

SENATE No. 2274

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

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:

Joan B. Lovely

Second Essex

James J. O'Day

14th Worcester

SENATE No. 2274

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 2274) (subject to Joint Rule 12) of Joan B. Lovely and James J. O'Day for legislation relative to the well-being of new mothers and infants. 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 Section 37. (a) The department shall appoint a community program director to coordinate
23 the department's role provided for in this section in a particular county or region.

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

27 (c) In the case of any person charged with and found incompetent to stand trial or not
28 guilty by reason of mental illness or mental defect in such proceedings of murder, a violation in
29 which the victim suffers intentionally inflicted great bodily injury, or an act that poses a serious
30 threat of bodily harm to another person, outpatient status under this section shall not be available
31 until that person has actually been confined in a state hospital or other treatment facility for 180
32 days or more after having been committed under the provisions of law specified in section 16,
33 unless the court finds a suitable placement, including, but not limited to, an outpatient placement

34 program, that would provide the person with more appropriate mental health treatment and the
35 court finds that the placement would not pose a danger to the health or safety of others,
36 including, but not limited to, the safety of the victim and the victim's family.

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

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

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

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

55 including but not limited to parenting assessment, parenting capacity building and parent-child
56 dyadic therapy shall also be made available if deemed appropriate by the consulting expert.

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

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

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

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

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

74 (ii) Whether the community program director advises the court that the defendant will
75 benefit from that status, and identifies an appropriate program of supervision and treatment. In

76 the case of a female defendant who suffers from mental illness related to a perinatal psychiatric
77 complication such as postpartum psychosis, an appropriate treatment program shall be identified
78 in consultation with an expert in reproductive psychiatry. Additional services, including but not
79 limited to parenting assessment, parenting capacity building and parent-child dyadic therapy
80 shall also be made available if deemed appropriate by the consulting expert.

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

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

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

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

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

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

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

115 (q) The court shall, after a hearing in court, either approve or disapprove the
116 recommendation for outpatient status. If the approval of the court is given, the defendant shall be
117 placed on outpatient status subject to the terms and conditions specified in the supervision and
118 treatment plan. If the outpatient treatment occurs in a county other than the county of

119 commitment, the court shall transmit a copy of the case record to the superior court in the county
120 where outpatient treatment occurs, so that the record will be available if revocation proceedings
121 are initiated pursuant to subsection (w) or (x).

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

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

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

135 (u) The outpatient treatment supervisor shall, at 90-day intervals following the beginning
136 of outpatient treatment, submit to the court, the prosecutor and defense counsel, and to the
137 community program director, where appropriate, a report setting forth the status and progress of
138 the defendant.

139 (v) Outpatient status shall be for a period not to exceed 1 year. At the end of the period of
140 outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the

141 defense counsel, and the community program director, and after a hearing in court, either
142 discharge the person from commitment under appropriate provisions of the law, order the person
143 confined to a treatment facility, or renew its approval of outpatient status. Prior to such hearing,
144 the community program director shall furnish a report and recommendation to the medical
145 director of the state hospital or other treatment facility, where appropriate, and to the court,
146 which the court shall make available to the prosecutor and defense counsel. The person shall
147 remain on outpatient status until the court renders its decision unless hospitalized under other
148 provision of the law. The hearing pursuant to the provisions of this section shall be held no later
149 than 30 days after the end of the 1 year period of outpatient status unless good cause exists. The
150 court shall transmit a copy of its order to the community program director or a designee.

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

159 Within 15 business days, the court where the request was filed shall hold a hearing and
160 shall either approve or disapprove the request for revocation of outpatient status. If the court
161 approves the request for revocation, the court shall order that the person be confined in a state
162 hospital or other treatment facility approved by the community program director. The court shall
163 transmit a copy of its order to the community program director or a designee. Where the county

164 of treatment and the county of commitment differ and revocation occurs in the county of
165 treatment, the court shall enter the name of the committing county and its case number on the
166 order of revocation and shall send a copy of the order to the committing court and the prosecutor
167 and defense counsel in the county of commitment.

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

180 (y) Upon the filing of a request for revocation under subsection (w) or subsection (x) and
181 pending the court's decision on revocation, the person subject to revocation may be confined in a
182 facility designated by the community program director when it is the opinion of that director that
183 the person will now be a danger to self or to another while on outpatient status and that to delay
184 confinement until the revocation hearing would pose an imminent risk of harm to the person or
185 to another. The facility so designated shall continue the patient's program of treatment, shall
186 provide adequate security so as to ensure both the safety of the person and the safety of others in

187 the facility, and shall, to the extent possible, minimize interference with the person's program of
188 treatment. Upon the request of the community program director or a designee, a peace officer
189 shall take, or cause to be taken, the person into custody and transport the person to a facility as
190 described in subsection (z) and designated by the community program director for confinement
191 under this section. Within 1 business day after the person is confined in a jail under this section,
192 the community program director shall apply in writing to the court for authorization to confine
193 the person pending the hearing under subsection (w) or subsection (x). The application shall be
194 in the form of a declaration, and shall specify the behavior or other reason justifying the
195 confinement of the person in a jail. Upon receipt of the application for confinement, the court
196 shall consider and rule upon it, and if the court authorizes detention in a jail, the court shall
197 actually serve copies of all orders and all documents filed by the community program director
198 upon the prosecuting and defense counsel. The community program director shall notify the
199 court in writing of the confinement of the person and of the factual basis for the opinion that the
200 immediate confinement in a jail was necessary. The court shall supply a copy of these documents
201 to the prosecutor and defense counsel.

202 (z) The facility designated by the community program director may be a state hospital, a
203 local treatment facility, a county jail, or any other appropriate facility, so long as the facility can
204 continue the person's program of treatment, provide adequate security, and minimize
205 interference with the person's program of treatment. If the facility designated by the community
206 program director is a county jail, the patient shall be separated from the general population of the
207 jail. A county jail may not be designated unless the services specified above are provided, and
208 accommodations are provided that ensure both the safety of the person and the safety of the
209 general population of the jail. Within 3 business days of the patient's confinement in a jail, the

210 community program director shall report to the court regarding what type of treatment the patient
211 is receiving in the facility. If there is evidence that the treatment program is not being complied
212 with, or accommodations have not been provided that ensure both the safety of the committed
213 person and the safety of the general population of the jail, the court shall order the person
214 transferred to an appropriate facility, including an appropriate state hospital.

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

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

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

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

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

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

238 (gg) The department shall contact all regional mental health programs by January 1,
239 2021, to determine their interest in providing an appropriate level of supervision and treatment of
240 judicially committed patients at reasonable cost. Regional mental health programs may agree or
241 refuse to operate such a program.

242 (hh) No later than January 1, 2022, and by January 1 of each subsequent year, all state
243 hospitals or other treatment facilities participating in the forensic conditional release program
244 shall report to the commissioner the following information: (i) the cost of the program to the
245 facility; (ii) the demographic profiles of persons receiving supervision and treatment in the
246 program; and (iii) the rates of adherence to treatment under the program.

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

250 (jj) The department shall conduct yearly evaluations of the forensic conditional release
251 program. An evaluation of the program shall determine its effectiveness in successfully

252 reintegrating these persons into society after release from state institutions. This evaluation of
253 program effectiveness shall include, but not be limited to, a determination of the rates of
254 reoffense while these persons are served by the program and after their discharge. This
255 evaluation shall also address the effectiveness of the various treatment components of the
256 program and their intensity.

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

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

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

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