

HOUSE No. 4948

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 30, 2022.

The committee on Mental Health, Substance Use and Recovery to whom was referred the petition (accompanied by bill, House, No. 2089) of Brandy Fluker Oakley and others for legislation to require the determination of qualified mental health professionals prior to prisoners being placed on mental health watch, reports recommending that the accompanying bill (House, No. 4948) ought to pass.

For the committee,

ADRIAN C. MADARO.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to ensure the constitutional rights and human dignity of prisoners on mental health watch.

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. Section 18 of chapter 123, as appearing in the 2020 Official Edition, is
2 hereby amended by striking out, in lines 27 to 34, inclusive, the words “; provided, however,
3 that, notwithstanding the court’s failure, after an initial hearing or after any subsequent hearing,
4 to make a finding required for commitment to the Bridgewater state hospital, the prisoner shall
5 be confined at said hospital if the findings required for commitment to a facility are made and if
6 the commissioner of correction certifies to the court that confinement of the prisoner at the
7 hospital is necessary to insure his continued retention in custody.

8 SECTION 2. Said section 18 of said chapter 123, as so appearing, is hereby further
9 amended by inserting after subsection (a) the following subsection:-

10 (a ½) (1) For purposes of this subsection, “mental health watch” shall mean a status
11 intended to protect a prisoner from a risk of imminent and serious self-harm.

12 (2) A prisoner or a prisoner’s legal representative, or a mental health staff person by
13 request of a prisoner, may petition to the district court that has jurisdiction over the prisoner’s
14 place of detention or, if the prisoner is awaiting trial, to the court that has jurisdiction of the
15 criminal case to be transferred to a suitable inpatient psychiatric facility or unit licensed or
16 operated by the department of mental health or to Bridgewater state hospital. The court may
17 order the prisoner’s requested transfer if the prisoner: (i) has been on mental health watch for at
18 least 24 hours; or (ii) is at serious risk of imminent and serious self-harm. A transfer ordered
19 under this subsection shall only be ordered to Bridgewater state hospital if: (i) the prisoner is
20 male and no bed is available in a timely manner at a unit licensed or operated by the department
21 of mental health; or (ii) (A) the prisoner is not a proper subject for commitment to an inpatient
22 psychiatric facility or unit licensed or operated by the department of mental health; and (B) the
23 failure to retain the prisoner in strict custody would create a likelihood of serious harm. When a
24 prisoner has been on mental health watch for 24 hours, and once every 24 hours thereafter that
25 the prisoner remains on mental health watch, a member of the mental health staff of the place of
26 detention shall advise the prisoner of the prisoner’s right to petition under this subsection and ask
27 the prisoner if the prisoner would like a mental health staff person to petition on the prisoner’s
28 behalf. If the prisoner requests, either orally or in writing, that a mental health staff person
29 petition under this subsection, a mental health staff person shall file a petition with the
30 appropriate court within 8 hours. If a prisoner, a prisoner’s legal representative or a mental health
31 staff person files a petition in a court that lacks jurisdiction under this subsection, the clerk of the
32 court shall, as soon as is practicable, determine the court with jurisdiction and forward the
33 petition to that court for adjudication. The court may order periodic reviews of transfers under
34 this subsection.

35 SECTION 3. Section 1 of chapter 127 of the General Laws, as appearing in the 2020
36 Official Edition, is hereby amended by inserting after the definition of “Medication-assisted
37 treatment” the following definition:

38 “Mental health watch”, a status intended to protect a prisoner from a risk of
39 imminent and serious self-harm.

40 SECTION 4. Said chapter 127 is hereby further amended by inserting after section 39H
41 the following section:-

42 Section 39I. (a) A prisoner may be placed on mental health watch only if it is determined
43 by a qualified mental health professional’s clinical judgment that the prisoner requires
44 observation to protect the prisoner from a risk of imminent and serious self-harm. A qualified
45 mental health professional shall assess the need for continued mental health watch after 6 hours,
46 after 12 hours and then at least once every 12 hours thereafter. Each such assessment shall
47 include an in-person interview with the prisoner.

48 (bc) The department, in consultation with the department of mental health, shall
49 promulgate regulations not later than December 31, 2022. The department and the department of
50 mental health shall jointly hold a public hearing pursuant to section 2 of Chapter 30A prior to
51 adopting, amending or repealing said regulations. Said regulations shall require that all state and
52 county correctional facilities:

53 (1) Have a written suicide prevention and suicide response policy that includes standards
54 and procedures that are consistent with department of mental health regulations for placing a
55 person on mental health watch status;

56 (2) Establish a mental health suicide watch chain of command supervised by mental
57 health clinical supervisory staff;

58 (3) Ensure that all persons on mental health watch status are housed in clinically-
59 appropriate settings and are provided constant 1-on-1 supervision;

60 (4) Ensure that all incarcerated persons needing mental health care receive confidential
61 mental health treatment that is consistent with generally accepted professional standards for
62 mental health treatment in the community. Medication alone, without therapy, does not
63 constitute sufficient treatment; provided, however, that a prisoner may decline therapy without
64 medication disruption if the prisoner does not want to participate in therapy. A prisoner on
65 mental health watch shall have an individual treatment plan written by a qualified mental health
66 professional in consultation with the prisoner, who may accept or decline the services offered in
67 said plan. The individual treatment plan shall include confidential individual therapy. Time spent
68 in therapy shall not count toward out of cell time as specified in paragraph (5)(iv). The individual
69 treatment plan shall remain in effect after the prisoner is returned to the general population as
70 long as deemed clinically indicated by the qualified mental health professional;

71 (5) Ensure personal dignity, except as limited by a qualified mental health professional
72 based on individual assessment, including but not limited to: (i) prisoners shall be fully clothed,
73 in clothing that is substantially similar to that which is worn by persons in the general
74 population; (ii) menstruating prisoners shall be provided with appropriate and sufficient personal
75 hygiene supplies throughout the duration of their menstrual cycle; (iii) prisoners on mental health
76 watch shall be provided a minimum of 2 blankets of the same or of substantially similar quality
77 to blankets provided in the general population; (iv) prisoners who have been placed on mental

78 health watch shall be offered time out of cell indoors or outdoors, in accordance with the
79 prisoner's preference, at least once daily; and (v) prisoners shall have the right to personal
80 possessions. If a qualified mental health professional deems a prisoner to be at continued risk for
81 imminent and serious self-harm while under constant 1-on-1 supervision or deems further human
82 dignity deprivations, including removal of clothing, are indicated to prevent serious self-harm or
83 death by suicide, said prisoner shall be transferred immediately to an inpatient psychiatric facility
84 or unit licensed or operated by the department of mental health or, only if no bed is available in a
85 timely manner at such a facility, to Bridgewater state hospital;

86 (65) Conduct independent reviews of completed suicides, attempted suicides and
87 incidents of self-harm, make recommendations for remediation after each incident and document
88 implementation of said recommendations; and

89 (76) Require that medical or clinical staff are responsible for mental health watch
90 observation