

An Act Relative to Ending Unnecessary Hospitalizations and Reducing Emergency Department Boarding

H. 1980 (Representative Decker)

Thousands of times each year, Massachusetts residents who are experiencing a mental health crisis are involuntarily detained and taken to hospital emergency departments (EDs) pursuant to G.L. c. 123, § 12(a) where they can wait days or weeks without treatment. ED “boarding” is a legal limbo where people receive no active treatment in a therapeutic milieu. Instead, they can be detained indefinitely, with no way to challenge their involuntary confinement.

The Supreme Judicial Court has called upon the Legislature to urgently remedy this problem, writing in Massachusetts General Hospital v. C.R., 484 Mass. 472 (2020), “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.” This bill seeks to address the Court’s constitutional concerns, in part by reducing the number of people who are taken to emergency departments in the first place.

H.1980 will:

- Reduce emergency room boarding and unnecessary hospitalization of people pursuant to § 12(a) by requiring mental health professionals to explore and exhaust community-based alternatives before pursuing hospitalization, including but not limited to:
 - the Behavioral Health Help Line;
 - services offered through Community Behavioral Health Centers (CBHCs) including mobile crisis intervention, behavioral health urgent care, and community crisis stabilization;
 - peer respite and other peer-run alternatives to EDs;
 - Children’s Behavioral Health Initiative (CBHI) services or Behavioral Health Services for Children and Adolescents (BHCA).
- Provide that after exhausting less restrictive alternatives, the mental health professional authorizes transport to the nearest CBHC.¹ If, after evaluation, the CBHC is unable to prevent a likelihood of serious harm, the person is then taken directly to an inpatient psychiatric facility with an available bed.
- Create a real-time database of open psychiatric beds so people who cannot be stabilized and treated in the community will be transported directly to an inpatient mental health facility for evaluation under G.L. c. 123, § 12(b). Those who meet criteria can then be admitted either voluntarily or involuntarily.
- Provide that the individual may only be transported to an emergency department if there is no open bed at a psychiatric facility within a 30-mile radius.
- Ensure that individuals taken to an ED will be informed, within 12 hours of arrival, of their right to speak with an attorney, and will have access to a judicial hearing if they are still in the emergency room 48 hours after their arrival.
- Require that data relative to § 12 applications is collected by the Department of Mental Health and reported to the Legislature annually.

It has never been more important to ensure timely access to community-based treatment for individuals with mental health needs. Doing so will reduce the traumatic effects associated with ED “boarding” and help to ensure that scarce ED resources are appropriately utilized and available for those who need them.

¹ A law enforcement officer may transport to a CBHC in an emergency if no mental health professional is available.

This bill is supported by: Committee for Public Counsel Services, Massachusetts Association for Mental Health, Center for Public Representation, Mental Health Legal Advisors Committee, Disability Law Center, Wildflower Alliance, NAMI Massachusetts, and Advocates, Inc.

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