

HOUSE No. 3720

The Commonwealth of Massachusetts

PRESENTED BY:

James J. O'Day

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 the well-being of new mothers and infants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>

HOUSE No. 3720

By Mr. O'Day of West Boylston, a petition (accompanied by bill, House, No. 3720) of James J. O'Day and others relative to the treatment of certain individuals affected by mental illness, including perinatal psychiatric complications, by the criminal justice system. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to the well-being of new mothers and infants.

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 15 of chapter 123 of the General Laws, as so appearing, is hereby
2 amended by inserting after the word “psychologists”, in lines 7 and 8, the following words:- ;
3 provided however, that a defendant who gave birth within 12 months prior to the crime for which
4 the defendant has been charged shall undergo a screening for perinatal psychiatric complications
5 by a treating physician, psychiatrist or psychologist or other qualified physician or psychologist.

6 SECTION 2. Subsection (a) of section 15 of chapter 123 of the General Laws, as so
7 appearing, is hereby amended by inserting at the end thereof the following new sentence:- When
8 an examination is ordered for a female defendant who suffers or suffered, at the time the crime
9 for which the defendant has been charged with occurred, from mental illness related to a
10 perinatal psychiatric complication such as postpartum psychosis, said examination shall be
11 conducted by an expert in reproductive psychiatry within 48 hours of such order.

12 SECTION 3. Section 16 of chapter 123 of the General Laws, as so appearing, is hereby
13 amended by inserting at the end thereof the following new subsection:-

14 (g) Any person committed to a facility under the provisions of this section who suffers
15 from mental illness related to a perinatal psychiatric complication such as postpartum psychosis
16 shall receive a diagnosis and treatment plan made in consultation with an expert in reproductive
17 psychiatry. Additional services, including but not limited to parenting assessment, parenting
18 capacity building, and parent-child dyadic therapy shall be made available if deemed appropriate
19 by the consulting expert.

20 SECTION 4. Chapter 123 of the General Laws, as so appearing, is hereby amended by
21 adding the following section:-

22

23 Section 37. (a) The department shall appoint a community program director to coordinate
24 the department's role provided for in this section in a particular county or region.

25 (b) Any person committed to a state hospital or other treatment facility under the
26 provisions of section 16 may be placed on outpatient status, from that commitment subject to the
27 procedures and provisions of this section.

28 (c) In the case of any person charged with and found incompetent to stand trial or not
29 guilty by reason of mental illness or mental defect in such proceedings of murder, a violation in
30 which the victim suffers intentionally inflicted great bodily injury, or an act which poses a
31 serious threat of bodily harm to another person, outpatient status under this section shall not be
32 available until that person has actually been confined in a state hospital or other treatment facility

33 for 180 days or more after having been committed under the provisions of law specified in
34 section 16, unless the court finds a suitable placement, including, but not limited to, an outpatient
35 placement program, that would provide the person with more appropriate mental health
36 treatment and the court finds that the placement would not pose a danger to the health or safety
37 of others, including, but not limited to, the safety of the victim and the victim's family.

38 (d) In the case of any person charged with and found incompetent to stand trial or not
39 guilty by reason of mental illness or mental defect of any misdemeanor or any felony other than
40 those described in subsection (c), or found not guilty of any misdemeanor by reason of mental
41 illness or mental defect outpatient status under this section may be granted by the court prior to
42 actual confinement in a state hospital or other treatment facility under the provisions of law
43 specified in section 16.

44 (e) Before any person subject to the provisions of subsection (d) may be placed on
45 outpatient status, the court shall consider all of the following criteria:

46 (i) In the case of a person who is an inpatient, whether the director of the state hospital or
47 other treatment facility to which the person has been committed advises the court that the
48 defendant will not be a danger to the health and safety of others while on outpatient status, and
49 will benefit from such outpatient status.

50 (ii) In all cases, whether the community program director or a designee advises the court
51 that the defendant will not be a danger to the health and safety of others while on outpatient
52 status, will benefit from such status, and identifies an appropriate program of supervision and
53 treatment. In the case of a female defendant who suffers from mental illness related to a perinatal
54 psychiatric complication such as postpartum psychosis, an appropriate treatment program shall

55 be identified in consultation with an expert in reproductive psychiatry. Additional services,
56 including but not limited to parenting assessment, parenting capacity building and parent-child
57 dyadic therapy shall also be made available if deemed appropriate by the consulting expert.

58 (f) Prior to determining whether to place the person on outpatient status, the court shall
59 provide actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a
60 hearing at which the court may specifically order outpatient status for the person.

61 (g) The community program director or a designee shall prepare and submit the
62 evaluation and the treatment plan specified in paragraph (ii) of subsection (e) to the court within
63 15 calendar days after notification by the court to do so, except that in the case of a person who
64 is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after
65 notification by the court to do so.

66 (h) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
67 subsection (e) shall include review and consideration of complete, available information
68 regarding the circumstances of the criminal offense and the person's prior criminal history.

69 (i) Before any person subject to subsection (c) of this section may be placed on outpatient
70 status the court shall consider all of the following criteria:

71 (i) Whether the director of the state hospital or other treatment facility to which the
72 person has been committed advises the committing court and the prosecutor that the defendant
73 would no longer be a danger to the health and safety of others, including himself or herself,
74 while under supervision and treatment in the community, and will benefit from that status.

75 (ii) Whether the community program director advises the court that the defendant will
76 benefit from that status, and identifies an appropriate program of supervision and treatment. In
77 the case of a female defendant who suffers from mental illness related to a perinatal psychiatric
78 complication such as postpartum psychosis, an appropriate treatment program shall be identified
79 in consultation with an expert in reproductive psychiatry. Additional services, including but not
80 limited to parenting assessment, parenting capacity building and parent-child dyadic therapy
81 shall also be made available if deemed appropriate by the consulting expert.

82 (j) Prior to release of a person under subsection (c), the prosecutor shall provide notice of
83 the hearing date and pending release to the victim or next of kin of the victim of the offense for
84 which the person was committed where a request for the notice has been filed with the court, and
85 after a hearing in court, the court shall specifically approve the recommendation and plan for
86 outpatient status. The burden shall be on the victim or next of kin to the victim to keep the court
87 apprised of the party's current mailing address.

88 (k) In any case in which the victim or next of kin to the victim has filed a request for
89 notice with the director of the state hospital or other treatment facility, he or she shall be notified
90 by the director at the inception of any program in which the committed person would be allowed
91 any type of day release unattended by the staff of the facility.

92 (l) The community program director shall prepare and submit the evaluation and the
93 treatment plan specified in paragraph (ii) of subsection (i) to the court within 30 calendar days
94 after notification by the court to do so.

95 (m) Any evaluations and recommendations pursuant to paragraphs (i) and (ii) of
96 subsection (i) shall include review and consideration of complete, available information
97 regarding the circumstances of the criminal offense and the person's prior criminal history.

98 (n) Upon receipt by the committing court of the recommendation of the director of the
99 state hospital or other treatment facility to which the person has been committed that the person
100 may be eligible for outpatient status as set forth in paragraph (i) of subsection (e) or (i) of this
101 section, the court shall immediately forward such recommendation to the community program
102 director, prosecutor, and defense counsel. The court shall provide copies of the arrest reports and
103 the state summary criminal history information to the community program director.

104 (o) Within 30 calendar days the community program director or a designee shall submit
105 to the court and, when appropriate, to the director of the state hospital or other treatment facility,
106 a recommendation regarding the defendant's eligibility for outpatient status, as set forth in
107 paragraph (ii) of subsection (e) or (i) and the recommended plan for outpatient supervision and
108 treatment. The plan shall set forth specific terms and conditions to be followed during outpatient
109 status. The court shall provide copies of this report to the prosecutor and the defense counsel.

110 (p) The court shall calendar the matter for hearing within 15 business days of the receipt
111 of the community program director's report and shall give notice of the hearing date to the
112 prosecutor, defense counsel, the community program director, and, when appropriate, to the
113 director of the state hospital or other facility. In any hearing conducted pursuant to this section,
114 the court shall consider the circumstances and nature of the criminal offense leading to
115 commitment and shall consider the person's prior criminal history.

116 (q) The court shall, after a hearing in court, either approve or disapprove the
117 recommendation for outpatient status. If the approval of the court is given, the defendant shall be
118 placed on outpatient status subject to the terms and conditions specified in the supervision and
119 treatment plan. If the outpatient treatment occurs in a county other than the county of
120 commitment, the court shall transmit a copy of the case record to the superior court in the county
121 where outpatient treatment occurs, so that the record will be available if revocation proceedings
122 are initiated pursuant to subsection (w) or (x).

123 (r) The department shall be responsible for the supervision of persons placed on
124 outpatient status under this title. The commissioner shall designate, for each county or region, a
125 community program director who shall be responsible for administering the community
126 treatment programs for persons committed from that county or region under the provisions
127 specified in subsection (b).

128 (s) The department shall notify in writing the chief justice of the trial court, the district
129 attorney of each county, and the executive director of the committee on public counsel services
130 as to the person designated to be the community program director for each county or region, and
131 timely written notice shall be given whenever a new community program director is to be
132 designated.

133 (t) The community program director shall be the outpatient treatment supervisor of
134 persons placed on outpatient status under this section. The community program director may
135 delegate the outpatient treatment supervision responsibility to a designee.

136 (u) The outpatient treatment supervisor shall, at 90-day intervals following the beginning
137 of outpatient treatment, submit to the court, the prosecutor and defense counsel, and to the

138 community program director, where appropriate, a report setting forth the status and progress of
139 the defendant.

140 (v) Outpatient status shall be for a period not to exceed 1 year. At the end of the period of
141 outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the
142 defense counsel, and the community program director, and after a hearing in court, either
143 discharge the person from commitment under appropriate provisions of the law, order the person
144 confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing,
145 the community program director shall furnish a report and recommendation to the medical
146 director of the state hospital or other treatment facility, where appropriate, and to the court,
147 which the court shall make available to the prosecutor and defense counsel. The person shall
148 remain on outpatient status until the court renders its decision unless hospitalized under other
149 provision of the law. The hearing pursuant to the provisions of this section shall be held no later
150 than 30 days after the end of the 1 year period of outpatient status unless good cause exists. The
151 court shall transmit a copy of its order to the community program director or a designee.

152

153 (w) If at any time during the outpatient period, the outpatient treatment supervisor is of
154 the opinion that the person requires extended inpatient treatment or refuses to accept further
155 outpatient treatment and supervision, the community program director shall notify the superior
156 court in either the county which approved outpatient status or in the county where outpatient
157 treatment is being provided of such opinion by means of a written request for revocation of
158 outpatient status. The community program director shall furnish a copy of this request to the

159 defense counsel and to the prosecutor in both counties if the request is made in the county of
160 treatment rather than the county of commitment.

161 Within 15 business days, the court where the request was filed shall hold a hearing and
162 shall either approve or disapprove the request for revocation of outpatient status. If the court
163 approves the request for revocation, the court shall order that the person be confined in a state
164 hospital or other treatment facility approved by the community program director. The court shall
165 transmit a copy of its order to the community program director or a designee. Where the county
166 of treatment and the county of commitment differ and revocation occurs in the county of
167 treatment, the court shall enter the name of the committing county and its case number on the
168 order of revocation and shall send a copy of the order to the committing court and the prosecutor
169 and defense counsel in the county of commitment.

170 (x) If at any time during the outpatient period the prosecutor is of the opinion that the
171 person is a danger to the health and safety of others while on that status, the prosecutor may
172 petition the court for a hearing to determine whether the person shall be continued on that status.
173 Upon receipt of the petition, the court shall calendar the case for further proceedings within 15
174 business days and the clerk shall notify the person, the community program director, and the
175 attorney of record for the person of the hearing date. Upon failure of the person to appear as
176 noticed, if a proper affidavit of service has been filed with the court, the court may issue a *ca-pias*
177 to compel the attendance of such person. If, after a hearing in court conducted using the same
178 standards used in conducting probation revocation hearings pursuant to section 3 of chapter 279,
179 the judge determines that the person is a danger to the health and safety of others, the court shall
180 order that the person be confined in a state hospital or other treatment facility which has been
181 approved by the community program director.

182 (y) Upon the filing of a request for revocation under subsection (w) or subsection (x) and
183 pending the court's decision on revocation, the person subject to revocation may be confined in a
184 facility designated by the community program director when it is the opinion of that director that
185 the person will now be a danger to self or to another while on outpatient status and that to delay
186 confinement until the revocation hearing would pose an imminent risk of harm to the person or
187 to another. The facility so designated shall continue the patient's program of treatment, shall
188 provide adequate security so as to ensure both the safety of the person and the safety of others in
189 the facility, and shall, to the extent possible, minimize interference with the person's program of
190 treatment. Upon the request of the community program director or a designee, a peace officer
191 shall take, or cause to be taken, the person into custody and transport the person to a facility as
192 described in subsection (z) and designated by the community program director for confinement
193 under this section. Within 1 business day after the person is confined in a jail under this section,
194 the community program director shall apply in writing to the court for authorization to confine
195 the person pending the hearing under subsection (w) or subsection (x). The application shall be
196 in the form of a declaration, and shall specify the behavior or other reason justifying the
197 confinement of the person in a jail. Upon receipt of the application for confinement, the court
198 shall consider and rule upon it, and if the court authorizes detention in a jail, the court shall
199 actually serve copies of all orders and all documents filed by the community program director
200 upon the prosecuting and defense counsel. The community program director shall notify the
201 court in writing of the confinement of the person and of the factual basis for the opinion that the
202 immediate confinement in a jail was necessary. The court shall supply a copy of these documents
203 to the prosecutor and defense counsel.

204 (z) The facility designated by the community program director may be a state hospital, a
205 local treatment facility, a county jail, or any other appropriate facility, so long as the facility can
206 continue the person's program of treatment, provide adequate security, and minimize
207 interference with the person's program of treatment. If the facility designated by the community
208 program director is a county jail, the patient shall be separated from the general population of the
209 jail. A county jail may not be designated unless the services specified above are provided, and
210 accommodations are provided which ensure both the safety of the person and the safety of the
211 general population of the jail. Within 3 business days of the patient's confinement in a jail, the
212 community program director shall report to the court regarding what type of treatment the patient
213 is receiving in the facility. If there is evidence that the treatment program is not being complied
214 with, or accommodations have not been provided which ensure both the safety of the committed
215 person and the safety of the general population of the jail, the court shall order the person
216 transferred to an appropriate facility, including an appropriate state hospital.

217 (aa) Nothing in this section shall prevent hospitalization pursuant to the provisions of
218 section 12.

219 (bb) A person whose confinement in a treatment facility under subsection (w) or
220 subsection (x) is approved by the court shall not be released again to outpatient status unless
221 court approval is obtained under subsection (e) or subsection (i).

222 (cc) No person who is on outpatient status pursuant to this section shall leave this state
223 without first obtaining prior written approval to do so from the committing court. The prior
224 written approval of the court for the person to leave this state shall specify when the person may
225 leave, when the person is required to return, and may specify other conditions or limitations at

226 the discretion of the court. The written approval for the person to leave this state may be in a
227 form and format chosen by the committing court.

228 (dd) In no event shall the court give written approval for the person to leave this state
229 without providing notice to the prosecutor, the defense counsel, and the community program
230 director. The court may conduct a hearing on the question of whether the person should be
231 allowed to leave this state and what conditions or limitations, if any, should be imposed.

232 (ee) Any person who violates subsection (dd) is guilty of a misdemeanor and upon
233 conviction shall be punished by imprisonment for not more than 6 months in a house of
234 correction or by a fine of not more than \$1,000.

235 (ff) The department shall be responsible for the community treatment and supervision of
236 judicially committed patients. These services shall be available on a county or regional basis.
237 The department may provide these services directly or through contract with private providers.
238 The program or programs through which these services are provided shall be known as the
239 forensic conditional release program.

240 (gg) The department shall contact all regional mental health programs by January 1,
241 2021, to determine their interest in providing an appropriate level of supervision and treatment of
242 judicially committed patients at reasonable cost. Regional mental health programs may agree or
243 refuse to operate such a program.

244 (hh) No later than January 1, 2022, and by January 1 of each subsequent year, all state
245 hospitals or other treatment facilities participating in the forensic conditional release program
246 shall report to the commissioner the following information: (i) the cost of the program to the

247 facility; (ii) the demographic profiles of persons receiving supervision and treatment in the
248 program; and (iii) the rates of adherence to treatment under the program.

249 (ii) No later than January 1, 2022, and by January 1 of each subsequent year, the chief
250 justice of the trial court shall report to the commissioner the following information: rates of
251 reoffense while these persons are served by the program and after their discharge.

252 (jj) The department shall conduct yearly evaluations of the forensic conditional release
253 program. An evaluation of the program shall determine its effectiveness in successfully
254 reintegrating these persons into society after release from state institutions. This evaluation of
255 program effectiveness shall include, but not be limited to, a determination of the rates of
256 reoffense while these persons are served by the program and after their discharge. This
257 evaluation shall also address the effectiveness of the various treatment components of the
258 program and their intensity.

259 (kk) The department shall ensure consistent data gathering and program standards for use
260 statewide by the forensic conditional release program.

261 (ll) The department of correction, and the executive office of public safety and security
262 shall cooperate with the department in conducting this evaluation.

263 (mm) The administrators and the supervision and treatment staff of the forensic
264 conditional release program shall not be held criminally or civilly liable for any criminal acts
265 committed by the persons on parole or judicial commitment status who receive supervision or
266 treatment.

267 (nn) The court retains jurisdiction over the person until the end of the period of the
268 assisted outpatient treatment established under this section or until the court finds that the person
269 no longer meets the criteria in this section.