

**HOUSE . . . . . No. 1945**

**The Commonwealth of Massachusetts**

PRESENTED BY:

**Denise Provost**

*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 regarding rights of persons receiving services from program or facilities of the department of mental health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Denise Provost	27th Middlesex
Ruth B. Balser	12th Middlesex
Patricia D. Jehlen	Second Middlesex
Paul J. Donato	35th Middlesex
Frank I. Smizik	15th Norfolk
Timothy J. Toomey, Jr.	26th Middlesex
Peter v. Kocot	1st Hampshire
Ellen Story	3rd Hampshire
Elizabeth A. Malia	11th Suffolk
Alice K. Wolf	25th Middlesex
John F. Quinn	9th Bristol
William N. Brownsberger	24th Middlesex
Thomas M. Stanley	9th Middlesex
Jonathan Hecht	29th Middlesex
Kay Khan	11th Middlesex
Paul McMurtry	11th Norfolk
Alice Hanlon Peisch	14th Norfolk
Sean Garballey	23rd Middlesex

Benjamin Swan

11th Hampden

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1895 OF 2007-2008.]

## The Commonwealth of Massachusetts

---

In the Year Two Thousand and Nine

---

### AN ACT REGARDING RIGHTS OF PERSONS RECEIVING SERVICES FROM PROGRAM OR FACILITIES OF THE DEPARTMENT OF MENTAL HEALTH.

*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 23 of chapter 123 of the General Laws, as appearing in the 2004 Official Edition, is  
2 hereby amended by inserting after subparagraph (e) the following subparagraph:

3 (f) to daily access to fresh air and the outdoors.

4 This right shall attach upon admission to an inpatient facility. The initial exercise of this right shall be  
5 subject to an assessment by a clinician which shall be completed no more than 48 hours after admission.

6 The exercise of this right shall only be suspended for a person in an inpatient facility upon written  
7 certification by a clinician that such person's exercise of such right in the immediate future would present  
8 a substantial risk of serious harm to such person or others. The suspension shall last no longer than the  
9 time necessary to prevent the harm and its imposition shall be documented with specific facts in such  
10 person's record. The signing of a three-day notice shall not constitute a basis for suspending the rights set  
11 forth in clause (f).

12 SECTION 2: Section 23 of chapter 123 of the General Laws, as appearing in the 2004 Official Edition, is  
13 hereby amended by adding after the seventh paragraph the following paragraphs:

14 Any person who believes that their aforementioned rights in clauses (a) to (f), inclusive were violated  
15 may seek redress through the following procedure:

16 Any person alleging such violation shall file a written request for a hearing with the Department stating  
17 facts regarding the right(s) violated and requesting a hearing based on the alleged violation.

18 An impartial hearing officer shall select a hearing location convenient to the Department and to the client  
19 and shall conduct the hearing, which shall be an adjudicatory proceeding pursuant to section 11 of

20 Chapter 30A, in not less than 10 business days and not later than 30 business days after the receipt of the  
21 request for the hearing. The client and the Department may be represented by an attorney or other person  
22 and shall be afforded the opportunity to present evidence, to examine adverse evidence and to examine  
23 and cross-examine witnesses.

24 Within 30 business days after the conclusion of the hearing, the hearing officer shall prepare a written  
25 decision containing findings of fact and conclusions of law based on the evidence received at the  
26 hearing. Said decision may order such remedial relief as necessary. The hearing officer shall submit  
27 copies of the decision, together with notice of appeal rights, to the client and the Department. The  
28 decision may be appealed to the superior court pursuant to section 14 of chapter 30A.