

HOUSE No. 3607

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo J. Puppolo, Jr.

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 relative to temporary guardianship for a person alleged to be incapacitated.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>

HOUSE No. 3607

By Mr. Puppolo of Springfield, a petition (subject to Joint Rule 12) of Angelo J. Puppolo, Jr. and others relative to temporary guardianship for certain incapacitated persons. The Judiciary.

The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
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An Act relative to temporary guardianship for a person alleged to be incapacitated.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 190B of the General Laws is hereby amended by inserting after section 5-308 the
2 following section:-

3 Section 5-308A. (a) Any person interested in the welfare of the person who has no
4 guardian and who is alleged to be incapacitated may petition the probate and family court, the
5 district court or the superior court, which shall within 5 days, convene a tribunal to consist of a
6 single justice of the probate and family court, the district court or the superior court, a physician
7 licensed to practice medicine in the commonwealth pursuant to section 2 of chapter 112 and an
8 attorney authorized to practice law in the commonwealth. The physician shall be selected by the
9 single justice from a list submitted by the Massachusetts Psychiatric Society. The list submitted
10 to the single justice shall consist only of physicians who practice medicine outside the county
11 where the petitioner resides. The attorney shall be selected by the single justice from a list
12 submitted by the Massachusetts Bar Association. The attorney and physician shall, subject to

13 appropriation, each be compensated in an amount to be approved by the chief justice of the trial
14 court.

15 (b) A petition made pursuant to this section shall state: (1) the name and age of the person
16 alleged to be incapacitated, his residence and the date residence was established; (2) the address
17 of the place it is proposed that the person alleged to be incapacitated will reside if the
18 appointment is made; (3) the nature of the circumstances requiring appointment; (4) the
19 particular harm sought to be avoided and the actions which will be necessary by the temporary
20 guardian to avoid the occurrence of the harm; (5) the name and address of the proposed
21 temporary guardian, including the relationship to the person alleged to be incapacitated, the
22 reason why he or she should be selected; (6) the type of guardianship requested, and if a general
23 guardianship, the reason why limited guardianship is inappropriate, and if a limited guardianship,
24 the powers to be granted to the limited guardian; and (7) the name and address of any agent
25 designated under a health care proxy or durable power of attorney of which the person alleged to
26 be incapacitated is the principal. The petitioner shall attach a copy of any such health care proxy
27 or durable power of attorney, if available. The petition shall be accompanied by an affidavit
28 containing facts supporting the statements and requests in the petition.

29 (c) Within 48 hours of being convened, the tribunal shall hold a hearing in which the
30 petitioner shall present an offer of proof that the failure to appoint a temporary guardian for such
31 person will likely result in real harm to the health, safety or welfare of the person alleged to be
32 incapacitated. If the tribunal determines by clear and convincing evidence that failure to appoint
33 a guardian will result in real harm to the health, safety or welfare of the person alleged to be
34 incapacitated, it shall issue an order for a temporary guardian who may exercise only those
35 powers granted in the order. The order shall terminate 60 days after issuance or, if a petition for

36 guardianship is filed pursuant to section 5-303 before such termination, upon the determination
37 by a court on a petition filed pursuant to said section 5-303.

38 (d) At the hearing, the person alleged to be incapacitated shall have the right to be
39 represented by counsel, and, if financially unable to retain adequate representation, to have
40 counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to
41 cross-examine witnesses who appear at the hearing, and to present information. The rules
42 concerning admissibility of evidence in criminal trials shall not apply to the presentation and
43 consideration of information at the hearing.

44 (e) The petitioner shall give written notice 2 days prior to any hearing for the
45 appointment of a temporary guardian pursuant to this section in hand to the person alleged to be
46 incapacitated.

47 (f) Appointment of a temporary guardian pursuant to this section is not a final
48 determination of a person's incapacity.