The Commonwealth of Massachusetts

PRESENTED BY:

John F. Keenan

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

PETITION OF:

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<td>John F. Keenan</td>
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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:

SEC. 1. Section 19 of chapter 19B of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in lines 126, 139, 280 and 281, 305, 384, 390 and 391, and in lines 394 and 395, the words “disabled persons protection commission” and inserting in place thereof, in each instance, the following words: commission for the protection of persons with disabilities.

SEC. 2. Chapter 19C of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the title and inserting in place thereof the following title: COMMISSION FOR THE PROTECTION OF PERSONS WITH DISABILITIES.

SEC. 3. Section 1 of said chapter 19C, as so appearing, is hereby amended by striking out the definition of “Abuse” and inserting in place thereof the following definition:
“Abuse”, an act or omission of a caretaker which results in serious physical or serious emotional injury to a person with a disability; provided, however, that no person shall be considered to be abused for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof. Abuse per se is such act or omission of a caretaker which based upon its circumstances is determined by the Commission to be in and of itself abusive, regardless of the presence of a serious physical or serious emotional injury.

SECTION 4. Said section 1 of said chapter 19C, as so appearing, is hereby further amended by striking out the definition of “Caretaker” and inserting in place thereof the following definition:-

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

SECTION 5. Said section 1 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 13, the words “disabled persons protection commission” and inserting in place thereof the following words:- commission for the protection of persons with disabilities.

SECTION 6. Said section 1 of said chapter 19C, as so appearing, is hereby further amended by striking out the definitions of “Disabled person”, “General counsel”, “Mandated reporter”, “Recommendations”, “Reportable condition” and “State agency”, and inserting in place thereof the following 5 definitions:-
“Mandated reporter”, any physician, medical intern, hospital personnel engaged in the
examination, care or treatment of persons, medical examiner, dentist, psychologist, nurse,
chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator,
guidance or family counselor, day care worker, probation officer, social worker, foster parent,
veterans’ service officer, police officer, animal control officer, firefighter, paramedic,
emergency medical technician, person employed by a state agency as defined by this chapter, or
person employed to provide assistance with activities of daily living to a person with a disability,
who in his or her professional capacity shall have reasonable cause to believe that a person with
a disability is suffering from a reportable condition.

“Person with a disability”, a person between the ages of eighteen to fifty-nine, inclusive,
who is a person with an intellectual or developmental disability as defined by section 1 of
chapter 123B or who is otherwise mentally or physically disabled and as a result of that mental
or physical disability is wholly or partially dependent on others to meet that person’s daily living
needs; provided however, that the term “person with a disability” shall replace the term “disabled
person” without changing the meaning.

“Recommendations”, a statement or statements contained in an investigation report
prepared pursuant to this chapter which set forth specific action or actions intended by the
investigator to protect the particular person with a disability or persons who are the subject or
subjects of the report from abuse or risk of abuse and which responds to the specific protective
needs of said person with a disability or persons or groups of persons with a disability similarly
situated.
“Reportable condition”, a serious physical or serious emotional injury sustained by a person with a disability and for which there is reasonable cause to believe resulted from abuse, or reasonable cause to believe that abuse per se exists.

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

SECTION 7. Section 2 of said chapter 19C, as so appearing, is hereby amended by striking out the title and inserting in place thereof, the following title:- Establishment of the commission for the protection of persons with disabilities; membership; terms; compensation; annual report.

SECTION 8. Said section 2 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 2, the first time it appears, the words “disabled persons” and inserting in place thereof the following words:- persons with a disability.

SECTION 9. Said section 2 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 2 and 3, the words “disabled persons protection commission” and inserting in place thereof the following words:- commission for the protection of persons with disabilities.

SECTION 10. Said section 2 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 5, the words “disabled persons” and inserting in place thereof the following words:- persons with a disability.
SECTION 11. Said section 2 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words “one of whom he shall designate as chairman” and inserting in place thereof the following word:- one of whom shall be designated as chair.

SECTION 12. Section 3 of said chapter 19C, as so appearing, is hereby amended by striking out, in lines 10 through 13, the following sentence, “For the purposes of determining the standards established under this section, the commission shall confer with the district attorneys and the attorney general.”

SECTION 13. Said section 3 of said chapter 19C, as so appearing, is hereby amended by striking out, in lines 20 and 21, the words “disabled persons” and inserting in place thereof the following words:- persons with a disability.

SECTION 14. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 22, the words “other state”.

SECTION 15. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 27, after the word “section” the following words:-five or.

SECTION 16. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 28 and 29, the words “disabled persons” and inserting in place thereof the following words:- persons with a disability.

SECTION 17. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by inserting in line 32, after the words “sixty-six A” the following:-. Except as otherwise provided in this chapter, all records containing confidential or personal data which are
created, collected, used, maintained or disseminated pursuant to this chapter shall not be public
records;

SECTION 18. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by striking subsection “(h)” in its entirety.

SECTION 19. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by renumbering subsection “(i)” to the following subsection:-(h).

SECTION 20. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 39, after the word “initial” the following words:- evaluation or.

SECTION 21. Said section 3 of said chapter 19C, as so appearing, is hereby further amended by striking, in lines 44 through following 48, the following sentence, “The commission shall promulgate rules and regulations establishing procedures to exclude personally identifiable information regarding the subjects of investigations and to carry out the responsibilities of this chapter in such a way as to disclose as little personally identifiable information as possible.” and inserting in place thereof the following subsection:- (i) the commission shall promulgate rules and regulations establishing procedures to exclude personally identifiable information regarding the subjects of investigations and to carry out the responsibilities of this chapter in such a way as to disclose as little personally identifiable information as possible.

SECTION 22. Section 4 of said chapter 19C, as so appearing, is hereby amended by striking out, in line 1, the words “disabled person” and inserting in place thereof the following words:- person with a disability, and subject to the commission’s authority to conduct its own investigation.
SECTION 23. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) refer immediately any such reports, which allege the occurrence of abuse of a person with a disability whose caretaker is a state agency, to the agency within the executive office of health and human services which has jurisdiction over the disability manifested by the person with a disability. As determined and assigned by the commission, either the commission or said referral agency, subject to the oversight of the commission, shall investigate such abuse as provided in section 5. In a case where a commission investigation is being conducted, the referral agency shall take reasonable steps to avoid unnecessary, unwarranted or counterproductive duplication between an internal investigation or inquiry by the referral agency and the commission’s investigation, by utilizing the commission’s investigation in lieu of an internal investigation conducted by the referral agency.

SECTION 24. Subsection (c) of said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

(c) refer immediately any such reports which allege the occurrence of abuse of a person with a disability whose caretaker is not a state agency, to the agency within the executive office of health and human services which the commission determines, based on the person’s disability, would most likely provide, license an entity to provide, or contract with or enter into an agreement to provide services or treatment to the person with a disability. As determined and assigned by the commission, either the commission or the referral agency, subject to the oversight of the commission, shall investigate such abuse as provided in section 5.
SECTION 25. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by inserting, after the first paragraph of subsection (c), the following subsection:-

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

SECTION 26. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 35 and 36, the words “disabled person where the screener ” and inserting in place thereof the following words:- person with a disability where the commission staff.

SECTION 27. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 38, the word “screener” and inserting in place thereof the following words:- commission staff.

SECTION 28. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 39 and 40, 41, and 42, the words “evaluation and investigation” and inserting in place thereof the following words:- evaluation or investigation.

SECTION 29. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 41 through 43 the words, “shall report the results of such evaluation and investigation to the commissioners who shall,” and inserting in place thereof the following word: and.
SECTION 30. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 46, the after the word “initial” the following words:- evaluation or.

SECTION 31. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking, in lines 56 and 57, the words “clients of state agencies or of contract providers” and inserting in place thereof the following words:- persons with a disability.

SECTION 32. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 58, the words “commission’s or department’s”.

SECTION 33. Said section 4 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 59, after the word “investigation” the following words:-by the commission or referral agency.

SECTION 34. Section 5 of said chapter 19C, as so appearing, is hereby amended by striking out, in line 1, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 35. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by inserting after the word “designated”, in line 2, the following words:- and assigned.

SECTION 36. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 2 to 4, inclusive, the words “, the general counsel, or a department within the executive office of health and human services”.

SECTION 37. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 7 and 8, the words “counsel or department of mental health or department of public health” and inserting in place thereof the following words:- department of
mental health, department of developmental services or the Massachusetts rehabilitation commission.

SECTION 38. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 9, the words “disabled person’s health or safety” and inserting in place thereof the following words:- health or safety of a person with a disability.

SECTION 39. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 12, the words “the disabled person’s residence and day program, if any” and inserting in place thereof the following words:- any sites relevant to the alleged abuse, which may include, but not be limited to, the residence and day program of the person with a disability.

SECTION 40. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 13, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 41. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 17 to 19, inclusive, the words “to the general counsel and to the department of mental health and the department of public health” and inserting in place thereof the following words:- and to the department of mental health, department of developmental services or the Massachusetts rehabilitation commission, as appropriate.

SECTION 42. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 22, after the word “ten” the following words:- or the employer of said mandated reporter.
SECTION 43. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 24, after the word “agency” the following words: - it designates for investigation.

SECTION 44. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking, in line 30, the word “neither” and inserting in place thereof the following word: - not.

SECTION 45. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 31 through 33, the following words, “nor prevent the admission of such documents in any civil or disciplinary proceeding arising out of the alleged abuse or neglect of the disabled person”.

SECTION 46. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 43 and 44, the words “the facility named in the report, if any,” and inserting in place thereof the following words: - any sites relevant to the report.

SECTION 47. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 45, the words “in the same facility”.

SECTION 48. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 46 and 47, the words “the general counsel, the department of mental health and the department of public health” and inserting in place thereof the following words: - and to the department of mental health, department of developmental services or the Massachusetts rehabilitation commission, as appropriate.
SECTION 49. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 50, the words “disabled person” and inserting in place thereof the following words: - person with a disability.

SECTION 50. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 52, the words “, the general counsel, the attorney general”.

SECTION 51. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 54, the word “six” and inserting in place thereof the following word: - three.

SECTION 52. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 56 and 58, the word “misconduct” and inserting in place thereof, in each instance, the following word: - abuse.

SECTION 53. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 60, the words “prior to the issuance of said report”.

SECTION 54. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 61, the word “misconduct” and inserting in place thereof the following word: - abuse.

SECTION 55. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 63, the words “disabled person” and inserting in place thereof the following words: - person with a disability.

SECTION 56. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 67, after the word “contrary,” the following words: - may refer any
matters for which there is reason to believe that a violation of any statute, regulation, or rule has occurred to the appropriate agency of the commonwealth that has jurisdiction over the violation.

In addition, the commission, notwithstanding any provisions of chapter sixty-six A regarding personal data to the contrary,”.

SECTION 57. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 73, 75, 77 and 78, the words “disabled person” and inserting in place thereof, in each instance, the following words: person with a disability.

SECTION 58. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 77, the word “or” as third appearing.

SECTION 59. Said section 5 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 79, after the word “caretaker” the following words: ; or (d) another criminal offense has occurred which has caused harm to a person with a disability.

SECTION 60. Section 6 of said chapter 19C, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The commission, acting through agencies within the executive office of health and human services designated by the commission for the purpose of providing protective services, as necessary to prevent further abuse in cases investigated pursuant to this chapter and subject to the oversight of the commission, shall:-

SECTION 61. Said section 6 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 10 and 15, the words “disabled person” and inserting in place thereof, in each instance, the following words: person with a disability.
SECTION 62. Section 7 of said chapter 19C, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “the general counsel, the department of mental health or the department of public health,” and inserting in place thereof the following words:- the department of mental health, the department of developmental services or the Massachusetts rehabilitation commission.

SECTION 63. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 4, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 64. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 5 and 6, the words “, counsel or department” and inserting in place thereof the following words:- or agency.

SECTION 65. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 66. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 9, the words “, counsel or department” and inserting in place thereof the following words:- or agency.

SECTION 67. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 12, 13, 16, 17 and 18, the words “disabled person” and inserting in place thereof, in each instance, the following words:- person with a disability.
SECTION 68. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 20, after the word “guardian” the following words:- or guardian.

SECTION 69. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 20 and 21, and 22, the words “disabled person” and inserting in place thereof, in each instance, the following words:- person with a disability.

SECTION 70. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 29, the words “disabled person” and inserting in place thereof, the following words:- person with a disability.

SECTION 71. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 33 and 34, the words “, counsel or department” and inserting in place thereof the following words:- or agency.

SECTION 72. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 35, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 73. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 37, the words “, counsel or department” and inserting in place thereof the following words:- or agency.

SECTION 74. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 39 and 40, 46, 47 and 48, 59 and 61, the words “disabled person” and inserting in place thereof, in each instance, the following words:- person with a disability.
SECTION 75. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 62, the words “counsel or department” and inserting in place thereof the following words:- or agency.

SECTION 76. Said section 7 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 65, 67 and 68, the words “disabled person” and inserting in place thereof, in each instance, the following words:- person with a disability.

SECTION 77. Section 8 of said chapter 19C, as so appearing, is hereby amended by striking out, in the title, the words “disabled person” and inserting in place thereof the following words:- persons with a disability.

SECTION 78. Said section 8 of said chapter 19C, as so appearing, is hereby amended by striking out, in line 2, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 79. Said section 8 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 6, the words “disabled persons” and inserting in place thereof the following words:- persons with a disability.

SECTION 80. Section 9 of said chapter 19C, as so appearing, is hereby amended by striking out subsection (d), and inserting in place thereof the following subsection:-

(d) refer any matters for which there is reason to believe that abuse has occurred by a state agency or its employee, to the agency of the commonwealth contracting with or licensing such party for termination of such contract or license or for such other action as may be deemed appropriate by such agency of the commonwealth.
SECTION 81. Section 10 of said chapter 19C, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words “and shall report in writing within forty-eight hours after such oral report”.

SECTION 82. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 7, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 83. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 10, the word “six” and inserting in place thereof the following word:- three.

SECTION 84. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 12, after the word “file” the following word:- a.

SECTION 85. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 13 and 19, the words “disabled person” and inserting in place thereof, in each instance, the following words:- person with a disability.

SECTION 86. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking, in lines 26 and 27, the words “in any civil action arising out of a report made pursuant to this chapter” and inserting in place thereof, the following words:- participation in an investigation conducted pursuant to this chapter.

SECTION 87. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 29, the words “disabled person” and inserting in place thereof, the following words:- person with a disability.
SECTION 88. Said section 10 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 32 and 33, the words “oral and written reports” and inserting in place thereof, the following words:- a report.

SECTION 89. Section 11 of said chapter 19C, as so appearing, is hereby amended by striking out, in line 6, the words “, the general counsel or”.

SECTION 90. Said section 11 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 9, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 91. Said section 11 of said chapter 19C, as so appearing, is hereby further amended by inserting, in line 33, after the word “writing.” the following sentence:- The commission may investigate any allegation under this section pursuant to section 5 or 9.

SECTION 92. Section 12 of said chapter 19C, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words “, in consultation with the secretary of health and human services,”.

SECTION 93. Said section 12 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 11, the word “formal”.

SECTION 94. Said section 12 of said chapter 19C, as so appearing, is hereby further amended by striking out, in lines 12 and 13, the words “, in consultation with the secretary of health and human services,”.
SECTION 95. Said section 12 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 13, the words “a formal” and inserting in place thereof the word:- an.

SECTION 96. Section 13 of said chapter 19C, as so appearing, is hereby amended by striking out, in the title, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 97. Said section 13 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 1, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 98. Said section 13 of chapter 19C, as so appearing, is hereby further amended by striking out, in line 6, the word “a” and inserting in place thereof the following word:- any.

SECTION 99. Said section 13 of said chapter 19C, as so appearing, is hereby further amended by striking out, in line 8, the words “disabled person” and inserting in place thereof the following words:- person with a disability.

SECTION 100. Section 220 of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out, in lines 20 to 21, the words “disabled persons protection commission” and inserting in place thereof the following words:- commission for the protection of persons with disabilities.