

SENATE No. 69

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

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 to increase the safety of disabled individuals living in group homes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/25/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/30/2017</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>1/31/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/2/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/3/2017</i>

SENATE No. 69

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 69) of Patrick M. O'Connor, Richard J. Ross, Donald F. Humason, Jr., Ryan C. Fattman and other members of the General Court for legislation to increase the safety of disabled individuals living in group homes. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to increase the safety of disabled individuals living in group homes.

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 19 of the General Laws, as so appears, is amended by inserting the
2 following new chapter

3 19E. Disability Abuse Registry

4 Section 1. Definitions

5 The following words as used in this chapter shall have the following meanings:

6 "Abuse" means the action or inaction that inflicts injury, unreasonable confinement,
7 intimidation, or punishment on an adult person with a disability. In instances of abuse of an adult
8 with a disability who is unable to express or demonstrate physical harm, pain, or mental anguish,
9 the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual
10 abuse, mental abuse, physical abuse, personal exploitation and financial exploitation of an adult
11 with a disability and which have the following meanings:

12 (a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not
13 limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit
14 photographing, and sexual harassment.

15 (b) "Physical abuse" means the action of inflicting bodily injury or physical mistreatment.
16 Physical abuse includes, but is not limited to, striking with or without an object, slapping,
17 pinching, choking, kicking, shoving, or prodding.

18 (c) "Mental abuse" means a verbal or nonverbal action that threatens, humiliates,
19 harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult.
20 Mental abuse may include ridiculing, yelling, or swearing.

21 (d) "Personal exploitation" means an act of forcing, compelling, or exerting undue
22 influence over an adult with a disability causing the individual to act in a way that is inconsistent
23 with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of
24 another.

25 (e) "Financial exploitation" means the illegal or improper use, control over, or
26 withholding of the property, income, resources, or trust funds of the vulnerable adult by any
27 person or entity for any person's or entity's profit or advantage other than for the vulnerable
28 adult's profit or advantage.

29 "Caretaker" any person volunteering or employed by a service provider, as licensed or
30 contracted with by any department of the Executive Office of Health and Human Services, who
31 provides services or supports to an individual with a disability

32 "Commission," Disabled persons protection commission

33 “Department”, any Department within the Executive Office of Health and Human
34 Services

35 “EOHHS, Executive Office of Health and Human Services

36 “Executive Director” Executive Director of the Disabled persons protection commission

37 “Secretary”, Secretary of the Executive Office of Health and Human Services

38 “Neglect” the failure to provide or permit treatment or services, including sufficient food,
39 clothing, maintenance, medical care or a clean and proper home

40 “Registry,” the disability abuse registry

41 “Service provider,” any organization licensed by any department within EOHHS or those
42 facilities or programs licensed, contracted or regulated by any department within EOHHS
43 providing supports and services for individuals with disabilities or those providing community
44 based services with indirect state funding to persons with disabilities, including but not limited
45 to: facilities for individuals with disabilities, a rehabilitation facility; a group home; an adult
46 foster care home; a case management entity that provides services to people with disabilities; a
47 corporate guardian; shared living placement services, a day habilitation center; a residential
48 service or habilitation service authorized to be reimbursed by MassHealth; any licensed or
49 MassHealth-certified entity or any program funded by any EOHHS department that provides
50 respite, companion or personal care services.

51 SECTION 2. Creation of Disability Abuse Registry.

52 EOHHS shall establish and maintain a central computerized registry of caretaker who
53 have had a substantiated finding of abuse, neglect or exploitation of a person with a disability

54 issued by the commission and/or any agency within EOHHS that receives and investigates
55 complaints of abuse, neglect and exploitation. The registry will be known as the disability abuse
56 registry.

57 EOHHS shall adopt rules and regulations that define the procedure and standards for
58 inclusion of a caregiver with a substantiated complaint of abuse, neglect or exploitation on the
59 registry, notification of such inclusion to the caregiver and process for caregiver's right to appeal
60 the placement of his or her name on the registry. After notice to the caregiver of their right to
61 appeal the substantiated finding, the caregiver's name will be added to the registry.

62 SECTION 3. Use of Registry.

63 Once a caregiver's name has been added to the registry, that person will be prohibited
64 from employment in facilities and programs licensed by departments within EOHHS or those
65 facilities or programs licensed, contracted or regulated by any department within EOHHS or
66 from providing community based services with indirect state funding to persons with disabilities.

67 All providers, prior to hiring an individual, must review the registry to determine whether
68 the individual's name is on the registry. No service provider shall hire an individual whose name
69 appears on the registry. All service providers must review the registry on a quarterly basis to
70 ensure current employees have not been placed on the registry.

71 SECTION 4. Reporting Process.

72 Upon the receipt of a complaint or allegation of abuse, neglect or exploitation of a person
73 with a disability, the caregiver or caregivers named in the complaint will automatically be placed
74 on administrative leave until the investigation is completed and a finding has been issued.

75 EOHHS and the Departments will ensure that the providers they license and contract with
76 comply with this rule.

77 SECTION 5. Penalties.

78 EOHHS shall administer monetary sanctions not to exceed five thousand dollars for a
79 provider's failure to check the registry prior to hiring that results in the hiring of a person on the
80 registry.

81 SECTION 6. Public Disclosure.

82 EOHHS shall keep information contained in the registry confidential and may only be
83 disclosed under circumstances expressly authorized by rules and regulations promulgated by
84 EOHHS consistent with the requirement that the service provider must have access to the
85 registry prior to hiring new employees and for ongoing evaluation of current employees
86 providing caregiver services to individuals with disabilities.

87 SECTION 7. Section 1 of Chapter 19C of the general laws, as so appears, is amended by
88 deleting the definition of "abuse" and replacing it with the following:

89 "Abuse" means the action or inaction that inflicts injury, unreasonable confinement,
90 intimidation, or punishment on an adult person with a disability. In instances of abuse of an adult
91 with a disability who is unable to express or demonstrate physical harm, pain, or mental anguish,
92 the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual
93 abuse, mental abuse, physical abuse, personal exploitation and financial exploitation of an adult
94 with a disability and which have the following meanings:

95 (a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not
96 limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit
97 photographing, and sexual harassment.

98 (b) "Physical abuse" means the action of inflicting bodily injury or physical mistreatment.
99 Physical abuse includes, but is not limited to, striking with or without an object, slapping,
100 pinching, choking, kicking, shoving, or prodding.

101 (c) "Mental abuse" means a verbal or nonverbal action that threatens, humiliates,
102 harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult.
103 Mental abuse may include ridiculing, yelling, or swearing.

104 (d) "Personal exploitation" means an act of forcing, compelling, or exerting undue
105 influence over an adult with a disability causing the individual to act in a way that is inconsistent
106 with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of
107 another.

108 (e) "Financial exploitation" means the illegal or improper use, control over, or
109 withholding of the property, income, resources, or trust funds of the vulnerable adult by any
110 person or entity for any person's or entity's profit or advantage other than for the vulnerable
111 adult's profit or advantage.

112 SECTION 8. Section 5 of Chapter 19C of the general laws, as so appearing, is hereby
113 amended by inserting a new subsection after subsection 5:

114 (6) The executive director must submit substantiated investigations of abuse of a person
115 with a disability with the caregiver's relevant information immediately upon issuance to
116 EOHHS.