

HOUSE No.

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>1/14/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

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 one 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 operated or contracted for by the department pursuant to
21 subparagraph (g) of this section to conduct such observation and examination or in a facility or,
22 if such person is a male and appears to require strict security, at the Bridgewater state hospital.
23 The court may only order the involuntary observation and further examination of a defendant at a
24 facility or at the Bridgewater state hospital if the court makes a particularized finding on the
25 record, by clear and convincing evidence, that there is no appropriate, less restrictive alternative
26 that would allow for a determination of a defendant's competency. The burden of proof as to the
27 need for observation at a facility or Bridgewater state hospital shall be on the Commonwealth.
28 Any observation and further examination must be completed within twenty days of the court's
29 order. Copies of the complaints or indictments and the physician's or psychologist's report under
30 paragraph (a) shall be delivered to the community-based program operated or contracted for by
31 the department pursuant to subparagraph (g) of this section, or the facility conducting the
32 observation and examination or to Bridgewater state hospital if the person is found by the court
33 to require strict security. If an examining qualified physician or an examining qualified
34 psychologist completes the observation and examination before the expiration of such twenty-
35 day period, the examining qualified physician or examining qualified psychologist shall
36 forthwith notify the court as provided in subparagraph (c) and the court shall arrange for the

37 person's return to court at the earliest possible occasion. If, before the expiration of such twenty-
38 day period, an examining qualified physician or an examining qualified psychologist believes
39 that observation and examination for more than twenty days is necessary, that physician or
40 psychologist shall so notify the court and shall request in writing an extension of the twenty-day
41 period, specifying the reason or reasons for which such further observation and examination is
42 necessary. Upon the receipt of such request, the court may extend said observation and
43 examination period, but in no event shall the period exceed forty days from the date of the initial
44 court order for observation and examination; provided, however, a person confined to a facility
45 or the Bridgewater state hospital may request continued care and treatment during the pendency
46 of the criminal proceedings against such person and if the superintendent or medical director
47 agrees to provide such care and treatment, the court may order the further hospitalization of such
48 person at the facility or the Bridgewater state hospital.

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

54 (d) If on the basis of such reports the court is satisfied that the defendant is competent to
55 stand trial, the case shall continue according to the usual course of criminal proceedings;
56 otherwise the court shall hold a hearing on whether the defendant is competent to stand trial;
57 provided that at any time before trial any party to the case may request a hearing on whether the
58 defendant is competent to stand trial. A finding of incompetency shall require a preponderance of

59 the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed
60 until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

61 (e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may
62 order a psychiatric or other clinical examination and, after such examination, it may also order a
63 period of observation to be carried out at a community-based program operated or contracted for
64 by the department pursuant to subparagraph (g) of this section if the individual is released from
65 custody, or in a facility, or at the Bridgewater state hospital if the court determines that strict
66 security is required and if such person is male. The purpose of such observation or examination
67 shall be to aid the court in sentencing. Such period of observation or examination shall not
68 exceed forty days. During such period of observation, the superintendent or medical director of a
69 facility in which the person is confined may petition the court for commitment of such person. If
70 the observation and examination pursuant to this section has been conducted at a community-
71 based program operated or contracted for by the department pursuant to subparagraph (g) of this
72 section, and the examining qualified physician or an examining qualified psychologist believes
73 that failure to hospitalize such a person would create a likelihood of serious harm by reason of
74 mental illness, the examining qualified physician or an examining qualified psychologist may
75 apply for the person's commitment to a facility under the provisions of section twelve of this
76 chapter and shall notify the court. The court, after imposing sentence on said person, may hear
77 the petition as provided in section eighteen, and if the court makes necessary findings as set forth
78 in section eight it may in its discretion commit the person to a facility or the Bridgewater state
79 hospital. Such order of commitment shall be valid for a period of six months. All subsequent
80 proceedings for commitment shall take place under the provisions of said section eighteen in the
81 district court which has jurisdiction of the facility or hospital. A person committed to a facility or

82 Bridgewater state hospital pursuant to this section shall have said time credited against the
83 sentence imposed as provided in paragraph (c) of said section 18.

84 (f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section,
85 a court may order a psychiatric or psychological examination or a period of observation for an
86 alleged delinquent in the community or in a facility to aid the court in its disposition. Such period
87 shall not exceed forty days.

88 (g) The department shall coordinate the establishment of, contract for, fund, and provide
89 oversight to a system of geographically dispersed community-based programs to conduct
90 determinations of competency to stand trial and criminal responsibility. These programs shall be
91 available seven days per week to conduct such determinations and shall accept all referrals from
92 all courts which are located in their area of geographic responsibility. These programs shall offer
93 observation and examination regarding competency to stand trial and criminal responsibility and
94 may offer residential services, but a person's acceptance of residential services shall not be a
95 condition of their obtaining a competency or criminal responsibility determination.

96 SECTION 2. Chapter 123 of the General Laws is hereby amended by striking out section
97 16 and inserting in place thereof the following section:-

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

101 (a) The court having jurisdiction over the criminal proceedings may order that a person
102 who has been found incompetent to stand trial or not guilty by reason of mental illness or mental
103 defect in such proceedings be observed and examined for a period of forty days at a community-

104 based program or a facility operated or contracted for by the department pursuant to
105 subparagraph (g) of section 15; provided that, if the defendant is a male and if the court
106 determines that the failure to retain him in strict security would create a likelihood of serious
107 harm by reason of mental illness, or other mental defect, it may order such hospitalization at the
108 Bridgewater state hospital; and provided, further, that the combined periods of hospitalization
109 under the provisions of this section and paragraph (b) of section 15 shall not exceed fifty days.

110 (b) During the period of observation of a person believed to be incompetent to stand trial
111 or within sixty days after a person is found to be incompetent to stand trial or not guilty of any
112 crime by reason of mental illness or other mental defect, the district attorney, the superintendent
113 of a facility or the medical director of the Bridgewater state hospital may petition the court
114 having jurisdiction of the criminal case for the commitment of the person to a facility or to the
115 Bridgewater state hospital. If the observation and examination pursuant to this section has been
116 conducted at a community-based program operated or contracted for by the department pursuant
117 to subparagraph (g) of section fifteen, and the examining qualified physician or an examining
118 qualified psychologist has reason to believe that failure to hospitalize such person would create a
119 likelihood of serious harm by reason of mental illness, the examining qualified physician or an
120 examining qualified psychologist may apply for the person's commitment to a facility under the
121 provisions of section twelve of this chapter and shall notify the court. However, the petition for
122 the commitment of an untried defendant shall be heard only if the defendant is found
123 incompetent to stand trial or if the criminal charges are dismissed after commitment. If the court
124 makes the findings required by paragraph (a) of section eight it shall order the person committed
125 to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall
126 order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall

127 be dismissed and the person discharged. An order of commitment under the provisions of this
128 paragraph shall be valid for sixmonths. In the event a period of observation under the provisions
129 of paragraph (a) has expired, or in the event no such period of examination has been ordered, the
130 court may order the temporary detention of such person in a jail, house of correction, facility or
131 the Bridgewater state hospital until such time as the findings required by this paragraph are made
132 or a determination is made that such findings cannot be made.

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

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

147 (e) Any person committed to a facility under the provisions of this section may be
148 restricted in movements to the buildings and grounds of the facility at which the person is

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

165 (f) If a person is found incompetent to stand trial, the court shall send notice to the
166 department of correction which shall compute the date of the expiration of the period of time
167 equal to the time of imprisonment which the person would have had to serve prior to becoming
168 eligible for parole if they had been convicted of the most serious crime with which they were
169 charged in court and sentenced to the maximum sentence they could have received, if so
170 convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be
171 regarded as one half of the maximum sentence potential sentence. Where applicable, the

172 provisions of sections one hundred twenty-nine, one hundred twenty-nine A, one hundred
173 twenty-nine B, and one hundred twenty-nine C of chapter one hundred twenty-seven shall be
174 applied to reduce such period of time. On the final date of such period, the court shall dismiss the
175 criminal charges against such person, or the court in the interest of justice may dismiss the
176 criminal charges against such person prior to the expiration of such period.

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

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

190 Notwithstanding any general or special law to the contrary, there shall be a special
191 commission established to review and develop recommendations and best practices for
192 evaluations of competency to stand trial and criminal responsibility conducted pursuant to
193 sections fifteen and sixteen of chapter one hundred twenty-three, including an analysis of the

194 settings in which such evaluations are conducted. The commission shall be co-chaired by the
195 secretary of the executive office of health and human services, or his or her designee, and the
196 chief justice of the trial court or his or her designee. The commission shall solicit input from the
197 chairs of the joint committee on the judiciary, the chairs of the joint committee on mental health,
198 substance use and recovery, the secretary of public safety and security, the Massachusetts
199 Psychiatric Society, the Massachusetts Psychological Association, the Committee for Public
200 Counsel Services, the Massachusetts Association for Mental Health, the Association for
201 Behavioral Healthcare, the Mental Health Legal Advisors Committee, and the Wildflower
202 Alliance.

203 The commission shall gather and consider data related to number of persons held for
204 observation and examination conducted pursuant to Section fifteen (a), fifteen (b), sixteen (a)
205 and sixteen (b) of chapter one hundred twenty-three, including, for each of these sections, the
206 number of persons found to be competent to stand trial, incompetent to stand trial, criminally
207 responsible and not criminally responsible, the average and median length of stay for those held
208 pursuant to sections fifteen (a), fifteen (b), sixteen (a) and sixteen (b), and the profession of
209 providers conducting evaluations under these sections and outcome of determinations by these
210 provider types; provided further, that data shall be stratified, where available, by age, race,
211 ethnicity, gender identity, sexual orientation, individuals with Autism Spectrum Disorder,
212 intellectual or developmental disabilities and persons experiencing homelessness; provided
213 further, that the commission shall review up to three years of records of competency and criminal
214 responsibility determinations and related hospitalizations with variation of factors to allow for
215 data representative of the Commonwealth as a whole; provided further that the commission shall
216 gather and evaluate potential reforms to the processes by which individuals are evaluated for

217 competency to stand trial and criminal responsibility and the processes by which individuals are
218 attempted to be restored to competency; provided further that the commission shall investigate
219 and study the use by courts in the United States and in other countries of justice intermediaries
220 when individuals with disabilities and other vulnerable individuals are involved in justice
221 systems; and shall make findings and recommendations regarding possible reforms to these
222 processes including the use of justice intermediaries; provided further, that not later than June 30,
223 2026, the commission shall submit a report to the house and senate committees on the judiciary
224 and the clerks of the senate and house of representatives with its findings and recommendations.