SENATE DOCKET, NO. 1228 FILED ON: 1/20/2011

SENATE . . . . . No. 49

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

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 level IV treatment interventions..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian A. Joyce	*Norfolk, Bristol, and Plymouth*

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SENATE . . . . . No. 49

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 49) of Brian A. Joyce for legislation to create and authorize level iv behavioral treatment interventions. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *45* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to level IV treatment interventions..

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. Chapter 6A is hereby amended by adding the following section:-

Section 16P.

(a) As used in this section, the following words shall, except as otherwise provided, have the following meanings:-

"Level IV treatment intervention", any procedure which involves the systematic use of noxious or intrusive stimuli which are generally known to be painful or otherwise unpleasant to individuals, including but not limited to, procedures that: (1) cause physical pain to the individual, whether administered directly or through intermediate devices, such as skin electric shock, inhalants, or ingestible substances (excluding alcoholism treatments, such as disulfram, Antabuse or Antabus); (2) involve sleep or food deprivation; (3) include the introduction of additives to make food unpleasant; or (4) involve the prompting of an individual to engage in a behavior which then results in an aversive stimulus being applied as a punitive consequence.

"Department", the department of mental retardation, or its successor, the department of developmental services, as established in Chapter 19B.

"Individual treatment plan", a plan approved by the statewide peer review committee pursuant to regulations promulgated under this section.

17 "Secretary", secretary of the executive office of health and human services.

18 (b) The Department hereby creates a new classification of behavioral treatment
19 interventions, to be known as Level IV treatment interventions. The Department shall, with the
20 advice and input of the statewide peer review committee, promulgate rules and regulations
21 consistent with this chapter regarding the use of Level IV treatment interventions to address
22 behaviors that present a pattern of conduct or behavior caused by a disorder which poses a
23 serious danger or risk of injury or harm to self or others by any consumer of any public or private
24 agency in the commonwealth receiving public funding or subsidy through the federal
25 government, the commonwealth, any of its political subdivisions, or another state or political
26 subdivision, thereof. The Department regulations regarding the use of Level IV treatment
27 interventions will govern all uses of such procedures by any public or private agency receiving
28 public funding through the federal government, the Commonwealth of Massachusetts, any of its
29 political subdivisions, or another state or political subdivision, thereof.

30 Level IV treatment interventions are designed for the treatment of certain types of
31 dangerous or self destructive behaviors following a pre-determined treatment protocol which
32 includes highly punitive techniques designed to teach an individual not to repeat those
33 challenging behaviors. Level IV treatment interventions are the most intrusive form of treatment
34 interventions and they shall be considered to only be used as a method to address behaviors that
35 directly present a clear risk of injury or harm to self or others. Level IV treatment interventions
36 are not appropriate for addressing minor behavior problems, even if said behaviors are identified
37 as antecedents to targeted challenging behaviors. Level IV treatment interventions should only
38 be considered when reinforcement-based interventions and other less intrusive treatments have
39 failed, including programs developed by clinicians specially skilled in positive behavior
40 supports. Documentation of the fidelity of the application of all less intrusive interventions and
41 the completion of formal procedural reliability assessments must be provided in all proposed
42 Level IV treatment intervention submissions.

43 Level IV treatment interventions are restricted to those techniques and procedures that are
44 considered as evidence-based practices and meet the standards of being scientifically validated,
45 as demonstrated by their publication in peer-reviewed professional journals. All such proposed
46 interventions must have been demonstrated as clinically effective in the reduction of similar
47 topographies of challenging behaviors with participants within similar age ranges, diagnostic
48 categories, and settings. All such proposed interventions for children must be consistent with the
49 Individuals with Disabilities Education Act of 2004 (IDEA) and No Child Left Behind.

50 (c) There shall be a statewide peer review committee on Level IV treatment interventions,
51 hereinafter called the statewide committee, consisting of five members appointed by the
52 governor for terms of three years. The statewide committee shall be located within, but not
53 subject to control by, the executive office. Members of the statewide committee shall be
54 residents of the commonwealth and citizens of the United States. Two members of the statewide

55 committee shall be licensed psychologists, who meet the guidelines and standards of clause (2)
56 (d) below, have 10 or more years of experience in applied behavior analysis and behavior
57 treatment of severe behavior problems, and shall have been actively engaged in the practice of
58 applied behavior analysis and behavior treatment of severe behavior problems for the five years
59 next preceding their appointment. Two members of the committee shall be either Licensed
60 Independent Behavior Analysts in the commonwealth or Board Certified Behavior Analysts who
61 meet the guidelines and standards of clause (d) below, have 10 or more years of experience in
62 applied behavior analysis and behavior treatment of severe behavior problems and shall have
63 been actively engaged in the practice of applied behavior analysis and behavior treatment of
64 severe behavior problems for the five years next preceding their appointment. One member of
65 the statewide committee shall be selected from and shall represent the public, subject to the
66 provisions of section nine B of chapter 13.

67 In the case where a public or private agency in the commonwealth receives public
68 funding from another state or jurisdiction and seeks to utilize a Level IV procedure with a client
69 whose permanent residence is from that state or jurisdiction, said state or jurisdiction may
70 recommend an individual who meets the guidelines and standards of clause (d) below to serve as
71 an "ad-hoc", sixth member of the statewide committee to review any and/or all proposed Level
72 IV treatment interventions for residents from said state or jurisdiction.

73 The statewide committee shall: (1) oversee all Level IV treatment interventions being
74 implemented with any person in the commonwealth who is served by a public or private agency
75 receiving public funding or subsidy through the federal government, the commonwealth, any of
76 its political subdivisions or another state or political subdivision thereof; appoint a Chair from its
77 permanent members; (3) review individual treatment plans and make recommendations to the
78 Probate and Family Court regarding the approval or disapproval of Level IV treatment
79 interventions within such treatment plans; (4) review and make recommendations to the
80 department regarding guidelines and standards for facility peer review committees; (5) review
81 and make recommendations to the executive office for any requested exclusions or waivers from
82 the regulations governing Level IV treatment interventions; and (6) be assisted in its duties by
83 the executive office, which shall provide technical, technological, operational and administrative
84 support.

85 Members of the statewide committee may participate in any meeting by means of a
86 conference telephone or similar communications equipment by means of which all persons
87 participating in the meeting may simultaneously hear each other, and participation by such
88 means shall constitute presence in person at a meeting. Members may also transmit or receive
89 any written materials discussed at a meeting and transmit any written authorizations that may be
90 required during the meeting by electronic facsimile or other commercially acceptable
91 transmission. A quorum shall consist of not less than a majority of the members of the statewide
92 committee participating in the meeting.

93 A member of the statewide committee shall be indemnified from any civil action brought
94 for damages to the same extent as provided for public employees in chapter 258, and shall be
95 indemnified for all expenses in the defense thereof provided, however, that the claim arose out of
96 acts performed by such member while acting within the scope of the member's official duties.

97 (d) All Level IV treatment interventions shall be designed by an individual who is a
98 Licensed Applied Behavior Analyst, or is a Board Certified Behavior Analyst, or holds Specialty
99 Certification in Cognitive and Behavioral Psychology from the American Board of Professional
100 Psychology, or is a Licensed Psychologist with documented education, professional training and
101 experience in applied behavior analysis and behavioral treatment, and 5 years of full-time
102 experience serving individuals within the same age range and diagnostic category; demonstrating
103 similar topographies of challenging behaviors and utilizing similar treatment approaches as those
104 proposed in the Level IV plan under review. Individuals responsible for the design of Level IV
105 treatment interventions will comply fully with the Ethical Principles of Psychologists and the
106 Code of Conduct of the American Psychological Association. All Level IV treatment
107 interventions submitted for review and approval must meet the standards outlined within the
108 Guidelines for Responsible Conduct of the Behavior Analysis Certification Board, and include
109 documentation that the challenging behaviors being addressed are not a function of a medical or
110 psychiatric disorder. Additionally, all such proposed interventions must include evidence of the
111 completion of a formal comprehensive functional behavioral assessment, a preference
112 assessment, and reinforcement strategies designed to teach functionally equivalent replacement
113 behaviors. In addition to the ongoing empirical measurement of all targeted challenging and
114 replacement behaviors throughout any approved Level IV treatment intervention, all such Level
115 IV treatment interventions must also include ongoing objective documentation of the trauma
116 suffered by the individual or others as a result of the challenging behaviors addressed within the
117 treatment plan.

118 (e) Level IV treatment interventions shall only be implemented by staff persons who
119 have received specific training in the application of the intervention and the individualized
120 treatment plan. Documentation listing all qualified staff who received training in the Level IV
121 treatment intervention and the individuals who designed the treatment protocol and who
122 administered each application of the Level IV treatment intervention shall be incorporated in the
123 client record.

124 All level IV treatment interventions shall be implemented only under the direct
125 supervision and physical presence of a Licensed Applied Behavior Analyst, a Board Certified
126 Behavior Analyst, a professional with Specialty Certification in Cognitive and Behavioral
127 Psychology from the American Board of Professional Psychology, or a Licensed Psychologist
128 with documented education, professional training and experience in applied behavior analysis
129 and behavioral treatment.

130 (f) Each facility seeking to use Level IV treatment interventions shall establish a facility
131 peer review committee, hereinafter called the facility committee, whose membership shall
132 include (1) a minimum of two Licensed Applied Behavior Analysts or Board Certified Behavior
133 Analysts or psychologists with documented education, professional training and experience in
134 applied behavior analysis and behavioral treatment, (2) one psychologist with broad clinical
135 expertise outside the specialty of applied behavior analysis, (3) a physician, and (4) a public
136 member who shall not, nor shall have been within the period of five years immediately preceding
137 his/her appointment either been employed by said facility, been a recipient of services from said
138 facility, nor having had any immediate family members been an employee or recipient of
139 services from said facility.

140 Prior to application to the statewide committee for authority to implement a Level IV
141 behavior treatment intervention, consent shall be obtained from the client (if competent) and the
142 facility committee.

143 In cases of extreme emergencies, the agency serving the individual shall not be required
144 to apply for approval to the facility committee, but shall apply directly to the statewide
145 committee for a 30-day temporary approval of the intervention, provided, that the agency has
146 secured informed consent from the client (if competent). If such emergency application is
147 approved by the statewide committee consistent with clauses (g) and (h) below, the application
148 must also be submitted, together with a copy of the statewide committee's vote, prior to
149 implementation, to the Probate and Family Court of the county in which the client resides for
150 approval through a substituted judgment review process.

151 (g) Prior to rendering a decision, the statewide committee shall permit the proponent of
152 the use of such interventions and any other interested person the opportunity to present materials
153 in support of or in opposition to the proposed treatment plan. Approval of a Level IV treatment
154 intervention by the statewide committee shall require an affirmative vote of a majority of the
155 members participating at the meeting when said Level IV treatment intervention was under
156 review. The decision of the statewide committee shall be in writing, with supporting reasons
157 provided for its decision. A finding by the statewide committee permitting Level IV treatment
158 interventions with respect to any individual treatment plan shall be submitted thereafter to the
159 probate court of the county in which the client resides as part of the court's independent review
160 and approval of said treatment plan.

161 (h) Level IV treatment interventions shall not be initially approved by the statewide
162 committee unless the proponent of the use of such interventions provides clear and convincing
163 evidence through the evaluation protocol and ongoing behavioral data, that (i) the target behavior
164 presents an immediate risk of serious physical injury or harm to self or others; (ii) the Level IV
165 procedures will lead to positive outcomes and a significant decrease in the target behaviors; and
166 (iii) that less intrusive treatments continue to be unsuccessful or would present an immediate risk
167 of serious physical injury or harm.

168 Level IV treatment interventions may be initially approved for no more than 30 days by
169 the statewide committee, and may be re-approved thereafter for additional 30-day periods, not to
170 exceed six months. Request for re-approval shall be subject to such conditions as the statewide
171 committee may designate, including a review of all existing data to confirm that the use of the
172 Level IV treatment intervention has led to positive outcomes and a significant decrease in the
173 target behaviors. Any request for the use of the Level IV treatment intervention beyond the 30-
174 day trial shall require re-submission to the statewide peer review committee and the probate
175 court of the county in which the client resides as part of the court's independent review and
176 approval of said treatment plan. The statewide committee shall petition the Commissioner of the
177 Department to review all cases in which the continued use of Level IV treatment interventions
178 are requested beyond the six-month limit.

179 (i) The Secretary may, after a hearing pursuant to chapter 30A, deny, refuse, revoke,
180 limit or suspend a license of any recipient of funding or subsidy through the executive office for
181 failure to comply with the provisions of this section.

182 Except for emergency regulations adopted pursuant to Section 2 of chapter 30A, any
183 regulation, as defined in Section 1 of said chapter 30A, or any amendment or repeal of any such
184 regulation adopted by the Department pursuant to this section, shall, after compliance with all
185 applicable provisions of this section and said chapter 30A, except section 5, be submitted to the
186 general court. Said Department shall file the proposed regulation, amendment or repeal with the
187 clerk of the house of representatives, together with a statement of compliance with the pertinent
188 provisions of said chapter 30A, except section 5. The clerk of the house of representatives, with
189 the approval of the president of the senate and the speaker of the house of representatives, shall
190 refer such regulations to the joint committee on children, families, and persons with disabilities.
191 Within 30 days after such referral, said legislative committee may hold a public hearing on the
192 regulations and shall issue a report to said Department. Said report shall contain any proposed
193 changes to the regulations voted upon by the legislative committee. The Department and the
194 statewide committee shall review and report and the Department shall adopt final regulations as
195 deemed appropriate in view of said report and shall file with the chairmen of the legislative
196 committee its final regulations. If the final regulations do not contain the changes proposed by
197 the legislative committee, the Department shall send a letter to the legislative committee
198 accompanying the final regulations stating the reasons why such proposed changes were not
199 adopted. Not earlier than 45 days after the filing of such letter and final regulations with said
200 legislative committee, said Department shall file the final regulations with the state secretary as
201 provided in section 5 of said chapter 30a and said regulations shall thereupon take effect.

202 If no such proposed changes to the regulations are made to the Department within 60
203 days of the initial filing of the proposed regulation or any amendment or a repeal of such
204 regulation with the clerk of the house of representatives, the Department may file the final
205 regulations with the state secretary as provided in section 5 of the said chapter 30A and said
206 regulations shall thereupon take effect.

207 SECTION 2. Within 90 days after the passage of this act, the Department, with
208 the advice and input of the statewide committee shall draft, pursuant to chapter 30A, proposed
209 rules and regulations to the General Court regarding the development, review, approval, and on-
210 going review and monitoring process for Level IV treatment interventions.

211 SECTION 3. The implementation of any Level IV treatment intervention
212 beyond the scope of a court-ordered treatment plan or the approval of the statewide committee,
213 or by a staff member who does not meet the requirement of section 16P of chapter 6A will be
214 considered an act of mistreatment, pursuant to section 13K of chapter 265 and shall be reported
215 to the Disabled Persons Protection Commission.

216 SECTION 4. Except as provided herein, this act shall not otherwise alter the
217 procedures for substituted judgment review by the Probate and Family Court.