

HOUSE No. 1371

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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 authority of the Disabled Persons Protection Commission to seek restraining orders.

PETITION OF:

NAME:

Danielle W. Gregoire

DISTRICT/ADDRESS:

4th Middlesex

HOUSE No. 1371

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 1371) of Danielle W. Gregoire relative to the authority of the Disabled Persons Protection Commission to seek restraining orders. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1416 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Thirteen
—————

An Act relative to the authority of the Disabled Persons Protection Commission to seek restraining orders.

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 7 OF CHAPTER 19C OF THE GENERAL LAWS, AS
2 APPEARING IN THE 2004 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:
3 BY ADDING AFTER (D) THE FOLLOWING LANGUAGE:

4 (e) No person shall interfere with the provision of protective services or protective
5 placement provided to a person with a disability who requests, consents or assents to receiving
6 those services or placement. In the event that such interference occurs, the Commission, the
7 Department of Mental Health, the Department of Mental Retardation or the Massachusetts
8 Rehabilitation Commission may petition the court for a temporary restraining order to enjoin
9 such interference.

10 (f) When a court order exists authorizing protective services for a person with a disability
11 who lacks capacity to consent and any person interferes with the provision of such court-ordered
12 protective services, the appropriate law enforcement agency shall enforce the order of the court,
13 including but not limited to, taking the person with a disability into protective custody and
14 transporting said person with a disability to an appropriate medical or protective services facility
15 in order to provide the protective services as ordered by the court. In addition, said law
16 enforcement agency, the Commission, the Department of Mental Health, the Department of

17 Mental Retardation or the Massachusetts Rehabilitation Commission may petition the court for a
18 temporary restraining order to enjoin such interference.

19 (g) Notwithstanding any provision contained herein to the contrary, if during an
20 investigation conducted pursuant to Section 5 the alleged abuser seeks continued contact with the
21 alleged victim of abuse, the Commission, the Department of Mental Health, the Department of
22 Mental Retardation or the Massachusetts Rehabilitation Commission may petition the court for a
23 temporary restraining order to enjoin such contact during the pendency of said investigation.

24 (h) The action may be brought either in the superior court for the county in which the
25 conduct complained of occurred or in the superior court for the county in which the defendant
26 resides or has his principal place of business. Said court may issue a temporary restraining order
27 or make such other orders or judgments as it may deem appropriate. The court issuing said order
28 against the defendant shall retain jurisdiction of the matter. Any person who is restrained as a
29 result of an action brought pursuant to this section may petition the court for a modification or
30 termination of the order upon ten days written notice to the petitioning agency and the to the
31 attorney general.

32 (i) In an action brought pursuant to this section, whenever the court issues a temporary
33 restraining order ordering a defendant to refrain from certain conduct or activities, the order
34 issued shall contain the following statement:

35 "The clerk shall transmit two certified copies of each such order issued under this
36 section to each appropriate law enforcement agency having jurisdiction over locations where
37 such defendant is alleged to have committed the act giving rise to the action, and such law
38 enforcement agency shall serve one copy of the order upon the defendant. Unless otherwise
39 ordered by the court, service shall be by delivering a copy in hand to the defendant."

40 Law enforcement agencies shall establish procedures adequate to ensure that all officers
41 responsible for the enforcement of the order are informed of the existence and terms of such
42 order. Whenever any law enforcement officer has probable cause to believe that such defendant
43 has violated the provisions of this section, such officer shall have the authority to arrest said
44 defendant.

45 Whenever the court vacates a temporary restraining order issued under this section, the
46 clerk shall promptly notify in writing each appropriate law enforcement agency which has been
47 notified of the issuance of the order and shall direct each such agency to destroy all record of
48 such vacated order, and such agency shall comply with such directive.

49 (j) Any district attorney, law enforcement office or state agency receiving notice of any
50 alleged violation of this section or violation of an order issued in an action brought under this
51 section shall immediately forward written notice of the same together with all relevant
52 information that it may have to the office of the attorney general. Whenever the attorney general

53 has probable cause to believe that said order has been violated, the attorney general may bring an
54 action to enforce said order and to seek punishment for violation of said order.

55 (k) After any such order has been served upon the defendant, any violation of such order
56 shall be punishable by a fine of not more than ten thousand dollars or by imprisonment for not
57 more than one year in a house of correction, or both such fine and imprisonment.

58 Nothing contained herein shall prohibit the attorney general in his discretion from
59 beginning an action for civil contempt rather than seeking criminal charges for an alleged
60 violation of an order issued under this section. A court making a finding that the defendant is in
61 civil contempt by reason of an alleged violation of an order entered under this section shall
62 assess a civil penalty of not more than five thousand dollars for each such violation found.