

HOUSE No. 1553

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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 civil commitments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/17/2019</i>

HOUSE No. 1553

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 1553) of Angelo M. Scaccia relative to mental illness civil commitments. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to civil commitments.

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 2016
2 Official Edition is hereby amended by striking the section and inserting the following section:-

3 Section 1. Definitions

4 The following words as used in this section and sections two to thirty-seven, inclusive,
5 shall, unless the context otherwise requires, have the following meanings:

6 “Commissioner”, the commissioner of mental health.

7 “Department”, the department of mental health.

8 “Dependent funds”, those funds which a resident is unable to manage or spend himself as
9 determined by the periodic review.

10 “District court”, the district court within the jurisdiction of which a facility is located.

11 “Facility”, a public or private facility for the care and treatment of mentally ill persons,
12 except for the Bridgewater State Hospital.

13 “Fiduciary”, any guardian, conservator, trustee, representative payee as appointed by a
14 federal agency, or other person who receives or maintains funds on behalf of another.

15 “Funds”, all cash, checks, negotiable instruments or other income or liquid personal
16 property, and governmental and private pensions and payments, including payments pursuant to
17 a Social Security Administration program.

18 “Independent funds”, those funds which a resident is able to manage or spend himself as
19 determined by the periodic review.

20 “Licensed mental health professional”, any person who holds himself out to the general
21 public as one providing mental health services and who is required pursuant to such practice to
22 obtain a license from the commonwealth.

23 “Likelihood of serious harm”, (1) a substantial risk of physical harm to the person
24 himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm;
25 (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or
26 other violent behavior or evidence that others are placed in reasonable fear of violent behavior
27 and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury
28 to the person himself as manifested by evidence that such person’s judgment is so affected that
29 he is unable to protect himself in the community and that reasonable provision for his protection
30 is not available in the community.

31 “Patient”, any person with whom a licensed mental health professional has established a
32 mental health professional-patient relationship.

33 “Place of Detention”, an institution, or any part thereof, for the detention or confinement
34 of persons accused or convicted of crime, including, but not limited to, jails, prisons, houses of
35 correction and correctional institutions. A place of detention shall not include Bridgewater State
36 Hospital or the Massachusetts Alcohol and Substance Abuse Center.

37 “Psychiatric nurse”, a nurse licensed pursuant to section seventy-four of chapter one
38 hundred and twelve who specializes in mental health or psychiatric nursing.

39 “Psychiatrist”, a physician licensed pursuant to section two of chapter one hundred and
40 twelve who specializes in the practice of psychiatry.

41 “Psychologist”, an individual licensed pursuant to section one hundred and eighteen to
42 one hundred and twenty-nine, inclusive, of chapter one hundred and twelve.

43 “Qualified physician”, a physician who is licensed pursuant to section two of chapter one
44 hundred and twelve who is designated by and who meets qualifications required by the
45 regulations of the department; provided that different qualifications may be established for
46 different purposes of this chapter. A qualified physician need not be an employee of the
47 department or of any facility of the department.

48 “Qualified psychiatric nurse mental health clinical specialist”, a psychiatric nurse mental
49 health clinical specialist authorized to practice as such under regulations promulgated pursuant to
50 the provisions of section eighty B of chapter one hundred and twelve who is designated by and
51 meets qualifications required by the regulations of the department, provided that different

52 qualifications may be established for different purposes of this chapter. A qualified psychiatric
53 nurse mental health clinical specialist need not be an employee of the department or of any
54 facility of the department.

55 “Qualified psychologist”, a psychologist who is licensed pursuant to sections one
56 hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and
57 twelve who is designated by and who meets qualifications required by the regulations of the
58 department, provided that different qualifications may be established for different purposes of
59 this chapter. A qualified psychologist need not be an employee of the department or of any
60 facility of the department.

61 “Reasonable precautions”, any licensed mental health professional shall be deemed to
62 have taken reasonable precautions, as that term is used in section thirty-six B, if such
63 professional makes reasonable efforts to take one or more of the following actions as would be
64 taken by a reasonably prudent member of his profession under the same or similar
65 circumstances:--

66 (a) communicates a threat of death or serious bodily injury to the reasonably identified
67 victim or victims;

68 (b) notifies an appropriate law enforcement agency in the vicinity where the patient or
69 any potential victim resides;

70 (c) arranges for the patient to be hospitalized voluntarily;

71 (d) takes appropriate steps, within the legal scope of practice of his profession, to initiate
72 proceedings for involuntary hospitalization.

73 “Restraint”, bodily physical force, mechanical devices, chemicals, confinement in a place
74 of seclusion other than the placement of an inpatient or resident in his room for the night, or any
75 other means which unreasonably limit freedom of movement.

76 “Social worker”, an individual licensed pursuant to sections one hundred and thirty to one
77 hundred and thirty-two, inclusive, of chapter one hundred and twelve.

78 “Superintendent”, the superintendent or other head of a public or private facility.

79 SECTION 2. Section 6 of Chapter 123 of the General Laws, as appearing in the 2016
80 Official Edition is hereby amended by striking the section and inserting the following section:-

81 Section 6. Retention of persons; validity of orders; hearing trial

82 (a) No person shall be retained at a facility or at the Bridgewater state hospital except
83 under the provisions of paragraph (a) of section ten, the provisions of paragraphs (a), (b), and (c)
84 of section twelve, section thirteen, paragraph (e) of section sixteen and section thirty-five or
85 except under a court order or except during the pendency of a petition for commitment or to the
86 pendency of a request under section fourteen. A court order of commitment to a facility or to the
87 Bridgewater state hospital shall be valid for the period stipulated in this chapter or, if no such
88 period is so stipulated, for one year. A petition for the commitment of a person may not be issued
89 except as authorized under the provisions of this chapter.

90 (b) Following the filing of a petition for a commitment to a facility or to the Bridgewater
91 state hospital, a trial shall be held unless waived in writing by the person after consultation with
92 his counsel. In the event the trial is waived, the person may request a trial at any time during the
93 period of commitment.

94 SECTION 3. Section 8 of Chapter 123 of the General Laws, as appearing in the 2016
95 Official Edition is hereby amended by striking the section and inserting the following section:-

96 Section 8. Proceedings to commit dangerous persons; notice; trial; orders; jurisdiction

97 (a) After a trial, unless such trial is waived in writing pursuant to section 6 of this chapter,
98 the district court or the division of the juvenile court department shall not order the commitment
99 of a person at a facility or shall not renew such order unless it finds, beyond a reasonable doubt
100 and on the record, (1) such person is mentally ill, and (2) the discharge of such person from a
101 facility would create a likelihood of serious harm as defined by this chapter and the regulations
102 of the department.

103 (b) After trial and a finding on the record, unless such trial is waived in writing, the
104 district court or the division of the juvenile court department shall not order the commitment of a
105 person at the Bridgewater state hospital or shall not renew such order unless it finds that (1) such
106 person is mentally ill; (2) such person is not a proper subject for commitment to any facility of
107 the department; and (3) the failure to retain such person in strict custody would create a
108 likelihood of serious harm. If the court is unable to make the findings required by this paragraph,
109 but makes the findings required by paragraph (a), the court shall order the commitment of the
110 person to a facility designated by the department.

111 (c) The court shall render its decision on the petition within seven days of the completion
112 of the trial, provided prior to the expiration of the seven days, that for reasons stated in writing
113 by the court, the administrative justice for the district court department may extend said seven
114 day period.

115 (d) The first order of commitment of a person under this section shall be valid for a
116 period of ninety days and all subsequent commitments shall be valid for a period of six months
117 provided that if such commitments occur at the expiration of a commitment under any other
118 section of this chapter, other than a commitment for observation, the first order of commitment
119 shall be valid for a period of six months and provided further, that the first order of commitment
120 to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a
121 period of six months. If no trial is held before the expiration of the six months commitment, the
122 court may not recommit the person without a trial.

123 (e) In the event that the trial is waived and on the basis of a petition filed under the
124 authority of this chapter showing that a person is mentally ill and that the discharge of the person
125 from a facility would create a likelihood of serious harm, the district court or the division of the
126 juvenile court department which has jurisdiction over the commitment of the person may order
127 the commitment of the person to such facility.

128 (f) In the event that the trial is waived and on the basis of a petition filed under the
129 authority of this chapter showing that a person is mentally ill, that the person is not a proper
130 subject for commitment to any facility of the department and that the failure to retain said person
131 in strict security would create a likelihood of serious harm, the district court or the division of the
132 juvenile court department which has jurisdiction over a facility, or the Brockton district court if a
133 person is retained in the Bridgewater state hospital, may order the commitment of the person to
134 said hospital.

135 (g) The court may retain jurisdiction over the case after trial either on its own or at the
136 request of the respondent or respondent's counsel to determine that a person is mentally ill and
137 that the discharge of the person from a facility would create a likelihood of serious harm.

138 SECTION 4. Section 10 of Chapter 123 of the General Laws, as appearing in the 2016
139 Official Edition is hereby amended by striking the section and inserting the following section:-

140 Section 10. Voluntary admissions; consultation with attorney; discharge; outpatients;
141 veterans

142 (a) Pursuant to departmental regulations on admission procedures, the superintendent
143 may receive and retain on a voluntary basis any person providing the person is in need of care
144 and treatment and providing the admitting facility is suitable for such care and treatment. The
145 application may be made (1) by a person who has attained the age of sixteen, (2) by a parent or
146 guardian of a person on behalf of a person under the age of eighteen years, and (3) by the
147 guardian of a person on behalf of a person under his guardianship. Prior to accepting an
148 application for a voluntary admission, the superintendent shall inform the person, in writing, the
149 person making the application that the person has the right to consult with an attorney, or with a
150 person who is working under the supervision of an attorney, concerning the legal effect of a
151 voluntary admission and the right to appointed counsel pursuant chapter 211D, if the person is
152 indigent. The facility shall provide to the person and post in a prominent location the contact
153 information, including phone numbers for lawyer referral programs, the Committee for Public
154 Counsel Services and Mental Health Legal Advisors Committee. The superintendent may
155 discharge any person admitted under the provisions of this paragraph at any time he deems such
156 discharge in the best interest of such person, provided, however, that if a parent or guardian

157 made the application for admission, fourteen days' notice shall be given to such parent or
158 guardian prior to such discharge.

159 (b) Pursuant to departmental regulations, the superintendent of a facility may treat
160 persons as outpatients providing application for outpatient treatment is made in accordance with
161 the application provisions of paragraph (a). The superintendent may, in the best interest of the
162 person, discontinue the outpatient treatment of a person at any time.

163 (c) The chief officer of any facility of the Veterans Administration within the
164 commonwealth may admit eligible veterans under the provisions of this chapter and thereupon
165 shall be vested with the same powers as the department has under this chapter with respect to
166 retention or discharge.

167 SECTION 5. Section 11 of Chapter 123 of the General Laws, as appearing in the 2016
168 Official Edition is hereby amended by striking the section and inserting the following section:-

169 Section 11. Voluntary admissions; withdrawal; notice; examination; retention

170 Any person retained in a facility under the provisions of paragraph (a) of section ten shall
171 be free to leave such facility at any time, and any parent or guardian who requested the
172 admission of such person may withdraw such person at any time, upon giving written notice to
173 the superintendent. The superintendent may restrict the right to leave or withdraw to normal
174 working hours and weekdays and, in his discretion, may require persons or the parents or
175 guardians of persons to give three days written notice of their intention to leave or withdraw.

176 Where persons or their parents or guardians are required to give three days notice of intention to
177 leave or withdraw, an examination of such persons may be conducted to determine their clinical
178 progress, their suitability for discharge and to investigate other aspects of their case including

179 their legal competency and their family, home or community situation in the interest of
180 discharging them from the facility. Such persons may be retained at the facility beyond the
181 expiration of the three day notice period if, prior to the expiration of the said three day notice
182 period, the superintendent files with the district court a petition for the commitment of such
183 person at the said facility. Before accepting an application for voluntary admission where the
184 superintendent may require three days written notice of intention to leave or withdraw, the
185 admitting or treating physician shall assess the person's capacity to understand that: (i) the
186 person is agreeing to stay or remain at the hospital; (ii) the person is agreeing to accept
187 treatment; (iii) the person is required to provide the facility with three days written advance
188 notice of the person's intention to leave the facility; (iv) the person has been informed of the
189 right to retain and consult with an attorney or with a person or with a person who is working
190 under the supervision of an attorney, concerning the legal effect of a voluntary admission and the
191 right to appointed counsel pursuant chapter 211D, if the person is indigent and (v) the facility
192 may petition a court for an extended commitment of the person and that he may be held at the
193 facility until the petition is heard by the court. If the physician determines that the person lacks
194 the capacity to understand these facts and consequences of hospitalization, the application shall
195 not be accepted.

196 SECTION 6. Section 12 of Chapter 123 of the General Laws, as appearing in the 2016
197 Official Edition is hereby amended by striking the section and inserting the following section:-

198 Section 12. Emergency restraint and hospitalization of persons posing risk of serious
199 harm by reason of mental illness

200 (a) Any physician who is licensed pursuant to section 2 of chapter 112 or qualified
201 psychiatric nurse mental health clinical specialist authorized to practice as such under regulations
202 promulgated pursuant to the provisions of section 80B of said chapter 112 or a qualified
203 psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or a
204 licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of
205 chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such
206 person would create a likelihood of serious harm by reason of mental illness may restrain or
207 authorize the restraint of such person and shall immediately apply for the hospitalization of such
208 person for a 3-day period at a public facility or at a private facility authorized for such purposes
209 by the department. If an examination is not possible because of the emergency nature of the case
210 and because of the refusal of the person to consent to such examination, the physician, qualified
211 psychologist, qualified psychiatric nurse mental health clinical specialist or licensed independent
212 clinical social worker on the basis of the facts and circumstances may determine that
213 hospitalization is necessary and may apply therefore. In an emergency situation, if a physician,
214 qualified psychologist, qualified psychiatric nurse mental health clinical specialist or licensed
215 independent clinical social worker is not available, a police officer, who believes that failure to
216 hospitalize a person would create a likelihood of serious harm by reason of mental illness may
217 restrain such person and apply for the hospitalization of such person for a 3-day period at a
218 public facility or a private facility authorized for such purpose by the department. An application
219 for hospitalization shall state the with specificity why failure to hospitalize such person would
220 create a likelihood of serious harm by reason of mental illness and any other relevant information
221 which may assist the admitting physician or physicians. Whenever practicable, prior to
222 transporting such person, the applicant shall telephone or otherwise communicate with a facility

223 to describe the circumstances and known clinical history and to determine whether the facility is
224 the proper facility to receive such person and also to give notice of any restraint to be used and to
225 determine whether such restraint is necessary. No restraint under this section shall last longer
226 than 12 hours from the initial restraint. Any person restrained for more than 12 hours after their
227 initial restraint shall be advised, in writing, of the right to institute a petition for writ of habeas
228 corpus pursuant to chapter 248, sections 35-40 and of their right to the assignment of counsel, if
229 indigent. If the person requests an attorney, the Committee for Public Counsel Services shall be
230 immediately notified and shall appoint counsel.

231 (b) Only if the application for hospitalization under the provisions of this section is made
232 by a physician specifically designated to have the authority to admit to a facility in accordance
233 with the regulations of the department, shall such person be admitted to the facility immediately
234 after his reception. If the application is made by someone other than a designated physician, such
235 person shall be given a psychiatric examination by a designated physician immediately after his
236 reception at such facility. If the physician determines that failure to hospitalize such person
237 would create a likelihood of serious harm by reason of mental illness he may admit such person
238 to the facility for care and treatment.

239 Upon admission of a person under the provisions of this subsection, the facility shall
240 inform the person, in writing, of the right to retain and consult with an attorney or with a person
241 or with a person who is working under the supervision of an attorney, concerning the legal effect
242 of a voluntary admission and the right to appointed counsel pursuant chapter 211D, if the person
243 is indigent, and the facility shall, upon such person's request, notify the committee for public
244 counsel services of the name and location of the person admitted. Said committee for public
245 counsel services shall forthwith appoint an attorney who shall meet with the person. If the

246 appointed attorney determines that the person voluntarily and knowingly waives the right to be
247 represented, or is presently represented or will be represented by another attorney, the appointed
248 attorney shall so notify said committee for public counsel services, which shall withdraw the
249 appointment.

250 Any person admitted under the provisions of this subsection, who has reason to believe
251 that such admission is the result of an abuse or misuse of the provisions of this chapter, may
252 request, or request through counsel an emergency hearing in the district court in whose
253 jurisdiction the facility is located, and unless a delay is requested by the person or through
254 counsel, the district court shall hold such hearing on the day the request is filed with the court or
255 not later than the next business day.

256 (c) No person shall be admitted to a facility under the provisions of this section unless he,
257 or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary
258 admission under the provisions of paragraph (a) of section ten and unless he, or such parent or
259 legal guardian has been informed (1) that he has a right to such voluntary admission, and (2) that
260 the period of hospitalization under the provisions of this section cannot exceed three days. At any
261 time during such period of hospitalization, the superintendent may discharge such person if he
262 determines that such person is not in need of care and treatment.

263 (d) A person shall be discharged at the end of the three day period unless the
264 superintendent applies for a commitment under the provisions of sections seven and eight of this
265 chapter or the person remains on a voluntary status.

266 (e) Any person may make application to a district court justice or a justice of the juvenile
267 court department for a three day commitment to a facility of a mentally ill person whom the

268 failure to confine would cause a likelihood of serious harm. The court shall appoint counsel to
269 represent said person. After hearing such evidence as he may consider sufficient, a district court
270 justice or a justice of the juvenile court department may issue a warrant for the apprehension and
271 appearance before him of the alleged mentally ill person, if in his judgment the condition or
272 conduct of such person makes such action necessary or proper. Following apprehension, the
273 court shall have the person examined by a physician designated to have the authority to admit to
274 a facility or examined by a qualified psychologist in accordance with the regulations of the
275 department. If said physician or qualified psychologist reports that the failure to hospitalize the
276 person would create a likelihood of serious harm by reason of mental illness, the court may order
277 the person committed to a facility for a period not to exceed three days, but the superintendent
278 may discharge him at any time within the three day period. The periods of time prescribed or
279 allowed under the provisions of this section shall be computed pursuant to Rule 6 of the
280 Massachusetts Rules of Civil Procedure.

281 SECTION 7. Section 18 of Chapter 123 of the General Laws, as appearing in the 2016
282 Official Edition is hereby amended by striking the section and inserting the following section:-

283 Section 18. Hospitalization of mentally ill prisoners; examination; reports; hearing;
284 commitment; voluntary admission; reduction of sentence; discharge

285 (a) If the person in charge of any place of detention within the commonwealth has reason
286 to believe that a person confined therein is in need of hospitalization by reason of mental illness
287 at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to
288 be examined at such place of detention by a physician or psychologist, designated by the
289 department as qualified to perform such examination. Said physician or psychologist shall report

290 the results of the examination to the district court which has jurisdiction over the place of
291 detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal
292 case. Such report shall include an opinion, with reasons therefore, as to whether such
293 hospitalization is actually required. The court which receives such report may order the prisoner
294 to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for
295 examination and observation for a period not to exceed thirty days. After completion of such
296 examination and observation, a written report shall be sent to such court and to the person in
297 charge of the place of detention. Such report shall be signed by the physician or psychologist
298 conducting such examination, and shall contain an evaluation, supported by clinical findings, of
299 whether the prisoner is in need of further treatment and care at a facility or, if a male, the
300 Bridgewater state hospital by reason of mental illness. The person in charge of the place of
301 detention shall have the same right as a superintendent of a facility and the medical director of
302 the Bridgewater state hospital to file a petition with the court which received the results of the
303 examination for the commitment of the person to a facility or to the Bridgewater state hospital.
304 An initial court order of commitment issued subject to the provisions of this section shall be
305 valid for a six-month period, and all subsequent commitments during the term of the sentence
306 shall take place under the provisions of sections seven and eight and shall be valid for one year.

307 (b) Notwithstanding any contrary provision of general or special law, a prisoner who is
308 retained in any place of detention within the commonwealth and who is in need of care and
309 treatment in a facility may, with the approval of the person in charge of such place of detention
310 apply for voluntary admission under the provisions of paragraph (a) of section ten.

311 (c) At the commencement of hospitalization under the provisions of paragraph (a) or
312 paragraph (b) the department of correction shall enter in the patient record of such prisoner the

313 date of the expiration of the sentence of the prisoner. Where applicable, the provisions of
314 sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-
315 nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be
316 applied to reduce such sentence, and on such date the prisoner shall be discharged; provided,
317 however, that if the superintendent or other head of a facility or the medical director of the
318 Bridgewater state hospital determines that the discharge of the prisoner committed subject to the
319 provisions of paragraph (a) would create a likelihood of serious harm by reason of mental illness,
320 he may petition the district court having jurisdiction over the facility prior to the date of
321 expiration to order the commitment of such person to a facility or to the Bridgewater state
322 hospital under the provisions of this chapter other than paragraph (a); and provided, further, that
323 any prisoner resident in a facility subject to the provisions of paragraph (b) shall be free to leave
324 such facility subject to the provisions of section eleven.

325 (d) In the event the provisions of this chapter require the release of a prisoner from a
326 facility or from the Bridgewater state hospital prior to the date of expiration of his sentence
327 calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the
328 place of detention from which he was transferred to such facility or to said hospital.

329