HOUSE DOCKET, NO. FILED ON: 1/14/2009

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

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Danielle W. Gregoire**

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*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 bill:

An Act relative to the authority of the disabled persons protection commission pursuant to Chapter 19C.

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PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Danielle W. Gregoire | 4th Middlesex |
| James B. Eldridge |  |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2081 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act relative to the authority of the disabled persons protection commission pursuant to Chapter 19C.

 *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 19C of the General Laws, as appearing in the 2004 Official Edition, is hereby amended as follows: -

By striking out the first paragraph as so appearing on lines 1 and 2, and inserting in place thereof the following words: -

For the sole purposes of this chapter, the following words shall, unless the context requires otherwise, have the following meanings: -

Said Section 1 is further amended by striking out the words “chapter one hundred and twenty-three” as so appearing in  the definition of "Disabled person"  on lines 16 and 17, and inserting in place thereof the following: -

chapter one hundred and twenty-three B -

Said Section 1 is further amended by striking out the definition of "General counsel" or "counsel" as so appearing on lines 20 and 21

Said Section 1 is further amendedby amending the definition of "Reportable condition"by striking out the words "including un-consented to sexual activity." as so appearing on line 42 and inserting in place thereof the following: -

.  . . , including but not limited to, un-assented to sexual activity.

**SECTION 2.** Section 3 of chapter 19C of the General Laws, as appearing in the 2002 Official Edition, is hereby amended as follows:

By amending subsection (d) of said section 3 by deleting the word “other” after the word “designate” and before the words “state agencies” as so appearing on line 20

Said Section 3 is further amended by striking out subsection (h) of said section 3 as so appearing on lines 31 through 35 and inserting in place thereof the following: -

(h) to develop, in consultation with the secretary of the executive office of health and human services, standards for referral of investigations to the agencies within the executive office of health and human services pursuant to section four.

**SECTION 3.** Section 4 of chapter 19C of the General Laws as appearing in the 2002 Official Edition, is hereby amended as follows:

By amending the first sentence as so appearing on lines 1 and 2  by inserting following the words "disabled person," and before the words "the commission shall:"  the following: --

. . . and subject to the commission's authority to conduct its own investigation

Said section 4 is further amended by amending subsection (b) of said section 4 by striking out the first sentence of said subsection (b) as so appearing on lines 10 through 16 and inserting in place thereof the following: --

.  . . refer immediately any such reports, which allege the occurrence of abuse to a disabled person whose caretaker is an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to disabled persons pursuant to a contract or agreement with an agency of the commonwealth, to an investigator of the commission or to the department within the executive office of health and human services which has jurisdiction over the disability manifested by the disabled person.

Said section 4 is further amended by amending subsection (c) of said section 4 by striking out the first paragraph of said subsection (c) as so appearing on lines 25 through 33 and inserting in place thereof the following: -

(c) refer immediately any such reports which allege the occurrence of abuse of a disabled person whose caretaker is other thanan agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to disabled persons pursuant to a contract or agreement with an agency of the commonwealth to the commission; the department of mental health in those cases where the disabled person is suffering from a mental illness, the department of mental retardation where the disabled person is a person with mental retardation, or to the Massachusetts rehabilitation commission where the disabled person is otherwise physically disabled. Upon such referral, the commission or said department shall immediately designate an investigator who shall investigate such allegation of abuse as provided in section five.

Said Section 4 is further amended by adding immediately after subsection (c) of said Section 4 the following language” -

(d) In every case in which an investigation is conducted pursuant to section 4(b) or section 4(c) of chapter 19C and the alleged victim is at risk of harm, the appropriate protective service agency as designated by the commission shall make reasonable efforts to alleviate the risk of further harm by providing protective services not later than the initiation of said investigation to insure the safety of the disabled person.  In conducting such investigation, the designated investigator may seek and utilize the assistance of municipal and state police.  If during said investigation, access to the disabled person is denied to the designated investigator, an appropriate municipal or state police officer shall, upon request, accompany the designated investigator to gain access to the disabled person.

Said Section 4 is further amended by striking out the last paragraph of said subsection (c) as so appearing on lines 34 through 66 and inserting in place thereof the following:-

(e) Upon receipt of a written determination and evaluation prepared and forwarded to the commission pursuant to the provisions of section 5 or upon receipt of a report of abuse of a disabled person where the commission, in accordance with written standards established by the commission, determines that the report may contain allegations of criminal conduct, including but not limited to (1) a disabled person has been sexually abused or raped, or assaulted or battered as set forth in chapter two hundred and sixty-five; (2) a disabled person has suffered brain injury, loss or substantial impairment of a bodily function or organ, or substantial disfigurement; or (3) a disabled  person has suffered a serious bodily injury as a result of a pattern of repetitive actions or inactions by a caretaker;  the commission, notwithstanding any provision of chapter sixty-six A regarding personal data to the contrary, shall immediately refer such report to the special investigative unit, established pursuant to section 3(i) of chapter 19C, which shall conduct an initial evaluation and investigation of the alleged criminal conduct.  Upon completion of such evaluation and investigation, said special investigative unit shall report the results of such evaluation and investigation to the commissioners who, notwithstanding any provision of chapter sixty-six A regarding personal data to the contrary, shall, if the special investigative unit has determined that there is reason to believe that a criminal offense has been committed, immediately refer such report, together with any relevant information obtained in such initial investigation, to the attorney general or district attorney for the county wherein the alleged criminal offense occurred.  Upon receipt of such report, the attorney general or district attorney for the county wherein the alleged criminal offense occurred shall contact the commission in order to coordinate the investigation of the matters giving rise to the report.  As part of such coordination, the attorney general or the district attorney may request that the commission delay or defer the investigation of the non-criminal matters giving rise to the report; provided, however, that such request shall be granted only where the commission determines that the health and the safety of the  alleged victim of abuse shall not be adversely affected thereby and that the commission's or department's ability to conduct a later investigation shall not be unreasonably impaired by such delay or deferral.  In all cases including, but not limited to, those in which the commission agrees to delay or defer the non-criminal investigation, the attorney general or district attorney shall keep the commission informed of the status of the criminal investigation and the commission shall provide to the attorney general or the district attorney any and all information that may be relevant to the criminal investigation.  In cases in which the commission agrees to delay or defer the non-criminal investigation, it shall monitor the progress of the criminal investigation and shall determine, after consultation with the appropriate law enforcement agencies, when or whether the non-criminal investigation should be initiated or resumed.

No person providing notification or information to the commission, the commission’s special investigative unit, the district attorney, or attorney general or providing testimony in court in furtherance of the provisions of this section shall be liable in any civil or criminal action by reason of such action.

**SECTION 4.** Section 5 of chapter 19C of the General Laws as appearing in the 2002 Official Edition, is hereby amended as follows:

The first sentence as so appearing on lines 1 through 4, shall be amended by deleting the words "the general counsel," and by further striking out the words "executive office of human services" and inserting in place thereof the words " executive office of health and human services"

Subsection (1) of said section 5, as so appearing, is hereby amended by striking out on lines 7 and 8 the words "counsel or department of mental health or the department of public health" and inserting in place thereof the words: -

the department of mental health, the department of mental retardation or the Massachusetts rehabilitation commission.

Said subsection (1) of said Section 5 as so appearing, is hereby further amended by striking out on lines 16 and 18 the words "to the general counsel and to the department of mental health and the department of public health" and inserting in place thereof the words: -

and to the department of mental health, the department of mental retardation or the Massachusetts rehabilitation commission, as appropriate.

Subsection (3) of said Section 5, as so appearing, is hereby amended by striking out the words "the general counsel, the department of mental health and the department of public health" as appearing on lines 42 and 43 and inserting in place thereof the words: -

and the department of mental health, the department of mental retardation or the Massachusetts rehabilitation commission, as appropriate.

Subsection (5) of said section 5, as so appearing, is hereby amended; by deleting the second and third paragraphs thereof as so appearing on lines 59 through 77.

**SECTION 5.** Section 6 of chapter 19C of the General Laws as appearing in the 2002 Official Edition, is hereby amended by striking out the first paragraph as so appearing on lines 1 through 9 and inserting in place thereof the following: --

Acting through state agencies within the executive office of health and human services designated by the commission for the purpose of providing protective services as necessary to prevent further abuse in cases investigated pursuant to this chapter and subject to the oversight of the commission, the commission shall:

**SECTION 6.** Section 7 of chapter 19C of the General Laws as appearing in the 2002 Official Edition, is hereby amended as follows: --

Subsection (a) of said section 7, as so appearing, is hereby amended by striking out the words "the general counsel, department of mental health or the department of public health" as so appearing on lines 1 and 2, and inserting in place thereof the words: -

the department of mental health, the department mental retardation or the Massachusetts rehabilitation commission.

Subsection (a) of said section 7, as so appearing,  is hereby further amended by deleting the word "counsel, " as so appearing on line 5.

Subsection (b) of said section 7, as so appearing, is hereby amended by deleting the words "counsel or" as so appearing on line 31 and on line 35,

Subsection (b) of said section 7, as so appearing, is hereby further amended by striking out the phrase ". . . the court may order the provision of protective services on an emergency basis. . ." as appearing on lines 46 and 47 and inserting in its stead the following words: -

and no other person who is authorized to consent is available or willing to consent, the court may order protective services on an emergency basis and the cour**t** in ordering the provision of protective services on an emergency basis may appoint a conservator, guardian or other person authorized to consent to the provision of protective services; provided however, that the court shall establish the least restrictive fiduciary representation that will satisfy addressing the emergency and needs of such disabled person.

Subsection (b) of said Section 7, as so appearing, is hereby further amended by striking out the words “Said order may be extended for an additional seventy-two hour period if the court finds that such extension is necessary to remove the emergency” as so appearing on lines 51 through 53 and inserting in its stead the following words: -

Said order may be extended for an additional period of time if the court finds that such extension is necessary to remove the emergency or to address the needs of such disabled person.

Subsection (c) of said section 7 is hereby amended by deleting on line 58 the word "counsel"

**SECTION 7.** Section 8 of chapter 19C of the General Laws as appearing in the 2002 Official Edition, is hereby amended by striking out the words ". . . whose caretaker is a state agency", as so appearing on lines 2 and 6, and inserting in place thereof the words:

. . . whose caretaker is an agency of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to disabled persons pursuant to a contract or agreement with an agency of the commonwealth

**SECTION 8.** Section 9 of chapter 19C, as appearing in the 2002 Official Edition, is hereby amended as follows: --

By striking out line 1 and line 2, as so appearing, and inserting in place thereof the words: -

Upon completion of any investigation conducted pursuant to this chapter, including but not limited to a formal investigation conducted pursuant to section eight, and notwithstanding any provision of chapter sixty-six A regarding personal data to the contrary, the commission shall:

Section 9 of said chapter 19C, as so appearing, is hereby further amended by adding the following subsection after subsection (d) of said Section 9 of said chapter 19C: -

(e) refer any matters for which there is reason to believe that professional misconduct has occurred to the agency of the commonwealth having jurisdiction over such professional conduct for possible imposition of disciplinary measures in accordance with the requirements of any applicable law or regulation.

**SECTION 9.** Section 13 of chapter 19C, as appearing in the 2002 Official Edition, is hereby amended by striking out as so appearing on line 1 through line 3 the following words: -

"whose caretaker was a state agency or an agency of any subdivision of the commonwealth or a private agency contracting with the commonwealth"

and inserting in place thereof the following:-

“whose caretaker is an agency of the commonwealth, a subdivision of the commonwealth, a facility licensed by an agency of the commonwealth or a private agency which provides services or treatment to disabled persons pursuant to a contract or agreement with an agency of the commonwealth”