

HOUSE No. 62

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 the authority of the Disabled Persons Protection Commission.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------|--|
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>James B. Eldridge</i> | <input type="checkbox"/> <i>[District]</i> |
| | <input type="checkbox"/> |
| <i>George T. Ross</i> | <i>2nd Bristol</i> |

HOUSE No. 62

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 62) of Kay Khan, James B. Eldridge and George Ross relative to the authority of the Disabled Persons Protection Commission. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ HOUSE
□ , NO. 143 OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the authority of the Disabled Persons Protection Commission.

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. Section 1 of chapter 19C of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended as follows:-

3 By striking out the first paragraph as so appearing on lines 1-2, and inserting in place
4 thereof the following words: -

5 For the sole purposes of this chapter, the following words shall, unless the
6 context requires otherwise, have the

7 following meanings:-

8 Said Section 1 is further amended by striking out the words “disabled person’s” in lines
9 9-10 and inserting in place thereof the words:-

10 person with a disability

11 Said Section 1 is further amended by striking out the words “disabled person” on lines 11
12 and 15 and inserting in place thereof the words:-

13 person with a disability

14 Said Section 1 is further amended by striking out the words “chapter one hundred and
15 twenty-three” on lines 16-17, and inserting in place thereof the following:-

16 Chapter 123B –

17 Said Section 1 is further amended by striking out the definition of "General Counsel" or
18 "counsel" on lines 20-21.

19 Said Section 1 is further amended by striking out the words “disabled persons” on line 30
20 and inserting in place thereof the words:-

21 persons with a disability

22 And further, by striking out the words “disabled person” on line 31 and inserting in place
23 thereof the words:-

24 persons with a disability

25 Said Section 1 is further amended by striking out the words “disabled person or persons”
26 on lines 37 and 39 and inserting in place thereof the words:-

27 person(s) with a disability

28 Said Section 1 is further amended by striking out the words "including un-consented to
29 sexual activity" on line 42 and inserting in place thereof the following: -

30 . . . , including but not limited to, un-assented to sexual activity

31 Said Section 1 is further amended by striking out the words “disabled persons” as so
32 appearing on line 44 and inserting in place thereof the words:-

33 persons with a disability

34 SECTION 2. Section 2 of chapter 19C of the General Laws, as appearing in the 2008
35 Official Edition, is hereby amended as follows:-

36 By striking out the words “disabled persons” in said section and inserting in place thereof
37 the words:-

38 persons with disabilities

39 SECTION 3. Section 3 of chapter 19C of the General Laws, as appearing in the 2008
40 Official Edition, is hereby amended as follows:-

41 By amending subsection (c) of said section by deleting the words “disabled persons”
42 before the words “to be known as” on line 18 and inserting in place thereof the words:-

43 persons with disabilities

44 And by amending subsection (d) of said section by deleting the word "other" after the
45 word "designate" on line 20.

46 Said Section 3 is further amended by amending subsection (f) by striking out the words
47 "disabled persons" as so appearing on lines 26-27 and inserting in place thereof the words:-

48 persons with disabilities

49 Said Section 3 is further amended by striking out subsection (h) of said Section 3 on lines
50 31-35 and inserting in place thereof the following:-

51 (h) to develop, in consultation with the secretary of the executive office of
52 health and human services, standards for

53 referral of investigations to the agencies within the executive office of health
54 and human services pursuant to Section 4.

55 SECTION 4. Section 4 of chapter 19C of the General Laws as appearing in the 2008
56 Official Edition, is hereby amended as follows:-

57 By amending the first sentence by striking the words "disabled person," and inserting in
58 place thereof the words:-

59 person with a disability

60 And further by inserting before the words "the commission shall" the following:-

61 . . . and subject to the commission's authority to conduct its own investigation

62 Said Section 4 is further amended by amending subsection (b) of said section by striking
63 out the first sentence on lines 10-16 and inserting in place thereof the following:-

64 . . . refer immediately any such reports, which allege the occurrence of abuse to a
65 person with a disability whose caretaker is

66 an agency of the commonwealth, a facility licensed by an agency of the
67 commonwealth or a private agency which provides

68 services or treatment to persons with disabilities pursuant to a contract or agreement
69 with an agency of the commonwealth, to

70 an investigator of the commission or to the department within the executive office of
71 health and human services which has

72 jurisdiction over the disability manifested by the person with a disability.

73 Said Section 4 is further amended by amending subsection (c) of said section 4 by
74 striking out the first paragraph on lines 25-33 and inserting in place thereof the following:-

75 (c) refer immediately any such reports, which allege the occurrence of abuse of a
76 person with a disability whose caretaker is

77 other than an agency of the commonwealth, a facility licensed by an agency of the
78 commonwealth or a private agency which

79 provides services or treatment to persons with disabilities pursuant to a contract or
80 agreement with an agency of the

81 commonwealth to the commission; the department of mental health in those cases
82 where the disabled person is suffering from

83 a mental illness, the department of developmental services where the person with a
84 disability is a person with developmental

85 disabilities, or to the Massachusetts rehabilitation commission where the person with
86 a disability is otherwise physically

87 disabled. Upon such referral, the commission or said department shall immediately
88 designate an investigator who shall

89 investigate such allegation of abuse as provided in Section 5.

90 Said Section 4 is further amended by adding immediately after subsection (c) the
91 following:-

92 (d) In every case in which an investigation is conducted pursuant to section 4(b) or
93 section 4(c) of chapter 19C and the alleged

94 victim is at risk of harm, the appropriate protective service agency as designated by
95 the commission shall make reasonable

96 efforts to alleviate the risk of further harm by providing protective services not later
97 than the initiation of said investigation to

98 insure the safety of the person with a disability. In conducting such investigation, the
99 designated investigator may seek and

100 utilize the assistance of municipal and state police officer. If during said
101 investigation, Access to the disabled person is denied

102 to the designated investigator, an appropriate municipal or state police officer shall,
103 upon request, accompany the designated

104 investigator to gain access to the person with a disability.

105 Said Section 4 is further amended by striking out the last paragraph of subsection (c)
106 lines 34-66 and inserting in place thereof the following:-

107 (e) Upon receipt of a written determination and evaluation prepared and forwarded to
108 the commission pursuant to the

109 provisions of section 5 or upon receipt of a report of abuse of a person with a
110 disability where the commission, in accordance

111 with written standards established by the commission, determines that the report may
112 contain allegations of criminal conduct,

113 including but not limited to (1) a person with a disability has been sexually abused or
114 raped, or assaulted or battered as set

115 forth in chapter 265; (2) a person with a disability has suffered brain injury, loss or
116 substantial impairment of a bodily function

117 or organ, or substantial disfigurement; or (3) a person with a disability has suffered a
118 serious bodily injury as a result of a

119 pattern of repetitive actions or inactions by a caretaker; the commission,
120 notwithstanding any provision of chapter 66A

121 regarding personal data to the contrary, shall immediately refer such report to the
122 special investigative unit, established

123 pursuant to section 3(i) of chapter 19C, which shall conduct an initial evaluation and
124 investigation of the alleged criminal

125 conduct. Upon completion of such evaluation and investigation, said special
126 investigative unit shall report the results of such

127 evaluation and investigation to the commissioners who, notwithstanding any
128 provision of chapter 66A regarding personal data

129 to the contrary, shall, if the special investigative unit has determined that there is
130 reason to believe that a criminal offense has

131 been committed, immediately refer such report, together with any relevant
132 information obtained in such initial investigation, to

133 the attorney general or district attorney for the county wherein the alleged criminal
134 offense occurred. Upon receipt of such

135 report, the attorney general or district attorney for the county wherein the alleged
136 criminal offense occurred shall contact the
137 commission in order to coordinate the investigation of the matters giving rise to the
138 report. As part of such coordination, the
139 attorney general or the district attorney may request that the commission delay or
140 defer the investigation of the non-criminal
141 matters giving rise to the report; provided, however, that such request shall be granted
142 only where the commission determines
143 that the health and the safety of the alleged victim of abuse shall not be adversely
144 affected thereby and that the commission's
145 or department's ability to conduct a later investigation shall not be unreasonably
146 impaired by such delay or deferral. In all
147 cases including, but not limited to, those in which the commission agrees to delay or
148 defer the non-criminal investigation, the
149 attorney general or district attorney shall keep the commission informed of the status
150 of the criminal investigation and the
151 commission shall provide to the attorney general or the district attorney any and all
152 information that may be relevant to the
153 criminal investigation. In cases in which the commission agrees to delay or defer the
154 non-criminal investigation, it shall monitor
155 the progress of the criminal investigation and shall determine, after consultation with
156 the appropriate law enforcement
157 agencies, when or whether the non-criminal investigation should be initiated or
158 resumed. No person providing notification or
159 information to the commission, the commission's special investigative unit, the
160 district attorney, or attorney general or
161 providing testimony in court in furtherance of the provisions of this section shall be
162 liable in any civil or criminal action by reason
163 of such action.

164 SECTION 5. Section 5 of chapter 19C of the General Laws as appearing in the 2008
165 Official Edition, is hereby amended as follows:-

166 The first sentence as so appearing on lines 1-4 shall be amended by deleting the words
167 "disabled person" and inserting in place thereof the words:-

168 person with a disability

169 And further, by deleting the words "the general counsel," and "executive office of human
170 services" and inserting in place thereof the words:-

171

172 "executive office of health and human services"

173 Subsection (1) of said Section 5 is hereby amended by striking out on lines 7-8 the words
174 "counsel or department of mental health or the department of public health" and inserting in
175 place thereof the words: -

176 the department of mental health, the department of developmental services or the
177 massachusetts rehabilitation commission

178 Subsection(1) of said Section 5 is hereby further amended by striking out the words
179 "disabled person's" on line 11 and inserting place thereof the words:-

180 person with a disability

181 And further by striking out the words "disabled person" on line 12 and inserting in place
182 thereof the words:-

183 person with a disability

184 Said subsection (1) of said Section 5 is hereby further amended by striking out on lines
185 16-18 the words "to the general counsel and to the department of mental health and the
186 department of public health" and inserting in place thereof the words:-

187 and to the department of mental health, the department of developmental services or
188 the massachusetts rehabilitation

189 commission, as appropriate

190 Subsection (3) of said Section 5 is hereby amended by striking out the words "the general
191 counsel, the department of mental health and the department of public health" on lines 42-43 and
192 inserting in place thereof the words:-

193 and the department of mental health, the department of developmental services or the
194 massachusetts rehabilitation

195 commission, as appropriate

196 Subsection (4) of said Section 5 is hereby amended by striking out the words “a disabled
197 person” on line 46 and inserting in place thereof the words:-

198 a person with a disability

199 Subsection (5) of said Section 5 is hereby amended by deleting the second and third
200 paragraphs on lines 59-77.

201 SECTION 6. Section 6 of Chapter 19C of the General Laws as appearing in the 2008
202 Official Edition, is hereby amended by striking out the first paragraph on lines 1-9 and inserting
203 in place thereof the following:-

204 Acting through state agencies within the executive office of health and human
205 services designated by the commission for the

206 purpose of providing protective services as necessary to prevent further abuse in cases
207 investigated pursuant to this chapter

208 and subject to the oversight of the commission, the commission shall:

209 Section 6 of Chapter 19C, subsection (1) and subsection (3) are hereby amended by
210 striking out the words “a disabled person” and inserting in place thereof the words:-

211 a person with a disability

212 SECTION 7. Section 7 of Chapter 19C of the General Laws as appearing in the 2008
213 Official Edition, is hereby amended as follows:-

214 Subsection (a) of said Section 7 is hereby amended by striking out the words "the general
215 counsel, department of mental health or the department of public health" on lines 1-2, and
216 inserting in place thereof the words:-

217 the department of mental health, the department developmental services or the
218 massachusetts rehabilitation commission

219 Subsection (a) of Section 7 is further amended by striking out the words “disabled
220 person” on lines 3, 6, 11, 12, 15, 17, 19, 21, and 27 and inserting in place thereof the words:-

221 person with a disability

222 Subsection (a) of said Section 7 is hereby further amended by deleting the word
223 "counsel" on lines 5 and 8.

224 Subsection (b) of said Section 7 is hereby amended by deleting the words "counsel or"
225 line 31 and on line 35.

226 Subsection (b) of said Section 7 is hereby further amended by striking out the phrase ". .
227 .the court may order the provision of protective services on an emergency basis. . ." on lines 46-
228 47 and inserting in its stead the following words:-

229 and no other person who is authorized to consent is available or willing to consent,
230 the court may order protective services on

231 an emergency basis and the court in ordering the provision of protective services on
232 an emergency basis may appoint a

233 conservator, guardian or other person authorized to consent to the provision of
234 protective services; provided however, that

235 the court shall establish the least restrictive fiduciary representation that will satisfy
236 addressing the emergency and needs of

237 such person with a disability.

238 Subsection (b) of said Section 7 is hereby further amended by striking out the words
239 "Said order may be extended for an additional seventy-two hour period if the court finds that
240 such extension is necessary to remove the emergency" on lines 51-53 and inserting in its stead
241 the following:-

242 Said order may be extended for an additional period of time if the court finds that such
243 extension is necessary to remove the

244 emergency or to address the needs of such person with a disability

245 Subsection (c) of said Section 7 is hereby amended by striking out the words "disabled
246 person" on lines 56-57 and inserting in place thereof the words:-

247 person with a disability

248 Subsection (c) of said Section 7 is hereby amended by deleting on line 58 the word
249 "counsel."

250 Subsection (d) of said Section 7 is hereby amended by striking out the words "disabled
251 person" on lines 62, 64 and 65 and inserting in place thereof the words:-

252 person with a disability

253 SECTION 8. Section 8 of chapter 19C of the General Laws as appearing in the 2008
254 Official Edition, is hereby amended by striking out the words "disabled person" on line 2 and
255 inserting in place thereof the following:-

256 person with a disability

257 And further by striking out the words “disabled persons” on line 5 and inserting in place
258 thereof the following:-

259 persons with disabilities.

260 Section 8 is further amended by striking out the words “...whose caretaker is a state
261 agency” on lines 2 and 5-6, and inserting in place thereof the words:-

262 . . . whose caretaker is an agency of the commonwealth, a facility licensed by an
263 agency of the commonwealth or a private

264 agency which provides services or treatment to persons with disabilities pursuant to a
265 contract or agreement with an agency of

266 the commonwealth

267 SECTION 9. Section 9 of chapter 19C, as appearing in the 2008 Official Edition, is
268 hereby amended by striking out lines 1-2 and inserting in place thereof the words:-

269 Upon completion of any investigation conducted pursuant to this chapter, including
270 but not limited to a formal investigation

271 conducted pursuant to section 8, and notwithstanding any provision of chapter 66A
272 regarding personal data to the contrary,

273 the commission shall:

274 Section 9 of said chapter 19C is hereby further amended by adding the following
275 subsection after subsection (d):-

276 (e) refer any matters for which there is reason to believe that professional misconduct
277 has occurred to the agency of the

278 commonwealth having jurisdiction over such professional conduct for possible
279 imposition of disciplinary measures in accordance

280 with the requirements of any applicable law or regulation.

281 SECTION 10. Section 10 of chapter 19C, as appearing in the 2008 Official Edition, is
282 hereby amended by striking out the words “disabled person” on lines 6-7 and 12 and inserting in
283 place thereof the following:-

284 person with a disability

285 SECTION 11. Section 11 of chapter 19C as appearing in the 2008 Official Edition, is
286 hereby amended by striking out the words “general counsel” as appearing on lines 5-6.

287 Section 11 of Chapter 19C is further amended by striking out the words “disabled
288 person” on line 9 and inserting in place thereof the following:-

289 person with a disability

290 SECTION 12. Section 13 of chapter 19C as appearing in the 2008 Official Edition is
291 hereby amended by striking out the words “disabled person” from the title and inserting in place
292 thereof the words:-

293 a person with a disability

294 Section 13 is further hereby amended by striking out on lines 1-3 the following words
295 “any disabled person whose caretaker was a state agency or an agency of any subdivision of the
296 commonwealth or a private agency contracting with the commonwealth” and inserting in place
297 thereof the following:-

298 any person with a disability whose caretaker is an agency of the commonwealth, a
299 subdivision of the commonwealth, a facility

300 licensed by an agency of the commonwealth or a private agency which provides
301 services or treatment to a person with

302 disabilities pursuant to a contract or agreement with an agency or the commonwealth