

# HOUSE . . . . . No. 1792

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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 establishing assisted outpatient treatment.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>1/28/2013</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/14/2013</i>

# HOUSE . . . . . No. 1792

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By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1792) of Kay Khan, Marcos A. Devers and Stephen L. DiNatale relative to involuntary outpatient commitment for mentally ill persons. Mental Health and Substance Abuse.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1419 OF 2011-2012.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act establishing assisted outpatient treatment.

*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 123 of the General Laws, as appearing in the 2004  
2   Official Edition, is hereby amended by inserting, in line 18, after t he word "program" the  
3   following:-

4           "Gravely disabled" means a condition evidenced by behavior in which a person, as a  
5   result of a mental disorder, becomes likely to come to serious harm or serious illness because of  
6   his inability to provide for his basic physical needs, including medical and psychiatric treatment  
7   and shelter.

8           SECTION 2. Said section 1 of said chapter 123, as so appearing, is further amended by  
9   inserting, in line 20, after the word "review" the following:-

10          "Informed decision" means a voluntary decision following presentation of all facts  
11   necessary to form the basis of an intelligent consent by a patient, or guardian, who is aware of  
12   the effects of his psychiatric disorder and has the capacity to make a well-reasoned, willful, and  
13   knowing decision concerning his medical or psychiatric treatment.

14          "Outpatient Treatment" means any treatment that does not require continuous inpatient  
15   hospitalization.

16 SECTION 3. Said section 6 of said chapter 123, as so appearing is further amended by  
17 inserting, in line 2, after the words "provisions of" the following: - paragraph (e) of section 8½.

18 SECTION 4. Said Chapter 123 of the General Laws, as so appearing, is further amended  
19 by inserting after section 7 the following new section:-Section 71/2.

20 (a) Any physician licensed pursuant to section 2 of chapter 112 after examining a patient;  
21 the Department of Mental Health; any person eighteen years of age or older with whom the  
22 subject of the petition resides; the parent, spouse, sibling eighteen years of age or older, or child  
23 eighteen years of age or older of the subject of the petition; or the superintendent of any public or  
24 private facility or hospital authorized for the commitment or treatment of mentally ill persons  
25 under section 8(a) or 12(a) of this chapter, may petition the district court in whose jurisdiction  
26 the facility is located for the assisted outpatient treatment of any individual who( 1) is mentally  
27 ill, and (2) displays one or more of the following:

28 (i) likelihood of creating serious harm, or

29 (ii) incapacity to make an informed decision regarding treatment, or

30 (iii) grave disability, and

31 (3) the patient's condition will likely either deteriorate or not improve without treatment.

32 (c) The petition shall include a written outpatient treatment plan prepared in consultation  
33 with, when possible, those familiar with the patient's case history and the superintendent or  
34 physician in charge of the patient's care and the patient. The plan shall include each of the  
35 following:

36 (1) A statement of the patient's requirements for supervision, medication, and assistance  
37 in obtaining the basic needs such as employment, food, clothing, and shelter.

38 (2) If known, the address of the residence where the patient resides and the name of the  
39 person(s) in charge of the residence.

40 (3) If known, the name and address of any person, agency, or organization assigned to  
41 supervise an outpatient treatment plan or care for the patient.

42 (4) The conditions for continued outpatient treatment, which may require reporting,  
43 continuation of medication, submission to testing, or other such reasonable conditions.

44 (d) The hearing shall be commenced within 4 days of the filing of the petition. The  
45 periods of time prescribed or allowed under the provisions of this section shall be computed  
46 pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure. Adjournments shall be  
47 permitted only for good cause shown. In granting adjournments, the court shall consider the need  
48 for further examination by a physician or the potential need to provide treatment expeditiously.

(e) A petition for assisted outpatient treatment may be filed along with and in the alternative to a petition for inpatient commitment brought pursuant to section 7.

SECTION 5. Said Chapter 123 of the General Laws, as so appearing, is hereby amended by inserting after section 8 the following:-

Section 8 1/2. (a) After a hearing, unless the subject waives the hearing in writing, the district court shall not order the commitment of a person to outpatient treatment or shall not renew such order unless it finds (1) the patient is mentally ill, and ( 2) the illness results in one or more of the following:

(i) likelihood of creating serious harm, or

(ii) incapacity to make an informed decision regarding treatment, or

(iii) grave disability, and

(3) the patient does not require continuous inpatient hospitalization, and will be more appropriately treated in an outpatient treatment program, and (4) the patient's condition will either:

(i) likely deteriorate until his or her psychiatric disorder significantly impairs the person's judgment, reason, behavior or capacity to recognize reality and has a substantial probability of causing him or her to suffer or continue to suffer severe psychiatric, emotional or physical harm, or

(ii) not improve without treatment and such deterioration could result in harm to the patient or others.

(b) Assisted outpatient treatment shall not be ordered unless the court approves a written treatment plan presented to the court which conforms to the requirements of section 71 /2; of this chapter, and which contains the name of the designated director of the mental health treatment agency that will supervise and administer the patient's treatment program.

(c) The court may order only that portion of the treatment plan submitted pursuant to section 71/2 of this chapter which, considering all available alternatives for treatment, it determines appropriate and the least restrictive treatment alternative available.

(d) If the court finds by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, , the court may order the director of appropriate treatment program to oversee such plan.

(e) The first order for assisted outpatient treatment shall not exceed 180 days, and any subsequent order shall not exceed 365 days.

(f) If the court orders outpatient treatment pursuant to this section, all of the following will apply:

(1) During any period of the assisted outpatient treatment, if the court, on motion by the supervising mental health professional in charge of a patient's assisted outpatient treatment, determines that the patient is not complying with the terms of the order and that the outpatient plan no longer remains appropriate, the court may enter an order amending its original order. The amended order may alter the outpatient treatment plan, or request an emergency evaluation to determine whether the failure to hospitalize such person would create a likelihood of serious harm.

(2) If a patient refuses to comply with an amended outpatient plan, further amendments may be made as the court deems necessary including the inpatient commitment of the patient where the court finds that failure to hospitalize such person would create a likelihood of serious harm.

(3) If the court determines the person meets the standard for inpatient commitment and the patient refuses to comply with an amended order, the court may authorize and direct a peace officer to take the patient into protective custody and transport him to the agency specified for inpatient treatment.

(4) When reporting or being returned to a treatment facility for inpatient treatment pursuant to an amended order, the patient shall retain all rights to judicial review, and the right to counsel.

SECTION 6. Said Chapter 123 of the General Laws, as so appearing, is hereby amended by inserting after section 8 the following:-

Section 8 <sup>3</sup>/<sub>4</sub>. (a) Before commitment for outpatient treatment, the patient shall be provided with copies of the court order and full explanations of the approved treatment plan. The approved treatment plan shall be filed with the court and the supervising mental health professional in charge of the patient's outpatient treatment.

(b) The supervising mental health professional shall require periodic reports, not more frequently than every 30 days, concerning the condition of patients committed to outpatient treatment from any person, agency, or organization assigned to supervise such patients.

(c) The supervising mental health professional shall review the condition of a patient committed to outpatient treatment at least once every 30 days.

(d) The supervising mental health professional may amend any part of the outpatient treatment plan during the course of commitment, subject to judicial review after notice to and objection of the patient.

115 (e) The supervising mental health professional may, at any time during the course of the  
116 ordered outpatient treatment, petition the court for inpatient commitment of the patient if, in the  
117 supervising mental health professional's judgment, the patient has failed to comply with a term of  
118 the outpatient treatment plan and outpatient treatment no longer remains appropriate.

119 (f) The supervising mental health professional may, at any time, petition the court for  
120 termination of a patient's assisted outpatient treatment order if the supervising mental health  
121 professional determines that assisted outpatient treatment is no longer the least restrictive  
122 appropriate treatment available.

123 (g) Nothing in this section shall prevent the supervising mental health professional from  
124 authorizing involuntary commitment and treatment in an emergency under section 12 of this  
125 chapter.

126 SECTION 7. Section 9 of said Chapter 123 of the General Laws, as so appearing, is  
127 hereby amended by adding at the end thereof the following:- Any person may apply to the court  
128 stating his or her belief that a person currently treated on an assisted outpatient basis under  
129 section 8 1/2 should no longer be so treated.