HOUSE DOCKET, NO. 1750 FILED ON: 1/17/2013

HOUSE . . . . . No. 103

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

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:

An Act relative to the authority of the disabled persons protection commission pursuant to Chapter 19C.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Danielle W. Gregoire	*4th Middlesex*

HOUSE DOCKET, NO. 1750 FILED ON: 1/17/2013

HOUSE . . . . . No. 103

By Miss Gregoire of Marlborough, a petition (accompanied by bill, House, No. 103) of Danielle W. Gregoire for legislation to make certain changes in the law relative to the authority of the Disabled Persons Protection Commission. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *143* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

SECTION 1. SECTION 1 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2004 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: -

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

FOR THE SOLE PURPOSES OF THIS CHAPTER, THE FOLLOWING WORDS SHALL, UNLESS THE CONTEXT REQUIRES OTHERWISE, HAVE THE FOLLOWING MEANINGS: -

Said Section 1 is further amended by striking out the words “chapter one hundred and twenty-three” as so appearing in the definition of "Disabled person" on lines 16 and 17, and inserting in place thereof the following: -

CHAPTER ONE HUNDRED AND TWENTY-THREE B -

Said Section 1 is further amended by striking out the definition of "General counsel" or "counsel" as so appearing on lines 20 and 21

14 SAID SECTION 1 IS FURTHER AMENDED BY AMENDING THE DEFINITION OF
15 "REPORTABLE CONDITION" BY STRIKING OUT THE WORDS "INCLUDING UN-
16 CONSENTED TO SEXUAL ACTIVITY." AS SO APPEARING ON LINE 42 AND
17 INSERTING IN PLACE THEREOF THE FOLLOWING: -

18 . . . , including but not limited to, un-assented to sexual activity.

19 SECTION 2. SECTION 3 OF CHAPTER 19C OF THE GENERAL LAWS, AS
20 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED AS
21 FOLLOWS:

22 By amending subsection (d) of said section 3 by deleting the word “other” after the word
23 “designate” and before the words “state agencies” as so appearing on line 20

24 SAID SECTION 3 IS FURTHER AMENDED BY STRIKING OUT SUBSECTION (H)
25 OF SAID SECTION 3 AS SO APPEARING ON LINES 31 THROUGH 35 AND INSERTING
26 IN PLACE THEREOF THE FOLLOWING: -

27 (h) to develop, in consultation with the secretary of the executive office of health and
28 human services, standards for referral of investigations to the agencies within the executive
29 office of health and human services pursuant to section four.

30 SECTION 3. SECTION 4 OF CHAPTER 19C OF THE GENERAL LAWS AS
31 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

32 BY AMENDING THE FIRST SENTENCE AS SO APPEARING ON LINES 1 AND 2
33 BY INSERTING FOLLOWING THE WORDS "DISABLED PERSON," AND BEFORE THE
34 WORDS "THE COMMISSION SHALL:" THE FOLLOWING: --

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

36 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (B) OF
37 SAID SECTION 4 BY STRIKING OUT THE FIRST SENTENCE OF SAID SUBSECTION
38 (B) AS SO APPEARING ON LINES 10 THROUGH 16 AND INSERTING IN PLACE
39 THEREOF THE FOLLOWING: --

40 . . . refer immediately any such reports, which allege the occurrence of abuse to a
41 disabled person whose caretaker is an agency of the commonwealth, a facility licensed by an
42 agency of the commonwealth or a private agency which provides services or treatment to
43 disabled persons pursuant to a contract or agreement with an agency of the commonwealth, to an
44 investigator of the commission or to the department within the executive office of health and
45 human services which has jurisdiction over the disability manifested by the disabled person.

46 SAID SECTION 4 IS FURTHER AMENDED BY AMENDING SUBSECTION (C) OF
47 SAID SECTION 4 BY STRIKING OUT THE FIRST PARAGRAPH OF SAID SUBSECTION

48 (C) AS SO APPEARING ON LINES 25 THROUGH 33 AND INSERTING IN PLACE
49 THEREOF THE FOLLOWING: -

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

60 Said Section 4 is further amended by adding immediately after subsection (c) of said
61 Section 4 the following language" -

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

71 Said Section 4 is further amended by striking out the last paragraph of said subsection (c)
72 as so appearing on lines 34 through 66 and inserting in place thereof the following:-

73 (E) UPON RECEIPT OF A WRITTEN DETERMINATION AND EVALUATION
74 PREPARED AND FORWARDED TO THE COMMISSION PURSUANT TO THE
75 PROVISIONS OF SECTION 5 OR UPON RECEIPT OF A REPORT OF ABUSE OF A
76 DISABLED PERSON WHERE THE COMMISSION, IN ACCORDANCE WITH WRITTEN
77 STANDARDS ESTABLISHED BY THE COMMISSION, DETERMINES THAT THE
78 REPORT MAY CONTAIN ALLEGATIONS OF CRIMINAL CONDUCT, INCLUDING BUT
79 NOT LIMITED TO (1) A DISABLED PERSON HAS BEEN SEXUALLY ABUSED OR
80 RAPED, OR ASSAULTED OR BATTERED AS SET FORTH IN CHAPTER TWO
81 HUNDRED AND SIXTY-FIVE; (2) A DISABLED PERSON HAS SUFFERED BRAIN
82 INJURY, LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY FUNCTION OR
83 ORGAN, OR SUBSTANTIAL DISFIGUREMENT; OR (3) A DISABLED PERSON HAS
84 SUFFERED A SERIOUS BODILY INJURY AS A RESULT OF A PATTERN OF

85 REPETITIVE ACTIONS OR INACTIONS BY A CARETAKER; THE COMMISSION,
86 NOTWITHSTANDING ANY PROVISION OF CHAPTER SIXTY-SIX A REGARDING
87 PERSONAL DATA TO THE CONTRARY, SHALL IMMEDIATELY REFER SUCH
88 REPORT TO THE SPECIAL INVESTIGATIVE UNIT, ESTABLISHED PURSUANT TO
89 SECTION 3(I) OF CHAPTER 19C, WHICH SHALL CONDUCT AN INITIAL
90 EVALUATION AND INVESTIGATION OF THE ALLEGED CRIMINAL CONDUCT.
91 UPON COMPLETION OF SUCH EVALUATION AND INVESTIGATION, SAID SPECIAL
92 INVESTIGATIVE UNIT SHALL REPORT THE RESULTS OF SUCH EVALUATION AND
93 INVESTIGATION TO THE COMMISSIONERS WHO, NOTWITHSTANDING ANY
94 PROVISION OF CHAPTER SIXTY-SIX A REGARDING PERSONAL DATA TO THE
95 CONTRARY, SHALL, IF THE SPECIAL INVESTIGATIVE UNIT HAS DETERMINED
96 THAT THERE IS REASON TO BELIEVE THAT A CRIMINAL OFFENSE HAS BEEN
97 COMMITTED, IMMEDIATELY REFER SUCH REPORT, TOGETHER WITH ANY
98 RELEVANT INFORMATION OBTAINED IN SUCH INITIAL INVESTIGATION, TO THE
99 ATTORNEY GENERAL OR DISTRICT ATTORNEY FOR THE COUNTY WHEREIN THE
100 ALLEGED CRIMINAL OFFENSE OCCURRED. UPON RECEIPT OF SUCH REPORT, THE
101 ATTORNEY GENERAL OR DISTRICT ATTORNEY FOR THE COUNTY WHEREIN THE
102 ALLEGED CRIMINAL OFFENSE OCCURRED SHALL CONTACT THE COMMISSION IN
103 ORDER TO COORDINATE THE INVESTIGATION OF THE MATTERS GIVING RISE TO
104 THE REPORT. AS PART OF SUCH COORDINATION, THE ATTORNEY GENERAL OR
105 THE DISTRICT ATTORNEY MAY REQUEST THAT THE COMMISSION DELAY OR
106 DEFER THE INVESTIGATION OF THE NON-CRIMINAL MATTERS GIVING RISE TO
107 THE REPORT; PROVIDED, HOWEVER, THAT SUCH REQUEST SHALL BE GRANTED
108 ONLY WHERE THE COMMISSION DETERMINES THAT THE HEALTH AND THE
109 SAFETY OF THE ALLEGED VICTIM OF ABUSE SHALL NOT BE ADVERSELY
110 AFFECTED THEREBY AND THAT THE COMMISSION'S OR DEPARTMENT'S ABILITY
111 TO CONDUCT A LATER INVESTIGATION SHALL NOT BE UNREASONABLY
112 IMPAIRED BY SUCH DELAY OR DEFERRAL. IN ALL CASES INCLUDING, BUT NOT
113 LIMITED TO, THOSE IN WHICH THE COMMISSION AGREES TO DELAY OR DEFER
114 THE NON-CRIMINAL INVESTIGATION, THE ATTORNEY GENERAL OR DISTRICT
115 ATTORNEY SHALL KEEP THE COMMISSION INFORMED OF THE STATUS OF THE
116 CRIMINAL INVESTIGATION AND THE COMMISSION SHALL PROVIDE TO THE
117 ATTORNEY GENERAL OR THE DISTRICT ATTORNEY ANY AND ALL INFORMATION
118 THAT MAY BE RELEVANT TO THE CRIMINAL INVESTIGATION. IN CASES IN
119 WHICH THE COMMISSION AGREES TO DELAY OR DEFER THE NON-CRIMINAL
120 INVESTIGATION, IT SHALL MONITOR THE PROGRESS OF THE CRIMINAL
121 INVESTIGATION AND SHALL DETERMINE, AFTER CONSULTATION WITH THE
122 APPROPRIATE LAW ENFORCEMENT AGENCIES, WHEN OR WHETHER THE NON-
123 CRIMINAL INVESTIGATION SHOULD BE INITIATED OR RESUMED.

124 NO PERSON PROVIDING NOTIFICATION OR INFORMATION TO THE
125 COMMISSION, THE COMMISSION'S SPECIAL INVESTIGATIVE UNIT, THE DISTRICT
126 ATTORNEY, OR ATTORNEY GENERAL OR PROVIDING TESTIMONY IN COURT IN
127 FURTHERANCE OF THE PROVISIONS OF THIS SECTION SHALL BE LIABLE IN ANY
128 CIVIL OR CRIMINAL ACTION BY REASON OF SUCH ACTION.

129 SECTION 4. SECTION 5 OF CHAPTER 19C OF THE GENERAL LAWS AS
130 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS:

131 THE FIRST SENTENCE AS SO APPEARING ON LINES 1 THROUGH 4, SHALL BE
132 AMENDED BY DELETING THE WORDS "THE GENERAL COUNSEL," AND BY
133 FURTHER STRIKING OUT THE WORDS "EXECUTIVE OFFICE OF HUMAN SERVICES"
134 AND INSERTING IN PLACE THEREOF THE WORDS " EXECUTIVE OFFICE OF
135 HEALTH AND HUMAN SERVICES"

136 SUBSECTION (1) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY
137 AMENDED BY STRIKING OUT ON LINES 7 AND 8 THE WORDS "COUNSEL OR
138 DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF PUBLIC HEALTH"
139 AND INSERTING IN PLACE THEREOF THE WORDS: -

140 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF MENTAL
141 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

142 Said subsection (1) of said Section 5 as so appearing, is hereby further amended by
143 striking out on lines 16 and 18 the words "to the general counsel and to the department of mental
144 health and the department of public health" and inserting in place thereof the words: -

145 AND TO THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF
146 MENTAL RETARDATION OR THE MASSACHUSETTS REHABILITATION
147 COMMISSION, AS APPROPRIATE.

148 SUBSECTION (3) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY
149 AMENDED BY STRIKING OUT THE WORDS "THE GENERAL COUNSEL, THE
150 DEPARTMENT OF MENTAL HEALTH AND THE DEPARTMENT OF PUBLIC HEALTH"
151 AS APPEARING ON LINES 42 AND 43 AND INSERTING IN PLACE THEREOF THE
152 WORDS: -

153 AND THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF
154 MENTAL RETARDATION OR THE MASSACHUSETTS REHABILITATION
155 COMMISSION, AS APPROPRIATE.

156 SUBSECTION (5) OF SAID SECTION 5, AS SO APPEARING, IS HEREBY
157 AMENDED; BY DELETING THE SECOND AND THIRD PARAGRAPHS THEREOF AS SO
158 APPEARING ON LINES 59 THROUGH 77.

159 SECTION 5. SECTION 6 OF CHAPTER 19C OF THE GENERAL LAWS AS
160 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING
161 OUT THE FIRST PARAGRAPH AS SO APPEARING ON LINES 1 THROUGH 9 AND
162 INSERTING IN PLACE THEREOF THE FOLLOWING: --

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

167 SECTION 6. SECTION 7 OF CHAPTER 19C OF THE GENERAL LAWS AS
168 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: --
169

170 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY
171 AMENDED BY STRIKING OUT THE WORDS "THE GENERAL COUNSEL,
172 DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF PUBLIC HEALTH"
173 AS SO APPEARING ON LINES 1 AND 2, AND INSERTING IN PLACE THEREOF THE
174 WORDS: -

175 THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT MENTAL
176 RETARDATION OR THE MASSACHUSETTS REHABILITATION COMMISSION.

177 SUBSECTION (A) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY
178 FURTHER AMENDED BY DELETING THE WORD "COUNSEL, " AS SO APPEARING ON
179 LINE 5.

180 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY
181 AMENDED BY DELETING THE WORDS "COUNSEL OR" AS SO APPEARING ON LINE
182 31 AND ON LINE 35,

183 Subsection (b) of said section 7, as so appearing, is hereby further amended by striking
184 out the phrase ". . . the court may order the provision of protective services on an emergency
185 basis. . ." as appearing on lines 46 and 47 and inserting in its stead the following words: -

186 AND NO OTHER PERSON WHO IS AUTHORIZED TO CONSENT IS AVAILABLE
187 OR WILLING TO CONSENT, THE COURT MAY ORDER PROTECTIVE SERVICES ON
188 AN EMERGENCY BASIS AND THE COURT IN ORDERING THE PROVISION OF
189 PROTECTIVE SERVICES ON AN EMERGENCY BASIS MAY APPOINT A
190 CONSERVATOR, GUARDIAN OR OTHER PERSON AUTHORIZED TO CONSENT TO
191 THE PROVISION OF PROTECTIVE SERVICES; PROVIDED HOWEVER, THAT THE
192 COURT SHALL ESTABLISH THE LEAST RESTRICTIVE FIDUCIARY

193 REPRESENTATION THAT WILL SATISFY ADDRESSING THE EMERGENCY AND
194 NEEDS OF SUCH DISABLED PERSON.

195 SUBSECTION (B) OF SAID SECTION 7, AS SO APPEARING, IS HEREBY
196 FURTHER AMENDED BY STRIKING OUT THE WORDS “SAID ORDER MAY BE
197 EXTENDED FOR AN ADDITIONAL SEVENTY-TWO HOUR PERIOD IF THE COURT
198 FINDS THAT SUCH EXTENSION IS NECESSARY TO REMOVE THE EMERGENCY” AS
199 SO APPEARING ON LINES 51 THROUGH 53 AND INSERTING IN ITS STEAD THE
200 FOLLOWING WORDS: -

201 SAID ORDER MAY BE EXTENDED FOR AN ADDITIONAL PERIOD OF TIME IF
202 THE COURT FINDS THAT SUCH EXTENSION IS NECESSARY TO REMOVE THE
203 EMERGENCY OR TO ADDRESS THE NEEDS OF SUCH DISABLED PERSON.

204 Subsection (c) of said section 7 is hereby amended by deleting on line 58 the word
205 "counsel"

206 SECTION 7. SECTION 8 OF CHAPTER 19C OF THE GENERAL LAWS AS
207 APPEARING IN THE 2002 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING
208 OUT THE WORDS ". . . WHOSE CARETAKER IS A STATE AGENCY", AS SO
209 APPEARING ON LINES 2 AND 6, AND INSERTING IN PLACE THEREOF THE WORDS:

210 . . . WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A
211 FACILITY LICENSED BY AN AGENCY OF THE COMMONWEALTH OR A PRIVATE
212 AGENCY WHICH PROVIDES SERVICES OR TREATMENT TO DISABLED PERSONS
213 PURSUANT TO A CONTRACT OR AGREEMENT WITH AN AGENCY OF THE
214 COMMONWEALTH

215 SECTION 8. SECTION 9 OF CHAPTER 19C, AS APPEARING IN THE 2002
216 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: --

217 BY STRIKING OUT LINE 1 AND LINE 2, AS SO APPEARING, AND INSERTING
218 IN PLACE THEREOF THE WORDS: -

219 UPON COMPLETION OF ANY INVESTIGATION CONDUCTED PURSUANT TO
220 THIS CHAPTER, INCLUDING BUT NOT LIMITED TO A FORMAL INVESTIGATION
221 CONDUCTED PURSUANT TO SECTION EIGHT, AND NOTWITHSTANDING ANY
222 PROVISION OF CHAPTER SIXTY-SIX A REGARDING PERSONAL DATA TO THE
223 CONTRARY, THE COMMISSION SHALL:

224 SECTION 9 OF SAID CHAPTER 19C, AS SO APPEARING, IS HEREBY FURTHER
225 AMENDED BY ADDING THE FOLLOWING SUBSECTION AFTER SUBSECTION (D) OF
226 SAID SECTION 9 OF SAID CHAPTER 19C:-

227 (E) REFER ANY MATTERS FOR WHICH THERE IS REASON TO BELIEVE THAT
228 PROFESSIONAL MISCONDUCT HAS OCCURRED TO THE AGENCY OF THE
229 COMMONWEALTH HAVING JURISDICTION OVER SUCH PROFESSIONAL CONDUCT
230 FOR POSSIBLE IMPOSITION OF DISCIPLINARY MEASURES IN ACCORDANCE WITH
231 THE REQUIREMENTS OF ANY APPLICABLE LAW OR REGULATION.

232 SECTION 9. SECTION 13 OF CHAPTER 19C, AS APPEARING IN THE 2002
233 OFFICIAL EDITION, IS HEREBY AMENDED BY STRIKING OUT AS SO APPEARING
234 ON LINE 1 THROUGH LINE 3 THE FOLLOWING WORDS: -

235 "WHOSE CARETAKER WAS A STATE AGENCY OR AN AGENCY OF ANY
236 SUBDIVISION OF THE COMMONWEALTH OR A PRIVATE AGENCY CONTRACTING
237 WITH THE COMMONWEALTH"

238 AND INSERTING IN PLACE THEREOF THE FOLLOWING:-

239 “WHOSE CARETAKER IS AN AGENCY OF THE COMMONWEALTH, A
240 SUBDIVISION OF THE COMMONWEALTH, A FACILITY LICENSED BY AN AGENCY
241 OF THE COMMONWEALTH OR A PRIVATE AGENCY WHICH PROVIDES SERVICES
242 OR TREATMENT TO DISABLED PERSONS PURSUANT TO A CONTRACT OR
243 AGREEMENT WITH AN AGENCY OF THE COMMONWEALTH”