

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Brian A. Joyce**

*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 level IV treatment interventions.

PETITION OF:

NAME:

Brian A. Joyce

DISTRICT/ADDRESS:

Norfolk, Bristol & Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01123 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### AN ACT RELATIVE TO LEVEL IV TREATMENT INTERVENTIONS.

*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 6A is hereby amended by adding the following section:-

2 Section 16P.

3 (a) As used in this section, the following words shall, except as otherwise provided, have the  
4 following meanings:-

5 "Level IV treatment intervention", any procedure which involves the systematic use of noxious or  
6 intrusive stimuli which are generally known to be painful or otherwise unpleasant to individuals,  
7 including but not limited to, procedures that: (1) cause physical pain to the individual, whether  
8 administered directly or through intermediate devices, such as skin electric shock, inhalants, or ingestible  
9 substances (excluding alcoholism treatments, such as disulfiram, Antabuse or Antabus); (2) involve sleep  
10 or food deprivation; (3) include the introduction of additives to make food unpleasant; or (4) involve the  
11 prompting of an individual to engage in a behavior which then results in an aversive stimulus being  
12 applied as a punitive consequence.

13 "Department", the department of mental retardation, or its successor, the department of developmental  
14 services, as established in Chapter 19B.

15 "Individual treatment plan", a plan approved by the statewide peer review committee pursuant to  
16 regulations promulgated under this section.

17 "Secretary", secretary of the executive office of health and human services.

18 (b) The Department hereby creates a new classification of behavioral treatment interventions, to  
19 be known as Level IV treatment interventions. The Department shall, with the advice and input of the  
20 statewide peer review committee, promulgate rules and regulations consistent with this chapter regarding  
21 the use of Level IV treatment interventions to address behaviors that present a pattern of conduct or  
22 behavior caused by a disorder which poses a serious danger or risk of injury or harm to self or others by  
23 any consumer of any public or private agency in the commonwealth receiving public funding or subsidy  
24 through the federal government, the commonwealth, any of its political subdivisions, or another state or  
25 political subdivision, thereof. The Department regulations regarding the use of Level IV treatment  
26 interventions will govern all uses of such procedures by any public or private agency receiving public  
27 funding through the federal government, the Commonwealth of Massachusetts, any of its political  
28 subdivisions, or another state or political subdivision, thereof.

29 Level IV treatment interventions are designed for the treatment of certain types of dangerous or  
30 self destructive behaviors following a pre-determined treatment protocol which includes highly punitive  
31 techniques designed to teach an individual not to repeat those challenging behaviors. Level IV treatment  
32 interventions are the most intrusive form of treatment interventions and they shall be considered to only  
33 be used as a method to address behaviors that directly present a clear risk of injury or harm to self or  
34 others. Level IV treatment interventions are not appropriate for addressing minor behavior problems,  
35 even if said behaviors are identified as antecedents to targeted challenging behaviors. Level IV treatment  
36 interventions should only be considered when reinforcement-based interventions and other less intrusive  
37 treatments have failed, including programs developed by clinicians specially skilled in positive behavior  
38 supports. Documentation of the fidelity of the application of all less intrusive interventions and the  
39 completion of formal procedural reliability assessments must be provided in all proposed Level IV  
40 treatment intervention submissions.

41 Level IV treatment interventions are restricted to those techniques and procedures that are  
42 considered as evidence-based practices and meet the standards of being scientifically validated, as  
43 demonstrated by their publication in peer-reviewed professional journals. All such proposed  
44 interventions must have been demonstrated as clinically effective in the reduction of similar topographies  
45 of challenging behaviors with participants within similar age ranges, diagnostic categories, and settings.  
46 All such proposed interventions for children must be consistent with the Individuals with Disabilities  
47 Education Act of 2004 (IDEA) and No Child Left Behind.

48 (c) There shall be a statewide peer review committee on Level IV treatment interventions,  
49 hereinafter called the statewide committee, consisting of five members appointed by the governor for  
50 terms of three years. The statewide committee shall be located within, but not subject to control by, the

51 executive office. Members of the statewide committee shall be residents of the commonwealth and  
52 citizens of the United States. Two members of the statewide committee shall be licensed psychologists,  
53 who meet the guidelines and standards of clause (2) (d) below, have 10 or more years of experience in  
54 applied behavior analysis and behavior treatment of severe behavior problems, and shall have been  
55 actively engaged in the practice of applied behavior analysis and behavior treatment of severe behavior  
56 problems for the five years next preceding their appointment. Two members of the committee shall be  
57 either Licensed Independent Behavior Analysts in the commonwealth or Board Certified Behavior  
58 Analysts who meet the guidelines and standards of clause (d) below, have 10 or more years of experience  
59 in applied behavior analysis and behavior treatment of severe behavior problems and shall have been  
60 actively engaged in the practice of applied behavior analysis and behavior treatment of severe behavior  
61 problems for the five years next preceding their appointment. One member of the statewide committee  
62 shall be selected from and shall represent the public, subject to the provisions of section nine B of chapter  
63 13.

64 In the case where a public or private agency in the commonwealth receives public funding from  
65 another state or jurisdiction and seeks to utilize a Level IV procedure with a client whose permanent  
66 residence is from that state or jurisdiction, said state or jurisdiction may recommend an individual who  
67 meets the guidelines and standards of clause (d) below to serve as an “ad-hoc”, sixth member of the  
68 statewide committee to review any and/or all proposed Level IV treatment interventions for residents  
69 from said state or jurisdiction.

70 The statewide committee shall: (1) oversee all Level IV treatment interventions being  
71 implemented with any person in the commonwealth who is served by a public or private agency receiving  
72 public funding or subsidy through the federal government, the commonwealth, any of its political  
73 subdivisions or another state or political subdivision thereof; appoint a Chair from its permanent  
74 members; (3) review individual treatment plans and make recommendations to the Probate and Family  
75 Court regarding the approval or disapproval of Level IV treatment interventions within such treatment  
76 plans; (4) review and make recommendations to the department regarding guidelines and standards for  
77 facility peer review committees; (5) review and make recommendations to the executive office for any  
78 requested exclusions or waivers from the regulations governing Level IV treatment interventions; and (6)  
79 be assisted in its duties by the executive office, which shall provide technical, technological, operational  
80 and administrative support.

81 Members of the statewide committee may participate in any meeting by means of a conference  
82 telephone or similar communications equipment by means of which all persons participating in the  
83 meeting may simultaneously hear each other, and participation by such means shall constitute presence in  
84 person at a meeting. Members may also transmit or receive any written materials discussed at a meeting  
85 and transmit any written authorizations that may be required during the meeting by electronic facsimile or

86 other commercially acceptable transmission. A quorum shall consist of not less than a majority of the  
87 members of the statewide committee participating in the meeting.

88 A member of the statewide committee shall be indemnified from any civil action brought for  
89 damages to the same extent as provided for public employees in chapter 258, and shall be indemnified for  
90 all expenses in the defense thereof provided, however, that the claim arose out of acts performed by such  
91 member while acting within the scope of the member's official duties.

92 (d) All Level IV treatment interventions shall be designed by an individual who is a Licensed  
93 Applied Behavior Analyst, or is a Board Certified Behavior Analyst, or holds Specialty Certification in  
94 Cognitive and Behavioral Psychology from the American Board of Professional Psychology, or is a  
95 Licensed Psychologist with documented education, professional training and experience in applied  
96 behavior analysis and behavioral treatment, and 5 years of full-time experience serving individuals within  
97 the same age range and diagnostic category; demonstrating similar topographies of challenging behaviors  
98 and utilizing similar treatment approaches as those proposed in the Level IV plan under review.  
99 Individuals responsible for the design of Level IV treatment interventions will comply fully with the  
100 Ethical Principles of Psychologists and the Code of Conduct of the American Psychological Association.  
101 All Level IV treatment interventions submitted for review and approval must meet the standards outlined  
102 within the Guidelines for Responsible Conduct of the Behavior Analysis Certification Board, and include  
103 documentation that the challenging behaviors being addressed are not a function of a medical or  
104 psychiatric disorder. Additionally, all such proposed interventions must include evidence of the  
105 completion of a formal comprehensive functional behavioral assessment, a preference assessment, and  
106 reinforcement strategies designed to teach functionally equivalent replacement behaviors. In addition to  
107 the ongoing empirical measurement of all targeted challenging and replacement behaviors throughout any  
108 approved Level IV treatment intervention, all such Level IV treatment interventions must also include  
109 ongoing objective documentation of the trauma suffered by the individual or others as a result of the  
110 challenging behaviors addressed within the treatment plan.

111 (e) Level IV treatment interventions shall only be implemented by staff persons who have  
112 received specific training in the application of the intervention and the individualized treatment plan.  
113 Documentation listing all qualified staff who received training in the Level IV treatment intervention and  
114 the individuals who designed the treatment protocol and who administered each application of the Level  
115 IV treatment intervention shall be incorporated in the client record.

116 All level IV treatment interventions shall be implemented only under the direct supervision and  
117 physical presence of a Licensed Applied Behavior Analyst, a Board Certified Behavior Analyst, a  
118 professional with Specialty Certification in Cognitive and Behavioral Psychology from the American

119 Board of Professional Psychology, or a Licensed Psychologist with documented education, professional  
120 training and experience in applied behavior analysis and behavioral treatment.

121 (f) Each facility seeking to use Level IV treatment interventions shall establish a facility peer  
122 review committee, hereinafter called the facility committee, whose membership shall include (1) a  
123 minimum of two Licensed Applied Behavior Analysts or Board Certified Behavior Analysts or  
124 psychologists with documented education, professional training and experience in applied behavior  
125 analysis and behavioral treatment, (2) one psychologist with broad clinical expertise outside the specialty  
126 of applied behavior analysis, (3) a physician, and (4) a public member who shall not, nor shall have been  
127 within the period of five years immediately preceding his/her appointment either been employed by said  
128 facility, been a recipient of services from said facility, nor having had any immediate family members  
129 been an employee or recipient of services from said facility.

130 Prior to application to the statewide committee for authority to implement a Level IV behavior treatment  
131 intervention, consent shall be obtained from the client (if competent) and the facility committee.

132 In cases of extreme emergencies, the agency serving the individual shall not be required to apply  
133 for approval to the facility committee, but shall apply directly to the statewide committee for a 30-day  
134 temporary approval of the intervention, provided, that the agency has secured informed consent from the  
135 client (if competent). If such emergency application is approved by the statewide committee consistent  
136 with clauses (g) and (h) below, the application must also be submitted, together with a copy of the  
137 statewide committee's vote, prior to implementation, to the Probate and Family Court of the county in  
138 which the client resides for approval through a substituted judgment review process.

139 (g) Prior to rendering a decision, the statewide committee shall permit the proponent of the use of  
140 such interventions and any other interested person the opportunity to present materials in support of or in  
141 opposition to the proposed treatment plan. Approval of a Level IV treatment intervention by the  
142 statewide committee shall require an affirmative vote of a majority of the members participating at the  
143 meeting when said Level IV treatment intervention was under review. The decision of the statewide  
144 committee shall be in writing, with supporting reasons provided for its decision. A finding by the  
145 statewide committee permitting Level IV treatment interventions with respect to any individual treatment  
146 plan shall be submitted thereafter to the probate court of the county in which the client resides as part of  
147 the court's independent review and approval of said treatment plan.

148 (h) Level IV treatment interventions shall not be initially approved by the statewide committee  
149 unless the proponent of the use of such interventions provides clear and convincing evidence through the  
150 evaluation protocol and ongoing behavioral data, that (i) the target behavior presents an immediate risk of  
151 serious physical injury or harm to self or others; (ii) the Level IV procedures will lead to positive

152 outcomes and a significant decrease in the target behaviors; and (iii) that less intrusive treatments  
153 continue to be unsuccessful or would present an immediate risk of serious physical injury or harm.

154 Level IV treatment interventions may be initially approved for no more than 30 days by the  
155 statewide committee, and may be re-approved thereafter for additional 30-day periods, not to exceed six  
156 months. Request for re-approval shall be subject to such conditions as the statewide committee may  
157 designate, including a review of all existing data to confirm that the use of the Level IV treatment  
158 intervention has led to positive outcomes and a significant decrease in the target behaviors. Any request  
159 for the use of the Level IV treatment intervention beyond the 30-day trial shall require re-submission to  
160 the statewide peer review committee and the probate court of the county in which the client resides as part  
161 of the court's independent review and approval of said treatment plan. The statewide committee shall  
162 petition the Commissioner of the Department to review all cases in which the continued use of Level IV  
163 treatment interventions are requested beyond the six-month limit.

164 (i) The Secretary may, after a hearing pursuant to chapter 30A, deny, refuse, revoke, limit or  
165 suspend a license of any recipient of funding or subsidy through the executive office for failure to comply  
166 with the provisions of this section.

167 Except for emergency regulations adopted pursuant to Section 2 of chapter 30A, any regulation, as  
168 defined in Section 1 of said chapter 30A, or any amendment or repeal of any such regulation adopted by  
169 the Department pursuant to this section, shall, after compliance with all applicable provisions of this  
170 section and said chapter 30A, except section 5, be submitted to the general court. Said Department shall  
171 file the proposed regulation, amendment or repeal with the clerk of the house of representatives, together  
172 with a statement of compliance with the pertinent provisions of said chapter 30A, except section 5. The  
173 clerk of the house of representatives, with the approval of the president of the senate and the speaker of  
174 the house of representatives, shall refer such regulations to the joint committee on children, families, and  
175 persons with disabilities. Within 30 days after such referral, said legislative committee may hold a public  
176 hearing on the regulations and shall issue a report to said Department. Said report shall contain any  
177 proposed changes to the regulations voted upon by the legislative committee. The Department and the  
178 statewide committee shall review and report and the Department shall adopt final regulations as deemed  
179 appropriate in view of said report and shall file with the chairmen of the legislative committee its final  
180 regulations. If the final regulations do not contain the changes proposed by the legislative committee, the  
181 Department shall send a letter to the legislative committee accompanying the final regulations stating the  
182 reasons why such proposed changes were not adopted. Not earlier than 45 days after the filing of such  
183 letter and final regulations with said legislative committee, said Department shall file the final regulations  
184 with the state secretary as provided in section 5 of said chapter 30a and said regulations shall thereupon  
185 take effect.

186 If no such proposed changes to the regulations are made to the Department within 60 days of the initial  
187 filing of the proposed regulation or any amendment or a repeal of such regulation with the clerk of the  
188 house of representatives, the Department may file the final regulations with the state secretary as provided  
189 in section 5 of the said chapter 30A and said regulations shall thereupon take effect.

190 SECTION 2. Within 90 days after the passage of this act, the Department, with the advice and input of  
191 the statewide committee shall draft, pursuant to chapter 30A, proposed rules and regulations to the  
192 General Court regarding the development, review, approval, and on-going review and monitoring process  
193 for Level IV treatment interventions.

194 SECTION 3. The implementation of any Level IV treatment intervention beyond the scope of a court-  
195 ordered treatment plan or the approval of the statewide committee, or by a staff member who does not  
196 meet the requirement of section 16P of chapter 6A will be considered an act of mistreatment, pursuant to  
197 section 13K of chapter 265 and shall be reported to the Disabled Persons Protection Commission.

198 SECTION 4. Except as provided herein, this act shall not otherwise alter the procedures for substituted  
199 judgment review by the Probate and Family Court.