

SENATE No. 402

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 family visitation with a vulnerable adult.

PETITION OF:

NAME:

Bruce E. Tarr

DISTRICT/ADDRESS:

First Essex and Middlesex

SENATE No. 402

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 402) of Bruce E. Tarr for legislation relative to family visitation with a vulnerable adult. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2207 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act relative to family visitation with a vulnerable adult.

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 215 of the general laws as appearing in the 2020 official edition is
2 hereby amended by inserting after section 6c the following new section:-

3 "Section 6d.

4 (a) Definitions. As used in this section shall mean the following:-

5 "Family caregiver" means an adult family member who is a provider of in-home care to a
6 frail elderly individual.

7 "Family member" means the spouse, adult child, adult grandchild, or other close relative
8 of the frail elderly individual.

9 "Frail elderly individual" means an adult over 60 years of age who is determined by a
10 court to be functionally impaired because the person: (i) is unable to perform at least 2 activities
11 of daily living without substantial human assistance, including verbal reminding, physical
12 cueing, or supervision; or (ii) due to a cognitive or other mental impairment, requires substantial
13 supervision because the person behaves in a manner that poses a serious health or safety hazard
14 to the person or to another person.

15 "Petitioner" means the family member who files a verified petition for visitation under (a)
16 of this section.

17 (b) Visitation with frail elderly individuals.

18 (i) If a family caregiver unreasonably prevents a family member from visiting the frail
19 elderly individual, the court, upon a verified petition by the family member, may order the family
20 caregiver to permit such visitation as the court deems reasonable and appropriate under the
21 circumstances.

22 (ii) At the hearing on the verified petition for visitation, the court shall consider:

23 (1) the nature and extent of the frail elderly individual's functional impairment;

24 (2) the frail elderly individual's previously expressed preferences in regard to visitation
25 with the petitioner;

26 (3) the history of visitation between the frail elderly individual and the petitioner;

27 (4) the opinions of any family members and the family caregiver with respect to visitation
28 between the petitioner and the frail elderly individual; and

29 (5) any other area of inquiry deemed appropriate by the court under the circumstances.

30 (iii) The court shall not allow visitation if the court finds that:

31 (i) the frail elderly individual has capacity to evaluate and communicate decisions
32 regarding visitation and expresses a desire to not have visitation with the petitioner; or (ii)
33 visitation between the petitioner and the frail elderly individual is not in the best interests of the
34 frail elderly individual.

35 (iv) Guardian ad litem for frail elderly individual.

36 (1) The court may appoint a guardian ad litem for the frail elderly individual if it
37 determines such appointment to be in the frail elderly individual's best interests.

38 (2) The court shall appoint a guardian ad litem for the frail elderly individual if the frail
39 elderly individual does

40 not appear at the hearing or is unable to appear due to hardship.

41 (3) The court may award reasonable compensation to a guardian ad litem appointed under
42 this Act. The petitioner shall pay the court-awarded compensation due to the guardian ad litem,
43 except if the court grants the verified petition for visitation and finds that the family caregiver
44 acted maliciously in denying visitation between the petitioner and the frail elderly individual,
45 then the family caregiver shall pay the court-awarded compensation due the guardian ad litem.

46 (c) Notice of hospitalization, change or residence, or death of frail elderly individual. If
47 the court grants the petition of a family member for visitation in accordance with Section (a) the
48 court may also order the family caregiver to use reasonable efforts to notify the petitioner of the

49 frail elderly individual's hospitalization, admission to a healthcare facility, change in permanent
50 residence, or death.

51 (d) Commencement of proceeding; notice.

52 (i) A proceeding under this Act shall be commenced in the court of the county in which
53 the frail elderly individual resides.

54 (ii) The frail elderly individual and family caregiver shall be personally served with a
55 copy of the verified petition for visitation and a summons not less than 14 days before the
56 hearing. The form of the summons shall be in the manner prescribed by the probate court.

57 (iii) The petitioner shall provide notice of the time, date, and place of the hearing by mail
58 to any other family members not less than 14 days before the hearing. All other notices during
59 the pendency of the proceeding shall be served in accordance with the rules of the probate court.