

HOUSE No. 4379

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION COMMISSION PURSUANT TO CHAPTER 19C..

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 and 2, and inserting in place
4 thereof the following words: -

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

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

9 person with a disability

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

12 person with a disability

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

15 Chapter 123B –

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

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

20 persons with a disability

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

23 persons with a disability

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

26 person(s) with a disability

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

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

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

32 persons with a disability

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

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

37 persons with disabilities

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

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

42 persons with disabilities

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

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

47 persons with disabilities

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

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

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

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

57 person with a disability

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

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

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

62 . . . refer immediately any such reports, which allege the occurrence of abuse to a person
63 with a disability whose caretaker is an agency of the commonwealth, a facility licensed by an
64 agency of the commonwealth or a private agency which provides services or treatment to persons
65 with disabilities pursuant to a contract or agreement with an agency of the commonwealth, to an
66 investigator of the commission or to the department within the executive office of health and
67 human services which has jurisdiction over the disability manifested by the person with a
68 disability.

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

71 (c) refer immediately any such reports, which allege the occurrence of abuse of a person
72 with a disability whose caretaker is other than an agency of the commonwealth, a facility
73 licensed by an agency of the commonwealth or a private agency which provides services or
74 treatment to persons with disabilities pursuant to a contract or agreement with an agency of the
75 commonwealth to the commission; the department of mental health in those cases where the
76 disabled person is suffering from a mental illness, the department of developmental services
77 where the person with a disability is a person with developmental disabilities, or to the
78 Massachusetts rehabilitation commission where the person with a disability is otherwise
79 physically disabled. Upon such referral, the commission or said department shall immediately
80 designate an investigator who shall investigate such allegation of abuse as provided in Section 5.

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

83 (d) In every case in which an investigation is conducted pursuant to section 4(b) or
84 section 4(c) of chapter 19C and the alleged victim is at risk of harm, the appropriate protective
85 service agency as designated by the commission shall make reasonable efforts to alleviate the
86 risk of further harm by providing protective services not later than the initiation of said
87 investigation to insure the safety of the person with a disability. In conducting such investigation,
88 the designated investigator may seek and utilize the assistance of municipal and state police
89 officer. If during said investigation,. Access to the disabled person is denied to the designated

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

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

94 (e) Upon receipt of a written determination and evaluation prepared and forwarded to the
95 commission pursuant to the provisions of section 5 or upon receipt of a report of abuse of a
96 person with a disability where the commission, in accordance with written standards established
97 by the commission, determines that the report may contain allegations of criminal conduct,
98 including but not limited to (1) a person with a disability has been sexually abused or raped, or
99 assaulted or battered as set forth in chapter 265; (2) a person with a disability has suffered brain
100 injury, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;
101 or (3) a person with a disability has suffered a serious bodily injury as a result of a pattern of
102 repetitive actions or inactions by a caretaker; the commission, notwithstanding any provision of
103 chapter 66A regarding personal data to the contrary, shall immediately refer such report to the
104 special investigative unit, established pursuant to section 3(i) of chapter 19C, which shall
105 conduct an initial evaluation and investigation of the alleged criminal conduct. Upon completion
106 of such evaluation and investigation, said special investigative unit shall report the results of
107 such evaluation and investigation to the commissioners who, notwithstanding any provision of
108 chapter 66A regarding personal data to the contrary, shall, if the special investigative unit has
109 determined that there is reason to believe that a criminal offense has been committed,
110 immediately refer such report, together with any relevant information obtained in such initial
111 investigation, to the attorney general or district attorney for the county wherein the alleged
112 criminal offense occurred. Upon receipt of such report, the attorney general or district attorney

113 for the county wherein the alleged criminal offense occurred shall contact the commission in
114 order to coordinate the investigation of the matters giving rise to the report. As part of such
115 coordination, the attorney general or the district attorney may request that the commission delay
116 or defer the investigation of the non-criminal matters giving rise to the report; provided,
117 however, that such request shall be granted only where the commission determines that the
118 health and the safety of the alleged victim of abuse shall not be adversely affected thereby and
119 that the commission's or department's ability to conduct a later investigation shall not be
120 unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those
121 in which the commission agrees to delay or defer the non-criminal investigation, the attorney
122 general or district attorney shall keep the commission informed of the status of the criminal
123 investigation and the commission shall provide to the attorney general or the district attorney any
124 and all information that may be relevant to the criminal investigation. In cases in which the
125 commission agrees to delay or defer the non-criminal investigation, it shall monitor the progress
126 of the criminal investigation and shall determine, after consultation with the appropriate law
127 enforcement agencies, when or whether the non-criminal investigation should be initiated or
128 resumed. No person providing notification or information to the commission, the commission's
129 special investigative unit, the district attorney, or attorney general or providing testimony in
130 court in furtherance of the provisions of this section shall be liable in any civil or criminal action
131 by reason of such action.

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

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

136 person with a disability

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

139 "executive office of health and human services"

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

143 the department of mental health, the department of developmental services or the
144 massachusetts rehabilitation commission

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

147 person with a disability's

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

150 person with a disability

151 Said subsection (1) of said Section 5 is hereby further amended by striking out on lines
152 16-18 the words "to the general counsel and to the department of mental health and the
153 department of public health" and inserting in place thereof the words:-

154 and to the department of mental health, the department of developmental services or the
155 massachusetts rehabilitation commission, as appropriate

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

159 and the department of mental health, the department of developmental services or the
160 massachusetts rehabilitation commission, as appropriate

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

163 a person with a disability

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

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

169 Acting through state agencies within the executive office of health and human services
170 designated by the commission for the purpose of providing protective services as necessary to
171 prevent further abuse in cases investigated pursuant to this chapter and subject to the oversight of
172 the commission, the commission shall:

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

175 a person with a disability

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

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

181 the department of mental health, the department developmental services or the
182 massachusetts rehabilitation commission

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

185 person with a disability

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

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

190 Subsection (b) of said Section 7 is hereby further amended by striking out the phrase ". .
191 .the court may order the provision of protective services on an emergency basis. . ." on lines 46-
192 47 and inserting in its stead the following words:-

193 and no other person who is authorized to consent is available or willing to consent, the
194 court may order protective services on an emergency basis and the court in ordering the
195 provision of protective services on an emergency basis may appoint a conservator, guardian or
196 other person authorized to consent to the provision of protective services; provided however, that

197 the court shall establish the least restrictive fiduciary representation that will satisfy addressing
198 the emergency and needs of such person with a disability.

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

203 Said order may be extended for an additional period of time if the court finds that such
204 extension is necessary to remove the emergency or to address the needs of such person with a
205 disability

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

208 person with a disability

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

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

213 person with a disability

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

217 person with a disability

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

220 persons with disabilities.

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

223 . . . whose caretaker is an agency of the commonwealth, a facility licensed by an agency
224 of the commonwealth or a private agency which provides services or treatment to persons with
225 disabilities pursuant to a contract or agreement with an agency of the commonwealth

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

228 Upon completion of any investigation conducted pursuant to this chapter, including but
229 not limited to a formal investigation conducted pursuant to section 8, and notwithstanding any
230 provision of chapter 66A regarding personal data to the contrary, the commission shall:

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

233 (e) refer any matters for which there is reason to believe that professional misconduct has
234 occurred to the agency of the commonwealth having jurisdiction over such professional

235 conduct for possible imposition of disciplinary measures in accordance with the
236 requirements of any applicable law or regulation.

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

240 person with a disability

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

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

245 person with a disability

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

249 a person with a disability

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

254 any person with a disability whose caretaker is an agency of the commonwealth, a
255 subdivision of the commonwealth, a facility licensed by an agency of the commonwealth or a
256 private agency which provides services or treatment to a person with disabilities pursuant to a
257 contract or agreement with an agency or the commonwealth