

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger, (BY REQUEST)

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 protect public health, promote accountability and prevent the violation of individual rights through the misuse, abuse and the violation of law.

PETITION OF:

NAME:

Marie Yolette Winfield

DISTRICT/ADDRESS:

*1242 Commonwealth Avenue, Boston MA
02134*

SENATE No.

By Mr. Brownsberger (by request), a petition (accompanied by bill) (subject to Joint Rule 12) of Marie Yolette Winfield for legislation to protect public health, promote accountability and prevent the violation of individual rights through the misuse, abuse and the violation of law. Mental Health, Substance Use and Recovery.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1105 OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act to protect public health, promote accountability and prevent the violation of individual rights through the misuse, abuse and the violation of law.

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. Chapter 123 of the General Laws is hereby amended by inserting after
2 Section 36B the following section:-

3 “Section 36C:” Definition – “Likelihood of Serious Harm,” by striking:-

4 “The person’s judgment is so affected that there is a very substantial risk that the person
5 cannot protect himself or herself from physical impairment or injury, and no reasonable
6 provision to protect against this risk is available in the community.” The RELEVANT AND
7 APPLICABLE language is “Risk of Serious Harm.”

8 "Section 36D:" Clarification – Authorized Persons – Safeguards – Rights &
9 Accountability.

10 For the purposes of this section:-

11 "Emergency Restraint and Hospitalization shall be interpreted and understood to mean:

12 Emergency Care and Human Attendance to persons at risk of causing "SERIOUS
13 HARM" to himself or herself or others, due to mental status. This section covers:

14 (a) Emergency transport or hospitalization of a Person at Risk of posing "Serious Harm"
15 for the purpose of an initial medical, and as may be determined based on articulable
16 evidence, an appropriate psychiatric evaluation to properly assess the person's mental
17 state as concerned dangerousness.

18 (b) No restraint shall be used except, if it cannot be proved to be absolutely necessary due
19 to extreme and exigent circumstances, and based on the facts and documented evidence that
20 such person poses an imminent threat of "Serious Harm," as may be documented by the person's
21 action, deed, or expressly articulated thoughts (words), which may or may not be due to an
22 underlying mental illness.

23 For the purposes of this section, "Persons posing Risk of Serious Harm" shall not be
24 interpreted to mean anything other than an individual who, by specific material deed, act, or
25 expressed thoughts (words), demonstrates that such an individual is at risk of causing "Serious
26 Harm" to himself or herself or to others.

27 (c) Under this section, neither words spoken, nor behaviors manifestly displayed where
28 no evidence of imminent threat of "Serious Harm" to self or others can be clearly documented,

29 shall be purported or construed to mean or constitute “Risk of Serious Harm,” or cause a person
30 to be subjected to involuntary confinement pursuant to this Law. Nor shall any person’s mental
31 health history, age, or gender, social economics status, race or ethnicity, political views, creed or
32 religion, disability, gender orientation or personal lifestyle, be used as grounds to initiate an
33 application under Section 12, or to trigger any seizure, holding, or hospitalization in a mental
34 health ward or facility. In addition, that a person may or may not be under the influence of
35 substances, alcohol, or stress, shall not be used as grounds to trigger an application, restraint, or
36 the involuntary treatment, admission, or hospitalization of a person under this section. Nor shall
37 a victim of domestic abuse or violence be subjected to involuntary confinement.

38 Pursuant to this section, no person shall be held in a hospital emergency department for
39 observation longer than two hours following a medical and psychiatric evaluation, and no
40 person shall be involuntary confined to any facility for more than three (3) days, inclusive of
41 weekend and holidays, after which the facility must discharge such a person, or the facility must
42 petition the district court for involuntary commitment of that person pursuant to Sections 7 and 8
43 of Chapter 123.

44 (d) A facility, a licensed physician, or any other healthcare professional licensed pursuant
45 to section 80B of chapter 112, or pursuant to sections 118 to 129, inclusive, of said chapter 112,
46 or a licensed independent clinical social worker licensed pursuant to section 130 to 137,
47 inclusive of chapter 112, who has reason to believe based on a person’s evidenced deeds, acts,
48 expressed thoughts or words, that that a person’s right has been violated under this Act shall be
49 required to report such violation and abuse to the Department of Public Health and the
50 Department of Mental Health Commissioners for the Commonwealth and the Disabled Persons

51 Protection Commission (if the alleged victim is between the ages 18 and 59) for appropriate
52 review and investigation.

53 (e) Any facility authorized to receive patients, under this Act, shall be required to have an
54 authorized and licensed psychiatrist on staff, or on call at all times, pursuant to section 80B of
55 chapter 112. Any person who is caused to be transported to such a facility, other than by order of
56 an equivalently authorized and licensed physician, shall be evaluated by such authorized and
57 licensed physician on staff at the facility within no more than 2 hours of arrival to the facility, or
58 be immediately discharged from the facility. All evaluation of a detained person shall be
59 videotaped and all video recordings of such evaluation shall be made a part of the person's
60 record.

61 (f) Other than the following specialized physicians, mental health professionals, social
62 workers, and physicians licensed under section 80B of chapter 112, or pursuant to sections 118
63 to 129, inclusive, of said chapter 112, or a licensed independent clinical social worker licensed
64 pursuant to section 130 to 137, inclusive of chapter 112, any person, including police officers
65 and paramedics, who, by reasons of specific act, deed, or expressed thought through the use of
66 words [emphasis] has reason to believe that based on the demonstrated evidence, failure to
67 transport a person to a medical facility would pose a serious risk of harm to the person or to
68 others, shall sign the Application or Order and Authorization of Temporary Involuntary
69 Hospitalization pursuant to Sections 12 (a) and (b) under oath. An oath under the pains and
70 penalty of perjury shall be included in the application and shall be promulgated by the
71 Department of Mental Health. All Application or Order and Authorization of Temporary
72 Involuntary Hospitalization pursuant to Sections 12 (a) and (b), shall be signed by oath and
73 witnessed under the pains and penalty of perjury.

74 (g) Any person who knowingly, willfully, or maliciously, by act or omission or neglect,
75 by providing false statement, or through misuse or abuse of the process, causes a person to be
76 involuntarily and wrongly transported, restrained, medicated, transferred, or confined to a facility
77 under this Section shall be liable to that person for damages in law and equity.

78 (h) For the purpose of this section, police officers and other law enforcement personnel
79 are to be considered non-authorized persons, as opposed to the authorized and licensed
80 practitioners listed in section 80B of chapter 112, or pursuant to sections 118 to 129, inclusive, of
81 said chapter 112, or a licensed independent clinical social worker licensed pursuant to section
82 130 to 137, inclusive of chapter 112. In accordance with this section, any application by a person
83 or persons, other than the authorized physicians and practitioners listed in this section, including
84 application by police, shall not constitute an application for hospitalization, nor be used as an
85 application for admission.

86 Consequently, all applications issued for the transport of a person to a facility by an
87 unauthorized person, under this Act, shall be considered as an application for initial medical
88 evaluation ONLY, and an initial psychiatric assessment, in consented to, rather than a petition
89 for involuntary restraint and hospitalization or admission. If circumstances do not allow for a
90 person to consent, the facility shall be required to obtain consent from a next of kin, proxy, or a
91 family member, unless in cases where the

92 admission or referral is made or ordered by an authorized and licensed physician or
93 practitioner as listed in this section, and shall be done under strict limitations, supervision,
94 restrictions, and guidelines, and within the determined arrival time of 1 to 2 hours, or such a
95 person shall be immediately discharged from the facility.

96 (i) No person shall be restrained, transported, involuntarily medicated, held against his or
97 her will, or admitted to a hospital, in the absence of, or before the filing of a signed affidavit
98 under the pains and penalty of perjury by the person making the application, indicating the
99 demonstrated act, deed, or expressed thought or word to evidence that such a person presents a
100 likelihood to pose a serious harm as provided by this Act, and no restraint, admission, or
101 hospitalization shall issue without the express authorization upon evaluation and by order of an
102 authorized licensed physician pursuant and within the evaluation time required under this Act or
103 that person shall be immediately released from the facility.

104 (j) No person shall be involuntarily transported or admitted to any facility under this Act,
105 on the basis of race, ethnicity, color, gender, language, creed, age, sexual orientation, or national
106 origin.

107 (k) Pursuant to M.G.L.c123, S12(b), a physician who is licensed pursuant to section 2 of
108 chapter 112 or qualified psychiatric nurse, mental health specialist authorized to practice as such
109 under regulations promulgated pursuant to the provisions of section 80B of said chapter 112, or
110 licensed pursuant to section 118 to 129, inclusive, of said chapter 112, or a licensed independent
111 clinical social worker licensed pursuant to section 130 to 137, inclusive, of chapter 112 who,
112 after EXAMINATION of a person, and based on acts, deeds, or expressed thoughts (words), has
113 reason to conclude that failure to hospitalize such person **WOULD CREATE A LIKELIHOOD**
114 **OF SERIOUS HARM** by reason of mental illness may authorize the transport of such person to
115 a medical facility and apply for the hospitalization of such person for the purposes of a complete
116 medical and psychiatric evaluation.

117 (l) In all cases, other than by the direct order of a licensed psychiatrist, where a person is
118 transported to a hospital under the provision of this Act, such a person shall be medically
119 evaluated by a licensed physician in the Emergency Room of such facility to rule out underlining
120 medical conditions as the cause or causes of such transport. Where a person is transported to a
121 facility by a non-authorized physician under this Section, and as per regulations, such a person
122 shall be immediately be released from the Emergency Room of such facility if it is determined
123 that the person poses no risk of serious harm. Any determination that a person poses a risk of
124 serious harm shall be documented in terms of deed, act, or expressed thought (words) that
125 evidence such risk of serious harm.

126 (m) Other than by the direct order of a licensed psychiatrist or a licensed mental health
127 professional as listed pursuant to section 2 of chapter 112, any person transported to a medical
128 facility under the provision of this law shall be evaluated by a licensed psychiatrist pursuant to
129 section 2 of chapter 112, or qualified psychiatric nurse, mental health specialist authorized to
130 practice as such under regulations promulgated pursuant to the provisions of section 80B of said
131 chapter 112, or licensed pursuant to section 118 to 129, inclusive, of said chapter 112, or a
132 licensed INDEPENDENT clinical social worker Licensed pursuant to section 130 to 137, 109
133 inclusive of said chapter 112, within no

134 more than 2 hours upon arriving at the facility.

135 (n) No person shall be admitted to a facility under this Act, other than by direct order of a
136 licensed psychiatrist pursuant to section 2 of chapter 112.

137 (o) No person shall be involuntary held, medicated, restrained, or admitted to a facility
138 under this Act, without the attending licensed mental health professional informing that person of

139 his or her right to speak with an attorney of his or her choice, or provided by the facility from the
140 Committee for Public Counsel Services (CPCS), from a pool of on-call emergency attorneys, or
141 a Civil Rights worker on staff at the facility or on call. Where an application has been issued and
142 it cannot be documented by expressed acts or deeds that a person poses a risk of serious harm by
143 reason of mental illness, or where a person makes a protests the detention or makes a claim of
144 abuse or misuse of the process under the law, such person shall not be admitted or detained
145 absence the presence of an attorney from. Under the provision of this Act, upon arrival of such a
146 person, the facility shall provide such a person with an immediate consult with a Civil Rights
147 Officer in person, via teleconference, or by telephone.

148 (p) A facility receiving a person under an involuntary application for admission, restraint,
149 or hospitalization, shall forthwith notify the Committee for Public Counsel Services to appoint
150 an attorney to meet or consult by telephone with such person immediately and in private. The
151 appointed attorney shall represent such person through admission, involuntary commitment
152 within the facility, and at the time of discharge. If the attorney determines that the person
153 voluntarily and knowingly waived the right to be represented or is or will be represented by
154 another attorney, the appointed attorney shall notify the Committee for Public Counsel Services,
155 which shall withdraw the appointment. Under this section, any person transported to a hospital
156 shall be given access to a patient advocate, charge nurse, nurse supervisor, medical director, and
157 hospital administrators, as well as other resources that may be necessary to address issues and
158 concerns and to prevent abuse of process. In the case of involuntary hospitalization, such
159 resources shall be made available to all persons prior to any admission, and all services shall
160 remain available to such a person if admitted, in the event that an authorized physician
161 determines that failure to admit such a person would pose a risk of serious harm by reason of

162 mental illness under this section. In addition, any person admitted under the provisions of this
163 Act, who has reason to believe that such an admission is the result of abuse or misuse of this act
164 may request an emergency hearing in district court, which should be held within 1 day (24 hours)
165 of the request.

166 (q) A person who is involuntarily transported to a facility under this Act, and who
167 disputes the act of being transported to a facility or challenges the manner in which that person
168 feels he or she is being treated under this law, objects to admission, is waiting to consult with a
169 licensed psychiatrist, a Civil Rights worker, or an attorney, or is being represented by an
170 attorney, shall not have their movement restricted, or be guarded, restrained, involuntarily
171 medicated, or admitted to a facility, except by the direct order of a psychiatrist pursuant to
172 section 2 of chapter 112, pending the outcome of any action – legal or otherwise, that the
173 person’s attorney, representative, or family member, might decide to undertake.

174 (r) A person who is transported to a facility under this Act shall not be searched, have
175 their personal belongings (i.e., wallet, handbag, purse, clothing, etc.) seized, or be deprived of
176 movement or communication with the outside by telephone or other electronic means, unless a
177 licensed physician pursuant to Chapter 112 has evaluated such a person and specifically ordered
178 the deprivation of those rights on the basis that allowing such the person to enjoy those rights
179 would create a likelihood of that person posing an even greater RISK OF SERIOUS HARM due
180 to mental illness.

181 (s) No person 18 or older shall be forced, threatened, intimidated, deceived, or coerced
182 into signing a voluntary hospitalization, or be medicated, or receive electroshock treatment. A
183 person who has been admitted to a facility under involuntary confinement shall not be medicated

184 or receive any treatment without that person’s consent. Any and all treatment shall require
185 consent of a person who a person who is involuntarily admitted to any facility and refuses to sign
186 a voluntary admission shall not be automatically committed to the facility in the absence of a
187 Court Order issued and signed by a judge. Consequently, under this section, a person who
188 challenges his or her involuntarily admission and or hospitalization to a facility shall
189 immediately be put in contact with an attorney and the Civil Right worker on staff, and shall not
190 be admitted until the matter is resolved under the supervision of an authorized licensed physician
191 pursuant to the provisions of section 2 of chapter 112.”

192 (t) The Departments of Public Health and the Department of Mental Health shall be
193 required to develop and circulate appropriate forms and affidavits to be completed by applicants
194 with specific descriptions or evidence of the deed, act, or expressed thought or words that shall
195 prompt anyone to trigger the use of this law.

196 (u) Pursuant to CMR: DEPARTMENT OF MENTAL HEALTH - Procedure to safeguard
197 the Admission Process - The Departments of Public Health and the Department of Mental Health
198 shall develop and widely promulgate and disseminate all appropriate information, new and
199 updated requirements, and necessary forms and affidavits, to all hospitals, licensed physicians,
200 mental health professionals, social workers, and police departments, within a period of 60 days.
201 Under this section, the departments shall also be required to receive, compile, monitor, and
202 review such mandated forms and affidavits relating to all forced restraint and involuntary
203 admission and hospitalization of persons residing in the Commonwealth of Massachusetts
204 through their Divisions of Safety and Quality Care, which shall be responsible for reporting any
205 violation and abuse to the Commissioner of their respective departments.

206 (v) The Department of Public Health and the Department of Mental Health shall
207 thoroughly investigate any report, complaint, or allegations of violations or abuse made by
208 patients interested parties, or other entities, take necessary steps to enforce the provisions of this
209 section through sanctions or mandatory reforms, and compile such data to be included in reports
210 to the governor and the legislature.

211 (w) Under this section, electroshock treatment is to be considered banned in cases of
212 involuntary confinement, and shall not be administered or practiced as a viable or alternative
213 course of treatment unless specifically requested and consented to by the committed person.

214 (x) Pursuant to this amendment, no parents shall be threatened, intimidate, forced, or
215 coerced, into allowing their children (0 – 17) to be medicated or confined to an institution or any
216 facility. Any medicating of children shall ONLY be allowed with the full consent of a parent or
217 guardian.