

SENATE No. 2454

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:

*1810 Commonwealth Avenue #6, Boston
MA 02135*

SENATE No. 2454

By Mr. Brownsberger (by request), a petition (accompanied by bill, Senate, No. 2454) (subject to Joint Rule 12) of Marie Yvette 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 [Refile Branch], NO. OF 2019-2020.]

The Commonwealth of Massachusetts

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

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.”

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

For the purposes of this section:-

“Emergency Restraint and Hospitalization shall be interpreted and understood to mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

Consequently, all applications issued for the transport of a person to a facility by an unauthorized person, under this Act, shall be considered as an application for initial medical evaluation ONLY, and an initial psychiatric assessment, in consented to, rather than a petition for involuntary restraint and hospitalization or admission. If circumstances do not allow for a person to consent, the facility shall be required to obtain consent from a next of kin, proxy, or a family member, unless in cases where the admission or referral is made or ordered by an authorized and licensed physician or practitioner as listed in this section, and shall be done under strict limitations, supervision, restrictions, and guidelines, and within the determined arrival time of 1 to 2 hours, or such a person shall be immediately discharged from the facility.

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

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

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

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

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

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

(o) No person shall be involuntary held, medicated, restrained, or admitted to a facility under this Act, without the attending licensed mental health professional informing that person of his or her right to speak with an attorney of his or her choice, or provided by the facility from the

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

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

Act, who has reason to believe that such an admission is the result of abuse or misuse of this act may request an emergency hearing in district court, which should be held within 1 day (24 hours) of the request.

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

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

(s) No person 18 or older shall be forced, threatened, intimidated, deceived, or coerced into signing a voluntary hospitalization, or be medicated, or receive electroshock treatment. A person who has been admitted to a facility under involuntary confinement shall not be medicated or receive any treatment without that person’s consent. Any and all treatment shall require

183 consent of a person who a person who is involuntarily admitted to any facility and refuses to sign
184 a voluntary admission shall not be automatically committed to the facility in the absence of a
185 Court Order issued and signed by a judge. Consequently, under this section, a person who
186 challenges his or her involuntarily admission and or hospitalization to a facility shall
187 immediately be put in contact with an attorney and the Civil Right worker on staff, and shall not
188 be admitted until the matter is resolved under the supervision of an authorized licensed physician
189 pursuant to the provisions of section 2 of chapter 112.”

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

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

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

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

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