

HOUSE No. 3870

The Commonwealth of Massachusetts

PRESENTED BY:

Christine P. Barber

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 establishing a designation of a state protection and advocacy system.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>4/10/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>4/10/2023</i>

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By Representative Barber of Somerville, a petition (subject to Joint Rule 12) of Christine P. Barber and Samantha Montañó for legislation to establish a protection and advocacy system for investigating abuse, neglect, and financial exploitation of persons with disabilities occurring and advocating for the civil and human rights of such persons. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing a designation of a state protection and advocacy system.

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 6 of the General Laws, as appearing in the 2020 Official Edition, is
2 hereby amended by inserting after section 221 the following section:

3 Section 222. (a) There shall be a protection and advocacy system for the purpose of
4 investigating abuse, neglect, and financial exploitation of persons with disabilities occurring in
5 the Commonwealth and advocating for the civil and human rights of such persons. For the
6 purposes of this chapter, the system shall be an independent private nonprofit corporation which
7 has been designated as the protection and advocacy system for the Commonwealth under the
8 Protection and Advocacy under the federal Developmental Disabilities Assistance and Bill of
9 Rights Act of 2000, 42 U.S.C. 15041 et. seq., and the Protection and Advocacy for Individuals
10 with Mental Illness Act. 42 U.S.C. 10801 et. seq.

11 (b) The protection and advocacy system shall meet all of the requirements of federal law
12 applicable to such systems, including, but not limited to, the requirement that it establish a
13 grievance procedure for clients or prospective clients of the system to ensure that people with
14 disabilities have full access to services of the system. The protection and advocacy system may
15 receive and expend funds to protect and advocate the rights of persons with developmental
16 disabilities, emotional and mental health disabilities, and any other disabilities. In a manner
17 consistent with other statutory responsibilities, the departments, officers, agencies, and
18 institutions of the Commonwealth shall cooperate with the protection and advocacy system in
19 carrying out its duties in order to further the purposes of this act. Notwithstanding any other
20 provision of law, all departments, officers, agencies, and institutions of the Commonwealth may,
21 on the behalf of a person with a developmental disability, emotional and mental health
22 disabilities, or any other disability, request the system to provide protection and advocacy
23 services. The governor may designate an appropriate state official to serve as liaison between
24 the protection and advocacy system and the state departments and agencies that provide services
25 to persons with developmental disabilities, emotional and mental health disabilities, or any other
26 disabilities.

27 (c) The protection and advocacy system shall have the authority to:

28 (i) Investigate incidents of abuse and neglect of individuals with developmental
29 disabilities, emotional and mental health disabilities, or any other disabilities if the incidents are
30 reported to the system or if there is probable cause to believe that the incidents occurred;

31 (ii) Pursue legal, administrative, and other appropriate remedies to ensure the protection
32 of the rights of persons with developmental disabilities, mental health conditions, or any other
33 disabilities;

34 (iii) Provide information on and referral to programs and services addressing the needs of
35 persons with developmental disabilities, emotional and mental health disabilities, or any other
36 disabilities, including information and training regarding individual rights and the services
37 available from the protection and advocacy system;

38 (iv) Have immediate access to any individual with a developmental disability, emotional
39 and mental health disabilities, or any other disability, regardless of age, who has requested
40 services or on whose behalf services have been requested from the protection and advocacy
41 system or concerning whom the protection and advocacy system has reasonable cause to believe
42 that abuse, neglect, financial exploitation, or a violation of rights of the individual has occurred;

43 (v) Have immediate access to any facility, school, jail, hospital, or any other location
44 where any individual with a developmental disability, emotional and mental health disabilities,
45 or any other disability is receiving or has received services, where the protection and advocacy
46 system has received a complaint or where the system has reasonable cause to believe that abuse,
47 neglect, financial exploitation, or a violation of rights of the individual has occurred, in order to:

48 (A) Monitor compliance with respect to the rights and safety of any person receiving
49 services;

50 (B) Communicate privately by mail or orally, and where available, by electronic means,
51 with any person receiving services;

52 (C) Interview any member of the staff of said facility or other location;

53 (D) Inspect all records relating to persons receiving services, provided that said person, or
54 their guardian, gives written permission;

55 (E) Have access to policies, rules, and regulations affecting care, rights, or
56 responsibilities of persons receiving services;

57 (F) Inspect, view, and photograph all areas of the facility or any other locations that are
58 used by persons receiving services, or that are accessible to them, or which otherwise may affect
59 their health and safety;

60 (G) Take whatever steps are appropriate, including posting notice, to see that persons are
61 made aware of the services of the protection and advocacy system, its purpose, and how it can be
62 contacted. Officials in charge of each facility shall cooperate with the protection and advocacy
63 system in this respect;

64 (H) Provide information and training on, and referral to programs addressing the needs
65 of, persons with disabilities, and information and training on individual rights and services
66 available from the protection and advocacy system, including, but not limited to, the name,
67 address, and telephone number of the protection and advocacy system;

68 (vi) Have reasonable unaccompanied access to public and private facilities, programs,
69 and services, and recipients of services therein during normal working hours and visiting hours
70 for other advocacy services. In the case of information and training services, access shall be at
71 times mutually agreeable to the protection and advocacy system and facility management;

72 (vii) Upon request, and notwithstanding any other provision of law, the designated
73 protection and advocacy system shall be entitled to inspect and copy any records or documents,
74 files, books, charts, or other materials which may further the system's investigation of problems
75 affecting persons with developmental disabilities, emotional and mental health disabilities, or
76 any other disabilities. When required by both state and federal law, any personally identifiable
77 information of said persons with disabilities shall be removed from the records.

78 (d) Any individual or entity having knowledge of or reasonable cause to suspect that a
79 person with a developmental disability, emotional and mental health disabilities, or any other
80 disabilities, is or has been abused, neglected, or exploited may report those circumstances to the
81 protection and advocacy system.

82 (e) Records maintained by the protection and advocacy system are the property of the
83 agency, which must protect said records from loss, damage, tampering, or use by unauthorized
84 individuals. The system must:

85 (i) Except as provided elsewhere in this section, keep confidential all records and
86 information, including information contained in any automated electronic database pertaining to:

87 (A) Clients, to the same extent as is required under Federal or State laws for a provider of
88 services;

89 (B) Individuals who have been provided general information or technical assistance on a
90 particular matter;

91 (C) Identities of individuals who report incidents of abuse or neglect or furnish
92 information that forms the basis for a determination that probable cause exists;

93 (ii) Obtain written consent from the client, if competent, or from their legal
94 representative, from individuals who have been provided general information or technical
95 assistance on a particular matter, and from individuals who furnish reports or information that
96 forms the basis for a determination of probable cause, before releasing information to individuals
97 not otherwise authorized to receive it.

98 (f) On a quarterly basis, the Department of Developmental Disabilities, the Department of
99 Mental Health, and the Department of Public Health shall provide the protection and advocacy
100 system all death reports of persons with disabilities who were receiving services of such state
101 agency after a determination of eligibility or were receiving services in a facility or setting run,
102 licensed, or funded by such agency. State agencies shall provide access to death reports more
103 regularly with a specific request by the protection and advocacy system.

104 (g) Subject to confidentiality and redisclosure provisions, upon request, the protection
105 and advocacy system shall be entitled to receive from the Department of Mental Health lists of
106 all individuals in state operated facilities serving persons with mental health conditions who are
107 clinically determined to be discharge-ready yet remain being held in such facilities.

108 (h) Nothing in this subpart shall prevent the protection and advocacy system from:

109 (i) Issuing a public report of the results of an investigation which maintains the
110 confidentiality of the individuals affected or;

111 (ii) Reporting the results of an investigation which maintains the confidentiality of
112 individual service recipients to responsible investigative or enforcement agencies should an
113 investigation reveal information concerning the facility, its staff, or employees warranting
114 possible sanctions or corrective action. This information may be reported to agencies

115 responsible for facility licensing or accreditation, employee discipline, employee licensing or
116 certification, or criminal prosecution.

117 (i) No facility or any other location which provides or has provided services to persons
118 with developmental disabilities, emotional and mental health disabilities, or any other
119 disabilities shall retaliate or discriminate against any person submitting a complaint to the
120 protection and advocacy system or cooperating with the system's monitoring, investigation, or
121 advocacy activities.

122 (j) (i) Prior to instituting any legal action in a federal or state court on behalf of a person
123 with a developmental disability, emotional and mental health disabilities, or any other
124 disabilities, or on its own behalf, the protection and advocacy system shall exhaust in a timely
125 manner all administrative remedies when appropriate. If, in pursuing administrative remedies,
126 the protection and advocacy system determines that any matter with respect to such person will
127 not be resolved within a reasonable time, it may pursue alternative remedies, including the
128 initiation of legal action.

129 (ii) Subsection (j)(i) of this section shall not apply to any legal action instituted to prevent
130 or eliminate imminent serious harm to a person with a developmental disability, emotional and
131 mental health disabilities, or any other disabilities.

132 (k) The authority of the protection and advocacy system set forth in this section shall not
133 diminish its authority under federal statutes pertaining to the authority of protection and
134 advocacy systems, or under federal rules and regulations adopted in implementation of those
135 statutes.

136 SECTION 2: Section 5 of Chapter 19C of the General Laws, as appearing in the 2020
137 Official Edition, is hereby amended by removing subsection (4) and replacing it with the
138 following language:

139 (4) If there is reasonable cause to believe that a disabled person has died as a result of
140 abuse, immediately report said death to the commission, the general counsel, the attorney
141 general, the district attorney for the county in which such death occurred, the state protection and
142 advocacy system, and to the medical examiner as required by section six of chapter thirty-eight

143 SECTION 3: Section 72H of Chapter 111 of the General Laws, as appearing in the 2020
144 Official Edition, is hereby amended by removing subsection (5) and replacing it with the
145 following language:

146 (5) if it has reasonable cause to believe that a patient or resident has died as a result of
147 abuse, mistreatment, or neglect, immediately report such death to the attorney general, the
148 district attorney for the county in which such death occurred, the state protection and advocacy
149 system, and the medical examiner as required by section 3 of chapter 38; and