

HOUSE No. 1460

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker

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 reforming the competency to stand trial process.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/19/2023</i>

HOUSE No. 1460

By Representative Decker of Cambridge, a petition (accompanied by bill, House, No. 1460) of Marjorie C. Decker relative to reforming the competency to stand trial process. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to reforming the competency to stand trial process.

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 123 of the General Laws is hereby amended by striking out section
2 15 and inserting in place thereof the following section:-

3 Section 15: Competence to stand trial or criminal responsibility; examination; period of
4 observation; reports; hearing; commitment; delinquents

5 (a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal
6 case is competent to stand trial or is criminally responsible by reason of mental illness or mental
7 defect, it may at any stage of the proceedings after the return of an indictment or the issuance of
8 a criminal complaint against the defendant, order an examination of such defendant to be
9 conducted by 1 or more qualified physicians or 1 or more qualified psychologists. Whenever
10 practicable, examinations shall be conducted at the court house or place of detention where the
11 person is being held. When an examination is ordered, the court shall instruct the examining

12 physician or psychologist in the law for determining mental competence to stand trial and
13 criminal responsibility.

14 (b) After the examination described in paragraph (a), if the court has reason to believe
15 that observation and further examination are necessary in order to determine whether mental
16 illness or mental defect have so affected a person that the person is not competent to stand trial or
17 not criminally responsible for the crime or crimes with which the person has been charged, the
18 court may order that the person submit to observation and further examination to make such a
19 determination. The court may order the person to undergo observation and further examination at
20 a community-based program contracted for by the department pursuant to subparagraph (g) of
21 this section to conduct such observation and examination, or in a facility or, if such person is a
22 male and appears to require strict security, at the Bridgewater state hospital. Any observation and
23 further examination must be completed within 20 days of the court's order. Copies of the
24 complaints or indictments and the physician's or psychologist's report under paragraph (a) shall
25 be delivered to the community-based program contracted for by the department pursuant to
26 subparagraph (g) of this section, or the facility conducting the observation and examination or to
27 Bridgewater state hospital if the person is found by the court to require strict security. If an
28 examining qualified physician or an examining qualified psychologist completes the observation
29 and examination before the expiration of such 20-day period, the examining qualified physician
30 or examining qualified psychologist shall forthwith notify the court as provided in subparagraph
31 (c) and the court shall arrange for the person's return to court at the earliest possible occasion. If,
32 before the expiration of such 20-day period, an examining qualified physician or an examining
33 qualified psychologist believes that observation and examination for more than 20 days is
34 necessary, that physician or psychologist shall so notify the court and shall request in writing an

35 extension of the 20-day period, specifying the reason or reasons for which such further
36 observation and examination is necessary. Upon the receipt of such request, the court may extend
37 said observation and examination period, but in no event shall the period exceed 40 days from
38 the date of the initial court order for observation and examination; provided, however, a person
39 confined to a facility or the Bridgewater state hospital may request continued care and treatment
40 during the pendency of the criminal proceedings against such person and if the superintendent or
41 medical director agrees to provide such care and treatment, the court may order the further
42 hospitalization of such person at the facility or the Bridgewater state hospital.

43 (c) At the conclusion of the examination or the observation, the examining physician or
44 psychologist shall forthwith give to the court written signed reports of their findings, including
45 the clinical findings bearing on the issue of competence to stand trial or criminal responsibility.
46 Such reports shall also contain an opinion, supported by clinical findings, as to whether the
47 defendant is in need of treatment and care offered by the department.

48 (d) If on the basis of such reports the court is satisfied that the defendant is competent to
49 stand trial, the case shall continue according to the usual course of criminal proceedings;
50 otherwise the court shall hold a hearing on whether the defendant is competent to stand trial;
51 provided that at any time before trial any party to the case may request a hearing on whether the
52 defendant is competent to stand trial. A finding of incompetency shall require a preponderance of
53 the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed
54 until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

55 (e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may
56 order a psychiatric or other clinical examination and, after such examination, it may also order a

57 period of observation to be carried out at a community-based program contracted for by the
58 department pursuant to subparagraph (g) of this section if the individual is released from
59 custody, or in a facility, or at the Bridgewater state hospital if the court determines that strict
60 security is required and if such person is male. The purpose of such observation or examination
61 shall be to aid the court in sentencing. Such period of observation or examination shall not
62 exceed 40 days. During such period of observation, the superintendent or medical director of a
63 facility in which the person is confined may petition the court for commitment of such person. If
64 the observation and examination pursuant to this section has been conducted at a community-
65 based program contracted for by the department pursuant to subparagraph (g) of this section, and
66 the examining qualified physician or an examining qualified psychologist believes that failure to
67 hospitalize such a person would create a likelihood of serious harm by reason of mental illness,
68 the examining qualified physician or an examining qualified psychologist may apply for the
69 person's commitment to a facility under the provisions of section 12 of this chapter and shall
70 notify the court. The court, after imposing sentence on said person, may hear the petition as
71 provided in section 18, and if the court makes necessary findings as set forth in section 8, it may
72 in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of
73 commitment shall be valid for a period of 6 months. All subsequent proceedings for commitment
74 shall take place under the provisions of said section 18 in the district court which has jurisdiction
75 of the facility or hospital. A person committed to a facility or Bridgewater state hospital pursuant
76 to this section shall have said time credited against the sentence imposed as provided in
77 paragraph (c) of said section 18.

78 (f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section,
79 a court may order a psychiatric or psychological examination or a period of observation for an

80 alleged delinquent in the community or in a facility to aid the court in its disposition. Such period
81 shall not exceed 40 days.

82 (g) The department shall coordinate the establishment of, contract for, fund, and provide
83 oversight to a system of geographically dispersed community-based programs to conduct
84 determinations of competency to stand trial and criminal responsibility. These programs shall be
85 available 7 days per week to conduct such determinations and shall accept all referrals from the
86 court which is located in their area of geographic responsibility. These programs shall offer
87 observation and examination regarding competency to stand trial and criminal responsibility and
88 may offer residential services, but the acceptance of residential services shall not be a condition
89 of obtaining a competency or criminal responsibility determination.

90 SECTION 2. Chapter 123 of the General Laws is hereby amended by striking out section
91 16 and inserting in place thereof the following section:-

92 Section 16: Hospitalization of persons incompetent to stand trial or not guilty by reason
93 of mental illness; examination period; commitment; hearing; restrictions; dismissal of criminal
94 charges

95 (a) The court having jurisdiction over the criminal proceedings may order that a person
96 who has been found incompetent to stand trial or not guilty by reason of mental illness or mental
97 defect in such proceedings be observed and examined for a period of 40 days at a community-
98 based program or a facility contracted for by the department pursuant to subparagraph (g) of
99 section 15; provided that, if the defendant is a male and if the court determines that the failure to
100 retain him in strict security would create a likelihood of serious harm by reason of mental illness,
101 or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and

102 provided, further, that the combined periods of hospitalization under the provisions of this
103 section and paragraph (b) of section 15 shall not exceed 50 days.

104 (b) During the period of observation of a person believed to be incompetent to stand trial
105 or within sixty days after a person is found to be incompetent to stand trial or not guilty of any
106 crime by reason of mental illness or other mental defect, the district attorney, the superintendent
107 of a facility or the medical director of the Bridgewater state hospital may petition the court
108 having jurisdiction of the criminal case for the commitment of the person to a facility or to the
109 Bridgewater state hospital. If the observation and examination pursuant to this section has been
110 conducted at a community-based program contracted for by the department pursuant to
111 subparagraph (g) of section 15, and the examining qualified physician or an examining qualified
112 psychologist has reason to believe that failure to hospitalize such person would create a
113 likelihood of serious harm by reason of mental illness, the examining qualified physician or an
114 examining qualified psychologist may apply for the person's commitment to a facility under the
115 provisions of section 12 of this chapter and shall notify the court. However, the petition for the
116 commitment of an untried defendant shall be heard only if the defendant is found incompetent to
117 stand trial or if the criminal charges are dismissed after commitment. If the court makes the
118 findings required by paragraph (a) of section 8 it shall order the person committed to a facility; if
119 the court makes the findings required by paragraph (b) of section 8, it shall order the
120 commitment of the person to the Bridgewater state hospital; otherwise the petition shall be
121 dismissed and the person discharged. An order of commitment under the provisions of this
122 paragraph shall be valid for 6 months. In the event a period of observation under the provisions
123 of paragraph (a) has expired, or in the event no such period of examination has been ordered, the
124 court may order the temporary detention of such person in a jail, house of correction, facility or

125 the Bridgewater state hospital until such time as the findings required by this paragraph are made
126 or a determination is made that such findings cannot be made.

127 (c) After the expiration of a commitment under paragraph (b) of this section, a person
128 may be committed for additional 1 year periods under the provisions of sections 7 and 8 of this
129 chapter, but no untried defendant shall be so committed unless in addition to the findings
130 required by sections 7 and 8 the court also finds said defendant is incompetent to stand trial. If
131 the person is not found incompetent, the court shall notify the court with jurisdiction of the
132 criminal charges, which court shall thereupon order the defendant returned to its custody for the
133 resumption of criminal proceedings. All subsequent proceedings for the further commitment of a
134 person committed under this section shall be in the court which has jurisdiction of the facility or
135 hospital.

136 (d) The district attorney for the district within which the alleged crime or crimes occurred
137 shall be notified of any hearing conducted for a person under the provisions of this section or any
138 subsequent hearing for such person conducted under the provisions of this chapter relative to the
139 commitment of the person with mental illness and shall have the right to be heard at such
140 hearings.

141 (e) Any person committed to a facility under the provisions of this section may be
142 restricted in movements to the buildings and grounds of the facility at which the person is
143 committed by the court which ordered the commitment. If such restrictions are ordered, they
144 shall not be removed except with the approval of the court. If the superintendent seeks removal
145 or modification of such restriction, the superintendent shall notify the district attorney who has or
146 had jurisdiction of the relevant criminal case. If, after the superintendent communicates the

147 superintendent's intention to remove or modify such restriction in writing to the court and the
148 district attorney who has or had jurisdiction of the relevant criminal case, neither the court nor
149 the district attorney makes written objection to such removal or modification within 14 days of
150 receipt of the notice, such restriction shall be removed by the superintendent. If the
151 superintendent or medical director of the Bridgewater state hospital intends to discharge a person
152 committed under this section or at the end of a period of commitment intends not to petition for
153 their further commitment, they shall notify the court and district attorney which have or had
154 jurisdiction of the criminal case. Within 30 days of the receipt of such notice, the district attorney
155 may petition for commitment under the provisions of paragraph (c). During such 30 day period,
156 the person shall be held at the facility or hospital. This paragraph shall not apply to persons
157 originally committed after a finding of incompetence to stand trial whose criminal charges have
158 been dismissed.

159 (f) If a person is found incompetent to stand trial, the court shall send notice to the
160 department of correction which shall compute the date of the expiration of the period of time
161 equal to the time of imprisonment which the person would have had to serve prior to becoming
162 eligible for parole if they had been convicted of the most serious crime with which they were
163 charged in court and sentenced to the maximum sentence they could have received, if so
164 convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be
165 regarded as 1 half of the maximum sentence potential sentence. Where applicable, the provisions
166 of sections 129, 129A, 129B, and 129C of chapter 127 shall be applied to reduce such period of
167 time. On the final date of such period, the court shall dismiss the criminal charges against such
168 person, or the court in the interest of justice may dismiss the criminal charges against such
169 person prior to the expiration of such period.

170 (g) The department shall establish a forensic navigators program to help guide, support,
171 and advocate for persons involved in the criminal court system and who, pursuant to this chapter,
172 have been ordered to undergo observation and evaluation for competency to stand trial or
173 criminal responsibility pursuant to section 15, or ordered to undergo restoration of competency
174 pursuant to this section, or who have been committed to a facility or the Bridgewater state
175 hospital pursuant to subsection (b) of this section. Such forensic navigators shall serve as interim
176 case managers and community liaisons for such persons. A forensic navigator shall be offered to
177 persons who receive court orders for competency evaluations, subject to available department
178 resources. No penalty shall be imposed on persons who decline to accept the services of a
179 forensic navigator. The department shall promulgate regulations to govern the forensic navigator
180 program and the services provided by forensic navigators.

181 SECTION 3. Special Commission to Collect Data on Competency to Stand Trial and
182 Criminal Responsibility Determinations and to Recommend Reforms to These Processes

183 Notwithstanding any general or special law to the contrary, there shall be a special
184 commission established to review and develop recommendations and best practices for
185 evaluations of competency to stand trial and criminal responsibility conducted pursuant to
186 sections 15 and 16 of chapter 123, including an analysis of the settings in which such evaluations
187 are conducted. The commission shall be co-chaired by the secretary of the executive office of
188 health and human services, or his or her designee, and the chief justice of the trial court or his or
189 her designee. The commission shall solicit input from the chairs of the joint committee on the
190 judiciary, the chairs of the joint committee on mental health, substance use and recovery, the
191 secretary of public safety and security, the Massachusetts Psychiatric Society, the Massachusetts
192 Psychological Association, the Committee for Public Counsel Services, the Massachusetts

193 Association for Mental Health, the Association for Behavioral Healthcare, the Mental Health
194 Legal Advisors Committee, and the Wildflower Alliance.

195 The commission shall gather and consider data related to number of persons held for
196 observation and examination conducted pursuant to Section 15(a), 15(b), 16(a) and 16(b) of
197 chapter 123, including, for each of these sections, the number of persons found to be competent
198 to stand trial, incompetent to stand trial, criminally responsible and not criminally responsible,
199 the average and median length of stay for those held pursuant to sections 15(a), 15(b), 16 (a) and
200 16(b), and the profession of providers conducting evaluations under these sections and outcome
201 of determinations by these provider types; provided further, that data shall be stratified, where
202 available, by age, race, ethnicity, gender identity, sexual orientation, individuals with Autism
203 Spectrum Disorder, intellectual or developmental disabilities and persons experiencing
204 homelessness; provided further, that the commission shall review up to 3 years of records of
205 competency and criminal responsibility determinations and related hospitalizations with
206 variation of factors to allow for data representative of the Commonwealth as a whole; provided
207 further that the commission shall gather and evaluate potential reforms to the processes by which
208 individuals are evaluated for competency to stand trial and criminal responsibility and the
209 processes by which individuals are attempted to be restored to competency and shall make
210 recommendations regarding possible reforms to these processes; provided further, that not later
211 than June 30, 2024, the commission shall submit a report to the house and senate committees on
212 the judiciary and the clerks of the senate and house of representatives with its findings and
213 recommendations.