The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

AN ACT REVISING THE LAWS OF THE COMMONWEALTH RELATIVE TO THE ADMISSION, TREATMENT AND RELEASE OF PATIENTS IN INSTITUTIONS UNDER THE DEPARTMENT OF MENTAL HEALTH AND RELATED MATTERS.

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. Chapter one hundred twenty-three of the General Laws is hereby amended by striking out section one and by inserting in place thereof the following: —

2 Section 1. Unless the context otherwise requires, as used in this chapter:

3 “Commissioner” shall mean the commissioner of mental health.

4 “Department” shall mean the department of mental health.

5 “Mental health legal adviser” shall mean a mental health legal adviser as described and provided for in section thirty-four of chapter two hundred twenty-one.

6 “Mental health or retardation facility of the department” shall mean state hospitals, state schools, comprehensive centers, clinics and other mental health institutions placed within or established by the department.

7 “Private mental health or retardation facility” shall mean private mental hospitals or clinics or schools for the retarded or other facilities offering professional care and treatment for such persons.

8 “Qualified physician” shall mean a physician who is designated by and who meets qualifications required by the regulations of the department. The department may designate dif-
ferent physicians or may establish different qualifications for
the position of qualified physician for the purposes of different
sections of this chapter. A qualified physician need not be an
employee of the department or of any mental health or retarda-
tion facility of the department.

"Likelihood of serious harm" shall mean: (1) a substantial
risk of physical harm to the person himself as manifested by
evidence of threats of, or attempts at, suicide or serious bodily
harm; or (2) a very substantial risk of grave social harm to
self such as the loss of a professional license or means of liveli-
hood or a serious loss of property; or (3) a substantial risk of
physical harm to other persons as manifested by evidence of
homicidal or other violent behavior or evidence that others
are placed in reasonable fear of violent behavior; or (4) a very
substantial risk of behavior which is socially destructive to
others, such as serious harassment, grave offenses against
public decency or behavior by a parent which inflicts serious
psychological damage on his children; or (5) a substantial risk
of physical impairment or injury to the person himself as
manifested by evidence that such person's judgment is so af-
fected that he is unable to protect himself in the community
and that reasonable provision for this protection is not avail-
able in the community.

1 Section 2. In section six of chapter one hundred twenty-
three, strike the words "state hospital" and insert in place
thereof the words "mental health or retardation facility of the
department".

1 Section 3. In section seven of chapter one hundred twenty-
three, strike the words "state hospitals" appearing in said sec-
tion in the first, second and third sentences and insert in place
thereof in each instance the words "mental health or retarda-
tion facilities of the department".

1 Section 4. In section eight of chapter one hundred twenty-
three, strike the words "state hospital" appearing twice in the
first sentence thereof and insert in place thereof in each in-
4 stance the words "mental health or retardation facility of the 5 department.

1 SECTION 5. In section eight A, strike the words "state hos- 2 pital" and insert in place thereof the words "mental health or 3 retardation facility of the department", and strike out the last 4 word of the section, "hospital", and insert in place thereof the 5 word "facility".

1 SECTION 6. In section nine of chapter one hundred twenty- 2 three, strike the words "state hospitals" and insert in place 3 thereof the words "mental health or retardation facilities of 4 the department".

1 SECTION 7. Sections twelve and thirteen of chapter one 2 hundred twenty-three are hereby repealed.

1 SECTION 8. Section fifteen of chapter one hundred twenty- 2 three is hereby repealed.

1 SECTION 9. In section sixteen of chapter one hundred 2 twenty-three, strike in the first sentence and in the second 3 sentence the words "state hospital" and insert in place thereof 4 on each instance the words "mental health or retardation 5 facility of the department" and strike out also in the first sen- 6 tence the word "hospital" and insert in place thereof the word 7 "facility".

1 SECTION 10. In section sixteen A of chapter one hundred 2 twenty-three, strike out the words "state hospital" and insert 3 in place thereof the words "mental health or retardation fa- 4 cility of the department".

1 SECTION 11. Strike section twenty of chapter one hundred 2 twenty-three and insert in place thereof the following new 3 section:—

4 Section 20A. (a) The superintendent or other head of any 5 mental health or retardation facility of the department shall 6 have the power and authority to transfer to any other mental
7 health or retardation facility of the department, or any private
8 mental health facility if the superintendent or other head
9 thereof gives his approval, any resident or in-patient whom
10 he determines to be a proper subject to receive care and
11 treatment at the facility to which he is to be transferred. At
12 least three days before a transfer is to take place the super-
13 intendent or other head shall give written notice thereof to
14 the person, and to the nearest relative or guardian of such
15 person. Such notice shall contain a statement that the person,
16 relative or guardian may consult with a mental health legal
17 adviser. If the transfer must be made immediately because
18 of a medical emergency, such notice shall be given within
19 twenty-four hours after the transfer is made. Except in
20 medical emergency cases, no person who at any time prior
21 to being transferred has given notice of his intention to leave
22 a mental health or retardation facility in accordance with the
23 provisions of section fifty-two of this chapter shall be trans-
24 ferred until a final determination has been made on the issue
25 of whether such person should be further retained as an in-
26 patient or resident. Any person to be transferred to or from
27 any mental health or retardation facility may be transferred
28 by his family, his friend, or the department, by public or pri-
29 vate automobile or ambulance whenever the person ordering
30 such transfer determines that such is practicable and safe.
31 If the person ordering the transfer determines that such
32 would not be practicable or safe, he may request any police
33 or court officer to transfer such person. Each female patient
34 being transferred by the department or the police or a court
35 officer shall be accompanied by a female transfer agent, nurse
36 or attendant. Under no circumstances shall any form of
37 restraint be used which is not absolutely necessary for the
38 safety of such person or other people.
39 (b) The department may enter into an agreement with the
40 corresponding department of another state for the transfer
41 of a person to a mental health or retardation facility of such
42 other state if such person is found to be a resident of such
43 other state, and for the transfer of a person to the facilities of
44 the department if he is found to be a resident of the common-
wealth; provided, however, that no person who is subject to a criminal complaint, indictment or sentence of a court of this commonwealth shall be transferred out of the commonwealth without the approval of said court.

1 Section 12. In section twenty A of chapter one hundred twenty-three, strike sub-sections (1) and (3) and also strike the heading number "(2)" from remaining paragraph, and insert a period after the word "restraint" in the first sentence of such remaining paragraph, and strike the remaining words in said first sentence.

1 Section 13. Chapter 123 of the General Laws is hereby amended by striking out section 22A and inserting in place thereof the following section: —

4 Section 22A. (a) The superintendent or other head of a mental health or retardation facility of the department shall have the power and authority after approval by the commissioner to transfer to the Bridgewater State Hospital for a period not to exceed 60 days, any male persons who are so dangerous by reason of mental illness or other mental disability that strict security is required. The commissioner, if he approves, shall at the time of the transfer, transmit to the commissioner of correction a written statement setting forth the reasons for the transfer. Except in emergency cases, the superintendent or other head of the facility shall give written notice to the person of such proposed transfer at least three days before the transfer is to take place. Such notice shall also be given to the nearest relative or guardian of such person and a mental health legal adviser. If the transfer must be made immediately because of an emergency, such notice shall be given within 24 hours after the transfer is made. Such notice shall contain a statement that the person, his guardian, or closest relative or a mental health legal adviser may, within three days of receipt of such notice petition the district court having jurisdiction over the facility for a hearing on the matter, and shall state that a mental health legal adviser is available to assist the person or nearest relative or guardian in making such petition. Written notice of the time and place
28 set for such hearing shall be served upon the person, the near-
29 est relative or guardian and the mental health legal adviser
30 and the superintendent or other head of the facility who trans-
31 ferred such person. In all such hearings the person shall be
32 represented by counsel. If the person is found to be indigent,
33 counsel shall be appointed by the court and an independent
34 psychiatric examination, if requested by counsel for such per-
35 son, shall be provided by the court. The person shall be allowed
36 not less than 48 hours after the appearance of counsel on his
37 behalf in which to prepare his case. Such person may request
38 either an open or closed hearing at the mental health facility
39 or at the district court and the court in its discretion may
40 grant such request. The court shall determine whether or not
41 the person is so dangerous by reason of mental illness or other
42 mental disability that strict security is required. If the court
43 after such hearing does so find, it shall order the person trans-
44 ferred to the Bridgewater State Hospital and such person may
45 be retained under such court order for a period not to exceed
46 60 days from the date of such court order for transfer to the
47 Bridgewater State Hospital. At the expiration of such 60 day
48 period such person, if still retained, shall be returned to a
49 mental health or retardation facility to be designated by the
50 department unless, prior to such expiration, the medical direc-
51 tor of the Bridgewater State Hospital has (1) determined that
52 such person is still so dangerous by reason of mental illness
53 or other mental disability that continued strict security is re-
54 quired beyond such 60 day period and (2) determined that
55 such person is not a proper subject for hospitalization at an
56 appropriate facility under the jurisdiction of the department
57 and (3) petitioned the district court of Brockton at least ten
58 days prior to the expiration of such 60 day period to so retain
59 such person. Notice of the petition for retention and of the
60 right to request a hearing on the petition shall be given to
61 the person, his guardian or nearest relative, a mental health
62 legal adviser, the medical director of Bridgewater State Hos-
63 pital and the department by the district court of Brockton
64 not less than five days prior to the expiration of the 60 day
65 period. In the event that no such request for a hearing is re-
ceived by the court within 20 days of the giving of notice of the petition for retention, the court may, without further pro-
cceedings, order that such person be retained at the Bridge-
water State Hospital for the further period of 120 days. In
the event that a hearing on the petition is requested by such
person or by his guardian or nearest relative or by a mental
health legal adviser the court shall hold such a hearing. In
all such hearings the person shall be represented by counsel.
if the person is found to be indigent counsel shall be provided
by the court and an independent psychiatric examination if
requested by counsel for such person shall be provided by the
court. The person shall be provided not less than 48 hours
after the appearance of counsel in which to prepare his case.
Such person may request either an open or closed hearing at
the Bridgewater State Hospital or at the Brockton district
court and the court in its discretion may grant such request.
If such court order for retention is issued no further court
order shall be required for such retention for a further 120 day
period. If the court declines to issue such order of retention
the person shall be returned to the mental health or retarda-
tion facility from which he was originally transferred or such
other facility of the department as the commissioner shall
designate.

(b) If the medical director of the Bridgewater State Hos-
pital at any time certifies that any person hospitalized at the
Bridgewater State Hospital, other than a person under crim-
inal sentence, is not so dangerous by reason of mental illness
or other mental disability that strict security is required but
that such person is in need of further care and treatment in
a mental health or retardation facility of the department, he
shall request the commissioner of correction to seek to trans-
fer such person to a facility of the department. If the commis-
sioner of correction approves he shall forthwith request such
a transfer by the department provided, however, that in the
case of a person who is awaiting trial and has been hospital-
ized at the Bridgewater State Hospital under the provisions
of Section 70 of this chapter, no such transfer shall be made
without the consent of the court which ordered such hospital-
ization or the court which has current jurisdiction over the
criminal proceedings. Within thirty days the commissioner of
mental health shall communicate his approval or disapproval
of such transfer request to the commissioner of correction and
if he approves execute the transfer forthwith. If the depart-
ment disapproves the request, the department shall petition
for a hearing before either the district court of Brockton or
the court which originally ordered the hospitalization. The
court shall hear and determine whether or not the person is
a fit subject for transfer. The person on behalf of whom such
request for transfer has been made, his guardian or nearest
relative and a mental health legal adviser shall be informed
by the designated court of such person’s right, within ten days
after the filing of a request for hearing and the selection of
the court by the department, to file written objection to the
jurisdiction of the court so selected. If no written objection
to the choice of court is made, the court selected by the de-
partment shall proceed to hear the matter. When such written
objection is made to the court chosen by the department, that
court shall not hear the matter, but shall refer the case for;
hearing to the alternate court available under this section for
hearings on such matters. If at the hearing on the petition
the court determines that the person is not so dangerous by
reason of mental illness or other mental disability that strict
security is required, and that the person is in need of further
care and treatment in a facility of the department, it shall
order the person transferred to a mental health or retardation
facility of the department to be designated by the department.
If the court determines that such person is still so dangerous
by reason of mental illness or other mental disability that
strict security is required it shall order that such person be
further retained at the Bridgewater State Hospital. If the de-
partment does not approve such request for transfer or request
such hearing within thirty days, it shall be deemed to have
approved the transfer. All transfers which have been approved
or ordered by any of the aforesaid procedures shall be made
forthwith to a mental health or retardation facility of the de-
partment designated by the commissioner of mental health.
(c) The medical director of the Bridgewater State Hospital shall have the authority to discharge or place on trial visit at any time any person hospitalized at the Bridgewater State Hospital who is no longer in need of hospitalization and whose discharge or trial visit would not create a likelihood of serious harm to himself or others by reason of mental illness or other mental disability except for those persons who are serving a criminal sentence and those persons hospitalized under the provisions of Section 70 or Section 73 of this chapter.

(d) Whenever the medical director of the Bridgewater State Hospital certifies that any person hospitalized thereat requires surgical or medical treatment which cannot be safely or properly given at the Bridgewater State Hospital, the department may temporarily place such person in a hospital of the department for such surgical or medical treatment as may be required.

1 **SECTION 14.** Strike section twenty-three of chapter one hundred twenty-three and insert in place thereof the following new section:

4 **Section 23.** The superintendent or other head of any mental health or retardation facility of the department or of the McLean Hospital or of any other private mental health facility so authorized by the department may receive for care and treatment any person in the military or naval service of the United States who is suffering from mental illness and cannot properly be cared for at the army post, naval station, air base or governmental hospital within the confines of the commonwealth where he is stationed or happens to be, upon the written application of the medical officer in charge of such army post, naval station, air base or government hospital, who shall make a full statement of the case in such form as the department prescribes. Unless otherwise ordered by the proper military or naval authority, persons received into an institution under this section may be detained therein for a period not exceeding sixty days, except that further detention, if necessary, may be authorized by the department. The department may make contracts with the federal government
relative to the support of persons received and cared for under the provisions of this section on such terms as may be agreed upon.

Section 15. Section twenty-four of chapter one hundred twenty-three is hereby repealed.

Section 16. In section twenty-seven of chapter one hundred twenty-three, strike in the first sentence the sixth word "hospital", and insert in place thereof the words "institution listed in section fourteen of chapter nineteen of the General Laws", and strike the word "hospital" as it appears subsequently three additional times in said section and insert in place thereof in each instance the word "institution".

Section 17. In section twenty-eight of chapter one hundred twenty-three, strike the eleventh and twelfth words in the first sentence, "state hospital", and insert in place thereof the following words: — "institution listed in section fourteen of chapter nineteen of the General Laws" and strike the ninety-seventh word in said sentence, "hospital", and insert in place thereof the word "institution". Also in said section, in the third sentence, strike "a state hospital" and insert in place thereof the words "each such institution"; in the fourth sentence, strike "state hospital" and insert in place thereof the words "such institution"; in the eighth sentence strike "a state hospital" and insert in place thereof the words "each such institution".

Section 18. In section twenty-nine of chapter one hundred twenty-three, strike the fifth and sixth words, "state hospital", and insert in place thereof the following words "institution listed in section fourteen of the General Laws"; in the remainder of the section, strike the words "state hospitals" appearing in subsections (a) and (c) and "state hospital" appearing in subsections (d) and (e) and insert in place thereof in each place the word "institutions".
1 Section 19. Section thirty of chapter one hundred twenty-three is hereby repealed.

1 Section 20. Strike out section thirty-three of chapter one hundred twenty-three and insert in place thereof the following new section: —

4 Section 33. (a) The department may grant a license to a private, federal, county or municipal hospital, sanitorium, infirmary, rest home, school, clinic, training center, convalescent home, nursing home, nursery, extended care institution or other facility or a department or ward of any such facility which offers to the public residential or day hospital services and is represented as providing treatment, care or training of persons who are mentally ill, mentally retarded or otherwise mentally disabled; provided, however, that licensing by the department is not required where such residential or day hospital treatment, care or training is provided within an institution or facility licensed by the Department of Public Health under the provisions of section seventy-one of chapter one hundred eleven of the General Laws, unless such services are provided on an involuntary basis. Different types of licenses may be granted to different types of facilities, departments or wards, including authority to admit and retain persons under section fifty-three and under court order and under other sections of this chapter in the same manner as mental health and retardation facilities of the department. Licenses granted hereunder shall expire one year from the date of issuance. The department may fix reasonable fees for licenses and renewal of licenses.

27 (b) Each such facility, department or ward licensed by the department shall be subject to the supervision, visitation and inspection of the department, and the department may make reasonable regulations for the proper operation of such facilities, departments or wards.

32 (c) The department may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew a license granted under this section, subject to the procedural requirements of section thirteen of chapter thirty A of the
General Laws for any violation of its regulations or standards concerning such facility, department or ward. The department may temporarily suspend a license at any time in an emergency situation without the delay occasioned by holding a prior hearing on the suspension; provided, however, that upon request of an aggrieved party, a hearing in accord with section thirteen of chapter thirty A of the General Laws shall be held after the license is suspended. Any party aggrieved by a decision of the department under this section may appeal in accordance with the provisions of section fourteen of chapter thirty A of the General Laws.

(d) Each facility, department or ward licensed under the provisions of this section shall maintain and make available to the department such statistical and diagnostic data as may reasonable be required by the department.

(e) No hospital, sanatorium, infirmary, rest home, school, clinic, training center, convalescent home, nursing home, nursery, extended care institution or facility nor any department or ward of any such institution or facility, shall provide residential or day hospital services for the treatment, care or training of persons who are mentally ill, mentally retarded or otherwise mentally disabled unless it has obtained a license under the provisions of this section. The Superior Court sitting in equity shall have jurisdiction, upon petition of the department, to restrain any violation of the provisions of this section or to take such other action as equity and justice may require.

(f) Whoever establishes or maintains, or is concerned in establishing or maintaining a facility which offers to the public residential or day care and is represented as providing treatment, care or training of persons who are mentally ill, mentally retarded or otherwise mentally disabled without a license granted under the provisions of this section, shall for the first offense be punished by a fine of not more than five hundred dollars and for subsequent offenses by a fine of not more than one thousand dollars or by imprisonment for not more than two years. The department shall be authorized to enter and to inspect any facility or institution which it has reason to believe is operating in violation of the provisions of this sec-
 tion. Refusal by the operator or owner to allow such entry and inspection shall for a first offense be punishable by a fine of not more than five hundred dollars and for subsequent offenses not more than one thousand dollars or by imprison-
ment for not more than two years.

(g) Any yearly license previously granted to an institution or facility by the department prior to the effective date of this Act shall remain in effect until the institution or facility is inspected and a new license is issued or expressly refused.

1 SECTION 21. Sections thirty-four, thirty-four A, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, thirty-nine A, thirty-nine C, thirty-nine D, and thirty-nine E of chapter one hundred twenty-three are hereby repealed.

1 SECTION 22. In section forty-two of chapter one hundred twenty-three, strike the words “state hospitals” and insert in place thereof “mental health or retardation facilities of the department”.

1 SECTION 23. In section forty-five of chapter one hundred twenty-three, strike the words “feeble-minded” appearing twice in such section and insert in place thereof in each instance the words “mentally retarded”.

1 SECTION 24. Sections forty-six and forty-seven of chapter one hundred twenty-three are hereby repealed.

1 SECTION 25. Strike all sections of chapter one hundred twenty-three from section fifty to the end of the chapter and insert in place thereof the following new sections:—

Section 50. The department shall adopt regulations establishing appropriate procedures for the reception, examination, admission, hospitalization, treatment, education, training, care, transfer and discharge of mental patients in facilities of the department. Such procedures shall be consistent with the highest practicable professional standards and may include provisions for inpatient care, day or night care, halfway house services, family care, after-care, home treatment and
such other provisions as the department requires. The de-
partment shall make provisions for a public hearing, prior to
the adoption of regulations under this section in accord with
section two of chapter thirty A of the general laws. The de-
partment shall by regulation in accord with established pro-
fessional standards define the categories of mental illness and
mental disability for purposes of this chapter. The depart-
ment shall also by regulation establish standards for adequate
care and treatment of patients in mental health facilities and
programs of the department. Different procedures may be
established by the department for specific types of patients
or for particular facilities but shall be non-discriminatory in
regard to race, creed, national origin or length of residence in
a particular community. Such procedures shall be flexible
and adaptable to changing conditions and advances in the
methods of care and treatment and in the delivery of services.
In making such regulations the department shall concern it-
sel with the welfare of the patients under its care, the
preservation of the rights and dignity of each such patient
and the protection and welfare of the community in general.
Such regulations shall be in as simple and non-technical
language as practicable and copies of such regulations shall be
available to patients and their families. The department shall
furnish the forms which may be required to be used in the
procedures which it shall establish under the authority of
this section, and shall keep records concerning admissions and
other such procedures.

Section 51. The department shall adopt regulations estab-
lishing appropriate procedures for education, training, care,
treatment, examination, evaluation, habilitation, admission,
transfer and discharge of mentally retarded persons in facili-
ties of the department. Such procedures shall be consistent
with the highest practicable professional standards and may
include provisions for long and short term residential services,
day and night residential services for various purposes, train-
ing programs, school programs, rehabilitation and habilita-
tion services, pre-school clinical services and such other pro-
visions as the department requires. The department shall
make provision for a public hearing, prior to the adoption of
regulations under this section in accord with section two of
chapter thirty A of the general laws. The department shall
by regulation in accord with established professional standards
define the levels of and other aspects of mental retardation
as deemed necessary by the department for evaluation, train-
ing, education, care, treatment or other services. The depart-
ment shall also by regulation establish standards for adequate
care, treatment, training, education and habilitation of in-
patients and residents in mental retardation facilities and pro-
grams of the department.

Different procedures may be established for different types
of facilities or types of mentally retarded persons or their
families who are being served, but shall be flexible and adapt-
able to changing conditions and advances in programs and
services for the mentally retarded and shall be non-discrimina-
tory in regard to race, creed, national origin or length of
residence in a particular community. In making such regula-
tions, the department shall concern itself with the welfare of
the mentally retarded under its care, the preservation of the
rights and dignity of each such person and the welfare of the
community in general. Such regulations shall be in as simple
and non-technical language as is practicable and copies of
such regulations shall be made available to such persons and
their families. The department shall furnish the forms which
may be required to be used in the procedures which it shall
establish under the authority of this section, and shall keep
records concerning admissions and other such procedures.

Section 52 Any in-patient or resident over twenty-one years
of age or persons under twenty-one who are married shall be
free to leave any public or private mental health or retarda-
tion facility at any time upon giving written notice of such in-
tention to the superintendent or other head of such facility
except in-patients or residents who are under court ordered
restriction or who were admitted under the provisions of
section fifty-three. When a person is unable personally to
give such written notice, a mental health legal adviser shall
do so upon request of such person. The superintendent or
other head of such facility may restrict such right to leave the facility to normal working hours and weekdays and, in his discretion, may require certain in-patients or residents three days written notice of their intention to leave such facilities. No person, however, shall be required to give three days notice unless he has been previously informed in writing of such requirement. The parents or guardian of persons under twenty-one years of age who are not married or under guardianship shall have the same right to remove such persons from the facility as set out above. Where persons are required to give three days notice of intention to leave the facility, an examination of the person may be conducted to determine his clinical progress and to investigate other aspects of his case including his legal competency and his family, home or community situation in the interest of discharging him from the facility. If, however, the superintendent or other head of the facility determines that discharge of a person who has given a three days notice would create a likelihood of serious harm to the person himself or to other people by reason of the person’s mental illness or other mental disability, he shall forthwith petition the district court of the judicial district wherein such facility is located to order that such person be further retained as an inpatient or resident. The superintendent or other head may retain such person until the hearing on such petition has been held. The court shall hold a hearing on such petition unless prior thereto such person has withdrawn or waived his notice of intention to leave or the superintendent or other head of the facility has discharged the person and withdrawn his petition. The court shall cause written notice of the time and place set for such hearing to be served upon the person and the nearest relative or guardian of such person, the superintendent or other head of such facility and a mental health legal adviser. In all such hearings, the person shall be represented by legal counsel and may present independent medical testimony. If the person is found by the court to be indigent, counsel shall be appointed by the court and an independent psychiatric examination, if requested by counsel
for such person, shall be provided by the court. The person shall be allowed not less than forty-eight hours after the appearance of counsel on his behalf in which to prepare his case. Such person may request either an open or a closed hearing at the mental health facility or at the district court and the court in its discretion may grant such requests. If the court finds after such hearing that discharge of such person would create a likelihood of serious harm to the person himself or to other people by reason of mental illness or other mental disability the court shall order that such person be further retained as an in-patient or resident and such person may not during the next six month period leave such facility except by permission of the superintendent or other head of the facility and no further court order shall be necessary to retain such person during such period. If the court does not so find it shall order that such person be forthwith discharged. Any patient aggrieved by the decision of a district court for further hospitalization under the provisions of this section may appeal the findings and order of the district court de novo to the probate court having jurisdiction wherein the facility is located. In an appeal to a probate court under the provisions of this section the findings and order of the district court may be introduced into evidence by either party. If a probate court finds after such hearing that discharge of such person would create a likelihood of serious harm to the person himself or to other people by reason of mental illness or other mental disability, the court shall order that such person be further retained as an in-patient or resident and such may not during the next six month period leave such facility except by permission of the superintendent or other head of the facility and no further court order shall be necessary to retain such person during such period. As the basis for its order the probate court shall make written findings as to the following: (1) that such person is mentally ill or otherwise mentally disabled and the medical, psychiatric, social and other evidence upon which this determination is based; and (2) that, in accordance with the definition of “likelihood of serious harm” in section one of this chapter and one or more of the applica-
ble standards defined therein, as indicated by the court, the discharge of such person would create a likelihood of serious harm to the person himself or to other people by reason of such mental illness or other mental disability, and the medical, psychiatric, social and other evidence upon which this determination is based; and (3) any other issue or evidence which the court deems relevant and necessary for inclusion in such findings. If the court finds that such person is not mentally ill or otherwise mentally disabled or that such person does not meet any one or more of the standards defined in section one of this chapter such that there does not exist a likelihood of serious harm to the person himself or to other people by reason of such mental illness or other mental disability, it shall order that such person be forthwith discharged.

If, at the end of any six month period of retention as above provided in this section the person is still in need of care and treatment he may, if he so desires, be admitted or transferred to other care and treatment in the same or another mental health facility. If the person is unwilling to consent to continued hospitalization, he shall be discharged; provided, however, that if the superintendent or other head of the facility determines that such discharge would create a likelihood of serious harm to the person himself or to other people by reason of mental illness or other mental disability, he shall, prior to the expiration of the six month period, petition the district court which made the earlier order to order, under the same procedures, that such person be further retained as an in-patient or resident, and such person may not during the next one year period leave such facility except by permission of the superintendent or other head of the facility and no further court order shall be necessary to retain such person during such period. Such order may be renewed by the court for additional one year periods on petition of the superintendent or other head of the facility under the same conditions and procedures as above. The superintendent or other head of such facility shall be immune from civil suit for damages for retaining a person and petitioning the court pursuant to the provisions of this section.
Section 52A. No person shall be retained at the Bridgewater State Hospital except under court order or during the pendency of a criminal sentence or criminal proceeding against him. The initial court order of retention of persons retained at the Bridgewater State Hospital beyond the expiration of a criminal sentence as provided in section 75 of this chapter, or of persons retained at the Bridgewater State Hospital beyond the pendency of criminal proceedings against them as provided in section 70 of this chapter, or of persons retained at the Bridgewater State Hospital following transfer from a mental health or retardation facility of the department, as provided in sections 53A and 22A of this chapter, shall not exceed six months from the date of such expiration, pending or transfer.

No person shall be retained at the Bridgewater State Hospital beyond such six month period unless a request for transfer to a facility of the department is pending under the provisions of section 22A, subsection (b) of this chapter, or unless the medical director of the Bridgewater State Hospital (1) has determined that such person is still so dangerous by reason of mental illness that strict security is required beyond such six month period, (2) has determined that such person is not a proper subject for hospitalization at an appropriate facility under the jurisdiction of the department, and (3) has petitioned the district court of Brockton at least ten days prior to the expiration of such six month period to further retain such person by further court order. Notice of the petition for further retention and of the right to request a hearing on such petition shall be given to the person, his guardian or nearest relative, a mental health legal adviser, and the medical director of Bridgewater State Hospital by the Brockton district court not less than five days prior to the expiration of the sixty day period. In the event that no such request for a hearing is received by the court within twenty days of the giving of the notice of the petition for retention, the court may without further proceedings order that such person be retained at the Bridgewater State Hospital for the further period of one year. In the event that a hearing on
the petition is requested by such person or by his guardian or nearest relative or by a mental health legal adviser, the court shall hold such a hearing. In all such hearings the person shall be represented by counsel. If the person is found to be indigent, the court shall provide counsel and, upon request of counsel, an independent psychiatric examination of such person shall be provided by the court. The person shall be provided not less than forty-eight hours after the appearance of counsel in which to prepare his case. Such person may request either an open or closed hearing at the Bridgewater State Hospital or at the Brockton district court, and the court in its discretion may grant such request. If such court order for further retention is issued, no further court order shall be required for such retention for the further period of one year, and such person may not, during such one year period, leave or be transferred from the Bridgewater State Hospital except by permission of the medical director thereof. Such order may be renewed by the district court of Brockton for additional one year periods on petition of the medical director of the Bridgewater State Hospital under the same conditions and provisions as above.

If the court does not find that the person is so dangerous by reason of mental illness or other mental disability that strict security is required, and declines to issue an order for further retention at the Bridgewater State Hospital, it shall order that the person be transferred to a mental health facility of the department to be designated by the commissioner. Following such transfer to a mental health facility of the department, such person shall not be retained beyond a ten day period at the facility of the department unless he has consented to further care and treatment or a petition for court-ordered retention has been filed with the district court having jurisdiction over the facility as provided in section 52 of this chapter.

Any person aggrieved by the decision of the district court of Brockton ordering further hospitalization at the Bridgewater State Hospital may appeal the findings and order of the district court de novo to the probate court having jurisdiction.
The findings and order of the district court may be introduced into evidence by either party. The probate court shall review the order of the district court on the same basis as set out herein for the district court and shall make written findings of fact and conclusion, including an indication of the medical, social and other evidence upon which findings are made. The person shall be retained at the Bridgewater State Hospital pending such appeal to the probate court.

The medical director of the Bridgewater State Hospital shall be immune from civil suit for damages for petitioning a court and retaining a person pursuant to the provisions of this section.

Section 53. (a) Any physician or, if no physician is available, any police officer who, after examining a person, has reason to believe that failure to hospitalize the person would create a likelihood of serious harm to the person himself or to other persons by reason of such person's mental illness or other mental disability may restrain such person and apply for the temporary hospitalization of such person for a ten day period at a mental health facility of the department or any other licensed mental health facility authorized for such purpose by the department. If the initial examination of such person is not possible because of the emergency nature of the case or because of the refusal of the person to consent to such examination, other facts and circumstances may be considered by the applicant to determine whether hospitalization is necessary. The application for hospitalization shall state the reasons for restraint of such person and any other relevant information which may assist the admitting physician at the mental health facility. Each such person shall be transported to such facility by his family or his friend, or by private car or private ambulance whenever the applicant for hospitalization deems such to be practicable and safe. Where appropriate, the department may transport such person to the mental health facility in which case each female patient being transported by the department shall be accompanied by a female transport agent, nurse or attendant. If the applicant deems that such would not be practicable or safe, he shall re-
quest the local police department to transport, and such police department shall so transport, such person. Under no circumstance shall any form of mechanical or chemical restraint which is not necessary for the safety of the person himself or other people be used. Whenever practicable prior to transporting such person, the applicant shall telephone the mental health facility to describe the circumstances and known clinical history and to determine whether such facility is the proper facility to receive such person and also to give notice of any mechanical or chemical restraints to be used and to determine whether such is necessary.

(b) If the applicant for hospitalization is a physician qualified by the department to conduct such examinations, such person shall be admitted to the facility immediately after his reception. If the applicant is other than a so qualified physician, such person shall be given a psychiatric examination by a qualified physician immediately after his reception at such facility. If the qualified physician determines that failure to hospitalize the person would create a likelihood of serious harm to the person himself or to other people by reason of such person's mental illness or other mental disability, he may admit such person to the facility for care and treatment.

(c) No person shall be involuntarily transported or admitted to a public or private mental health facility pursuant to the provisions of this section unless he has first been advised of his right to apply for admission on other than an involuntary basis. Any person hospitalized at a mental health facility pursuant to the provisions of this section shall, immediately after his admission, be given notice of his right to leave such facility at any time after he has been hospitalized for ten days, his right to be represented by counsel and his right to be assisted by a mental health legal adviser. Such ten day emergency hospitalization shall not be renewable for another ten day period. At any time during such ten day period that he is no longer in need of care and treatment he may be discharged. If, at the end of ten days, he is still in need of care and treatment he may, if he so desires, be admitted or transferred to other care and treatment in the same or another mental health
If, however, the person is unwilling to consent to continued hospitalization, he shall be discharged; provided, however, that if the superintendent or other head of the facility determines that such discharge would create a likelihood of serious harm to the person himself or to other people by reason of mental illness or other mental disability, he shall prior to the expiration of the ten day period petition the district court of the judicial district wherein such facility is located to order that such person be further retained as an in-patient under the same provisions as are contained in section fifty-two of this chapter. The department may by regulation restrict the methods of treatment of such persons during such ten day period in the facilities of the department or in authorized private facilities.

(d) Physicians and police officers shall be immune from civil suit for damages for restraining, transporting and applying for the admission of or admitting any person to a mental health facility pursuant to the provisions of this section.

Section 53 A. Whenever pursuant to the provisions of this chapter a court finds (1) that discharge of any male person from any mental health or retardation facility of the department or from the Bridgewater State Hospital would create a likelihood of serious harm to the person himself or to other people by reason of mental illness or other mental disability and (2) that such person is so dangerous by reason of mental illness or other mental disability that strict security is required and (3) that such person is not a proper subject for hospitalization at any appropriate institution for the mentally ill under the jurisdiction of the department, said court may order that such person be hospitalized at the Bridgewater State Hospital. Such findings shall be in writing and shall be entered upon the order of hospitalization and the record of the court's proceedings.

The clinical status of such person shall within 60 days of his hospitalization at the Bridgewater State Hospital be reviewed by the medical director of the Bridgewater State Hospital who shall within said period either discharge such person or request his transfer to a mental health or retardation facility.
facility of the department under the provisions of section 22 A, Chapter 123; provided, however, that such person may be retained at the Bridgewater State Hospital if the medical director determines (1) that such person is so dangerous by reason of mental illness or other mental disability that strict security is required and (2) that such person is not a proper subject for hospitalization at an appropriate institution for the mentally ill under the jurisdiction of the department, and (3) has petitioned the Brockton district court to retain such person for a further 120 day period. The person, his counsel, his nearest relative or guardian and a mental health legal adviser shall be given notice of the petition for retention made by the medical director of the Bridgewater State Hospital and shall also be given notice of the person's right to request a judicial review of such further retention within twenty days of the receipt of such notice of the petition for retention. The provisions of this section shall be construed to be in addition to and not in limitation of any other provision of law authorizing the hospitalization or transfer of any male person to the Bridgewater State Hospital.

Section 54 (a) Any person under the age of twenty-one whose parent or parents request admission of such person, or any person under guardianship whose guardian requests admission of such person may be admitted in accord with departmental regulations on admission procedures to such public and private mental health and retardation facilities as are appropriate for the care of such persons. The superintendent or other head of such facility may without the consent of the parent or guardian discharge or change the patient status of such person at any time it is deemed in the best interest of the person; provided, however, that written notice be given to the parent or guardian at least three days prior to such discharge or change of status.

(b) Any person between the ages of sixteen and twenty-one and any person aged sixteen and above who is under guardianship may be admitted without the consent of his parents or guardian to any public or private mental health or retardation facility appropriate for the care of such persons and in accord
with departmental regulations on admission procedures; pro-
vided, however, that the superintendent or other head of the
facility is of the opinion that such person possesses sufficient
judgment to make such request for admission. The super-
intendent or other head of the facility may discharge or
change the patient status of such person without the consent
of parent or guardian at any time it is deemed in the best
interest of the person. Such person may leave the mental
health facility at any time, subject to the provisions of section
fifty-two of this chapter.

Section 54A. (a) Any district court may, upon applica-
tion for the hospitalization of a person alleged to be addicted
to the intemperate use of alcohol or addicting drugs, and fol-
lowing an examination under oath of the applicant and all
other witnesses and the reduction to writing of the applica-
tion, subscribed and sworn to by the applicant, issue an order
of notice to such allegedly addicted person to appear before
said court. If, after hearing the testimony of the applicant,
the allegedly addicted person and all other witnesses, or in
the absence of such appearance by the allegedly addicted per-
son, the court is satisfied that further proceedings are neces-
sary, it may order an examination of such allegedly addicted
person by a qualified physician. After certification by the
qualified physician and upon a finding by the court that fail-
ure to retain such person would create a likelihood of serious
harm to the person himself or to other people by reason of
such addiction, the court may order the hospitalization of
such person for a period of time not to exceed six months at
the Massachusetts Correctional Institution, Bridgewater, if
a male, or to the Massachusetts Correctional Institution,
Framingham, if a female, or to any public or private mental
health facility licensed by the department for such purposes.
In the case of an admission to such a private mental health
facility, the approval of the superintendent or other head
thereof shall be required prior to the issuance of an order for
hospitalization.

(b) At the time of the issuance of the court order for hos-
pitalization under subsection (a), the person to whom the or-
der applies shall have and shall be given reasonable notice of the right to a hearing on such order. Should such hearing be requested, such person shall be entitled to counsel and, if indigent, the court shall provide counsel and, if requested by such defense counsel, an independent medical opinion shall be obtained.

(c) Any person aggrieved by the decisions of the district court following a hearing as provided under subsection (b) may appeal the findings and order of the court de novo to the probate court having jurisdiction. The person may be retained in the mental health facility at which hospitalization has been ordered pending such appeal. In an appeal to a probate court under the provisions of this section the findings and order of the district court may be introduced into evidence by either party. If a probate court finds after such hearing that failure to hospitalize such person would create a likelihood of serious harm to the person himself or to other people by reason of such addiction, the court shall order the hospitalization of such person for a period of time not to exceed six months in accordance with the procedures of subsection (a) of this section. As the basis for its order, the probate court shall make written findings as to the following:

(1) that such person is addicted to the intemperate use of alcohol or addicting drugs and medical, psychiatric, social and other evidence upon which his determination is based;

(2) that in accordance with the definition of "likelihood of serious harm" in section one of this chapter and any one or more of the applicable standards defined therein, the failure to hospitalize such person would create a likelihood of serious harm to the person himself or to other people by reason of such addiction, and the medical, psychiatric, social and other evidence upon which this determination is based; (3) any other issue or evidence which the court deems relevant and necessary for inclusion in such findings. If the court finds that person is not addicted to the intemperate use of alcohol or addicting drugs or that such person does not meet any one or more of the standards defined in section one of this chapter such that there does not exist a likelihood of serious harm to
the person himself or the other people by reason of such addiction, it shall order that such person not be hospitalized.

(d) Nothing in this section shall preclude either the voluntary admission of any person to the facilities and institutions described above in lieu of a court order for such admission, or the change of status of persons admitted under the provisions of subsection (a) to a voluntary or other status under such regulations as the department or department of corrections shall provide.

Section 55. Each person hospitalized under the provisions of this chapter other than a mentally retarded person or a person retained under court order shall have a periodic review of his case as hereinafter described at the following times, which times shall be calculated from the date of hospitalization as an in-patient; between the seventieth and ninetieth day, within the last twenty days of the sixth month and at least once each year thereafter. The patient and his family shall be given written notice by the superintendent or other head of such facility or by the medical director of the Bridgewater State Hospital of such review and of the availability of a mental health legal adviser at least three days before the review is to begin. The superintendent or other head of the facility shall be responsible for the proper conduct of the periodic review as required herein. The periodic review shall consist of a thorough clinical examination. In addition, each periodic review shall include a consideration of all possible alternatives to continued hospitalization. Such consideration shall include, but not be limited to, a determination of the patient's relationship to the community, including the nature of existing relationships with family or others in the community, employment possibilities, community resources, and foster or convalescent care facilities. The social service department of the facility shall take part in the review and may utilize community resources, including the area and regional community mental health programs, in conducting such review. The review shall also include consideration of the legal competency of the patient and the necessity or advisability of the appointment of a guardian or conservator. The patient or his
family, or the clinician in charge of the case, or the social
service department may request the assistance of a mental
health legal adviser in examining the legal issues in the case.
In rendering such assistance the mental health legal adviser
shall represent the best interests of the patient. Following the
periodic review, the patient shall be discharged or placed on
trial visit if it is determined that he is no longer in need of
care and treatment; provided, however, that if it is deter-
mined by the superintendent or other head of such facility
that the person is in need of further care and treatment as an
in-patient, the patient shall be so notified by the superinten-
dent or other head of such facility and the patient may, if he
so desires, continue as a patient in said mental health facility.
If, however, the person is unwilling to consent to continued
hospitalization, he shall be discharged; provided, however, that
if the superintendent or other head of such facility determines
that such discharge would create a likelihood of serious harm
to the person himself or to other people by reason of mental
illness or other mental disability, he shall forthwith petition
the district court of the judicial district wherein such facility
is located to order that such person be further retained as an
in-patient under the provisions for judicial review in sections
fifty-two and fifty-two A of this chapter. If the patient is not
discharged, a written report shall be filed with his record
indicating that such patient is in need of further care and
treatment as an in-patient and the reasons therefor and that
the patient has requested continued hospitalization; or, indi-
cating that there exists a likelihood of serious harm to the
person himself or to other people by reason of mental illness
or other mental disability such that a petition for continued
hospitalization shall be presented to the district court having
jurisdiction. The report shall also indicate the results of the
clinical, social and legal review. Following the periodic review,
the patient shall be given written notice by the superintendent
or other head of such facility of the medical director of the
Bridgewater State Hospital of the availability of a mental
health legal adviser, of his right to leave the facility and to
judicial review of any decision to retain him as a resident or
in-patient under sections fifty-two and fifty-two A of this chapter.

Section 56. Each mentally retarded person who is a resident or inpatient at any facility of the department shall have a periodic review of his case as hereinafter described at the following times, which times shall be calculated from the date of admission as a resident or inpatient: within ninety days; within sixty days after one year; and at least once each year thereafter. The person shall be given written or oral notice and his family shall be given written notice by the superintendent or other head of such facility of the first yearly view and each periodic review thereafter at least three days before the review is to begin. The superintendent or other head of the facility shall be responsible for the proper conduct of the periodic review as required herein. Periodic review shall consist of a thorough clinical examination. In addition, each periodic review shall include a consideration of all possible alternatives to continued residence or care. Such consideration shall include, but not be limited to, a determination of the person's relationship to the community, including the nature of existing relationships with family members or others in the community, employment possibilities, community resources and foster or convalescent care facilities. The social service department of the facility shall take part in the review and may utilize community resources, including the area and regional community mental retardation programs and the services of child guardianship programs on the state and local levels, in conducting such review. The review shall also include consideration of the legal competency of the person and the necessity or advisability of having a guardian or conservator appointed. The person or his family or legal guardian, or the professional in charge of the case, or the social service department may request the assistance of a mental health legal adviser in examining the legal issue in the case. In rendering such assistance a mental health legal adviser shall represent the best interests of the person. Following the periodic review, the resident or in-patient shall be discharged or placed on trial visit if it is determined that he is no longer
in need of training or care and treatment; provided, however, that if it is determined by the superintendent or other head of such facility that the person is in need of further training or care and treatment as a resident or in-patient, he shall be so notified by the superintendent or other head of such facility and the person may, if he so desires, continue as a resident or in-patient in said mental health facility. If, however, the person or his family or legal guardian is unwilling to accept continued training or care and treatment, he shall be discharged.

Section 58. Any person who is an in-patient or resident in any public or private mental health or retardation facility and who absents himself under any circumstances not authorized by the provisions of this chapter or the regulations of the department or fails to return to the facility at the expiration of any trial visit, or upon being recalled therefrom, may be taken into custody and returned to the facility by any police officer, or by any person so authorized by the superintendent or other head of the facility; provided, however, that no person shall be taken into custody under the authority of this section after the expiration of six months, beginning with the first day of such absence, other than defendants in pending criminal proceedings or prisoners under sentence.

Section 59. Physical means of restraint on in-patients or residents may be used only in cases of extreme violence, of personal injury, or attempted suicide, or the imminence or threat of such. Prior to the application of such restraint, a written order therefor shall be issued by the superintendent or by a physician designated by the superintendent. Means of restraint other than chemical in nature may be applied without such order in emergencies where the superintendent or designated physician is not available, provided that the restraint is reported to the superintendent or to the designated physician who shall investigate the matter as soon as possible thereafter. The superintendent or the designated physician shall investigate and by written order authorize the continuation or the removal of such restraint and shall indicate his reasons therefore in the record of the person so restrained. Such ap-
Sections 59 and 60. All letters written by patients or residents in any public or private mental health or retardation facility to the department, to his personal physician, to his attorney, to his clergyman, to a mental health legal adviser and to any court shall be forwarded unopened. The superintendent or other head of a mental health or retardation facility or his representative may open any other letters written by the patient or resident and, when necessary in the best interest of such patient or resident, may restrict the mailing thereof; provided, however, that the patient or resident shall be informed whenever his mail has been so restricted. Each mental health or retardation facility shall make stationery and postage available in reasonable amounts to all patients or residents thereof.

Sections 61 and 62. Annually on or before October one, the Com-
mission of Administration and Finance shall determine the actual cost of the treatment; training and other care of persons hospitalized or otherwise cared for in any mental health or retardation facility of the department and the cost of other services rendered by the department and shall notify the department thereof. The department shall then establish the charges for services for each such person. Any such person or the estate, parent, spouse or child of such person if of sufficient financial ability, shall be liable to the department for such charges; provided, however, that such person shall be entitled to retain five hundred dollars or its equivalent in personal property which amount shall be exempt from the provisions of this section. Any action for the recovery of such charges shall be brought by the attorney general in the name of the department. This section shall not apply to defendants in pending criminal proceedings, or to prisoners under sentence, or to persons retained under court order as a result of being determined not guilty by reason of insanity due to mental illness, mental retardation or other mental disability.

Section 63. Whenever the superintendent or other head of the department has reason to believe that a person who has been an inpatient or resident thereat for more than six months, who is not under guardianship or conservatorship, is unable to care for his personal property, he shall so notify a mental health legal adviser who shall promptly investigate the matter and make a written record of the name and last known residential address of such person, the name and address of the nearest relative of such person if known or, if not known, the name and address of the person with whom such person last resided. Such record shall also contain the nature, income and probable value of the person's property. If a mental health legal adviser is satisfied that such person is not able to care for his property adequately, he shall (1) if he determines that such property exceeds five hundred dollars in value or that it would otherwise be appropriate for a guardian or conservator for such person to be appointed, cause the appropriate petitions to be filed with the probate court having jurisdiction; or (2) if he determines that such property does not exceed five hundred
dollars in value and that it would not otherwise be appropriate for a guardian or conservator for such person to be appointed, arrange for the most appropriate disposition of the property. In the latter case, a mental health legal adviser shall have the power to sell, liquidate or otherwise dispose of such property; provided, however, that not less than thirty days prior to such disposition he shall cause a copy of the aforementioned record together with a statement of his intended disposition to be sent to such person, relative or other friend. If such person, relative or other friend does not within such thirty day period send to a mental health legal adviser a written objection to such disposition, the property may be disposed of as hereinabove provided for the benefit of the person. If such person, relative or friend so objects, a mental health legal adviser shall cause the appropriate petitions for the appointment of a guardian or conservator to be filed with the probate court having jurisdiction. Prior to taking any action under the provisions of this section, a mental health legal adviser shall consult with the professional staff of the hospital and shall take into account the clinical effects of such disposition of a person's property, and shall determine that such disposition is in the best interests of the person. Funds received as a result of such disposition shall be deposited in accordance with the provisions of subsection (a) of section sixty-four. A mental health legal adviser shall make and maintain complete records of all dispositions of property made under the provisions of this section and shall file a copy of each such record with the other records of the department relating to the person whose property has been so disposed of. A mental health legal adviser may take such other steps as he deems necessary to protect the financial security of such in-patient or resident. If a guardian or conservator is appointed for a person who is an in-patient at a mental health or retardation facility, the approval by a mental health legal adviser of any accounts filed in a probate court by the guardian or conservator shall dispense with the need for the appointment of a guardian ad litem, if such appointment would otherwise be required by law. In no case shall a mental health legal advisor serve as a guardian or
SECTION 64. (a) The superintendent or other head of a mental health or retardation facility of the department may deposit in any bank organized and existing under the laws of the commonwealth funds belonging to persons who are in-patients or residents at such facility, funds deposited by relatives or friends of such persons, and other funds belonging to such persons. Such funds shall be held in trust or used for the benefit of such persons. The superintendent or other head of the facility may endorse for deposit with such funds, only checks which do not exceed five hundred dollars in value payable to such persons who are unable or refuse to endorse such checks for the purpose of so depositing them. Upon request of any such person, or the nearest relative, guardian or conservator of such person, or the superintendent or other head of the facility shall render a complete written account of all funds which are held in trust for the person. Upon the discharge of a person, the department shall render such an account of and shall pay over to such person all such funds which it holds in trust for him.

(b) So much of any funds held in trust by the superintendent or other head of the facility for any persons who have been discharged from or who have otherwise left any mental health facility or the custody of the department, and such funds amounting to less than one hundred dollars belonging to persons who have died, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent or other head of the facility to the state treasurer to be held subject to being paid to the person establishing a lawful right thereto, with interest at the rate of three percent per annum from the time when it was so paid to the state treasurer to the time when it is paid by him to such person; provided, however, that the department shall first be paid from such funds for any sum due it for charges to the person for whom such funds were originally deposited, and provided further that if such amount does not exceed fifty dollars, the superintendent or other head of the facility may pay such sum to the state treasurer immediately. The balance of such funds may, after
Six years from the date when such funds were paid to the state treasurer, be used as a part of the ordinary revenue of the commonwealth. Any person may, however, establish his claim to such funds after the expiration of such six year period and any claim so established shall be paid from the ordinary revenue of the commonwealth. Any person claiming a right to funds deposited with the state treasurer under this section may establish the same by a petition to the probate court; provided, however, that in cases where claims amount to less than fifty dollars, the claims may be presented to the comptroller who shall examine the same and allow and certify for payment such as may be proved to his satisfaction. The public administrator shall be notified when there exist funds in excess of one hundred dollars belonging to a deceased person who has been an in-patient or a resident of a mental health or retardation facility of the department.

(c) If a person is discharged from or otherwise leaves a mental health or retardation facility of the department while he is liable to the department for any charges and there is in the custody of the superintendent or other head of the facility a bank book representing a deposit account in a bank as defined in section one of chapter one hundred and sixty-seven in the patient's name which is unclaimed during the two-year period following the date of such discharge or other leave, the superintendent or other head of the facility may present said bank book to such bank accompanied by the affidavit of a mental health legal adviser stating (1) the name of such person, (2) the dates upon which such person was admitted to and discharged from or otherwise left such mental health or retardation facility or the supervision of the department, (3) the amount of money for which the said person is liable to the department, (4) that the said bank book belongs to said person, (5) that it has been in the custody of the superintendent or other head of the facility and has been unclaimed for more than two years, and (6) a diligent search has been made to find the person or persons entitled thereto; and demanding payment from the balance of such bank account an amount not in excess of the amount due to the department by such per-
son. Thereupon such bank shall pay the department the amount so requested in said affidavit and shall endorse such payment upon such bank book, with specific reference to this section and shall return such bank book to the superintendent or head of the facility. Payment to the department under the provisions of this section shall discharge the bank of liability to the owner of said property, or any person claiming under him, to the extent of such payments.

(d) Personal property belonging to or deposited for the benefit of any persons who have been discharged from or who have otherwise left any mental health or retardation facility or the custody of the department, or who have died, which shall have remained unclaimed for more than one year shall be sold, or if without sale value, otherwise disposed of by the superintendent or other head of the facility; provided, however, that not less than thirty days prior to such disposition the superintendent or other head of the facility shall send notice of the intended sale or disposition of such property to the person at his last known residential address, to the nearest relative or guardian or conservator of such person to the person with whom such person last resided. If such person, relative or other person does not object to such disposition, the department may sell or dispose of the property in accordance with its regulations. Funds received as a result of such sale or disposition shall be disposed of in accordance with the provisions of subsection (b) of this section.

Section 65. (a) The department shall cause to be given to the patients or residents hospitalized at each facility of the department instruction in such arts, crafts, manual training and other branches and lines of occupation and education as may be appropriate for such persons to undertake, especially persons who are unable to engage in programs for patient-trainees.

(b) The department shall establish programs for patients or residents at each facility whose recovery or rehabilitation would be assisted by performing certain work in or about such mental health facility. The department shall pay or credit each trainee for work performed by him under said program
in accordance with payment schedules established by the department in its regulations.

(c) The department may permit the sale of goods, wares and merchandise produced by any patient hospitalized at any mental health facility on such terms and conditions and at such places as it shall determine. The department shall also determine the price for which said goods may be sold, and the portion, if any, of the proceeds of each such sale which shall be returned to the commonwealth to reimburse it for its costs in connection therewith. The balance of the proceeds of any such sale shall be held in trust in accordance with the provisions of subsection (a) of section sixty-four of this chapter.

Section 66. The superintendent or other head of each facility of the department shall furnish medicine and drugs without payment therefor to any patients at the out-patient clinic of such facility who, in his opinion, is a needy person and who actually requires such medicine and drugs. For the purposes of this section, the determination as to whether the patient is a needy person shall be made by the superintendent or other head of the facility or his representative and such determination shall be final.

Section 67. In-patients or residents in mental health or retardation facilities of the department may retain the services of physicians and other professional persons who are not employed full time by the department. The department shall encourage and facilitate the establishment and continuation of such professional relationships. If the superintendent or other head of a facility is satisfied that a patient or resident is indigent the department may compensate such physicians and other professional persons for services rendered and for expenses incurred in accordance with payment schedules established by the department in its regulations.

Section 68. In order to determine the mental condition of any party or witness before any court of the commonwealth, the presiding judge may, in his discretion, request the department to assign a physician designated by the department as qualified for such purposes, which physicians shall make such examinations as the judge may deem necessary.
Section 69. (a) If after the indictment of or the issuance of a criminal complaint again any person, the criminal court having jurisdiction has reason to believe that the defendant may be incompetent to stand trial or that the defendant may not be criminally responsible for the crime of which he has been accused by reason of mental illness, mental retardation or other mental disability, it may at any stage of the proceedings order an examination of the defendant to be conducted by one or more physicians qualified by the department to conduct such examinations. In each such instance, the court shall provide the qualified physician or physicians with the legal criteria for competence to stand trial and criminal responsibility.

(b) Such examination shall be conducted, whenever practicable, at the court house or place of detention where the defendant is being held. If no qualified physician is available to conduct such examination outside of a mental health facility, such person shall, except in an emergency, be brought before the court before an order for hospitalization is made. In the case of a complaint, the court shall determine whether there is justification for the complaint. If after such examination, the court has reason to believe that the defendant may be incompetent to stand trial or may lack criminal responsibility for the crime of which he has been accused by reason of mental illness, mental retardation or other mental disability, it may order that the defendant be taken to a mental health facility or, if a male, to the Bridgewater State Hospital if the court determines that strict security is required, to be received for examination and observation for a period not to exceed twenty days. If, before the expiration of such twenty day period, an examining qualified physician believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty day period, specifying the reason for which such further observation is necessary. Upon receipt of such request, the court may extend such observation period, but in no event shall such period exceed forty days from the date of the initial court order of such examination.
The examining qualified physician or physicians shall give a written report of their examination and findings to the court. Such report shall be signed by the physician or physicians actually conducting such examination and shall contain the clinical findings relative to whether the defendant is competent to stand trial and relative to whether the defendant lacked criminal responsibility for the crime of which he is accused by reason of mental illness, mental retardation or other mental disability. Such report shall also contain an opinion, supported by clinical findings, of whether the defendant is in need of the treatment and care offered by the department.

(d) Within five days after the receipt of such report, the court shall make a finding on the issue of whether the defendant is competent to stand trial; provided, however, that thereafter the defendant shall be accorded reasonable notice and an opportunity for a hearing on such finding; and provided further that the court on its own motion by notice to the defendant may order such hearing at any time. A copy of such notice shall also be sent to the nearest relative or guardian of and to counsel for the defendant and to a mental health legal adviser. If the court orders or of the defendant or any other person on his behalf requests such hearing, it shall be given by the court within ten days of such finding or request as the case may be. In all such hearings, the defendant shall be represented by counsel and may present independent medical testimony. If the defendant is found to be indigent, such counsel shall be appointed by the court and an independent psychiatric examination, if requested by counsel for the defendant, shall be provided by the court. The defendant may be present at the hearing, subject to the discretion of the court.

(e) In like manner to the proceedings under subsection (a), (b) and (c) of this section the court may order a psychiatric examination or a period of observation in a mental health facility of the department to aid the court in its disposition after a finding of guilty on a criminal charge and prior to sentencing, but in no case shall such period of observation exceed forty days.

(f) In like manner to the proceedings under subsections
(a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent in a mental health facility to aid the court in its disposition. Such period of observation shall not exceed forty days and any juvenile who is hospitalized beyond forty days shall have the same rights and status established by this chapter and the regulations of the department for persons other than defendants in pending criminal proceedings or prisoners under sentence.

Section 70 (a) After a hearing under the provisions of section sixty-nine of this chapter or if no hearing is ordered or requested, if the court finds that the defendant is competent to stand trial, the court shall cause the defendant to be returned to criminal custody and shall continue with the original proceedings. If the court finds that the defendant is incompetent to stand trial, the court may order that the defendant be hospitalized at a mental health facility or, if a male, at the Bridgewaer State Hospital if the court finds that the defendant is so dangerous to others by reason of mental illness or other mental disability that strict security is required. Such defendant shall have a periodic clinical and legal review of his case between the one hundred fiftieth and one hundred eighty-first day of such hospitalization and at least once each year thereafter. Such review shall include an examination by a mental health legal adviser and shall include his opinion with regard to the defendant's competence to stand trial. After each such periodic review, a mental health legal adviser shall give notice to the defendant of his right to petition for a hearing in the court ordering such hospitalization on the issue of competence to stand trial and shall assist the defendant to so petition if he so elects. In addition, a mental health legal adviser following such examination or at any other time, may, on his own motion, petition for such hearing. If such hearing is requested it shall be given by the court within ten days of such request in the same manner and with the same rights as specified hereinbefore for original hearings on such issue. If after such hearing the court finds that the defendant is still incompetent to stand trial it may order the continued hospital-
1034 ization of such defendant and during the next six months no
1035 new hearing on the issue shall be required except by request
1036 of the superintendent or other head of such mental health fa-
1037 cility of the department or the medical director of the Bridge-
1038 water State Hospital or by order of the court. Any party ag-
1039 grieved by a finding of a district court on the issue of com-
1040 petence to stand trial under the provisions of the section may
1041 appeal such finding of the district court de novo to the
1042 superior court having jurisdiction.
1043 (b) If at any time during such hospitalization it shall ap-
1044 pear to the superintendent or other head of a mental health
1045 facility or the medical director of the Bridgewater State Hos-
1046 pital wherever said defendant is hospitalized, that said de-
1047 fendant is competent to stand trial, the court shall be so noti-
1048 fied and said defendant shall forthwith be returned to the
1049 court for continuation of the criminal proceedings.
1050 (c) If at any time during such hospitalization the super-
1051 intendent or other head of a mental health facility of the
1052 department at which such defendant is hospitalized deter-
1053 mines that it would be in the best interest of the defendant
1054 to place him on out-patient care, day or night care or on
1055 some other patient status and that to do so would not create
1056 a likelihood of serious harm to the defendant himself or to
1057 other people, he shall so notify in writing the court having
1058 jurisdiction and the prosecuting agency. The court within
1059 ten days of the receipt of such notification shall communicate
1060 in writing its approval or disapproval of such request for
1061 status change to the superintendent or other head of the
1062 mental health facility at which such defendant is hospitalized.
1063 If the court fails to approve or disapprove such request for
1064 status change within ten days after the receipt of notification
1065 therefor, the superintendent or other head may place the
1066 defendant on such other patient status and subject to such
1067 restrictions as he may determine to be proper.
1068 (d) In the case of a court order for hospitalization under
1069 the provisions of subsection (a), the court shall enter the date
1070 of the expiration of the period of time equal to the time of
1071 imprisonment which the defendant would have had to serve
prior to becoming eligible for parole if he had been convicted
of the most serious crime with which he was charged in court
prior to such hospitalization and sentenced to the maximum
sentence he could have received therefor. Where applicable,
the provisions of sections one hundred twenty-nine, one hun-
dred twenty-nine A, one hundred twenty-nine B and one
hundred nine C of chapter one hundred twenty-seven shall be
applied to reduce such period of time. On the final date of
such period, the court shall dismiss the criminal charges
against such person. In the case of a dismissal or of a nolle
prosequi or filing of such charges such person may be dis-
charged from the treatment and care of the department; pro-
vided however, that if the superintendent or other head of
the mental health facility at which the defendant has been
hospitalized determines that the discharge of the defendant
would create a likelihood of serious harm to the defendant
himself or to other people by reason of the defendant’s men-
tal illness or other mental disability, he may retain the de-
fendant as an in-patient under the provisions of section 52
of this chapter; and provided further that no person shall be
retained at the Bridgewater State Hospital as an in-patient
unless the medical director thereof shall determine that such
person is so dangerous by reason of mental illness or other
mental disability that strict security is required. In the event
that the patient is to be retained beyond the term of a court
ordered hospitalization under the provisions of this section
at the mental health facility or the Bridgewater State Hos-
pital as herinabove provided, notice of the decision to retain
him shall be given to such person, his guardian, parent and
a mental health legal advisor by the court which has been
petitioned in accordance with the provisions of section 52 or
section 52A of this chapter not less than 5 days prior to the
expiration of such court ordered hospitalization. A mental
health legal adviser shall forthwith inform him of his right
to a judicial review of any decision to retain him as an in-
patient under sections fifty-two and fifty-two A of this chap-
ter and provide assistance if the person elects to exercise
this right; provided however, that in the case of a dismissal
of a *nolle prosequi* or a filing of charges, prior to the expiration date of such court ordered hospitalization, such notice shall be given within ten days after any such action.

Section 71. (a) If either a defendant or counsel for a defendant who under the previous section has been found to be incompetent to stand trial believes that he can establish a defense of not guilty to the charges pending against the defendant other than the defense of not guilty by reason of insanity due to mental illness, mental retardation or other mental disability, he may request an opportunity to offer a defense thereto on the merits before the court having jurisdiction. The court may require counsel for the defendant to support the request by affidavit or other evidence. If the court in its discretion grants such a request, the evidence of the defendant and of the commonwealth shall be heard by the court sitting without a jury. If after hearing such petition the court finds a lack of probable cause it shall dismiss the indictment or other charges or find them defective or insufficient and order the release of the defendant from criminal custody; provided, however, that if the court deems that discharge of the defendant would create a likelihood of serious harm to the defendant himself or to other people by reason of the defendant’s mental illness, mental retardation or other mental disability, it may order that the defendant be taken to a mental health facility for hospitalization or the Bridgewater State Hospital if strict security is required in accordance with the procedures, and with the same rights and status, established by this chapter and the regulations of the department for persons other than defendants in pending criminal actions or prisoners under sentence.

(b) Notwithstanding any finding of incompetence to stand trial under the provisions of this section or the previous two sections, the court having jurisdiction may, at any appropriate stage of the criminal proceedings, allow a defendant to be released with or without bail.

(c) If the court determines that a defendant in a criminal proceeding for a misdemeanor is in need of the treatment and care offered by the department, it may dismiss the crim-
nal charges against the defendant and permit the defendant to be hospitalized at a mental health facility in accordance with the procedure and with the same rights and status established by this chapter and the regulations of the department for persons other than defendants in pending criminal proceedings or prisoners under sentence.

Section 74. (a) In lieu of sentencing a person convicted of common drunkenness, as provided in section fifty-three of chapter two hundred seventy-two, or of any crime involving the illegal use of alcohol or addicting drugs, or in lieu of conviction of any crime to which alcoholism or drug addiction may be allowed as defense, the criminal court having jurisdiction may order such person to be hospitalized for a period of time not to exceed six months at a facility designated by the department for such purpose or, in the case of a male person, to the Massachusetts Correctional Institution at Bridgewater or, in the case of a female person, to the Massachusetts Correctional Institution at Framingham; provided, however, that prior to issuing such order the court has made a finding, based upon competent medical testimony, that such person is addicted to the intemperate use of alcohol or addiction drugs and that failure to restrain such person would create a likelihood of serious harm to the person himself or to other people by reason of such addiction. Such hospitalization may be terminated at any time by the superintendent or other head of the facility or institution under such conditions, including authorized leave of absence, as the superintendent or other head of the facility determines to be in the best interest of such person.

(b) At the time of the issuance of the court order for hospitalization under subsection (a), the person to whom the order applies shall be given reasonable notice of the right to a hearing on such order. Should such hearing be requested, such person shall be entitled to counsel and, if indigent, the court shall provide counsel and, if requested by such defense counsel, an independent medical opinion shall be obtained.

(c) Nothing in this section shall preclude either the voluntary admission of any person to the facilities and institu-
tions described above in lieu of complaint, prosecution, con-

viction or as a condition of probation for offenses involving
the intemperate or illegal use of alcohol or addicting drugs
or the change of status of persons admitted under the pro-
vision of subsection (a) to a voluntary or other status under
such regulations as the department or the department of cor-
rection shall provide.

Section 73. If a person who has been a defendant in any
criminal proceeding is found not guilty by reason of insanity
due to mental illness, mental retardation or other mental
disability, the court having jurisdiction may order that such
person be hospitalized at a mental health facility of the de-
partment or, if a male, at the Bridgewater State Hospital
if the court has determined that the person is so dangerous
by reason of mental illness or other mental disability that
strict security is required. In the case of such finding in
which the charge was murder or manslaughter such hospis-
talization at a mental health facility or the Bridgewater State
Hospital shall be mandatory and for an indefinite period of
time. Any person hospitalized under the provisions of this
section shall be restricted in his movements to the buildings
and grounds of the institution at which he is hospitalized.

At any time after such person has been hospitalized for six
months he shall have the right to petition the court which
ordered such hospitalization for a hearing on the question
of whether he may be discharged from the care of the de-
partment or the Bridgewater State Hospital; provided, how-
ever, that no such person shall be discharged without such
hearing and the court shall be satisfied that such discharge
would not create a likelihood of serious harm to the person
himself or other persons by reason of mental illness or other
mental disability. A mental health legal adviser may assist
in the preparation of such petition for discharge. If the court
grants such request for a hearing the person shall be repre-
sented by legal counsel and may present independent medical
testimony. If the person is found by the court to be indigent
counsel shall be appointed by the court. The court need not
grant such hearing for discharge. Any person aggrieved by
the decision of the court on such petition for discharge may appeal such decision de novo to the probate court having jurisdiction thereof. From time to time the superintendent or other head of the mental health facility wherein such person is hospitalized or the medical director of Bridgewater State Hospital if such person is confined therein, may in writing request that the court which ordered such hospitalization modify the restrictions hereinabove provided in the interest of the rehabilitation of such person. After notice to opportunity for the prosecuting agency to be heard the court may grant such modification by court order with or without a hearing on the issue; provided, however, that no such modification shall be granted unless the court is satisfied that such modification would not create a likelihood of serious harm to the person himself or other persons by reason of mental illness or other mental disability. Such restrictions may be reimposed at any time by the court having jurisdiction or by the superintendent or other head of the mental health facility or the medical director of the Bridgewater State Hospital, whichever has the responsibility for the care of such patient, if there is reason to believe that such modification is resulting in a likelihood of serious harm to the person himself or other persons by reason of mental illness or other mental disability, unless such person has been discharged from the care of the department by the court or by action of the governor as hereinbelow provided. In addition to the discharge from the care of the department as provided above, the governor may discharge such person from the care of the department when he is satisfied after an investigation by the department and such other investigation as he may order that such discharge will not cause danger to others.

Section 74. If the person in charge of any place of detention within the commonwealth has reason to believe that any prisoner under sentence therein is in need of hospitalization at a mental health facility by reason of mental illness or other mental disability, he shall cause such prisoner to be examined at such place of detention by a physician or phy-
1262 sicians designated by the department as qualified to perform
1263 such examination. The qualified physician or physicians shall
1264 report the results of the examination to the district or su-
1265 perior court having jurisdiction over the place of detention.
1266 Such report shall include an opinion with reasons therefor
1267 as to whether the prisoner is in need of hospitalization at a
1268 mental health facility by reason of mental illness or other
1269 mental disability. The court which receives such report may
1270 order the prisoner to be taken to a mental health facility or,
1271 if a male, to the Bridgewater State Hospital to be received
1272 for examination and observation for a period not to exceed
1273 thirty days. After completion of such examination, a written
1274 report shall be sent to such court. Such report shall be signed
1275 by the physician or physicians conducting such examination
1276 and shall contain an evaluation, supported by clinical findings,
1277 of whether the prisoner is in need of further treatment and
1278 care at a mental health facility or, if a male, the Bridgewater
1279 State Hospital by reason of mental illness or other mental
1280 disability. Within ten days of the receipt of such report the
1281 court shall make a finding on whether the prisoner is in
1282 need of further hospitalization and may order such hospitali-
1283 zation; provided, however, that no order for further hospitali-
1284 zation shall be final unless and until the prisoner is accorded
1285 reasonable notice and an opportunity for a hearing on such
1286 order. A copy of such notice shall also be sent to the nearest
1287 relative or guardian of the prisoner and to a mental health
1288 legal adviser. If the prisoner requests such hearing, it shall
1289 be given by the court. In all such hearings, the prisoner shall
1290 be represented by counsel and may present independent medi-
1291 cal testimony. If the prisoner is found to be indigent, counsel
1292 shall be appointed by the court and an independent psychiatric
1293 examination, if requested by counsel for the prisoner, shall be
1294 provided by the court. The prisoner may be present at the
1295 hearing, subject to the discretion of the court. After such
1296 hearing, or if no hearing is requested, if the court finds that
1297 the prisoner is not mentally ill or otherwise mentally disabled
1298 or is not in need of hospitalization at a mental health facility
1299 the court shall forthwith cause the prisoner to be returned
1300 to the place of detention from which he was transferred. If
1301 at any time during such continued hospitalization under the
1302 provisions of this section it shall be determined by the su-
1303 perintendent or other head of the mental health facility or
1304 the medical director of the Bridgewater State Hospital, as
1305 the case may be, that the prisoner is no longer in need of
1306 care and treatment he shall so notify the court. He shall
1307 also notify the person in charge of the place of detention
1308 from which the prisoner had been transferred, who shall
1309 thereupon and within ten days cause the prisoner to be
1310 returned to such place of detention, there to remain pursuant
1311 to the original sentence, computing the time of his residency
1312 in the mental health facility or the Bridgewater State Hospi-
1313 tal as time served under such sentence.

Section 75. At the commencement of hospitalization under
the provisions of section seventy-four of this chapter the
department of corrections shall enter in the patient record
of such prisoner the date of the expiration of the sentence
of the prisoner. Where applicable, the provisions of sections
one hundred twenty-nine, one hundred twenty-nine A, one
hundred twenty-nine B and one hundred twenty-nine C of
chapter one hundred twenty-seven may be applied to reduce
such sentence, and on such date the prisoner shall be dis-
charged; provided, however, that if the superintendent or
other head of a mental health facility or the medical director
of the Bridgewater State Hospital determines that the dis-
charge of the prisoner would create a likelihood of serious
harm to the prisoner himself or to other people by reason of
the prisoner's mental illness or other mental disability, he
shall petition the district court having jurisdiction over the
facility not less than ten days prior to the date of expiration
to order his retention as an in-patient beyond such expira-
tion date. If such patient is to be so retained notice of the
petition to retain him shall be given to such person, his
guardian or nearest relative and a mental health legal adviser
by the court not less than five days prior to such date of
expiration. A mental health legal adviser shall forthwith
inform the person of his right to judicial review of any de-
1338 cision to retain him as an in-patient as provided in sections
1339 fifty-two and fifty-two A of this chapter and provide as-
1340 sistance if the person elects to exercise this right. Unless
1341 such notice of the petition to retain him shall have been duly
1342 given or unless the person consents to further care and treat-
1343 ment such person shall be discharged at the expiration of
1344 his sentence. No prisoner shall be retained as an in-patient at
1345 the Bridgewater State Hospital beyond the date of expira-
1346 tion of his sentence unless it shall be determined by the medi-
1347 cal director that such patient is so dangerous by reason of
1348 mental illness or other mental disability that strict security
1349 is required and he has petitioned the Brockton district court
1350 to order such retention in accordance with the provisions
1351 of this section and the provisions of section fifty-two A of
1352 this chapter; provided, however, that if a request for transfer
1353 of the person to a facility of the department is pending under
1354 the provisions of section twenty-two A, subsection (b) of
1355 this chapter such person may be retained during the pendency
1356 of such transfer proceedings. Except as hereinabove provided,
1357 any person who is retained or hospitalized at a mental health
1358 facility or the Bridgewater State Hospital under the provi-
1359 sions of this section shall have the same rights and status
1360 established by this chapter and the regulations of the depart-
1361 ment for persons other than defendants in pending criminal
1362 proceedings or prisoners under sentence.

1  **Section 26.** (a) The word “patient” as used in this section
2 shall mean any person confined at the Bridgewater State Hos-
3 pital prior to the latest date upon which any provision of this
4 act becomes effective, pursuant to Section 51, Section 103 or
5 104, or Section 100 and 105 of Chapter 123 of the General
6 Laws, or any person confined at a state hospital under the
7 jurisdiction of the department of mental health pursuant to
8 Sections 100 and 105 or Section 103 or 104 of said Chapter
9 123. Any patient who believes or has reason to believe that his
10 commitment or confinement to any such institution is unlawful,
11 or any other person on his behalf, may petition in writing the
12 superior court for the county in which he is confined for a
13 hearing relative to his alleged unlawful commitment or con-
13a finement.
14 Such petition shall state that the petitioner believes or has
15 reason to believe that such patient's commitment or confine-
16 ment is unlawful, shall set forth such facts and grounds of the
17 alleged unlawful commitment or confinement as may be
18 deemed pertinent thereto and shall state the name and latest
19 known address of the patient's nearest relative or guardian, if
20 any. Notice of the filing of the petition and a true copy there-
21 of shall be sent by the court by registered mail to the superin-
22 tendents of the institution at which said patient is confined.
23 The court shall appoint counsel to represent such patient if
24 he is not so represented, whether or not such petition con-
25 tains a prayer therefor. The court then shall order a hearing
26 to take place without delay; provided, however, that no such
27 hearing shall be less than 72 hours after notice of such hear-
28 ing has been received by such patient. The hearing may be
29 held at the institution or at any other suitable place, as the
30 court may determine. Written notice of the time and place of
31 the hearing shall be sent by the court to the patient, his coun-
32 sel, his nearest relative or guardian, if any is named in the
33 petition, the petitioner, if other than the patient, the superin-
34 tendent of the institution at which such patient is confined and
35 such other persons as the court considers proper. Such patient
36 shall have the right to be present at the hearing. The court
37 shall, if necessary to insure such patient's right to be present
38 at the hearing, issue an appropriate writ upon such terms and
39 conditions as it deems necessary and appropriate to accomp-
40 lish this purpose. At all other times during the pendency of
41 proceedings under this section the superintendent may con-
42 tinue to confine the patient at the institution wherein he is al-
43 legedly unlawfully committed or confined. Any hearing under
44 this section shall be held by the court sitting without a jury.
45 (b) The court, acting pursuant to subsection (a) of this sec-
46 tion shall determine whether or not such patient's commit-
47 ment or confinement is lawful. If the court determines that
48 such patient is not unlawfully committed or confined, the
49 court shall dismiss the petition. If the court determines that
the patient's commitment or confinement is unlawful, it shall then receive evidence of his mental condition and take such action as is hereinafter provided.

1. In the case of a patient found pursuant to this section to be unlawfully confined at Bridgewater State Hospital pursuant to sections 51, 103, or 104 of said chapter 123 of the General Laws or at a state hospital under the jurisdiction of the department of mental health pursuant to section 103 or 104 of said chapter 123 of the General Laws, the court, acting in compliance with the provisions of chapter 123 of the General Laws as amended by this act, shall determine whether such patient is a proper subject for hospitalization at any institution pursuant to any provision of chapter 123 as so amended. If the court determines that said patient is not such a proper subject, it shall order that he be discharged forthwith; if the court determines the said patient is such a proper subject it shall order that he be hospitalized at an appropriate institution under the jurisdiction of the department of mental health; provided, however, that the court may order any such male patient to be hospitalized at the Bridgewater State Hospital if, after consideration of all the evidence, it makes findings and causes them to be entered upon the order of hospitalization and the record of the proceeding that such patient is so dangerous by reason of mental illness or other mental disability that strict security is required and that he is not a proper subject for hospitalization at an appropriate institution under the jurisdiction of the department of mental health.

2. In the case of a patient confined at Bridgewater State Hospital or at a state hospital under the jurisdiction of the department of mental health pursuant to said sections 100 and 105 of said chapter 123, the court shall determine whether the complaint or indictment referred to in said section 100 is still outstanding. If the court determines that such complaint or indictment is not outstanding and that the patient is not a proper subject for hospitalization at any institution pursuant to any provision of chapter 123 as amended by this act, it shall order that he be discharged forthwith. If the court determines that such complaint or indictment remains outstanding—
ing and that the patient is competent to stand trial, it shall
order that he be returned to the custody from which he was
taken at the time of his commitment under said section 100.
If the court determines that such complaint or indictment re-
 mains outstanding and that such patient is incompetent to
stand trial, or that such complaint or indictment is not out-
standing and that such patient is a proper subject for hospitali-
 zation under any provision of chapter 123 as amended by this
act, the court shall order that he be hospitalized at an ap-
propriate institution under the jurisdiction of the department
of mental health; provided, however, that the court may order
any such male patient to be hospitalized at the Bridgewater
State Hospital if, after consideration of all the evidence, it
makes findings and causes them to be entered upon the order
of hospitalization and the record of the proceeding that such
patient is so dangerous by reason of mental illness or other
mental disability that strict security is required and that he
is not a proper subject for hospitalization at an appropriate
institution under the jurisdiction of the department of mental
health. In any case in which the court determines that the
complaint or indictment remains outstanding and that the
patient has been confined for a period of time longer than the
time he would have had to serve prior to becoming eligible for
parole or release if he had been convicted of the most serious
crime with which he was charged and sentenced to the maxi-
mum sentence he could have received therefor, the complaint
or indictment shall be deemed to be dismissed and the court
shall either discharge the patient forthwith or order that he
be hospitalized at an appropriate institution under the juris-
diction of the department of mental health if the court de-
termines that he is a proper subject for hospitalization pur-
suant to the provisions of chapter 123 as amended by this act;
provided, however, that the court may order any such male
patient to be hospitalized at the Bridgewater State Hospital
if, after consideration of all the evidence it makes the follow-
ing findings and causes them to be entered upon the order of
hospitalization and the record of the proceeding; that such
patient is so dangerous by reason of mental illness or other
126 mental disability that strict security is required and that he
127 is not a proper subject for hospitalization at an appropriate
128 institution under the jurisdiction of the department of mental
129 health.

130 (c) The superintendent of the institution to which a patient
131 allegedly is unlawfully confined or committed shall permit any
132 expert witness on such patient's behalf to examine him and
133 his complete record on file at the institution. Such record or
134 any part thereof shall be admissible in evidence in any pro-
135 ceeding under this act. The court if requested by counsel for
136 a patient petitioning for release under this act shall or upon
137 its own motion, may appoint a physician, other than one hold-
138 ing any office or appointment in the department of mental
139 health or in the institution to which such patient is committed
140 or confined and other than a physician certifying as to the
141 mental illness of the patient, to examine such patient and to
142 provide expert testimony concerning such examination in any
143 proceeding under this section. Such physician shall be a phy-
144 sician licensed to practice medicine in the commonwealth and
145 shall meet such other qualifications as the court may require.
146 Each physician so appointed shall receive an amount not to
147 exceed twenty-five dollars per hour as compensation for his
148 services. All expenses incurred under this section shall be al-
149 lowed and certified by the appointing judge.

150 (d) Any retired chief justice or associate justice of the su-
151 perior court may, subject to his consent, be recalled for ac-
152 tive service in that court as an associate justice to preside
153 over proceedings instituted under this act. Such recall shall
154 be made by the chief justice of the superior court. A chief
155 justice or associate justice recalled for such active service
156 shall be compensated as follows: — for each day of service he
157 shall be paid a per diem amount determined on the basis of
158 the annual salary of an associate justice of the court. In
159 calculating such per diem compensation Sundays and holidays
160 shall be excluded. From the amount of per diem compensa-
161 tion thus determined there shall be deducted a similarly de-
162 termined amount of the pension payable to him. He shall also
163 be reimbursed for expenses incurred while sitting pursuant to
this section in any place other than his residence. Such com-
pensation and expenses shall be paid by the commonwealth. 
The fact of such active service by a retired chief justice or 
associate justice shall be stated on the records of the court, 
but need not be separately stated in the record or docket of 
any cause or proceeding acted upon by him. A retired chief 
justice or associate justice serving under the provisions of this 
section shall not be counted in the number of justices au-
thorized or required for the court by any applicable statute. 
Any retired chief justice or associate justice serving under the 
provisions of this section shall not be subject to the provisions 
of section 27 of chapter 212 of the General Laws, only insofar 
as that section relates to the direct or indirect practise of law.

(e) Notwithstanding the provisions of section 34D of chap-
ter 221 of the General Laws, the Massachusetts Defenders 
Committee is hereby authorized to provide counsel for patients 
at any stage of any judicial proceeding instituted pursuant to 
this act; provided, however, that such patient is unable to ob-
tain counsel by reason of his inability to pay. Mental health 
legal advisers appointed pursuant to the provisions of section 
34F of chapter 221 of the General Laws as amended by this 
act may also provide counsel for patients at any stage of any 
judicial proceeding instituted pursuant to this act; provided, 
that such patient is unable to obtain counsel by reason of his 
inability to pay.

(f) The provisions of this act shall be construed to be in 
addition to, and not in limitation of, any other provision of 
law intended to provide relief for persons unlawfully confined 
or committed within the commonwealth.

1 Section 27. Each person heretofore committed in accord-
ance with sections one hundred thirteen to one hundred twenty-
four of chapter one hundred twenty-three to the Massachusetts 
Correctional Institution at Bridgewater or the Massachusetts 
Correctional Institution at Framingham prior to the enactment 
of this act shall be examined by a qualified physician or physi-
cians designated by the department for purposes of this section, 
who shall have access to all records of the department of cor-
section pertaining to the persons being examined. A written report of each such examination shall be sent to the department and to the persons being examined. A written report of each such examination shall be sent to the department and to the commissioner of correction. Such examinations shall be performed within six months of the enactment of this act. If it is determined by the qualified physician or physicians that any such person is so dangerous by reason of mental illness or other mental disability that strict security is required, such person, if a male, shall forthwith be transferred to and hospitalized at the Bridgewater State Hospital or, in the case of a female person, to the Massachusetts Correctional Institution at Framingham, such person to be so hospitalized under a civil status. If it is determined by the qualified physician or physicians that the person is not so dangerous by reason of mental illness or other mental disability that strict security is required but that the person is in need of further care and treatment, such person shall be transferred to and hospitalized at a mental health or retardation facility designated by the department. If it is determined by the qualified physician or physicians after the completion of such examination that the person is no longer in need of care and treatment by reason of mental illness or other mental disability, such person shall be discharged. All such persons shall be so transferred or discharged within nine months of the enactment of this act. Except as hereinabove provided, any person who is retained or hospitalized at a mental health or mental retardation facility of the department or the Bridgewater state hospital under the provisions of this section shall have the same rights and status established by this chapter and the regulations of the department for persons other than defendants in pending criminal proceedings or prisoners under sentence.

Section 28. Any person committed under chapter one hundred twenty-three on a prolonged care basis in accordance with section fifty-one or section sixty-nine as repealed by this act, and hospitalized at any mental health facility, public or private, other than Bridgewater state hospital on the date on which this act becomes effective shall, within six months, be
7 given written notice by the superintendent or other head of
8 the facility of his right to leave such institution upon giving
9 to the superintendent or other head of the facility three days
10 written notice of his intention to leave such facility under the
11 provisions of section fifty-two of chapter one hundred twenty-
12 three as herein enacted. Such right to leave the facility shall
13 become effective on the date said person receives such notice.
14 The superintendent or other head of the facility may distribute
15 such notices at his discretion throughout the six month period
16 in order to assure an orderly transition of such patients to
17 their appropriate status under the new law.

1 Section 29. Following section thirty-four E of chapter two
2 hundred twenty-one add the following new section: —
3 Section 34F. In addition to and separate from the functions
4 of the Massachusetts defenders committee under section thirty-
5 four E of chapter two hundred twenty-one, said committee
6 shall establish and maintain a division of mental health legal
7 assistance. The committee shall appoint as director of said
8 division a member of the Massachusetts bar who shall serve
9 under and be directly responsible to the committee and who
10 shall, subject to the approval of the committee, appoint and
11 may remove mental health legal advisers, who shall also be
12 members of the Massachusetts bar. A mental health legal ad-
13 viser shall perform all duties assigned under the appropriate
14 provisions of chapter one hundred twenty-three and such other
15 duties as may be assigned from time to time by the director.
16 A mental health legal adviser shall assist and advise patients
17 and residents in mental health and retardation facilities of the
18 department, patients at the Bridgewater State Hospital and
19 patients under court order at other public and private facilities
20 concerning their legal rights as provided under this chapter
21 and shall advise and arrange for appropriate legal representa-
22 tion of such party where otherwise necessary. A mental health
23 legal adviser may consent to represent a patient in court pro-
24 ceedings if requested to so act by the patient and after a find-
25 ing by the court that such patient is indigent. A mental health
26 legal adviser may examine all necessary patients' records, rec-
ords of such facilities and records of the department of mental health and may make such other inquiries as may be necessary to carry out his duties hereunder. Except where disclosure is for the welfare or benefit of the patient, information so obtained shall be confidential and not disclosed to others than the members of the Massachusetts defenders committee appointed under section thirty-four E of chapter two hundred twenty-one and to the director of said division of mental health legal assistance and members of the staff of the division. Said committee shall adopt such rules and regulations as may be necessary for the care of its affairs hereunder and may from time to time amend or revise the same without further approval; provided, however, that in the adoption of such rules and regulations, said committee in instances deemed appropriate by it, may consult with the department of mental health, the department of correction and such other public or private institutions and personnel thereof, as may be of assistance to the effectuation of the purposes hereof. Said director shall, subject to the approval of said committee, appoint such professional or non-professional aides, clerical and other assistants as may be necessary to carry out the duties of the committee hereunder and said committee shall provide suitable accommodations throughout the commonwealth. The director and other employees appointed hereunder shall not be subject to the provisions of chapter thirty-one. Said committee for the purposes hereof, may accept gifts, grants or contributions from any source whether public or private and may expend the same.

1. **Section 30.** Chapter one hundred nineteen, section twenty-three C of the general laws is hereby amended to read as follows: — "The department may seek and shall accept on order of a probate court the responsibility for any child under twenty-one years of age who is without proper guardianship due to the death, unavailability, incapacity or unfitness of the parent or guardian, or on the consent of the parent or parents. Such responsibility shall include the right to determine the child's place of abode, medical care, education; to control visits to the
child; to give consents to enlistments, marriages and other contracts requiring parental consent, such responsibility to include the right to consent to adoption only when it is expressly included in the order of the court. If such child is in the care of the department of mental health, the responsibility enumerated above and all rights therein contained shall continue in the department. The department shall continue to have such responsibility for a mentally retarded person notwithstanding the fact that such person has reached the age of twenty-one years, if the department has accepted responsibility for such person prior to his reaching the age of twenty-one years and such person has been declared to be legally incompetent. Such responsibility shall continue in the department until such person shall be declared to be no longer legally incompetent.

Section 31. Section sixteen of chapter two hundred seventy-seven of the general laws is hereby repealed.

Section 32. Section thirteen of chapter two hundred seventy-eight of the general laws is hereby repealed.

Section 33. Section two, three and three A of chapter one hundred twenty-three are hereby repealed.

Section 34. The first paragraph of section 19 of chapter 125 of the General Laws, as appearing in section 16 of chapter 715 of the Acts of 1956, is hereby amended by inserting after the word "chapter" in line eleven, the words: — or persons hospitalized under section 53A of said chapter.

Section 35. Chapter 618, chapter 619 and chapter 620 of the Acts of 1967 are hereby repealed.

Section 36. This Act shall take effect on July 1, 1969.