

REFORMING THE PROCESS BY WHICH DEFENDANTS ARE EVALUATED FOR, AND RESTORED TO, COMPETENCY

H.1652 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 are everyday occurrences. These commitments profoundly impact the defendant, administration of justice, and mental health system. Defendants subject to competency evaluations, or found incompetent to stand trial, find themselves in mental health facilities, including Bridgewater State Hospital, with their day in court delayed or, if competency is not restored, denied.

Department of Mental Health (DMH) continuing-care hospitals experience high numbers of admissions of forensic patients and declining admissions of non-forensic patients:

- Courts directed 1007 forensic admissions to DMH-operated or contracted continuing care units in 2024, continuing a pattern seen in 2022 and 2023 of these units receiving over 1000 forensic admissions annually.¹
- During 2024, there were only 180 civil admissions to those same units.²
- The average cost of a forensic evaluation at a DMH continuing care unit is \$42,130.³
- Transfers from Bridgewater to DMH continuing care facilities increased 92% between 2018 and 2024.⁴

Forensic patients using DMH beds prevent access by other Massachusetts patients waiting for mental health care:

- As of June 2025, 281 adults were waiting in an emergency department or medical surgical floor for an acute care inpatient behavioral health bed.⁵
- In April 2023, 104 people on acute care psychiatric units were approved for transfer and waiting for a bed in a DMH continuing-care hospital.⁶ In March 2025, only one DMH continuing care hospital received admissions from an acute care psychiatric unit.⁷

WHAT THIS BILL ACHIEVES This bill revises §§15 & 16 of G.L. c. 123, the MA mental health statute, to establish:

- A DMH **program which can conduct community-based competency to stand trial and criminal responsibility determinations.**⁸ [Sections 1 & 2]
- A DMH program of **forensic navigators** to assist people moving through the competency and criminal responsibility determination processes, to expedite those processes and protect individual rights. [Section 2]
- A commission to **collect data and develop recommendations** to improve the competency and criminal responsibility processes, including through an investigation of the potential use of **justice intermediaries** to assist individuals with disabilities or other vulnerabilities during court proceedings. [Section 3]

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 continuing care psychiatric hospital beds in DMH facilities, thereby helping to allow people stuck in emergency departments and on acute-care psychiatric units to access mental health care.

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¹ DMH, Office of Inpatient Management response to public records request to Mental Health Legal Advisors Committee (July 21, 2025). These forensic admissions include admissions pursuant to G.L. c. 123, §§ 15, 16, and 18. Of these, 559 were for a court-ordered forensic evaluation regarding competence to stand trial (§ 15), criminal responsibility (§ 15), or both. *Id.*

² *Id.*

³ *Id.* (based on a cost per day at a DMH hospital of \$1221 (FY24 cost report), an average length of forensic admission of 30 days, and an average cost of a contracted forensic evaluation of \$5,500). The state's forensic evaluator workforce is a blend of state employees and contracted vendor employees; the costs of the "contracted forensic evaluator" represent costs of services provided by the latter category of evaluators. *Id.*

⁴ *Id.* (from 99 to 190 transfers).

⁵ Mass. Health and Hospital Assoc., Capturing a Crisis: Behavioral Health Boarding Reports, <https://www.mhalink.org/bhboarding/> (June 2, 2025 data) (51 hospitals reporting).

⁶ DMH Admission Referral Tracking System, Continuing Care Referral List Summary (Apr. 3, 2023).

⁷ DMH, Section 114 Report—Mar. 2025, <https://www.mass.gov/info-details/section-114-reports#2025-reports> (Tewksbury had at least one but no more than 10 admissions from Arbour Hospital—JP and from BIDMC 1 Deaconess Road; precise numbers suppressed for patient confidentiality).

⁸ This program would help effectuate the Supreme Judicial Court's finding in *Commonwealth v. A.Z.* (2024) (unconstitutional for a court to hospitalize a pretrial defendant for a clinical evaluation and observation of competency, absent a finding by the judge, by clear and convincing evidence, that hospitalization is the least restrictive means available to determine adequately a defendant's competency to stand trial).