

HOUSE No. 2409

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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 clarifying that a facility shall advise clients of right to counsel.

PETITION OF:

NAME:

Angelo M. Scaccia

DISTRICT/ADDRESS:

14th Suffolk

HOUSE No. 2409

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2409) of Angelo M. Scaccia relative to the providing of advise to clients of the right to counsel by certain mental health facilities. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act clarifying that a facility shall advise clients of right to counsel.

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 123 of the General Laws, as appearing in the 2014 Official
2 Edition, is hereby amended by striking out sections 10, 11, and 12 and inserting in place thereof
3 the following new sections:

4 Section 10. (a) Pursuant to departmental regulations on admission procedures, the
5 superintendent may receive and retain on a voluntary basis any person providing the person is in
6 need of care and treatment and providing the admitting facility is suitable for such care and
7 treatment. The application may be made (1) by a person who has attained the age of sixteen, (2)
8 by a parent or guardian of a person on behalf of a person under the age of eighteen years, and (3)
9 by the guardian of a person on behalf of a person under his guardianship. Prior to accepting an
10 application for a voluntary admission, the superintendent shall inform the person making the
11 application of his right to retain and consult with an attorney, or with a person who is working
12 under the supervision of an attorney, and the right to have counsel appointed for him if he is

13 found to be indigent according to the standards in chapter 211D, concerning the legal effect of a
14 voluntary admission. The superintendent may discharge any person admitted under the
15 provisions of this paragraph at any time he deems such discharge in the best interest of such
16 person, provided, however, that if a parent or guardian made the application for admission,
17 fourteen days' notice shall be given to such parent or guardian prior to such discharge.

18 (b) Pursuant to departmental regulations, the superintendent of a facility may treat
19 persons as outpatients providing application for outpatient treatment is made in accordance with
20 the application provisions of paragraph (a). The superintendent may, in the best interest of the
21 person, discontinue the outpatient treatment of a person at any time.

22 (c) The chief officer of any facility of the Veterans Administration within the
23 commonwealth may admit eligible veterans under the provisions of this chapter and thereupon
24 shall be vested with the same powers as the department has under this chapter with respect to
25 retention or discharge.

26 Section 11. Any person retained in a facility under the provisions of paragraph (a) of
27 section ten shall be free to leave such facility at any time, and any parent or guardian who
28 requested the admission of such person may withdraw such person at any time, upon giving
29 written notice to the superintendent. The superintendent may restrict the right to leave or
30 withdraw to normal working hours and weekdays and, in his discretion, may require persons or
31 the parents or guardians of persons to give three days written notice of their intention to leave or
32 withdraw. Where persons or their parents or guardians are required to give three days' notice of
33 intention to leave or withdraw, an examination of such persons may be conducted to determine
34 their clinical progress, their suitability for discharge and to investigate other aspects of their case

35 including their legal competency and their family, home or community situation in the interest of
36 discharging them from the facility. Such persons may be retained at the facility beyond the
37 expiration of the three day notice period if, prior to the expiration of the said three day notice
38 period; the superintendent files with the district court a petition for the commitment of such
39 person at the said facility. Before accepting an application for voluntary admission where the
40 superintendent may require three days written notice of intention to leave or withdraw, the
41 admitting or treating physician shall assess the person's capacity to understand that: (i) the
42 person is agreeing to stay or remain at the hospital; (ii) the person is agreeing to accept
43 treatment; (iii) the person is required to provide the facility with three days written advance
44 notice of the person's intention to leave the facility; (iv) the person has been informed by the
45 superintendent of his right to retain and consult with an attorney, or with a person who is
46 working under the supervision of an attorney, and the right to have counsel appointed for him if
47 he is found to be indigent according to the standards in chapter 211D; and (v) the facility may
48 petition a court for an extended commitment of the person and that he may be held at the facility
49 until the petition is heard by the court. If the physician determines that the person lacks the
50 capacity to understand these facts and consequences of hospitalization, the application shall not
51 be accepted.

52 Section 12. (a) Any physician who is licensed pursuant to section 2 of chapter 112 or
53 qualified psychiatric nurse mental health clinical specialist authorized to practice as such under
54 regulations promulgated pursuant to the provisions of section 80B of said chapter 112 or a
55 qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or
56 a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive,
57 of chapter 112 who, after examining a person, has reason to believe that failure to hospitalize

58 such person would create a likelihood of serious harm by reason of mental illness may restrain or
59 authorize the restraint of such person and apply for the hospitalization of such person for a 3-day
60 period at a public facility or at a private facility authorized for such purposes by the department.
61 If an examination is not possible because of the emergency nature of the case and because of the
62 refusal of the person to consent to such examination, the physician, qualified psychologist,
63 qualified psychiatric nurse mental health clinical specialist or licensed independent clinical social
64 worker on the basis of the facts and circumstances may determine that hospitalization is
65 necessary and may apply therefore. In an emergency situation, if a physician, qualified
66 psychologist, qualified psychiatric nurse mental health clinical specialist or licensed independent
67 clinical social worker is not available, a police officer, who believes that failure to hospitalize a
68 person would create a likelihood of serious harm by reason of mental illness may restrain such
69 person and apply for the hospitalization of such person for a 3-day period at a public facility or a
70 private facility authorized for such purpose by the department. An application for hospitalization
71 shall state the reasons for the restraint of such person and any other relevant information which
72 may assist the admitting physician or physicians. Whenever practicable, prior to transporting
73 such person, the applicant shall telephone or otherwise communicate with a facility to describe
74 the circumstances and known clinical history and to determine whether the facility is the proper
75 facility to receive such person and also to give notice of any restraint to be used and to determine
76 whether such restraint is necessary.

77 (b) Only if the application for hospitalization under the provisions of this section is made
78 by a physician specifically designated to have the authority to admit to a facility in accordance
79 with the regulations of the department, shall such person be admitted to the facility immediately
80 after his reception. If the application is made by someone other than a designated physician, such

81 person shall be given a psychiatric examination by a designated physician immediately after his
82 reception at such facility. If the physician determines that failure to hospitalize such person
83 would create a likelihood of serious harm by reason of mental illness he may admit such person
84 to the facility for care and treatment.

85 Upon admission of a person under the provisions of this subsection, the facility shall
86 inform the person of his right to consult with an attorney, or with a person who is working under
87 the supervision of an attorney, and the right to have counsel appointed for him if he is found to
88 be indigent according to the standards in chapter 211D and that it shall, upon such person's
89 request, notify the committee for public counsel services of the name and location of the person
90 admitted. Said committee for public counsel services shall forthwith appoint an attorney who
91 shall meet with the person. If the appointed attorney determines that the person voluntarily and
92 knowingly waives the right to be represented, or is presently represented or will be represented
93 by another attorney, the appointed attorney shall so notify said committee for public counsel
94 services, which shall withdraw the appointment.

95 Any person admitted under the provisions of this subsection, who has reason to believe
96 that such admission is the result of an abuse or misuse of the provisions of this subsection, may
97 request, or request through counsel an emergency hearing in the district court in whose
98 jurisdiction the facility is located, and unless a delay is requested by the person or through
99 counsel, the district court shall hold such hearing on the day the request is filed with the court or
100 not later than the next business day.

101 (c) No person shall be admitted to a facility under the provisions of this section unless he,
102 or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary

103 admission under the provisions of paragraph (a) of section ten and unless he, or such parent or
104 legal guardian has been informed (1) that he has a right to such voluntary admission, (2) has a
105 right to consult with an attorney, or with a person who is working under the supervision of an
106 attorney, and the right to have counsel appointed for him if he is found to be indigent according
107 to the standards in chapter 211D, and (3) that the period of hospitalization under the provisions
108 of this section cannot exceed three days. At any time during such period of hospitalization, the
109 superintendent may discharge such person if he determines that such person is not in need of care
110 and treatment.

111 (d) A person shall be discharged at the end of the three day period unless the
112 superintendent applies for a commitment under the provisions of sections seven and eight of this
113 chapter or the person remains on a voluntary status.

114 (e) Any person may make application to a district court justice or a justice of the juvenile
115 court department for a three day commitment to a facility of a mentally ill person whom the
116 failure to confine would cause a likelihood of serious harm. The court shall appoint counsel to
117 represent said person. After hearing such evidence as he may consider sufficient, a district court
118 justice or a justice of the juvenile court department may issue a warrant for the apprehension and
119 appearance before him of the alleged mentally ill person, if in his judgment the condition or
120 conduct of such person makes such action necessary or proper. Following apprehension, the
121 court shall have the person examined by a physician designated to have the authority to admit to
122 a facility or examined by a qualified psychologist in accordance with the regulations of the
123 department. If said physician or qualified psychologist reports that the failure to hospitalize the
124 person would create a likelihood of serious harm by reason of mental illness, the court may order
125 the person committed to a facility for a period not to exceed three days, but the superintendent

126 may discharge him at any time within the three day period. The periods of time prescribed or
127 allowed under the provisions of this section shall be computed pursuant to Rule 6 of the
128 Massachusetts Rules of Civil Procedure.