

## The Commonwealth of Massachusetts

PRESENTED BY:

Josh S. Cutler

*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 board of registration of licensed mental health counselors.

PETITION OF:

| NAME:                     | DISTRICT/ADDRESS:    |
|---------------------------|----------------------|
| <i>Josh S. Cutler</i>     | <i>6th Plymouth</i>  |
| <i>Diana DiZoglio</i>     | <i>First Essex</i>   |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> |

By Mr. Cutler of Duxbury, a petition (accompanied by bill, House, No. 1706) of Josh S. Cutler, Diana DiZoglio and Jack Patrick Lewis relative to establishing a board of registration of licensed mental health counselors. Mental Health, Substance Use and Recovery.

## The Commonwealth of Massachusetts

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

An Act establishing a board of registration of licensed mental health counselors.

*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 163 of the General Laws, as appearing in the 2016 Official Edition,  
2 is hereby amended by striking, in lines 7 through 8, the words “licensed mental health  
3 counselor”.

4 SECTION 2. Section 163 of the General Laws, as appearing in the 2016 Official Edition,  
5 is further amended by striking lines 40 through 64 in their entirety.

6 SECTION 3. Section 164 of the General Laws, as appearing in the 2016 Official Edition,  
7 is hereby amended by striking line 7 in its entirety.

8 SECTION 4. Section 165 of the General Laws, as appearing in the 2016 Official Edition,  
9 is hereby amended by striking, in line 2 through 3, the words “mental health counselor”.

10 SECTION 5. Section 171 of the General Laws, as appearing in the 2016 Official Edition,  
11 is hereby amended by striking, in line 6 through 7, the words "mental health counselor".

12                   SECTION 6. Section 172A of the General Laws, as appearing in the 2016 Official  
13                   Edition, is hereby repealed.

14                   SECTION 7. Chapter 13 of the General Laws, as appearing in the 2016 Official Edition  
15                   is hereby amended by adding the following new sections:

16                   Section 110. Board of registration of licensed mental health counselors; membership;  
17                   appointment; removal

18                   There shall be within the division of professional licensure a board of registration of  
19                   mental health counselors, in this section and sections eighty-nine and ninety, which shall consist  
20                   of 9 members, one of whom shall be designated as chairperson, to be appointed in the manner  
21                   provided by section eighty-nine. Of the first board members appointed four shall continue in  
22                   office for one year, three for two years and two, including the chairperson, shall continue in  
23                   office for three years. Their successors shall be appointed for terms of three years each except  
24                   that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the  
25                   board member to be succeeded. Upon the expiration of the term of office, a board member shall  
26                   continue to serve until a successor shall have been appointed and shall have qualified. No person  
27                   shall be appointed more than once to fill an unexpired term for more than two consecutive terms.  
28                   One board member shall be elected by the board of registration of mental health counselors to  
29                   serve as chairperson during the term of such person's appointment to the board; provided,  
30                   however, that no person shall serve as chairperson for more than three years.

31                   The governor may remove any member of the board or the chairperson from such  
32                   position as chairperson after a recommendation of the majority of the board, and only for neglect  
33                   of duty or malfeasance or conviction of a felony or crime of moral turpitude while in office. No

34 member may be removed without a public hearing with at least thirty days prior written notice of  
35 the charges and the date fixed for such hearing. No board member shall participate in any matter  
36 before the board in which a pecuniary interest, personal bias or other similar conflict of interest  
37 is established.

38           Board members shall serve without compensation but shall be reimbursed for their actual  
39 and necessary expenses incurred in the performance of official board business.

40           Section 111. Board of registration of licensed mental health counselors; qualifications of  
41 members

42           The governor shall appoint members of the board only from among the candidates who  
43 meet the following qualifications:

44           (A) 7 members shall be licensed, practicing mental health counselors and each shall have  
45 been, for at least five years immediately preceding appointment, actively engaged as a licensed  
46 practitioner rendering professional services in that field, or in the education and training of  
47 graduate students or interns in the field, or in appropriate mental health counseling research, or in  
48 other areas substantially equivalent thereto, and shall have spent the majority of the professional  
49 time in such activity during the two years preceding the appointment in the commonwealth.

50           (B) Two members shall be representatives of the general public who have no direct  
51 affiliation with the practice of any mental health or human services profession.

52           Immediately upon enactment, the current sitting LMHC members of the Board of Allied  
53 Mental and Human Services Professions, shall immediately become appointed members of the  
54 Board of Registration of mental health counselors and seek nominees for the remaining 5 LMHC

55 seats. The governor shall nominate a new member to fill a vacancy on the board within thirty  
56 days of the occurrence of any vacancy.

57 The appointment of any member of the board shall automatically terminate within thirty  
58 days after the date such member is no longer a resident of the commonwealth.

59 Each appointee shall, upon accepting appointment to the board, take and subscribe to the  
60 oath or affirmation prescribed by law and file the same in the office of secretary of state.

61 Section 112. Board of registration of licensed mental health counselors; meetings; duties

62 The board shall hold at least two regular meetings each year, but additional meetings may  
63 be held upon the call of the chairperson, or the secretary, or upon the written request of any two  
64 board members. A majority of the appointed members of the board shall constitute a quorum;  
65 provided, however, that at least one of those members shall be a member who was selected from  
66 and who represents the general public. The principal office of the board shall be in the city of  
67 Boston but the board may act and exercise all of its powers in such other jurisdictions as it deems  
68 necessary.

69 The board shall administer and enforce the provisions of section one hundred and sixty-  
70 three to one hundred and seventy-two, inclusive, of chapter one hundred and twelve. Said board  
71 shall promulgate regulations which set forth education and training requirements necessary for a  
72 person to be licensed under the provisions of section one hundred and sixty-five of said chapter  
73 one hundred and twelve; and the board may, from time to time, adopt such rules and regulations  
74 as it deems necessary to carry out the performance of its duties.

75           The director of consumer affairs and business regulations shall have authority to review  
76   and approve rules and regulations proposed by the board. Such regulations will be deemed  
77   approved unless disapproved within fifteen days of submission to said director; provided,  
78   however that any such disapproval shall be in writing setting forth the reasons for such  
79   disapproval.

80           Said board shall examine and pass on the qualifications of all applicants for licenses  
81   under sections one hundred and sixty-three to one hundred and seventy-two, inclusive, of chapter  
82   one hundred and twelve, and shall issue a license to each successful applicant therefor, attesting  
83   to their professional qualifications to be a licensed mental health counselor. After a person has  
84   applied for licensure, no member of the board may supervise such applicant for a fee nor shall  
85   any member vote on any applicant previously supervised by such member.

86           The board shall act as the standards committees for the licensed mental health counselors  
87   profession. The Board, by a majority vote, shall recommend approval or disapproval of the  
88   granting of all licenses for that profession, approve the examination required of applicants for  
89   licensure in that profession, provide for the grading of that examination and provide for other  
90   matters relating to the standards for licensure in the mental health counseling profession.

91           Said board may recommend to the governor and the general court, after a public hearing  
92   which shall be advertised by publication of notices to the appropriate mental health and human  
93   service professional organizations and in major media outlets throughout the commonwealth,  
94   modifications and amendments to sections eighty-eight, eighty-nine and this section and sections  
95   one hundred and sixty-three to one hundred and seventy-two, inclusive, of chapter one hundred  
96   and twelve.

97            Said board shall cause examinations to be held not less than twice annually and shall  
98    evaluate examinations to keep them free from cultural bias.

99            Said board shall annually publish a list of names and addresses of persons who are  
100   licensed under sections one hundred and sixty-three to one hundred and seventy-two inclusive, of  
101   chapter one hundred and twelve.

102           Fees for examinations and for initial and renewal applications shall be determined  
103   annually by the commissioner of administration under the provisions of section three B of  
104   chapter seven.

105           Said board shall establish regulations for continuing educational requirements for  
106   licensees. Said regulations shall not require more than thirty contact hours per year, on average  
107   through the term of the license, of approved continuing education programs as a condition for  
108   continuing registration, nor more than fifteen contact hours per year on average for any licensed  
109   individual during the term of their employment by the commonwealth or any political  
110   subdivisions thereof.

111           The Board may designate an entity (Massachusetts Mental Health Counselors  
112   Association) to set specifications for Continuing Education.

113           The board shall follow DPL established procedures to permit consumers to file written  
114   complaints against licensed individuals and investigate and take appropriate action on such  
115   complaints.

116           SECTION 8. Chapter 112 of the General Laws, as appearing in the 2016 Official Edition  
117   is hereby amended by adding the following new sections:

118                   Section 275. Definitions applicable to Secs. 275 to 284

119                   As used in sections one hundred and sixty-three to one hundred and seventy-two,  
120                   inclusive, the following words shall, unless the context clearly requires otherwise, have the  
121                   following meanings:

122                   "Licensed mental health counselor", a person licensed or eligible for licensure under  
123                   section one hundred and sixty-five.

124                   "Practice of mental health counseling", the rendering of professional services to  
125                   individuals, families or groups for compensation, monetary or otherwise. These professional  
126                   services include: applying the principles, methods and theories of counseling, human  
127                   development, learning theory, group and family dynamics, the etiology of mental illness and  
128                   dysfunctional behavior and psychotherapeutic techniques to define goals and develop treatment  
129                   plans aimed toward the prevention, treatment and resolution of mental and emotional  
130                   dysfunction and intra or interpersonal disorders in all persons irrespective of diagnosis. The  
131                   practice of mental health counseling shall include, but not be limited to, diagnosis and treatment,  
132                   counseling and psychotherapy, of a nonmedical nature of mental and emotional disorders and the  
133                   psychoeducational techniques aimed at prevention of such disorders and consultations to  
134                   individuals, couples, families, groups, organizations and communities.

135                   Practice of mental health counseling in independent practice with individuals diagnosed  
136                   with psychosis may be undertaken by a licensed mental health counselor: (a) who is licensed  
137                   under section 165 on or after March 1, 1992; or (b) who was licensed prior to March 1, 1992 and  
138                   who meets the certification criteria for independent practice with individuals diagnosed with

139 psychosis as established by the board of registration of allied mental health and human services  
140 professions.

141 "Advertise", includes, but is not limited to, distributing or causing to be distributed any  
142 card, sign or device to any person; or the causing, permitting or allowing of any sign or marking  
143 on or in any building or structure, or in any newspaper or magazine or in any directory, or on  
144 radio or television, or by the use of any other means designed to secure public attention.

145 "Use a title or description of", means to hold oneself out to the public as having a  
146 particular status by means of statements on signs, mailboxes, address plates, stationery,  
147 announcement, calling cards or other instruments of professional identification.

148 "Board", the Massachusetts board of registration of Mental Health Counselors.

149 Section 276. Advertisement or engagement in practice of licensed profession; license  
150 requirement; exemptions

151 No individual who is not licensed or exempted from licensure shall advertise the  
152 performance of or use a title or description of:

153 licensed mental health counselor, advisor or consultant; or licensed supervised mental  
154 health counselor

155 No individual who is not licensed or exempted from licensure shall engage in the practice  
156 as a licensed mental health counselor. This does not prevent individuals not eligible to apply for  
157 licensure from advertising and practicing as counselors or therapists, provided that such  
158 individuals do not advertise or otherwise hold themselves out to the public to be licensed mental  
159 health counselors.

160           The following individuals shall be exempt from the requirements of this section:

161           (1) a licensed psychologist, a licensed social worker, a licensed occupational therapist, or

162           a licensed physician or registered nurse.

163           (2) an employee or other agent of a recognized academic institution or alcohol or drug

164           education or awareness program, employee assistance program, or of a federal, state, county or

165           local government institution, program agency, or facility, or a school committee, school district,

166           school board or board of regents while performing those duties constituting employment by such

167           an institution, program, agency or facility; provided, however, that such individuals are

168           performing those activities solely within the agency or under the jurisdiction of such agency;

169           and, provided further, that a license granted under section one hundred and sixty-five need not be

170           a requirement for qualification for civil service examinations nor shall it be a requirement for

171           employment in any state, county or municipal agency.

172           (3) a student in the discipline of mental health counseling or an intern or trainee in

173           mental health counseling receiving qualified supervision approved by the board, and whose

174           training status is designated by such titles as "mental counseling health intern", or a person who

175           is issued a temporary permit by the board to engage in the activities for which licensure is

176           required.

177           Section 277. Mental health counselors; licenses; qualifications

178           The board may issue a license to an applicant as a mental health counselor; provided,

179           however, that each such applicant shall provide satisfactory evidence to the board that such

180           applicant: (1) is of good moral character; (2) has not engaged or is not engaging in any practice

181 or conduct which would be grounds for refusing to issue a license under section one hundred and  
182 sixty-nine;

183 (3) Educational Requirements - demonstrates to the board, the successful completion of a  
184 masters degree in a relevant field from an educational institution licensed by the state in which it  
185 is located and meets national standards for granting of a 60 credit masters degree with a  
186 subspecialization in mental health counseling, or a relevant subspecialization approved by the  
187 board, according to the educational requirements set forth in CMR 262 Section 2 – Requirements  
188 for Licensed Mental Health Counselor .

189 (4) Licensed Supervised Mental Health Counselor - The board may issue a license to an  
190 applicant as a licensed supervised mental health counselor (LSMHC); provided, however, that  
191 each such applicant shall meet all the Educational and Degree Requirements above in paragraph  
192 (3).

193 (5) LSMHCs will show a passing grade on an examination of the Board's choosing (see  
194 section g below)

195 (6) Field Training Requirements -To be eligible for licensure, an applicant must have two  
196 additional years, Post Master's Degree and the receipt of the LSMHC license paragraph (4)  
197 above, of supervised clinical experience in mental health counseling in either a clinic or hospital  
198 licensed by the department of mental health or the department of public health, or accredited by  
199 the Joint Commission on Accreditation of Hospitals or in an equivalent center or institute or  
200 under the direction of a supervisor approved by the board. Mental Health Counseling Field  
201 Training Sites are defined in CMR-262 2.02 Definitions

202                    Licensed Supervised Mental Health Counselors (LSMHC) can only practice mental  
203                    health counseling in a qualified Post Master's Field Placement site as defined above in paragraph  
204                    (5)

205                    (7) Supervision - For purposes of paragraphs (3) and (4) above, "Supervision" shall be  
206                    defined as no less than two hundred hours of supervised clinical experience, at least one hundred  
207                    hours of which shall consist of individual supervision with an Approved Supervisor as defined in  
208                    CMR-262. Section 2.02 Definitions a-g.

209                    Section 278. Examinations; issuance of licenses without examinations

210                    The board shall conduct examinations at least twice a year for both licensure as an  
211                    LSMHC and LMHC, at a time and place designated by the board, in order to determine any  
212                    applicant's qualifications for the practice of mental health counseling.

213                    Examinations may be written or oral as determined by the board. In any written  
214                    examination each applicant shall be designated so that the name shall not be disclosed to the  
215                    board until examinations have been graded.

216                    Examinations shall include questions in such theoretical and applied fields as the board  
217                    deems most suitable to test an applicant's knowledge and competence to engage in the practice of  
218                    mental health counseling.

219                    An applicant shall be held to have passed an examination upon affirmative vote of at least  
220                    five members of the board.

221                    Any individual who fails an examination conducted by the board shall not be admitted to  
222                    a subsequent examination for a period of at least six months.

223           Section 279. Temporary permits

224           The board, at its discretion, may issue a temporary permit, effective for up to one year, to  
225    an individual whose application for licensure under this chapter is being processed by the board,  
226    or to a person awaiting the opportunity to take the first written examination offered by the board  
227    after filing such application.

228           Section 280. License fees; renewals

229           A fee, as determined by the commissioner of administration pursuant to section three B  
230    of chapter seven shall be paid to the board for the original license. Licenses shall be valid for two  
231    years and must be renewed biennially. Any application for renewal of a license which has  
232    expired shall require the payment of a re-registration fee.

233           On or before September thirtieth of the year preceding the expiration of a license, the  
234    secretary of the board shall forward to the holder of the license a form of application for renewal  
235    thereof. Upon the receipt of the completed form and the renewal fee on or before November  
236    thirtieth, the secretary shall issue a new license for the year commencing January first.

237           Section 281. Denial, revocation or suspension of licenses

238           The board, subject to a majority vote of its members, is authorized to deny, revoke or  
239    suspend a license granted pursuant to this chapter on the following grounds:

240           (1) conviction by a court of competent jurisdiction of a crime which the board determines  
241    to be of such a nature as to render such person unfit to practice as a mental health professional.  
242    Said board shall maintain and publish a list of such crimes;

243 (2) violation of ethical standards of the American Mental Health Counselors Association  
244 and American Counseling Association of such a nature as to render such individual unfit to  
245 practice as a mental health professional. Said board shall publish and maintain such ethical  
246 standards;

247 (3) fraud or misrepresentation in obtaining a license; or

248 (4) other just and sufficient cause which renders a person unfit to practice as a mental  
249 health professional.

250        No license may be suspended or revoked for the reasons set forth in the preceding  
251        paragraph without prior notice and opportunity for hearing on such suspension or revocation,  
252        except that the board may, in its discretion, without prior notice or hearing, suspend for up to one  
253        year the license of any individual convicted of a crime as set forth therein. The burden of proof  
254        shall be on the board in any proceeding to suspend or revoke a license. No license may be  
255        suspended or revoked under this section except by majority vote of the full board,  
256        notwithstanding any other provisions.

257 Any individual may file a complaint with the board seeking denial, suspension or  
258 revocation of a license issued or to be issued by the board. Such complaints shall be in a form  
259 prescribed by the board and shall be verified under oath by the complainant or his duly  
260 authorized agent. If the board determines that a complaint alleges facts which, if true, would  
261 require denial, revocation or suspension of a license, it shall promptly conduct a hearing.  
262 Whenever said board establishes that a complaint does not state facts which warrant a hearing,  
263 such complaint may be dismissed.

264                   Said board shall not hear complaints against any licensed individuals for actions which  
265    have occurred in the course of employment by any agency of the commonwealth or its political  
266    subdivisions unless such complaint is received by the board subsequent to the dismissal of a  
267    licensee by such agency for reasons of moral turpitude or gross negligence; provided, however,  
268    that said licensee shall have exhausted all administrative appeals of such dismissal.

269                   Any individual whose license has been suspended or revoked may apply to the board for  
270    vacation of the suspension or reinstatement of the license.

271                   Section 282. Board hearings; subpoena powers

272                   The board shall conduct its proceedings in accordance with the provisions of this chapter  
273    and chapter thirty A. Any individual may be heard by the board in person or by an attorney.  
274    Every vote and official act of the board shall be entered on the record. All hearings and rule  
275    making proceedings shall be open to the public. A stenographic record shall be made of every  
276    hearing before the board.

277                   The board shall have subpoena power to require the attendance and testimony of  
278    witnesses and the production of all books, papers and documents relating to any matter under  
279    investigation. Subpoenas shall be issued by the board upon application by any party to a  
280    proceeding before the board and a showing of general relevance and reasonable scope. Witnesses  
281    summoned before the board shall be paid the same fees and mileage paid witnesses in courts of  
282    the commonwealth. In case of disobedience of a subpoena, the board may apply to the superior  
283    court for an order requiring the person subpoenaed to appear before the board and testify and  
284    produce books, papers, or documents called for by such subpoena.

285           One or more board members or a hearing examiner or other officer appointed by the  
286    board shall preside at hearings.

287           Section 283. Penalties

288           Any individual not licensed under sections one hundred and sixty-three to one hundred  
289    and seventy-two who on March first, nineteen hundred and eighty-nine holds himself out to be or  
290    advertises himself as a mental health counselor in violation of this chapter shall be punished by a  
291    fine not exceeding five hundred dollars for the first offense and five hundred dollars for each  
292    subsequent offense; provided, however, that the board may also proceed in the superior court to  
293    enjoin and restrain any unlicensed individual violating any section of this chapter. The board  
294    shall not be required to post bond at any such proceeding.

295           Section 284. Privilege against disclosures in court, legislative or administrative  
296    proceedings; exercise or waiver of privilege by guardian; scope of privilege

297           (a) Except as hereinafter provided, in a court proceeding, in a proceeding preliminary  
298    thereto or in a legislative or administrative proceeding, a client of a mental health counselor who  
299    is licensed pursuant to the provisions of section 165 or employed in a state, county or municipal  
300    government agency shall have the privilege of refusing to disclose and of preventing a witness  
301    from disclosing any communication relative to the diagnosis or treatment of the client's mental or  
302    emotional condition, wherever made, between the client and the mental health counselor.

303           (b) If a client is incompetent to exercise or waive the privilege, a guardian shall be  
304    appointed to act on the client's behalf under this section. A previously appointed guardian shall  
305    be authorized to so act. Upon the exercise of the privilege granted by this section, the judge or  
306    presiding officer shall instruct the jury that no adverse inference may be drawn therefrom.

307 (c) The privilege granted by this section shall not apply to the following communications:

308 (1) if a mental health counselor, in the course of his diagnosis or treatment of the client,

309 determines that the client is in need of treatment in a hospital for mental or emotional illness or

310 that there is a threat of imminently dangerous activity by the patient against himself or another

311 person and, on the basis of that determination, discloses the communication either for the

312 purpose of placing or retaining the client in the hospital; but, this section shall continue in effect

313 after the patient is in the hospital or placed under arrest or under the supervision of law

314 enforcement authorities;

315 (2) if a judge finds that the client, after having been informed that a communication

316 would not be privileged, has made a communication to a mental health counselor in the course of

317 a psychiatric examination ordered by the court; but, the communication shall be admissible only

318 on issues involving the patient's mental or emotional condition but not as a confession or

319 admission of guilt;

320 (3) in a proceeding, except one involving child custody, in which the client introduces his

321 mental or emotional condition as an element of his claim or defense and the judge or presiding

322 officer finds that it is more important to the interests of justice that the communication be

323 disclosed than that the relationship between client and mental health counselor be protected;

324 (4) in a proceeding after the death of a client in which his mental or emotional condition

325 is introduced by any party claiming or defending through or as beneficiary of the patient as an

326 element of the claim or the defense and the judge or presiding officer finds that it is more

327 important to the interests of justice that the communication be disclosed than that the relationship

328 between client and mental health counselor be protected;

329 (5) in the initiation of proceedings under paragraph C of section 23 of chapter 119 or  
330 under section 24 of said chapter 119 or section 3 of chapter 210 or to give testimony in  
331 connection therewith;

332 (6) in a proceeding whereby the mental health counselor has acquired the information  
333 while conducting an investigation pursuant to section 51B of chapter 119;

334 (7) in a case involving child custody, adoption or the dispensing with the need for consent  
335 to adoption where, upon hearing in chambers, the judge exercises his discretion to determine that  
336 the mental health counselor has evidence bearing significantly on the client's ability to provide  
337 suitable care or custody and it is more important to the welfare of the child that the  
338 communication be disclosed than that the relationship between the client and the mental health  
339 counselor be protected; but, in the case of adoption or the dispensing with the need for consent to  
340 adoption, a judge shall determine that the client has been informed that the communication  
341 should not be privileged; or

342 (8) if in a proceeding brought by the client against the mental health counselor, and in  
343 any malpractice, criminal or license revocation proceeding, in which disclosure is necessary or  
344 relevant to the claim or defense of the mental health counselor.

345 The provisions of this section shall not be construed to prevent third party payer from  
346 inspecting and copying, in the ordinary course of determining eligibility for or entitlement to  
347 benefits, any and all records relating to diagnosis, treatment or other services provided to any  
348 person, including a minor or incompetent, for which coverage, benefit or reimbursement is  
349 claimed, so long as the policy or certificate under which the claim is made provides that such  
350 access to such records is permitted. The provisions of this section shall not be construed to

- 351 prevent access to any such records pursuant to any peer review or utilization review procedures
- 352 applied and implemented in good faith.