

**HOUSE . . . . . No. 4066**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Fourteen**  
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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 2012  
2 Official Edition, is hereby amended as follows:-

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

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

7 Said section is further amended by striking out on lines 9-10, 11, 15 and 31 the words  
8 “disabled person’s” and inserting in place thereof the words:-

9 person with a disability

10 Said section is further amended by striking out on lines 30 and 44 the words “disabled  
11 persons” and inserting in place thereof the words:-

12 persons with a disability

13 Said section is further amended by striking out on lines 37 and 39 the words “disabled  
14 person or persons” and inserting in place thereof the words:-

15 person(s) with a disability

16 Said section is further amended by striking out on line 42 the words "including un-  
17 consented to sexual activity" and inserting in place thereof the following: -

18 including but not limited to, unassented to sexual activity

19 SECTION 2. Section 2 of chapter 19C of the General Laws is hereby amended as  
20 follows:-

21 By striking out on lines 2 and 4 the words “disabled persons” and inserting in place  
22 thereof the words:-

23 persons with disabilities

24 SECTION 3. Section 3 of chapter 19C of the General Laws is hereby amended as  
25 follows:-

26 By amending subsection (c) on lines 18 and 26-27 by deleting the words “disabled  
27 persons” and inserting in place thereof the words:-

28 persons with disabilities

29 And by amending subsection (d) on line 20 of said section by deleting the word “other”  
30 after the word “designate”.

31 Said section is further amended on lines 31-35 by striking out subsection (h) and inserting  
32 in place thereof the following:-

33 (h) to develop, in consultation with the secretary of the executive office of health and  
34 human services, standards for referral of investigations to the agencies within the executive  
35 office of health and human services pursuant to section 4.

36 SECTION 4. Section 4 of chapter 19C of the General Laws, is hereby amended as  
37 follows:-

38 On line 1, by striking the words "disabled person," and inserting in place thereof the  
39 words:-

40 person with a disability

41 And further by inserting on line 1 before the words "the commission" the following:-

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

43 Said section is further amended on lines 10-16 in subsection (b) by striking out the first  
44 sentence and inserting in place thereof the following:-

45 . . . refer immediately any such reports, which allege the occurrence of abuse to a person  
46 with a disability whose caretaker is an agency of the commonwealth, a facility licensed by an  
47 agency of the commonwealth or a private agency which provides services or treatment to persons

48 with disabilities pursuant to a contract or agreement with an agency of the commonwealth, to an  
49 investigator of the commission or to the department within the executive office of health and  
50 human services which has jurisdiction over the disability manifested by the person with a  
51 disability.

52 Said section is further amended on lines 25-33 in subsection (c) by striking out the first  
53 paragraph in its entirety and inserting in place thereof the following:-

54 (c) refer immediately any such reports, which allege the occurrence of abuse of a person  
55 with a disability whose caretaker is other than an agency of the commonwealth, a facility  
56 licensed by an agency of the commonwealth or a private agency which provides services or  
57 treatment to persons with disabilities pursuant to a contract or agreement with an agency of the  
58 commonwealth to the commission; the department of mental health in those cases where the  
59 disabled person is suffering from a mental illness, the department of developmental services  
60 where the person with a disability is a person with developmental disabilities, or to the  
61 Massachusetts rehabilitation commission where the person with a disability is otherwise  
62 physically disabled. Upon such referral, the commission or said department shall immediately  
63 designate an investigator who shall investigate such allegations of abuse as provided in section 5.

64 Said section is further amended by inserting after subsection (c) the following new  
65 subsections:-

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

75 (e) Upon receipt of a written determination and evaluation prepared and forwarded to the  
76 commission pursuant to the provisions of section 5 or upon receipt of a report of abuse of a  
77 person with a disability where the commission, in accordance with written standards established  
78 by the commission, determines that the report may contain allegations of criminal conduct,  
79 including but not limited to (1) a person with a disability has been sexually abused or raped, or  
80 assaulted or battered as set forth in chapter 265; (2) a person with a disability has suffered brain  
81 injury, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;  
82 or (3) a person with a disability has suffered a serious bodily injury as a result of a pattern of  
83 repetitive actions or inactions by a caretaker; the commission, notwithstanding any provision of  
84 chapter 66A regarding personal data to the contrary, shall immediately refer such report to the

85 special investigative unit, established pursuant to section 3(i) of chapter 19C, which shall  
86 conduct an initial evaluation and investigation of the alleged criminal conduct. Upon completion  
87 of such evaluation and investigation, said special investigative unit shall report the results of  
88 such evaluation and investigation to the commissioners who, notwithstanding any provision of  
89 chapter 66A regarding personal data to the contrary, shall, if the special investigative unit has  
90 determined that there is reason to believe that a criminal offense has been committed,  
91 immediately refer such report, together with any relevant information obtained in such initial  
92 investigation, to the attorney general or district attorney for the county wherein the alleged  
93 criminal offense occurred. Upon receipt of such report, the attorney general or district attorney  
94 for the county wherein the alleged criminal offense occurred shall contact the commission in  
95 order to coordinate the investigation of the matters giving rise to the report. As part of such  
96 coordination, the attorney general or the district attorney may request that the commission delay  
97 or defer the investigation of the non-criminal matters giving rise to the report; provided,  
98 however, that such request shall be granted only where the commission determines that the  
99 health and the safety of the alleged victim of abuse shall not be adversely affected thereby and  
100 that the commission's or department's ability to conduct a later investigation shall not be  
101 unreasonably impaired by such delay or deferral. In all cases including, but not limited to, those  
102 in which the commission agrees to delay or defer the non-criminal investigation, the attorney  
103 general or district attorney shall keep the commission informed of the status of the criminal  
104 investigation and the commission shall provide to the attorney general or the district attorney any  
105 and all information that may be relevant to the criminal investigation. In cases in which the  
106 commission agrees to delay or defer the non-criminal investigation, it shall monitor the progress  
107 of the criminal investigation and shall determine, after consultation with the appropriate law  
108 enforcement agencies, when or whether the non-criminal investigation should be initiated or  
109 resumed. No person providing notification or information to the commission, the commission's  
110 special investigative unit, the district attorney, or attorney general or providing testimony in  
111 court in furtherance of the provisions of this section shall be liable in any civil or criminal action  
112 by reason of such action.

113 SECTION 5. Section 5 of chapter 19C of the General Laws is hereby amended as  
114 follows:-

115 On lines 1, 12 and 46 by deleting the words "disabled person" and inserting in place  
116 thereof the words:-

117 person with a disability

118 And further, by deleting the words "the general counsel" on line 2, and inserting on line  
119 3, the words "health and" before the word "human".

120 And further, in subsection (1) of said section on lines 7-8 by striking the words "counsel  
121 or department of mental health or the department of public health" and inserting in place thereof  
122 the words: -

123 the department of mental health, the department of developmental services or the  
124 massachusetts rehabilitation commission

125 Subsection (1) of said section is further amended on line 11 by striking the words  
126 "disabled person's" and inserting in place thereof the words:-

127 person with a disability's

128 Said subsection (1) is further amended on lines 16-18 by striking the words "to the  
129 general counsel and to the department of mental health and the department of public health" and  
130 inserting in place thereof the words:-

131 and to the department of mental health, the department of developmental services or the  
132 massachusetts rehabilitation commission, as appropriate

133 Subsection (3) of said section on lines 42-43 is amended by striking out the words "the  
134 general counsel, the department of mental health and the department of public health" and  
135 inserting in place thereof the words:-

136 and the department of mental health, the department of developmental services or the  
137 massachusetts rehabilitation commission, as appropriate

138 Subsection (5) of said section on lines 59-77 is amended by deleting the second and third  
139 paragraphs.

140 SECTION 6. Section 6 of Chapter 19C of the General Laws is amended by striking the  
141 first paragraph on lines 1-9 and inserting in place thereof the following:-

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

146 Section 6 of chapter 19C, subsections (1) and (3) are hereby amended by striking out the  
147 words "disabled person" and inserting in place thereof the words:-

148 person with a disability

149 SECTION 7. Section 7 of chapter 19C of the General Laws is hereby amended as  
150 follows:-

151 Subsection (a) of said section is amended on lines 1-2 by striking the words "the general  
152 counsel, department of mental health or the department of public health", and inserting in place  
153 thereof the words:-

154 the department of mental health, the department of developmental services or the  
155 massachusetts rehabilitation commission

156 Said subsection is further amended on lines 3, 6, 11, 12, 15, 17, 19, 21 and 27 by striking  
157 the words "disabled person" and inserting in place thereof the words:-

158 person with a disability

159 And, subsection (a) is further amended on lines 5 and 8 by deleting the word "counsel".

160 Subsection (b) of said section is amended on lines 31 and 35 by deleting the words  
161 "counsel or"

162 Subsection (b) of said section 7 is further amended on lines 46-47 by striking out the  
163 words "the court may order the provision of protective services on an emergency basis" and  
164 inserting in its place the following:-

165 and no other person who is authorized to consent is available or willing to consent, the  
166 court may order protective services on an emergency basis and the court in ordering the  
167 provision of protective services on an emergency basis may appoint a conservator, guardian or  
168 other person authorized to consent to the provision of protective services; provided however, that  
169 the court shall establish the least restrictive fiduciary representation that will satisfy addressing  
170 the emergency and needs of such person with a disability.

171 Said subsection (b) is further amended on lines 51-53 by striking the words "Said order  
172 may be extended for an additional seventy-two hour period if the court finds that such extension  
173 is necessary to remove the emergency" and inserting in its stead the following:-

174 Said order may be extended for an additional period of time if the court finds that such  
175 extension is necessary to remove the emergency or to address the needs of such person with a  
176 disability

177 Subsection (c) of said section is hereby amended on lines 56-57 by striking out the words  
178 "disabled person" and inserting in place thereof the words:-

179 person with a disability

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

181 Subsection (d) of said section is amended on lines 62, 64, and 65 by striking the words  
182 "disabled person" and inserting in place thereof the words:-

183 person with a disability

184 SECTION 8. Section 8 of chapter 19C of the General Laws is amended on line 2 by  
185 striking out the words "disabled person" and inserting in place thereof the following:-

186 person with a disability

187 And further, by striking out on line 5 the words "disabled persons" and inserting in place  
188 thereof the following:-

189 persons with disabilities.

190 Section 8 is further amended on lines 2 and 5-6, by striking out the words "whose  
191 caretaker is a state agency" and inserting in place thereof the words:-

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

195 SECTION 9. Section 9 of chapter 19C is amended on lines 1-2 by striking and inserting  
196 in place thereof the words:-

197 Upon completion of any investigation conducted pursuant to this chapter, including but  
198 not limited to a formal investigation conducted pursuant to section 8, and notwithstanding any  
199 provision of chapter 66A regarding personal data to the contrary, the commission shall:

200 Said section is hereby further amended by adding the following subsection after  
201 subsection (d):-

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

206 SECTION 10. Section 10 of chapter 19C is amended on lines 6-7 and 12 by striking out  
207 the words "disabled person" and inserting in place thereof the following:-

208 person with a disability

209 SECTION 11. Section 11 of chapter 19C is amended on lines 5-6 by striking out the  
210 words "general counsel" as appearing.

211 Said section is further amended on line 9 by striking out the words "disabled person" and  
212 inserting in place thereof the following:-

213 person with a disability

214 SECTION 12. Section 13 of chapter 19C is amended in its title by striking out the words  
215 “disabled person” and inserting in place thereof the words:-

216 a person with a disability

217 Section 13 is further amended on lines 1-3 by striking the words “any disabled person  
218 whose caretaker was a state agency or an agency of any subdivision of the commonwealth or a  
219 private agency contracting with the commonwealth” and inserting in place thereof the  
220 following:-

221 any person with a disability whose caretaker is an agency of the commonwealth, a  
222 subdivision of the commonwealth, a facility licensed by an agency of the commonwealth or a  
223 private agency which provides services or treatment to a person with disabilities pursuant to a  
224 contract or agreement with an agency or the commonwealth