

HOUSE No. 1828

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the well-being of new mothers and infants.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------|-----------------------|------------------|
| <i>James J. O'Day</i> | <i>14th Worcester</i> | <i>2/19/2021</i> |
| <i>Ruth B. Balseer</i> | <i>12th Middlesex</i> | <i>2/19/2021</i> |

HOUSE No. 1828

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 1828) of James J. O'Day and Ruth B. Balsler relative to the mental well-being of new mothers facing criminal charges. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to the well-being of new mothers and infants.

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 15 of chapter 123 of the General Laws, as so appearing, is hereby
2 amended by inserting after the word “psychologists”, in lines 7 and 8, the following words:- ;
3 provided however, that a defendant who gave birth within 12 months prior to the crime for which
4 the defendant has been charged shall undergo a screening for perinatal psychiatric complications
5 by a treating physician, psychiatrist or psychologist or other qualified physician or psychologist.

6 SECTION 2. Subsection (a) of section 15 of chapter 123 of the General Laws, as so
7 appearing, is hereby amended by inserting at the end thereof the following new sentence:- When
8 an examination is ordered for a female defendant who suffers or suffered, at the time the crime
9 for which the defendant has been charged with occurred, from mental illness related to a
10 perinatal psychiatric complication such as postpartum psychosis or postpartum depression, said
11 examination shall be conducted by an expert in reproductive psychiatry within 48 hours of such
12 order.

13 SECTION 3. Section 16 of chapter 123 of the General Laws, as so appearing, is hereby
14 amended by inserting at the end thereof the following new subsection:-

15 (g) Any person committed to a facility under the provisions of this section who suffers
16 from mental illness related to a perinatal psychiatric complication such as postpartum psychosis
17 or postpartum depression shall receive a diagnosis and treatment plan made in consultation with
18 an expert in reproductive psychiatry. Additional services, including but not limited to parenting
19 assessment, parenting capacity building, and parent-child dyadic therapy shall be made available
20 if deemed appropriate by the consulting expert.

21 SECTION 4. Section 1 of Chapter 123 of the General Laws, as so appearing, is hereby
22 amended by inserting at the end thereof the following new definitions:-

23 “Postpartum psychosis”, the most severe of the postpartum mood disorders whereby an
24 individual experiences alternating states of depression and/or mania (euphoria) and loses touch
25 with reality. Thinking and judgement are severely impaired. Other symptoms often include
26 hallucinations and/or delusions, cognitive confusion and disorientation, disorganized or racing
27 thoughts, excessive restlessness like pacing, minimal need for sleep and delirium. Postpartum
28 psychosis symptoms can wax and wane, whereby someone is behaving normally at times, while
29 other times is hallucinating, having delusions (false bizarre beliefs such as their baby is doomed
30 to hell and they must take their baby’s life in order for them to be safe and reborn), and behaving
31 in a bizarre manner.

32 “Postpartum depression”, a mood disorder which includes a variety of moderate to severe
33 symptoms of depression, severe anxiety, panic attacks and/or intrusive distressing obsessive
34 thoughts and compulsive ritualistic behavior. The clinical symptoms of depression are the

35 following: insomnia and sleep disturbances; loss of pleasure and motivation in usual activities
36 (that can include a lack of interest in the infant); sad and depressed mood; lack of clarity in
37 thinking that can be experienced as fogginess; lack of appetite or interest in eating; feelings of
38 hopelessness, worthlessness and poor self-esteem; extreme fatigue; suicidal thoughts; not feeling
39 like oneself; feeling overwhelmed and unable to cope with life's demands.

40 SECTION 5. Chapter 123 of the General Laws, as so appearing, is hereby amended by
41 adding the following section:-

42 Section 37. (a) The department shall appoint a community program director to coordinate
43 the department's role provided for in this section in a particular county or region.

44 (b) Any person committed to a state hospital or other treatment facility under the
45 provisions of section 16 may be placed on outpatient status, from that commitment subject to the
46 procedures and provisions of this section.

47 (c) In the case of any person charged with and found incompetent to stand trial or not
48 guilty by reason of mental illness or mental defect in such proceedings of murder, a violation in
49 which the victim suffers intentionally inflicted great bodily injury, or an act which poses a
50 serious threat of bodily harm to another person, outpatient status under this section shall not be
51 available until that person has actually been confined in a state hospital or other treatment facility
52 for 180 days or more after having been committed under the provisions of law specified in
53 section 16, unless the court finds a suitable placement, including, but not limited to, an outpatient
54 placement program, that would provide the person with more appropriate mental health
55 treatment and the court finds that the placement would not pose a danger to the health or safety
56 of others, including, but not limited to, the safety of the victim and the victim's family.

57 (d) In the case of any person charged with and found incompetent to stand trial or not
58 guilty by reason of mental illness or mental defect of any misdemeanor or any felony other than
59 those described in subsection (c), or found not guilty of any misdemeanor by reason of mental
60 illness or mental defect outpatient status under this section may be granted by the court prior to
61 actual confinement in a state hospital or other treatment facility under the provisions of law
62 specified in section 16.

63 (e) Before any person subject to the provisions of subsection (d) may be placed on
64 outpatient status, the court shall consider all of the following criteria:

65 (i) In the case of a person who is an inpatient, whether the director of the state
66 hospital or other treatment facility to which the person has been committed advises the court that
67 the defendant will not be a danger to the health and safety of others while on outpatient status,
68 and will benefit from such outpatient status.

69 (ii) In all cases, whether the community program director or a designee advises
70 the court that the defendant will not be a danger to the health and safety of others while on
71 outpatient status, will benefit from such status, and identifies an appropriate program of
72 supervision and treatment. In the case of a female defendant who suffers from mental illness
73 related to a perinatal psychiatric complication such as postpartum psychosis or postpartum
74 depression, an appropriate treatment program shall be identified in consultation with an expert in
75 reproductive psychiatry. Additional services, including but not limited to parenting assessment,
76 parenting capacity building and parent-child dyadic therapy shall also be made available if
77 deemed appropriate by the consulting expert.

78 (f) Prior to determining whether to place the person on outpatient status, the court shall
79 provide actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a
80 hearing at which the court may specifically order outpatient status for the person.

81 (g) The community program director or a designee shall prepare and submit the
82 evaluation and the treatment plan specified in paragraph (ii) of subsection (e) to the court within
83 15 calendar days after notification by the court to do so, except that in the case of a person who
84 is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after
85 notification by the court to do so.

86 (h) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
87 subsection (e) shall include review and consideration of complete, available information
88 regarding the circumstances of the criminal offense and the person's prior criminal history.

89 (i) Before any person subject to subsection (c) of this section may be placed on
90 outpatient status the court shall consider all of the following criteria:

91 (i) Whether the director of the state hospital or other treatment facility to which
92 the person has been committed advises the committing court and the prosecutor that the
93 defendant would no longer be a danger to the health and safety of others, including himself or
94 herself, while under supervision and treatment in the community, and will benefit from that
95 status.

96 (ii) Whether the community program director advises the court that the defendant
97 will benefit from that status, and identifies an appropriate program of supervision and treatment.
98 In the case of a female defendant who suffers from mental illness related to a perinatal
99 psychiatric complication such as postpartum psychosis or postpartum depression, an appropriate

100 treatment program shall be identified in consultation with an expert in reproductive psychiatry.
101 Additional services, including but not limited to parenting assessment, parenting capacity
102 building and parent-child dyadic therapy shall also be made available if deemed appropriate by
103 the consulting expert.

104 (j) Prior to release of a person under subsection (c), the prosecutor shall provide notice of
105 the hearing date and pending release to the victim or next of kin of the victim of the offense for
106 which the person was committed where a request for the notice has been filed with the court, and
107 after a hearing in court, the court shall specifically approve the recommendation and plan for
108 outpatient status. The burden shall be on the victim or next of kin to the victim to keep the court
109 apprised of the party's current mailing address.

110 (k) In any case in which the victim or next of kin to the victim has filed a request for
111 notice with the director of the state hospital or other treatment facility, he or she shall be notified
112 by the director at the inception of any program in which the committed person would be allowed
113 any type of day release unattended by the staff of the facility.

114 (l) The community program director shall prepare and submit the evaluation and the
115 treatment plan specified in paragraph (ii) of subsection (i) to the court within 30 calendar days
116 after notification by the court to do so.

117 (m) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
118 subsection (i) shall include review and consideration of complete, available information
119 regarding the circumstances of the criminal offense and the person's prior criminal history.

120 (n) Upon receipt by the committing court of the recommendation of the director of the
121 state hospital or other treatment facility to which the person has been committed that the person

122 may be eligible for outpatient status as set forth in paragraph (i) of subsection (e) or (i) of this
123 section, the court shall immediately forward such recommendation to the community program
124 director, prosecutor, and defense counsel. The court shall provide copies of the arrest reports and
125 the state summary criminal history information to the community program director.

126 (o) Within 30 calendar days the community program director or a designee shall submit
127 to the court and, when appropriate, to the director of the state hospital or other treatment facility,
128 a recommendation regarding the defendant's eligibility for outpatient status, as set forth in
129 paragraph (ii) of subsection (e) or (i) and the recommended plan for outpatient supervision and
130 treatment. The plan shall set forth specific terms and conditions to be followed during outpatient
131 status. The court shall provide copies of this report to the prosecutor and the defense counsel.

132 (p) The court shall calendar the matter for hearing within 15 business days of the receipt
133 of the community program director's report and shall give notice of the hearing date to the
134 prosecutor, defense counsel, the community program director, and, when appropriate, to the
135 director of the state hospital or other facility. In any hearing conducted pursuant to this section,
136 the court shall consider the circumstances and nature of the criminal offense leading to
137 commitment and shall consider the person's prior criminal history.

138 (q) The court shall, after a hearing in court, either approve or disapprove the
139 recommendation for outpatient status. If the approval of the court is given, the defendant shall be
140 placed on outpatient status subject to the terms and conditions specified in the supervision and
141 treatment plan. If the outpatient treatment occurs in a county other than the county of
142 commitment, the court shall transmit a copy of the case record to the superior court in the county

143 where outpatient treatment occurs, so that the record will be available if revocation proceedings
144 are initiated pursuant to subsection (w) or (x).

145 (r) The department shall be responsible for the supervision of persons placed on
146 outpatient status under this title. The commissioner shall designate, for each county or region, a
147 community program director who shall be responsible for administering the community
148 treatment programs for persons committed from that county or region under the provisions
149 specified in subsection (b).

150 (s) The department shall notify in writing the chief justice of the trial court, the district
151 attorney of each county, and the executive director of the committee on public counsel services
152 as to the person designated to be the community program director for each county or region, and
153 timely written notice shall be given whenever a new community program director is to be
154 designated.

155 (t) The community program director shall be the outpatient treatment supervisor of
156 persons placed on outpatient status under this section. The community program director may
157 delegate the outpatient treatment supervision responsibility to a designee.

158 (u) The outpatient treatment supervisor shall, at 90-day intervals following the beginning
159 of outpatient treatment, submit to the court, the prosecutor and defense counsel, and to the
160 community program director, where appropriate, a report setting forth the status and progress of
161 the defendant.

162 (v) Outpatient status shall be for a period not to exceed 1 year. At the end of the period of
163 outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the
164 defense counsel, and the community program director, and after a hearing in court, either

165 discharge the person from commitment under appropriate provisions of the law, order the person
166 confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing,
167 the community program director shall furnish a report and recommendation to the medical
168 director of the state hospital or other treatment facility, where appropriate, and to the court,
169 which the court shall make available to the prosecutor and defense counsel. The person shall
170 remain on outpatient status until the court renders its decision unless hospitalized under other
171 provision of the law. The hearing pursuant to the provisions of this section shall be held no later
172 than 30 days after the end of the 1 year period of outpatient status unless good cause exists. The
173 court shall transmit a copy of its order to the community program director or a designee.

174 (w) If at any time during the outpatient period, the outpatient treatment supervisor is of
175 the opinion that the person requires extended inpatient treatment or refuses to accept further
176 outpatient treatment and supervision, the community program director shall notify the superior
177 court in either the county which approved outpatient status or in the county where outpatient
178 treatment is being provided of such opinion by means of a written request for revocation of
179 outpatient status. The community program director shall furnish a copy of this request to the
180 defense counsel and to the prosecutor in both counties if the request is made in the county of
181 treatment rather than the county of commitment.

182 Within 15 business days, the court where the request was filed shall hold a hearing and
183 shall either approve or disapprove the request for revocation of outpatient status. If the court
184 approves the request for revocation, the court shall order that the person be confined in a state
185 hospital or other treatment facility approved by the community program director. The court shall
186 transmit a copy of its order to the community program director or a designee. Where the county
187 of treatment and the county of commitment differ and revocation occurs in the county of

188 treatment, the court shall enter the name of the committing county and its case number on the
189 order of revocation and shall send a copy of the order to the committing court and the prosecutor
190 and defense counsel in the county of commitment.

191 (x) If at any time during the outpatient period the prosecutor is of the opinion that the
192 person is a danger to the health and safety of others while on that status, the prosecutor may
193 petition the court for a hearing to determine whether the person shall be continued on that status.
194 Upon receipt of the petition, the court shall calendar the case for further proceedings within 15
195 business days and the clerk shall notify the person, the community program director, and the
196 attorney of record for the person of the hearing date. Upon failure of the person to appear as
197 noticed, if a proper affidavit of service has been filed with the court, the court may issue a *capias*
198 to compel the attendance of such person. If, after a hearing in court conducted using the same
199 standards used in conducting probation revocation hearings pursuant to section 3 of chapter 279,
200 the judge determines that the person is a danger to the health and safety of others, the court shall
201 order that the person be confined in a state hospital or other treatment facility which has been
202 approved by the community program director.

203 (y) Upon the filing of a request for revocation under subsection (w) or subsection (x) and
204 pending the court's decision on revocation, the person subject to revocation may be confined in a
205 facility designated by the community program director when it is the opinion of that director that
206 the person will now be a danger to self or to another while on outpatient status and that to delay
207 confinement until the revocation hearing would pose an imminent risk of harm to the person or
208 to another. The facility so designated shall continue the patient's program of treatment, shall
209 provide adequate security so as to ensure both the safety of the person and the safety of others in
210 the facility, and shall, to the extent possible, minimize interference with the person's program of

211 treatment. Upon the request of the community program director or a designee, a peace officer
212 shall take, or cause to be taken, the person into custody and transport the person to a facility as
213 described in subsection (z) and designated by the community program director for confinement
214 under this section. Within 1 business day after the person is confined in a jail under this section,
215 the community program director shall apply in writing to the court for authorization to confine
216 the person pending the hearing under subsection (w) or subsection (x). The application shall be
217 in the form of a declaration, and shall specify the behavior or other reason justifying the
218 confinement of the person in a jail. Upon receipt of the application for confinement, the court
219 shall consider and rule upon it, and if the court authorizes detention in a jail, the court shall
220 actually serve copies of all orders and all documents filed by the community program director
221 upon the prosecuting and defense counsel. The community program director shall notify the
222 court in writing of the confinement of the person and of the factual basis for the opinion that the
223 immediate confinement in a jail was necessary. The court shall supply a copy of these documents
224 to the prosecutor and defense counsel.

225 (z) The facility designated by the community program director may be a state hospital, a
226 local treatment facility, a county jail, or any other appropriate facility, so long as the facility can
227 continue the person's program of treatment, provide adequate security, and minimize
228 interference with the person's program of treatment. If the facility designated by the community
229 program director is a county jail, the patient shall be separated from the general population of the
230 jail. A county jail may not be designated unless the services specified above are provided, and
231 accommodations are provided which ensure both the safety of the person and the safety of the
232 general population of the jail. Within 3 business days of the patient's confinement in a jail, the
233 community program director shall report to the court regarding what type of treatment the patient

234 is receiving in the facility. If there is evidence that the treatment program is not being complied
235 with, or accommodations have not been provided which ensure both the safety of the committed
236 person and the safety of the general population of the jail, the court shall order the person
237 transferred to an appropriate facility, including an appropriate state hospital.

238 (aa) A resentencing hearing shall be allowed in the following cases, in addition to those
239 permitted under other sections:

240 At the time of the offense, the defendant was suffering from a serious perinatal
241 psychiatric complication, a mental illness such as postpartum depression or postpartum
242 psychosis, which though insufficient to establish the defense of insanity, substantially affected
243 his or her ability to understand his or her acts or to conform his or her conduct to the
244 requirements of the law.

245 At the time of the offense, the defendant was suffering from postpartum depression or
246 postpartum psychosis which was either undiagnosed by a qualified medical professional
247 (physician, psychiatrist or psychologist) or untreated or unsuccessfully treated, and this
248 temporary mental illness tended to excuse or justify the defendant's criminal conduct and was
249 not used in trial or sentencing.

250 (bb) Nothing in this section shall prevent hospitalization pursuant to the provisions of
251 section 12.

252 (cc) A person whose confinement in a treatment facility under subsection (w) or
253 subsection (x) is approved by the court shall not be released again to outpatient status unless
254 court approval is obtained under subsection (e) or subsection (i).

255 (dd) No person who is on outpatient status pursuant to this section shall leave this state
256 without first obtaining prior written approval to do so from the committing court. The prior
257 written approval of the court for the person to leave this state shall specify when the person may
258 leave, when the person is required to return, and may specify other conditions or limitations at
259 the discretion of the court. The written approval for the person to leave this state may be in a
260 form and format chosen by the committing court.

261 (ee) In no event shall the court give written approval for the person to leave this state
262 without providing notice to the prosecutor, the defense counsel, and the community program
263 director. The court may conduct a hearing on the question of whether the person should be
264 allowed to leave this state and what conditions or limitations, if any, should be imposed.

265 (ff) Any person who violates subsection (dd) is guilty of a misdemeanor and upon
266 conviction shall be punished by imprisonment for not more than 6 months in a house of
267 correction or by a fine of not more than \$1,000.

268 (gg) The department shall be responsible for the community treatment and supervision of
269 judicially committed patients. These services shall be available on a county or regional basis.
270 The department may provide these services directly or through contract with private providers.
271 The program or programs through which these services are provided shall be known as the
272 forensic conditional release program.

273 (hh) The department shall contact all regional mental health programs by January 1,
274 2022, to determine their interest in providing an appropriate level of supervision and treatment of
275 judicially committed patients at reasonable cost. Regional mental health programs may agree or
276 refuse to operate such a program.

277 (ii) No later than January 1, 2023, and by January 1 of each subsequent year, all
278 state hospitals or other treatment facilities participating in the forensic conditional release
279 program shall report to the commissioner the following information: (i) the cost of the program
280 to the facility; (ii) the demographic profiles of persons receiving supervision and treatment in the
281 program; and (iii) the rates of adherence to treatment under the program.

282 (jj) No later than January 1, 2023, and by January 1 of each subsequent year, the chief
283 justice of the trial court shall report to the commissioner the following information: rates and
284 types of reoffense while these persons are served by the program and after their discharge.

285 (kk) The department shall conduct yearly evaluations of the forensic conditional release
286 program. An evaluation of the program shall determine its effectiveness in successfully
287 reintegrating these persons into society after release from state institutions. This evaluation of
288 program effectiveness shall include, but not be limited to, a determination of the rates of
289 reoffense while these persons are served by the program and after their discharge. This
290 evaluation shall also address the effectiveness of the various treatment components of the
291 program and their intensity.

292 (ll) The department shall ensure consistent data gathering and program standards for use
293 statewide by the forensic conditional release program.

294 (mm) The department of correction, and the executive office of public safety and security
295 shall cooperate with the department in conducting this evaluation.

296 (nn) The administrators and the supervision and treatment staff of the forensic conditional
297 release program shall not be held criminally or civilly liable for any criminal acts committed by
298 the persons on parole or judicial commitment status who receive supervision or treatment.

299 (oo) The court retains jurisdiction over the person until the end of the period of the
300 assisted outpatient treatment established under this section or until the court finds that the person
301 no longer meets the criteria in this section.