

HOUSE No. 3722

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 expand the role of nurses in psychiatric facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/18/2019</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>4/8/2019</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>4/8/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>4/10/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/9/2019</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>4/4/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>4/8/2019</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>4/4/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>4/9/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>4/8/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>4/8/2019</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>	<i>4/10/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>4/8/2019</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>4/5/2019</i>

HOUSE No. 3722

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 3722) of Kay Khan and others relative to nurses in psychiatric facilities. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

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

An Act to expand the role of nurses in psychiatric facilities.

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 inserting after the definition of “Psychologist” the
3 following definition:-

4 “Qualified nurse practitioner”, a licensed nurse practitioner or equivalent licensed nurse,
5 authorized to practice as such under regulations promulgated pursuant to the provisions of
6 section 80B of chapter 112 who is designated by and meets qualifications required by regulations
7 of the department provided that different qualifications may be established for different purposes
8 of this chapter. A qualified nurse practitioner need not be an employee of the department or any
9 facility of the department.

10 SECTION 2. Section 11 of said chapter 123, as so appearing, is hereby amended, in line
11 22 and in line 29, by inserting after the word “physician” the following words:- or qualified
12 nurse practitioner.

13 SECTION 3. Said chapter 123, as so appearing, is hereby further amended by striking out
14 section 12 and inserting in place thereof the following section:-

15 Section 12. (a) Any physician who is licensed pursuant to section 2 of chapter 112 or
16 qualified nurse practitioner authorized to practice as such under regulations promulgated
17 pursuant to the provisions of section 80B of said chapter 112 or a qualified psychologist licensed
18 pursuant to sections 118 to 129, inclusive, of said chapter 112, or a licensed independent clinical
19 social worker licensed pursuant to sections 130 to 137, inclusive, of chapter 112 who, after
20 examining a person, has reason to believe that failure to hospitalize such person would create a
21 likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of
22 such person and apply for the hospitalization of such person for a 3-day period at a public facility
23 or at a private facility authorized for such purposes by the department. If an examination is not
24 possible because of the emergency nature of the case and because of the refusal of the person to
25 consent to such examination, the physician, qualified psychologist, qualified nurse practitioner or
26 licensed independent clinical social worker on the basis of the facts and circumstances may
27 determine that hospitalization is necessary and may apply therefore. In an emergency situation, if
28 a physician, qualified psychologist, qualified nurse practitioner or licensed independent clinical
29 social worker is not available, a police officer, who believes that failure to hospitalize a person
30 would create a likelihood of serious harm by reason of mental illness may restrain such person
31 and apply for the hospitalization of such person for a 3-day period at a public facility or a private
32 facility authorized for such purpose by the department. An application for hospitalization shall
33 state the reasons for the restraint of such person and any other relevant information which may
34 assist the admitting physician or physicians or qualified nurse practitioner. Whenever
35 practicable, prior to transporting such person, the applicant shall telephone or otherwise

36 communicate with a facility to describe the circumstances and known clinical history and to
37 determine whether the facility is the proper facility to receive such person and also to give notice
38 of any restraint to be used and to determine whether such restraint is necessary.

39 (b) Only if the application for hospitalization under the provisions of this section is made
40 by a physician, or a qualified nurse practitioner specifically designated to have the authority to
41 admit to a facility in accordance with the regulations of the department, shall such person be
42 admitted to the facility immediately after his reception. If the application is made by someone
43 other than a designated physician, or a qualified nurse practitioner, such person shall be given a
44 psychiatric examination by a designated physician, or a qualified nurse practitioner immediately
45 after his reception at such facility. If the physician, or a qualified nurse practitioner determines
46 that failure to hospitalize such person would create a likelihood of serious harm by reason of
47 mental illness he may admit such person to the facility for care and treatment.

48 Upon admission of a person under the provisions of this subsection, the facility shall
49 inform the person that it shall, upon such person's request, notify the committee for public
50 counsel services of the name and location of the person admitted. Said committee for public
51 counsel services shall forthwith appoint an attorney who shall meet with the person. If the
52 appointed attorney determines that the person voluntarily and knowingly waives the right to be
53 represented, or is presently represented or will be represented by another attorney, the appointed
54 attorney shall so notify said committee for public counsel services, which shall withdraw the
55 appointment.

56 Any person admitted under the provisions of this subsection, who has reason to believe
57 that such admission is the result of an abuse or misuse of the provisions of this subsection, may

58 request, or request through counsel an emergency hearing in the district court in whose
59 jurisdiction the facility is located, and unless a delay is requested by the person or through
60 counsel, the district court shall hold such hearing on the day the request is filed with the court or
61 not later than the next business day.

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

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

72 (e) Any person may make application to a district court justice or a justice of the juvenile
73 court department for a three day commitment to a facility of a mentally ill person whom the
74 failure to confine would cause a likelihood of serious harm. The court shall appoint counsel to
75 represent said person. After hearing such evidence as he may consider sufficient, a district court
76 justice or a justice of the juvenile court department may issue a warrant for the apprehension and
77 appearance before him of the alleged mentally ill person, if in his judgment the condition or
78 conduct of such person makes such action necessary or proper. Following apprehension, the
79 court shall have the person examined by a physician, or a qualified nurse practitioner designated

80 to have the authority to admit to a facility or examined by a qualified psychologist in accordance
81 with the regulations of the department. If said physician, qualified nurse practitioner or qualified
82 psychologist reports that the failure to hospitalize the person would create a likelihood of serious
83 harm by reason of mental illness, the court may order the person committed to a facility for a
84 period not to exceed three days, but the superintendent may discharge him at any time within the
85 three day period. The periods of time prescribed or allowed under the provisions of this section
86 shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

87 SECTION 4. Said chapter 123 is hereby further amended by striking out section 21 and
88 inserting in place thereof the following section:-

89 Section 21. Any person who transports a mentally ill person to or from a facility for any
90 purpose authorized under this chapter shall not use any restraint which is unnecessary for the
91 safety of the person being transported or other persons likely to come in contact with him.

92

93 In the case of persons being hospitalized under the provisions of section six, the applicant
94 shall authorize practicable and safe means of transport, including where appropriate,
95 departmental or police transport.

96

97 Restraint of a mentally ill patient may only be used in cases of emergency, such as the
98 occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide;
99 provided, however, that written authorization for such restraint is given by the superintendent or
100 director of the facility or by a physician or qualified nurse practitioner designated by him for this

101 purpose who is present at the time of the emergency or if the superintendent or director or
102 designated physician or qualified nurse practitioner is not present at the time of the emergency,
103 non-chemical means of restraint may be used for a period of one hour provided that within one
104 hour the person in restraint shall be examined by the superintendent, director or designated
105 physician or qualified nurse practitioner. Provided further, that if said examination has not
106 occurred within one hour, the patient may be restrained for up to an additional one hour period
107 until such examination is conducted, and the superintendent, director, or designated physician or
108 qualified nurse practitioner shall attach to the restraint form a written report as to why the
109 examination was not completed by the end of the first hour of restraint.

110

111 Any minor placed in restraint shall be examined within fifteen minutes of the order for
112 restraint by a physician or qualified nurse practitioner or, if a physician or qualified nurse
113 practitioner is not available, by a registered nurse or a certified physician assistant; provided,
114 however, that said minor shall be examined by a physician or qualified nurse practitioner within
115 one hour of the order for restraint. A physician or qualified nurse practitioner or, if a physician or
116 qualified nurse practitioner is not available, a registered nurse or a certified physician assistant,
117 shall review the restraint order, by personal examination of the minor or consultation with ward
118 staff attending the minor, every hour thereafter.

119

120 No minor shall be secluded for more than two hours in any twenty-four hour period;
121 provided, however, that no such seclusion of a minor may occur except in a facility with
122 authority to use such seclusion after said facility has been inspected and specially certified by the

123 department. The department shall issue regulations establishing procedures by which a facility
124 may be specially certified with authority to seclude a minor. Such regulations shall provide for
125 review and approval or disapproval by the commissioner of a biannual application by the facility
126 which shall include (i) a comprehensive statement of the facility's policies and procedures for the
127 utilization and monitoring of restraint of minors including a statistical analysis of the facility's
128 actual use of such restraint, and (ii) a certification by the facility of its ability and intent to
129 comply with all applicable statutes and regulations regarding physical space, staff training, staff
130 authorization, record keeping, monitoring and other requirements for the use of restraints.

131

132 Any use of restraint on a minor exceeding one hour in any twenty-four hour period shall
133 be reviewed within two working days by the director of the facility. The director shall forward a
134 copy of his report on each such instance of restraint to the human rights committee of that
135 facility and, in the event that there is no human rights committee, to the appropriate body
136 designated by the commissioner of mental health. The director shall also compile a record of
137 every instance of restraint in the facility and shall forward a copy of said report on a monthly
138 basis to the human rights committee or the body designated by the commissioner of mental
139 health.

140

141 No order for restraint for an individual shall be valid for a period of more than three
142 hours beyond which time it may be renewed upon personal examination by the superintendent,
143 director, authorized physician or qualified nurse practitioner or, for adults, by a registered nurse
144 or a certified physician assistant; provided, however, that no adult shall be restrained for more

145 than six hours beyond which time an order may be renewed only upon personal examination by a
146 physician or qualified nurse practitioner. The reasons for the original use of restraint, the reason
147 for its continuation after each renewal, and the reason for its cessation shall be noted upon the
148 restraining form by the superintendent, director or authorized physician or qualified nurse
149 practitioner or, when applicable, by the registered nurse or certified physician or qualified nurse
150 practitioner assistant at the time of each occurrence.

151

152 When a designated physician or qualified nurse practitioner is not present at the time and
153 site of the emergency, an order for chemical restraint may be issued by a designated physician or
154 qualified nurse practitioner who has determined, after telephone consultation with a physician or
155 qualified nurse practitioner, registered nurse or certified physician assistant who is present at the
156 time and site of the emergency and who has personally examined the patient, that such chemical
157 restraint is the least restrictive, most appropriate alternative available; provided, however, that
158 the medication so ordered has been previously authorized as part of the individual's current
159 treatment plan.

160

161 No person shall be kept in restraint without a person in attendance specially trained to
162 understand, assist and afford therapy to the person in restraint. The person may be in attendance
163 immediately outside the room in full view of the patient when an individual is being secluded
164 without mechanical restraint; provided, however, that in emergency situations when a person
165 specially trained is not available, an adult, may be kept in restraint unattended for a period not to
166 exceed two hours. In that event, the person kept in restraints must be observed at least every five

167 minutes; provided, further, that the superintendent, director, or designated physician or qualified
168 nurse practitioner shall attach to the restraint form a written report as to why the specially trained
169 attendant was not available. The maintenance of any adult in restraint for more than eight hours
170 in any twenty-four hour period must be authorized by the superintendent or facility director or
171 the person specifically designated to act in the absence of the superintendent or facility director;
172 provided, however, that when such restraint is authorized in the absence of the superintendent or
173 facility director, such authorization must be reviewed by the superintendent or facility director
174 upon his return.

175

176 No "P.R.N." or "as required" authorization of restraint may be written. No restraint is
177 authorized except as specified in this section in any public or private facility for the care and
178 treatment of mentally ill persons including Bridgewater.

179

180 No later than twenty-four hours after the period of restraint, a copy of the restraint form
181 shall be delivered to the person who was in restraint. A place shall be provided on the form or on
182 attachments thereto, for the person to comment on the circumstances leading to the use of
183 restraint and on the manner of restraint used.

184

185 A copy of the restraint form and any such attachments shall become part of the chart of
186 the patient. Copies of all restraint forms and attachments shall be sent to the commissioner of
187 mental health, or with respect to Bridgewater state hospital to the commissioner of correction,

188 who shall review and sign them within thirty days, and statistical records shall be kept thereof for
189 each facility including Bridgewater state hospital, and each designated physician or qualified
190 nurse practitioner. Furthermore such reports, excluding patient identification, shall be made
191 available to the general public at the department's central office, or with respect to Bridgewater
192 state hospital at the department of correction's central office.

193

194 Responsibility and liability for the implementation of the provisions of this section shall
195 rest with the department, the superintendent or director of each facility or the physician or
196 qualified nurse practitioner designated by such superintendent or director for this purpose.

197 SECTION 5. Section 22 of said chapter 123, as so appearing, is hereby amended by
198 inserting, in line 1, after the word "physicians" the following words:- , qualified nurse
199 practitioners.

200 SECTION 6. Said section 22 of said chapter 123, as so appearing, is hereby further
201 amended by inserting, in line 6, after the word "physician" the following words:- qualified nurse
202 practitioner.