

# HOUSE . . . . . No. 62

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Kay Khan*

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*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 relative to the authority of the Disabled Persons Protection Commission.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/19/2011</i>
<i>James B. Eldridge</i>		<i>2/3/2011</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>	<i>2/4/2011</i>

# HOUSE . . . . . No. 62

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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.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 143 OF 2009-2010.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
\_\_\_\_\_

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

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

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

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

persons with a disability

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

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

persons with disabilities

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

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

persons with disabilities

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

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

persons with disabilities

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

(h) to develop, in consultation with the secretary of the executive office of  
health and human services, standards for  
referral of investigations to the agencies within the executive office of health  
and human services pursuant to Section 4.

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

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

person with a disability

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

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

Said Section 4 is further amended by amending subsection (b) of said section by striking  
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

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

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

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

investigate such allegation of abuse as provided in Section 5.

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

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

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

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

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

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

to the designated investigator, an appropriate municipal or state police officer shall,  
upon request, accompany the designated  
investigator to gain access to the person with a disability.

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

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

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

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

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

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

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

pattern of repetitive actions or inactions by a caretaker; the commission,  
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