

**The Commonwealth of Massachusetts**

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

1 by adding after Section 78 the following 3 sections:-

2 SECTION XX. Chapter 123 as appearing in the Massachusetts General Laws is hereby  
3 amended by striking out section 12, as so appearing, and inserting in place thereof the following  
4 section:-

5 Section 12. (a) A physician who is licensed pursuant to section 2 of chapter 112, an  
6 advanced practice registered nurse authorized to practice as such under regulations promulgated  
7 pursuant to section 80B of said chapter 112, a qualified psychologist licensed pursuant to  
8 sections 118 to 129, inclusive, of said chapter 112 or a licensed independent clinical social  
9 worker licensed pursuant to sections 130 to 137, inclusive, of said chapter 112 or a qualified  
10 physician assistant licensed pursuant to section 9(e) of chapter 112, who, after examining a  
11 person, has reason to believe that failure to hospitalize such person would create a likelihood of  
12 serious harm by reason of mental illness may restrain or authorize the restraint of such person  
13 and apply for the hospitalization of such person for a 3-day period at a public facility or at a  
14 private facility authorized for such purposes by the department. If an examination is not possible  
15 because of the emergency nature of the case and because of the refusal of the person to consent  
16 to such examination, the physician, qualified psychologist, qualified advanced practice registered

17 nurse, qualified physician assistant, or licensed independent clinical social worker on the basis of  
18 the facts and circumstances may determine that hospitalization is necessary and may therefore  
19 apply. In an emergency situation, if a physician, qualified psychologist, qualified advanced  
20 practice registered nurse, qualified physician assistant or licensed independent clinical social  
21 worker is not available, a police officer who believes that failure to hospitalize a person would  
22 create a likelihood of serious harm by reason of mental illness may restrain such person and  
23 apply for the hospitalization of such person for a 3-day period at a public facility or a private  
24 facility authorized for such purpose by the department. An application for hospitalization shall  
25 state the reasons for the restraint of such person and any other relevant information that may  
26 assist the admitting physician or qualified advanced practice registered nurse or qualified  
27 physician assistant. Whenever practicable, prior to transporting such person, the applicant shall  
28 telephone or otherwise communicate with a facility to describe the circumstances and known  
29 clinical history and to determine whether the facility is the proper facility to receive such person  
30 and to give notice of any restraint to be used and to determine whether such restraint is  
31 necessary.

32 (b) Only if the application for hospitalization under this section is made by a physician, a  
33 qualified advanced practice registered nurse or qualified physician assistant specifically  
34 designated to have the authority to admit to a facility in accordance with the regulations of the  
35 department, shall such person be admitted to the facility immediately after reception. If the  
36 application is made by someone other than a designated physician, a qualified advanced practice  
37 registered nurse, or a qualified physician assistant such person shall be given a psychiatric  
38 examination by a designated physician, a qualified advanced practice registered nurse or  
39 qualified physician assistant immediately after reception at such facility. If the physician,

40 qualified advanced practice registered nurse, or qualified physician assistant determines that  
41 failure to hospitalize such person would create a likelihood of serious harm by reason of mental  
42 illness, the physician or qualified advanced practice registered nurse or qualified physician  
43 assistant may admit such person to the facility for care and treatment. Upon admission of a  
44 person under this subsection, the facility shall inform the person that it shall, upon such person's  
45 request, notify the committee for public counsel services of the name and location of the person  
46 admitted. The committee for public counsel services shall immediately appoint an attorney who  
47 shall meet with the person. If the appointed attorney determines that the person voluntarily and  
48 knowingly waives the right to be represented, is presently represented or will be represented by  
49 another attorney, the appointed attorney shall so notify the committee for public counsel  
50 services, which shall withdraw the appointment.

51 Any person admitted under this subsection who has reason to believe that such admission  
52 is the result of an abuse or misuse of this subsection may request or request through counsel an  
53 emergency hearing in the district court in whose jurisdiction the facility is located and unless a  
54 delay is requested by the person or through counsel, the district court shall hold such hearing on  
55 the day the request is filed with the court or not later than the next business day.

56 (c) No person shall be admitted to a facility under this section unless the person, or the  
57 person's parent or legal guardian on the person's behalf, is given an opportunity to apply for  
58 voluntary admission under paragraph (a) of section 10 and unless the person, or the person's  
59 parent or legal guardian, has been informed that: (i) the person has a right to such voluntary  
60 admission; and (ii) the period of hospitalization under this section cannot exceed 3 days. At any  
61 time during such period of hospitalization, the superintendent may discharge such person if the  
62 superintendent determines that such person is not in need of care and treatment.

63 (d) A person shall be discharged at the end of the 3-day period unless the superintendent  
64 applies for a commitment under sections 7 and 8 or the person remains on a voluntary status.

65 (e) Any person may make an application to a district court justice or a justice of the  
66 juvenile court department for a 3-day commitment to a facility of a person with a mental illness  
67 if the failure to confine said person would cause a likelihood of serious harm. The court shall  
68 appoint counsel to represent said person. After hearing such evidence as the court may consider  
69 sufficient, a district court justice or a justice of the juvenile court department may issue a warrant  
70 for the apprehension and appearance before the court of the alleged person with a mental illness  
71 if in the court's judgment the condition or conduct of such person makes such action necessary  
72 or proper. Following apprehension, the court shall have the person examined by a physician, a  
73 qualified advanced practice registered nurse or a qualified physician assistant designated to have  
74 the authority to admit to a facility or examined by a qualified psychologist in accordance with the  
75 regulations of the department. If the physician, qualified advanced practice registered nurse,  
76 qualified physician assistant or qualified psychologist reports that the failure to hospitalize the  
77 person would create a likelihood of serious harm by reason of mental illness, the court may order  
78 the person committed to a facility for a period not to exceed 3 days; provided, however, that the  
79 superintendent may discharge said person at any time within the 3-day period. The periods of  
80 time prescribed or allowed under this section shall be computed pursuant to Rule 6 of the  
81 Massachusetts Rules of Civil Procedure.

82 SECTION XX. Said chapter 123 is hereby further amended by striking out section 21, as  
83 so appearing, and inserting in place thereof the following section:-

84           Section 21. Any person who transports a person with a mental illness to or from a facility  
85 for any purpose authorized under this chapter shall not use any restraint that is unnecessary for  
86 the safety of the person being transported or other persons likely to come in contact with the  
87 person.

88           In the case of persons being hospitalized under section 6, the applicant shall authorize  
89 practicable and safe means of transport including, where appropriate, departmental or police  
90 transport.

91           Restraint of a person with a mental illness may only be used in cases of emergency, such  
92 as the occurrence of, or serious threat of, extreme violence, personal injury or attempted suicide;  
93 provided, however, that written authorization for such restraint is given by the superintendent or  
94 director of the facility or by a physician, or by a qualified advanced practice registered nurse or  
95 qualified physician assistant designated by the superintendent or director for this purpose who is  
96 present at the time of the emergency or if the superintendent, director, designated physician,  
97 designated qualified advanced practice registered nurse or designated qualified physician  
98 assistant is not present at the time of the emergency, non-chemical means of restraint may be  
99 used for a period of not more than 1 hour; provided further, that within 1 hour the person in  
100 restraint shall be examined by the superintendent, director, designated physician, designated  
101 qualified advanced practice registered nurse, or designated qualified physician assistant,; and  
102 provided further, that if the examination has not occurred within 1 hour, the patient may be  
103 restrained for an additional period of not more than 1 hour until such examination is conducted  
104 and the superintendent, director, designated physician, designated qualified advanced practice  
105 registered nurse, or designated qualified physician assistant shall attach to the restraint form a

106 written report as to why the examination was not completed by the end of the first hour of  
107 restraint.

108 Any minor placed in restraint shall be examined within 15 minutes of the order for  
109 restraint by a physician, qualified advanced practice registered nurse, or qualified physician  
110 assistant, or, if a physician, qualified advanced practice registered nurse or qualified physician  
111 assistant is not available, by a registered nurse or a certified physician assistant; provided,  
112 however, that said minor shall be examined by a physician, qualified advanced practice  
113 registered nurse or qualified physician assistant within 1 hour of the order for restraint. A  
114 physician, qualified advanced practice registered nurse or qualified physician assistant, or, if a  
115 physician, qualified advanced practice registered nurse or qualified physician assistant are not  
116 available, a registered nurse or a certified physician assistant, shall review the restraint order by  
117 personal examination of the minor or consultation with ward staff attending the minor every hour  
118 thereafter.

119 No minor shall be secluded for more than 2 hours in any 24-hour period; provided,  
120 however, that no such seclusion of a minor may occur except in a facility with authority to use  
121 such seclusion after said facility has been inspected and specially certified by the department.  
122 The department shall issue regulations establishing procedures by which a facility may be  
123 specially certified with authority to seclude a minor. Such regulations shall provide for review  
124 and approval or disapproval by the commissioner of a biannual application by the facility, which  
125 shall include: (i) a comprehensive statement of the facility's policies and procedures for the  
126 utilization and monitoring of restraint of minors including a statistical analysis of the facility's  
127 actual use of such restraint; and (ii) a certification by the facility of its ability and intent to

128 comply with all applicable statutes and regulations regarding physical space, staff training, staff  
129 authorization, record keeping, monitoring and other requirements for the use of restraints.

130 Any use of restraint on a minor exceeding 1 hour in any 24-hour period shall be reviewed  
131 within 2 working days by the director of the facility. The director shall forward a copy of the  
132 report on each such instance of restraint to the human rights committee of that facility and, if  
133 there is no human rights committee, to the appropriate body designated by the commissioner of  
134 mental health. The director shall also compile a record of every instance of restraint in the  
135 facility and shall forward a copy of said report on a monthly basis to the human rights committee  
136 or the body designated by the commissioner of mental health.

137 No order for restraint for an individual shall be valid for a period of more than 3 hours  
138 beyond which time it may be renewed upon personal examination by the superintendent,  
139 director, designated physician, designated qualified advanced practice registered nurse, or  
140 qualified physician assistant or, for adults, by a registered nurse or a certified physician assistant;  
141 provided, however, that no adult shall be restrained for more than 6 hours beyond which time an  
142 order may be renewed only upon personal examination by a physician, qualified advanced  
143 practice registered nurse or qualified physician assistant. The reason for the original use of  
144 restraint, the reason for its continuation after each renewal and the reason for its cessation shall  
145 be noted upon the restraining form by the superintendent, director, designated physician,  
146 qualified physician assistant, or, when applicable, by the registered nurse, certified physician,  
147 qualified advanced practice registered nurse assistant at the time of each occurrence.

148 When a designated physician, qualified advanced practice registered nurse, or qualified  
149 physician assistant is not present at the time and site of the emergency, an order for chemical

150 restraint may be issued by a designated physician, qualified advanced practice registered nurse,  
151 or qualified physician assistant who has determined, after telephone consultation with a  
152 physician, qualified advanced practice registered nurse, registered nurse, or qualified physician  
153 assistant, registered nurse or certified physician assistant who is present at the time and site of  
154 the emergency and who has personally examined the patient, that such chemical restraint is the  
155 least restrictive, most appropriate alternative available; provided, however, that the medication so  
156 ordered has been previously authorized as part of the individual's current treatment plan.

157         No person shall be kept in restraint without a person in attendance specially trained to  
158 understand, assist and afford therapy to the person in restraint. The person may be in attendance  
159 immediately outside the room in full view of the patient when an individual is being secluded  
160 without mechanical restraint; provided, however, that in emergency situations when a person  
161 specially trained is not available, an adult may be kept in restraint unattended for a period not to  
162 exceed 2 hours. In that event, the person kept in restraints shall be observed at least every 5  
163 minutes; provided, further, that the superintendent, director, designated physician, designated  
164 qualified advanced practice registered nurse or designated physician assistant shall attach to the  
165 restraint form a written report as to why the specially trained attendant was not available. The  
166 maintenance of any adult in restraint for more than 8 hours in any 24-hour period shall be  
167 authorized by the superintendent or director or the person specifically designated to act in the  
168 absence of the superintendent or director; provided, however, that when such restraint is  
169 authorized in the absence of the superintendent or director, such authorization shall be reviewed  
170 by the superintendent or director upon the return of the superintendent or director.

171 No "P.R.N." or "as required" authorization of restraint may be written. No restraint is  
172 authorized except as specified in this section in any public or private facility for the care and  
173 treatment of mentally ill persons including Bridgewater state hospital.

174 Not later than 24 hours after the period of restraint, a copy of the restraint form shall be  
175 delivered to the person who was in restraint. A place shall be provided on the form or on  
176 attachments thereto for the person to comment on the circumstances leading to the use of  
177 restraint and on the manner of restraint used.

178 A copy of the restraint form and any such attachments shall become part of the chart of  
179 the patient. Copies of all restraint forms and attachments shall be sent to the commissioner of  
180 mental health, or, with respect to Bridgewater state hospital to the commissioner of correction,  
181 who shall review and sign them within 30 days and statistical records shall be kept thereof for  
182 each facility, including Bridgewater state hospital, and each designated physician, qualified  
183 advanced practice registered nurse or qualified physician assistant. Furthermore, such reports,  
184 excluding personally identifiable patient identification, shall be made available to the general  
185 public at the department's central office, or, with respect to Bridgewater state hospital at the  
186 department of correction's central office.

187 Responsibility and liability for the implementation of this section shall rest with the  
188 department, the superintendent or director of each facility or the physician, qualified advanced  
189 practice registered nurse or qualified physician assistant designated by such superintendent or  
190 director for this purpose.

191 SECTION XX. Said chapter 123 is hereby further amended by striking out section 22, as  
192 so appearing, and inserting in place thereof the following section:-

193           Section 22. Physicians, qualified advanced practice registered nurses, qualified physician  
194 assistant, qualified psychologists, qualified psychiatric nurse mental health clinical specialists,  
195 police officers and licensed independent clinical social workers shall be immune from civil suits  
196 for damages for restraining, transporting, applying for the admission of or admitting any person  
197 to a facility or Bridgewater state hospital if the physician, qualified advanced practice registered  
198 nurse, or qualified physician assistant, qualified psychologist, qualified psychiatric nurse mental  
199 health clinical specialist, police officer or licensed independent clinical social workers acts in  
200 accordance with this chapter.