

SENATE No. 71

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 protect persons with intellectual or developmental disability from abuse.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/24/2019</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/24/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/24/2019</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>1/24/2019</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/29/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/28/2019</i>
<i>Dean A. Tran</i>	<i>Worcester and Middlesex</i>	<i>1/28/2019</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>1/28/2019</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/28/2019</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>1/28/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/29/2019</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>1/29/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/29/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/29/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/29/2019</i>

<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/29/2019</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/30/2019</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>1/30/2019</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>1/30/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>1/31/2019</i>
<i>David K. Muradian, Jr.</i>	<i>9th Worcester</i>	<i>1/31/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/31/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/31/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>1/31/2019</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>1/31/2019</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>1/31/2019</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/31/2019</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/31/2019</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>1/31/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>2/1/2019</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/6/2019</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	<i>2/8/2019</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>2/11/2019</i>

SENATE No. 71

By Mr. Moore, a petition (accompanied by bill, Senate, No. 71) of Michael O. Moore, Patrick M. O'Connor, Jack Patrick Lewis, Angelo J. Puppolo, Jr. and other members of the General Court for legislation to establish a registry of caretakers found to have substantiated abuse against persons with intellectual disability or developmental disability. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 64 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to protect persons with intellectual or developmental disability from abuse.

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 4H of chapter 7 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the fourth paragraph the following
3 paragraph:-

4 In accordance with section 15 of chapter 19C, a care provider against whom a
5 substantiated finding of registrable abuse has been made or whose appeal to have the care
6 provider’s name removed from the registry of abusers of persons with intellectual or
7 developmental disabilities was denied shall be entitled to appeal a final decision of the disabled
8 persons protection commission at a hearing before the division.

9 SECTION 2. Chapter 19C of the General Laws is hereby amended by adding the
10 following section:-

11 Section 15. (a) As used in this section the following words shall have the following
12 meanings, unless the context requires otherwise:-

13 “Care provider”, a person who is employed by, or contracts with, the department or an
14 employer to provide services or supports to a person with an intellectual or developmental
15 disability.

16 “Department”, the department of developmental services.

17 “Employer”, an entity that provides services or treatment to persons with intellectual or
18 developmental disabilities, pursuant to: (i) a contract or agreement with the department; (ii)
19 funding administered by the department; or (iii) a license under section 15 or 15A of chapter
20 19B.

21 “Registry”, the registry of abusers of persons with intellectual or developmental
22 disabilities.

23 “Registrable abuse”, an act or omission of a care provider that results in serious physical
24 injury or serious emotional injury, or constitutes abuse per se, of a person with an intellectual or
25 developmental disability; provided, however, that “registrable abuse” shall not include instances
26 in which the commission determines that, based on the nature of the act or omission, the care
27 provider is not likely to pose a serious risk of abuse to a person with an intellectual or
28 developmental disability.

29 (b) The commission shall, subject to appropriation, establish and maintain a registry of
30 care providers against whom the commission has made a substantiated finding of registrable
31 abuse.

32 (c) If, after notice and an opportunity to respond in writing, the commission substantiates
33 a finding of registrable abuse, the commission shall include the care provider's name on the
34 registry; provided, however, that the commission shall provide notification to the care provider
35 of the care provider's right to appeal a final decision of the commission to the division of
36 administrative law appeals pursuant to section 4H of chapter 7 and of the care provider's right to
37 petition for the removal of the care provider's name from the registry pursuant to subsection (g);
38 provided further, that if the care provider appeals the commission's final decision to the division
39 of administrative law appeals, the commission shall not enter the care provider's name on the
40 registry unless the division affirms the commission's final decision by finding that the
41 Commonwealth has established the care providers responsibility for registerable abuse, based on
42 a preponderance of the evidence. The commission shall notify the department and the last known
43 employer of the care provider of the placement on the registry.

44 (d) Prior to employing, or contracting with, a person as a care provider, the department or
45 an employer shall determine whether the person's name appears on the registry. Neither the
46 department nor an employer shall hire, utilize the services of or employ a person whose name
47 appears on the registry.

48 If an employer fails to meet the requirements of this subsection, the commission may: (i)
49 impose a monetary fine of not more than \$5,000; (ii) recommend the revocation or downgrade of
50 a license maintained by the employer; (iii) recommend the forfeiture of a state contract; or (iv)

51 impose a combination of such fine, recommendation of license revocation or downgrade or
52 recommendation of state contract forfeiture.

53 (e) The information maintained in the registry, including the record of its proceedings,
54 shall not be a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66.
55 The commission, the division of administrative law appeals and the department shall keep
56 information contained in the registry confidential and shall not disseminate information about a
57 care provider to anyone other than said care provider unless it is necessary for the consideration
58 of a current or prospective care provider or as provided by law.

59 (f) Annually, the commission shall initiate an audit of the registry to ensure compliance
60 with this section, including that all substantiated findings of registrable abuse were added to the
61 registry and proper notification was made to the department, employers and care providers. A
62 summary of the audit shall be filed not later than December 31 of each year with the clerks of the
63 senate and house of representatives, the senate and house committees on ways and means and the
64 joint committee on children, families and persons with disabilities. The summary shall include,
65 but not be limited to: (i) the number of people on the registry; (ii) the number of people who
66 were added to the registry in the last calendar year; (iii) the number of substantiated findings of
67 registrable abuse that were appealed in the last calendar year; (iv) the number of substantiated
68 findings of registrable abuse that were overturned on appeal in the last calendar year; (v) the
69 number of requests made by employers for information from the registry in the last calendar year
70 and the number of such requests that were granted; (vi) the total number of instances in the last
71 calendar year in which the commission failed to notify the department or the last known
72 employer of a care provider who was placed on the registry and the reasons for such failures; and
73 (vii) the number of employers found to have failed to meet the requirements of subsection (d) in

74 the last calendar year. Information contained in the summary shall be in a de-identified and
75 aggregate form.

76 (g) A person whose name appears on the registry may petition the commission to have
77 the person's name removed from the registry; provided, however, that such a petition shall not be
78 considered until 5 years after the placement of the person's name on the registry or 5 years after
79 the conclusion of any prior petition for the removal of the person's name from the registry,
80 whichever is later.

81 (h) The commission shall adopt regulations to implement this section.

82 SECTION 3. Section 9B of chapter 30 of the General Laws, as appearing in the 2016
83 Official Edition, is hereby amended by striking out, in line 32, the words "thirty-one or chapter
84 one hundred and fifty E" and inserting in place thereof the following words:-

85 "31 or chapter 150E or a hearing under section 4H of chapter 7 related to a care
86 provider's placement on the registry of abusers of persons with intellectual or developmental
87 disabilities established under section 14 of chapter 19C".

88 SECTION 4. Notwithstanding any general or special law to the contrary, section 14 of
89 chapter 19C of the General Laws shall apply to all substantiated findings of registrable abuse
90 made by the disabled persons protection commission on or after January 1, 2020, regardless of
91 when such registrable abuse took place.

92 SECTION 5. This act shall take effect on January 1, 2020.