

SENATE No. 124

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 establishing a designation of a state protection and advocacy system.

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No. 124

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 124) of James B. Eldridge for legislation to establish a designation of a state protection and advocacy system. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2434 OF 2023-2024.]

The Commonwealth of Massachusetts

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

An Act establishing a designation of a state protection and advocacy system.

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 6 of the General Laws, as appearing in the 2022 Official Edition, is
2 hereby amended by inserting after section 221 the following section:

3 Section 222. (a) There shall be a protection and advocacy system for the purpose of
4 investigating abuse, neglect, and financial exploitation of persons with disabilities occurring in
5 the Commonwealth and advocating for the civil and human rights of such persons. For the
6 purposes of this chapter, the system shall be an independent private nonprofit corporation which
7 has been designated as the protection and advocacy system for the commonwealth under the
8 Protection and Advocacy under the federal Developmental Disabilities Assistance and Bill of
9 Rights Act of 2000, 42 U.S.C. 15041 et. seq., and the Protection and Advocacy for Individuals
10 with Mental Illness Act. 42 U.S.C. 10801 et. seq.

(b) The protection and advocacy system shall meet all of the requirements of federal law applicable to such systems, including, but not limited to, the requirement that it establish a grievance procedure for clients or prospective clients of the system to ensure that people with disabilities have full access to services of the system. The protection and advocacy system may receive and expend funds to protect and advocate the rights of persons with developmental disabilities, emotional and mental health disabilities, and any other disabilities. In a manner consistent with other statutory responsibilities, the departments, officers, agencies, and institutions of the Commonwealth shall cooperate with the protection and advocacy system in carrying out its duties in order to further the purposes of this act. Notwithstanding any other provision of law, all departments, officers, agencies, and institutions of the Commonwealth may, on the behalf of a person with a developmental disability, emotional and mental health disabilities, or any other disability, request the system to provide protection and advocacy services. The governor may designate an appropriate state official to serve as liaison between the protection and advocacy system and the state departments and agencies that provide services to persons with developmental disabilities, emotional and mental health disabilities, or any other disabilities.

(c) The protection and advocacy system shall have the authority to:

(i) Investigate incidents of abuse and neglect of individuals with developmental disabilities, emotional and mental health disabilities, or any other disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(ii) Pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities, mental health conditions, or any other disabilities;

(iii) Provide information on and referral to programs and services addressing the needs of persons with developmental disabilities, emotional and mental health disabilities, or any other disabilities, including information and training regarding individual rights and the services available from the protection and advocacy system;

(iv) Have immediate access to any individual with a developmental disability, emotional and mental health disabilities, or any other disability, regardless of age, who has requested services or on whose behalf services have been requested from the protection and advocacy system or concerning whom the protection and advocacy system has reasonable cause to believe that abuse, neglect, financial exploitation, or a violation of rights of the individual has occurred;

(v) Have immediate access to any facility, school, jail, hospital, or any other location where any individual with a developmental disability, emotional and mental health disabilities, or any other disability is receiving or has received services, where the protection and advocacy system has received a complaint or where the system has reasonable cause to believe that abuse, neglect, financial exploitation, or a violation of rights of the individual has occurred, in order to:

(A) Monitor compliance with respect to the rights and safety of any person receiving services;

(B) Communicate privately by mail or orally, and where available, by electronic means, with any person receiving services;

(C) Interview any member of the staff of said facility or other location;

(D) Inspect all records relating to persons receiving services, provided that said person, or their guardian, gives written permission;

(E) Have access to policies, rules, and regulations affecting care, rights, or responsibilities of persons receiving services;

(F) Inspect, view, and photograph all areas of the facility or any other locations that are used by persons receiving services, or that are accessible to them, or which otherwise may affect their health and safety;

(G) Take whatever steps are appropriate, including posting notice, to see that persons are made aware of the services of the protection and advocacy system, its purpose, and how it can be contacted. Officials in charge of each facility shall cooperate with the protection and advocacy system in this respect;

(H) Provide information and training on, and referral to programs addressing the needs of, persons with disabilities, and information and training on individual rights and services available from the protection and advocacy system, including, but not limited to, the name, address, and telephone number of the protection and advocacy system;

(I) Have reasonable unaccompanied access to public and private facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other advocacy services. In the case of information and training services, access shall be at times mutually agreeable to the protection and advocacy system and facility management;

(J) Upon request, and notwithstanding any other provision of law, the designated protection and advocacy system shall be entitled to inspect and copy any records or documents, files, books, charts, or other materials which may further the system's investigation of problems affecting persons with developmental disabilities, emotional and mental health disabilities, or any other disabilities. When required by both state and federal law, any personally identifiable information of said persons with disabilities shall be removed from the records.

(d) Any individual or entity having knowledge of or reasonable cause to suspect that a person with a developmental disability, emotional and mental health disabilities, or any other disabilities, is or has been abused, neglected, or exploited may report those circumstances to the protection and advocacy system.

(e) Records maintained by the protection and advocacy system are the property of the agency, which must protect said records from loss, damage, tampering, or use by unauthorized individuals. The system must:

(i) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(A) Clients, to the same extent as is required under Federal or State laws for a provider of services;

(B) Individuals who have been provided general information or technical assistance on a particular matter;

(C) Identities of individuals who report incidents of abuse or neglect or furnish information that forms the basis for a determination that probable cause exists;

(ii) Obtain written consent from the client, if competent, or from their legal representative, from individuals who have been provided general information or technical assistance on a particular matter, and from individuals who furnish reports or information that forms the basis for a determination of probable cause, before releasing information to individuals not otherwise authorized to receive it.

(f) On a quarterly basis, the Department of Developmental Disabilities, the Department of Mental Health, and the Department of Public Health shall provide the protection and advocacy system all death reports of persons with disabilities who were receiving services of such state agency after a determination of eligibility or were receiving services in a facility or setting run, licensed, or funded by such agency. State agencies shall provide access to death reports more regularly with a specific request by the protection and advocacy system.

(g) Subject to confidentiality and redisclosure provisions, upon request, the protection and advocacy system shall be entitled to receive from the Department of Mental Health lists of all individuals in state operated facilities serving persons with mental health conditions who are clinically determined to be discharge-ready yet remain being held in such facilities.

(h) Nothing in this subpart shall prevent the protection and advocacy system from:

(i) Issuing a public report of the results of an investigation which maintains the confidentiality of the individuals affected or;

(ii) Reporting the results of an investigation which maintains the confidentiality of individual service recipients to responsible investigative or enforcement agencies should an investigation reveal information concerning the facility, its staff, or employees warranting possible sanctions or corrective action. This information may be reported to agencies responsible

for facility licensing or accreditation, employee discipline, employee licensing or certification, or criminal prosecution.

(i) No facility or any other location which provides or has provided services to persons with developmental disabilities, emotional and mental health disabilities, or any other disabilities shall retaliate or discriminate against any person submitting a complaint to the protection and advocacy system or cooperating with the system's monitoring, investigation, or advocacy activities.

(j) (i) Prior to instituting any legal action in a federal or state court on behalf of a person with a developmental disability, emotional and mental health disabilities, or any other disabilities, or on its own behalf, the protection and advocacy system shall exhaust in a timely manner all administrative remedies when appropriate. If, in pursuing administrative remedies, the protection and advocacy system determines that any matter with respect to such person will not be resolved within a reasonable time, it may pursue alternative remedies, including the initiation of legal action.

(ii) Subsection (j)(i) of this section shall not apply to any legal action instituted to prevent or eliminate imminent serious harm to a person with a developmental disability, emotional and mental health disabilities, or any other disabilities.

(k) The authority of the protection and advocacy system set forth in this section shall not diminish its authority under federal statutes pertaining to the authority of protection and advocacy systems, or under federal rules and regulations adopted in implementation of those statutes.

136 SECTION 2. Section 5 of Chapter 19C of the General Laws, as appearing in the 2022
137 Official Edition, is hereby amended by removing subsection (4) and replacing it with the
138 following language:

139 (4) If there is reasonable cause to believe that a disabled person has died as a result of
140 abuse, immediately report said death to the commission, the general counsel, the attorney
141 general, the district attorney for the county in which such death occurred, the state protection and
142 advocacy system, and to the medical examiner as required by section six of chapter thirty-eight

143 SECTION 3. Section 72H of Chapter 111 of the General Laws, as appearing in the 2022
144 Official Edition, is hereby amended by removing subsection (5) and replacing it with the
145 following language:

146 (5) if it has reasonable cause to believe that a patient or resident has died as a result of
147 abuse, mistreatment, or neglect, immediately report such death to the attorney general, the
148 district attorney for the county in which such death occurred, the state protection and advocacy
149 system, and the medical examiner as required by section 3 of chapter 38; and