

SENATE No. 1105

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien, (BY REQUEST)

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 protect public health, promote accountability and prevent the violation of individual rights through the misuse – abuse & the violation of law by amending Chapter 123 Section 12.

PETITION OF:

NAME:

Marie Winfield

DISTRICT/ADDRESS:

17 Red Spring Rd Andover, MA 01810

SENATE No. 1105

By Ms. L'Italien (by request), a petition (accompanied by bill, Senate, No. 1105) of Marie Winfield for legislation to protect public health, promote accountability and prevent the violation of individual rights through the misuse – abuse & the violation of law. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

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

An Act to protect public health, promote accountability and prevent the violation of individual rights through the misuse – abuse & the violation of law by amending Chapter 123 Section 12.

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. This Act shall be amended to be referred to as the Emergency Restrain and
2 Hospitalization Safeguards and Accountability Act – GLc.123 Section 36C As Amended.

3 SECTION 2. Chapter 123 of the General Laws is hereby amended by inserting after
4 Section 36B the following section:-

5 “Section 36C:” Definition - Clarification – Authorized Persons – Rights - Safeguards &
6 Accountability

7 (a) For the purposes of this section, “Emergency Restraint and Hospitalization of Persons
8 posing Risk of Serious Harm” shall be understood to mean a person who evidences an imminent
9 risk of causing serious harm by demonstrated deed or act or expressed thoughts (words), by
10 reason of mental illness.

11 (b) For the purposes of this section, “Persons posing Risk of Serious Harm” shall not be
12 interpreted to mean anything other than an individual who, by specific material deed, act, or
13 expressed thoughts (words), demonstrates that such an individual is at risk of causing serious
14 harm to himself or herself or to others.

15 (c) Under this section, no vague remarks, pretenses, innuendoes, stereotypes, suggestions,
16 speculations, extrapolations, or suspicions, or purported mental conditions found in the larger
17 population, shall constitute grounds for initiating such an application by triggering Section 12.
18 Nor shall an individual’s perception, prejudices, assumptions, theories, ideas, notions, principles,
19 moral values, religion, or philosophy, be used as grounds to initiate an application, to trigger this
20 law, or to justify restraint or the involuntary hospitalization of an individual under this section. In
21 addition, the mere suggestion or speculation that a person may or may not be under the influence
22 of substance, alcohol, stress, or anything else, shall not be used as grounds to trigger an
23 application, restraint, or the involuntary treatment, admission, or hospitalization of a person
24 under this section.

25 (d) A facility, a licensed physician, or any other healthcare professional licensed pursuant
26 to section 80B of chapter 112, or pursuant to sections 118 to 129, inclusive, of said chapter 112,
27 or a licensed independent clinical social worker licensed pursuant to section 130 to 137,
28 inclusive of chapter 112, who has reason to believe based on a person’s evidenced deeds, acts,
29 expressed thought or word, that that a person’s right has been violated under this Act shall be
30 required to report such violation and abuse to the Department of Public Health and the
31 Department of Mental Health Commissioners for the Commonwealth for appropriate review and
32 investigation.

33 (e) Any facility authorized to receive patients, under this Act, shall be required to have an
34 authorized and licensed psychiatrist on staff, or on call at all times, pursuant to section 80B of
35 chapter 112. Any person who is caused to be transported to such a facility, other than by order of
36 an equivalently authorized and licensed physician, shall be evaluated by such authorized and
37 licensed physician on staff at the facility within no more than 2 hours of arrival to the facility, or
38 be immediately discharged from the facility. .

39 (f) Other than the following specialized physicians, mental health professionals, social
40 workers, and physicians licensed under section 80B of chapter 112, or pursuant to sections 118
41 to 129, inclusive, of said chapter 112, or a licensed independent clinical social worker licensed
42 pursuant to section 130 to 137, inclusive of chapter 112, any person, including police officers
43 and paramedics, who, by reasons of specific act, deed, or expressed thought through the use of
44 words [emphasis] has reason to believe that based on the demonstrated evidence, failure to
45 transport a person to a medical facility would pose a serious risk of harm to the person or to
46 others, shall file and sign an affidavit under the pains and penalty of perjury, along with an
47 application for a medical evaluation.

48 (g) All forms and affidavit in support of an application for involuntary transportation,
49 restraint, medication, admission, or hospitalization in a facility under this Act, shall state and
50 outline in specifics the tangible act, deed, or expressed thought or words that form the foundation
51 of the applicant's claim that such a person poses a likelihood of serious harm by reason of mental
52 illness. Such forms and affidavit shall be duly signed and witnessed by a third person or co-
53 applicant under the pains and penalty of perjury. Any person who knowing, willfully, or
54 maliciously, by an act of neglect or omission, or by providing false statement on the required
55 affidavit and associated forms and filings, misuses or abuses the process, or violates the spirit or

56 intent of this law to wrongfully cause a person to be involuntarily and wrongly transported,
57 restrained, medicated, transferred, or admitted to a facility under this law, or causes a person to
58 be wrongly subjected to the admission process under this section, shall be held liable before a
59 Court for violating the Civil Rights violation of another.

60 (h) Under this section, police officers and other law enforcement personnel are to be
61 considered as non-authorized persons, as opposed to the authorized and licensed practitioners
62 listed in section 80B of chapter 112, or pursuant to sections 118 to 129, inclusive, of said chapter
63 112, or a licensed independent clinical social worker licensed pursuant to section 130 to 137,
64 inclusive of chapter 112. In accordance with this section, any application by a person or persons,
65 other than the authorized physicians and practitioners listed in this section, including application
66 by police, shall not consist and shall not be used as an application for admission [emphasis].
67 Consequently, all applications issued for the transport of a person to a facility by an unauthorized
68 person, under this Act, shall be considered as an application for medical evaluation only, rather
69 than a petition for involuntary restraint and hospitalization or admission, unless such restraint
70 and admission and hospitalization is ordered by an authorized and licensed physician or
71 practitioner as listed in this section, and within the determined arrival time of 1 to 2 hours, or
72 such a person shall be immediately discharged from the facility.

73 (i) No person shall be restrained, transported, involuntarily medicated, held against his or
74 her will, or admitted to a hospital, in the absence of, or before the filing of, such signed affidavit
75 by the person making the application, indicating the demonstrated act, deed, or expressed
76 thought or word to evidence that such a person presents a likelihood to pose a serious harm as
77 provided by this Act, and no restraint, admission, or hospitalization shall issue without the
78 express authorization upon evaluation and by order of an authorized licensed physician pursuant

79 and within the evaluation time required under this Act or that person shall be immediately
80 released from the facility.

81 (j) No person shall be involuntarily transported or admitted to any facility under this Act,
82 on the basis of race, color, gender, language, creed, age, sexual orientation, or national origin.

83 (k) Pursuant to M.G.L.c123, S12(b), a physician who is licensed pursuant to section 2 of
84 chapter 112 or qualified psychiatric nurse, mental health specialist authorized to practice as such
85 under regulations promulgated pursuant to the provisions of section 80B of said chapter 112, or
86 licensed pursuant to section 118 to 129, inclusive, of said chapter 112, or a licensed independent
87 clinical social worker licensed pursuant to section 130 to 137, inclusive, of chapter 112 who,
88 after EXAMINATION of a person, and based on acts, deeds, or expressed thoughts (words), has
89 reason to conclude that failure to hospitalize such person **WOULD CREATE A LIKELIHOOD**
90 **OF SERIOUS HARM** by reason of mental illness may restrain or authorize the restraint of such
91 person and apply for the hospitalization of such person for the purposes of a complete medical
92 and psychiatric evaluation.

93 (l) In all cases, other than by the direct order of a licensed psychiatrist, where a person is
94 transported to a hospital under the provision of this Act, such a person shall be medically
95 evaluated by a licensed physician in the Emergency Room of such facility to rule out underlining
96 medical conditions as the cause or causes of such transport. Where a person is transported to a
97 facility by a non-authorized physician under this Section, and as per regulations, such a person
98 shall be immediately released from the Emergency Room of such facility if it is determined that
99 the person poses no risk of serious harm. Any determination that a person poses a risk of serious

100 harm shall be documented in terms of deed, act, or expressed thought (words) that evidence such
101 risk of serious harm.

102 (m) Other than by the direct order of a licensed psychiatrist or a licensed mental health
103 professional as listed pursuant to section 2 of chapter 112, any person transported to a medical
104 facility under the provision of this law shall be evaluated by a licensed psychiatrist pursuant to
105 section 2 of chapter 112, or qualified psychiatric nurse, mental health specialist authorized to
106 practice as such under regulations promulgated pursuant to the provisions of section 80B of said
107 chapter 112, or licensed pursuant to section 118 to 129, inclusive, of said chapter 112, or a
108 licensed INDEPENDENT clinical social worker licensed pursuant to section 130 to 137,
109 inclusive of said chapter 112, within no more than 2 hours upon arriving at the facility.

110 (n) No person shall be admitted to a facility under this Act, other than by direct order of a
111 licensed psychiatrist pursuant to section 2 of chapter 112.

112 (o) No person shall be involuntary held, medicated, restrained, or admitted to a facility
113 under this Act, without the attending licensed mental health professional informing that person of
114 his or her right to speak with an attorney of his or her choice, or provided by the facility from the
115 pool of on-call emergency State attorneys, or a Civil Rights worker on staff at the facility. Where
116 an application has been issued and it cannot be documented by expressed acts or deeds that a
117 person poses a risk of serious harm by reason of mental illness, such person shall not be
118 admitted. Under the provision of this Act, upon arrival of such a person, the facility shall provide
119 such a person with an immediate consult with a Civil Rights Officer.

120 (p) A facility receiving a person under an involuntary application for admission, restraint,
121 or hospitalization, shall forthwith notify the Committee for Public Counsel Services and appoint

122 an attorney to meet or consult by telephone with such person immediately and in private. The
123 appointed attorney shall represent such person through discharge, admission, and any
124 involuntary commitment within the facility. If the attorney determines that the person voluntarily
125 and knowingly waived the right to be represented or is or will be represented by another
126 attorney, the appointed attorney shall notify the Committee for Public Counsel Services, which
127 shall withdraw the appointment. Under this section, any person transported to a hospital shall be
128 given access to a patient advocate, charge nurse, supervisor, medical director, and hospital
129 administrators, as well as other resources that may be necessary to address issues and concerns
130 and to prevent abuse of process. In the case of involuntary hospitalization, such resources shall
131 be made available to all persons prior to any admission, and all services shall remain available to
132 such a person if admitted, in the event that an authorized physician determines that failure to
133 admit such a person would pose a risk of serious harm by reason of mental illness under this
134 section. In addition, any person admitted under the provisions of this Act, who has reason to
135 believe that such an admission is the result of abuse or misuse of this act may request an
136 emergency hearing in district court, which should be held within 1 day of the request.

137 (q) A person who is involuntarily transported to a facility under this Act, disputes the act
138 of being transported to a facility or challenges the manner in which that person feels he or she is
139 being treated under this law, objects to admission, is waiting to consult with a licensed
140 psychiatrist, a Civil Rights worker, or an attorney, or is being represented by an attorney, shall
141 not have their movement restricted, or be guarded, restrained, involuntarily medicated, or
142 admitted to a facility, except by the direct order of a psychiatrist pursuant to section 2 of chapter
143 112, pending the outcome of any action – legal or otherwise, that the person’s attorney,
144 representative, or family member, might decide to undertake.

145 (r) A person who is transported to a facility under this Act shall not be searched, have
146 their personal belongings (i.e., wallet, handbag, purse, clothing, etc.) seized, or be deprived of
147 movement or communication with the outside by telephone or other electronic means, unless a
148 licensed physician pursuant to Chapter 112 has evaluated such a person and specifically ordered
149 the deprivation of those rights on the basis that allowing such the person to enjoy those rights
150 would create a likelihood of that person posing an even greater RISK OF SERIOUS HARM due
151 to mental illness.

152 (s) No person shall be forced, threatened, or coerced into signing a voluntary
153 hospitalization. A person who is involuntarily admitted to any facility and refuses to sign a
154 voluntary admission shall not be automatically committed to the facility in the absence of a
155 Court Order. Consequently, under this section, a person who challenges his or her involuntarily
156 admission and or hospitalization to a facility shall immediately be put in contact with an attorney
157 and the Civil Right worker on staff, and shall not be admitted until the matter is resolved under
158 the supervision of an authorized licensed physician pursuant to the provisions of section 2 of
159 chapter 112.”

160 (t) The Departments of Public Health and the Department of Mental Health shall be
161 required to develop and circulate appropriate forms and affidavits to be completed by applicants
162 with specific descriptions or evidence of the deed, act, or expressed thought or words that shall
163 prompt anyone to trigger the use of this law.

164 (u) Pursuant to CMR: DEPARTMENT OF MENTAL HEALTH - Procedure to
165 Safeguard the Admission Process - The Departments of Public Health and the Department of
166 Mental Health shall develop and widely promulgate and disseminate all appropriate information,

167 requirements, forms, and affidavits, to all hospitals, licensed physicians, mental health
168 professionals, social workers, and police departments, within a period of 60 days. Under this
169 section, the departments shall also be required to receive, compile, monitor, and review such
170 mandated forms and affidavits relating to all forced restraint and involuntary admission and
171 hospitalization of persons residing in the Commonwealth of Massachusetts through their
172 Divisions of Safety and Quality Care, which shall be responsible for reporting any violation and
173 abuse to the Commissioner of their respective departments.

174 (v) The Department of Public Health and the Department of Mental Health shall
175 thoroughly investigate any report, complaint, or allegations of violations or abuse made by
176 patients, interested parties, or other entities, take necessary steps to enforce the provisions of this
177 section through sanctions or mandatory reforms, and compile such data to be included in reports
178 to the governor and the legislature.