

SENATE No. 1087

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

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 to provide critical community services.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|-----------------------------|-----------------------------------|------------------|
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> | |
| <i>Kenneth I. Gordon</i> | <i>21st Middlesex</i> | <i>1/27/2017</i> |
| <i>Barbara A. L'Italien</i> | <i>Second Essex and Middlesex</i> | <i>1/27/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>2/1/2017</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/3/2017</i> |

SENATE No. 1087

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 1087) of Kenneth J. Donnelly, Kenneth I. Gordon, Barbara A. L'Italien, Marjorie C. Decker and others for legislation to provide critical community services. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to provide critical community services.

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 2014
2 Official Edition, is hereby amended by inserting after the word “health.”, in line 4, the following
3 words:-

4 “Critical community health services”, health, behavioral health and social services that
5 can be provided in a community setting, and do not require continuous inpatient hospitalization.

6 “Critical community health service treatment plan”, a plan defining a set of health,
7 behavioral health or social services delivered to an individual.

8 SECTION 2. Said section 1 of chapter 123 is hereby further amended by inserting after
9 the word “program.”, in line 18, the following words:-

10 “Gravely disabled”, a condition evidenced by behavior in which a person, as a result of a
11 mental disorder, is at substantial risk of inflicting serious harm to himself or others, and has

12 shown an inability to provide for his basic physical needs, including medical and psychiatric
13 treatment and shelter because of the mental disorder.

14 SECTION 3. Said section 1 of chapter 123 is hereby further amended by inserting after
15 the word “movement.”, in line 87, the following words:-

16 “Service plan”, a critical community health service treatment plan.

17 SECTION 4. Said section 1 of chapter 123 is hereby further amended by inserting after
18 the word “facility.”, in line 92, the following words:-

19 “Supervising mental health professional”, any person who holds himself out to the
20 general public as one providing mental health services and who is required pursuant to such
21 practice to obtain a license from the commonwealth or who, at the discretion of the court, is
22 deemed suitable to supervise a critical community health service treatment plan.

23 SECTION 5. Said chapter 123 is hereby further amended by inserting after section 8 the
24 following section:-

25 Section 8 1/2. (a) Any physician licensed pursuant to section 2 of chapter 112 after
26 examining a patient, the department of mental health, any person age 18 or older with whom the
27 subject of the petition resides, the parent, spouse, sibling age 18 or older, child age 18 or older
28 of the subject of the petition, the superintendent of any public or private facility or hospital
29 authorized for the commitment or treatment of mentally ill persons, or the medical director of the
30 Bridgewater state hospital, may petition the district court in whose jurisdiction a facility is
31 located that shall provide critical community health services for any individual who is

32 (1) mentally ill, (2) at least 18 years old and (3) meets the following criteria:

33 (i) is gravely disabled;

34 (ii) has a history of lack of compliance with treatment for mental illness that, prior to the
35 filing of the petition, has: (A) at least twice within the last 36 months, been a significant factor in
36 necessitating hospitalization, or receipt of mental health services in a forensic or department of
37 correction facility or house of corrections or the Bridgewater state hospital; or (B) committed one
38 or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious
39 physical harm to self or others within the last 36 months;

40 (iii) based on his or her treatment history and current behavior, is in need of critical
41 community health services in order to prevent a relapse or deterioration which would be likely
42 to result in serious harm to the person or others; and

43 (iv) is likely to benefit from critical community health services.

44 The petition shall include a written service plan prepared in consultation with, when
45 possible, those familiar with the patient, the superintendent or physician in charge of the care of
46 the patient or those familiar with the case history of the patient. The plan shall include each of
47 the following:

48 (1) a statement of the requirements for supervision, medication, and assistance in
49 obtaining basic necessities such as employment, food, clothing, and shelter;

50 (2) if known, the address of the residence where the patient resides and the name of the
51 person or persons in charge of the residence;

52 (3) if known, the name and address of any person, agency, or organization assigned to
53 supervise a critical community health service treatment plan or care for the patient; and

54 (4) the conditions for continued receipt of critical community health services, which may
55 require reporting, continuation of medication, submission to testing, or other such reasonable
56 conditions.

57 (b) A petition for critical community health services may be filed along with and in the
58 alternative to a petition for inpatient commitment under sections 7 or 8(a).

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

64 (d) A court may not issue a critical community service health service treatment plan
65 unless it finds that providing critical community health services is the least restrictive alternative
66 available to the person.

67 (e) If, after the hearing, the court finds by clear and convincing evidence that the subject
68 of the petition meets the criteria for critical community health services included in subsection (a),
69 the court may order the supervising mental health professional of an appropriate treatment
70 program to supervise the plan for such services.

71 Critical community health services shall not be ordered unless the court approves a
72 written critical community health service treatment plan presented to the court which conforms
73 to the requirements of this section and which contains the name of the designated director of the
74 facility that will supervise and administer the service plan.

75 (f) The first order for critical community health services shall not exceed 180 days, and
76 any subsequent order shall not exceed 365 days.

77 (g) Before an order for critical community health services can commence, the patient
78 shall be provided with copies of the court order and full explanations of the approved service
79 plan. The approved service plan shall be filed with the court and the supervising mental health
80 professional in charge of the patient's service plan.

81 (h) During any period in which an individual receives critical community health services,
82 the patient or the supervising mental health professional may petition the court to amend the
83 critical community health service treatment plan. The court may order an amended service plan
84 or, if contested, the court may order a hearing on the amended plan. If an amended service plan
85 is contested, the party wishing to amend the service plan shall provide the opposing party the
86 proposed amended service plan at least 7 days before the filing of a petition.

87 (i) A supervising mental health professional may petition the court for a hearing if the
88 supervising mental health professional has determined that the patient is not complying with the
89 critical community health service treatment plan.

90 When a supervising mental health professional determines that a patient has not complied
91 with any condition of the service plan, that monitor shall notify the court of the conditions of the
92 treatment plan that have been violated.

93 (1) Upon receipt of notice from the supervising mental health professional, the court shall
94 appoint counsel, if necessary, and schedule a service plan non-compliance hearing for a date no
95 less than 7 days and not more than 14 days later except in extraordinary circumstances, as
96 determined by the court. The court shall create a standard “notice of service plan non-

97 compliance” form, which the monitor shall complete with times and dates of alleged non-
98 compliance of the patient.

99 (2) The notice of service plan non-compliance shall set forth the conditions of plan that
100 the supervising mental health professional alleges have not been complied with and shall order
101 the patient to appear at a specific date and time for the non-compliance hearing, and shall be
102 delivered to all parties to the original proceeding under which the service plan order was issued.

103 (3) Service plan non-compliance hearings shall proceed in two distinct steps, the first to
104 adjudicate the factual issue of whether the plan is being complied with and the second to
105 determine the disposition of the matter, if plan non-compliance is found by the court to have
106 occurred.

107 (4) If the court finds that the patient has not complied with one or more conditions of the
108 service plan as alleged, the supervising mental health professional shall recommend to the court
109 a course of immediate action and may present argument and evidence in support of that
110 recommendation. If the court determines that the patient is not complying with the terms of the
111 order, the court may amend the service plan as the court deems necessary. The amended order
112 may alter the service plan, or the court may request, under the provisions of section 12 of this
113 chapter, an emergency evaluation to determine whether the failure to hospitalize such person
114 would create a likelihood of serious harm.

115 (j) The supervising mental health professional shall require periodic reports, not more
116 frequently than every 30 days, concerning the condition of patients receiving critical community
117 health services from any person, agency, or organization assigned to treat such patients.

118 (k) The supervising mental health professional shall review the condition of a patient
119 ordered to receive critical community services at least once every 30 days.

120 (l) The supervising mental health professional may, at any time, petition the court for
121 termination of a patient's critical community health service plan if the supervising mental health
122 professional determines that critical community health services are no longer the least restrictive
123 appropriate treatment available.

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

127 (n) The patient or his or her representative may petition for termination of an order for
128 critical community health services order.

129 (o) All hearings under this section shall be conducted by a judge consistent by the
130 requirements of this chapter and applicable law with such flexibility and informality as the court
131 may deem appropriate. The patient shall be entitled to the assistance of counsel and the court, if
132 necessary, shall appoint counsel. All testimony shall be taken under oath. The standard of proof
133 at such hearing will be clear and convincing evidence.

134 (p) Reasonable expense incurred in providing critical community health services may be
135 paid out of the estate of such person, by the petitioner or by the commonwealth, as may be
136 determined by the court.

137 SECTION 6. Section 9 of said chapter 123 is hereby amended by inserting after the
138 words "of section eight B.", in line 39, the following words:- Any person may apply to the court

139 stating his or her belief that a person currently receiving critical community health services under
140 section 8 1/2 should no longer be so treated.