

HOUSE No. 4066

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 12, 2014.

The committee on Children, Families and Persons with Disabilities to whom were referred the petition (accompanied by bill, House, No. 103) of Danielle W. Gregoire for legislation to make certain changes in the law relative to the authority of the Disabled Persons Protection Commission and the petition (accompanied by bill, House, No. 105) of Danielle W. Gregoire and Carlos Henriquez for legislation to further define the authority of the Disabled Persons Protection Commission, reports recommending that the accompanying bill (House, No. 4066) ought to pass.

For the committee,

KAY KHAN.

HOUSE No. 4066

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

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 2012

2 Official Edition, is hereby amended as follows:-

3 By striking out the first paragraph on lines 1 and 2, and inserting in place thereof the
4 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 is further amended by striking out on lines 9-10, 11, 15 and 31 the words
8 “disabled person’s” and inserting in place thereof the words:-

9 person with a disability

10 Said section is further amended by striking out on lines 30 and 44 the words “disabled
11 persons” and inserting in place thereof the words:-

12 persons with a disability

13 Said section is further amended by striking out on lines 37 and 39 the words “disabled
14 person or persons” and inserting in place thereof the words:-

15 person(s) with a disability

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

18 including but not limited to, unassented to sexual activity

19 SECTION 2. Section 2 of chapter 19C of the General Laws is hereby amended as
20 follows:-

21 By striking out on lines 2 and 4 the words “disabled persons” and inserting in place
22 thereof the words:-

23 persons with disabilities

24 SECTION 3. Section 3 of chapter 19C of the General Laws is hereby amended as
25 follows:-

26 By amending subsection (c) on lines 18 and 26-27 by deleting the words “disabled
27 persons” and inserting in place thereof the words:-

28 persons with disabilities

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

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

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

36 SECTION 4. Section 4 of chapter 19C of the General Laws, is hereby amended as
37 follows:-

38 On line 1, by striking the words "disabled person," and inserting in place thereof the
39 words:-

40 person with a disability

41 And further by inserting on line 1 before the words "the commission" the following:-

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

43 Said section is further amended on lines 10-16 in subsection (b) by striking out the first
44 sentence and inserting in place thereof the following:-

45 . . . refer immediately any such reports, which allege the occurrence of abuse to a person
46 with a disability whose caretaker is an agency of the commonwealth, a facility licensed by an
47 agency of the commonwealth or a private agency which provides services or treatment to persons

with disabilities pursuant to a contract or agreement with an agency of the commonwealth, to an investigator of the commission or to the department within the executive office of health and human services which has jurisdiction over the disability manifested by the person with a disability.

Said section is further amended on lines 25-33 in subsection (c) by striking out the first paragraph in its entirety and inserting in place thereof the following:-

(c) refer immediately any such reports, which allege the occurrence of abuse of a person with a disability whose caretaker is other than an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to persons with disabilities pursuant to a contract or agreement with an agency of the commonwealth to the commission; the department of mental health in those cases 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 allegations of abuse as provided in section 5.

Said section is further amended by inserting after subsection (c) the following new subsections:-

(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 ensure 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 officers. 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.

(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 regarding personal data to the contrary, shall immediately refer such report to the

special investigative unit, established pursuant to section 3(i) of chapter 19C, which shall conduct an initial evaluation and investigation of the alleged criminal conduct. Upon completion of such evaluation and investigation, said special investigative unit shall report the results of such evaluation and investigation to the commissioners who, notwithstanding any provision of chapter 66A regarding personal data to the contrary, shall, if the special investigative unit has determined that there is reason to believe that a criminal offense has been committed, immediately refer such report, together with any relevant information obtained in such initial investigation, to the attorney general or district attorney for the county wherein the alleged criminal offense occurred. Upon receipt of such report, the attorney general or district attorney for the county wherein the alleged criminal offense occurred shall contact the commission in order to coordinate the investigation of the matters giving rise to the report. As part of such coordination, the attorney general or the district attorney may request that the commission delay or defer the investigation of the non-criminal matters giving rise to the report; provided, however, that such request shall be granted only where the commission determines that the health and the safety of the alleged victim of abuse shall not be adversely affected thereby and that the commission's or department's ability to conduct a later investigation shall not be unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those in which the commission agrees to delay or defer the non-criminal investigation, the attorney general or district attorney shall keep the commission informed of the status of the criminal investigation and the commission shall provide to the attorney general or the district attorney any and all information that may be relevant to the criminal investigation. In cases in which the commission agrees to delay or defer the non-criminal investigation, it shall monitor the progress of the criminal investigation and shall determine, after consultation with the appropriate law enforcement agencies, when or whether the non-criminal investigation should be initiated or resumed. No person providing notification or information to the commission, the commission's special investigative unit, the district attorney, or attorney general or providing testimony in court in furtherance of the provisions of this section shall be liable in any civil or criminal action by reason of such action.

SECTION 5. Section 5 of chapter 19C of the General Laws is hereby amended as follows:-

On lines 1, 12 and 46 by deleting the words "disabled person" and inserting in place thereof the words:-

person with a disability

And further, by deleting the words "the general counsel" on line 2, and inserting on line 3, the words "health and" before the word "human".

120 And further, in subsection (1) of said section on lines 7-8 by striking the words "counsel
121 or department of mental health or the department of public health" and inserting in place thereof
122 the words: -

123 the department of mental health, the department of developmental services or the
124 massachusetts rehabilitation commission

125 Subsection (1) of said section is further amended on line 11 by striking the words
126 "disabled person's" and inserting in place thereof the words:-

127 person with a disability's

128 Said subsection (1) is further amended on lines 16-18 by striking the words "to the
129 general counsel and to the department of mental health and the department of public health" and
130 inserting in place thereof the words:-

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

133 Subsection (3) of said section on lines 42-43 is amended by striking out the words "the
134 general counsel, the department of mental health and the department of public health" and
135 inserting in place thereof the words:-

136 and the department of mental health, the department of developmental services or the
137 massachusetts rehabilitation commission, as appropriate

138 Subsection (5) of said section on lines 59-77 is amended by deleting the second and third
139 paragraphs.

140 SECTION 6. Section 6 of Chapter 19C of the General Laws is amended by striking the
141 first paragraph on lines 1-9 and inserting in place thereof the following:-

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

146 Section 6 of chapter 19C, subsections (1) and (3) are hereby amended by striking out the
147 words "disabled person" and inserting in place thereof the words:-

148 person with a disability

149 SECTION 7. Section 7 of chapter 19C of the General Laws is hereby amended as
150 follows:-

151 Subsection (a) of said section is amended on lines 1-2 by striking the words "the general
152 counsel, department of mental health or the department of public health", and inserting in place
153 thereof the words:-

154 the department of mental health, the department of developmental services or the
155 massachusetts rehabilitation commission

156 Said subsection is further amended on lines 3, 6, 11, 12, 15, 17, 19, 21 and 27 by striking
157 the words "disabled person" and inserting in place thereof the words:-

158 person with a disability

159 And, subsection (a) is further amended on lines 5 and 8 by deleting the word "counsel".

160 Subsection (b) of said section is amended on lines 31 and 35 by deleting the words
161 "counsel or"

162 Subsection (b) of said section 7 is further amended on lines 46-47 by striking out the
163 words "the court may order the provision of protective services on an emergency basis" and
164 inserting in its place the following:-

165 and no other person who is authorized to consent is available or willing to consent, the
166 court may order protective services on an emergency basis and the court in ordering the
167 provision of protective services on an emergency basis may appoint a conservator, guardian or
168 other person authorized to consent to the provision of protective services; provided however, that
169 the court shall establish the least restrictive fiduciary representation that will satisfy addressing
170 the emergency and needs of such person with a disability.

171 Said subsection (b) is further amended on lines 51-53 by striking the words "Said order
172 may be extended for an additional seventy-two hour period if the court finds that such extension
173 is necessary to remove the emergency" and inserting in its stead the following:-

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

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

179 person with a disability

180 Subsection (c) of said section is amended on line 58 by deleting the word "counsel."

181 Subsection (d) of said section is amended on lines 62, 64, and 65 by striking the words
182 "disabled person" and inserting in place thereof the words:-

183 person with a disability

184 SECTION 8. Section 8 of chapter 19C of the General Laws is amended on line 2 by
185 striking out the words "disabled person" and inserting in place thereof the following:-

186 person with a disability

187 And further, by striking out on line 5 the words "disabled persons" and inserting in place
188 thereof the following:-

189 persons with disabilities.

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

192 whose caretaker is an agency of the commonwealth, a facility licensed by an agency of
193 the commonwealth or a private agency, which provides services or treatment to persons with
194 disabilities pursuant to a contract or agreement with an agency of the commonwealth

195 SECTION 9. Section 9 of chapter 19C is amended on lines 1-2 by striking and inserting
196 in place thereof the words:-

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

200 Said section is hereby further amended by adding the following subsection after
201 subsection (d):-

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

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

206 SECTION 10. Section 10 of chapter 19C is amended on lines 6-7 and 12 by striking out
207 the words "disabled person" and inserting in place thereof the following:-

208 person with a disability

209 SECTION 11. Section 11 of chapter 19C is amended on lines 5-6 by striking out the
210 words "general counsel" as appearing.

211 Said section is further amended on line 9 by striking out the words "disabled person" and
212 inserting in place thereof the following:-

213 person with a disability

214 SECTION 12. Section 13 of chapter 19C is amended in its title by striking out the words
215 “disabled person” and inserting in place thereof the words:-

216 a person with a disability

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

221 any person with a disability whose caretaker is an agency of the commonwealth, a
222 subdivision of the commonwealth, a facility licensed by an agency of the commonwealth or a
223 private agency which provides services or treatment to a person with disabilities pursuant to a
224 contract or agreement with an agency or the commonwealth