HOUSE DOCKET, NO. 2945 FILED ON: 1/18/2013

# HOUSE . . . . . No. 78

## The Commonwealth of Massachusetts

PRESENTED BY:

***Garrett J. Bradley***

*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 passage of the accompanying:

An Act to permit the Department of Developmental Services provide services to adults with developmental disabilities.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Garrett J. Bradley* | *3rd Plymouth* |
| *Bradford Hill* | *4th Essex* |
| *Thomas J. Calter* | *12th Plymouth* |
| *Alice Hanlon Peisch* | *14th Norfolk* |
| *James M. Cantwell* | *4th Plymouth* |
| *Jason M. Lewis* | *31st Middlesex* |
| *Dennis A. Rosa* | *4th Worcester* |
| *Angelo J. Puppolo, Jr.* | *12th Hampden* |
| *Paul McMurtry* | *11th Norfolk* |
| *Frank I. Smizik* | *15th Norfolk* |
| *Edward F. Coppinger* | *10th Suffolk* |
| *David Paul Linsky* | *5th Middlesex* |
| *Mark J. Cusack* | *5th Norfolk* |
| *William Smitty Pignatelli* | *4th Berkshire* |
| *Tricia Farley-Bouvier* | *3rd Berkshire* |
| *Louis L. Kafka* | *8th Norfolk* |
| *James M. Murphy* | *4th Norfolk* |

| | |
|---|---|
| *Ruth B. Balser* | *12th Middlesex* |
| *Kay Khan* | *11th Middlesex* |
| *Paul R. Heroux* | *2nd Bristol* |
| *Stephen L. DiNatale* | *3rd Worcester* |
| *Chris Walsh* | *6th Middlesex* |
| *Paul A. Schmid, III* | *8th Bristol* |
| *Angelo L. D'Emilia* | *8th Plymouth* |
| *Christine E. Canavan* | *10th Plymouth* |
| *Aaron Vega* | *5th Hampden* |
| *James R. Miceli* | *19th Middlesex* |
| *Danielle W. Gregoire* | *4th Middlesex* |
| *James J. Dwyer* | *30th Middlesex* |
| *Jonathan Hecht* | *29th Middlesex* |
| *Paul W. Mark* | *2nd Berkshire* |
| *Lori A. Ehrlich* | *8th Essex* |
| *Benjamin Swan* | *11th Hampden* |
| *John W. Scibak* | *2nd Hampshire* |
| *Todd M. Smola* | *1st Hampden* |
| *Robert F. Fennell* | *10th Essex* |
| *Katherine M. Clark* | *Fifth Middlesex* |
| *Thomas M. Stanley* | *9th Middlesex* |
| *Cheryl A. Coakley-Rivera* | *10th Hampden* |
| *Sarah K. Peake* | *4th Barnstable* |
| *Colleen M. Garry* | *36th Middlesex* |
| *Bradley H. Jones, Jr.* | *20th Middlesex* |
| *Ann-Margaret Ferrante* | *5th Essex* |
| *John J. Binienda* | *17th Worcester* |
| *Mary S. Keefe* | *15th Worcester* |
| *Josh S. Cutler* | *6th Plymouth* |
| *Carl M. Sciortino, Jr.* | *34th Middlesex* |
| *Carolyn C. Dykema* | *8th Middlesex* |
| *Kevin J. Murphy* | *18th Middlesex* |
| *David M. Rogers* | *24th Middlesex* |
| *John D. Keenan* | *7th Essex* |
| *Donald Humason* | *[District]* |
| *Geoff Diehl* | *7th Plymouth* |
| *James B. Eldridge* | *Middlesex and Worcester* |
| *Paul Brodeur* | *32nd Middlesex* |
| *John J. Lawn, Jr.* | *10th Middlesex* |

| | |
|---|---|
| *Brian A. Joyce* | *Norfolk, Bristol and Plymouth* |
| *Bruce J. Ayers* | *1st Norfolk* |
| *Bruce E. Tarr* | *First Essex and Middlesex* |
| *Kenneth I. Gordon* | *21st Middlesex* |
| *Anne M. Gobi* | *5th Worcester* |
| *James J. O'Day* | *14th Worcester* |
| *James Arciero* | *2nd Middlesex* |
| *Sheila C. Harrington* | *1st Middlesex* |
| *Denise Andrews* | *2nd Franklin* |
| *Theodore C. Speliotis* | *13th Essex* |
| *Thomas P. Conroy* | *13th Middlesex* |
| *Thomas A. Golden, Jr.* | *16th Middlesex* |
| *Sean Garballey* | *23rd Middlesex* |

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# HOUSE . . . . . No. 78

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 78) of Garrett J. Bradley and others relative to services for adults with developmental disabilities. Children, Families and Persons with Disabilities.

## The Commonwealth of Massachusetts

**In the Year Two Thousand Thirteen**

An Act to permit the Department of Developmental Services provide services to adults with developmental disabilities.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 1 of chapter 123B as appearing in the 2010 Official Edition, is hereby amended

by inserting the following definition, following line 17:

"Person with a developmental disability", a person with a severe, chronic disability of an individual 5 years of age or older that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity;

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

15 (iv) Mobility;

16 (v) Self-direction;

17 (vi) Capacity for independent living; and

18 (vii) Economic self-sufficiency.

19 (5) Reflects the individual's need for a combination and sequence of special,

20 interdisciplinary, or generic services, supports, or other assistance that is of lifelong or

21 extended duration and is individually planned and coordinated, except that such term,

22 when applied to infants and young children means individuals from birth to age 5,

23 inclusive, who have substantial developmental delay or specific congenital or acquired

24 conditions with a high probability of resulting in developmental disabilities if services are

25 not provided.

26 A person who has a developmental disability may be considered to be mentally ill;

27 provided, however, that no person with a developmental disability shall be considered to

28 be mentally ill solely by reason of the person's developmental disability.

29 SECTION 2:

30 Section 2 of chapter 123B as appearing in the 2010 Official Edition is hereby amended

31 by adding the following paragraph, following line 13:

32 The department shall, in accordance with section two of chapter thirty A and subject to

33 appropriation, adopt regulations consistent with this chapter which establish procedures

34 and the highest practicable professional standards for community services for persons

35 with developmental disabilities.

36 2

37 SECTION 3:

38 Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by

39 inserting, on line 7, following "persons with an intellectual disability" the words -

40 or persons with a developmental disability.

41 Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further

42 amended by striking “mental retardation services” on line 23 and inserting in place

43 thereof the words–services for persons with an intellectual disability

44 Said Section 1 of chapter 19B as appearing in the 2010 Official Edition is hereby further

45 amended by striking “intellectual disabilities services” on lines 27 and 28, and inserting

46 in place thereof the words–

47 services for persons with an intellectual disability or a developmental disability.

48 Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by

49 striking “mental retardation” on line 2, and inserting in place thereof the wordsof

50 the department of developmental services

51 Said Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby further

52 amended by striking “mental retardation” on line 18.

53 Section 2 of chapter 19B as appearing in the 2010 Official Edition is hereby amended by

54 3

55 striking “for mental retardation in the commonwealth” on line 31 and inserting in place

56 thereof the words for

57 persons with intellectual disabilities and services served for people with

58 developmental disabilities in the commonwealth.

59 Section 12 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

60 by striking “mental retardation programs” on line 4 and inserting in place thereof the

61 wordsprograms

62 for persons with an intellectual disability

63 SECTION 3:

64 Chapter 19B as appearing in the 2010 Official Edition is hereby amended by inserting

65 after Section 12 the following section:

66 Section 12A. The department, subject to appropriation, shall establish a

67 comprehensive program of community developmental disability services, and

68 shall establish standards for the development of programs at appropriate

69 geographic areas to ensure access to needed services. The commissioner shall

70 ensure citizen, consumer and family participation in the oversight of community

71 developmental disability services at all such levels, including the local level.

72 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

73 by inserting, on lines 2 and 3, following "community intellectual disability services" the

74 words—

75 4

76 and community developmental disability services

77 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

78 by inserting on lines 8 and 9, following "intellectual disability", the words—

79 and developmental disability services

80 Section 13 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

81 by inserting, on line 13 following "Intellectual disability services" the words—

82 and developmental disability services

83 SECTION 4:

84 Chapter 19B as appearing in the 2010 Official Edition is hereby amended by the inserting

85 after Section 15 the following section:

86 Section 15A. (a) The department shall issue for a term of two years, and may

87 renew for like terms, a license, subject to revocation by it for cause, to any

88 program which offers to the public residential or day care services and is

89 represented as providing treatment of persons with a developmental disability,

90 and which is deemed by it to be responsible and suitable to meet applicable
91 licensure standards and requirements, except that: (1) the department may license
92 those programs providing care but not treatment of persons with an intellectual
93 disability; and (2) licensing by the department is not required where such
94 residential or day care treatment is provided within an institution or facility
95 licensed by the department of public health under the provisions of chapter one
96 5
97 hundred and eleven. Whether or not a license is issued under clause (1), the
98 department shall make regulations for the operation of such programs. The
99 department may grant the type of license which it deems suitable for the program.
100 The department shall fix reasonable fees for licenses and renewal thereof.
101 (b) Each program licensed under the provisions of this section shall maintain and
102 make available to the department such statistical and diagnostic data as may be
103 required by the department.
104 (c) Each such program licensed by the department shall be subject to the
105 supervision, visitation and inspection of the department, and the department may
106 make regulations for the proper operation of such programs.
107 (d) The department may refuse to grant, suspend, revoke, limit or restrict the
108 applicability of or refuse to renew a license granted under this section, subject to
109 the procedural requirements of section thirteen of chapter thirty A for any
110 violation of its regulations or standards concerning such program. The department
111 may temporarily suspend a license prior to a hearing in cases of emergency if it
112 deems that such suspension would be in the public interest; provided, however,
113 that upon request of an aggrieved party, a hearing pursuant to section thirteen of
114 chapter thirty A, shall be held after the license is suspended. Any party aggrieved

115 by a decision of the department under this section may appeal in accordance with
116 the provisions of section fourteen of chapter thirty A.
117 (e) No program for which a license is required under paragraph (a), shall provide
118 6
119 residential or day care services for the treatment or care of persons with a
120 developmental disability unless it has obtained a license under the provisions of
121 this section. The superior court sitting in equity shall have jurisdiction, upon
122 petition of the department, to restrain any violation of the provisions of this
123 section or to take such other action as equity and justice may require. Whoever
124 violates the provisions of this section shall be punished for the first offense by a
125 fine of not more than one thousand dollars or by imprisonment for not more than
126 two years.
127 (f) Each person served by such a program, shall be granted protection from
128 commercial and private exploitation of any kind. No person shall be video taped,
129 audio taped, photographed, interviewed or exposed to the public without either
130 the person's express written consent, or that of the person's legal guardian.
131 Whoever violates the provision of this paragraph shall be punished by a fine of
132 not more than two thousand dollars or by imprisonment for not more than two and
133 one-half years in a house of correction or by imprisonment for not more than five
134 years in the state prison.
135 (g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any child
136 care center, family child care home, family child care system, family foster care
137 or group care facility as defined in section 1A of chapter 15D, shall not be subject
138 to the provisions of this section.
139 SECTION 5:

140 7

141 Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

142 by striking “mentally retarded persons” on lines 1 and 2 and inserting in place thereof the

143 wordspersons

144 with an intellectual disability or a developmental disability

145 Section 17 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

146 by striking “mentally regarded person” on line 11 and inserting in place thereof the

147 wordsperson with an intellectual disability or a developmental disability

148 SECTION 6:

149 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

150 by striking “mentally ill and persons with an intellectual disability” on line 10 and

151 inserting in place thereof the wordspersons with mental illness and intellectual or
152 developmental disabilities

153 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

154 by striking “mentally ill and mentally retarded individuals” on lines 14 and 15 and

155 inserting in place thereof the wordspersons with mental illness and intellectual or
156 developmental disabilities

157 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

158 by striking “a person with an intellectual disability and mentally ill” on lines 16 and 17

159 8

160 and inserting in place thereof the words a

161 person with an intellectual or developmental disability and a mental illness

162 Section 18 of chapter 19B as appearing in the 2010 Official Edition is hereby amended

163 by inserting, on line 29-30 following “intellectual disability”, the words or

164 a developmental disability,