

**SENATE . . . . . No. 107****The Commonwealth of Massachusetts**

PRESENTED BY:

*Cindy F. Friedman*

*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 child ED boarding.

PETITION OF:

| NAME:                       | DISTRICT/ADDRESS:                        |                   |
|-----------------------------|--|-------------------|
| <i>Cindy F. Friedman</i>    | <i>Fourth Middlesex</i>                  |                   |
| <i>Joanne M. Comerford</i>  | <i>Hampshire, Franklin and Worcester</i> | <i>3/19/2021</i>  |
| <i>Susannah M. Whipps</i>   | <i>2nd Franklin</i>                      | <i>3/24/2021</i>  |
| <i>Michael P. Kushmerek</i> | <i>3rd Worcester</i>                     | <i>4/1/2021</i>   |
| <i>Kenneth I. Gordon</i>    | <i>21st Middlesex</i>                    | <i>4/22/2021</i>  |
| <i>Patrick M. O'Connor</i>  | <i>Plymouth and Norfolk</i>              | <i>5/25/2021</i>  |
| <i>Natalie M. Higgins</i>   | <i>4th Worcester</i>                     | <i>9/13/2021</i>  |
| <i>Joan B. Lovely</i>       | <i>Second Essex</i>                      | <i>10/29/2021</i> |
| <i>Mindy Domb</i>           | <i>3rd Hampshire</i>                     | <i>10/29/2021</i> |

# SENATE . . . . . No. 107

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By Ms. Friedman, a petition (accompanied by bill, Senate, No. 107) of Cindy F. Friedman, Joanne M. Comerford, Susannah M. Whipps and Michael P. Kushmerek for legislation relative to child ED boarding. Children, Families and Persons with Disabilities.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)

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An Act relative to child ED boarding.

*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. Chapter 6A of the General Laws, as appearing in the 2018 Official Edition,  
2 is hereby amended by striking out section 16P and inserting in place thereof the following  
3 section:-

4 Section 16P. (a) For the purpose of this section, the following words shall, unless the  
5 context clearly requires otherwise, have the following meanings:

6 “Awaiting residential disposition”, an individual who waits 72 hours or more to be  
7 moved from an acute level of psychiatric care to a less intensive or less restrictive clinically-  
8 appropriate level of psychiatric care.

9 “Boarding”, when an individual waits 12 hours or more to be placed in an appropriate  
10 therapeutic setting, after being assessed to need acute psychiatric treatment, intensive  
11 community-based treatment, continuing care unit placement, or post-hospitalization residential

12 placement, and having been determined by a licensed health care provider to be medically stable  
13 without needing urgent medical assessment or hospitalization for a physical health condition.

14 "Children and adolescents", individuals between the ages of 0 and 18 years old.

15 (b) The secretary of health and human services shall facilitate the coordination of services  
16 for children and adolescents awaiting clinically-appropriate behavioral health services by  
17 developing and maintaining an online portal that enables the public to access real-time data on  
18 children and adolescents who are boarding, awaiting residential disposition or are in the care or  
19 custody of a state agency and are awaiting discharge to an appropriate foster home or a  
20 congregate or group care program.

21 (c) The online portal shall include, but not be limited to, the following data: (1) the total  
22 number of children and adolescents boarding in the commonwealth, including a breakdown of  
23 the total number of children and adolescents boarding in hospital emergency rooms or at  
24 emergency services sites, on a medical floor after having received medical stabilization  
25 treatment, or while at home; (2) the total number of children and adolescents awaiting residential  
26 disposition in the commonwealth, including a breakdown of the type of facility that each child or  
27 adolescent is currently placed at while awaiting residential disposition and the type of placement  
28 for which each child and adolescent is waiting; and (3) the total number of children and  
29 adolescents in the commonwealth who are hospitalized and in the care or custody of a state  
30 agency, and have been assessed to no longer need hospital-level care, but have waited 72 hours  
31 or more for discharge to an appropriate foster home or a congregate or group care program.

32 (d) For each category of children and adolescents data published on the online portal  
33 pursuant to subsection (c), the online portal shall include the following data: (1) the average

34 length of wait for discharge to the appropriate level of care or placement; (2) the level of care  
35 required as determined by a licensed health care provider; (3) the primary behavioral health  
36 diagnosis and any comorbid conditions relevant for the purposes of placement; (4) the primary  
37 reason for boarding, awaiting residential disposition or, for children and adolescents who are  
38 hospitalized and in the care or custody of a state agency and have been assessed to no longer  
39 need hospital-level care, the primary reason why such children and adolescents have waited 72  
40 hours or more for discharge to an appropriate foster home or a congregate or group care  
41 program; (5) whether the children and adolescents are in the care or custody of the department of  
42 children and families or the department of youth services or are eligible for services from the  
43 department of mental health or the department of developmental services; (6) the type of  
44 insurance coverage for the children and adolescents; and (7) the ages, races, ethnicities, preferred  
45 spoken languages, and genders of the children and adolescents.

46 (e) The online portal shall include data on the availability of pediatric acute psychiatric  
47 beds, intensive community-based treatment beds, continuing care beds, and post-hospitalization  
48 residential beds. The online portal shall also enable a real-time bed search and shall categorize  
49 beds by geographic region in the commonwealth, which shall include, but not be limited to: (1)  
50 the total number of beds licensed by the department of mental health, the department of public  
51 health and the department of early education and care, and the total number of available beds  
52 broken down by licensing authority; (2) the total number of available beds broken down by  
53 children and adolescents age ranges; (3) the average daily bed availability broken down by  
54 licensing authority and by children and adolescent age ranges; (4) daily bed admissions broken  
55 down by licensing authority and by children and adolescent age ranges; (5) the location from  
56 which a child or adolescent was admitted; (6) daily bed discharges broken down by licensing

57 authority and by children and adolescent age ranges; and (7) the average length of stay broken  
58 down by licensing authority and by children and adolescent age ranges.

59 (f) (1) Quarterly, not later than 14 days after the preceding quarter has ended, the  
60 secretary shall compile a report on the status of children and adolescents awaiting clinically-  
61 appropriate behavioral health services, which shall include a summary and assessment of the data  
62 published on the online portal under subsections (c), (d) and (e) for the immediately preceding  
63 quarter.

64 (2) Annually, not later than February 1, the secretary shall compile a report on the status  
65 of children and adolescents awaiting clinically-appropriate behavioral health services, which  
66 shall include a summary and assessment of the data published on the online portal under  
67 subsections (c), (d) and (e) for the immediately preceding calendar year.

68 (3) The reports required under paragraphs (1) and (2) of this subsection shall be  
69 submitted to the children's behavioral health advisory council established in section 16Q, the  
70 office of the child advocate, the health policy commission, the chairs of the joint committee on  
71 health care financing, the chairs of the joint committee on mental health, substance use and  
72 recovery, the chairs of the joint committee on children, families and persons with disabilities,  
73 and the senate and house committees on ways and means.

74 SECTION 2. Chapter 6D of the General Laws, as appearing in the 2018 Official Edition,  
75 is hereby amended by adding the following section:-

76 Section 20. Every 5 years, the commission, in collaboration with the department of public  
77 health, the department of mental health, and the department of developmental services, shall  
78 review data on children and adolescents awaiting clinically-appropriate behavioral health

79 services published on the online portal under section 16P of chapter 6A and compiled by the  
80 secretary of health and human services in the reports submitted to the commission under  
81 subsection (f) of section 16P of chapter 6A, and shall publish on its website a pediatric  
82 behavioral health planning report that analyzes the pediatric behavioral health needs of the  
83 commonwealth. The report shall include, but not be limited to, an analysis of: (i) the availability  
84 of pediatric acute psychiatric beds, intensive community-based treatment beds, continuing care  
85 beds, and post-hospitalization residential beds by geographic region in the commonwealth and  
86 by sub-specialty, and any service limitations; (ii) the capacity of the pediatric behavioral health  
87 workforce to respond to the acute behavioral health needs of children and adolescents across the  
88 commonwealth; and (iii) any statutory, regulatory or operational factors that may impact  
89 pediatric boarding.

90 SECTION 3. Chapter 18C of the General Laws, as appearing in the 2018 Official  
91 Edition, is hereby amended by inserting after section 10 the following section:-

92 Section 10A. (a) The child advocate shall review data on children and adolescents  
93 awaiting clinically-appropriate behavioral health services published on the online portal under  
94 section 16P of chapter 6A and compiled by the secretary of health and human services in the  
95 reports submitted to the child advocate under subsection (f) of section 16P of chapter 6A, and  
96 shall draft an annual report analyzing any trends in the data from the immediately preceding  
97 calendar year and making recommendations for decreasing and eliminating the number of  
98 children and adolescents awaiting clinically-appropriate behavioral health services by geographic  
99 region in the commonwealth and by sub-specialty. The report shall be submitted annually, not  
100 later than April 1, to the governor, the children's behavioral health advisory committee  
101 established in section 16Q of chapter 6A, the clerks of the senate and the house of

102 representatives, the chairs of the joint committee on health care financing, the chairs of the joint  
103 committee on mental health, substance use and recovery, the chairs of the joint committee on  
104 children, families and persons with disabilities, and the senate and house committees on ways  
105 and means.

106 SECTION 4. Said chapter 18C is hereby further amended by adding the following  
107 section:-

108 Section 14A. (a) The office shall establish a complex case resolution panel, hereinafter  
109 referred to as the “panel”. The panel shall include: the child advocate or a designee, who shall  
110 serve as chair; the secretary of health and human services or a designee; the director of Medicaid  
111 or a designee; the commissioner of mental health or a designee; the commissioner of children  
112 and families or a designee; the commissioner of elementary and secondary education or a  
113 designee; the commissioner of developmental services or a designee; and 2 individuals to be  
114 appointed by the child advocate to serve for 2-year terms, 1 of whom shall be a representative  
115 from an organization providing services to families of children with behavioral health needs and  
116 1 of whom shall be a representative from an organization that assists families in navigating the  
117 health and human services system; provided, that the 2 individuals appointed for 2-year terms  
118 shall recuse themselves from any matter in which they have a direct conflict of interest; and  
119 provided further, that for the 2 individuals appointed for 2-year terms, if a vacancy occurs prior  
120 to the end of the individual’s 2-year term, the vacancy shall be immediately filled by the child  
121 advocate. The child advocate may require the participation of a local educational agency when  
122 the matter involves or may involve services provided by or paid for by said local educational  
123 agency. Panel member designees shall be empowered by the agency or local educational agency  
124 to act on behalf of the appointee in making decisions and agreements.

125                         (b) The panel shall review and resolve matters referred to the panel by a parent or legal  
126                         guardian or a legal advocate, a physician or behavioral health provider authorized to act on  
127                         behalf of a parent or guardian, seeking to access services for a child with complex behavioral  
128                         health needs by resolving any administrative, financial or clinical barriers to such services that  
129                         arise from disputes between state agencies, MassHealth or local educational agencies; provided,  
130                         that the child has waited in a hospital emergency department or a medical bed or at home for 5  
131                         days or more to be placed in an appropriate therapeutic setting after being assessed to need acute  
132                         psychiatric treatment and having been determined by a licensed health care provider to be  
133                         medically stable without need for urgent medical assessment or hospitalization for a physical  
134                         health condition.

135                         (c) The panel shall convene not later than 1 business day after receiving a referral under  
136                         subsection (b). If the lack of a primary care manager is impeding the child's access to services  
137                         and if, after 1 business day after the panel convenes for the first time on a matter, the panel  
138                         cannot reach consensus regarding the primary state or local agency responsible for case  
139                         management, the child advocate has the authority to and shall immediately designate an agency  
140                         to act as the interim primary care manager until a final decision is issued on the matter under  
141                         subsection (d). If the child is unable to access services for which they are eligible or entitled  
142                         because of a disagreement about the responsibility for payment among state agencies and local  
143                         education agencies and if, after 1 business day after the panel convenes for the first time on a  
144                         matter, the panel cannot reach consensus about responsibility for payment among the agencies or  
145                         local education agencies, the child advocate has the authority to and shall immediately require  
146                         the relevant state and local agencies to enter into a binding temporary cost-share agreement until  
147                         a final decision is issued on the matter under subsection (d).

148                     (d) Not later than 14 business days after the panel convenes for the first time on a matter,  
149       the panel shall complete its review and, after hearing from the parents or guardian of the child,  
150       relevant agencies and service providers, and reviewing relevant materials, shall issue a decision  
151       on which services are appropriate for the child, who shall provide such services and who shall  
152       pay for such services. If the lack of a primary care manager is impeding the child's access to  
153       services and if, after 14 business days, the panel cannot reach consensus regarding the agency or  
154       entity with primary responsibility for managing the care of a child, the child advocate has the  
155       authority to and shall immediately designate an agency to act as the primary care manager. The  
156       designated agency shall remain the primary case manager until an alternative agreement is  
157       entered into or until the child no longer qualifies for the services. If the child is unable to access  
158       services for which they are eligible or entitled because of a disagreement about the responsibility  
159       for payment among state agencies and local education agencies and if, after 14 days, the panel  
160       cannot reach consensus about responsibility for payment among the agencies or local education  
161       agencies, the child advocate has the authority to and shall immediately require the relevant state  
162       and local agencies to enter into a cost-share agreement. The cost-share agreement shall remain in  
163       effect until the child advocate is informed in writing of an alternative cost-share or payment  
164       agreement having been implemented or until the child no longer qualifies for the services.

165                     Panel decisions shall be issued to the parent or guardian in writing not later than 3 days  
166       after the decision and shall include the basis for the decision, the basis for the denial of services,  
167       if any, and information regarding rights to further review or appeal of a decision.

168                     (e) If the parent or guardian of the child disputes the decision of the panel under  
169       subsection (d), the parent or guardian may file an appeal with the division of administrative law

170 appeals, established under section 4H of chapter 7, which shall conduct an adjudicatory  
171 proceeding and order any necessary relief consistent with state or federal law.

172 (f) Nothing in this section shall be construed to entitle a child to services for which the  
173 child would otherwise be ineligible under applicable agency statutes or regulations.

174 (g) Notwithstanding chapters 66A, 112 and 119 or any other law related to the  
175 confidentiality of personal data, the teams, the child advocate and the division of administrative  
176 law appeals shall have access to and may discuss materials related to a case while the case is  
177 under review once the parent or guardian has consented in writing and those having access agree  
178 in writing to keep the materials confidential. Once the review is complete, all materials shall be  
179 returned to the originating source.

180 (h) Nothing in this section shall limit the rights of parents or children under chapter 71B,  
181 the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or Section 504 of  
182 the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.

183 (i) The child advocate shall promulgate regulations to effectuate the purposes of this  
184 section.

185 (j) The child advocate shall publish an annual report summarizing the cases reviewed by  
186 the panel in the previous year, the length of time spent at each stage and their final resolution.

187 SECTION 5. Subsection (a) of section 25C ½ of chapter 111 of the General Laws, as  
188 appearing in the 2018 Official Edition, is hereby amended by inserting after paragraph (4) the  
189 following paragraph:-

190                         (5) A health facility if the facility plans to make a capital expenditure for the  
191 development of acute psychiatric services, including inpatient, community-based acute  
192 treatment, intensive community-based treatment, a continuing care unit and partial  
193 hospitalization program; provided, that the health facility demonstrates the need for a license  
194 from the department of mental health pursuant to subsection (c) of section 19 of chapter 19.

195 SECTION 6. Said chapter 111, as so appearing, is hereby amended by inserting after  
196 section 51½ the following section:-

197       Section 51 $\frac{3}{4}$ . The department, in consultation with the department of mental health, shall  
198       promulgate regulations requiring all acute-care hospitals licensed under section 51G to provide  
199       or arrange for qualified behavioral health clinicians, during all operating hours of an emergency  
200       department or a satellite emergency facility as defined in section 51 $\frac{1}{2}$ , to evaluate and stabilize a  
201       person admitted with a behavioral health presentation to the department, or to a facility and to  
202       refer such person for appropriate treatment or inpatient admission.

203 The regulations shall permit evaluation via telemedicine, electronic or telephonic  
204 consultation, as deemed appropriate by the department.

205 The regulations shall be promulgated after consultation with the department of mental  
206 health and the division of medical assistance and shall include, but not be limited to,  
207 requirements that individuals under the age of 22 receive an expedited evaluation and  
208 stabilization process.

SECTION 7. Notwithstanding any general or special law to the contrary, the so called  
expedited psychiatric inpatient admissions protocol, developed by the executive office of health  
and human services, department of mental health, department of public health, division of

212 medical assistance and division of insurance, shall: (i) require, for patients under the age of 22,  
213 notification to the department of mental health to expedite placement in or admission to an  
214 appropriate treatment program or facility within 48 hours of boarding or within 48 hours of being  
215 assessed to need acute psychiatric treatment and having been determined by a licensed health  
216 care provider to be medically stable without needing urgent medical assessment or  
217 hospitalization for a physical health condition; (ii) include, within the escalation protocol,  
218 patients who initially had a primary medical diagnosis or primary presenting problem requiring  
219 treatment on a medical-surgical floor, who have been subsequently medically cleared and are  
220 boarding on a medical-surgical floor for an inpatient psychiatric placement; and (iii) include, for  
221 patients under the age of 22, notification upon discharge from the emergency department,  
222 satellite emergency facility or medical-surgical floor to the patient's primary care physician, if  
223 known.

224 SECTION 8. The secretary of health and human services shall develop the online portal  
225 established by section 16P of chapter 6A of the General Laws not later than 6 months after the  
226 effective date of this act.

227 SECTION 9. The health policy commission shall publish its first pediatric behavioral  
228 health planning report required by section 20 of chapter 6D of the General Laws not later than 1  
229 year after the effective date of this act.

230 SECTION 10. The office of the child advocate shall publish the first annual report  
231 required by section 10A of chapter 18C of the General Laws not later than 1 year after the  
232 development of the online portal established by section 16P of chapter 6A of the General Laws.

233           SECTION 11. Section 6 shall take effect on January 1, 2023; provided, however, that the  
234    department of public health shall promulgate regulations to implement section 51 $\frac{3}{4}$  of chapter  
235    111 of the General Laws not later than October 1, 2022.