

# HOUSE . . . . . No. 6129

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## **The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, May 29, 1985.

The committee on the Judiciary to whom was referred so much of the recommendations of the Department of Mental Health (House, No. 190) as relates to providing for district court adjudication of competency and medical treatment, including treatment with anti-psychotic medications (House, No. 197), reports recommending that the accompanying bill (House, No. 6129) ought to pass.

For the Committee,

T. F. BROWNELL.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT TO PROVIDE FOR DISTRICT COURT ADJUDICATIONS OF COMPETENCY AND MEDICAL TREATMENT, INCLUDING TREATMENT WITH ANTIPSYCHOTIC MEDICATIONS.

*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. The first sentence of section 5 of chapter 123 of the  
2 General Laws is hereby amended by inserting after the words  
3 "I.C.U." the following words: "or for medical treatment including  
4 treatment with antipsychotic medication."

1 SECTION 2. Chapter 123 of the General Laws is hereby  
2 amended by inserting after section 8A the following new section:

3 Section 8B. (a) With respect to any patient who is the subject of  
4 a petition for a commitment or an order of commitment for care  
5 and treatment under the provision of sections seven, eight, fifteen,  
6 sixteen or eighteen, the superintendent of a facility or medical  
7 director of the Bridgewater State Hospital may further petition the  
8 district court in whose jurisdiction the facility is located (i) to  
9 adjudicate the patient incapable of making informed decisions  
10 about proposed medical treatment, (ii) to authorize, by an adjudi-  
11 cation of substituted judgment, treatment with antipsychotic medi-  
12 cations, and (iii) to authorize according to the applicable legal  
13 standards such other medical treatment as may be necessary for the  
14 treatment of mental illness.

15 (b) A petition filed under this section shall be separate from any  
16 pending petition for commitment and shall not be heard or other-  
17 wise considered by the court unless the court has first issued an  
18 order of commitment on the pending petition for commitment.

19 (c) Whenever a court receives a petition filed under the provisions  
20 of this section, such court shall notify the person, and his nearest  
21 relative or guardian of the receipt of such petition and of the date a

22 hearing on such petition is to be held. The hearing shall be com-  
23 menced within fourteen days of the filing of the petition unless a  
24 delay is requested by the person or his counsel, provided that the  
25 commencement of such hearing shall not be delayed beyond the  
26 date of the hearing on the commitment petition if the petition was  
27 filed concurrently with a petition for commitment.

28 (d) After a hearing on the petition regarding anti-psychotic med-  
29 ication treatment, the court shall not authorize medical treatment  
30 unless it (i) specifically finds that the person is incapable of making  
31 informed decisions concerning the proposed medical treatment (ii)  
32 upon application of the legal substituted judgment standard, specif-  
33 ically finds that the patient would accept such treatment if compe-  
34 tent, and (iii) specifically approves and authorizes a written substi-  
35 tute judgment treatment plan. The court may base its findings  
36 exclusively upon affidavits and other documentary evidence if it (i)  
37 determines, after careful inquiry and upon representations of coun-  
38 sel, that there are not contested issues of fact and (ii) includes in its  
39 findings the reasons that oral testimony was not required.

40 (e) The court may delegate to a guardian who has been duly  
41 appointed by a court of competent jurisdiction the authority to  
42 monitor the antipsychotic medication treatment process to ensure  
43 that an antipsychotic medication treatment plan is followed, pro-  
44 vided such a guardian is readily available for such purpose. Ap-  
45 proval of a treatment plan shall not be withheld, however, because  
46 such a guardian is not available to perform such monitoring. In  
47 such circumstances, the court shall monitor the treatment process  
48 to ensure that the treatment plan is followed.

49 (f) Any authorization for treatment that is ordered pursuant to  
50 the provisions of this section shall expire at the same time as the  
51 expiration of the order of commitment that was in effect when the  
52 authorization for treatment was ordered; provided that subsequent  
53 authorizations may be ordered and any party may at any time  
54 petition the court for modification of a medical treatment author-  
55 ization that has been ordered pursuant to the standards and proce-  
56 dures established in this section.

57 (g) An adjudication of competency or incompetency with respect  
58 to treatment for mental illness by a court pursuant to this section

59 may be binding upon the probate court in any subsequent  
60 guardianship proceedings only with respect to matters which were  
61 the subject of the district court adjudication.

62 (h) Any privilege established by section one hundred and thirty-  
63 five of chapter one hundred and twelve or by section twenty B of  
64 chapter two hundred and thirty-three, relating to confidential  
65 communications, shall not prohibit the filing of reports or affida-  
66 vits, or the giving of testimony, pursuant to this section, for the  
67 purpose of obtaining treatment of a mentally ill or mentally  
68 retarded person, provided that such person has been informed prior  
69 to making such communications that they may be used for such  
70 purpose and has waived the privilege.

1 SECTION 3. Section 9 of chapter 123 of the General Laws is  
2 hereby amended by deleting subsections (a) and (b) and inserting in  
3 their place the following new subsections (a) and (b):

4 (a) Matters of law arising in commitment hearings, antipsychotic  
5 medication hearings or competency for trial proceedings in a dis-  
6 trict court may be reviewed by the appellate division of the district  
7 courts in the same manner as in civil cases generally.

8 (b) Any person may make written application to a justice of the  
9 superior court at any time and in any county, stating that he  
10 believes or has reason to believe that a person named in such  
11 application is retained in a facility or the Bridgewater State Hospi-  
12 tal, or the I.C.U. who should no longer be so retained, or that a  
13 person named in such application is the subject of a medical treat-  
14 ment order issued by a district court pursuant to section eight B and  
15 should not be so treated, giving the names of all persons interested  
16 in his confinement or medical treatment and requesting his dis-  
17 charge or other relief. The justice within seven days thereof shall  
18 order notice of the time and place for a hearing to be given to the  
19 superintendent or medical director or director of the I.C.U. and to  
20 such other persons as he considers proper; and such hearing shall be  
21 given promptly before a justice of the superior court in any county.  
22 The justice shall appoint an attorney to represent any applicant  
23 whom he finds to be indigent. The alleged mentally ill person may  
24 be brought before the justice at the hearing upon a writ of habeas

25 corpus, upon a request approved by the justice. Pending the deci-  
26 sion of the court such person may be retained in the custody of the  
27 superintendent or medical director or the director of the I.C.U. If  
28 the justice decides that the person is not mentally ill or that failure  
29 to retain the person in a facility or the Bridgewater State Hospital  
30 would not create a likelihood or serious harm, or finds that the  
31 woman in the I.C.U. is not mentally ill; has not engaged in repeated  
32 and recent incidents of serious self-destructive behavior or assaul-  
33 tive behavior as an inpatient at a facility or an inmate of a place of  
34 detention, can be properly treated in any other facility licensed,  
35 operated or regulated by the department or a place of detention in  
36 the case of a woman under the sentence; and here is not a substan-  
37 tial likelihood that woman's condition will continue to cause her to  
38 inflict serious harm upon herself or others, said person shall be  
39 discharged. If the justice decides that a patient at the Bridgewater  
40 State Hospital does not require strict security, he shall be trans-  
41 ferred to a facility. If the justice decides that a person who is the  
42 subject of a medical treatment order issued by a district court  
43 pursuant to section eight B should not be so treated, the justice shall  
44 issue an appropriate order modifying or vacating such order and,  
45 where such previous order is modified, the court shall monitor said  
46 modified order by means of a guardian or otherwise as provided in  
47 subsection (3) of this section.



1918 . . . . . No. 413

The University of Pennsylvania

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