

SENATE No. 396

The Commonwealth of Massachusetts

PRESENTED BY:

Jacob R. Oliveira

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 establish the office of elder advocate.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/2/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/13/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/16/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/3/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/6/2023</i>

SENATE No. 396

By Mr. Oliveira, a petition (accompanied by bill, Senate, No. 396) of Jacob R. Oliveira, Josh S. Cutler, Brian M. Ashe, Patrick M. O'Connor and other members of the General Court for legislation to establish the office of elder advocate. Elder Affairs.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to establish the office of elder advocate.

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. Definitions.

2 As used in this chapter, the following words shall have the following meanings unless the
3 context clearly requires otherwise:

4 "Advisory council", the elder advocate advisory council established in section 4.

5 "Elder advocate", the elder advocate appointed under section 3.

6 "Critical incident", (i) a fatality, near fatality or serious bodily or emotional injury of an
7 older adult or person with disabilities who is in the custody of or receiving services from an
8 executive agency or a constituent agency, or private party whose clients or residents in whole or
9 in part of funded with public funds or (ii) circumstances which result in a reasonable belief that
10 an executive agency or a constituent agency failed in its duty to protect an older adult or person

11 with disabilities and, as a result, the older adult or person with disabilities was at imminent risk
12 of, or suffered serious bodily or emotional injury or death.

13 "Department", the department of public health.

14 "Executive agency", a state agency within the office of the governor, including the
15 executive office of elder affairs, the executive office of public safety and security, executive
16 office of health and human services, the executive office of housing, the executive office of
17 transportation and their constituent agencies, the Massachusetts interagency council on housing
18 and homelessness.

19 "Office", the office of the elder advocate.

20 "Serious bodily or emotional injury", an injury which involves a substantial risk of death,
21 extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of
22 the function of a bodily member, organ or mental faculty or emotional distress.

23 SECTION 2. Office of the Elder Advocate; Duties

24 There shall be an office of the elder advocate which shall be independent of any
25 supervision or control by any executive agency. The office shall:

26 (a) ensure that older adults and people with disabilities involved with an executive
27 agency, in particular, adult served by the executive office of health and human services, or
28 executive office of elder affairs, and agencies reporting to said executive offices or private
29 entities that receive public funding, including Medicare and Medicaid reimbursements, receive
30 timely, safe and effective services;

31 (b) ensure that older adults or people with disabilities placed in the care of the
32 commonwealth or receiving services under the supervision or regulation of an executive agency
33 in any public or private facility shall receive humane and dignified treatment at all times, with
34 full respect for the person's personal dignity, right to privacy, and right to a free and appropriate
35 education in accordance with state and federal law;

36 (c) examine, on a system-wide basis, the care and services that executive agencies
37 provide older adults or people with disabilities;

38 (d) advise the public and those at the highest levels of state government about how the
39 commonwealth may improve its services to and for older adults, people with disabilities,
40 caregivers, and their families; and

41 (e) impose temporary cost share agreements, as necessary pursuant to section 16R of
42 chapter 6A to ensure children's timely access to services.

43 The office shall act to investigate and ensure that the highest quality of services and
44 supports are provided to safeguard the health, safety and well-being of all older adults and people
45 with disabilities receiving services. The office shall examine systemic issues related to the
46 provision of services to older adults or people with disabilities and provide recommendations to
47 improve the quality of those services in order to give each person the opportunity to live a full
48 and productive life.

49 SECTION 3. Elder Advocate: Appointment; vacancies, removal

50 The office of the elder advocate shall be under the direction of the elder advocate. The
51 elder advocate shall be the administrative head of the office and shall devote full-time to the

52 duties of the office. The elder advocate shall be appointed by a majority vote of the attorney
53 general, the state auditor and the governor from a list of 3 nominees submitted by a nominating
54 committee to recommend an elder advocate. The nominating committee shall consist of: the
55 secretary of health and human services; the commissioner of children and families; the
56 commissioner of ; the commissioner of mental health; the executive director of the elder abuse
57 prevention board; a geriatrician experienced in treating victims of elder abuse who shall be
58 designated by the Massachusetts chapter of the American Academy of Geriatrics; an adult
59 psychiatrist who shall be designated by the Massachusetts Psychiatric Society, Inc.; a adult
60 psychologist who shall be designated by The Massachusetts Psychological Association, Inc.; a
61 representative from the Massachusetts Association for Mental Health, Inc.; a representative of an
62 organization that advocates on behalf of older adults and people with disabilities recommended
63 by Dignity Alliance Massachusetts Inc.; an attorney experienced in care and protection cases
64 who shall be designated by the Massachusetts Bar Association; a social worker who shall be
65 designated by the Massachusetts chapter of the National Association of Social Workers, Inc.; a
66 person with experience in elder law system who shall be designated by the chief justice of the
67 superior court department and a representative of organized labor who shall be designated by the
68 president of a collective bargaining unit that represents nursing home or home care workers. The
69 work of the nominating committee shall be coordinated by the executive office of health and
70 human services.

71 Any person appointed to the position of elder advocate shall be selected without regard to
72 political affiliation and on the basis of integrity and demonstrated ability in aging services, elder
73 law, disability law, auditing, law, management analysis, public administration and investigation

74 or criminal justice administration. The elder advocate may, subject to appropriation, appoint such
75 other personnel as the elder advocate deems necessary for the efficient management of the office.

76 The elder advocate shall serve for a term of 5 years. In case of a vacancy in the position
77 of the elder advocate, a successor shall be appointed in the same manner for the remainder of the
78 unexpired term. No person shall be appointed as elder advocate for more than 2 full terms.

79 The elder advocate may be removed from office for cause by a majority vote of the
80 attorney general, the state auditor and the governor. Such cause may include substantial neglect
81 of duty, gross misconduct or conviction of a crime. The cause for removal of the elder advocate
82 shall be stated in writing and shall be sent to the clerks of the senate and house of representatives
83 and to the governor at the time of removal and shall be a public document.

84 SECTION 4 Elder Advocate Advisory Council; duties and salary

85 There shall be a 25-member elder advocate advisory council. The advisory council shall
86 consist of the elder advocate, who shall serve as chair, the secretary of health and human
87 services, the secretary of elder affairs, the secretary of public safety and security, the secretary of
88 housing, the commissioner of mental health, the commissioner of developmental services, the
89 commissioner of public health, the commissioner of the Massachusetts rehabilitation
90 commission, the commissioner for the deaf and hard of hearing, the commissioner for the blind,
91 the commissioner of transitional assistance,, the chief justice of the probate and family court
92 department, the executive director of the elder abuse prevention board, and 3 persons appointed
93 by the governor.

94 The elder advocate shall meet with the advisory council at least annually and shall
95 present to the advisory council the annual goals of the office and its plans for monitoring the

96 work, including the continuing quality improvement, of the elder and disability service agencies
97 and the identification of any critical gaps and issues relating to interagency collaboration. The
98 elder advocate may consult with or request the assistance of members of the advisory council
99 with respect to the duties and responsibilities of the office; provided however, that any request
100 for assistance shall not place requirements on any member of the council to fulfill the request.

101 The advisory council shall annually set the salary of the elder advocate; provided,
102 however, that such salary shall not exceed 90 per cent of the salary of the chief justice of the
103 supreme judicial court.

104 SECTION 5. Investigation of critical incidents; coordination with other agencies,
105 complaints

106 (a) An executive agency shall inform the elder advocate as soon as practicable when a
107 critical incident has occurred. The elder advocate may conduct an investigation of the critical
108 incident or may review an executive agency's investigation of a critical incident. When the elder
109 advocate conducts his own investigation, he shall determine: (1) the factual circumstances
110 surrounding the critical incident; (2) whether an agency's activities or services provided to an
111 older adult or person with disabilities and his family were adequate and appropriate and in
112 accordance with agency polices and state and federal law; and (3) whether the agency's policies,
113 regulations, training or delivery of services or state law can be improved.

114 (b) Before investigating any critical incident, the elder advocate shall determine whether
115 an executive or law enforcement agency is already conducting an investigation. If a law
116 enforcement agency is conducting an investigation, the elder advocate shall, when appropriate,
117 defer to that agency or may conduct his own investigation. The elder advocate shall coordinate

118 efforts to minimize the impact on the older adult or person with disabilities, family or employees
119 of the agency involved, unless he determines such coordination would impede his investigation.
120 If an executive agency is conducting an investigation, the elder advocate may defer to that
121 investigation or may conduct his own investigation. The elder advocate may coordinate efforts to
122 minimize the impact on the older adult or person with disabilities, family or employees of the
123 agency involved. In every instance, the elder advocate shall notify the head of the relevant
124 agency of his involvement before beginning any investigation.

125 (c) The elder advocate shall receive complaints relative to the provision of services to
126 older adults or people with disabilities by an executive agency and shall review and monitor the
127 complaints that reasonably cause him to believe that an older adult or person with disabilities
128 may be in need of assistance and to ensure that the complaint is resolved. If the complaint is not
129 resolved by the relevant executive agency within a reasonable period of time in light of the
130 circumstances, if the resolution is determined to be unsatisfactory to the elder advocate, or if the
131 complaint reasonably causes the elder advocate to believe that an older adult or person with
132 disabilities may be in need of immediate assistance, the elder advocate may conduct an
133 investigation and upon completion of the investigation, the elder advocate may provide relevant
134 information in the form of a report to any relevant agencies and request a meeting, if necessary,
135 to review the investigation and accompanying report.

136 (d) The elder advocate shall receive complaints from adults in the care or with support of
137 the commonwealth and assist such adults in resolving problems and concerns associated with
138 their placement, plans for life-long adult connections and independent living, and decisions
139 regarding custody of persons aged 22 and above, including ensuring that relevant executive
140 agencies have been alerted to the complaint and facilitating intra-agency cooperation, if

141 appropriate. For the purposes of this section, the office shall develop procedures to ensure
142 appropriate responses to the concerns of adults in foster care or guardianship.

143 (e) The elder advocate shall periodically review, report and make recommendations, as
144 appropriate, with respect to system-wide improvements that may increase the effectiveness of the
145 care and services provided to older adults, people with disabilities, and their families and
146 suggested legislative and regulatory changes including, but not limited to, a review of the
147 programs and procedures established by the department to provide and administer a
148 comprehensive program of services and supports.

149 (f) The elder advocate shall perform oversight functions to ensure that agencies serving
150 older adults and people with disabilities are fulfilling their obligations in the most effective and
151 efficient manner.

152 (g) The elder advocate shall undertake activities designed to educate the public regarding
153 the services of the office and of the mission of the executive agencies in providing services to
154 older adults, people with disabilities and their families.

155 (h) The elder advocate shall be authorized to apply for, and accept on behalf of the
156 commonwealth, federal, local or private grants, bequests, gifts or contributions for the purpose of
157 carrying out the functions of the office.

158 SECTION 6. Access to Facilities and records, release of information

159 The elder advocate or his designee shall have access at any and all reasonable times to
160 any facility, residence, program, or portion thereof, that is operated, licensed or funded by an
161 executive agency, and shall have unrestricted access to all electronic information systems

162 records, reports, materials and employees in order to better understand the needs of older adults
163 and people with disabilities in the custody of the commonwealth or who are receiving services
164 from an executive agency. The elder advocate shall have access to relevant records held by the
165 clerk of the trial court and the clerk of the probate and family court, including the right to inspect
166 and copy, without cost. The elder advocate shall be bound by any limitations on the use or
167 release of information imposed by law upon the party furnishing such information, except as
168 provided in subsection (e) of section 12.

169 SECTION 7. Witnesses, documents, subpoenas

170 The elder advocate may request the attendance and testimony of witnesses and the
171 production of documents, papers, books, records, reports, reviews, recommendations,
172 correspondence, data and other evidence that the elder advocate reasonably believes is relevant.
173 If a request is denied, the elder advocate shall have the power to issue a subpoena for witnesses
174 and the production of documents and any other data and evidence that the elder advocate
175 reasonably believes is relevant.

176 If any person to whom a subpoena is issued fails to appear or, having appeared, refuses to
177 give testimony or fails to produce the evidence required, the elder advocate may apply to the
178 Suffolk county superior court to issue an order to compel the testimony and production of
179 documents of any such witnesses. A failure to obey the order may be punished as contempt.

180 The district attorney may seek injunctive relief in Suffolk county superior court to defer a
181 subpoena issued by the elder advocate.

182 SECTION 8. Discrimination or retaliation, penalties

183 No discriminatory or retaliatory action shall be taken against any person who
184 communicates with or provides information to the office. Any person who knowingly or
185 willfully discriminates or retaliates against such a person shall be liable to such person for treble
186 damages, costs and attorney's fees.

187 SECTION 9. Procedures for performance of duties, rules and regulations

188 The elder advocate shall develop internal procedures appropriate for the effective
189 performance of his duties.

190 The elder advocate may, subject to chapter 30A, adopt, amend or repeal such rules and
191 regulations as are deemed necessary to carry out the functions of the office.

192 SECTION 10. Annual Report

193 The elder advocate shall report annually to the governor, the president of the senate, the
194 speaker of the house, the senate and the house committees on ways and means, and the chairs of
195 the joint committee on elder affairs, the chairs of the joint committee on children, families and
196 persons with disabilities on the activities of the office, including an analysis of the delivery of
197 service to children, activities undertaken to implement subsection (d) of section 5,
198 recommendations for changes in agency procedures which would enable the commonwealth to
199 better provide services to and for older adults, people with disabilities, and their families and
200 priorities for implementation of those changes to services. The report shall be made public.

201 SECTION 11. Examination of systemwide responses to elder abuse and neglect

202 Section 11. The elder advocate, in consultation with the advisory council, may from time
203 to time, examine systemwide responses to elder abuse and neglect, including related mental

204 health, substance use and domestic violence issues, and shall file a report on any such
205 examination with the governor, the clerks of the senate and house of representatives, the senate
206 and house committees on ways and means, the joint committee on elder affairs, and the joint
207 committee on children, families and persons with disabilities. The elder advocate's examination
208 may include, without limitation, racial disproportionality and disparity, elopements, mandated
209 reporting, screening of elder or handicapped abuse and neglect reports, social worker
210 qualifications and caseloads, law enforcement involvement, health service needs, including
211 behavioral health needs, of older adults and people with disabilities at risk, criminal offender
212 record information reviews, administrative and cost requirements, federal funding for aging and
213 disability purposes and the effectiveness of elder or disability abuse or bullying laws. The elder
214 advocate may seek advice broadly from individuals with expertise in aging or disability welfare
215 in preparing a report under this section.

216 Section 12. Information and records; confidentiality; subpoena and discovery; public
217 disclosure; investigation of critical incidents

218 Section 12. The following provisions apply to information and records obtained,
219 reviewed or maintained by the elder advocate:

220 (a) Notwithstanding the provisions of any general or special law to the contrary, the
221 disclosure of information to the office of the elder advocate pursuant to this chapter shall not be
222 prohibited. Any information considered to be confidential shall be submitted for the elder
223 advocate's review upon the determination of the elder advocate that the review of said
224 information is necessary. The elder advocate shall ensure that no information submitted for his
225 review is disseminated to parties outside the office, except when disclosure may be necessary to

226 enable the elder advocate to perform the elder advocate's duties. Under no circumstances shall
227 the elder advocate or any employee of the office violate the confidentiality provisions set forth in
228 the aforementioned statutes, except as authorized under subsection (e).

229 (b) Any and all information and records acquired by the elder advocate in the exercise of
230 the office's purpose and duties under this chapter shall be confidential and exempt from
231 disclosure under chapter 66 and clause Twenty-sixth of section 7 of chapter 4.

232 (c) Information, documents and records of the elder advocate and his office shall not be
233 subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding;
234 provided, however, that information, documents and records otherwise available from any other
235 source shall not be immune from subpoena, discovery or introduction into evidence through
236 these sources solely because they were presented during the elder advocate's investigation or
237 maintained by the office of the elder advocate.

238 (d) Statistical compilations of data which do not contain any information that would
239 permit the identification of any person may be disclosed to the public.

240 (e) The restrictions of this section shall not preclude the elder advocate from sharing with
241 the governor, the attorney general, a district attorney, a secretary, an agency commissioner or
242 other agency personnel, or the chairs of the joint committee on elder affairs or the chairs of the
243 joint committee on children, families and persons with disabilities, the report of, or the results of,
244 a critical incident investigation involving that agency. Any executive or legislative branch
245 employees who receive or read such a document shall be bound by the confidentiality
246 requirements of this section.

247 Section 13. Personal liability for civil damages

248 Section 13. No person employed by or contracted by or volunteering for the office shall
249 be subject to suit directly, derivatively or by way of contribution or indemnification for any civil
250 damages under the laws of the commonwealth resulting from any act or omission performed
251 during or in connection with the discharge of his duties within the scope of his employment or
252 appointment, unless such act or failure to act was committed with gross negligence, maliciously,
253 or in bad faith.