

HOUSE No. 2588

By Mr. Belmonte of Framingham, petition of Robert A. Belmonte for protecting the constitutional rights and privacy of persons under the supervision of the Commissioner of Mental Health. Social Welfare.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

AN ACT PROTECTING THE CIVIL RIGHTS OF INCOMPETENT PERSONS UNDER THE SUPERVISION OF THE COMMISSIONER OF MENTAL HEALTH.

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 123 of the General Laws is hereby amended by
- 2 adding at the end of section 2 thereof a new section:—
- 3 *Section 2A.* The commonwealth shall have the duty to
- 4 protect the constitutional rights and the privacy of those
- 5 persons committed to its care under the provisions of section
- 6 two of this chapter including those persons committed to
- 7 Bridgewater correctional institution or to Bridgewater state
- 8 hospital under the provisions of this chapter or chapter one
- 9 hundred and twenty-five or the provisions of any other
- 10 statute or law governing such cases, whenever such persons
- 11 do not have guardians or conservators of their property,
- 12 appointed by order of a probate court having jurisdiction. If
- 13 the right to privacy or any other constitutional right of any
- 14 such person is violated the commissioner of mental health
- 15 shall proceed, with the department of the attorney general
- 16 acting as counsel, on behalf of such person for the protection
- 17 of such rights or the recovery of any damages or other relief
- 18 therefor as such person would have proceeded if he or she
- 19 were competent. It shall be the duty of the commissioner of

20 mental health to bring such action within thirty days of
21 learning of any such violation of the constitutional rights of
22 such person. In determining whether there may have been a
23 violation of such rights the commissioner of mental health
24 shall submit relevant facts in writing to the attorney general
25 and may rely on the written opinion of the attorney general
26 concerning the existence of any such violations. The author-
27 ity and duty delegated to the commissioner of mental health
28 herein shall include bringing action in the courts in jurisdic-
29 tions outside the commonwealth including but not limited to
30 courts of other states and territories and the United States.

31 If there is a recovery of money or other property by either
32 judicial decision or settlement agreement between the parties
33 arising from litigation commenced under the authority and
34 direction of this section two A the attorney general shall
35 forthwith petition the probate court in the county of last
36 residence of the person in whose behalf such litigation was
37 commenced to appoint as conservator or guardian of prop-
38 erty, as said court may deem appropriate, a disinterested,
39 qualified individual or institution to hold and manage such
40 property for the benefit of the person for whom such litiga-
41 tion was commenced and to distribute any property remain-
42 ing upon the death of such person in accordance with the
43 applicable laws of the commonwealth governing distribution
44 and descent of property.