

**HOUSE . . . . . No.**

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**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>1/15/2025</i>

**HOUSE . . . . . No.**

[Pin Slip]

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Fourth General Court  
(2025-2026)**

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 1 of Chapter 123 of the General Laws, as so appearing, is hereby  
2 amended by inserting at the end thereof the following new definitions:-

3 “Postpartum psychosis,” the most severe of the perinatal mood and anxiety disorders  
4 whereby an individual experiences alternating states of depression and/or mania (euphoria) and  
5 loses touch with reality. Postpartum psychosis severely impairs an individual’s thinking and  
6 judgment, with symptoms including, but not limited to, hallucinations and/or delusions,  
7 cognitive confusion and disorientation, disorganized or racing thoughts, minimal need for sleep,  
8 delirium, and excessive restlessness, such as pacing.

9 “Postpartum depression,” a mood disorder which includes a variety of moderate to severe  
10 symptoms of depression, severe anxiety, panic attacks and/or intrusive distressing obsessive  
11 thoughts and compulsive ritualistic behavior. Clinical symptoms of depression include, but are  
12 not limited to: insomnia and sleep disturbances; loss of pleasure and motivation in usual  
13 activities, including lack of interest in the infant; sad and depressed mood; lack of clarity in

14 thinking; lack of appetite or interest in eating; feelings of hopelessness, worthlessness and poor  
15 self-esteem; extreme fatigue; suicidal thoughts; not feeling like oneself; feeling overwhelmed  
16 and unable to cope with life's demands.

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

22 SECTION 3. Subsection (a) of section 15 of chapter 123 of the General Laws, as so  
23 appearing, is hereby amended by inserting at the end thereof the following new sentence:- When  
24 an examination is ordered for a female defendant who suffers or suffered, at the time the crime  
25 for which the defendant has been charged occurred, from mental illness related to a perinatal  
26 psychiatric complication such as postpartum psychosis or postpartum depression, said  
27 examination shall be conducted by an expert in reproductive psychiatry within 48 hours of such  
28 order.

29 SECTION 4. Section 16 of chapter 123 of the General Laws, as so appearing, is hereby  
30 amended by inserting at the end thereof the following new subsection:-

31 (g) Any person committed to a facility under the provisions of this section who suffers  
32 from mental illness related to a perinatal psychiatric complication such as postpartum psychosis  
33 or postpartum depression shall receive a diagnosis and treatment plan made in consultation with  
34 an expert in reproductive psychiatry. Additional services, including but not limited to parenting

35 assessment, parenting capacity building, and parent-child dyadic therapy shall be made available  
36 if deemed appropriate by the consulting expert.

37 SECTION 5. Chapter 123 of the General Laws, as so appearing, is hereby amended by  
38 adding the following section:- Section 37. (a) The department shall appoint a community  
39 program director to coordinate the department's role provided for in this section in a particular  
40 county or region.

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

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

54 (d) In the case of any person charged with and found incompetent to stand trial or not  
55 guilty by reason of mental illness or mental defect of any misdemeanor or any felony other than  
56 those described in subsection (c), or found not guilty of any misdemeanor by reason of mental

57 illness or mental defect, outpatient status under this section may be granted by the court prior to  
58 actual confinement in a state hospital or other treatment facility under the provisions of law  
59 specified in section 16.

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

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

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

75 (f) Prior to determining whether to place a female defendant who suffers from mental  
76 illness related to a perinatal psychiatric complication on outpatient status, the court shall provide  
77 actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a hearing at  
78 which the court may specifically order outpatient status for the defendant. .

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

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

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

89 (i) Whether the director of the state hospital or other treatment facility to which the  
90 defendant has been committed advises the committing court and the prosecutor that the  
91 defendant would no longer be a danger to the health and safety of others, including himself or[1]  
92 herself, while under supervision and treatment in the community, and will benefit from that  
93 status.

94 (ii) Whether the community program director advises the court that the defendant will  
95 benefit from said outpatient status, and identifies an appropriate program of supervision and  
96 treatment. In the case of a female defendant who suffers from mental illness related to a perinatal  
97 psychiatric complication such as postpartum psychosis or postpartum depression, an appropriate  
98 treatment program shall be identified in consultation with an expert in reproductive psychiatry.  
99 Additional services, including but not limited to parenting assessment, parenting capacity

100 building and parent-child dyadic therapy shall also be made available if deemed appropriate by  
101 the consulting expert.

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

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

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

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

118 (n) Upon receipt by the committing court of the recommendation of the director of the  
119 state hospital or other treatment facility to which the person has been committed that the person  
120 may be eligible for outpatient status as set forth in paragraph (i) of subsection (e) or (i) of this  
121 section, the court shall immediately forward such recommendation to the community program

122 director, prosecutor, and defense counsel. The court shall provide copies of the arrest reports and  
123 the state summary criminal history information to the community program director.

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

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

137 (q) The court shall, after a hearing in court, either approve or disapprove the  
138 recommendation for outpatient status. If the approval of the court is given, the defendant shall be  
139 placed on outpatient status subject to the terms and conditions specified in the supervision and  
140 treatment plan. If the outpatient treatment occurs in a county other than the county of  
141 commitment, the court shall transmit a copy of the case record to the superior court in the county  
142 where outpatient treatment occurs, so that the record will be available if revocation proceedings  
143 are initiated pursuant to subsection (w) or (x).

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

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

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

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

161 (v) Outpatient status shall be for a period not to exceed 1 year. At the end of the period  
162 of outpatient status approved by the court, the court shall, after actual notice to the prosecutor,  
163 the defense counsel, and the community program director, and after a hearing in court, either  
164 discharge the person from commitment under appropriate provisions of the law, order the person  
165 confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing,

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

173 (w) If at any time during the outpatient period, the outpatient treatment supervisor is of  
174 the opinion that the defendant requires extended inpatient treatment or refuses to accept further  
175 outpatient treatment and supervision, the community program director shall notify the superior  
176 court in either the county which approved outpatient status or in the county where outpatient  
177 treatment is being provided of such opinion by means of a written request for revocation of  
178 outpatient status. The community program director shall furnish a copy of this request to the  
179 defense counsel and to the prosecutor in both counties if the request is made in the county of  
180 treatment rather than the county of commitment. Within 15 business days, the court where the  
181 request was filed shall hold a hearing and shall either approve or disapprove the request for  
182 revocation of outpatient status. If the court approves the request for revocation, the court shall  
183 order that the defendant be confined in a state hospital or other treatment facility approved by the  
184 community program director. The court shall transmit a copy of its order to the community  
185 program director or a designee. Where the county of treatment and the county of commitment  
186 differ and revocation occurs in the county of treatment, the court shall enter the name of the  
187 committing county and its case number on the order of revocation and shall send a copy of the

188 order to the committing court and the prosecutor and defense counsel in the county of  
189 commitment.

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

202 (y) Upon the filing of a request for revocation under subsection (w) or subsection (x) and  
203 pending the court's decision on revocation, the defendant subject to revocation may be confined  
204 in a facility designated by the community program director when it is the opinion of that director  
205 that the defendant will now be a danger to himself or to another while on outpatient status and  
206 that to delay confinement until the revocation hearing would pose an imminent risk of harm to  
207 the defendant or to another. The facility so designated shall continue the person's [2] program  
208 of treatment, shall provide adequate security so as to ensure both the safety of the defendant and  
209 the safety of others in the facility, and shall, to the extent possible, minimize interference with  
210 the defendant's program of treatment. Upon the request of the community program director or a

211 designee, a peace officer shall take, or cause to be taken, the defendant into custody and  
212 transport the defendant to a facility as described in subsection (z) and designated by the  
213 community program director for confinement under this section. Within 1 business day after the  
214 defendant is confined in a jail under this section, the community program director shall apply in  
215 writing to the court for authorization to confine the defendant pending the hearing under  
216 subsection (w) or subsection (x). The application shall be in the form of a declaration, and shall  
217 specify the behavior or other reason justifying the confinement of the defendant in a jail. Upon  
218 receipt of the application for confinement, the court shall consider and rule upon it, and if the  
219 court authorizes detention in a jail, the court shall actually serve copies of all orders and all  
220 documents filed by the community program director upon the prosecuting and defense counsel.  
221 The community program director shall notify the court in writing of the confinement of the  
222 defendant and of the factual basis for the opinion that the immediate confinement in a jail was  
223 necessary. The court shall supply a copy of these documents to the prosecutor and defense  
224 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 defendant's program of treatment, provide adequate security, and minimize  
228 interference with the defendant's program of treatment. If the facility designated by the  
229 community program director is a county jail, the defendant shall be separated from the general  
230 population of the jail. A county jail may not be designated unless the services specified above are  
231 provided, and accommodations are provided which ensure both the safety of the defendant and  
232 the safety of the general population of the jail. Within 3 business days of the defendant's  
233 confinement in a jail, the community program director shall report to the court regarding what

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

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

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

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

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

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

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

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

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

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

274 (hh) The department shall contact all regional mental health programs by January 1,  
275 2026, to determine their interest in providing an appropriate level of supervision and treatment of  
276 judicially committed patients at reasonable cost. Regional mental health programs may agree or  
277 refuse to operate such a program.

278 (ii) No later than January 1, 2027, and by January 1 of each subsequent year, all state  
279 hospitals or other treatment facilities participating in the forensic conditional release program  
280 shall report to the commissioner the following information: (i) the cost of the program to the  
281 facility; (ii) the demographic profiles of persons receiving supervision and treatment in the  
282 program; and (iii) the rates of adherence to treatment under the program.

283 (jj) No later than January 1, 2027, and by January 1 of each subsequent year, the chief  
284 justice of the trial court shall report to the commissioner the following information: rates and  
285 types of reoffense while these persons are served by the program and after their discharge.

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

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

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

297 (nn) The administrators and the supervision and treatment staff of the forensic  
298 conditional release program shall not be held criminally or civilly liable for any criminal acts

299 committed by the persons on parole or judicial commitment status who receive supervision or  
300 treatment.

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

304 SECTION 6. In all cases in which the penalty of life imprisonment without the possibility  
305 of parole may be authorized, mitigating circumstances shall be any factors proffered by the  
306 defendant or the commonwealth which are relevant to a finding that a defendant suffered from  
307 mental illness related to a perinatal psychiatric complication such as postpartum psychosis or  
308 postpartum depression at the time the offense was committed.