

## STEPS TO REFORM THE PROCESS BY WHICH DEFENDANTS ARE EVALUATED FOR, AND RESTORED TO, COMPETENCY

### H.1460 An Act relative to reforming the competency to stand trial process (Rep. Marjorie Decker)

**THE PROBLEM** Commitments for evaluation of a criminal defendant's competency to stand trial (CST) are everyday occurrences in courts. These commitments profoundly impact the defendant, the administration of justice, and the mental health system. Defendants subject to competency evaluations, or found incompetent to stand trial, find themselves in mental health facilities, with their day in court delayed or, if competency is not restored, denied. Bridgewater State Hospital (BSH) is experiencing a rise of admissions of persons in need of competency determinations:

In 2021, there were 774 commitments, for various reasons, to BSH, a 31% increase over the previous year.<sup>1</sup>

Department of Mental Health (DMH)-operated psychiatric hospitals also are seeing a high number of admissions of such forensic patients (and a corresponding decline in non-forensic admissions):

Between December 2021 and December 2022, 1,042 admissions to DMH hospitals came from the courts and 43 from hospital psychiatric care, according to data compiled by the Massachusetts Association of Behavioral Health Systems.<sup>2</sup> In August 2023, DMH operated and contracted chronic care hospitals admitted 91 adults from the courts and not one person from acute care hospitals.<sup>3</sup>

Forensic patients using DMH beds prevent access by other patients waiting in acute-care units for longer-term care:

As of April 3, 2023, there were 104 people in private psychiatric hospitals who had been approved for transfer to DMH continuing-care hospitals but who were stuck because there were no open continuing care beds.<sup>4</sup>

In turn, the lack of movement of the non-forensic patients in acute-care hospitals contributes to the emergency department (ED) boarding crisis because there are no available inpatient beds for people waiting in the ED.

### WHAT THIS BILL ACHIEVES

This bill offers several solutions to this systemic problem.

- Revises the mental health statute, Ch. 123, to require DMH to contract with providers so that individuals may receive competency and criminal responsibility determinations in community-based programs. [Sections 1 & 2]
- Requires a study to collect data regarding the competency and criminal responsibility determination processes in Massachusetts and to make recommendations for reform of those processes. [Section 3]
- Establishes a program of forensic navigators coordinated, funded, and overseen by DMH to assist people who are moving through the competency and criminal responsibility determination processes, to expedite those processes and protect individual rights. [Section 2]

**WHY THIS MATTERS** Moving evaluation and restoration to the community whenever appropriate allows people to remain with family and friends, retain their jobs and housing, and pursue mental health recovery in the least restrictive setting possible. Moreover, it will free up chronic care psychiatric hospital beds in DMH facilities, thereby helping to allow people stuck on acute-care units and in EDs to access care.

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<sup>1</sup> Massachusetts Department of Correction, *Population Trends 2021*, 35 (2022), <https://www.mass.gov/doc/prison-population-trends-2021/download>.

<sup>2</sup> Editorial, Lack of long-term mental health beds is harming patients (Apr. 2, 2023), <https://www.bostonglobe.com/2023/04/09/opinion/mental-health-beds/>. For raw data, see DMH, Section 114 Reports: Section 114 of Chapter 24 of Acts of 2021; at <https://www.mass.gov/info-details/section-114-reports>.

<sup>3</sup> DMH, DMH Section 114 Report – August 2023, <https://www.mass.gov/doc/section-114-report-august-2023/download>.

<sup>4</sup> DMH Admission Referral Tracking System, Continuing Care Referral List Summary (Apr. 3, 2023).