

HOUSE No. 646

Accompanying the petition of Salem D. Towne for an amendment of the laws relating to the commitment of insane persons, mental incompetents and feeble minded persons and to their estates. Legal Affairs. January 15.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Twenty-Three

AN ACT

Relating to Insane Persons, Mental Incompetents and Feeble-minded Persons, and their Estates.

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. The term "insane person", as used in this
2 act, shall be construed to include idiots, and any person
3 so insane and distracted in his mind as to endanger his
4 own person or property, or the person and property of
5 another, or others, if allowed to go at large.

6 The phrases "incompetent", "mental incompetent",
7 "incapable" and "feeble-minded" as used in this act,
8 shall be construed to mean any person who, though not
9 insane, is by reason of old age, disease, weakness of mind,
10 feebleness of mind, or from any other cause, incapable,
11 unassisted, to properly manage and take care of himself or
12 his property, and by reason thereof, would be likely to
13 be deceived or imposed upon by artful or designing
14 persons.

1 SECTION 2. The probate judges of the several counties
2 of the state of Massachusetts shall each appoint a lunacy
3 commission. Said commission shall consist of two per-
4 sons, both of whom shall be licensed physicians of
5 reputable character, resident in the county. The duties
6 of said lunacy commission shall be to consider and take
7 under observation such patients as shall be referred to
8 them by the probate judge, as hereinafter provided in this
9 act.

10 The members of said commission shall hold office
11 during the pleasure of the probate judge in their respec-
12 tive counties, and said judge may, if he deem it best,
13 appoint new and different commissioners for each investi-
14 gation.

15 Said commission shall sit at such place or places, and
16 at such time or times as it may determine, and shall make
17 an examination of the person whose condition is to be
18 inquired into, as provided hereafter in this act, save that
19 the judge must, by order, fix the time and place for the
20 first session of the commission, and at least five days'
21 notice of such time and place shall be given by the clerk
22 of the court or the judge thereof to the person complained
23 of as hereinafter provided, unless in an aggravated case,
24 waiver of such notice is made by the guardian ad litem
25 with the permission of the court or the judge thereof.

1 SECTION 3. Wherever any reputable person shall file
2 with any probate court, or with the clerk of the judge
3 thereof in vacation, a duly verified complaint, alleging
4 that any person in said county is so insane or distracted
5 in his mind as to endanger his own person or property,
6 or the person or property of another, or others, if allowed
7 to go at large; or that he is, by reason of old age, disease,
8 weakness of mind, feebleness of mind, or from any other

9 cause, incapable, unassisted, to properly manage and take
10 care of himself or his property, and therefore would be
11 likely to be deceived or imposed upon by artful or de-
12 signing persons; and praying that inquiry therein be had,
13 the said court or the judge thereof shall forthwith issue
14 an order in the name of the people, directing any officer
15 of said court, or any person who shall be appointed or
16 designated by the said court or judge, to execute the same
17 by immediately taking such patient into custody, as
18 hereinbefore and may hereinafter be provided.

19 Upon executing the said order, a copy of the complaint
20 and order shall be delivered to the person so apprehended,
21 and until the final determination of the said inquiry into
22 the mental condition of the said alleged insane, distracted
23 or feeble-minded person, said person shall be confined in
24 a hospital or some other convenient or suitable place, to
25 be designated by the said court or judge; provided, that
26 when any sheriff or constable shall find in his county any
27 such insane or distracted person at large, he may appre-
28 hend said person without an order of the court, save that
29 if any such person be so apprehended without an order of
30 court, he shall be forthwith taken before the probate court
31 or the judge thereof, which said court or judge shall forth-
32 with determine whether an examination into the mental
33 condition of the said person is desirable; and, if de-
34 sirable, shall make such like order of detention as may be
35 made in cases where a patient is apprehended pursuant
36 to formal complaint.

37 And provided, that, when, in the opinion of the said
38 probate court, or the judge thereof, it will be for the best
39 interests of said insane person, that he be confined in
40 some hospital or institution, or in some other convenient
41 and suitable place for observation, the said probate court,
42 or the judge thereof, may make an order committing said

43 person to some hospital or other suitable place, where said
44 patient shall be confined, observed, treated and cared for
45 until such time as the judge of the probate court may
46 determine whether or not an examination into the mental
47 condition of said person is desirable.

1 SECTION 4. Whenever any complaint, as hereinbefore
2 provided, shall be filed with the probate court, or the
3 clerk thereof, said complaint shall be referred to said
4 lunacy commission. Said alleged insane or distracted or
5 feeble-minded person must be present at the first meeting
6 of the commission, and shall have the right to be present
7 at all its meetings; and the court or judge shall appoint
8 an attorney-at-law, resident in the county of the inquiry,
9 who shall be given at least two day's notice of the first
10 session of the commission, and who shall represent the
11 person complained against as his guardian ad litem, and
12 who shall attend all meetings of the commission.

13 In case either of the commissioners appointed declines,
14 or is unable to serve, the court shall appoint a substitute,
15 and in case the commissioners appointed disagree in their
16 findings, the court or judge shall appoint a third com-
17 missioner of like qualifications to sit with them with all
18 the powers possessed by either of them.

1 SECTION 5. The court or judge, at the request of the
2 commission, or of the guardian ad litem or county
3 attorney, shall cause to be issued subpoenas and compel
4 the attendance of witnesses at the sessions of the com-
5 mission; and the commission in its sessions shall have the
6 power to administer oaths, and shall hear all such evi-
7 dence as may be offered, bearing upon the merits of the
8 case, as well as the statements of the party complained of,
9 or his guardian ad litem, and of such counsel as may be

10 employed by the said party complained against. Said
11 commission shall have the right to examine witnesses
12 whether they be subpoenaed or not, and shall make such
13 investigation and inquiry as it deems fit, in order to
14 ascertain the truth of the matter alleged in the complaint.

1 SECTION 6. The commission, after making examina-
2 tion, and considering the facts in the case, shall within
3 forty-eight hours after its first session, unless the time be
4 extended by the court or judge, make a sworn report, to
5 be returned in open court, in which it shall answer the
6 following questions, to be best of its knowledge, informa-
7 tion and belief:—

8 1. Is the person complained against so insane or dis-
9 tracted in his mind as to endanger his own person or
10 property, or the person or property of another, or others,
11 if allowed to go at large?

12 2. Is such person, by reason of old age, disease, weak-
13 ness of mind, or from any other cause, incapable, un-
14 assisted, to properly manage and take care of himself or
15 his property?

16 3. Does said person have any personal or real estate?

17 4. Is such person so mentally defective as to be in-
18 competent to care for himself or his property?

19 Said report must be subscribed and sworn to by all
20 members of said lunacy commission, and when presented
21 to the court, said guardian ad litem must be present.

22 Notice of the presentation of said report shall be given
23 to the board of county commissioners, or to the county
24 attorney, at which time they may be present, and may
25 make any inquiry that they may deem proper on behalf
26 of said county.

1 SECTION 7. Upon the return of the report of the com-
2 mission, the court or judge shall enter an order approving

3 said report, and its findings as concurred in by any two
4 members of the commission. If it appears from said
5 report that the person complained of is so insane or dis-
6 tracted in his mind as to endanger his own person or
7 property, or the person or property of another, or others,
8 if allowed to go at large it shall be the duty of the court
9 or judge to enter an order committing the said person to
10 the state insane asylum; provided, however, that the
11 court or judge may, in his or its discretion, instead of
12 committing the said patient to the state insane asylum,
13 designate some hospital or other suitable place, where
14 said patient shall be confined, treated and cared for.

15 When such hospital or other suitable place shall be
16 designated at the request of such patient, or any friend
17 or relative of such patient, the county shall not pay any
18 of the costs or expenses of the maintenance of such
19 patient.

20 If it appear from said report that said person is so
21 mentally defective as to be incompetent to care for him-
22 self, or his property, it shall be the duty of the court or
23 judge to enter an order committing the said person to the
24 state home and training school for mental defectives,
25 where said patient shall be confined, treated and cared
26 for.

27 If it appear from said report that the said person is
28 not dangerously insane, as aforesaid, nor mentally de-
29 fective; but that he is, by reason of old age, disease,
30 weakness of mind, feebleness of mind, or from any other
31 cause, incapable, unassisted, to properly manage and take
32 care of himself or his property, the court or judge shall
33 order the said person so found mentally incompetent, to
34 be placed in the custody of some friend or relative, who
35 will assume his custody and care, if any such friend or
36 relative be found. Otherwise the court or judge shall

37 commit the said patient to the said state insane asylum,
38 or other hospital, or place suitable for his confinement
39 and treatment.

40 If the judge or court shall order that said patient be
41 confined in the state insane asylum, in the state home for
42 mental defectives, or in any hospital or place suitable for
43 his confinement and treatment, the court or judge shall
44 designate some trained attendant to accompany the
45 patient to the said state insane asylum, if the commitment
46 is to the said state insane asylum, or to the state home
47 for mental defectives, or to some hospital or suitable
48 place of confinement, if said patient is committed thereto;
49 and every female patient committed to said asylum, state
50 home for mental defectives, hospital or other suitable
51 place, shall be accompanied by a female attendant, unless
52 accompanied by her husband, father, brother, or son, and
53 the said attendant shall have the entire control, care and
54 custody of said patient until delivered to the designated
55 place of commitment.

56 And provided, that the court or judge may make such
57 other order relative to the persons to accompany the
58 patient to the place of detention and treatment as to the
59 said court or judge seems proper.

1 SECTION 8. If the commission reports that the person
2 complained of has real or personal estate, and the report
3 in other respects requires the patient to be committed to
4 the care of some person or institution as before set forth,
5 it shall be the duty of the probate court in this proceed-
6 ing, or at any time thereafter, if and when it shall be
7 shown to the court that said insane person or mental in-
8 competent has real or personal estate, to appoint some fit
9 person to be conservator of the estate of the patient and
10 if any patient committed under this act has any estate in

11 the hands of his conservator an account of his keeping
12 shall be rendered by the proper authorities of the asylum
13 or hospital, or the owner or owners of any other place to
14 which he has been committed, or where he has been
15 treated, to the probate court by which said commitment
16 was ordered, and upon the further order of said court the
17 conservator shall pay said account out of any money in
18 his hands belonging to said estate, and which may be
19 lawfully applied.

20 If said person so committed has no estate said account
21 shall be presented to the board of county commissioners
22 of said county, whose duty it shall be, on satisfactory
23 proof of the justice of such account, to issue their warrant
24 to the treasurer of the county therefor; provided, how-
25 ever, that no such account for the treatment in the state
26 insane asylum shall be so presented or audited.

1 SECTION 9. Upon the discharge of any insane person
2 or mental incompetent as by law provided, the probate
3 court or the judge thereof, shall immediately cause the
4 conservator of said mental incompetent or insane person's
5 estate to appear before the court and proceed to close the
6 estate without delay and without further notice.

1 SECTION 10. Any order of any probate court or judge
2 directing that any person be held in custody or detained,
3 shall be full protection to all persons acting thereunder to
4 hold said patient, as against all persons; provided, that if
5 any person ordered to be committed, or any friend in his
6 behalf, or any person interested in the proceedings, is dis-
7 satisfied with the order of the judge or court in making
8 the commitment, pursuant to the report of the commis-
9 sion, he may, within five days after the making of such
10 order, demand in writing that the questions considered

11 by the commission be tried by a jury before the said
12 probate court. Thereupon, that court must cause a jury
13 of six lawful men to be summoned and to be in attendance
14 at a date to be fixed by the court.

15 At such trial the cause against the person complained
16 of must be represented by the district attorney of the
17 county, or deputy district attorney, or if there be no
18 district attorney or deputy district attorney living in such
19 county, then by some person to be appointed by the
20 probate judge to represent such county, and the court
21 shall appoint a guardian ad litem to represent the person
22 so complained of, unless said patient appear by his own
23 counsel.

24 The trial shall be had as provided by law for the trial
25 of civil causes before a jury, and the jury shall return
26 answers to the interrogatories theretofore submitted to
27 the commission as hereinbefore set forth; and upon the
28 finding of the jury, the judge shall enter a decree in ac-
29 cordance with the said finding, making an order of com-
30 mitment as upon the original hearing, or discharging the
31 person complained of as the case may be; and pending
32 the determination of any such jury trial the probate court
33 or judge thereof may make such order as it may consider
34 proper in the premises relating to the custody and care of
35 the person complained of.

1 SECTION 11. If there are not in any county of this
2 state a sufficient number of physicians to make up the
3 lunacy commission, as aforesaid, the county judge or
4 court shall appoint one physician and one other reputable
5 person who is a legal resident and freeholder of the county
6 as such lunacy commission.

1 SECTION 12. Every commissioner serving under this
2 act shall receive for his services in each inquiry a sum not

3 to exceed ten dollars, to be fixed by the court or judge,
4 together with his necessary expenses and all costs and
5 expenses in proceedings thereunder shall be payable as by
6 statute is now provided in lunacy inquisitions. Every
7 person serving under this act as guardian ad litem, or ap-
8 pointed to represent the county, shall receive for his
9 services in each inquiry a sum not to exceed ten dollars,
10 to be fixed by the court or judge, excepting in case of a
11 trial by jury, in which case such guardian ad litem and
12 such person appointed to represent the county shall
13 receive for their services such sums as may be fixed by
14 the court or judge.

15 The fees and expenses of said commissioners and
16 guardian ad litem, shall be paid by warrants drawn upon
17 the county treasurer, and in like manner as provided for
18 the expense of care of insane and mental incompetents in
19 section eight of this act.

1 SECTION 13. Every inquest concerning the lunacy of
2 any person shall be brought and conducted in the name
3 of the people of the state of Massachusetts, and shall be
4 prosecuted by the district attorney of the respective
5 counties, or his deputy, of the respective districts, unless
6 said district attorney be absent, unable or unwilling to
7 act, when, and in such cases, the probate judge shall ap-
8 point a duly qualified attorney or other suitable person
9 to prosecute said inquest.

1 SECTION 14. No inquest shall be had as to the lunacy
2 of any person charged with a criminal offense until such
3 criminal offense shall have been tried or dismissed, unless
4 the judge of the district court wherein such criminal
5 offense is pending shall order such inquest.

1 SECTION 15. Nothing in this chapter shall be so con-
2 strued as to exempt the relatives and next of kin of any
3 insane or mentally incompetent pauper from their liability
4 for his or her support; and all moneys expended by any
5 county for the maintenance of any such insane or men-
6 tally incompetent person, under the provisions of this
7 chapter, may be recovered of the person or persons who
8 are or may be liable by law for his or her maintenance.

1 SECTION 16. No member of any lunacy commission
2 shall be a relative of the person applying for the order or
3 of the person alleged to be insane, or a manager, superin-
4 tendent, proprietor, officer, stockholder, or have any
5 pecuniary interest, directly, or be an attending physician,
6 in the institution to which it is proposed to commit such
7 person.

1 SECTION 17. Chapter one hundred and twenty-three
2 of the General Laws of Massachusetts is hereby repealed
3 and all acts or parts of acts in conflict with the provisions
4 of this act are likewise hereby repealed.

