

HOUSE No. 3939

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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 adoption of the accompanying bill:

An Act relative to the well-being of new mothers and infants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>4/20/2023</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>6/14/2023</i>

HOUSE No. 3939

By Representative O'Day of West Boylston, a petition (subject to Joint Rule 12) of James J. O'Day relative to the mental well-being of new mothers facing criminal charges. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to the well-being of new mothers and infants.

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 123 of the General Laws, as so appearing, is hereby
2 amended by inserting at the end thereof the following new definitions:-

3 “Postpartum psychosis”, the most severe of the perinatal mood and anxiety disorders
4 whereby an individual experiences alternating states of depression and/or mania (euphoria) and
5 loses touch with reality. Postpartum psychosis severely impairs an individual’s thinking and
6 judgment, with symptoms including, but not limited to, hallucinations and/or delusions,
7 cognitive confusion and disorientation, disorganized or racing thoughts, minimal need for sleep,
8 delirium, and excessive restlessness, such as pacing.

9 “Postpartum depression”, a mood disorder which includes a variety of moderate to severe
10 symptoms of depression, severe anxiety, panic attacks and/or intrusive distressing obsessive
11 thoughts and compulsive ritualistic behavior. Clinical symptoms of depression include, but are
12 not limited to: insomnia and sleep disturbances; loss of pleasure and motivation in usual

13 activities, including lack of interest in the infant sad and depressed mood; lack of clarity in
14 thinking; lack of appetite or interest in eating; feelings of hopelessness, worthlessness and poor
15 self-esteem; extreme fatigue; suicidal thoughts; not feeling like oneself; feeling overwhelmed
16 and unable to cope with life's demands.

17 SECTION 2. (a) As used in this section, "perinatal" shall refer to the period of time from
18 pregnancy up until one year following birth.

19 (b) The department of public health may consult with health care providers, including,
20 but not limited to, obstetricians, gynecologists, pediatricians, primary care providers, nurse
21 midwives, psychiatrists, and mental health clinicians, non-profit organizations, community
22 organizations, organizations providing prenatal childbirth education, and health insurance
23 carriers regarding development of a comprehensive digital resource center on perinatal mood and
24 anxiety disorders, including but not limited to postpartum depression and postpartum psychosis.
25 The department shall create, maintain, and update this digital resource center, which shall be free
26 and available to the public, and shall include information and resources for health care providers
27 and organizations serving perinatal individuals to aid them in treating or making appropriate
28 referrals for individuals experiencing perinatal psychiatric complications, as well as information
29 and resources for perinatal individuals and their families to aid them in understanding and
30 identifying perinatal mood and anxiety disorders and how to navigate available resources.

31 (c) The department shall issue regulations that require health care providers and
32 organizations providing services to perinatal individuals, including, but not limited to,
33 obstetricians, gynecologists, pediatricians, primary care providers, nurse midwives, psychiatrists,
34 and mental health clinicians, non-profit organizations, community organizations, and

35 organizations providing prenatal childbirth education, to provide information to perinatal
36 individuals and their families about how to access the digital resource center described in
37 subsection (b), or to provide hard copies of the materials included in the digital resource center to
38 individuals unable to access digital resources.

39 (d) The commissioner of public health shall issue an annual summary of the use of the
40 digital resource center described in subsection (b), including but not limited to which portions of
41 the resource center were the most and least utilized by visitors, and shall annually file the
42 summary with the clerks of the house of representatives and the senate not later than June 30;
43 provided, however, that the first report is due not later than the June 30 following publication of
44 the digital resource center.

45 SECTION 3. Section 15 of chapter 123 of the General Laws, as so appearing, is hereby
46 amended by inserting after the word “psychologists”, in lines 7 and 8, the following words:
47 provided however, that a defendant who gave birth within 12 months prior to the crime for which
48 the defendant has been charged shall undergo a screening for perinatal psychiatric complications
49 by a treating physician, psychiatrist or psychologist or other qualified physician or psychologist.

50 SECTION 4. Subsection (a) of section 15 of chapter 123 of the General Laws, as so
51 appearing, is hereby amended by inserting at the end thereof the following new sentence:- When
52 an examination is ordered for a female defendant who suffers or suffered, at the time the crime
53 for which the defendant has been charged with occurred, from mental illness related to a
54 perinatal psychiatric complication such as postpartum psychosis or postpartum depression, said
55 examination shall be conducted by an expert in reproductive psychiatry within 48 hours of such
56 order.

57 SECTION 5. Section 16 of chapter 123 of the General Laws, as so appearing, is hereby
58 amended by inserting at the end thereof the following new subsection:-

59 (g) Any person committed to a facility under the provisions of this section who suffers
60 from mental illness related to a perinatal psychiatric complication such as postpartum psychosis
61 or postpartum depression shall receive a diagnosis and treatment plan made in consultation with
62 an expert in reproductive psychiatry. Additional services, including but not limited to parenting
63 assessment, parenting capacity building, and parent-child dyadic therapy shall be made available
64 if deemed appropriate by the consulting expert.

65 SECTION 6. Chapter 123 of the General Laws, as so appearing, is hereby amended by
66 adding the following section:- Section 37. (a) The department shall appoint a community
67 program director to coordinate the department's role provided for in this section in a particular
68 county or region.

69 (b) Any person committed to a state hospital or other treatment facility under the
70 provisions of section 16 may be placed on outpatient status, from that commitment subject to the
71 procedures and provisions of this section.

72 (c) In the case of any person charged with and found incompetent to stand trial or not
73 guilty by reason of mental illness or mental defect in such proceedings of murder, a violation in
74 which the victim suffers intentionally inflicted great bodily injury, or an act which poses a
75 serious threat of bodily harm to another person, outpatient status under this section shall not be
76 available until that person has actually been confined in a state hospital or other treatment facility
77 for 180 days or more after having been committed under the provisions of law specified in
78 section 16, unless the court finds a suitable placement, including, but not limited to, an outpatient

79 placement program, that would provide the person with more appropriate mental health
80 treatment and the court finds that the placement would not pose a danger to the health or safety
81 of others, including, but not limited to, the safety of the victim and the victim's family.

82 (d) In the case of any person charged with and found incompetent to stand trial or not
83 guilty by reason of mental illness or mental defect of any misdemeanor or any felony
84 other than those described in subsection (c), or found not guilty of any misdemeanor by reason of
85 mental illness or mental defect outpatient status under this section may be granted by the court
86 prior to actual confinement in a state hospital or other treatment facility under the provisions of
87 law specified in section 16.

88 (e) Before any person subject to the provisions of subsection (d) may be placed on
89 outpatient status, the court shall consider all of the following criteria:

90 (i) In the case of a person who is an inpatient, whether the director of the state hospital or
91 other treatment facility to which the person has been committed advises the court that the
92 defendant will not be a danger to the health and safety of others while on outpatient status, and
93 will benefit from such outpatient status.

94 (ii) In all cases, whether the community program director or a designee advises the court
95 that the defendant will not be a danger to the health and safety of others while on outpatient
96 status, will benefit from such status, and identifies an appropriate program of supervision and
97 treatment. In the case of a female defendant who suffers from mental illness related to a perinatal
98 psychiatric complication such as postpartum psychosis or postpartum depression, an appropriate
99 treatment program shall be identified in consultation with an expert in reproductive psychiatry.
100 Additional services, including but not limited to parenting assessment, parenting capacity

101 building and parent-child dyadic therapy shall also be made available if deemed appropriate by
102 the consulting expert.

103 (f) Prior to determining whether to place the person on outpatient status, the court shall
104 provide actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a
105 hearing at which the court may specifically order outpatient status for the person.

106 (g) The community program director or a designee shall prepare and submit the
107 evaluation and the treatment plan specified in paragraph (ii) of subsection (e) to the court within
108 15 calendar days after notification by the court to do so, except that in the case of a person who
109 is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after
110 notification by the court to do so.

111 (h) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
112 subsection (e) shall include review and consideration of complete, available information
113 regarding the circumstances of the criminal offense and the person's prior criminal history.

114 (i) Before any person subject to subsection (c) of this section may be placed on outpatient
115 status the court shall consider all of the following criteria:

116 (i) Whether the director of the state hospital or other treatment facility to which the
117 person has been committed advises the committing court and the prosecutor that the defendant
118 would no longer be a danger to the health and safety of others, including himself or herself,
119 while under supervision and treatment in the community, and will benefit from that status.

120 (ii) Whether the community program director advises the court that the defendant will
121 benefit from that status, and identifies an appropriate program of supervision and treatment. In

122 the case of a female defendant who suffers from mental illness related to a perinatal psychiatric
123 complication such as postpartum psychosis or postpartum depression, an appropriate treatment
124 program shall be identified in consultation with an expert in reproductive psychiatry. Additional
125 services, including but not limited to parenting assessment, parenting capacity building and
126 parent-child dyadic therapy shall also be made available if deemed appropriate by the consulting
127 expert.

128 (j) Prior to release of a person under subsection (c), the prosecutor shall provide notice of
129 the hearing date and pending release to the victim or next of kin of the victim of the offense for
130 which the person was committed where a request for the notice has been filed with the court, and
131 after a hearing in court, the court shall specifically approve the recommendation and plan for
132 outpatient status. The burden shall be on the victim or next of kin to the victim to keep the court
133 apprised of the party's current mailing address.

134 (k) In any case in which the victim or next of kin to the victim has filed a request for
135 notice with the director of the state hospital or other treatment facility, he or she shall be notified
136 by the director at the inception of any program in which the committed person would be allowed
137 any type of day release unattended by the staff of the facility.

138 (l) The community program director shall prepare and submit the evaluation and the
139 treatment plan specified in paragraph (ii) of subsection (i) to the court within 30 calendar days
140 after notification by the court to do so.

141 (m) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
142 subsection (i) shall include review and consideration of complete, available information
143 regarding the circumstances of the criminal offense and the person's prior criminal history.

144 (n) Upon receipt by the committing court of the recommendation of the director of the
145 state hospital or other treatment facility to which the person has been committed that the person
146 may be eligible for outpatient status as set forth in paragraph (i) of subsection (e) or (i) of this
147 section, the court shall immediately forward such recommendation to the community program
148 director, prosecutor, and defense counsel. The court shall provide copies of the arrest reports and
149 the state summary criminal history information to the community program director.

150 (o) Within 30 calendar days the community program director or a designee shall submit
151 to the court and, when appropriate, to the director of the state hospital or other treatment facility,
152 a recommendation regarding the defendant's eligibility for outpatient status, as set forth in
153 paragraph (ii) of subsection (e) or (i) and the recommended plan for outpatient supervision and
154 treatment. The plan shall set forth specific terms and conditions to be followed during outpatient
155 status. The court shall provide copies of this report to the prosecutor and the defense counsel.

156 (p) The court shall calendar the matter for hearing within 15 business days of the receipt
157 of the community program director's report and shall give notice of the hearing date to the
158 prosecutor, defense counsel, the community program director, and, when appropriate, to the
159 director of the state hospital or other facility. In any hearing conducted pursuant to this section,
160 the court shall consider the circumstances and nature of the criminal offense leading to
161 commitment and shall consider the person's prior criminal history.

162 (q) The court shall, after a hearing in court, either approve or disapprove the
163 recommendation for outpatient status. If the approval of the court is given, the defendant shall be
164 placed on outpatient status subject to the terms and conditions specified in the supervision and
165 treatment plan. If the outpatient treatment occurs in a county other than the county of

166 commitment, the court shall transmit a copy of the case record to the superior court in the county
167 where outpatient treatment occurs, so that the record will be available if revocation proceedings
168 are initiated pursuant to subsection (w) or (x).

169 (r) The department shall be responsible for the supervision of persons placed on
170 outpatient status under this title. The commissioner shall designate, for each county or region, a
171 community program director who shall be responsible for administering the community
172 treatment programs for persons committed from that county or region under the provisions
173 specified in subsection (b).

174 (s) The department shall notify in writing the chief justice of the trial court, the district
175 attorney of each county, and the executive director of the committee on public counsel services
176 as to the person designated to be the community program director for each county or region, and
177 timely written notice shall be given whenever a new community program director is to be
178 designated.

179 (t) The community program director shall be the outpatient treatment supervisor of
180 persons placed on outpatient status under this section. The community program director may
181 delegate the outpatient treatment supervision responsibility to a designee.

182 (u) The outpatient treatment supervisor shall, at 90-day intervals following the beginning
183 of outpatient treatment, submit to the court, the prosecutor and defense counsel, and to the
184 community program director, where appropriate, a report setting forth the status and progress of
185 the defendant.

186 (v) Outpatient status shall be for a period not to exceed 1 year. At the end of the period of
187 outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the

188 defense counsel, and the community program director, and after a hearing in court, either
189 discharge the person from commitment under appropriate provisions of the law, order the person
190 confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing,
191 the community program director shall furnish a report and recommendation to the medical
192 director of the state hospital or other treatment facility, where appropriate, and to the court,
193 which the court shall make available to the prosecutor and defense counsel. The person shall
194 remain on outpatient status until the court renders its decision unless hospitalized under other
195 provision of the law. The hearing pursuant to the provisions of this section shall be held no later
196 than 30 days after the end of the 1 year period of outpatient status unless good cause exists. The
197 court shall transmit a copy of its order to the community program director or a designee.

198 (w) If at any time during the outpatient period, the outpatient treatment supervisor is of
199 the opinion that the person requires extended inpatient treatment or refuses to accept further
200 outpatient treatment and supervision, the community program director shall notify the superior
201 court in either the county which approved outpatient status or in the county where outpatient
202 treatment is being provided of such opinion by means of a written request for revocation of
203 outpatient status. The community program director shall furnish a copy of this request to the
204 defense counsel and to the prosecutor in both counties if the request is made in the county of
205 treatment rather than the county of commitment. Within 15 business days, the court where the
206 request was filed shall hold a hearing and shall either approve or disapprove the request for
207 revocation of outpatient status. If the court approves the request for revocation, the court shall
208 order that the person be confined in a state hospital or other treatment facility approved by the
209 community program director. The court shall transmit a copy of its order to the community
210 program director or a designee. Where the county of treatment and the county of commitment

211 differ and revocation occurs in the county of treatment, the court shall enter the name of the
212 committing county and its case number on the order of revocation and shall send a copy of the
213 order to the committing court and the prosecutor and defense counsel in the county of
214 commitment.

215 (x) If at any time during the outpatient period the prosecutor is of the opinion that the
216 person is a danger to the health and safety of others while on that status, the prosecutor may
217 petition the court for a hearing to determine whether the person shall be continued on that status.
218 Upon receipt of the petition, the court shall calendar the case for further proceedings within 15
219 business days and the clerk shall notify the person, the community program director, and the
220 attorney of record for the person of the hearing date. Upon failure of the person to appear as
221 noticed, if a proper affidavit of service has been filed with the court, the court may issue a *capias*
222 to compel the attendance of such person. If, after a hearing in court conducted using the same
223 standards used in conducting probation revocation hearings pursuant to section 3 of chapter 279,
224 the judge determines that the person is a danger to the health and safety of others, the court shall
225 order that the person be confined in a state hospital or other treatment facility which has been
226 approved by the community program director.

227 (y) Upon the filing of a request for revocation under subsection (w) or subsection (x) and
228 pending the court's decision on revocation, the person subject to revocation may be confined in a
229 facility designated by the community program director when it is the opinion of that director that
230 the person will now be a danger to self or to another while on outpatient status and that to delay
231 confinement until the revocation hearing would pose an imminent risk of harm to the person or
232 to another. The facility so designated shall continue the patient's program of treatment, shall
233 provide adequate security so as to ensure both the safety of the person and the safety of others in

234 the facility, and shall, to the extent possible, minimize interference with the person's program of
235 treatment. Upon the request of the community program director or a designee, a peace officer
236 shall take, or cause to be taken, the person into custody and transport the person to a facility as
237 described in subsection (z) and designated by the community program director for confinement
238 under this section. Within 1 business day after the person is confined in a jail under this section,
239 the community program director shall apply in writing to the court for authorization to confine
240 the person pending the hearing under subsection (w) or subsection (x). The application shall be
241 in the form of a declaration, and shall specify the behavior or other reason justifying the
242 confinement of the person in a jail. Upon receipt of the application for confinement, the court
243 shall consider and rule upon it, and if the court authorizes detention in a jail, the court shall
244 actually serve copies of all orders and all documents filed by the community program director
245 upon the prosecuting and defense counsel. The community program director shall notify the
246 court in writing of the confinement of the person and of the factual basis for the opinion that the
247 immediate confinement in a jail was necessary. The court shall supply a copy of these documents
248 to the prosecutor and defense counsel.

249 (z) The facility designated by the community program director may be a state hospital, a
250 local treatment facility, a county jail, or any other appropriate facility, so long as the facility can
251 continue the person's program of treatment, provide adequate security, and minimize
252 interference with the person's program of treatment. If the facility designated by the community
253 program director is a county jail, the patient shall be separated from the general population of the
254 jail. A county jail may not be designated unless the services specified above are provided, and
255 accommodations are provided which ensure both the safety of the person and the safety of the
256 general population of the jail. Within 3 business days of the patient's confinement in a jail, the

257 community program director shall report to the court regarding what type of treatment the patient
258 is receiving in the facility. If there is evidence that the treatment program is not being complied
259 with, or accommodations have not been provided which ensure both the safety of the committed
260 person and the safety of the general population of the jail, the court shall order the person
261 transferred to an appropriate facility, including an appropriate state hospital.

262 (aa) A resentencing hearing shall be allowed in the following cases, in addition to those
263 permitted under other sections:

264 At the time of the offense, the defendant was suffering from a serious perinatal
265 psychiatric complication, a mental illness such as postpartum depression or postpartum
266 psychosis, which though insufficient to establish the defense of insanity, substantially affected
267 his or her ability to understand his or her acts or to conform his or her conduct to the
268 requirements of the law.

269 At the time of the offense, the defendant was suffering from postpartum depression or
270 postpartum psychosis which was either undiagnosed by a qualified medical professional
271 (physician, psychiatrist or psychologist) or untreated or unsuccessfully treated, and this
272 temporary mental illness tended to excuse or justify the defendant's criminal conduct and was
273 not used in trial or sentencing.

274 (bb) Nothing in this section shall prevent hospitalization pursuant to the provisions of
275 section 12.

276 (cc) A person whose confinement in a treatment facility under subsection (w) or
277 subsection (x) is approved by the court shall not be released again to outpatient status unless
278 court approval is obtained under subsection (e) or subsection (i).

279 (dd) No person who is on outpatient status pursuant to this section shall leave this state
280 without first obtaining prior written approval to do so from the committing court. The prior
281 written approval of the court for the person to leave this state shall specify when the person may
282 leave, when the person is required to return, and may specify other conditions or limitations at
283 the discretion of the court. The written approval for the person to leave this state may be in a
284 form and format chosen by the committing court.

285 (ee) In no event shall the court give written approval for the person to leave this state
286 without providing notice to the prosecutor, the defense counsel, and the community program
287 director. The court may conduct a hearing on the question of whether the person should be
288 allowed to leave this state and what conditions or limitations, if any, should be imposed.

289 (ff) Any person who violates subsection (dd) is guilty of a misdemeanor and upon
290 conviction shall be punished by imprisonment for not more than 6 months in a house of
291 correction or by a fine of not more than \$1,000.

292 (gg) The department shall be responsible for the community treatment and supervision of
293 judicially committed patients. These services shall be available on a county or regional basis.
294 The department may provide these services directly or through contract with private providers.
295 The program or programs through which these services are provided shall be known as the
296 forensic conditional release program.

297 (hh) The department shall contact all regional mental health programs by January 1,
298 2024, to determine their interest in providing an appropriate level of supervision and treatment of
299 judicially committed patients at reasonable cost. Regional mental health programs may agree or
300 refuse to operate such a program.

301 (ii) No later than January 1, 2025, and by January 1 of each subsequent year, all state
302 hospitals or other treatment facilities participating in the forensic conditional release program
303 shall report to the commissioner the following information: (i) the cost of the program to the
304 facility; (ii) the demographic profiles of persons receiving supervision and treatment in the
305 program; and (iii) the rates of adherence to treatment under the program.

306 (jj) No later than January 1, 2025, and by January 1 of each subsequent year, the chief
307 justice of the trial court shall report to the commissioner the following information: rates and
308 types of reoffense while these persons are served by the program and after their discharge.

309 (kk) The department shall conduct yearly evaluations of the forensic conditional release
310 program. An evaluation of the program shall determine its effectiveness in successfully
311 reintegrating these persons into society after release from state institutions. This evaluation of
312 program effectiveness shall include, but not be limited to, a determination of the rates of
313 reoffense while these persons are served by the program and after their discharge. This
314 evaluation shall also address the effectiveness of the various treatment components of the
315 program and their intensity.

316 (ll) The department shall ensure consistent data gathering and program standards for use
317 statewide by the forensic conditional release program.

318 (mm) The department of correction, and the executive office of public safety and security
319 shall cooperate with the department in conducting this evaluation.

320 (nn) The administrators and the supervision and treatment staff of the forensic conditional
321 release program shall not be held criminally or civilly liable for any criminal acts committed by
322 the persons on parole or judicial commitment status who receive supervision or treatment.

323 (oo) The court retains jurisdiction over the person until the end of the period of the
324 assisted outpatient treatment established under this section or until the court finds that the person
325 no longer meets the criteria in this section.

326 SECTION 7. In all cases in which the penalty of life imprisonment without the possibility
327 of parole may be authorized, mitigating circumstances shall be any factors proffered by the
328 defendant or the commonwealth which are relevant to a finding that a defendant suffered from
329 mental illness related to a perinatal psychiatric complication such as postpartum psychosis or
330 postpartum depression at the time the offense was committed.