that many such offenders are not aware of the serious issues which may arise from the use and abuse of alcohol. Therefore, the General Court is establishing a pilot program designed to provide a new method of dealing with individuals under the age of 21 who could otherwise be charged criminally with violations of chapter 138. The General Court states that the purpose of the program is to provide education to individuals under the legal drinking age who have been charged for the first time with violating laws relating to procurement, possession or use of alcoholic beverages. The General Court has determined that the program shall only be applicable to first time violators under the age of 21 who have not previously been convicted under chapter 138 of an offense involving alcohol. The program shall not limit the ability of the court to impose additional penalties upon or require restitution from those program participants who have also been charged with a separate crime for causing personal injury or personal or real property damage during the commission of any offense under sections 34 through 34D, inclusive.

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

Section 34E. (a) There shall be established within the commonwealth a pilot program for a period of three years from the effective date of this section to study the effectiveness of 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
24 of 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.

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

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

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

49 At or before the completion of each tour of duty, or at the beginning of the first
50 subsequent tour of duty, the police officer shall give to his commanding officer a copy of each
51 notice of an offense he has taken cognizance of during such tour which has not already been
52 delivered or mailed by him as aforesaid. The commanding officer shall retain and safely preserve
53 1 copy and shall, at a time not later than the next court day after such delivery or mailing, deliver
54 the other copy to the clerk of the court before which the offender has been notified to appear.
55 The clerk of each district court shall maintain a separate docket of such notices to appear.

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

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

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

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

75 If any person so notified to appear desires to contest the section 34 to 34D offense alleged
76 in the notice to appear and also to avail himself of the procedure established pursuant to this
77 paragraph, he may, within 21 days after the date of the notice, request a hearing in writing. Such
78 hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall
79 direct, and if the judge, clerk, or assistant clerk shall, after hearing, find that the section 34 to
80 34D offense occurred and that it was committed by the person so notified to appear, the person
81 so notified shall be permitted to a disposition of the case by paying into the fund established in
82 section 34F a fine of $300 for each such section 34 to 34D offense included in the first-time
83 offender event and he shall attend an approved alcohol awareness program as set forth in this
84 section. For any first-time violation of section 34A or 34C, the court shall report the same to the
85 registrar of motor vehicles and the offender's license or right to operate a motor vehicle shall be
86 suspended as provided in the applicable section. Any proceeding held under this paragraph shall
87 not be deemed a criminal proceeding.

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

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

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

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

107 (j) If the individual under the age of 21 completes the alcohol awareness program and
108 pays the fine as provided in subsection (f) within the time period set forth in subsection (i), those
109 offenses shall not become part of the individual's criminal record. However, records shall be
110 maintained separately by the criminal history systems board showing the name, address, section
111 34 to 34D offense and age at the time of offense of each individual who has participated in the
112 pilot program and has successfully completed it. Such records shall be available to police
113 departments and courts for the purpose of determining eligibility to participate in the pilot
114 program. Such records shall also be available to police departments and courts for the purpose of
115 charging subsequent violations of section 34 to 34D by the same individuals as second or
116 subsequent offenses under said sections; or charging individuals as second or subsequent
117 offenders under any other provisions of the General Laws which would otherwise treat the first-
118 time offenses under section 34-34D as the first offense in a statute which imposes greater
119 penalties for second and subsequent offenses.

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

124 (l) Upon the failure of a person under the age of 2l to pay the required fines and complete
125 the alcohol awareness program, the registrar of motor vehicles shall suspend the offender's
126 license or permit to operate for 180 days. This suspension shall be separate from any suspension
127 set forth in this section for a violation of sections 34A or 34C.

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

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