

# HOUSE . . . . . No. 143

## 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 passage of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Danielle W. Gregoire	4th Middlesex
James B. Eldridge	
Martin J. Walsh	13th Suffolk
Christopher G. Fallon	33rd Middlesex
Frank I. Smizik	15th Norfolk
Bruce J. Ayers	1st Norfolk
Anne M. Gobi	5th Worcester
John P. Fresolo	16th Worcester
Bradley H. Jones, Jr.	20th Middlesex
John W. Scibak	2nd Hampshire
Richard R. Tisei	Middlesex and Essex
Barbara A. L'Italien	18th Essex
Robert F. Fennell	10th Essex

[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  
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### 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:*

1 **SECTION 1.** SECTION 1 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2004  
2 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: -

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

5 FOR THE SOLE PURPOSES OF THIS CHAPTER, THE FOLLOWING WORDS SHALL,  
6 UNLESS THE CONTEXT REQUIRES OTHERWISE, HAVE THE FOLLOWING  
7 MEANINGS: -

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

10 CHAPTER ONE HUNDRED AND TWENTY-THREE B -

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

13 SAID SECTION 1 IS FURTHER AMENDED BY AMENDING THE DEFINITION OF "REPORTABLE  
14 CONDITION" BY STRIKING OUT THE WORDS "INCLUDING UN-CONSENTED TO SEXUAL ACTIVITY."  
15 AS SO APPEARING ON LINE 42 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

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

17 **SECTION 2.** SECTION 3 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2002  
18 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

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

21 SAID SECTION 3 IS FURTHER AMENDED BY STRIKING OUT SUBSECTION (H) OF SAID SECTION 3 AS  
22 SO APPEARING ON LINES 31 THROUGH 35 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

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

26 **SECTION 3.** SECTION 4 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002  
27 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

28 BY AMENDING THE FIRST SENTENCE AS SO APPEARING ON LINES 1 AND 2 BY  
29 INSERTING FOLLOWING THE WORDS "DISABLED PERSON," AND BEFORE THE  
30 WORDS "THE COMMISSION SHALL:" THE FOLLOWING: --

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

32 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (B) OF SAID SECTION 4 BY  
33 STRIKING OUT THE FIRST SENTENCE OF SAID SUBSECTION (B) AS SO APPEARING ON LINES 10  
34 THROUGH 16 AND INSERTING IN PLACE THEREOF THE FOLLOWING: --

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

40 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (C) OF SAID SECTION 4 BY  
41 STRIKING OUT THE FIRST PARAGRAPH OF SAID SUBSECTION (C) AS SO APPEARING ON LINES 25  
42 THROUGH 33 AND INSERTING IN PLACE THEREOF THE FOLLOWING: -

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

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

55 (d) In every case in which an investigation is conducted pursuant to section 4(b) or section  
56 4(c) of chapter 19C and the alleged victim is at risk of harm, the appropriate protective service  
57 agency as designated by the commission shall make reasonable efforts to alleviate the risk of  
58 further harm by providing protective services not later than the initiation of said investigation  
59 to insure the safety of the disabled person. In conducting such investigation, the designated  
60 investigator may seek and utilize the assistance of municipal and state police. If during said

61 investigation, access to the disabled person is denied to the designated investigator, an  
62 appropriate municipal or state police officer shall, upon request, accompany the designated  
63 investigator to gain access to the disabled person.

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

66 (E) UPON RECEIPT OF A WRITTEN DETERMINATION AND EVALUATION  
67 PREPARED AND FORWARDED TO THE COMMISSION PURSUANT TO THE  
68 PROVISIONS OF SECTION 5 OR UPON RECEIPT OF A REPORT OF ABUSE OF A  
69 DISABLED PERSON WHERE THE COMMISSION, IN ACCORDANCE WITH  
70 WRITTEN STANDARDS ESTABLISHED BY THE COMMISSION, DETERMINES  
71 THAT THE REPORT MAY CONTAIN ALLEGATIONS OF CRIMINAL CONDUCT,  
72 INCLUDING BUT NOT LIMITED TO (1) A DISABLED PERSON HAS BEEN  
73 SEXUALLY ABUSED OR RAPED, OR ASSAULTED OR BATTERED AS SET FORTH  
74 IN CHAPTER TWO HUNDRED AND SIXTY-FIVE; (2) A DISABLED PERSON HAS  
75 SUFFERED BRAIN INJURY, LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY  
76 FUNCTION OR ORGAN, OR SUBSTANTIAL DISFIGUREMENT; OR (3) A  
77 DISABLED PERSON HAS SUFFERED A SERIOUS BODILY INJURY AS A RESULT  
78 OF A PATTERN OF REPETITIVE ACTIONS OR INACTIONS BY A  
79 CARETAKER; THE COMMISSION, NOTWITHSTANDING ANY PROVISION OF  
80 CHAPTER SIXTY-SIX A REGARDING PERSONAL DATA TO THE CONTRARY,  
81 SHALL IMMEDIATELY REFER SUCH REPORT TO THE SPECIAL INVESTIGATIVE  
82 UNIT, ESTABLISHED PURSUANT TO SECTION 3(I) OF CHAPTER 19C, WHICH  
83 SHALL CONDUCT AN INITIAL EVALUATION AND INVESTIGATION OF THE  
84 ALLEGED CRIMINAL CONDUCT. UPON COMPLETION OF SUCH EVALUATION  
85 AND INVESTIGATION, SAID SPECIAL INVESTIGATIVE UNIT SHALL REPORT THE  
86 RESULTS OF SUCH EVALUATION AND INVESTIGATION TO THE  
87 COMMISSIONERS WHO, NOTWITHSTANDING ANY PROVISION OF CHAPTER  
88 SIXTY-SIX A REGARDING PERSONAL DATA TO THE CONTRARY, SHALL, IF THE  
89 SPECIAL INVESTIGATIVE UNIT HAS DETERMINED THAT THERE IS REASON TO  
90 BELIEVE THAT A CRIMINAL OFFENSE HAS BEEN COMMITTED, IMMEDIATELY  
91 REFER SUCH REPORT, TOGETHER WITH ANY RELEVANT INFORMATION  
92 OBTAINED IN SUCH INITIAL INVESTIGATION, TO THE ATTORNEY GENERAL OR  
93 DISTRICT ATTORNEY FOR THE COUNTY WHEREIN THE ALLEGED CRIMINAL  
94 OFFENSE OCCURRED. UPON RECEIPT OF SUCH REPORT, THE ATTORNEY  
95 GENERAL OR DISTRICT ATTORNEY FOR THE COUNTY WHEREIN THE ALLEGED  
96 CRIMINAL OFFENSE OCCURRED SHALL CONTACT THE COMMISSION IN ORDER  
97 TO COORDINATE THE INVESTIGATION OF THE MATTERS GIVING RISE TO THE  
98 REPORT. AS PART OF SUCH COORDINATION, THE ATTORNEY GENERAL OR  
99 THE DISTRICT ATTORNEY MAY REQUEST THAT THE COMMISSION DELAY OR  
100 DEFER THE INVESTIGATION OF THE NON-CRIMINAL MATTERS GIVING RISE TO  
101 THE REPORT; PROVIDED, HOWEVER, THAT SUCH REQUEST SHALL BE  
102 GRANTED ONLY WHERE THE COMMISSION DETERMINES THAT THE HEALTH  
103 AND THE SAFETY OF THE ALLEGED VICTIM OF ABUSE SHALL NOT BE  
104 ADVERSELY AFFECTED THEREBY AND THAT THE COMMISSION'S OR  
105 DEPARTMENT'S ABILITY TO CONDUCT A LATER INVESTIGATION SHALL NOT  
106 BE UNREASONABLY IMPAIRED BY SUCH DELAY OR DEFERRAL. IN ALL CASES  
107 INCLUDING, BUT NOT LIMITED TO, THOSE IN WHICH THE COMMISSION  
108 AGREES TO DELAY OR DEFER THE NON-CRIMINAL INVESTIGATION, THE  
109 ATTORNEY GENERAL OR DISTRICT ATTORNEY SHALL KEEP THE COMMISSION  
110 INFORMED OF THE STATUS OF THE CRIMINAL INVESTIGATION AND THE  
111 COMMISSION SHALL PROVIDE TO THE ATTORNEY GENERAL OR THE DISTRICT  
112 ATTORNEY ANY AND ALL INFORMATION THAT MAY BE RELEVANT TO THE  
113 CRIMINAL INVESTIGATION. IN CASES IN WHICH THE COMMISSION AGREES TO

114 DELAY OR DEFER THE NON-CRIMINAL INVESTIGATION, IT SHALL MONITOR  
115 THE PROGRESS OF THE CRIMINAL INVESTIGATION AND SHALL DETERMINE,  
116 AFTER CONSULTATION WITH THE APPROPRIATE LAW ENFORCEMENT  
117 AGENCIES, WHEN OR WHETHER THE NON-CRIMINAL INVESTIGATION SHOULD  
118 BE INITIATED OR RESUMED.

119 NO PERSON PROVIDING NOTIFICATION OR INFORMATION TO THE  
120 COMMISSION, THE COMMISSION'S SPECIAL INVESTIGATIVE UNIT, THE  
121 DISTRICT ATTORNEY, OR ATTORNEY GENERAL OR PROVIDING TESTIMONY IN  
122 COURT IN FURTHERANCE OF THE PROVISIONS OF THIS SECTION SHALL BE  
123 LIABLE IN ANY CIVIL OR CRIMINAL ACTION BY REASON OF SUCH ACTION.

124 **SECTION 4.** SECTION 5 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002  
125 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

126 THE FIRST SENTENCE AS SO APPEARING ON LINES 1 THROUGH 4, SHALL BE  
127 AMENDED BY DELETING THE WORDS "THE GENERAL COUNSEL," AND BY  
128 FURTHER STRIKING OUT THE WORDS "EXECUTIVE OFFICE OF HUMAN SERVICES"  
129 AND INSERTING IN PLACE THEREOF THE WORDS " EXECUTIVE OFFICE OF HEALTH  
130 AND HUMAN SERVICES"

131 SUBSECTION (1) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED BY  
132 STRIKING OUT ON LINES 7 AND 8 THE WORDS "COUNSEL OR DEPARTMENT OF  
133 MENTAL HEALTH OR THE DEPARTMENT OF PUBLIC HEALTH" AND INSERTING IN  
134 PLACE THEREOF THE WORDS: -

135 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF MENTAL  
136 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

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

140 AND TO THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF  
141 MENTAL RETARDATION OR THE MASSACHUSETTS REHABILITATION  
142 COMMISSION, AS APPROPRIATE.

143 SUBSECTION (3) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED BY STRIKING OUT  
144 THE WORDS "THE GENERAL COUNSEL, THE DEPARTMENT OF MENTAL HEALTH AND THE  
145 DEPARTMENT OF PUBLIC HEALTH" AS APPEARING ON LINES 42 AND 43 AND INSERTING IN PLACE  
146 THEREOF THE WORDS: -

147 AND THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF MENTAL  
148 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION, AS  
149 APPROPRIATE.

150 SUBSECTION (5) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY AMENDED; BY DELETING THE  
151 SECOND AND THIRD PARAGRAPHS THEREOF AS SO APPEARING ON LINES 59 THROUGH 77.

152 **SECTION 5.** SECTION 6 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002  
153 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING OUT THE FIRST PARAGRAPH AS SO  
154 APPEARING ON LINES 1 THROUGH 9 AND INSERTING IN PLACE THEREOF THE FOLLOWING: --

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

158 **SECTION 6.** SECTION 7 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002  
159 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: --

160 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY AMENDED BY  
161 STRIKING OUT THE WORDS "THE GENERAL COUNSEL, DEPARTMENT OF MENTAL HEALTH  
162 OR THE DEPARTMENT OF PUBLIC HEALTH" AS SO APPEARING ON LINES 1 AND 2, AND  
163 INSERTING IN PLACE THEREOF THE WORDS: -

164 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT MENTAL  
165 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

166 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY FURTHER AMENDED  
167 BY DELETING THE WORD "COUNSEL," AS SO APPEARING ON LINE 5.

168 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY AMENDED BY  
169 DELETING THE WORDS "COUNSEL OR" AS SO APPEARING ON LINE 31 AND ON LINE 35,

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

173 AND NO OTHER PERSON WHO IS AUTHORIZED TO CONSENT IS AVAILABLE  
174 OR WILLING TO CONSENT, THE COURT MAY ORDER PROTECTIVE SERVICES  
175 ON AN EMERGENCY BASIS AND THE COURT IN ORDERING THE PROVISION  
176 OF PROTECTIVE SERVICES ON AN EMERGENCY BASIS MAY APPOINT A  
177 CONSERVATOR, GUARDIAN OR OTHER PERSON AUTHORIZED TO CONSENT  
178 TO THE PROVISION OF PROTECTIVE SERVICES; PROVIDED HOWEVER, THAT  
179 THE COURT SHALL ESTABLISH THE LEAST RESTRICTIVE FIDUCIARY  
180 REPRESENTATION THAT WILL SATISFY ADDRESSING THE EMERGENCY  
181 AND NEEDS OF SUCH DISABLED PERSON.

182 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY FURTHER  
183 AMENDED BY STRIKING OUT THE WORDS "SAID ORDER MAY BE EXTENDED  
184 FOR AN ADDITIONAL SEVENTY-TWO HOUR PERIOD IF THE COURT FINDS THAT  
185 SUCH EXTENSION IS NECESSARY TO REMOVE THE EMERGENCY" AS SO  
186 APPEARING ON LINES 51 THROUGH 53 AND INSERTING IN ITS STEAD THE  
187 FOLLOWING WORDS: -

188 SAID ORDER MAY BE EXTENDED FOR AN ADDITIONAL PERIOD OF TIME IF  
189 THE COURT FINDS THAT SUCH EXTENSION IS NECESSARY TO REMOVE THE  
190 EMERGENCY OR TO ADDRESS THE NEEDS OF SUCH DISABLED PERSON.

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

192 **SECTION 7.** SECTION 8 OF CHAPTER 19C OF THE GENERAL LAWS AS APPEARING IN THE 2002  
193 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING OUT THE WORDS ". . . WHOSE CARETAKER  
194 IS A STATE AGENCY", AS SO APPEARING ON LINES 2 AND 6, AND INSERTING IN PLACE THEREOF  
195 THE WORDS:

196 . . . WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A  
197 FACILITY LICENSED BY AN AGENCY OF THE COMMONWEALTH OR A  
198 PRIVATE AGENCY WHICH PROVIDES SERVICES OR TREATMENT TO  
199 DISABLED PERSONS PURSUANT TO A CONTRACT OR AGREEMENT WITH AN  
200 AGENCY OF THE COMMONWEALTH

201 **SECTION 8.** SECTION 9 OF CHAPTER 19C, AS APPEARING IN THE 2002 OFFICIAL EDITION, IS  
202 HEREBY AMENDED AS FOLLOWS: --

203 BY STRIKING OUT LINE 1 AND LINE 2, AS SO APPEARING, AND INSERTING IN  
204 PLACE THEREOF THE WORDS: -

205 UPON COMPLETION OF ANY INVESTIGATION CONDUCTED PURSUANT TO  
206 THIS CHAPTER, INCLUDING BUT NOT LIMITED TO A FORMAL  
207 INVESTIGATION CONDUCTED PURSUANT TO SECTION EIGHT, AND  
208 NOTWITHSTANDING ANY PROVISION OF CHAPTER SIXTY-SIX A  
209 REGARDING PERSONAL DATA TO THE CONTRARY, THE COMMISSION  
210 SHALL:

211 SECTION 9 OF SAID CHAPTER 19C, AS SO APPEARING, IS HEREBY FURTHER AMENDED BY ADDING  
212 THE FOLLOWING SUBSECTION AFTER SUBSECTION (D) OF SAID SECTION 9 OF SAID CHAPTER  
213 19C:-

214 (E) REFER ANY MATTERS FOR WHICH THERE IS REASON TO BELIEVE THAT  
215 PROFESSIONAL MISCONDUCT HAS OCCURRED TO THE AGENCY OF THE  
216 COMMONWEALTH HAVING JURISDICTION OVER SUCH PROFESSIONAL  
217 CONDUCT FOR POSSIBLE IMPOSITION OF DISCIPLINARY MEASURES IN  
218 ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE LAW OR  
219 REGULATION.

220 **SECTION 9.** SECTION 13 OF CHAPTER 19C, AS APPEARING IN THE 2002 OFFICIAL EDITION, IS  
221 HEREBY AMENDED BY STRIKING OUT AS SO APPEARING ON LINE 1 THROUGH LINE 3 THE  
222 FOLLOWING WORDS: -

223 "WHOSE CARETAKER WAS A STATE AGENCY OR AN AGENCY OF ANY  
224 SUBDIVISION OF THE COMMONWEALTH OR A PRIVATE AGENCY CONTRACTING  
225 WITH THE COMMONWEALTH"

226 AND INSERTING IN PLACE THEREOF THE FOLLOWING:-

227 "WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A SUBDIVISION  
228 OF THE COMMONWEALTH, A FACILITY LICENSED BY AN AGENCY OF THE  
229 COMMONWEALTH OR A PRIVATE AGENCY WHICH PROVIDES SERVICES OR  
230 TREATMENT TO DISABLED PERSONS PURSUANT TO A CONTRACT OR AGREEMENT  
231 WITH AN AGENCY OF THE COMMONWEALTH"