

**SENATE . . . . . No. 833**

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**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 relative to improving access to emergency treatment plans.

PETITION OF:

NAME:

*Kenneth J. Donnelly*

DISTRICT/ADDRESS:

*Fourth Middlesex*

**SENATE . . . . . No. 833**

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By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 833) of Kenneth J. Donnelly for legislation relative to improving access to emergency treatment plans. The Judiciary.

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**The Commonwealth of Massachusetts**

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

An Act relative to improving access to emergency treatment plans.

*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 5-101 of chapter 190B of the General Laws, as appearing in the  
2   2014 Official Edition, is hereby amended by inserting, in subsection (3), after the word “court”,  
3   in line 14, the following words:- or in proceedings relating to the appointment of treatment  
4   monitors and supervision of treatment plans as described in Section 5-306 of said chapter 190B.

5           SECTION 2. Said section 5-101 is hereby further amended by inserting after subsection  
6   (25) the following subsection:-

7           (26) “treatment monitor”, any person who holds himself out to the general public as one  
8   providing mental health services and who is required pursuant to such practice to obtain a license  
9   from the commonwealth or who, at the discretion of the court, is deemed suitable to monitor the  
10   treatment plan as described in subsection (a) of Section 5-306A of said chapter 190B.

11          SECTION 3. Section 5-306A of said chapter 190B is hereby amended by inserting after  
12   the words “section 5-308”, in line 17, the following words:-

13 In all cases, a treatment plan by order or decree must be issued and a monitor must be  
14 assigned not later than 14 days after the initial petition is filed.

15 SECTION 4. Said section 5-306A is hereby further amended by striking out subsection  
16 (b) and inserting in place thereof the following section:-

17 (b) The court shall delegate to a treatment monitor the authority to supervise the  
18 treatment plan to ensure that the treatment plan is followed. Reasonable expense incurred in such  
19 monitoring may be paid out of the estate of such person by the petitioner or by the  
20 commonwealth, as may be determined by the court.

21 SECTION 5. Said chapter 190B, as so appearing, is hereby amended by inserting after  
22 section 5-306A the following sections:-

23 Section 5-306B. (a) A treatment monitor shall report in writing the condition of the  
24 incapacitated person within 30 days following appointment and not more than 60 days thereafter  
25 and when otherwise ordered by the court. A report shall state:

26 (1) the current mental, physical and social condition of the incapacitated person;

27 (2) a statement of compliance with the treatment plan by the incapacitated person and the  
28 delivery of treatment services by the provider;

29 (3) a recommendation as to the need for continued monitoring and any recommended  
30 changes in the scope of monitoring; and

31 (4) plans regarding future care.

32 (b) The court shall establish a system for overseeing treatment monitors of incapacitated  
33 persons, including the filing and review of regular reports.

34 (c) When the treatment monitor determines that an incapacitated person has refused to  
35 comply with any condition of the treatment plan or when the treatment monitor determines that  
36 the service provider is not delivering treatment in accordance with the treatment plan, the  
37 monitor shall petition the court for a hearing to report the conditions of the treatment plan that  
38 have been violated.

39 Upon receipt of notice from the treatment monitor, the court shall appoint counsel, if  
40 necessary, and schedule treatment non-compliance hearings and service provider non-  
41 compliance hearings within 7 days and not more than 14 days, except in extraordinary  
42 circumstances, as determined by the court. The court shall create a standard “notice of treatment  
43 non-compliance” form, which the monitor shall complete with times and dates of alleged non-  
44 compliance of the incapacitated person or the service provider.

45 Treatment non-compliance hearings shall proceed in 2 distinct steps, the first to  
46 adjudicate the factual issue of whether the alleged treatment plan is being complied with and the  
47 second to determine the disposition of the matter, if treatment non-compliance is found by the  
48 court to have occurred.

49 If the court finds that the incapacitated person has not complied with one or more  
50 conditions of the treatment plan as alleged, or that the service provider has not complied with  
51 one or more conditions of the treatment plan as alleged, the treatment monitor shall recommend  
52 to the court a course of immediate action and may present argument and evidence in support of  
53 that recommendation. The incapacitated person or his representative and the treatment provider

54 or his representative shall be permitted to present argument and evidence relevant to disposition  
55 and to propose dispositional terms. The court may issue an order of enforcement that shall  
56 include a course of action and reasons for taking such action, including an order that the  
57 incapacitated person or service provider return before the court to amend the treatment plan.

58 (d) Nothing in this section shall prevent a supervising mental health professional from  
59 authorizing involuntary commitment and treatment in emergency under section 12 of chapter  
60 123.

61 Section 5-306C. The authority and responsibility of a treatment monitor of an  
62 incapacitated person terminates upon the death of the monitor or incapacitated person, the  
63 determination of incapacity of the monitor, the determination that the person is no longer  
64 incapacitated, or upon removal or resignation as provided in section 5-306D.

65 Section 5-306D. (a) On petition of the incapacitated person or any person interested in  
66 the welfare of the incapacitated person, the court, after notice and hearing, may remove a  
67 treatment monitor if the person under a treatment plan is no longer incapacitated or for other  
68 good cause. On petition of the treatment monitor, the court may accept a resignation.

69 (b) The incapacitated person or any person interested in the welfare of the incapacitated  
70 person, if 18 or more years of age, may petition for removal of a treatment monitor on the ground  
71 that removal would be in the best interest of the incapacitated person.

72 (c) The incapacitated person or any person interested in the welfare of the incapacitated  
73 person may petition for an order that the person is no longer incapacitated, for termination of the  
74 treatment order, or for modification of the treatment plan.

75 (d) After notice and hearing on a petition for removal or for permission to resign, the  
76 court may appoint a successor treatment monitor and make any other appropriate order. Before  
77 appointing a successor treatment monitor, or ordering that a person's incapacity has been  
78 terminated, the court shall follow the same procedures to safeguard the rights of the incapacitated  
79 person that apply to a petition for appointment of treatment monitor.

80 SECTION 6. Subsection (f) of section 8B of chapter 123 of the General Laws, as so  
81 appearing in the 2014 Official Edition, is hereby amended by inserting after the word "section.",  
82 in line 54, the following words:- The superintendent of a facility or medical director of the  
83 Bridgewater state hospital may further petition the court for the continued monitoring of the  
84 patient after the expiration of the order of commitment. The hearing to continue monitoring shall  
85 take place within 7 days following the filing of the petition. The court may appoint a treatment  
86 monitor, as described under sections 5-306A-D of said chapter 190B, to monitor the existing  
87 treatment plan or, under the guidance of the court, develop and monitor a new treatment plan, as  
88 described in subsection (a) of section 5-306A of said chapter 190B.