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# HOUSE . . . . . No. 4279

## The Commonwealth of Massachusetts

OFFICE OF THE GOVERNOR
**COMMONWEALTH OF MASSACHUSETTS**
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

*July 2, 2014*

To the Honorable Senate and House of Representatives,

I am filing for your consideration the attached proposal, entitled "An Act Reforming the Delivery of Forensic Mental Health Services."

This legislation will modernize our approach to caring for individuals with mental illness who have come to the attention of the Commonwealth through our criminal justice system. It has a straightforward goal — to ensure that individuals with mental illness receive the appropriate care in the appropriate setting — and uses a number of tools to achieve it.

The issues that bring individuals with mental illness into our criminal justice system are not susceptible to a simple solution. Nor is the question of how to treat these individuals susceptible to an easy answer. We must be thoughtful and creative in our approach. Our courts need more options when presented with mentally ill defendants. Our inpatient care system needs more resources. Our agencies, particularly the Department of Mental Health and the Department of Correction, need a statutory framework that harvests their expertise.

This legislation seeks to meet those needs. Specifically, it will:

- Create an enhanced security mental health facility, operated by the Department of Mental Health, which will provide care and treatment to individuals who (i) are receiving inpatient care but who, because of violent episodes, require treatment in a more secure setting; (ii) have been committed by a trial court for criminal competency evaluations or treatment

tailored to the restoration of competency; or (iii) have been found not guilty by reason of mental illness and require inpatient psychiatric treatment.

- Provide that only patients currently serving a criminal sentence may be committed to Bridgewater State Hospital.

- Create a division of forensic mental health services within the Department of Mental Health, which will provide competency evaluations and treatment in community settings and support the trial courts' efforts to develop and expand mental health courts.

Implementation of this legislation and related forensic mental health policy initiatives will create short-term and long-term costs. In the short term, I will propose supplemental funding of up to $10 million to add clinical staff at Bridgewater State Hospital to ensure patients committed there are getting the best possible care. To create a new medium security Department of Mental Health facility in the future, as outlined in this legislation, the Commonwealth will also incur new capital and operating costs, which will be identified in the project assessment to be shared with the Legislature.

This legislation represents a systemic change to the way our criminal justice and mental health systems interact. By opening up space in Department of Mental Health settings—including enhanced security placements—and establishing a framework for clinical services in the community, we will ensure the delivery of comprehensive mental health treatment in the appropriate settings.

Accordingly, I urge your prompt consideration and enactment of this bill.

Respectfully submitted,

Deval L. Patrick,
*Governor*

# HOUSE . . . . . No. 4279

Message from His Excellency the Governor recommending legislation relative to reforming the delivery of forensic mental health services.

## The Commonwealth of Massachusetts

**In the Year Two Thousand Fourteen**

An Act reforming the delivery of forensic mental health services.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 7 of Chapter 19, as appearing in the 2012 Official Edition, is hereby amended by inserting after the first paragraph the following paragraphs:–

Subject to appropriation, the commissioner shall establish and designate one or more state facilities, or units thereof, as an enhanced security facility to be operated in accordance with section 16A of this chapter, the provisions of chapter 123 and regulations of the department. An enhanced security facility shall provide forensic services for individuals committed for evaluation or treatment pursuant to sections 15 through 18 of chapter 123, as well as continuing care inpatient services for individuals determined to require enhanced security in accordance with the regulations of the department. An enhanced security facility shall have the capacity to provide a secure treatment environment for adults and adolescents, and shall include provisions for the appropriate separation of patient populations according to age and gender. An enhanced security facility shall provide appropriate levels of security to provide for public safety as well as the safety of patients and staff therein as determined by the department, provided, however, that an enhanced security facility is not a strict security correctional facility.

The department shall adopt regulations for the operation of an enhanced security facility.

SECTION 2. Chapter 19 of the General Laws, as so appearing, is hereby amended by inserting after section 16 the following section:–

Section 16A. The department shall develop and maintain, subject to appropriation and in accordance with its standards, a division of forensic mental health services to provide forensic services that shall include, but shall not be limited to: court-ordered evaluations of competence to stand trial, criminal responsibility, and aid-in-sentencing; programs and services for restoration of competence for individuals who have been adjudicated incompetent to stand trial; evaluations

23 of need for care and treatment for individuals who have been adjudicated incompetent to stand
24 trial, not guilty by reason of mental illness or who are being held in correctional facilities or
25 places of detention; the setting of standards for and certification of clinicians qualified to perform
26 evaluations; and specialized risk assessment evaluations; and the establishment and maintenance
27 of court clinics for the performance of clinical consultations and court-ordered evaluations.
28 Forensic services may also include, but shall not be limited to: programs and services for police
29 and pre-trial diversion; post adjudication alternatives to incarceration, including specialty court
30 services; and re-entry.

31 The division shall give major consideration to the development of forensic health services
32 that can be provided in the community or in settings other than an inpatient facility.

33 SECTION 3. Chapter 123 of the General Laws is hereby amended by striking out section
34 1, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:–

35 Section 1. The following words as used in this section and sections two to thirty-seven,
36 inclusive, shall, unless the context otherwise requires, have the following meanings:

37 "Commissioner", the commissioner of mental health.

38 "Department", the department of mental health.

39 "Dependent funds", those funds which a resident is unable to manage or spend himself as
40 determined by the periodic review.

41 "District court", the district court within the jurisdiction of which a facility is located, and
42 shall include the Boston municipal court and juvenile court as applicable.

43 "Enhanced security facility", a public facility, or units within a public facility, for the
44 care and treatment of persons with mental illness, except for the Bridgewater State Hospital,
45 designated by the department to provide forensic services and continuing care services for
46 individuals determined to require enhanced security in accordance with the regulations of the
47 department. An enhanced security facility provides appropriate levels of security to provide for
48 the public safety and the safety of persons, including patients and staff, therein, as determined by
49 the department; provided, however, that an enhanced security facility is not a strict security
50 correctional facility.

51 "Facility", a public or private facility for the care and treatment of persons with mental
52 illness, specifically including any enhanced security facility and specifically excluding the
53 Bridgewater State Hospital.

54 "Fiduciary", any guardian, conservator, trustee, representative payee as appointed by a
55 federal agency, or other person who receives or maintains funds on behalf of another.

56 “Forensic Services”, include but are not limited to: court ordered evaluations of
57 competence to stand trial, criminal responsibility, and aid-in-sentencing; programs and services
58 for restoration of competence for individuals who have been adjudicated incompetent to stand
59 trial; and evaluations of need for care and treatment for individuals who have been adjudicated
60 incompetent to stand trial, not guilty by reason of insanity or who are being held in correctional
61 facilities awaiting trial.

62 “Funds”, all cash, checks, negotiable instruments or other income or liquid personal
63 property, and governmental and private pensions and payments, including payments pursuant to
64 a Social Security Administration program.

65 “Independent funds”, those funds which a resident is able to manage or spend himself as
66 determined by the periodic review.

67 “Licensed mental health professional”, any person who holds himself out to the general
68 public as one providing mental health services and who is required pursuant to such practice to
69 obtain a license from the commonwealth.

70 “Likelihood of serious harm”, (1) a substantial risk of physical harm to the person
71 himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm;
72 (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or
73 other violent behavior or evidence that others are placed in reasonable fear of violent behavior
74 and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury
75 to the person himself as manifested by evidence that such person's judgment is so affected that
76 he is unable to protect himself in the community and that reasonable provision for his protection
77 is not available in the community.

78 “Patient”, any person with whom a licensed mental health professional has established a
79 mental health professional-patient relationship.

80 “Psychiatric nurse”, a nurse licensed pursuant to section seventy-four of chapter one
81 hundred and twelve who specializes in mental health or psychiatric nursing.

82 “Psychiatrist”, a physician licensed pursuant to section two of chapter one hundred and
83 twelve who specializes in the practice of psychiatry.

84 “Psychologist”, an individual licensed pursuant to section one hundred and eighteen to
85 one hundred and twenty-nine, inclusive, of chapter one hundred and twelve.

86 “Qualified physician”, a physician who is licensed pursuant to section two of chapter one
87 hundred and twelve who is designated by and who meets qualifications required by the
88 regulations of the department; provided that different qualifications may be established for
89 different purposes of this chapter. A qualified physician need not be an employee of the
90 department or of any facility of the department.

91 “Qualified psychiatric nurse mental health clinical specialist”, a psychiatric nurse mental
92 health clinical specialist authorized to practice as such under regulations promulgated pursuant to
93 the provisions of section eighty B of chapter one hundred and twelve who is designated by and
94 meets qualifications required by the regulations of the department, provided that different
95 qualifications may be established for different purposes of this chapter. A qualified psychiatric
96 nurse mental health clinical specialist need not be an employee of the department or of any
97 facility of the department.

98 “Qualified psychologist”, a psychologist who is licensed pursuant to sections one
99 hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and
100 twelve who is designated by and who meets qualifications required by the regulations of the
101 department, provided that different qualifications may be established for different purposes of
102 this chapter. A qualified psychologist need not be an employee of the department or of any
103 facility of the department.

104 “Reasonable precautions”, any licensed mental health professional shall be deemed to
105 have taken reasonable precautions, as that term is used in section thirty-six B, if such
106 professional makes reasonable efforts to take one or more of the following actions as would be
107 taken by a reasonably prudent member of his profession under the same or similar
108 circumstances:--

109 (a) communicates a threat of death or serious bodily injury to the reasonably identified
110 victim or victims;

111 (b) notifies an appropriate law enforcement agency in the vicinity where the patient or
112 any potential victim resides;

113 (c) arranges for the patient to be hospitalized voluntarily;

114 (d) takes appropriate steps, within the legal scope of practice of his profession, to initiate
115 proceedings for involuntary hospitalization.

116 “Restoration Services”, education and treatment provided by the department to assist an
117 individual who has been found incompetent to stand trial attain or regain the skills necessary to
118 become competent to stand trial.

119 “Restraint”, bodily physical force, mechanical devices, chemicals, confinement in a place
120 of seclusion other than the placement of an inpatient or resident in his room for the night, or any
121 other means which unreasonably limit freedom of movement.

122 “Social worker”, an individual licensed pursuant to sections one hundred and thirty to one
123 hundred and thirty-two, inclusive, of chapter one hundred and twelve.

124 "Strict security correctional facility", a public facility for the evaluation, care and
125 treatment of persons committed pursuant to section 15(e) or 18 of this chapter operated by the
126 department of corrections that provides a level of security equivalent to at least a medium
127 security prison.

128 "Superintendent", the superintendent or other head of a public or private facility.

129 SECTION 4. Chapter 123 of the General Laws is hereby amended by striking out section
130 3, as appearing in the 2012 Official Edition, and inserting in place thereof the following section:–

131 The department may transfer any person from any facility, including an enhanced
132 security facility, to any other facility which the department determines is suitable for the care and
133 treatment of such person; provided that no transfer to a private facility shall occur except with
134 the approval of the superintendent thereof; and provided further that no person may be
135 transferred to an enhanced security facility unless the commissioner or designee has determined
136 in accordance with regulations of the department that, considering the safety of the person, other
137 patients, staff or the public, the person requires treatment in a setting of enhanced security. At
138 least six days before a transfer from a facility occurs, the superintendent shall give written notice
139 thereof to the person and to the nearest relative, unless said person knowingly objects, or
140 guardian of such person; provided, however, if the transfer must be made immediately because
141 of an emergency, such notice shall be given within twenty-four hours after the transfer. Except
142 in emergency cases, no person who at any time prior to transfer has given notice of his intention
143 to leave a facility under the provisions of section eleven shall be transferred until a final
144 determination has been made as to whether such person should be retained in a facility.

145 SECTION 5. Chapter 123 is hereby amended by striking out section 6, as appearing in
146 the 2012 Official Addition, and inserting in place thereof the following section:–

147 (a) No person shall be retained at a facility or at the Bridgewater state hospital except
148 under the provisions of paragraph (a) of section ten, the provisions of paragraphs (a), (b), and (c)
149 of section twelve, paragraph (e) of section sixteen and section thirty-five or except under a court
150 order or except during the pendency of a petition for commitment. A court order of commitment
151 to a facility or to the Bridgewater state hospital shall be valid for the period stipulated in this
152 chapter or, if no such period is so stipulated, for one year. A petition for the commitment of a
153 person may not be issued except as authorized under the provisions of this chapter.

154 (b) Following the filing of a petition for commitment to a facility or to the Bridgewater
155 state hospital, a hearing shall be held unless the hearing is waived in writing by the person after
156 consultation with his counsel and the waiver is accepted by the court. In the event the hearing is
157 waived, the person may request a hearing for good cause shown at any time during the period of
158 commitment.

159 SECTION 6. Section 7 of chapter 123 of the General Laws, as appearing in the 2012
160 Official Edition, is hereby amended by striking out, in line 2, the words "or the division of the
161 juvenile court department."

162 SECTION 7. Section 7 of chapter 123 of the General Laws, as so appearing, is hereby
163 amended by striking out paragraph (b) and inserting in place thereof the following paragraph:–

164 (b) The medical director of the Bridgewater state hospital, the commissioner of mental
165 health, or with the approval of the commissioner of mental health, the superintendent of a
166 facility, may petition the court in whose jurisdiction the facility or hospital is located for the
167 commitment to the Bridgewater state hospital of any male patient at said facility or hospital, who
168 is at the time of the petition convicted of a crime and committed pursuant to paragraph (e) of
169 section 15 or convicted of a crime and serving a sentence and committed pursuant to section 18,
170 when it is determined that the failure to hospitalize in a strict security correctional facility would
171 create a serious risk to the safety of the person, other patients, staff or the public.

172 SECTION 8. Chapter 123 is hereby amended by striking out section 8, as appearing in
173 the 2012 Official Addition, and inserting in place thereof the following section:–

174 Section 8. (a) After a hearing, unless such hearing is waived in writing, the court shall
175 not order the commitment of a person at a facility or shall not renew such order unless it finds
176 after a hearing that (1) such person is mentally ill, and (2) the discharge of such person from a
177 facility would create a likelihood of serious harm.

178 (b) After a hearing on a petition filed pursuant to section 18, unless such hearing is
179 waived in writing, the district court shall not order the commitment of a person at the
180 Bridgewater state hospital or shall not renew such order unless it finds that such person: (1) is
181 serving a criminal sentence; (2) has a mental illness; (3) would create a likelihood of serious
182 harm if discharged from a facility; (4) is not a proper subject for commitment to any facility of
183 the department, including an enhanced security facility; and (5) would create a serious risk to the
184 safety of the person, other patients, staff or the public if not retained in a strict security
185 correctional facility. If the court is unable to make the findings required by this paragraph, but
186 makes the findings required by paragraph (a), the court shall order the commitment of the person
187 to a facility designated by the department.

188 (c) The court shall render its decision on the petition within ten days of the completion of
189 the hearing, provided, that for reasons stated in writing by the court, the administrative justice for
190 the district court department may extend said ten day period.

191 (d) The first order of commitment of a person under this section shall be valid for a
192 period of six months and all subsequent commitments shall be valid for a period of one year;
193 provided that if such commitments occur at the expiration or termination of a commitment under
194 any other section of this chapter, other than a commitment for observation, the first order of

195 commitment shall be valid for a period of one year; and provided further, that the first order of
196 commitment to the Bridgewater state hospital of a person under commitment to a facility shall be
197 valid for a period of six months. If no hearing is held before the expiration of the six months
198 commitment, the court may not recommit the person without a hearing.

199 (e) In the event that the hearing is waived and on the basis of a petition filed under the
200 authority of this chapter showing that a person is mentally ill and that the discharge of the person
201 from a facility would create a likelihood of serious harm, the court which has jurisdiction over
202 the commitment of the person may order the commitment of the person to such facility.

203 (f) In the event that the hearing is waived and on the basis of a petition filed under the
204 authority of 18 of this chapter showing that a person: (1) is serving a criminal sentence; (2) has a
205 mental illness; (2) would create a likelihood of serious harm if discharged from a facility; (3)
206 such person is not a proper subject for commitment to any facility of the department, including
207 an enhanced security facility; (4) is not a proper subject for commitment to any facility of the
208 department, including an enhanced security facility; and (5) would create serious risk to the
209 safety of the person, other patients, staff or the public if not retained in a strict security
210 correctional facility, the court with jurisdiction over the criminal case, or a facility, as applicable,
211 or the Brockton district court if a person is retained in the Bridgewater state hospital, may order
212 the commitment of the person to said hospital.

213 SECTION 9. Section 9 of chapter 123 of the General Laws, as appearing in the 2012
214 Official Edition, is hereby amended by striking out paragraph (b) and inserting in place thereof
215 the following paragraph:–

216 (b) Any person may make written application to a justice of superior court at any time in
217 the county with jurisdiction over the facility stating that he believes or has reason to believe that
218 a person named in such application is retained in a facility or the Bridgewater state hospital, who
219 should no longer be so retained, or that a person named in such application is the subject of a
220 medical treatment order issued by a district court and should not be so treated, giving the names
221 of all persons interested in his confinement or medical treatment and requesting his discharge or
222 other relief. The justice within seven days thereof shall order notice of the time and place for
223 hearing to be given to the superintendent or medical director and to such other persons as he
224 considers proper; and such hearing shall be given promptly before a justice of the superior court
225 with jurisdiction over the facility. The justice shall appoint an attorney to represent any applicant
226 whom he finds to be indigent. The alleged mentally ill person may be brought before the justice
227 at the hearing upon a writ of habeas corpus, upon a request approved by the justice. Pending the
228 decision of the court such person may be retained in the custody of the superintendent or medical
229 director. If the justice decides that the person is not mentally ill or that failure to retain the
230 person in a facility or the Bridgewater state hospital would not create a likelihood of serious
231 harm by reason of mental illness, said person shall be discharged. If the justice decides that a
232 patient at the Bridgewater state hospital has a mental illness and that failure to retain the person

233 in a facility would create a likelihood of serious harm by reason of mental illness, but does not
234 require treatment in a strict security correctional facility, he shall be transferred to a facility
235 designated by the department. If the justice decides that a person who is the subject of a medical
236 treatment order issued pursuant to section 8B should not be treated in accordance with such
237 order, the justice shall issue an appropriate order modifying or vacating such order and, where
238 such previous order is modified, the court shall monitor said modified order by means of a
239 guardian or otherwise as provided in paragraph (e) of section 8B.

240 SECTION 10. Section 12 of chapter 123 of the General Laws, as appearing in the 2012
241 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof
242 the following paragraph:–

243 (a) Any physician who is licensed pursuant to section 2 of chapter 112 or qualified
244 psychiatric nurse mental health clinical specialist authorized to practice as such under regulations
245 promulgated pursuant to the provisions of section 80B of said chapter 112 or a qualified
246 psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112, or a
247 licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of
248 chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such
249 person would create a likelihood of serious harm by reason of mental illness may restrain or
250 authorize the restraint of such person and apply for the hospitalization of such person for a 3-day
251 period at a public facility or at a private facility authorized for such purposes by the department;
252 provided however that no person shall be admitted to a public facility under this section unless
253 such admission is authorized by the commissioner or designee. If an examination is not possible
254 because of the emergency nature of the case and because of the refusal of the person to consent
255 to such examination, or in an emergency situation where an examination cannot be accomplished
256 within a reasonable period of time, but the facts and circumstances are conveyed by a licensed
257 mental health professional who has personally observed the person,, the physician, qualified
258 psychologist, qualified psychiatric nurse mental health clinical specialist or licensed independent
259 clinical social worker on the basis of the facts and circumstances may determine that
260 hospitalization is necessary and may apply therefore. In an emergency situation, if a physician,
261 qualified psychologist, qualified psychiatric nurse mental health clinical specialist or licensed
262 independent clinical social worker is not available, a police officer, who believes that failure to
263 hospitalize a person would create a likelihood of serious harm by reason of mental illness may
264 restrain such person and apply for the hospitalization of such person for a 3-day period at a
265 public facility or a private facility authorized for such purpose by the department. An application
266 for hospitalization shall state the reasons for the restraint of such person and any other relevant
267 information which may assist the admitting physician or physicians. Whenever practicable, prior
268 to transporting such person, the applicant shall telephone or otherwise communicate with a
269 facility to describe the circumstances and known clinical history and to determine whether the
270 facility is the proper facility to receive such person and also to give notice of any restraint to be
271 used and to determine whether such restraint is necessary.

272 SECTION 11. Section 12 of chapter 123, as so appearing, is hereby amended by striking
273 out paragraph (e) and inserting in place thereof the following paragraph:

274 (e) Any person may make application to a justice of the district court for a three day
275 commitment to a facility of a mentally ill person whom the failure to confine would cause a
276 likelihood of serious harm. The court shall appoint counsel to represent said person. After
277 hearing such evidence as he may consider sufficient, the justice may issue a warrant for the
278 apprehension and appearance before him of the alleged mentally ill person, if in his judgment the
279 condition or conduct of such person makes such action necessary or proper. Following
280 apprehension, the court shall have the person examined by a physician designated to have the
281 authority to admit to a facility or examined by a qualified psychologist in accordance with the
282 regulations of the department. If said physician or qualified psychologist reports that the failure
283 to hospitalize the person would create a likelihood of serious harm by reason of mental illness,
284 the court may order the person committed to a public facility or to a private facility authorized
285 for such purposes by the department for a period not to exceed 3 days; provided however that no
286 person shall be admitted to a public facility under this section unless such admission is
287 authorized by the commissioner or designee; and provided further that the superintendent may
288 discharge him at any time within the three day period. The periods of time prescribed or allowed
289 under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts
290 Rules of Civil Procedure.

291 SECTION 12. Section 13 of chapter 123 of the General Laws is hereby repealed.

292 SECTION 13. Chapter 123 of the General Laws is hereby amended by striking out
293 section 14, as appearing in the 2012 Official Edition, and inserting in place thereof the following
294 section:–

295 Whenever the medical director of the Bridgewater state hospital certifies that the failure
296 to retain any person in a strict security facility would not create an serious risk to the safety of
297 the person, other patients, staff or the public, but that such person is in need of further care and
298 treatment in a facility, he shall bring the matter before the court for a determination of whether
299 the person should be transferred to a facility designated by the commissioner or designee.

300 SECTION 14. Chapter 123 of the General Laws is hereby amended by striking out
301 section 15, as appearing in the 2012 Official Edition, and inserting in place thereof the following
302 section:–

303 (a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal
304 case is competent to stand trial or is criminally responsible by reason of mental illness or mental
305 defect, it may at any stage of the proceedings after the return of an indictment or the issuance of
306 a criminal complaint against the defendant, order an examination of such defendant to be
307 conducted by one or more qualified physicians or one or more qualified psychologists.
308 Whenever practicable, examinations shall be conducted at the court house or place of detention

309 where the person is being held and determinations of competence to stand trial made following
310 this initial examination. When an examination is ordered, the court shall instruct the examining
311 physician or psychologist in the law for determining mental competence to stand trial and
312 criminal responsibility.

313 (b) If, after the examination described in paragraph (a), the court has reason to believe
314 that further observation and examination are necessary in order to determine whether mental
315 illness or mental defect have so affected a person that he is not competent to stand trial or not
316 criminally responsible for the crime or crimes with which he has been charged, the court may
317 order that the person undergo further examination to be conducted by one or more qualified
318 physicians or psychologists: (1) in the community as a condition of recognizance or at the place
319 of detention if the person is held in lieu of bail or following a determination of dangerousness,
320 such examination to be completed within 20 days or such longer period as the court may order;
321 (2) in a facility for a period not to exceed 20 days for observation and further examination;
322 provided however that no person shall be hospitalized unless the examining physician or
323 psychologist reports that the failure to hospitalize the person would create a likelihood of serious
324 harm by reason of mental illness or provides a substantial basis for a finding that hospitalization
325 is necessary to further examine the defendant and determine whether he has a mental illness.
326 Copies of the complaints or indictments and the physician's or psychologist's report under
327 paragraph (a) shall be delivered to the qualified physician or psychologist conducting the
328 examination or to the facility with the person. If, before the expiration of such 20 day period, an
329 examining qualified physician or an examining qualified psychologist believes that examination
330 and observation for more than 20 days is necessary, he shall so notify the court and shall request
331 in writing an extension of the 20 day period, specifying the reason or reasons for which such
332 further period of time is necessary. Upon the receipt of such request, the court may extend said
333 observation period, but in no event shall the period exceed 40 days from the date of the initial
334 court order of for evaluation; provided, however, if a person who has been hospitalized pursuant
335 to this section requests continued care and treatment during the pendency of the criminal
336 proceedings against him and the superintendent or medical director agrees to provide such care
337 and treatment, the court may order the further hospitalization of such person at a facility
338 designated by the department.

339 (c) At the conclusion of the examination or the observation period, the examining
340 physician or psychologist shall forthwith give to the court written signed reports of their
341 findings, including the clinical findings bearing on the issue of competence to stand trial, the
342 basis for any opinion regarding the defendant's competence to stand trial and findings relating
343 whether there is a substantial probability that the defendant can be restored to competence within
344 a reasonable period of time, or criminal responsibility. Such reports shall also contain an
345 opinion, supported by clinical findings, as to whether the defendant is in need of treatment and
346 care offered by the department.

347 (d) If on the basis of such reports the court is satisfied that the defendant is competent to
348 stand trial, the case shall continue according to the usual course of criminal proceedings;
349 otherwise the court shall hold a hearing on whether the defendant is competent to stand trial;
350 provided that at any time before trial any party to the case may request a hearing on whether the
351 defendant is competent to stand trial. A finding of incompetency shall require a preponderance
352 of the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be
353 stayed until such time as the defendant becomes competent to stand trial, unless the case is
354 dismissed. Restoration services shall be delivered until a determination by the court with input
355 from a qualified psychologist or psychiatrist who has examined the person's competence to stand
356 trial, that there is no substantial likelihood that the person is able to attain the skills necessary for
357 competence to stand trial. Such restoration services shall not exceed one year unless a the court
358 finds, based on a clinical opinion, that the person has made progress towards restoration and that
359 there continues to be a substantial likelihood that the person can be restored to competence
360 within a reasonable period of time. For individuals for whom restoration is not obtained,
361 dismissal of the matter should be considered consistent with paragraph (f) of section 16.

362 (e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may
363 order a psychiatric or other clinical examination to be conducted at the court or place of
364 detention and, after such examination, it may also order a period of observation in an enhanced
365 security facility, or at the Bridgewater state hospital, but only if such person is male, the court
366 determines that failure to retain him in a strict security correctional facility would create a
367 serious risk to the safety of the person, other patients staff or the public. The purpose of such
368 observation or examination shall be to aid the court in sentencing. Such period of observation or
369 examination shall not exceed forty days. During such period of observation, the superintendent
370 or medical director may petition the court for commitment of such person. The court, after
371 imposing sentence on said person, may hear the petition as provided in section eighteen, and if
372 the court makes necessary findings as set forth in section eight, it may in its discretion commit
373 the person to a facility designated by the department or the Bridgewater state hospital. Such
374 order of commitment shall be valid for a period of six months. All subsequent proceedings for
375 commitment shall take place under the provisions of said section eighteen in the district court
376 which has jurisdiction of the facility or hospital. A person committed to a facility or Bridgewater
377 state hospital pursuant to this section shall have said time credited against the sentence imposed
378 as provided in paragraph (c) of said section eighteen.

379 (f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section,
380 a court may order a psychiatric or psychological examination or a period of observation for an
381 alleged delinquent; provided, however, that no such alleged delinquent shall be hospitalized at
382 the Bridgewater state hospital. A period of hospitalization ordered pursuant to this section shall
383 not exceed 40 days.

384 SECTION 15. Chapter 123 of the General Laws is hereby amended by striking out
385 section 16, as appearing in the 2012 Official Edition, and inserting in place thereof the following
386 section:–

387 (a) (1) The court having jurisdiction over the criminal proceedings may order that a
388 person who has been found incompetent to stand trial or not guilty by reason of mental illness or
389 mental defect in such proceedings be hospitalized at a facility for a period of 40 days for
390 observation and examination. The observation and examination shall be for the purpose of
391 determining the person's need for further care and treatment; and provided that the combined
392 periods of hospitalization under the provisions of this section and paragraph (b) of section 15
393 shall not exceed 50 days.

394 (2) The court having jurisdiction over the criminal proceedings may order that a person
395 who has been found incompetent to stand trial, who does not provide a likelihood of serious
396 harm by reason of mental illness, receive restoration services in the community as a condition of
397 recognizance or at a place of detention if the person is held in lieu of bail.

398 (b) During the period of observation of a person believed to be incompetent to stand trial
399 or within 60 days after a person is found to be incompetent to stand trial or not guilty of any
400 crime by reason of mental illness or other mental defect, the district attorney, the superintendent
401 of a facility, or the medical director of the Bridgewater state hospital may petition the court
402 having jurisdiction of the criminal case for the commitment of the person to a facility or, if the
403 person is serving a criminal sentence arising from other criminal proceedings, to the Bridgewater
404 state hospital. However, the petition for the commitment of an untried defendant shall be heard
405 only if the defendant is found incompetent to stand trial, or if the criminal charges are to be
406 dismissed after commitment; provided, however, that the dismissal of criminal charges shall not
407 require dismissal of the petition or of an order of commitment entered under this section. If the
408 court makes the findings required by paragraph (a) of section 8 it shall order the person
409 committed to a facility; if the court makes the findings required by paragraph (b) of section 8, it
410 shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition
411 shall be dismissed and the person discharged. An order of commitment under the provisions of
412 this paragraph shall be valid for 6 months. In the event a period of hospitalization under the
413 provisions of paragraph (a) has expired, or in the event no such period of examination has been
414 ordered, the court may order the temporary detention of such person in a jail, house of
415 correction, facility or, if the person is serving a criminal sentence arising from other criminal
416 proceedings, the Bridgewater state hospital until such times as the findings required by this
417 paragraph are made or a determination is made that such findings cannot be made.

418 (c) After the expiration of a commitment under paragraph (b) of this section, a person
419 may be committed for additional one year periods under the provisions of sections seven and
420 eight of this chapter, but no untried defendant shall be so committed unless in addition to the
421 findings required by sections seven and eight the court also finds said defendant is incompetent

422 to stand trial. If the person is not found incompetent, or if the court determines that there is a
423 substantial probability that the person will not attain competence in a reasonable period of time,
424 the court shall notify the court with jurisdiction of the criminal charges, which court shall
425 thereupon order the defendant returned to its custody for the resumption of criminal proceedings,
426 which shall include consideration of dismissal of the criminal charges in accordance with the
427 interests of justice. All subsequent proceedings for the further commitment of a person
428 committed under this section shall be in the court which has jurisdiction of the facility or
429 hospital.

430 (d) The district attorney for the district within which the alleged crime or crimes occurred
431 shall be notified of any hearing conducted for a person under the provisions of this section or any
432 subsequent hearing for such person conducted under the provisions of this chapter relative to the
433 commitment of the mentally ill and shall have the right to be heard at such hearings.

434 (e) Any person committed to a facility under the provisions of this section may be
435 restricted in his movements to the buildings and grounds of the facility at which he is committed
436 by the court which ordered the commitment. If such restrictions are ordered, they shall not be
437 removed except with the approval of the court. In the event the superintendent communicates his
438 intention to remove or modify such restriction in writing to the court and within fourteen days
439 the court does not make written objection thereto, such restrictions shall be removed by the
440 superintendent. If the superintendent or medical director of the Bridgewater state hospital
441 intends to discharge a person committed under this section or at the end of a period of
442 commitment intends not to petition for his further commitment, he shall notify the court and
443 district attorney which have or had jurisdiction of the criminal case. Within thirty days of the
444 receipt of such notice, the district attorney may petition for commitment under the provisions of
445 paragraph (c). During such thirty day period, the person shall be held at the facility or hospital.
446 This paragraph shall not apply to persons originally committed after a finding of incompetence to
447 stand trial whose criminal charges have been dismissed.

448 (f) If a person is found incompetent to stand trial, the court shall send notice to the
449 department of correction which shall compute the date of the expiration of the period of time
450 equal to the time of imprisonment which the person would have had to serve prior to becoming
451 eligible for parole if he had been convicted of the most serious crime with which he was charged
452 in court and sentenced to the maximum sentence he could have received, if so convicted. For
453 purposes of the computation of parole eligibility, the minimum sentence shall be regarded as one
454 half of the maximum sentence potential sentence. Where applicable, the provisions of sections
455 one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B,
456 and one hundred and twenty-nine C of chapter one hundred and twenty-seven shall be applied to
457 reduce such period of time. If the charges for which the person is incompetent to stand trial are
458 still open, on the final date of such period, the court shall dismiss the criminal charges against
459 such person, or the court in the interest of justice may dismiss the criminal charges against such
460 person prior to the expiration of such period.

461 SECTION 16. Section 17 of chapter 123 of the General Laws, as appearing in the 2012
462 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof
463 the following paragraph:

464 (a) The periodic review of a person found incompetent to stand trial shall include a
465 clinical opinion with regard to the person's competence to stand trial, including whether there is a
466 substantial likelihood that the person can be restored to competence within a reasonable period of
467 time, which opinion shall be noted in writing on the patient's record. If any person found
468 incompetent to stand trial is determined by the superintendent of the facility or the medical
469 director of the Bridgewater state hospital to be no longer incompetent or that there is not a
470 substantial probability that the person will be restored to competence within a reasonable period
471 of time, the superintendent or medical director shall notify the court, which shall without delay
472 hold a hearing on the person's competency to stand trial or on the probability that the person will
473 be restored to competence within a reasonable period of time. Any person found incompetent to
474 stand trial may at any time petition the court for a hearing on his competency. Whenever a
475 hearing is held and the court finds that the person is competent to stand trial, his commitment, if
476 any, to a facility or to the Bridgewater state hospital shall be terminated and he shall be returned
477 to the custody of the court for trial. However, if the person requests continued care and
478 treatment during the pendency of the criminal proceedings against him and the superintendent or
479 medical director agrees to provide such care and treatment, the court may order the further
480 hospitalization of such person at the facility or the Bridgewater state hospital.

481 SECTION 17. Chapter 123 of the General Laws is hereby amended by striking out
482 section 18, as appearing in the 2012 Official Edition, and inserting in place thereof the following
483 section:–

484 Section 18. (a) If the person in charge of any place of detention within the
485 commonwealth has reason to believe that a person confined therein is in need of hospitalization
486 by reason of mental illness at a facility of the department or, if he is serving a criminal sentence,
487 at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of
488 detention by a physician or psychologist, designated by the department as qualified to perform
489 such examination. Said physician or psychologist shall report the results of the examination to
490 the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting
491 trial, to the court which has jurisdiction of the criminal case. Such report shall include an
492 opinion, with reasons therefore, as to whether such hospitalization is actually required. The
493 court which receives such report may order the prisoner to be taken to a facility or, if a male who
494 is serving a criminal sentence, to the Bridgewater state hospital to be received for examination
495 and observation for a period not to exceed 30 days. After completion of such examination and
496 observation, a written report shall be sent to such court and to the person in charge of the place of
497 detention. Such report shall be signed by the physician or psychologist conducting such
498 examination, and shall contain an evaluation, supported by clinical findings, of whether the
499 prisoner is in need of further treatment and care at a facility or, if a male and serving a criminal

500 sentence, the Bridgewater state hospital by reason of mental illness. The person in charge of the
501 place of detention shall have the same right as a superintendent of a facility and the medical
502 director of the Bridgewater state hospital to file a petition with the court which received the
503 results of the examination for the commitment of the person to a facility or to the Bridgewater
504 state hospital; provided, however, that, notwithstanding the court's failure, after an initial hearing
505 or after any subsequent hearing, to make a finding required for commitment to the Bridgewater
506 state hospital, the prisoner shall be confined at said hospital if the findings required for
507 commitment to a facility are made and if the commissioner of correction certifies to the court
508 that confinement of the prisoner at said hospital is necessary to insure his continued retention in
509 custody. An initial court order of commitment issued subject to the provisions of this section
510 shall be valid for a six-month period, and all subsequent commitments during the term of the
511 sentence shall take place under the provisions of sections seven and eight and shall be valid for
512 one year.

513 (b) Notwithstanding any contrary provision of general or special law, a prisoner who is
514 retained in any place of detention within the commonwealth and who is in need of care and
515 treatment in a facility may, with the approval of the person in charge of such place of detention
516 apply for voluntary admission under the provisions of paragraph (a) of section ten.

517 (c) At the commencement of hospitalization under the provisions of paragraph (a) or
518 paragraph (b) the department of correction shall enter in the patient record of such prisoner the
519 date of the expiration of the sentence of the prisoner. Where applicable, the provisions of
520 sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-
521 nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be
522 applied to reduce such sentence, and on such date the prisoner shall be discharged; provided,
523 however, that if the superintendent or other head of a facility or the medical director of the
524 Bridgewater state hospital determines that the discharge of the prisoner committed subject to the
525 provisions of paragraph (a) would create a likelihood of serious harm by reason of mental illness,
526 he shall petition the district court having jurisdiction over the facility prior to the date of
527 expiration to order the commitment of such person to a facility under the provisions of this
528 chapter other than paragraph (a); and provided, further, that any prisoner resident in a facility
529 subject to the provisions of paragraph (b) shall be free to leave such facility subject to the
530 provisions of section eleven.

531 (d) In the event the provisions of this chapter require the release of a prisoner from a
532 facility or from the Bridgewater state hospital prior to the date of expiration of his sentence
533 calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the
534 place of detention from which he was transferred to such facility or to said hospital.

535 SECTION 18. Section 18A of chapter 123 of the General Laws is hereby repealed.

536 SECTION 19. Section 21 of chapter 123 of the General Laws, as appearing in the 2012
537 Official Edition, is hereby amended by striking out the twelfth paragraph and inserting in place
538 thereof the following paragraph:–

539 A copy of the restraint form and any such attachments shall become part of the chart of
540 the patient. The Commissioner of mental health, or with respect to Bridgewater state hospital,
541 the commissioner of correction, shall receive restraint data no less frequently than monthly, in a
542 form and manner that will permit the respective commissioner or senior-level clinical designee to
543 analyze and, if appropriate, request corrective action regarding, the use of restraint in facilities
544 under their supervision and control, and in the case of the department, facilities licensed by it.
545 Such data, excluding patient identification, shall be made available to the general public.

546 SECTION 20. Section 21 of chapter 123 of the General Laws, as so appearing, is hereby
547 amended by inserting after the word "from", in line 2, the following words:- , or within,.

548 SECTION 21. Section 21 of chapter 123 of the General Laws, as so appearing, is hereby
549 amended by striking out the word "by", in line 80, and inserting in place thereof the following
550 word:– be.

551 SECTION 22. Section 21 of chapter 123 of the General Laws, as so appearing, is hereby
552 amended by striking out the word "of", in line 93, and inserting in place thereof the following
553 word:– or

554 SECTION 23. Section 23 of chapter 123 of the General Laws, as appearing in the 2012
555 Official Edition, is hereby amended by striking out the third paragraph of subsection (e), at lines
556 71 to 81, and inserting in place thereof the following paragraph:

557 For any such persons over the age of 18, any right set forth in clauses (a) and (c) may be
558 temporarily suspended, but only for such person in an inpatient facility and only by the
559 superintendent, director, acting superintendent or acting director of such facility upon such
560 person; concluding, pursuant to standards and procedures set forth in department regulations that,
561 based on experience of such person's exercise of such right, further such exercise of it in the
562 immediate future would present a substantial risk of serious harm to such person or others and
563 that less restrictive alternatives have either been tried and failed or would be futile to attempt.
564 The suspension shall last no longer than the time necessary to prevent the harm and its
565 imposition shall be documented with specific facts in such person's record; provided, however
566 that an enhanced security facility may impose reasonable restrictions on the exercise of any right
567 set forth in clauses (a) and (c), but only if and to the extent such restrictions are necessary to
568 ensure safety and security within the facility. For any such person who is a minor under the age
569 of 18, who is a patient or resident of an inpatient or residential facility or program, the exercise
570 of the rights provided in paragraphs (a) through (c) may be limited but only upon a determination
571 by the superintendent, director, acting superintendent or acting director of such inpatient or
572 residential facility or program that failure to so limit would pose a risk of serious physical or

573 psychological harm to the resident or others. In making such a determination, the
574 superintendent, director, acting superintendent or acting director shall take into consideration the
575 developmental level of such minor, as well as family and cultural factors relevant to his or her
576 treatment, and may rely on information supplied by the patient's or resident's parent or guardian,
577 records and information from prior treatment providers, or other sources of reliable information.
578 Any such limitation of the rights shall last for no longer than necessary to accomplish the
579 purpose thereof, and its imposition shall be documented with specific facts in such person's
580 record

581 SECTION 24. Section 33 of chapter 123 of the General Laws is hereby repealed.

582 SECTION 25. Section 36 of chapter 123 of the General Laws, as appearing in the 2012
583 Official Edition, is hereby amended by inserting after the word "persons", in line 2, the following
584 words:– approved for services pursuant to chapter 19 or.

585 SECTION 26. Section 36A of chapter 123 of the General Laws, as appearing in the 2012
586 Official Edition, is hereby amended by inserting after the word "court", in line 3, the following
587 words:– ; provided, however, that the department shall retain copies of such reports which may
588 be reviewed for the purpose of risk assessment activities conducted by the department but shall
589 not be considered part of the treatment record unless released by the court.

590 SECTION 27. This Act shall be effective upon the filing of a certification by the
591 department of mental health with the respective clerk of the house and the senate that the
592 enhanced security facility is prepared to receive inpatient commitments and, in any event, no
593 later than July 1, 2015.