

# An Act Reducing Emergency Department Boarding

H.2198 | Rep. Marjorie Decker

## Problem

Massachusetts residents experiencing a mental health crisis are too often **detained involuntarily under Section 12(a) of Chapter 123** and taken to hospital emergency departments (EDs). Once there, they may wait days or **even weeks without receiving treatment**, stuck in emergency department “boarding”—a legal **limbo** with:

- **No defined time limit** on detention
- **No right to challenge** the confinement
- **No guaranteed access to legal counsel**

This not only undermines due process but also causes significant psychological harm for the individual. Emergency resources are overwhelmed by the number of individuals and long stays in the ED.

## Call to Action

In *Massachusetts General Hospital v. C.R.*, 484 Mass. 472, 475 (2020), the Supreme Judicial Court warned that the current law may be **constitutionally deficient** and urged legislative action:

*“We... strongly encourage the Legislature to identify a § 12(a) time deadline to clarify the statute and avoid future constitutional difficulties and to do so as expeditiously as possible.”*

## Solution

This legislation responds directly to the Court’s concerns by establishing basic legal safeguards for people involuntarily detained under Section 12(a). It:

- Limits involuntary detention to 72 hours
- Guarantees access to legal counsel after 48 hours

These changes ensure that individuals are treated with dignity and fairness – and that they are not indefinitely held without oversight or access to legal remedies.

## Companion Reform: Community Alternatives

This bill works in tandem with **H.2199, An Act ending unnecessary hospitalizations**, which would reduce unnecessary Section 12 detentions by requiring consideration of **community-based, voluntary mental health crisis services**, such as Mobile Crisis Intervention and Behavioral Health Urgent Care.

Together, these bills protect rights while **reducing the burden on hospitals and emergency departments**.

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