HOUSE DOCKET, NO. 2174 FILED ON: 1/20/2011

HOUSE . . . . . No. 2393

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

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 relative to protective custody.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	*10th Essex*

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HOUSE . . . . . No. 2393

By Mr. Fennell of Lynn, a petition (accompanied by bill, House, No. 2393) of Robert F. Fennell relative to protective custody for persons incapacitated by a drug overdose. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *2215* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to protective custody.

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

SECTION 1. Chapter 111 E of the General Laws, as appearing in the 2008 Official edition, is hereby amended by inserting after section 9 the following new section:-

Section 9A Overdosed persons; assistance to facility or protective custody

Section 9A. Any person who is incapacitated by a drug overdose may be assisted by a police officer or emergency technician with or without their consent and shall be placed in protective custody at a police station or transferred to a facility. To determine for purposes of this chapter only, whether or not such person has had a drug overdose, the police officer or emergency technician would have to have used a narcan or similar chemical derivative to resuscitate the person from the overdose.

Any person presumed to have overdosed, and to be held in protective custody at a police station shall, immediately after such presumption, have the right and be informed of said right to make one phone call at his own expense and on his own behalf. Any person assisted by a police officer to a facility under this section shall have the right to make one phone call at his own expense on his own behalf and shall be informed forthwith upon arriving at the facility of said right. The parent or guardian of any person, under the age of eighteen, to be held in protective custody at a police station shall be notified forthwith upon his arrival at said station or as soon as possible thereafter.

If any incapacitated person is assisted to a police station, the officer in charge or his designee shall notify forthwith the nearest facility that the person is being held in protective custody. If suitable treatment services are available at a facility, the department shall thereupon arrange for the transportation of the person to the facility in accordance with the provisions of section nine.

No person assisted to a police station pursuant to this section shall be held in protective custody against his will; provided, however, that if suitable treatment at a facility is not available, an incapacitated person may be held in protective custody at a police station until he is evaluated by a psychiatrist or physician and are offered the resources that are available for their possible addiction, or for a period not longer than twelve hours, whichever is shorter.

A police officer acting in accordance with the provisions of this section may use such force as is reasonably necessary to carry out his authorized responsibilities. If the police officer reasonably believes that his safety or the safety of other persons present so requires, he may search such person and his immediate surroundings, but only to the extent necessary to discover and seize any dangerous weapons which may on that occasion be used against the officer or other person present; provided, however, that if such person is held in protective custody at a police station all valuables and all articles which may pose a danger to such person or to others may be taken from him for safekeeping and if so taken shall be inventoried.

A person assisted to a facility or held in protective custody by the police pursuant to the provisions of this section, shall not be considered to have been arrested or to have been charged with any crime. An entry of custody shall be made indicating the date, time, place of custody, the name of the assisting officer, the name of the officer in charge, whether the person held in custody exercised his right to make a phone call, such entry shall not be treated for any purposes, as an arrest or criminal record