

SENATE No. 812

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 privileged communications.

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

SENATE No. 812

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 812) of James B. Eldridge for legislation relative to privileged communications. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to privileged communications.

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 19A of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by adding at the end thereof the following new subsection:-

3 (g) This section shall not apply to a person who is retained by an attorney to assist the
4 attorney in his or her representation of an individual client or employed by a legal service
5 provider to assist its attorneys in their representation of individual clients if the information that
6 provides reasonable cause for the person to believe that an elderly person is suffering from or has
7 suffered from abuse became known to the person in connection with his or her retention by the
8 attorney or his or her employment by the legal service provider.

9 SECTION 2. Section 1 of chapter 19C of the General Laws, as appearing in the 2012
10 Official Edition, is hereby amended by adding at the end of the definition of “Mandated
11 Reporter” the following new sentence:-

12 A “mandated reporter” shall not include a person who is retained by an attorney to assist
13 the attorney in his or her representation of an individual client or employed by a legal service
14 provider to assist its attorneys in their representation of individual clients if the person becomes
15 aware of a reportable condition in connection with his or her retention by the attorney or his or
16 her employment by a legal service provider.

17 SECTION 3. Section 10 of said chapter 19C, as appearing in the 2012 Official Edition,
18 is hereby amended by adding at the end thereof the following new paragraph:-

19 This section shall not apply to a person who is retained by an attorney to assist the
20 attorney in his or her representation of an individual client or employed by a legal service
21 provider to assist its attorneys in their representation of individual clients if the person becomes
22 aware of a reportable condition in connection with his or her retention by the attorney or his or
23 her employment by a legal service provider or if the information that provides reasonable cause
24 for the person to believe that a disabled person is suffering from or has suffered from abuse
25 became known to the person in connection with his or her retention by the attorney or his or her
26 employment by a legal service provider. Notwithstanding subsection (b) of section 3, the
27 commission may not promulgate rules or regulations to require such a person to notify the
28 commission of such reportable condition or abuse.

29 SECTION 4. Section 72G of chapter 111 of the General Laws, as appearing in the 2012
30 Official Edition, is hereby amended by adding at the end thereof the following new paragraph:-

31 This section shall not apply to a person who is retained by an attorney to assist the
32 attorney in his or her representation of an individual client or employed by a legal service
33 provider to assist its attorneys in their representation of individual clients if the information that

34 provides reasonable cause for the person to believe that a patient or resident has been abused,
35 mistreated, or neglected or has had property misappropriated became known to the person in
36 connection with his or her retention by the attorney or his or her employment by a legal service
37 provider.

38 SECTION 5. Section 21 of chapter 119 of the General Laws, as most recently amended
39 by Chapter 3 of the Acts of 2013, is hereby further amended by adding at the end of the
40 definition of “Mandated Reporter” the following new sentence:-

41 A “mandated reporter” shall not include a person who is retained by an attorney to assist
42 the attorney in his or her representation of an individual client or employed by a legal service
43 provider to assist its attorneys in their representation of individual clients if the facts that provide
44 reasonable cause for the person to believe that a child is suffering physical or emotional injury
45 under the circumstances described in section 51A(a) became known to the person in connection
46 with his or her retention by the attorney or his or her employment by a legal service provider.

47 SECTION 6. Section 51A of chapter 119 of the General Laws, as appearing in the 2012
48 Official Edition, is hereby amended by adding at the end thereof the following new subsection:-

49 (l) This section shall not apply to a person who is retained by an attorney to assist the
50 attorney in his or her representation of an individual client or employed by a legal service
51 provider to assist its attorneys in their representation of individual clients if the information that
52 provides reasonable cause for the person to believe that a child is suffering or has suffered
53 physical or emotional injury under the circumstances described in subsection (a) became known
54 to the person in connection with his or her retention by the attorney or his or her employment by
55 a legal service provider. No board of registration created under chapter 13 may require such a

56 person with such knowledge to make a report of the type described in subsection (a) as a
57 condition of registration or impose discipline on such a person under section 61 of chapter 112
58 for failing to make such a report.

59 SECTION 7. Section 51B of chapter 119 of the General Laws, as appearing in the 2012
60 Official Edition, is hereby amended by striking out subsection (m) and inserting in place thereof
61 the following:-

62 (m) Notwithstanding any privilege created by statute or common law relating to
63 confidential communications or any statute prohibiting the disclosure of information but subject
64 to subsection (j) and to subsection (s) of section 51A, a mandated reporter shall answer questions
65 and provide information posed by the department relating to an investigation conducted under
66 this section, whether or not that person filed the 51A report being investigated. A statutory or
67 common law privilege shall not preclude the admission of any such information, other than
68 information described in subsection (s), in any civil proceeding concerning abuse or neglect of a
69 child, placement or custody of a child.

70 SECTION 8. Said section 51B of said chapter 119, as so appearing, is hereby further
71 amended by adding at the end thereof the following new subsection:-

72 (s) This section shall not apply to a person who is retained by an attorney to assist the
73 attorney in his or her representation of an individual client or employed by a legal service
74 provider to assist its attorneys in their representation of individual clients if the information that
75 provides reasonable cause for the person to believe that a child is suffering or has suffered
76 physical or emotional injury under the circumstances described in subsection (a) became known

77 to the person in connection with his or her retention by the attorney or his or her employment by
78 a legal service provider.