

SENATE No. 2554

The Commonwealth of Massachusetts

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

SENATE, February 20, 2020.

The committee on Senate Ways and Means to whom was referred the Senate Bill updating terminology and investigative practices related to the protection of persons with disabilities (Senate, No. 2427), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2554).

For the committee,
Michael J. Rodrigues

SENATE No. 2554

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

An Act updating terminology and investigative practices related to the protection of persons with disabilities.

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. The fifth paragraph of section 4H of chapter 7 of the General Laws, inserted
2 by section 1 of chapter 19 of the acts of 2020, is hereby amended by striking out, each time they
3 appear, the words “disabled persons protection commission” and inserting in place thereof, in
4 each instance, the following words:- commission for the protection of persons with disabilities.

5 SECTION 2. Section 19 of chapter 19B of the General Laws, as appearing in the 2018
6 Official Edition, is hereby amended by striking out, in lines 126, 139, 280 and 281, 305, 384, 390
7 and 391, each time they appear, and 394 and 395, the words “disabled persons protection
8 commission” and inserting in place thereof, in each instance, the following words:- commission
9 for the protection of persons with disabilities.

10 SECTION 3. Chapter 19C of the General Laws is hereby amended by striking out the
11 title, as so appearing, and inserting in place thereof the following title:- COMMISSION FOR
12 THE PROTECTION OF PERSONS WITH DISABILITIES.

13 SECTION 4. Said chapter 19C is hereby further amended by striking out section 1, as so
14 appearing, and inserting in place thereof the following section:-

15 Section 1. As used in this chapter, the following words shall have the following meanings
16 unless the context requires otherwise:-

17 “Abuse”, an act or omission of a caretaker that results in serious physical or serious emotional
18 injury to a person with a disability; provided, however, that no person shall be considered to be
19 abused for the sole reason that such person is being furnished or relies upon treatment in
20 accordance with the tenets and teachings of a church or religious denomination by a duly
21 accredited practitioner of the church or religious denomination.

22 “Abuse per se”, abuse that, based upon its circumstances, is determined by the
23 commission to be in and of itself abusive, regardless of the presence of a serious physical or
24 serious emotional injury.

25 “Caretaker”, a parent, guardian or other person or agency responsible for the health or
26 welfare of a person with a disability, whether in the same home as the person with a disability,
27 the home of a relative, a foster home or any other location where the caretaker renders assistance.

28 “Commission”, the commission for the protection of persons with disabilities established
29 under section 2.

30 “Mandated reporter”, any physician, medical intern, hospital personnel engaged in the
31 examination, care or treatment of persons, medical examiner, dentist, psychologist, nurse,
32 chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator,
33 guidance or family counselor, day care worker, probation officer, social worker, foster parent,
34 police officer, animal control officer, person employed by a state agency or person employed to
35 provide assistance with activities of daily living or other services to a person with a disability

36 who, in their professional capacity, shall have reasonable cause to believe that a person with a
37 disability is suffering from a reportable condition.

38 “Person with a disability”, a person between the ages of 18 to 59, inclusive, who is a
39 person with an intellectual disability or a person with a developmental disability as defined under
40 section 1 of chapter 123B or who is otherwise mentally or physically disabled and, as a result of
41 that mental or physical disability, is wholly or partially dependent on another to meet the
42 person’s daily living needs.

43 “Recommendations”, a statement contained in an investigation report prepared pursuant
44 to this chapter that sets forth specific action intended by the investigator to protect a particular
45 person with a disability or similarly situated persons with disabilities who are the subject of the
46 report from abuse or risk of abuse and that responds to the specific protective needs of the person
47 with a disability or persons with disabilities.

48 “Reportable condition”, a serious physical or serious emotional injury sustained by a
49 person with a disability and for which there is reasonable cause to believe that the injury resulted
50 from abuse or that abuse per se exists.

51 “State agency”, an agency of the commonwealth that provides services or treatment to
52 persons with disabilities, including a private entity providing such services or treatment pursuant
53 to a contract, license or agreement with an agency of the commonwealth.

54 SECTION 5. Section 2 of said chapter 19C, as so appearing, is hereby amended by
55 striking out the first sentence and inserting in place thereof the following sentence:- There shall
56 be a commission for the protection of persons with disabilities.

57 SECTION 6. Said section 2 of said chapter 19C, as so appearing, is hereby further
58 amended by striking out, in line 5, the words “disabled persons” and inserting in place thereof
59 the following words:- persons with disabilities.

60 SECTION 7. Said section 2 of said chapter 19C, as so appearing, is hereby further
61 amended by striking out the third sentence and inserting in place thereof the following sentence:-
62 The commission shall consist of 3 members to be appointed by the governor, 1 of whom the
63 governor shall designate as chair.

64 SECTION 8. The first paragraph of section 3 of said chapter 19C, as so appearing, is
65 hereby amended by striking out clause (a) and inserting in place thereof the following clause:-
66 (a) to employ, subject to appropriation, the staff necessary to carry out its duties pursuant to this
67 chapter; provided, however, that the commission shall establish written standards for the position
68 of investigator and shall hire investigators whose education and training qualifies them for the
69 position pursuant to the standards established by the commission; provided further, that the
70 commission shall take the steps necessary to ensure that the conduct of each investigator meets
71 or exceeds the standards; and provided further, that the staff shall serve at the pleasure of the
72 commission and shall not be subject to chapter 31.

73 SECTION 9. Said section 3 of said chapter 19C, as so appearing, is hereby further
74 amended by striking out, in lines 20 and 21, the words “disabled persons” and inserting in place
75 thereof the following words:- persons with disabilities.

76 SECTION 10. Said section 3 of said chapter 19C, as so appearing, is hereby further
77 amended by striking out, in line 22, the words “other state”.

78 SECTION 11. Said section 3 of said chapter 19C, as so appearing, is hereby further
79 amended by striking out, in line 27, the word “nine” and inserting in place thereof the following
80 words:- 5 or section 9.

81 SECTION 12. Said section 3 of said chapter 19C, as so appearing, is hereby further
82 amended by striking out, in lines 28 and 29, the words “disabled persons” and inserting in place
83 thereof the following words:- persons with disabilities.

84 SECTION 13. Said section 3 of said chapter 19C, as so appearing, is hereby further
85 amended by striking out, in lines 31 and 32, the words “the provisions of chapters sixty-six and
86 sixty-six A” and inserting in place thereof the following words:- chapters 66 and 66A; provided,
87 however, that, except as otherwise provided in this chapter, all confidential or personally
88 identifiable information that is created, collected, used, maintained or disseminated pursuant to
89 this chapter shall not be a public record pursuant to clause Twenty-six of section 7 of chapter 4
90 or chapter 66.

91 SECTION 14. The first paragraph of said section 3 of said chapter 19C, as so appearing,
92 is hereby amended by striking clauses (h) and (i) and inserting in place thereof the following 2
93 clauses:-

94 (h) to establish within the commission a special investigative unit that shall have sole
95 responsibility for the initial evaluation or investigation of all reports of abuse received by the
96 commission in connection with which there is an allegation of criminal conduct; provided,
97 however, that the colonel of state police shall assign not less than 5 state police officers to the
98 special investigative unit; and

99 (i) to promulgate rules and regulations establishing procedures to exclude personally
100 identifiable information regarding the subjects of investigations and to carry out the

101 responsibilities of this chapter in such a way as to disclose as little personally identifiable
102 information as possible.

103 SECTION 15. Section 4 of said chapter 19C, as so appearing, is hereby amended by
104 striking out, in line 1, the words “disabled person” and inserting in place thereof the following
105 words:- person with a disability, and subject to the commission’s authority to conduct its own
106 investigation.

107 SECTION 16. The first paragraph of said section 4 of said chapter 19C, as so appearing,
108 is hereby amended by striking out clauses (b) and (c) and inserting in place thereof the following
109 3 clauses:-

110 (b) refer immediately any such report that alleges the occurrence of abuse of a person
111 with a disability whose caretaker is a state agency to the state agency within the executive office
112 of health and human services that has jurisdiction over the disability manifested by the person
113 with a disability; provided, however, that as determined and assigned by the commission, the
114 commission or the referral agency subject to the oversight of the commission shall investigate
115 the abuse as provided in section 5; and provided further, that, if a commission investigation is
116 being conducted, the referral agency shall take reasonable steps to avoid unnecessary,
117 unwarranted or counterproductive duplication of the commission’s investigation through an
118 internal investigation or inquiry by the referral agency and shall, when there is duplication,
119 utilize the commission’s investigation in lieu of an internal investigation or inquiry.

120 (c) refer immediately any such report that alleges the occurrence of abuse of a person
121 with a disability whose caretaker is not a state agency to the agency within the executive office
122 of health and human services that the commission determines, based on the person’s disability,
123 would most likely provide, license an entity to provide or contract with or enter into an

124 agreement to provide services or treatment to the person with a disability; provided, however,
125 that, as determined and assigned by the commission, the commission or the referral agency
126 subject to the oversight of the commission shall investigate such abuse as provided in section 5.

127 (d) in accordance with subsections (b) and (c), refer immediately reports that the
128 commission determines present imminent risk of substantial harm to a person with a disability,
129 regardless of whether any serious injury is alleged, for the provision of protective services;
130 provided, however, that the commission may oversee the provision of protective services until
131 such time that the commission determines the risk has been addressed.

132 SECTION 17. Said section 4 of said chapter 19C, as so appearing, is hereby further
133 amended by striking out, in lines 35 and 36, the words “disabled person where the screener” and
134 inserting in place thereof the following words:- person with a disability where the commission
135 staff.

136 SECTION 18. Said section 4 of said chapter 19C, as so appearing, is hereby further
137 amended by striking out, in line 38, the word “screener” and inserting in place thereof the
138 following words:- commission staff.

139 SECTION 19. Said section 4 of said chapter 19C, as so appearing, is hereby further
140 amended by striking out, in line 40, the first time it appears, the word “and” and inserting in
141 place thereof the following word:- or.

142 SECTION 20. Said section 4 of said chapter 19C, as so appearing, is hereby further
143 amended by striking out, in lines 40 to 42, inclusive, the words “and, upon completion of such
144 evaluation and investigation, shall report the results of such evaluation and investigation to the
145 commissioners who” and inserting in place thereof the following word: . Upon completion of

146 such evaluation or investigation, the special investigative unit shall report the results of such
147 evaluation or investigation to the commission that.

148 SECTION 21. Said section 4 of said chapter 19C, as so appearing, is hereby further
149 amended by inserting after the word “initial,” in line 46, the following words:- evaluation or.

150 SECTION 22. Said section 4 of said chapter 19C, as so appearing, is hereby further
151 amended by striking out, in lines 56 and 57, the words “clients of state agencies or of contract
152 providers” and inserting in place thereof the following words:- persons with disabilities.

153 SECTION 23. Said section 4 of said chapter 19C, as so appearing, is hereby further
154 amended by striking out, in line 58, the words “commission’s or department’s”.

155 SECTION 24. Said section 4 of said chapter 19C, as so appearing, is hereby further
156 amended by inserting after the word “investigation”, in lines 58 and 59, the following words:- by
157 the commission or referral agency.

158 SECTION 25. Section 5 of said chapter 19C, as so appearing, is hereby amended by
159 striking out, in lines 1, 13, 50, 63, 73 and 75, the words “disabled person” and inserting in place
160 thereof, in each instance, the following words:- person with a disability.

161 SECTION 26. Said section 5 of said chapter 19C, as so appearing, is hereby further
162 amended by inserting after the word “designated”, in line 2, the following words:- and assigned.

163 SECTION 27. Said section 5 of said chapter 19C, as so appearing, is hereby further
164 amended by striking out, in lines 2 to 4, inclusive, the words “, the general counsel, or a
165 department within the executive office of health and human services”.

166 SECTION 28. Said section 5 of said chapter 19C, as so appearing, is hereby further
167 amended by striking out, in lines 7 and 8, the words “counsel or department of mental health or
168 department of public health” and inserting in place thereof the following words:- department of

169 mental health, department of developmental services or the Massachusetts rehabilitation
170 commission.

171 SECTION 29. Said section 5 of said chapter 19C, as so appearing, is hereby further
172 amended by striking out, in line 9, the words “disabled person’s health or safety” and inserting in
173 place thereof the following words:- health or safety of a person with a disability.

174 SECTION 30. Said section 5 of said chapter 19C, as so appearing, is hereby further
175 amended by striking out, in line 12, the words “the disabled person’s residence and day program,
176 if any” and inserting in place thereof the following words:- any sites relevant to the alleged
177 abuse, which may include, but shall not be limited to, the residence and day program of the
178 person with a disability.

179 SECTION 31. Said section 5 of said chapter 19C, as so appearing, is hereby further
180 amended by striking out, in lines 17 to 19, inclusive, the words “, to the general counsel and to
181 the department of mental health and the department of public health” and inserting in place
182 thereof the following words:- and to the department of mental health, the department of
183 developmental services or the Massachusetts rehabilitation commission, as appropriate.

184 SECTION 32. Said section 5 of said chapter 19C, as so appearing, is hereby further
185 amended by striking out, in line 22, the word “ten” the inserting in place thereof the following
186 words:- 10, or the employer of the mandated reporter.

187 SECTION 33. Said section 5 of said chapter 19C, as so appearing, is hereby further
188 amended by inserting after the word “the”, in line 24, the first time it appears, the following
189 word:- designated.

190 SECTION 34. Said section 5 of said chapter 19C, as so appearing, is hereby further
191 amended by striking out, in line 30, the word “neither” and inserting in place thereof the
192 following word:- not.

193 SECTION 35. Said section 5 of said chapter 19C, as so appearing, is hereby further
194 amended by striking out, in lines 31 to 33, inclusive, the words, “nor prevent the admission of
195 such documents in any civil or disciplinary proceeding arising out of the alleged abuse or neglect
196 of the disabled person”.

197 SECTION 36. Said section 5 of said chapter 19C, as so appearing, is hereby further
198 amended by striking out, in lines 43 and 44, the words “the facility named in the report, if any,”
199 and inserting in place thereof the following words:- any sites relevant to the report.

200 SECTION 37. Said section 5 of said chapter 19C, as so appearing, is hereby further
201 amended by striking out, in line 45, the words “in the same facility”.

202 SECTION 38. Said section 5 of said chapter 19C, as so appearing, is hereby further
203 amended by striking out, in lines 46 and 47, the words “, the general counsel, the department of
204 mental health and the department of public health within” and inserting in place thereof the
205 following words:- and to the department of mental health, the department of developmental
206 services or the Massachusetts rehabilitation commission, as appropriate, within.

207 SECTION 39. Said section 5 of said chapter 19C, as so appearing, is hereby further
208 amended by striking out, in line 52, the words “, the general counsel, the attorney general”.

209 SECTION 40. Said section 5 of said chapter 19C, as so appearing, is hereby further
210 amended by striking out, in line 54, the words “six of chapter thirty-eight” and inserting in place
211 thereof the following words:- 3 of chapter 38.

212 SECTION 41. Said section 5 of said chapter 19C, as so appearing, is hereby further
213 amended by striking out, in line 55, the word “ten” and inserting in place thereof the following
214 words:- 10 business.

215 SECTION 42. Said section 5 of said chapter 19C, as so appearing, is hereby further
216 amended by striking out, in lines 56, 58 and 61, the word “misconduct” and inserting in place
217 thereof, in each instance, the following word:- abuse.

218 SECTION 43. Said section 5 of said chapter 19C, as so appearing, is hereby further
219 amended by striking out, in line 60, the words “prior to the issuance of said report”.

220 SECTION 44. Said section 5 of said chapter 19C, as so appearing, is hereby further
221 amended by striking out, in line 67, the word “shall” and inserting in place thereof the following
222 words:- may refer any matters for which there is reason to believe that a violation of any statute,
223 regulation or rule has occurred to the agency of the commonwealth that has jurisdiction over the
224 violation. In addition, the commission, notwithstanding any provisions of chapter 66A regarding
225 personal data to the contrary, shall.

226 SECTION 45. Said section 5 of said chapter 19C, as so appearing, is hereby further
227 amended by striking out, in lines 77 to 79, inclusive, the words “or (c) a disabled person has
228 suffered serious bodily injury as a result of a pattern of repetitive actions or inactions by a
229 caretaker” and inserting in place thereof the following words:- (c) a person with a disability has
230 suffered serious bodily injury as a result of a pattern of repetitive actions or inactions by a
231 caretaker; or (d) another criminal offense has occurred that has caused harm to a person with a
232 disability.

233 SECTION 46. Said chapter 19C is hereby further amended by striking out section 6, as so
234 appearing, and inserting in place thereof the following section:-

235 Section 6. The commission, acting through agencies within the executive office of health
236 and human services designated by the commission to provide protective services and as
237 necessary to prevent further abuse in cases investigated pursuant to this chapter and subject to
238 the oversight of the commission, shall:

239 (i) furnish protective services to a person with a disability with the consent of the person
240 or the person's current guardian;

241 (ii) petition the court for appointment of a conservator or guardian or for issuance of an
242 emergency order for protective services as provided in section 7; or

243 (iii) furnish protective services to a person with a disability on an emergency basis as
244 provided in said section 7.

245 SECTION 47. Section 7 of said chapter 19C, as so appearing, is hereby amended by
246 striking out, in lines 1 and 2, the words "the general counsel, the department of mental health or
247 the department of public health," and inserting in place thereof the following words:- the
248 department of mental health, the department of developmental services or the Massachusetts
249 rehabilitation commission.

250 SECTION 48. Said section 7 of said chapter 19C, as so appearing, is hereby further
251 amended by striking out, in lines 4, 6 and 7, 12, 13, 16, 17 and 18, each time they appear, 20 and
252 21, 22, 29, 35, 39 and 40, 46, 47 and 48, 59, each time they appear, 61, 65, 67 and 68, the words
253 "disabled person" and inserting in place thereof, in each instance, the following words:- person
254 with a disability.

255 SECTION 49. Said section 7 of said chapter 19C, as so appearing, is hereby further
256 amended by striking out, in lines 5 and 6, 9, 33 and 34, 37 and 62, the words " , counsel or
257 department" and inserting in place thereof, in each instance, the following words:- or agency.

258 SECTION 50. Said section 7 of said chapter 19C, as so appearing, is hereby further
259 amended by inserting after the word “guardian”, in line 20, the following words:- or guardian.

260 SECTION 51. Section 8 of said chapter 19C, as so appearing, is hereby amended by
261 striking out, in line 2, the words “disabled person” and inserting in place thereof the following
262 words:- person with a disability.

263 SECTION 52. Said section 8 of said chapter 19C, as so appearing, is hereby further
264 amended by striking out, in line 6, the words “disabled persons” and inserting in place thereof
265 the following words:- a person with a disability.

266 SECTION 53. Section 9 of said chapter 19C is hereby amended by striking out clause
267 (d), as so appearing, and inserting in place thereof the following clause:-

268 (d) refer any matters for which there is reason to believe that abuse has occurred by a
269 state agency or its employee to the agency of the commonwealth contracting with or licensing
270 such party for termination of the contract or license or for such other action that the agency of the
271 commonwealth deems appropriate.

272 SECTION 54. Section 10 of said chapter 19C, as so appearing, is hereby amended by
273 striking out, in lines 4 and 5, the words “and shall report in writing within forty-eight hours after
274 such oral report”.

275 SECTION 55. Said section 10 of said chapter 19C, as so appearing, is hereby further
276 amended by striking out, in lines 7, 13, 19 and 29, the words “disabled person” and inserting in
277 place thereof the following words:- person with a disability.

278 SECTION 56. Said section 10 of said chapter 19C, as so appearing, is hereby further
279 amended by striking out, in lines 10 and 11, the words “six of chapter thirty-eight” and inserting
280 in place thereof the following words:- 3 of chapter 38.

281 SECTION 57. Said section 10 of said chapter 19C, as so appearing, is hereby further
282 amended by inserting after the word “file”, in line 12, the following word:- a.

283 SECTION 58. Said section 10 of said chapter 19C, as so appearing, is hereby further
284 amended by striking out, in lines 27 and 28, the words “in any civil action arising out of a report
285 made pursuant to this chapter” and inserting in place thereof the following words:- participation
286 in an investigation conducted pursuant to this chapter.

287 SECTION 59. Said section 10 of said chapter 19C, as so appearing, is hereby further
288 amended by striking out, in lines 32 and 33, the words “oral and written reports, who fails to do
289 so,” and inserting in place thereof the following words:- a report and who fails to do so.

290 SECTION 60. Section 11 of said chapter 19C, as so appearing, is hereby amended by
291 striking out, in line 6, the words “the general counsel or”.

292 SECTION 61. Said section 11 of said chapter 19C, as so appearing, is hereby further
293 amended by striking out, in line 9, the words “disabled person” and inserting in place thereof the
294 following words:- person with a disability.

295 SECTION 62. The third paragraph of said section 11 of said chapter 19C, as so
296 appearing, is hereby amended by inserting after the first sentence the following sentence:- The
297 commission may investigate any allegation under this section pursuant to section 5 or section 9.

298 SECTION 63. Section 12 of said chapter 19C, as so appearing, is hereby amended by
299 striking out, in lines 10 and 11, the words “, in consultation with the secretary of health and
300 human services,”.

301 SECTION 64. Said section 12 of said chapter 19C, as so appearing, is hereby further
302 amended by striking out, in line 11, the word “formal”.

303 SECTION 65. Said section 12 of said chapter 19C, as so appearing, is hereby further
304 amended by striking out, in lines 12 and 13, the words “, in consultation with the secretary of
305 health and human services,”.

306 SECTION 66. Said section 12 of said chapter 19C, as so appearing, is hereby further
307 amended by striking out, in line 13, the words “a formal” and inserting in place thereof the
308 following word:- an.

309 SECTION 67. Section 13 of said chapter 19C, as so appearing, is hereby amended by
310 striking out, in lines 1 and 8, the words “disabled person” and inserting in place thereof, in each
311 instance, the following words:- person with a disability.

312 SECTION 68. Said section 13 of said chapter 19C, as so appearing, is hereby further
313 amended by striking out, in line 6, the word “a” and inserting in place thereof the following
314 word:- any.

315 SECTION 69. Section 220 of chapter 111 of the General Laws, as so appearing, is hereby
316 amended by striking out, in lines 20 and 21, the words “disabled persons protection commission”
317 and inserting in place thereof the following words:- commission for the protection of persons
318 with disabilities.

319 SECTION 70. Section 4 of chapter 19 of the acts of 2020 is hereby amended by striking
320 out the words “disabled persons protection commission” and inserting in place thereof the
321 following words:- commission for the protection of persons with disabilities.