SECTION 2. Contributions to such account shall be made by applicants for building permits for the construction, erection, improvement, reuse or rehabilitation of land or the buildings thereon for industrial, commercial, multi-family and residential uses. Excluded from the requirements of this act shall be single family residences if the owner occupies such as his primary residence for at least one year. The method and amount of such contributions from such private sources shall be as determined by ordinance, but not to exceed one per cent of estimated construction cost. Said ordinance shall provide for the method of determining the amount of each contribution from such applicants based upon their anticipated water and sewer use by each and for the particular kind of development contemplated.

SECTION 3. Appropriation from time to time may be made by the city of Quincy into said special account for the purpose of providing additional funds for aforesaid improvements, rehabilitation or repairs of sewage pipes, lines, facilities and systems.

SECTION 4. The city treasurer of the city of Quincy shall be authorized to invest monies in said special account and the interest accruing shall inure to the benefit of said special account. Said special account shall be maintained in accordance with generally accepted principles and shall be audited annually with the cost of such audit charged to said special account.

SECTION 5. The commissioner of public works for the city of Quincy may make applications for available state and federal government grants for the construction, improvements engineering, rehabilitation and repair of the sewage pipes, lines, facilities and systems and to pledge any and all such sums of money in said special account with the approval of said city for any such matching grants for the construction, improvements repair and rehabilitation of said sewage pipes, lines, facilities and systems.

SECTION 6. The city auditor shall file jointly with the city council, the mayor, the treasurer of said city, and with the bureau of accounts, a written report relative to such special account authorized by section one. Said report shall be made within one hundred twenty days after the books of account are closed for each fiscal year. Such report shall include a financial statement relating to the operation, maintenance and expenditures made under the said special account. Said city council may review and comment on said report and may file such review and comments with the state auditor.

SECTION 7. This act shall take effect upon its passage.

Approved December 16, 1986.

Chapter 599. AN ACT TO REORGANIZE THE MANAGEMENT OF MENTAL HEALTH AND MENTAL RETARDATION SERVICES IN THE COMMONWEALTH.
Be it enacted, etc., as follows:

SECTION 1. Section 11 of chapter 5 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by inserting after the word "health", in line 40, the first time it appears, the words:— , mental retardation.

SECTION 2. Section 81 of chapter 6 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 4, the first time it appears, the words:— , mental retardation.

SECTION 3. The first paragraph of section 181 of said chapter 6, as so appearing, is hereby amended by inserting after the word "health", in line 5, the words:— , the commissioner of mental retardation.

SECTION 4. Section 16 of chapter 6A of the General Laws, as amended by section 3 of chapter 715 of the acts of 1985, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

The following state agencies are hereby declared to be within the executive office of human services: the office for children, including the councils for children and the statewide advisory council established by sections seven and eight of chapter twenty-eight A; the department of social services, including the area advisory boards and the statewide advisory council established by sections thirteen and sixteen of chapter eighteen B; the department of public health and all other agencies within said department, including the commission on hypertension, the drug addiction rehabilitation board, and the several advisory councils established by section four D, four F and fifty-five of chapter one hundred and eleven, but excluding such divisions and personnel which relate to the areas of environmental health, including air pollution control, noise regulation, community sanitation, water supply and water quality, noisome trades and sanitary landfills; the department of public welfare and all other state agencies within said department; the commission on supplemental security income; the department of mental health, including the advisory council established by chapter nineteen, the several institutions within said department and their advisory boards, and all other state agencies within said department; the department of mental retardation, including the advisory council established by chapter nineteen B, the several institutions within said department and their advisory boards, and all other state agencies within said department; the department of corrections including the parole board and all other state agencies within said department; the advisory council on home and family; the commissioner of veterans' services; the board of trustees of the Soldiers' Home in Massachusetts and the board of trustees of the Soldiers' Home in Holyoke; the youth service board; the advisory committee on service to youth; the division of youth service, including the several institutions within said division; the Massachusetts rehabilitation commission and the advisory council; the boxers' fund board; the health and welfare commission; the nutrition board; the health facilities appeals board; the rate setting commission established by section thirty-two; and the Massachusetts commission for the blind and its advisory board, and all other state agencies within said commission;
and the Massachusetts commission for deaf and hard of hearing people and its advisory board.

SECTION 5. Section 17 of chapter 10 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— The state treasurer may receive the principal of any fund given or bequeathed to the commonwealth or the department of mental health for the use of mentally ill persons or to the commonwealth or the department of mental retardation for the use of mentally retarded persons; and upon the request of the department of mental health in the case of funds for the use of mentally ill persons, or upon the request of the department of mental retardation in the case of funds for the use of mentally retarded persons, the state treasurer shall expend the income of all such funds, and such part of the principal as may be subject to the control of the respective department, in such manner as it may direct, subject to any condition affecting the administration thereof. Said funds shall be invested safely by the state treasurer, and he shall be held responsible for the faithful management of the same in the same manner as for other funds held by him.

SECTION 6. Section 1Q of chapter 15 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 7, the first time it appears, the words:— , mental retardation.

SECTION 7. The first paragraph of section 13 of chapter 18B of the General Laws, as so appearing, is hereby amended by striking out the sixth sentence and inserting in place thereof the following sentence:— One member of said board at the time of appointment shall be a member of the mental health area board established under chapter nineteen, one member of said board at the time of appointment shall be a person knowledgeable in the field of mental retardation, two members of said board at the time of their appointment shall be members of the councils for children established under section seven of chapter twenty-eight A, two members of said board at the time of their appointment shall be members of the financial or business professions with special fiscal or budgetary skills, and two members of said board shall at the time of their appointment be members of the community service area boards established under section seven of chapter eighteen.

SECTION 8. The General Laws are hereby amended by striking out chapter 19 and inserting in place thereof the following chapter:—

CHAPTER 19.
DEPARTMENT OF MENTAL HEALTH.

Section 1. There shall be a department of mental health, in this chapter called the department, and a commissioner of mental health who shall have and shall exercise supervision and control of the department. All action of the department shall be taken by the commissioner, or under the direction of said commissioner, by such agents or subordinate officers as he shall determine.

The department shall take cognizance of all matters affecting the
mental health of the citizens of the commonwealth; provided, that the primary mission of the department shall be to provide for services to citizens with long-term or serious mental illness, early and ongoing treatment for mental illness, and research into the causes of mental illness. The department shall have supervision and control of all public facilities, for mentally ill persons and of all persons received into any of said facilities and shall have general supervision of all private facilities for such persons; provided, however, that this sentence shall not be deemed to interfere with or supersede any other provision of general or special law which grants or confers supervision and control of certain public facilities for mentally ill persons and persons admitted to such facilities or which grants or confers supervision over certain private facilities for such persons, to any other department of the commonwealth or to any political subdivision. The department shall have supervision and control of all hospitals, comprehensive centers and clinics, and other mental health facilities established within the department and, subject to appropriation, may further develop additional state hospitals, comprehensive centers and clinics, or other mental health facilities under commonwealth operation or, subject to appropriation, may contract with any private hospital, institution, nonprofit charitable corporation, partnership, collaborative or other agency furnishing community or complementary mental health services to pay it the ordinary and reasonable compensation for such services actually rendered or furnished to persons in need thereof. Such agreements may provide for the retention of all revenues resulting from all billings and third party reimbursements by the contracting agency, provided that the expenditure of such funds is made in conformance with applicable state and federal law and subject to the approval of the commissioner.

The department shall designate those facilities to which persons may be committed or admitted as patients under the provisions of chapter one hundred and twenty-three. The department shall periodically inform the courts as to the available facilities to which persons may be committed or admitted as patients or residents.

The department shall be a corporation for the purpose of taking, holding and administering in trust for the commonwealth any grant, devise, gift or bequest made either to the commonwealth, to it, or to any state hospital or other mental health facility of the department, for the use of persons under its control in any mental health facility of the department, or for the use of such hospital or facility, or if the acceptance of such trust is approved by the governor, for expenditure upon any work which the department is authorized to undertake.

The department shall select the site of any new state mental health facility and any land to be taken or purchased by the commonwealth for the purposes of any new or existing state mental health facility.

The department of public works shall construct and maintain roads on the grounds of property of a state mental health facility; and expenses so incurred shall be paid from appropriations for the maintenance of such facility.

The department may make contracts with the federal government relative to receiving persons in the United States armed forces for care and treatment in departmental facilities and for support of such persons.

Section 2. The secretary of human services shall appoint, with the
approval of the governor, a commissioner of mental health who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor.

Such commissioner shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the secretary of human services determines are necessary for the performance of the duties of the commissioner.

The commissioner shall appoint and may remove such agents and subordinate officers as the commissioner may deem necessary, and may establish such divisions or regional management systems in the department as the commissioner deems appropriate from time to time. Except as otherwise provided by law all offices and positions shall be subject to the provisions of chapter thirty-one; provided, however, the provisions of chapter thirty-one shall not apply to physicians and psychiatrists with full medical-psychiatric responsibility as opposed to administrative responsibility, to community mental health area directors appointed under the provisions of section thirteen, to nurses employed as such by the department, or to attorneys acting as legal counsel; and provided further, however, and notwithstanding the preceding provision or any other provision of law, all offices and positions which as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate and make necessary the application of the provisions of the civil service law, shall be subject to the provisions of chapter thirty-one if such federal standards are uniform in all states.

At the end of each fiscal year, the commissioner shall make an annual report of the activities of the department, and of each facility, clinic, or unit under its control, the cost of operating the same, the initiation of new programs, and the progress made in providing services and facilities for mental health in the commonwealth.

The position of commissioner shall be classified in accordance with section forty-five of chapter thirty and the salary shall be determined in accordance with section forty-six C of said chapter thirty.

Section 3. The commissioner shall appoint, with the approval of the secretary of human services, a person qualified to serve as deputy commissioner of mental health. Said deputy commissioner shall perform such duties as the commissioner may determine and shall, in the case of a vacancy in the office of the commissioner, and during said commissioner's absence or disability, exercise the powers and perform the duties of the office of the commissioner. Said deputy commissioner may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A.

The deputy commissioner shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the commissioner determines are necessary for the performance of the duties of the deputy commissioner. The commissioner or a deputy commissioner shall be a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc.

Section 4. The commissioner shall appoint, subject to appropriation, such other assistant, deputy or associate commissioners as the commis-
sioner may determine to be necessary or desirable to carry out the work of the department. Assistant, deputy and associate commissioners shall be assigned areas of responsibility to be specified by the commissioner. At the time of appointment, they shall possess such qualifications as the commissioner shall determine. Persons appointed to such positions shall serve at the pleasure of the commissioner. Chapter thirty-one and section nine A of chapter thirty shall not apply to said positions.

Section 5. The commissioner shall appoint a member of the Massachusetts bar to serve as legal counsel to the commissioner. Such legal counsel shall devote full time to his duties. Such legal counsel shall have been a member of the bar for not less than six years and shall have been actively engaged in the practice of law.

Section 6. The commissioner may establish a program for the training of residents in psychiatry and any other professional disciplines as required by departmental programs. Such residents shall be eligible for training grants from the commonwealth. Recipients of said grants shall be exempt from the provisions of chapter thirty-one and shall not be deemed employees of the commonwealth; provided, however, that such recipients shall be deemed public employees under chapter two hundred and fifty-eight. Such grants shall not be deemed income under chapter sixty-two. Approval of such training programs by the personnel administrator shall be required in accordance with the provisions of section twenty-eight of chapter seven.

Section 7. The state facilities under the control of the department shall be such state hospitals, mental health centers and other mental health facilities as the commissioner from time to time shall designate in the regulations of the department, including any facilities or portions thereof which the department may, subject to appropriation, construct or develop for use as homes or facilities for aging persons who are not mentally ill. Admissions of patients to said facilities or homes for aging persons shall be voluntary and not by commitment and said facilities or homes, although under the supervision and control of said department, shall be deemed to be public medical institutions within the meaning of section two of chapter one hundred and eighteen E.

Section 8. When a vacancy occurs in the positions of superintendent of a state hospital of the department or director of any other mental health facility of the department, the commissioner shall appoint to such a vacancy a person who has such educational qualifications and such administrative and other experience, including education or experience in the care, treatment or education of the mentally ill, as the commissioner determines are necessary for the performance of the duties of superintendent or director.

The superintendent with the approval of the commissioner shall appoint and may remove a treasurer and assistant treasurer in each state hospital, each of whom shall give bond for the faithful performance of this duties. The provisions of section forty-nine of chapter thirty-one shall apply to the appointment of such treasurers and assistant treasurers. The superintendent with the approval of the commissioner shall appoint and may remove assistant physicians and necessary subordinate officers and other persons. The superintendent may require that a physician who is to be so appointed be certified as to his qualifications by one of the physicians' specialty boards approved by the Council on Medical Education and Hospitals of the American Medical Association.
Section 9. The governor shall appoint a board of trustees for each state hospital. A majority of the members of each such board of trustees shall be consumers and their guardians or family members. Said board shall visit and familiarize itself with its state hospital, and may from time to time make suggestions to the department as to improvements therein, especially such as will make the administration thereof more effective, economical and humane. Said board shall serve without compensation, but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his duties.

Section 10. The superintendent of any state hospital or the director of any mental health facility of the department, who has reason to believe that a crime which is punishable by imprisonment in the state prison has been committed by or upon any person on the premises of the particular facility or by or upon any person in the care of the particular facility but not on the premises thereof, shall, no later than one week from the date of the commission of such crime, report the same to the district attorney of the district within which the crime was committed.

Section 11. There shall be a mental health advisory council consisting of fifteen persons to be appointed by the secretary of human services, with the approval of the governor, eight of whom shall be members of community mental health area boards, and of the remaining seven at least four shall be appointed to represent one of the following professions and groups: state level medical, psychological, nursing, educational, social work, occupational therapy, or bar associations, associations for mental health, industrial and labor groups and the clergy. Upon the expiration of the term of office of any member, his successor shall be appointed for a term of three years. No member shall be appointed to serve more than two consecutive three-year terms. The councils shall elect a chairman annually. The council shall serve without compensation, but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his official duties.

Said advisory council shall have the following duties:
(a) It shall advise the commissioner on policy, program development, and priorities of need in the commonwealth for comprehensive programs in mental health;
(b) It shall participate with the department in holding a regular series of public hearings throughout the commonwealth to obtain the views of the area boards and other citizens concerning the programs of the department and the needs of the people for mental health services;
(c) It shall review the annual plans and the proposed annual budget of the department, and shall make recommendations to the commissioner in regard thereto;
(d) It shall hold at least three meetings per year and shall convene special meetings at the call of the chairman of the council, a majority of the council, or the commissioner.

Section 12. The department shall establish a comprehensive program of community mental health services which shall include state hospitals, clinics, comprehensive centers and other facilities of the department, and to promote such programs the department shall divide the commonwealth into service areas for the conduct of said mental health services, and shall establish standards for the development of said community programs.
Each area shall be drawn so as to include and to allow for the development of mental health services and facilities, as needed, which shall be readily accessible to the people in the area, taking into consideration such factors as geographic boundaries, roads and other means of transportation, population concentration, city, town and county lines, other relevant community services, and community economic and social relationships.

Section 13. The commissioner shall, after consultation with the area board, appoint in each community mental health area an area director. Such area director shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the commissioner determines are necessary for the performance of the duties of area director.

The area director shall perform such duties as are described in this chapter and any other law and such other duties as are assigned by the department.

Where there is established within the area a comprehensive center operated by the department and designated as a comprehensive center by the commissioner, the area director may also serve by appointment of the commissioner as head of such center. The area board shall also serve as the citizen board for such center and no other board shall be formed or designated for such center. The area director, subject to departmental regulations, shall supervise all employees within such center.

Salaries for area directors shall be fixed under and in accordance with sections forty-five to fifty, inclusive, of chapter thirty, taking into account those individual cases where an area director is also superintendent of a state hospital or a comprehensive center.

Section 14. In each area established under section twelve there shall be a community mental health area board, hereinafter called the area board, which shall be an agency of the commonwealth, and shall serve in the department. The area board shall consist of fifteen members, who shall be appointed by the commissioner. Two thirds of the members shall live within the area for which they are appointed, and the remaining members shall either live or work within said area. The commissioner shall seek to provide proper geographical representation in the membership of the board.

Two thirds of such members shall be persons other than employees of the commonwealth. No member shall be an employee of the department.

Upon the expiration of the term of any member of the area board, a successor shall be appointed, in like manner, for a term of three years. In the event of vacancy, the commissioner may, in like manner, appoint a member who shall serve for the remainder of the unexpired term. Members of the board shall serve without compensation, and shall be sworn to the faithful performance of their duties. The area board shall suggest for consideration by the commissioner one or more names for each such expiring term or vacancy. No member shall be appointed for more than two consecutive three-year terms.

Section 15. The area board shall have the following duties and powers:
(a) to act as the representative of the citizens of the area;
(b) to advise regarding local needs and resources in the development of comprehensive mental health services;
(c) to advise in the recruitment and selection of the area director to
be appointed by the commissioner, provided that, where the area
director will also be an executive head of a facility which is integrated
with a university medical center or medical school or with a hospital, the
university, medical school, or hospital authorities shall advise in the
recruitment and selection of such director; provided, that the
commissioner may designate a person to act as area director in any case
in which such office shall be vacant;
(d) to review and make recommendations concerning the annual
budget for the comprehensive mental health services of the area;
(e) to review programs and services which are a part of the program
of the area but which are not conducted within commonwealth-operated
facilities;
(f) to consult with the commissioner in personnel recruitment and
appointment policies, in the establishment of program priorities for the
area, in admission policies for all facilities and services, and in policies
regarding relationships with other agencies and organizations;
(g) to communicate with the mental health advisory council,
established under section eleven, to discuss any matters concerning the
area program;
(h) to receive and administer any gift or bequest of personal property
or funds in trust or any grant or devise of lands made to its use in trust
in the interest of the area program of mental health services, or for any
special purpose as indicated in the gift or grant in trust, and may invest
the proceeds thereof in notes, bonds or property secured by sufficient
mortgages;
(i) to hold regular meetings in each year and to convene special
meetings on the call of the president, or ten members of the board, or
the area director, or the commissioner. The area director shall be
notified of, and may participate in, all meetings, but shall not vote;
(j) to elect from their members annually a president and such other
officers as they deem appropriate. The area board shall adopt rules for
its proper organization and for procedures at meetings. Such rules and
any subsequent amendments thereto shall be submitted to the
commissioner for approval.
Section 16. The department shall develop and maintain, subject to
appropriation, and in accordance with its standards, a comprehensive,
area-based system to provide community mental health services,
including specialized services for both children and adults.
Major consideration shall be given to the development of
(a) inpatient services; (b) outpatient services; (c) emergency services on
a twenty-four hour basis; (d) partial hospitalization services for day care
and night care; (e) mental health consultation and educational services to
community agencies and professional personnel practicing in the area;
and (f) employment opportunities for patients.
Mental health services shall include case management services, the
primary purpose of which is to assure continuity of care for a patient's
medical or psychiatric needs, but which shall include a determination of
eligibility for existing federal, state, and municipal programs to provide
for social and economic needs as well. The department shall issue rules
and regulations which shall govern the provision of such management
services, to be implemented and adhered to by each area, provided,
however, that each patient shall have the right to confidentiality of all
records and communications to the extent provided by chapter one
hundred and twenty-three. Mental health services shall also, where applicable, include: (a) diagnostic services; (b) rehabilitative services; (c) preventive, precare, and aftercare services within the area; and (d) research programs including evaluation of effectiveness and efficiency of the various programs operating within the area.

The services described in this section may, unless otherwise provided in this chapter or by departmental regulations, be developed for each area through commonwealth-operated facilities or, subject to appropriation, by contracts for services. Programs and services may also be developed in cooperation with facilities or other resources located in other community mental health areas of the commonwealth or operated regionally, subject to appropriation. In arranging cooperative services between or among areas, or on a regional basis, provision should be made to ensure continuity of services to clients. The department may also receive funds under contracts or other agreements from community sources, including municipalities as authorized by clause (40C) of section five of chapter forty for the rendering of services in collaboration with such municipal or other community or private agencies providing cooperative or complementary services. Those eligible for participation in any one service must be eligible for and have access to other services made available in the area. Services shall be offered without discrimination to all people in the area except where specialized programs are developed such as for children or the aging, provided that within such specialized categories the services shall be equally available to all such persons in the area.

Notwithstanding any provision of law to the contrary, all revenues received by the community mental health facilities operated by the department shall be deposited in one or more trust funds in the state treasury of which the commissioner shall be trustee and may be expended by the department for the operation and maintenance of such community mental health facilities and may be further expended for the management, stabilization, and delivery of mental health services by and through such community mental health facilities and other affiliated service providing agencies; provided, that all expenditures from said trust funds so made shall conform to standard state accounting procedures and such further requirements as prescribed by the comptroller; provided further, that the commissioner in his capacity as trustee shall report monthly to the commissioner of administration and to the house and senate committees on ways and means such revenues and reimbursements received and expenditures made; and provided further, that whenever any such trust fund ceases to be operative, all monies remaining in such fund shall accrue to the General Fund.

Section 17. The area board may appoint such advisory committees as it may from time to time deem necessary. The members of such committees shall serve for such terms as the area board may determine.

Section 18. The department may from time to time adopt such rules and regulations as it deems necessary to carry out the provisions of this chapter, and may amend or repeal the same.

Section 19. (a) The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any private, county or municipal facility or department or ward of any such facility which offers to the public residential or day care services and is represented as providing treatment of persons who are
mentally ill and which is deemed by it to be responsible and suitable to meet applicable licensure standards and requirements except that: (1) the department may license those facilities providing care but not treatment of persons who are mentally ill, and (2) licensing by the department is not required where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under the provisions of chapter one hundred and eleven unless such services are provided on an involuntary basis. Whether or not a license is issued under clause (1), the department shall make regulations for the operation of such facilities. The department may grant the type of license which it deems suitable for the facility, department or ward. The department shall fix reasonable fees for licenses and renewal thereof.

(b) 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 be required by the department.

(c) 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 regulations for the proper operation of such facilities, departments or wards.

(d) 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, for any violation of its regulations or standards concerning such facilities, department or ward. The department may temporarily suspend a license prior to a hearing in cases of emergency if it deems that such suspension would be in the public interest; provided, however, that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A 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.

(e) No facility nor any department or ward of any such facility, for which a license is required under paragraph (a), shall provide residential or day care services for the treatment or care of persons who are mentally ill, 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. Whoever violates the provisions of this section shall be punished for the first offense 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.

(f) Each patient shall be granted protection from commercial exploitation of any kind. No patient shall be photographed, interviewed or exposed to public view without either his expressed written consent or that of his legal guardian.

(g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any day care center, family day care home, family day care system, family foster care, or group care facility as defined in section nine of chapter twenty-eight A, shall not be subject to the provisions of this section.

Section 20. Stationary engineers, steam firemen, school teachers and
head farmers employed in mental health facilities of the department and, except as otherwise provided by the civil service law and rules, the classified labor service of the department, shall be exempt from chapter thirty-one; provided, however, that whenever, as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate, federal requirements make necessary the application of the civil service law and rules to any such position, or to the classified labor service or any portion thereof, said positions or service shall be subject to chapter thirty-one; provided, further, such federal requirements are uniform in all states.

Section 21. Subject to approval by the secretary of human services, the commissioner may enter into interagency agreements with the commissioner of mental retardation for the coordinated regulation of or for the coordinated or joint management of certain services that are required or that must be provided by both the department of mental retardation and the department of mental health. Such agreements may be entered where it is determined by the commissioners of said departments that the services require coordinated regulation to ensure development of substantially similar standards consistent with certain shared needs of mentally ill and mentally retarded individuals or that the services will be more efficiently and effectively provided by a single, unified management system than by two separate management systems. Such services may include, without limitation, transportation, laundry, data processing, certain services to mixed populations of mentally ill and mentally retarded individuals with common needs for care and treatment or to individuals who are diagnosed as both mentally retarded and mentally ill, research activities and program monitoring. Coordinated regulation of such services may include, without limitation, such issues as restraint, charges for care, investigations and case management. Pursuant to such agreements the department of mental health may assume responsibility for the provision of such services to the department of mental retardation. Such agreements may delegate responsibility to the department of mental retardation to provide such services for the department of mental health. Such agreements may provide for the expenditure of appropriated funds consistent with such joint management service systems and may further provide for assignment of certain staff to such joint management service systems. Such agreements shall not, however, conflict with the department of mental retardation's primary responsibility for mentally retarded persons regardless of whether such persons are also mentally ill.

SECTION 9. The General Laws are hereby amended by inserting after chapter 19A the following chapter:-

CHAPTER 19B.
DEPARTMENT OF MENTAL RETARDATION.

Section 1. There shall be a department of mental retardation, in this chapter called the department, and a commissioner of mental retardation who shall have and shall exercise exclusive supervision and control of the department. All action of said department shall be taken by the commissioner, or under the direction of said commissioner, by such agents or subordinate officers as he shall determine.
The department shall take cognizance of all matters affecting the welfare of the mentally retarded citizens of the commonwealth. The department shall have supervision and control of all public facilities for mentally retarded persons and of all persons received into any of said facilities, and shall have general supervision of all private facilities for such persons; provided, however, that this sentence shall not be deemed to interfere with or supersede any other provision of general or special law which grants or confers supervision and control of certain public facilities for mentally retarded persons and persons admitted to such facilities or which grants or confers supervision over certain private facilities for such persons, to any other department of the commonwealth or to any political subdivision. The department shall have supervision and control of all mental retardation facilities established within the department and, subject to appropriation, may further develop additional mental retardation facilities under commonwealth operation or, subject to appropriation, may contract with any private agency furnishing complementary or community mental retardation services to pay it the ordinary and reasonable compensation for such services actually rendered or furnished to persons in need thereof. The department may, subject to appropriation, enter into agreements with nonprofit charitable corporations, partnerships or collaboratives for the providing of mental retardation services. Such agreements may provide for the retention of all revenues resulting from all billings and third party reimbursements by such organizations, provided, that the expenditure of such funds is made in conformance with applicable state and federal law and subject to the approval of the commissioner.

The department shall be a corporation for the purpose of taking, holding and administering in trust for the commonwealth any grant, devise, gift or bequest made to the commonwealth, to it, or to any state school or other mental retardation facility of the department for the use of persons under its control in any such facility or for the use of such school or facility, or, if the acceptance of such trust is approved by the governor, for expenditure upon any work which the department is authorized to undertake.

The department shall select the site of any new state mental retardation facility and any land to be taken or purchased by the commonwealth for the purposes of any new or existing state mental retardation facility.

The department of public works shall construct and maintain roads on the grounds of property of a state mental retardation facility; and expenses so incurred shall be paid from appropriations for the maintenance of such facility.

Section 2. The secretary of human services shall appoint, with the approval of the governor, a commissioner of mental retardation who shall serve at the pleasure of the secretary and may be removed by the secretary at any time, subject to the approval of the governor.

Such commissioner shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the secretary of human services determines are necessary for performance of the duties of commissioner.

The commissioner shall appoint and may remove such agents and subordinate officers as the commissioner may deem necessary, and may establish such divisions or regional management systems in the
department as the commissioner deems appropriate from time to time. Except as otherwise provided by law all offices and positions shall be subject to the provisions of chapter thirty-one; provided, however, the provisions of chapter thirty-one shall not apply to physicians and psychiatrists with full medical-psychiatric responsibility as opposed to administrative responsibility, to mental retardation regional managers, if any, to nurses employed as such by the department, or to attorneys acting as legal counsel; and provided further, however, and notwithstanding the preceding provision or any other provision of law, all offices and positions, which as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate and make necessary the application of the provisions of the civil service law, shall be subject to the provisions of chapter thirty-one if such federal standards are uniform in all states.

At the end of each fiscal year, the commissioner shall make an annual report of the activities of the department and of each facility or unit under its control, the cost of operating the same, the initiation of new programs, and the progress made in providing services and facilities for mental retardation in the commonwealth.

The position of commissioner shall be classified in accordance with section forty-five of chapter thirty and the salary shall be determined in accordance with section forty-six C of said chapter thirty.

Section 3. The commissioner shall appoint, with the approval of the secretary of human services, a person qualified to serve as deputy commissioner of mental retardation. Said deputy commissioner shall perform such duties as the commissioner may determine and shall, in the case of a vacancy in the office of the commissioner, and during said commissioner's absence or disability, exercise the powers and perform the duties of the office of the commissioner. Said deputy commissioner may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A.

The deputy commissioner shall have such educational qualifications and such administrative and other experience, including education or experience in a field related to human services, as the commissioner determines are necessary for the performance of the duties of deputy commissioner.

Section 4. The commissioner shall, subject to appropriation, appoint such other assistant, associate or deputy commissioners as the commissioner may determine to be necessary or desirable to carry out the work of the department. Such other assistant, associate or deputy commissioners shall be assigned areas of responsibility to be specified by the commissioner. At the time of appointment, they shall possess such qualifications as the commissioner shall determine. Persons appointed to such positions shall serve at the pleasure of the commissioner. Chapter thirty-one and section nine A of chapter thirty shall not apply to said positions.

Section 5. The commissioner shall appoint a member of the Massachusetts bar to serve as legal counsel to the commissioner. Such legal counsel shall devote full time to his duties. Such legal counsel shall have been a member of the bar for not less than six years and shall have been actively engaged in the practice of law.
Section 6. The commissioner may establish a program for the training of residents in professional disciplines as required by departmental programs. Such residents shall be eligible for training grants from the commonwealth. Recipients of said grants shall be exempt from the provisions of chapter thirty-one and shall not be deemed employees of the commonwealth; provided, however, that such recipients shall be deemed public employees under chapter two hundred and fifty-eight. Such grants shall not be deemed income under chapter sixty-two. Approval of such training programs by the personnel administrator shall be required in accordance with the provisions of section twenty-eight of chapter seven.

Section 7. The state facilities under the control of the department shall be the state schools, and such other mental retardation facilities as the commissioner from time to time shall designate or approve pursuant to the regulations of the department.

Section 8. When a vacancy occurs in the position of superintendent of a state school of the department, or of director of any other mental retardation facility of the department, the commissioner shall appoint to such a vacancy a person who has such educational qualifications and such administrative and other experience, including education and experience in the care, treatment or education of the mentally retarded, as the commissioner determines are necessary for the performance of the duties of superintendent or director.

The superintendent with the approval of the commissioner shall appoint and may remove a treasurer and assistant treasurer in each state school, each of whom shall give bond for the faithful performance of his duties. The provisions of section forty-nine of chapter thirty-one shall apply to the appointment of such treasurers and assistant treasurers. The superintendent with the approval of the commissioner shall appoint and may remove assistant physicians and necessary subordinate officers and other persons. The superintendent may require that a physician who is to be so appointed be certified as to his qualifications by one of the physicians' specialty boards approved by the Council on Medical Education and Hospitals of the American Medical Association.

Section 9. The governor shall appoint a board of trustees for each state school. A majority of the members of each board of trustees shall be consumers and their guardians or family members. Said board shall visit and familiarize themselves with their respective public institutions, and may from time to time make suggestions to the department as to improvements therein, especially such as will make the administration thereof more effective, economical and humane. Said advisory board shall serve without compensation, but shall be reimbursed for all expenses incurred in the performance of their duties.

Section 10. The superintendent of any state school, or the director of any mental retardation facility of the department, who has reason to believe that a crime which is punishable by imprisonment in the state prison has been committed by or upon any person on the premises of the particular facility or by or upon any person in the care of the particular facility but not on the premises thereof, shall, no later than one week from the date of the commission of such crime, report the same to the district attorney of the district within which the crime was committed.

Section 11. There shall be a mental retardation advisory council consisting of fifteen persons to be appointed by the secretary of human
services, with the approval of the governor, five of whom shall be citizens who are members of the department's mental retardation citizens' advisory committees across the state, and of the remaining ten at least five shall be appointed to represent one of the following professions and groups: state level medical, psychological, nursing, educational, social work, occupational therapy, or bar associations, state level associations for mental retardation, industrial and labor groups and the clergy. Upon the expiration of the term of office of any member, his successor shall be appointed for a term of three years. No member shall be appointed to serve more than two consecutive three-year terms. The council shall elect a chairman annually. The council shall serve without compensation, but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his official duties.

Said advisory council shall have the following duties:

(a) It shall advise the commissioner on policy, program development and priorities of need in the commonwealth for comprehensive programs in mental retardation;

(b) It shall participate with the department in holding a regular series of public hearings throughout the commonwealth to obtain the views of the citizens concerning the programs of the department and the needs of the people in mental retardation services;

(c) It shall review the annual plans and the proposed annual budget of the department, and shall make recommendations to the commissioner in regard thereto;

(d) It shall hold at least three meetings per year and shall convene special meetings at the call of the chairman of the council, a majority of the council, or the commissioner.

Section 12. The department shall establish a comprehensive program of community mental retardation services which shall include state schools and other facilities of the department and shall establish standards for the development of mental retardation programs at appropriate geographic levels to ensure access to needed services. The commissioner shall ensure citizen, consumer and family participation, through the appointment of mental retardation citizens' advisory committees and other appropriate methods, in the oversight of mental retardation services at all such levels, including the local level.

Section 13. The department shall develop and maintain, subject to appropriation and in accordance with its standards, comprehensive community mental retardation services including specialized services for both children and adults.

Major consideration shall be given to: (a) diagnostic, evaluation and reevaluation services; (b) various treatment services; (c) various training programs; (d) preschool clinical services; (e) long and short-term day and night care residential services for various purposes; (f) mental retardation consultation and education services to community agencies and professional personnel; (g) employment opportunities for department clients; and (h) locally-based service delivery.

Mental retardation services shall also, where applicable, include: (a) research programs including evaluation of effectiveness and efficiency of the various programs of the department; and (b) preventive services.

The services described in this section may, unless otherwise provided in this chapter or by departmental regulation, be developed through
commonwealth-operated facilities or, subject to appropriation, by contracts for services. Those eligible for participation in any one service must be eligible for and have access to other services made available by the department. Services shall be offered without discrimination to all people who are eligible, except where specialized programs are developed such as for children or the aging, provided that within such specialized categories the services shall be equally available to all such persons who are eligible.

Notwithstanding any provision of law to the contrary, all revenues received by the community mental retardation facilities operated by the department shall be deposited in one or more trust funds in the state treasury of which the commissioner shall be trustee and may be expended by the department for the operation and maintenance of such community mental retardation facilities and may be further expended for the management, stabilization, and delivery of mental retardation services by and through such community mental retardation facilities and other affiliated service providing agencies; provided, that all expenditures from said trust funds so made shall conform to standard state accounting procedures and such further requirements as prescribed by the comptroller; provided further, that the commissioner in his capacity as trustee shall report monthly to the commissioner of administration and to the house and senate committees on ways and means such revenues and reimbursements received and expenditures made; and provided further, that whenever any such trust fund ceases to be operative, all monies remaining in such fund shall accrue to the General Fund.

Section 14. The department may from time to time adopt such rules and regulations as it deems necessary to carry out the provisions of this chapter, and may amend or repeal the same.

Section 15. (a) The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any private, county or municipal facility or department or ward of any such facility which offers to the public residential or day care services and is represented as providing treatment of persons who are mentally retarded, and which is deemed by it to be responsible and suitable to meet applicable licensure standards and requirements, except that: (1) the department may license those facilities providing care but not treatment of persons who are mentally retarded; and (2) licensing by the department is not required where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under the provisions of chapter one hundred and eleven. Whether or not a license is issued under clause (1), the department shall make regulations for the operation of such facilities. The department may grant the type of license which it deems suitable for the facility, department or ward. The department shall fix reasonable fees for licenses and renewal thereof.

(b) 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 be required by the department.

(c) 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 regulations for the proper operation of such facilities, departments or wards.
(d) 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 for any violation of its regulations or standards concerning such facility, department or ward. The department may temporarily suspend a license prior to a hearing in cases of emergency if its deems that such suspension would be in the public interest; provided, however, that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A, 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.

(e) No facility nor any department or ward of any such facility, for which a license is required under paragraph (a), shall provide residential or day care services for the treatment or care of persons who are mentally retarded 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. Whoever violates the provisions of this section shall be punished for the first offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

(f) Each patient shall be granted protection from commercial exploitation of any kind. No patient shall be photographed, interviewed or exposed to public view without either his expressed written consent or that of his legal guardian.

(g) Notwithstanding the provisions of paragraphs (a) to (f), inclusive, any day care center, family day care home, family day care system, family foster care, or group care facility as defined in section nine of chapter twenty-eight A, shall not be subject to the provisions of this section.

Section 16. Stationary engineers, steam firemen, school teachers and head farmers employed in mental retardation facilities of the department and, except as otherwise provided by the civil service law and rules, the classified labor service of the department, shall be exempt from chapter thirty-one; provided, however, that whenever, as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate, federal requirements make necessary the application of the civil service law and rules to any such position, or to the classified labor service or any portion thereof, said positions or service shall be subject to chapter thirty-one; provided, further, such federal requirements are uniform in all states.

Section 17. The department shall provide transportation for mentally retarded persons with respect to educational, habilitational or day care services provided pursuant to section thirteen. The department shall take appropriate steps to ensure the safety of all persons transported under this section. If the department determines that said persons cannot be transported safely without the assistance of monitors, said transporting shall include provision for monitors. Nothing in this section shall preclude the ability of parents to serve as unpaid monitors when their children are being transported.
Section 18. Subject to approval by the secretary of human services, the commissioner may enter into interagency agreements with the commissioner of mental health for the coordinated regulation of or for the coordinated or joint management of certain services that are required or that must be provided by both the department of mental retardation and the department of mental health. Such agreement may be entered where it is determined by the commissioners of said departments that the services require coordinated regulation to ensure development of substantially similar standards consistent with certain shared needs of mentally ill and mentally retarded individuals or that the services will be more efficiently and effectively provided by a single, unified management system than by two separate management systems. Such services may include, without limitation, transportation, laundry, data processing, certain services to mixed populations of mentally ill and mentally retarded individuals with common needs for care and treatment or to individuals who are diagnosed as both mentally retarded and mentally ill, research activities, and program monitoring. Coordinated regulation of such services may include, without limitation, such issues as restraint, charges for care, investigations and case management. Pursuant to such agreements the department of mental retardation may assume responsibility for the provision of such services to the department of mental health. Such agreements may delegate responsibility to the department of mental health to provide such services to the department of mental retardation. Such agreements may provide for the expenditure of appropriated funds consistent with such joint management service systems and may further provide for assignment of certain staff to such joint management service system. Such agreements shall not, however, conflict with the department of mental retardation's primary responsibility for mentally retarded persons regardless of whether such persons are also mentally ill.

SECTION 10. Section 8 of chapter 22A of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by inserting after the word "health", in line 3, the words:-- , department of mental retardation.

SECTION 11. Section 6A of chapter 28A of the General Laws, as so appearing, is hereby amended by inserting after the word "health," in line 13, the words:-- , the department of mental retardation.

SECTION 12. Clause (c) of section 10 of said chapter 28A, as so appearing, is hereby amended by inserting after the word "health", in line 28, the first time it appears, the words:-- , mental retardation.

SECTION 13. Section 9B of chapter 30 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 2, the first time it appears, the words:-- , mental retardation.

SECTION 14. Section 9C of said chapter 30, as so appearing, is hereby amended by inserting after the word "health", in line 2, the first time it appears, the words:-- , mental retardation.

SECTION 15. Section 9D of said chapter 30, as so appearing, is hereby
amended by inserting after the word "health", in line 2, the first time it appears, the words:- , mental retardation.

SECTION 16. The second paragraph of section 24A of said chapter 30, as so appearing, is hereby amended by inserting after the word "health", in line 19, the first time it appears, the words:- , mental retardation.

SECTION 17. Clause (a) of section 91 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 46, the first time it appears, the words:- , mental retardation.

SECTION 18. The first paragraph of section 13 of chapter 58 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 9, the first time it appears, the words:- , the department of mental retardation.

SECTION 19. Section 1 of chapter 71B of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 19, the words:- , mental retardation.

SECTION 20. The first paragraph of section 2 of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 2, the first time it appears, the words:- , mental retardation.

SECTION 21. The second paragraph of said section 2 of said chapter 71B, as so appearing, is hereby amended by striking out, in line 33, the words "and mental health" and inserting in place thereof the words:- , mental health and mental retardation.

SECTION 22. Section 3 of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 3, the first time it appears, line 34, the first time it appears, line 48, 71, the first time it appears, and in line 77, the words:- , mental retardation.

SECTION 23. Section 9 of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 2, the first time it appears, the words:- , mental retardation.

SECTION 24. Section 10 of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 9, 28, 36, and 55, the first time it appears, the words:- , mental retardation.

SECTION 25. Section 12 of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 3, the first time it appears, and in line 34, the words:- , mental retardation.

SECTION 26. Section 12B of said chapter 71B, as so appearing, is hereby amended by inserting after the word "health", in line 11, the words:- , the department of mental retardation.

SECTION 27. Section thirteen of said chapter seventy-one B is hereby repealed.
SECTION 28. Section 1 of chapter 90C of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by inserting after the word "health", in line 39, the words:– , or as the commissioner of mental retardation may designate at each institution of the department of mental retardation.

SECTION 29. Section 4J of chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 12, the words:– and the department of mental retardation.

SECTION 30. Section 70E of said chapter 111, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:–

As used in this section, "facility" shall mean any hospital, institution for the care of unwed mothers, clinic, infirmary maintained in a town, convalescent or nursing home, rest home, or charitable home for the aged, licensed or subject to licensing by the department; any state hospital operated by the department; any "facility" as defined in section three of chapter one hundred and eleven B; any private, county or municipal facility, department or ward which is licensed or subject to licensing by the department of mental health pursuant to section nineteen of chapter nineteen; or by the department of mental retardation pursuant to section fifteen of chapter nineteen B; any "facility" as defined in section one of chapter one hundred and twenty-three; the Soldiers Home in Holyoke, the Soldiers' Home in Massachusetts; and any facility set forth in section one of chapter nineteen or section one of chapter nineteen B.

SECTION 31. The thirteenth paragraph of section 71 of said chapter 111, as so appearing, is hereby amended by inserting after the word "health", in line 127, the words:– , or the department of mental retardation.

SECTION 32. The first paragraph of section 5 of chapter 111E of the General Laws, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words "regions established by the department of mental health pursuant to section seventeen" and inserting in place thereof the words:– areas established by the department of mental health pursuant to section twelve.

SECTION 33. Section 3 of chapter 111G of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 4, the words:– , the department of mental retardation.

SECTION 34. Said chapter 111G is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:–

Section 6. Whenever transportation to early intervention services is required, the department shall provide transportation with respect to said services. The department shall take appropriate steps to ensure the safety of all persons transported under this section. If the department determines that said persons cannot be transported safely without the assistance of monitors, said transporting shall include provision for
monitors. Nothing in this section shall preclude the ability of parents to serve as unpaid monitors when their children are being transported.

SECTION 35. The second paragraph of section 7 of chapter 118E of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 17, the second time it appears, the words:-, mental retardation.

SECTION 36. The first paragraph of section 23 of chapter 119 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 26, the words:-, the department of mental retardation.

SECTION 37. Paragraph (10) of section 51B of said chapter 119, as appearing in section 2 of chapter 776 of the acts of 1985, is hereby amended by inserting after the word "health", in line 1, the words:-, the department of mental retardation.

SECTION 38. The General Laws are hereby amended by striking out chapter 123 and inserting in place thereof the following chapter:-

CHAPTER 123.
MENTAL HEALTH.

Section 1. The following words as used in this section and sections two to thirty-seven, inclusive, shall, unless the context otherwise requires, have the following meanings:
"Commissioner", the commissioner of mental health.
"Department", the department of mental health.
"Dependent funds", those funds which a resident is unable to manage or spend himself as determined by the periodic review.
"District court", the district court within the jurisdiction of which a facility is located.
"Facility", a public or private facility for the care and treatment of mentally ill persons, except for the Bridgewater State Hospital.
"Fiduciary", any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.
"Funds", all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.
"Independent funds", those funds which a resident is able to manage or spend himself as determined by the periodic review.
"Likelihood of serious harm", (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; (2) 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 and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his
protection is not available in the community.

"Qualified physician", a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department; provided that different qualifications may be established for different purposes of this chapter. A qualified physician need not be an employee of the department or of any facility of the department.

"Qualified psychologist", a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychologist need not be an employee of the department or of any facility of the department.

"Restraint", bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of an inpatient or resident in his room for the night, or any other means which unreasonably limit freedom of movement.

"Superintendent", the superintendent or other head of a public or private facility.

Section 2. The department shall, in accordance with section two of chapter thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of mentally ill persons in departmental facilities. Said regulations shall be adaptable to changing conditions and to advances in methods of care and treatment of the mentally ill. Said regulations (1) shall include, but not necessarily be limited to, provisions for inpatient care, both during the day and at night, halfway house services, family care, aftercare and home treatment, (2) shall define the categories of mental illness for the purpose of this chapter, and (3) may provide for different procedures for specific types of patients or for particular facilities.

Section 3. The department may transfer any person from any facility to any other facility which the department determines is suitable for the care and treatment of such person; provided that no transfer to a private facility shall occur except with the approval of the superintendent thereof. At least six days before a transfer from a facility occurs, the superintendent shall give written notice thereof to the person and to the nearest relative, unless said person knowingly objects, or guardian of such person; provided, however, if the transfer must be made immediately because of an emergency, such notice shall be given within twenty-four hours after the transfer. Except in emergency cases, no person who at any time prior to transfer has given notice of his intention to leave a facility under the provisions of section eleven shall be transferred until a final determination has been made as to whether such person should be retained in a facility.

Section 4. Each person within the care of the department and each person at the Bridgewater state hospital under the provisions of this chapter relative to the mentally ill shall be the subject of a periodic review under the supervision of the superintendent, if said person is in a department facility, or of the medical director if said person is at the Bridgewater state hospital, which shall include, but not necessarily be
limited to, (1) a thorough clinical examination, (2) an evaluation of the legal competency of the person and the necessity or advisability of having a guardian or conservator appointed or removed, (3) a consideration of all possible alternatives to continued hospitalization or residential care including, but not necessarily limited to, a determination of the person's relationship to the community and to his family, or his employment possibilities, and of available community resources, foster care and convalescent facilities, and (4) unless a guardian or conservator has been appointed, an evaluation of each person who is an inpatient or resident of a facility in order to determine how much of his funds shall be designated as dependent funds and how much as independent funds, and the formulation and maintenance of a financial plan for the use of his dependent funds. Said periodic review shall take place at least upon admission, once during the first three months after admission, once during the second three months after admission and annually thereafter. Said person shall be given a physical examination by a physician licensed under the provisions of chapter one hundred and twelve at least once in every twelve-month period during which he is resident in said departmental facility or at the Bridgewater state hospital.

The superintendent or the medical director at the Bridgewater state hospital shall give written notice to said person and his guardian, or, if there is no such guardian and the mentally ill person does not knowingly object, his nearest relative prior to any such review which is made subsequent to admission. The social service department of the facility or of the Bridgewater state hospital shall take part in the review and may utilize community resources, including the area-based community mental health programs. The results of each review shall become part of the official record of the person reviewed.

If the mentally ill person is in need of further care and treatment, the superintendent or said medical director shall notify him and his guardian, or, if there is no such guardian and the mentally ill person does not knowingly object, his nearest relative, of that fact, and of his right to leave the facility or said hospital if he was not committed under a court order. If said mentally ill person was not committed under a court order and does not choose further treatment as an inpatient, within fourteen days of said notification he shall be discharged or be made the subject of a petition for a court ordered commitment. Following any review under the provisions of this section, or at any other time, any patient who is no longer in need of care as an inpatient shall be discharged or placed on interim community leave.

Section 5. Whenever the provisions of this chapter require that a hearing be conducted in any court for the commitment or further retention of a person to a facility or to the Bridgewater state hospital or for medical treatment including treatment with antipsychotic medication, it shall be held as hereinafter provided. Such person shall have the right to be represented by counsel and shall have the right to present independent testimony. The court shall appoint counsel for such person whom it finds to be indigent and who is not represented by counsel, unless such person refuses the appointment of counsel. The court may provide an independent medical examination for such indigent person upon request of his counsel or upon his request if he is not represented by counsel. The person shall be allowed not less than two days after the appearance of his counsel in which to prepare his case and a hearing.
shall be conducted forthwith after such period unless counsel requests a delay. Notice of the time and place of hearing shall be furnished by the court to the department, the person, his counsel, and his nearest relative or guardian. The court may hold the hearing at the facility or said hospital.

Section 6. (a) No person shall be retained at a facility or at the Bridgewater state hospital except under the provisions of paragraph (a) of section ten, the provisions of paragraphs (a), (b), and (c) of section twelve, section thirteen, paragraph (e) of section sixteen and section thirty-five or except under a court order or except during the pendency of a petition for commitment or to the pendency of a request under section fourteen. A court order of commitment to a facility or to the Bridgewater state hospital shall be valid for the period stipulated in this chapter or, if no such period is so stipulated, for one year. A petition for the commitment of a person may not be issued except as authorized under the provisions of this chapter.

(b) Following the filing of a petition for a commitment to a facility or to the Bridgewater state hospital, a hearing shall be held unless waived in writing by the person after consultation with his counsel. In the event the hearing is waived, the person may request a hearing for good cause shown at any time during the period of commitment.

Section 7. (a) The superintendent of a facility may petition the district court in whose jurisdiction the facility is located for the commitment to said facility and retention of any patient at said facility whom said superintendent determines that the failure to hospitalize would create a likelihood of serious harm by reason of mental illness.

(b) The medical director of the Bridgewater state hospital, the commissioner of mental health, or with the approval of the commissioner of mental health, the superintendent of a facility, may petition the district court in whose jurisdiction the facility or hospital is located for the commitment to the Bridgewater state hospital of any male patient at said facility or hospital when it is determined that the failure to hospitalize in strict security would create a likelihood of serious harm by reason of mental illness.

(c) Whenever a court receives a petition filed under any provisions of this chapter for an order of commitment of a person to a facility or to the Bridgewater state hospital, such court shall notify the person, and his nearest relative or guardian, of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing shall be commenced within fourteen days of the filing of the petition unless a delay is requested by the person or his counsel.

Section 8. (a) After a hearing, unless such hearing is waived in writing, the district court shall not order the commitment of a person at a facility or shall not renew such order unless it finds after a hearing that (1) such person is mentally ill, and (2) the discharge of such person from a facility would create a likelihood of serious harm.

(b) After hearing, unless such hearing is waived in writing, the district court shall not order the commitment of a person at the Bridgewater state hospital or shall not renew such order unless it finds that (1) such person is mentally ill; (2) such person is not a proper subject for commitment to any facility of the department; and (3) the failure to retain such person in strict custody would create a likelihood of serious harm. If the court is unable to make the findings required by this
paragraph, but makes the findings required by paragraph (a), the court shall order the commitment of the person to a facility designated by the department.

(c) The court shall render its decision on the petition within ten days of the completion of the hearing, provided, that for reasons stated in writing by the court, the administrative justice for the district court department may extend said ten day period.

(d) The first order of commitment of a person under this section shall be valid for a period of six months and all subsequent commitments shall be valid for a period of one year; provided that if such commitments occur at the expiration of a commitment under any other section of this chapter, other than a commitment for observation, the first order of commitment shall be valid for a period of one year; and provided further, that the first order of commitment to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a period of six months. If no hearing is held before the expiration of the six months commitment, the court may not recommit the person without a hearing.

(e) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill and that the discharge of the person from a facility would create a likelihood of serious harm, the district court which has jurisdiction over the commitment of the person may order the commitment of the person to such facility.

(f) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill, that the person is not a proper subject for commitment to any facility of the department and that the failure to retain said person in strict security would create a likelihood of serious harm, the district court which has jurisdiction over a facility, or the Brockton district court if a person is retained in the Bridgewater state hospital, may order the commitment of the person to said hospital.

Section 8B. (a) With respect to any patient who is the subject of a petition for a commitment or an order of a commitment for care and treatment under the provisions of sections seven, eight, fifteen, sixteen or eighteen, the superintendent of a facility or medical director of the Bridgewater state hospital may further petition the district court in whose jurisdiction the facility is located (i) to adjudicate the patient incapable of making informed decisions about proposed medical treatment, (ii) to authorize, by an adjudication of substituted judgment, treatment with antipsychotic medications, and (iii) to authorize according to the applicable legal standards such other medical treatment as may be necessary for the treatment of mental illness.

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

(c) Whenever a court receives a petition filed under the provisions of this section, such court shall notify the person, and his nearest relative or guardian of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing shall be commenced within fourteen days of the filing of the petition unless a delay is requested by the person or his counsel, provided that the commencement of such hearing shall not be delayed beyond the date of the hearing on the
commitment petition if the petition was filed concurrently with a petition for commitment.

(d) After a hearing on the petition regarding antipsychotic medication treatment the court shall not authorize medical treatment unless it (i) specifically finds that the person is incapable of making informed decisions concerning the proposed medical treatment, (ii) upon application of the legal substituted judgment standard, specifically finds that the patient would accept such treatment if competent, and (iii) specifically approves and authorizes a written substituted judgment treatment plan. The court may base its findings exclusively upon affidavits and other documentary evidence if it (i) determines, after careful inquiry and upon representations of counsel, that there are not contested issues of fact and (ii) includes in its findings the reasons that oral testimony was not required.

(e) The court may delegate to a guardian who has been duly appointed by a court of competent jurisdiction the authority to monitor the antipsychotic medication treatment process to ensure that an antipsychotic medication treatment plan is followed, provided such a guardian is readily available for such purpose. Approval of a treatment plan shall not be withheld, however, because such a guardian is not available to perform such monitoring. In such circumstances, the court shall monitor the treatment process to ensure that the treatment plan is followed.

(f) Any authorization for treatment that is ordered pursuant to the provisions of this section shall expire at the same time as the expiration of the order of commitment that was in effect when the authorization for treatment was ordered; provided that subsequent authorizations may be ordered and any party may at any time petition the court for modification of a medical treatment authorization that has been ordered pursuant to the standards and procedures established in this section.

(g) An adjudication of competency or incompetency with respect to treatment for mental illness by a court pursuant to this section shall be binding upon the probate court in any subsequent guardianship proceedings only with respect to matters which were the subject of the district court adjudication.

(h) Any privilege established by section one hundred and thirty-five of chapter one hundred and twelve or by section twenty B of chapter two hundred and thirty-three, relating to confidential communications, shall not prohibit the filing of reports or affidavits, or the giving of testimony, pursuant to this section, for the purpose of obtaining treatment of a patient, provided that such patient has been informed prior to making such communications that they may be used for such purpose and has waived the privilege.

Section 9. (a) Matters of law arising in commitment hearings, antipsychotic medication hearings or incompetency for trial proceedings in a district court may be reviewed by the appellate division of the district courts in the same manner as the civil cases generally.

(b) Any person may make written application to a justice of superior court at any time and in any county, stating that he believes or has reason to believe that a person named in such application is retained in a facility or the Bridgewater state hospital, who should no longer be so retained, or that a person named in such application is the subject of a medical treatment order issued by a district court and should not be so
treated, giving the names of all persons interested in his confinement or medical treatment and requesting his discharge or other relief. The justice within seven days thereof shall order notice of the time and place for hearing to be given to the superintendent or medical director and to such other persons as he considers proper; and such hearing shall be given promptly before a justice of the superior court in any county. The justice shall appoint an attorney to represent any applicant whom he finds to be indigent. The alleged mentally ill person may be brought before the justice at the hearing upon a writ of habeas corpus, upon a request approved by the justice. Pending the decision of the court such person may be retained in the custody of the superintendent or medical director. If the justice decides that the person is not mentally ill or that failure to retain the person in a facility or the Bridgewater state hospital would not create a likelihood of serious harm; has not engaged in repeated and recent incidents of serious self-destructive behavior or assaultive behavior as an inpatient at a facility or an inmate of a place of detention; can be properly treated in any other facility licensed, operated or regulated by the department, said person shall be discharged. If the justice decides that a patient at the Bridgewater state hospital does not require strict security, he shall be transferred to a facility. If the justice decides that a person who is the subject of a medical treatment order issued by a district court pursuant to section eight B should not be treated, the justice shall issue an appropriate order modifying or vacating such order and, where such previous order is modified, the court shall monitor said modified order by means of a guardian or otherwise as provided in paragraph (e) of section eight B.

Section 10. (a) Pursuant to departmental regulations on admission procedures, the superintendent may receive and retain on a voluntary basis any person providing the person is in need of care and treatment and providing the admitting facility is suitable for such care and treatment. The application may be made (1) by a person who has attained the age of sixteen, (2) by a parent or guardian of a person on behalf of a person under the age of eighteen years, and (3) by the guardian of a person on behalf of a person under his guardianship. Prior to accepting an application for a voluntary admission, the superintendent shall afford the person making the application the opportunity for consultation with an attorney, or with a person who is working under the supervision of an attorney, concerning the legal effect of a voluntary admission. The superintendent may discharge any person admitted under the provisions of an attorney, concerning the legal effect of a voluntary admission. The superintendent may discharge any person admitted under the provisions of this paragraph at any time he deems such discharge in the best interest of such person, provided, however, that if a parent or guardian made the application for admission, fourteen days' notice shall be given to such parent or guardian prior to such discharge.

(b) Pursuant to departmental regulations, the superintendent of a facility may treat persons as outpatients providing application for outpatient treatment is made in accordance with the application provisions of paragraph (a). The superintendent may, in the best interest of the person, discontinue the outpatient treatment of a person at any time.

(c) The chief officer of any facility of the Veterans Administration within the commonwealth may admit eligible veterans under the provisions of this chapter and thereupon shall be vested with the same powers as the department has under this chapter with respect to retention or discharge.
Section 11. Any person retained in a facility under the provisions of paragraph (a) of section ten shall be free to leave such facility at any time, and any parent or guardian who requested the admission of such person may withdraw such person at any time, upon giving written notice to the superintendent. The superintendent may restrict the right to leave or withdraw to normal working hours and weekdays and, in his discretion, may require persons or the parents or guardians of persons to give three days written notice of their intention to leave or withdraw. Where persons or their parents or guardians are required to give three days notice of intention to leave or withdraw, an examination of such persons may be conducted to determine their clinical progress, their suitability for discharge and to investigate other aspects of their case including their legal competency and their family, home or community situation in the interest of discharging them from the facility. Such persons may be retained at the facility beyond the expiration of the three day notice period if, prior to the expiration of the said three day notice period, the superintendent files with the district court a petition for the commitment of such person at the said facility.

Section 12. (a) Any physician who is licensed pursuant to section two of chapter one hundred and twelve or a qualified psychologist licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive of said chapter one hundred and twelve, who after examining a person has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a ten day period at a public facility or at a private facility authorized for such purposes by the department. If an examination is not possible because of the emergency nature of the case and because of the refusal of the person to consent to such examination, the physician or qualified psychologist on the basis of the facts and circumstances may determine that hospitalization is necessary and may apply therefore. In an emergency situation, if a physician or qualified psychologist is not available, a police officer, who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a ten day period at a public facility or a private facility authorized for such purpose by the department. An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information which may assist the admitting physician or physicians. Whenever practicable, prior to transporting such person, the applicant shall telephone or otherwise communicate with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and also to give notice of any restraint to be used and to determine whether such restraint is necessary.

(b) Only if the application for hospitalization under the provisions of this section is made by a physician specifically designated to have the authority to admit to a facility in accordance with the regulations of the department, shall such person be admitted to the facility immediately after his reception. If the application is made by someone other than a designated physician, such person shall be given a psychiatric examination by a designated physician immediately after his reception at such facility. If the physician determines that failure to hospitalize
such person would create a likelihood of serious harm by reason of mental illness he may admit such person to the facility for care and treatment.

(c) No person shall be admitted to a facility under the provisions of this section unless he, or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary admission under the provisions of paragraph (a) of section ten and unless he, or such parent or legal guardian has been informed (1) that he has a right to such voluntary admission, and (2) that the period of hospitalization under the provisions of this section cannot exceed ten days. At any time during such period of hospitalization, the superintendent may discharge such person if he determines that such person is not in need of care and treatment.

(d) A person shall be discharged at the end of the ten-day period unless the superintendent applies for a commitment under the provisions of sections seven and eight of this chapter or the person remains on a voluntary status.

(e) Any person may make application to a district court justice for a ten-day commitment to a facility of a mentally ill person, whom the failure to confine would cause a likelihood of serious harm. After hearing such evidence as he may consider sufficient, a district court justice may issue a warrant for the apprehension and appearance before him of the alleged mentally ill person, if in his judgment the condition or conduct of such person makes such action necessary or proper. Following apprehension, the court shall have the person examined by a physician designated to have the authority to admit to a facility in accordance with the regulations of the department. If said physician reports that failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, the court may order the person committed to a facility for a period not to exceed ten days, but the superintendent may discharge him at any time within the ten day period.

Section 13. If the superintendent of any facility determines that failure to retain a male resident therein in strict security would create a likelihood of serious harm by reason of mental illness and that the person's violent behavior constitutes an emergency, he may, with the consent of the commissioner, transfer the person to the Bridgewater state hospital for a period not to exceed five days. At the end of the five days the person shall be returned to the facility unless before the end of the five day period, the superintendent of the facility or medical director of the Bridgewater state hospital has filed a petition for his commitment to the Bridgewater state hospital under sections seven and eight. Such commitment shall not be ordered without a hearing. Such petition shall be brought in the district court of Brockton unless already filed in some other court before the emergency transfer.

Section 14. Whenever the medical director of the Bridgewater state hospital certifies that the failure to retain any person in strict security would not create a likelihood of serious harm by reason of mental illness but that such person is in need of further care and treatment in a facility, he shall request the commission to transfer such person to a facility designated by the commissioner. Within thirty days of the receipt of such request the commissioner shall execute the transfer, unless within said period he files a petition under sections seven and eight for the further commitment of the person to the Bridgewater state hospital.
Section 15. (a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.

(b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a public facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty day period, an examining qualified physician or an examining qualified psychologist 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 or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days for the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(c) At the conclusion of the examination or the observation period, the examining physician or psychologist shall forthwith give to the court written signed reports of their findings, including the clinical findings bearing on the issue of competence to stand trial or criminal responsibility. Such reports shall also contain an opinion, supported by clinical findings, as to whether the defendant is in need of treatment and care offered by the department.

(d) If on the basis of such reports the court is satisfied that the defendant is competent to stand trial, the case shall continue according to the usual course of criminal proceedings; otherwise the court shall hold a hearing on whether the defendant is competent to stand trial; provided that at any time before trial any party to the case may request a hearing on whether the defendant is competent to stand trial. A finding of incompetency shall require a preponderance of the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.
(e) After a finding of guilty on a criminal charge and prior to sentencing, the court may order a psychiatric or other clinical examination and, after such examination, it may also order a period of observation in a facility, or at the Bridgewater state hospital if the court determines that strict security is required and if such person is a male. The purpose of such observation or examination shall be to aid the court in sentencing. Such period of observation or examination shall not exceed forty days. During such period of observation, the superintendent or medical director may petition the court for commitment of such person. The court may hear the petition as provided in sections seven and eight, and if the court makes the necessary findings it may in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of commitment shall be valid for a period of six months. All subsequent proceedings for commitment shall take place under the provisions of sections seven and eight in the district court which has jurisdiction of the facility or hospital.

(f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section, a court may order a psychiatric or psychological examination or a period of observation for an alleged delinquent in a facility to aid the court in its disposition. Such period shall not exceed forty days.

Section 16. (a) The court having jurisdiction over the criminal proceedings may order that a person who has been found incompetent to stand trial or not guilty by reason of mental illness or mental defect in such proceedings be hospitalized at a facility for a period of forty days for observation and examination; provided that, if the defendant is a male and if the court determines that the failure to retain him in strict security would create a likelihood of serious harm by reason of mental illness, or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and provided, further, that the combined periods of hospitalization under the provisions of this section and paragraph (b) of section fifteen shall not exceed fifty days.

(b) During the period of observation of a person believed to be incompetent to stand trial or within sixty days after a person is found to be incompetent to stand trial or not guilty of any crime by reason of mental illness or other mental defect, the district attorney, the superintendent of a facility or the medical director of the Bridgewater state hospital may petition the court having jurisdiction of the criminal case for the commitment of the person to a facility or to the Bridgewater state hospital. However, the petition for the commitment of an untried defendant shall be heard only if the defendant is found incompetent to stand trial, or if the criminal charges are dismissed after commitment. If the court makes the findings required by paragraph (a) of section eight it shall order the person committed to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall be dismissed and the person discharged. An order of commitment under the provisions of this paragraph shall be valid for six months. In the event a period of hospitalization under the provisions of paragraph (a) has expired, or in the event no such period of examination has been ordered, the court may order the temporary detention of such person in a jail, house of correction, facility or the Bridgewater state hospital until such time as
the findings required by this paragraph are made or a determination is made that such findings cannot be made.

(c) After the expiration of a commitment under paragraph (b) of this section, a person may be committed for additional one year periods under the provisions of sections seven and eight of this chapter, but no untried defendant shall be so committed unless in addition to the findings required by sections seven and eight the court also finds said defendant is incompetent to stand trial. If the person is not found incompetent, the court shall notify the court with jurisdiction of the criminal charges, which court shall thereupon order the defendant returned to its custody for the resumption of criminal proceedings. All subsequent proceedings for the further commitment of a person committed under this section shall be in the court which has jurisdiction of the facility or hospital.

(d) The district attorney for the district within which the alleged crime or crimes occurred shall be notified of any hearing conducted for a person under the provisions of this section or any subsequent hearing for such person conducted under the provisions of this chapter relative to the commitment of the mentally ill and shall have the right to be heard at such hearings.

(e) Any person committed to a facility under the provisions of this section may be restricted in his movements to the buildings and grounds of the facility at which he is committed by the court which ordered the commitment. If such restrictions are ordered, they shall not be removed except with the approval of the court. In the event the superintendent communicates his intention to remove or modify such restriction in writing to the court and within fourteen days the court does not make written objection thereto, such restrictions shall be removed by the superintendent. If the superintendent or medical director of the Bridgewater state hospital intends to discharge a person committed under this section or at the end of a period of commitment intends not to petition for his further commitment, he shall notify the court and district attorney which have or had jurisdiction of the criminal case. Within thirty days of the receipt of such notice, the district attorney may petition for commitment under the provisions of paragraph (c). During such thirty day period, the person shall be held at the facility or hospital. This paragraph shall not apply to persons originally committed after a finding of incompetence to stand trial whose criminal charges have been dismissed.

(f) If a person is found incompetent to stand trial, the court shall send notice to the department of correction which shall compute the date of the expiration of the period of time equal to the time of imprisonment which the person 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 and sentenced to the maximum sentence he could have received, if so convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be regarded as one half of the maximum sentence potential sentence. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B, and one hundred and twenty-nine C of chapter one hundred and 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, or the court in the interest of justice may dismiss the criminal charges against such
person prior to the expiration of such period.

Section 17. (a) The periodic review of a person found incompetent to stand trial shall include a clinical opinion with regard to the person's competence to stand trial, which opinion shall be noted in writing on the patient's record. If any person found incompetent to stand trial is determined by the superintendent of the facility or the medical director of the Bridgewater state hospital to be no longer incompetent, the superintendent or medical director shall notify the court, which shall without delay hold a hearing on the person's competency to stand trial. Any person found incompetent to stand trial may at any time petition the court for a hearing on his competency. Whenever a hearing is held and the court finds that the person is competent to stand trial, his commitment, if any, to a facility or to the Bridgewater state hospital shall be terminated and he shall be returned to the custody of the court for trial. However, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(b) If either a person or counsel of a person who 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 person other than the defense of not guilty by reason of mental illness or mental defect, he may request an opportunity to offer a defense thereto on the merits before the court which has criminal 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 substantial evidence to support a conviction it shall dismiss the indictment or other charges or find them defective or insufficient and order the release of the defendant from criminal custody.

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

Section 18. (a) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or psychologist, designated by the department as qualified to perform such examination. Said physician or psychologist shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal case. Such report shall include an opinion, with reasons therefore, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report
shall be signed by the physician or psychologist conducting such examination, and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility or, if a male, the Bridgewater state hospital by reason of mental illness. The person in charge of the place of detention shall have the same right as a superintendent of a facility to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital; provided, however, that, notwithstanding the court's failure, after an initial hearing or after any subsequent hearing, to make a finding required for commitment to the Bridgewater state hospital, the prisoner shall be confined at said hospital if the findings required for commitment to a facility are made and if the commissioner of correction certifies to the court that confinement of the prisoner at said hospital is necessary to insure his continued retention in custody. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

(b) Notwithstanding any contrary provision of general or special law, a prisoner who is retained in any place of detention within the commonwealth and who is in need of care and treatment in a facility may, with the approval of the person in charge of such place of detention apply for voluntary admission under the provisions of paragraph (a) of section ten.

(c) At the commencement of hospitalization under the provisions of paragraph (a) or paragraph (b) the department of correction 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 and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be applied to reduce such sentence, and on such date the prisoner shall be discharged; provided, however, that if the superintendent or other head of a facility or the medical director of the Bridgewater state hospital determines that the discharge of the prisoner committed subject to the provisions of paragraph (a) would create a likelihood of serious harm by reason of mental illness, he shall petition the district court having jurisdiction over the facility prior to the date of expiration to order the commitment of such person to a facility or to the Bridgewater state hospital under the provisions of this chapter other than paragraph (a); and provided, further, that any prisoner resident in a facility subject to the provisions of paragraph (b) shall be free to leave such facility subject to the provisions of section eleven.

(d) In the event the provisions of this chapter require the release of a prisoner from a facility or from the Bridgewater state hospital prior to the date of expiration of his sentence calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the place of detention from which he was transferred to such facility or to said hospital.

Section 19. 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 qualified physician
or psychologist, who, if assigned shall make such examinations as the judge may deem necessary.

Section 20. (a) The governor may upon demand deliver to the executive of any other state any person who has escaped from an institution for the mentally ill to which he has been committed under the laws of such state, and who may be dangerous to the safety of the public, or may upon application appoint an agent to demand of the executive authority of any other state any person who has escaped from an institution in this commonwealth. Such demand or application shall be accompanied by an attested copy of the commitment and sworn evidence of the superintendent or manager of the institution stating that the person demanded has escaped from such institution, and by such further evidence as the governor requires.

(b) If the governor is satisfied that the demand made upon him under the preceding paragraph conforms to law and ought to be complied with, he shall issue his warrant under the seal of the commonwealth to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, and at a time designated in the warrant, to deliver custody of such person to such agent.

(c) A person arrested upon such a warrant shall not be delivered to the agent of another state until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of habeas corpus, if he claims such right of the officer making the arrest. If said writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney general or to the district attorney for the district where the arrest is made. An officer who delivers such person in his custody upon such warrant to such agent for rendition without having complied with this section shall forfeit not more than one thousand dollars. Pending the determination of the court upon an application for said writ, the person shall be detained in custody in a suitable facility.

Section 21. Any person who transports a mentally ill person to or from a facility for any purpose authorized under this chapter shall not use any restraint which is unnecessary for the safety of the person being transported or other persons likely to come in contact with him.

In the case of persons being hospitalized under the provisions of section six, the applicant shall authorize practicable and safe means of transport, including where appropriate, departmental or police transport.

Restraint of a mentally ill patient may only be used in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide; provided, however, that written authorization for such restraint is given by the superintendent or director of the facility or by a physician designated by him for this purpose who is present at the time of the emergency or if the superintendent or director or designated physician is not present at the time of the emergency, non-chemical means of restraint may be used for a period of one hour provided that within one hour the person in restraint shall be examined by the superintendent, director or designated physician. Provided further, that if said examination has not occurred within one hour, the patient may be restrained for up to an additional one hour period until such examination is conducted, and the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the examination was not
completed by the end of the first hour of restraint.

Any minor placed in restraint shall be examined within fifteen minutes of the order for restraint by a physician or, if a physician is not available, by a registered nurse or a certified physician assistant; provided, however, that said minor shall be examined by a physician within one hour of the order for restraint. A physician or, if a physician is not available, a registered nurse or a certified physician assistant, shall review the restraint order, by personal examination of the minor or consultation with ward staff attending the minor, every hour thereafter.

No minor shall be secluded for more than two hours in any twenty-four hour period; provided, however, that no such seclusion of a minor may occur except in a facility with authority to use such seclusion after said facility has been inspected and specially certified by the department. The department shall issue regulations establishing procedures by which a facility may be specially certified with authority to seclude a minor. Such regulations shall provide for review and approval or disapproval by the commissioner of a biannual application by the facility which shall include (i) a comprehensive statement of the facility's policies and procedures for the utilization and monitoring of restraint of minors including a statistical analysis of the facility's actual use of such restraint, and (ii) a certification by the facility of its ability and intent to comply with all applicable statutes and regulations regarding physical space, staff training, staff authorization, record keeping, monitoring and other requirements for the use of restraints.

Any use of restraint on a minor exceeding one hour in any twenty-four hour period shall be reviewed within two working days by the director of the facility. The director shall forward a copy of his report on each such instance of restraint to the human rights committee of that facility and, in the event that there is no human rights committee, to the appropriate body designated by the commissioner of mental health. The director shall also compile a record of every instance of restraint in the facility and shall forward a copy of said report on a monthly basis to the human rights committee or the body designated by the commissioner of mental health.

No order for restraint for an individual shall be valid for a period of more than three hours beyond which time it may be renewed upon personal examination by the superintendent, director, authorized physician or, for adults, by a registered nurse or a certified physician assistant; provided, however, that no adult shall be restrained for more than six hours beyond which time an order may be renewed only upon personal examination by a physician. The reasons for the original use of restraint, the reason for its continuation after each renewal, and the reason for its cessation shall be noted upon the restraining form by the superintendent, director or authorized physician or, when applicable, by the registered nurse or certified physician assistant at the time of each occurrence.

When a designated physician is not present at the time and site of the emergency, an order for chemical restraint may be issued by a designated physician who has determined, after telephone consultation with a physician, registered nurse or certified physician assistant who is present at the time and site of the emergency and who has personally examined the patient, that such chemical restraint is the least restrictive, most appropriate alternative available; provided, however,
that the medication so ordered has been previously authorized as part of the individual's current treatment plan.

No person shall be kept in restraint without a person in attendance specially trained to understand, assist and afford therapy to the person in restraint. The person may by in attendance immediately outside the room in full view of the patient when an individual is being secluded without mechanical restraint; provided, however, that in emergency situations when a person specially trained is not available, an adult, may be kept in restraint unattended for a period not to exceed two hours. In that event, the person kept in restraints must be observed at least every five minutes; provided, further, that the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the specially trained attendant was not available. The maintenance of any adult in restraint for more than eight hours in any twenty-four hour period must be authorized by the superintendent or facility director or the person specifically designated to act in the absence of the superintendent or facility director; provided, however, that when such restraint is authorized in the absence of the superintendent of facility director, such authorization must be reviewed by the superintendent or facility director upon his return.

No "P.R.N." or "as required" authorization of restraint may be written. No restraint is authorized except as specified in this section in any public or private facility for the care and treatment of mentally ill persons including Bridgewater.

No later than twenty-four hours after the period of restraint, a copy of the restraint form shall be delivered to the person who was in restraint. A place shall be provided on the form or on attachments thereto, for the person to comment on the circumstances leading to the use of restraint and on the manner of restraint used.

A copy of the restraint form and any such attachments shall become part of the chart of the patient. Copies of all restraint forms and attachments shall be sent to the commissioner of mental health who shall review them and sign them within thirty days, and statistical records shall be kept therefor for each facility and each designated physician. Furthermore, such reports, excluding patient identification, shall be made available to the general public at the department's central office.

Responsibility and liability for the implementation of the provisions of this section shall rest with the department, the superintendent or director of each facility or the physician designated by such superintendent or director for this purpose.

Section 22. Physicians, qualified psychologists and police officers shall be immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility or the Bridgewater state hospital, providing said physician, qualified psychologist or police officer acts pursuant to the provisions of this chapter.

Section 23. Any mentally ill person in the care of the department under the provisions of this chapter shall be provided with stationery and postage in reasonable amounts and shall have the right to have his letters forwarded unopened to the governor, to the commissioner, to his personal physician, his attorney, his clergyman, to any court, to any public elected official and to any member of his immediate family. The
superintendent may open and restrict the forwarding of any other letters written by said person when in said person's best interest.

A mentally ill person has the right to be visited at all reasonable times by his personal physician, his attorney, and his clergyman, and the right to be visited by other persons unless the superintendent determines that such a visit by any of said persons would not be in the best interest of the mentally ill person and incorporates a statement of the reasons for any denial of visiting rights in the treatment record of said person.

In addition to the rights specified above and any other rights guaranteed by law, a mentally ill person in the care of the department shall have the following legal and civil rights: to wear his own clothes, to keep and use his own personal possessions including toilet articles, to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, to have access to individual storage space for his private use, reasonable access to telephones to make and receive confidential calls, to refuse shock treatment, to refuse lobotomy, and any other rights specified in the regulations of the department; provided, however, that any of these rights may be denied for good cause by the superintendent or his designee and a statement of the reasons for any such denial entered in the treatment record of such person.

Section 24. No person shall be deemed to be incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operators licenses or to make a will solely by reason of his admission or commitment in any capacity to the treatment or care of the department or to any public or private facility, nor shall departmental regulations restrict such rights.

Section 25. In addition to the periodic review under section four of this chapter, whenever the superintendent has reason to believe that a person who has been under the care of the department as an inpatient or resident for more than six months, who is not under guardianship or conservatorship, is unable to care for his property, he shall promptly notify said person's nearest living relative and recommend that the necessary steps be taken for the appointment of a guardian or a conservator.

Section 26. (a) The superintendent may deposit in any bank organized and existing under the laws of the commonwealth funds belonging to persons who are inpatients or residents at such facility, funds deposited by relatives or friends of such persons, and other funds belonging to such persons except that independent funds shall only be deposited with the consent of the resident. The interest earned by any funds so deposited shall be credited to the account of such person. Such funds shall be held in trust or used for the benefit of such persons except that such person shall have an unrestricted right to manage and spend in his sole discretion all his independent funds.

(b) Any funds held in trust by the superintendent for any persons who have been discharged from or who have otherwise left any facility of the department, or the custody of the department, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent 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 five per cent 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 may pay such sum to the state treasurer immediately. The balance of such funds, after six years from the date when such funds were paid to the state treasurer, may be used as 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.

(c) Personal property belonging to or deposited for the benefit of any persons who have been discharged from or who have otherwise left any facility or the custody of the department, which shall have remained unclaimed for more than one year shall be sold, or if without value, otherwise disposed of by the superintendent; provided, however, that no less than thirty days prior to such disposition the superintendent 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 or the person with whom such person last resided. If such person, relative or other person does not within such thirty day period 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.

(d) All fiduciaries of persons who are inpatients or residents at a departmental facility shall register with the superintendent of such facility on a form supplied by the department.

(e) The department shall establish procedures to make the fiduciaries accountable to the department for all funds belonging to such inpatients and residents. These procedures shall require an annual report by the fiduciary to the department on a form supplied by the department indicating the manner in which such funds were managed or expended during the report period. The annual report shall be submitted by the fiduciary under penalty of perjury pursuant to sections one and one A of chapter two hundred and sixty-eight.

(f) A fiduciary who fails to register with the department or who fails to submit an annual report to the department shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars.

(g) A fiduciary who embezzles or fraudulently converts or appropriates money, goods, or property held or possessed by him for the use and benefit of the resident shall be subject to penalties prescribed in section fifty-seven of chapter two hundred and sixty-six.

(h) A guardian, trustee, or conservator shall be removed from his duties upon his conviction of any of the offenses enumerated in paragraphs (f) and (g). The department shall petition the appropriate
federal agency for the removal of a representative payee from his duties upon his conviction of any of the offenses enumerated in said paragraphs (f) and (g).

Section 27. If an inpatient or resident of any facility dies leaving an estate which does not exceed five thousand dollars in value, the superintendent shall notify the nearest living relative of such inpatient or resident of such fact, and if, after the expiration of thirty days from the date of such notice, no petition for administration of said estate has been filed, the department may provide for the administration of said estate under the provisions of section sixteen of chapter one hundred and ninety-five.

Section 28. Upon the death of any person confined to a mental institution under the control of the department, the superintendent of such institution shall, if he is of the opinion that the death may have resulted from violence or unnatural causes, immediately notify the district attorney for the district in which the death occurred, giving him the name and address of the person who died and the cause of death.

Section 29. (a) In cooperation with other state departments and agencies the department shall cause to be given to persons under its care instruction and education as may be appropriate for such persons to undertake, especially persons who are unable to engage in programs for patient-trainees.

(b) In cooperation with other state departments and agencies, the department shall cause to be established at each facility programs for persons under its care who would be assisted by performing work in or about such facility. The department shall pay or credit such trainee for work performed by him under said program in accordance with payment schedules established by the department in its regulations and approved by the commissioner of administration.

(c) The department may permit the sale of the work products of any person under its care on such conditions 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 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 paragraph (a) of section twenty-six.

Section 30. If a patient or resident in a facility of the department is absent without authorization the superintendent of the facility shall notify the state and local police, the district attorney of the county wherein the facility is located and the next of kin of such patient or resident. Any patient or resident in a facility of the department who is absent for less than six months without authorization consistent with the provisions of this chapter, the regulations of the department, or the rules of said facility may be returned by a police officer or other person designated by the superintendent or the director. Said six month limitation shall not apply to persons who have been found not guilty of a criminal charge by reason of insanity nor to persons who have been found incompetent to stand trial on a criminal charge.

Section 31. Medicine and drugs shall be furnished free of charge to any patient at the outpatient clinic of a facility of the department who, in the opinion of the head of the facility or his representatives, is indigent and requires them. For the purpose of this section, the
determination as to whether the patient is indigent shall be final; provided, however, that all medicines and drugs furnished a patient who meets the eligibility requirements for medical assistance under chapter one hundred and eighteen E shall be provided in accordance with the provisions of that chapter.

Section 32. The department may make charges for the care of any person in its facilities. To the extent that any person in its facilities is eligible for third party payment of charges for care, the department shall make said charges for care at rates established by the rate setting commission under chapter six A. To the extent that third party payment is not available, or is not sufficient to pay said charges, the charges may be recovered from said person, or from any person with a legal obligation to support the person; provided, however, that said person shall be entitled to retain one thousand dollars in cash or personal property; and provided, further, that the department shall make adjustments to the charges based upon said person's individual circumstances. The department also shall establish, by regulation, a system of charges for care in programs funded by or under a contract with the department which is consistent with the provisions of this section.

Section 33. All necessary expenses attending the apprehension, examination, hearing, commitment or delivery of a mentally ill person, or an alleged alcoholic shall be allowed and certified by the judge is said person is committed pursuant to his chapter, and presented as often as once a year to the comptroller, who shall examine and audit the same. Necessary expenses attending the apprehension, examination or hearing of any person sought to be committed pursuant to this chapter but not so committed shall be so presented, examined and audited if they have been allowed in the discretion of the judge and certified by him. All expenses certified, examined and audited as provided in this section shall be paid by the commonwealth. If application is made for the commitment of a person whose expenses and support are not to be paid by the commonwealth, said expenses shall be paid by the applicant or by a person in his behalf. The compensation of the physicians and officers taking part in the commitment or admission of persons to facilities in accordance with this chapter shall be as follows: The fee for each physician making an authorized mental examination and for making a written report thereon to the court, or for making a medical certificate, shall be twenty-five dollars, and twenty cents for each mile traveled one way or such other rates as may be set by the rate setting commission under chapter six A. Any physician required to appear before a judge or justice in any commitment proceedings, in which such physician has made an examination, shall receive a fee of twenty-five dollars, and twenty cents for each mile traveled one way for such appearance before the court, or such other rate as may be set by the rate setting commission under chapter six A. The fees for officers servicing process shall be the same as are allowed by law in like cases.

Section 34. (a) The judgment or order of commitment by a court of competent jurisdiction of another state or of the district of Columbia, committing a person to the Veterans Administration or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this commonwealth as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the
District of Columbia, shall be deemed to have retained jurisdiction of
the person so committed for the purpose of inquiring into the mental
condition of such person, and of determining the necessity for
continuance of his restraint. The law of the committing state or district
shall govern with respect to the authority of the chief officer of any
facility of said Veterans Administration or of any institution operated in
this commonwealth by any other agency of the United States to retain
custody of, or transfer, trial visit, or discharge, the committed person.

(b) Whenever, in any proceeding under the laws of this commonwealth
for the commitment of a person alleged to be of unsound mind or
otherwise in need of care and treatment in a facility or other institution
for his proper care, it is determined after such adjudication of the status
of such person as may be required by law that commitment to a facility
for the mentally ill or other institution is necessary for care and
treatment and it appears that such person is eligible for care or
treatment by said Veterans Administration or other agency of the United
States government, the court, upon receipt of certificate from said
Veterans Administration or such other agency showing that facilities are
available and that such person is eligible for care or treatment therein,
may commit such person to said Veterans Administration or other
agency. The person whose commitment is sought shall be personally
served with such notice of the pending commitment proceedings as is
required, and in such manner as is provided, by the laws of the
commonwealth; and nothing in this section shall affect his right to
appear and be heard in the proceedings. Upon commitment, such person,
when admitted to any facility operated by any such agency within or
without this commonwealth shall be subject to the rules and regulations
of said Veterans Administration or other agency. The chief officer of
any facility of said Veterans Administration or institution operated by
any other agency of the United States to which the person is so
committed shall with respect to such person be vested with the same
powers as the department with respect to retention of custody, transfer,
parole or discharge. Jurisdiction is retained in the committing or other
appropriate court of the commonwealth at any time to inquire into the
mental condition of the person so committed, and to determine the
necessity for continuance of his restraint, and all commitments pursuant
to this section are so conditioned.

(c) Upon receipt of a certificate of said Veterans Administration or
such other agency of the United States that facilities are available for
the care or treatment of any person committed to any facility for the
mentally ill or other institution for the care or treatment of persons
similarly afflicted and that such person is eligible for care or treatment,
the department or the committing court may cause the transfer of such
person to said Veterans Administration or other agency of the United
States for care or treatment. Upon effecting any such transfer, the
committing court or proper officer thereof shall be notified thereof by
the transferring agency. No person shall be transferred to said Veterans
Administration or other agency of the United States if he is confined
pursuant to conviction of any felony or misdemeanor or if he has been
acquitted of the charge solely on the grounds of insanity, unless prior to
transfer the court or other authority originally committing such person
shall enter an order for such transfer after appropriate motion and
hearing. Any person transferred as provided in this subsection shall be
deemed to be committed to said Veterans Administration or other agency of the United States pursuant to the original commitment.

Section 35. For the purpose of this section, "alcoholic" shall mean a person who chronically or habitually consumes alcoholic beverages to the extent that (1) such use substantially injures his health or substantially interferes with his social or economic functioning, or (2) he has lost the power of self-control over the use of such beverages.

Any police officer, physician, spouse, blood relative or guardian may petition in writing any district court for an order of commitment of a person whom he has reason to believe is an alcoholic. Upon receipt of a petition for an order of commitment of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the application to be served upon the person in the manner provided by section twenty-five of chapter two hundred and seventy-six. In the event of the person's failure to appear at the time summoned, the court may issue a warrant for the person's arrest. Upon presentation of such a petition, if there is reasonable grounds to believe that such person will not appear and that any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent, said court may issue a warrant for the apprehension and appearance of such person before it. No arrest shall be made on such warrant unless the person may be presented immediately before a judge of the district court. The person shall have the right to be presented by legal counsel and may present independent expert or other testimony. If the court finds the person indigent, it shall immediately appoint counsel. The court shall order examination by a qualified physician.

If, after a hearing, the court based upon competent medical testimony finds that said person is an alcoholic and that there is a likelihood of serious harm as a result of his alcoholism, it may order such person to be committed for a period not to exceed thirty days. Such commitment shall be for the purpose of inpatient care in public or private facilities approved by the department of public health under the provisions of chapter one hundred and eleven B for the care and treatment of alcoholism. The person may be committed to the Massachusetts correctional institution at Bridgewater, if a male, or at Framingham, if a female, provided that there are not suitable facilities available under chapter one hundred and eleven B; and provided, further, that the person so committed shall be housed and treated separately from convicted criminals. A person so committed may be released prior to the expiration of the period of commitment upon determination by the superintendent that release of said person will not result in a likelihood of serious harm. Said person shall be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purposes. The department of mental health, in conjunction with the department of public health, shall maintain a roster of public and private facilities available, together with the number of beds currently available, for the care and treatment of alcoholism and shall make it available to the district courts of the commonwealth on a monthly basis.

Nothing in this section shall preclude any public or private facility for the care and treatment of alcoholism, including the separated facilities at the Massachusetts correctional institutions at Bridgewater and
Section 36. The department shall keep records of the admission, treatment and periodic review of all persons admitted to facilities under its supervision. Such records shall be private and not open to public inspection except (1) upon proper judicial order whether or not in connection with pending judicial proceedings, (2) that the commissioner shall allow the attorney of a patient or resident to inspect records of said patient or resident if requested to do so by the patient, resident or attorney, and (3) that the commissioner may permit inspection or disclosure when in the best interest of the patient or resident as provided in the rules and regulations of the department. This section shall govern the patient records of the department notwithstanding any other provision of law.

Section 36A. All reports of examinations made to a court pursuant to sections one to eighteen, inclusive, section forty-seven and forty-eight shall be private except in the discretion of the court. All petitions for commitment, notices, orders of commitment and other commitment papers used in proceedings under sections one to eighteen and section thirty-five shall be private except in the discretion of the court. Each court shall keep a private docket of the cases of persons coming before it believed to be mentally ill, including proceedings under section thirty-five; provided that nothing in this section shall prevent public inspection of any complaints or indictments in a criminal case, or prevent any notation in the ordinary docket of criminal cases concerning commitment proceedings under sections one to eighteen against a defendant in a criminal case. Notwithstanding the provisions of this paragraph, any person who is the subject of an examination or a commitment proceeding, or his counsel, may inspect all reports and papers filed with the court in a pending proceeding, and the prosecutor in a criminal case may inspect all reports and papers concerning commitment proceedings that are filed with the court in a pending case.

SECTION 39. The General Laws are hereby amended by inserting after chapter 123A the following chapter:–

CHAPTER 123B. MENTAL RETARDATION.

Section 1. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:
"Commissioner", the commissioner of mental retardation.
"Department", the department of mental retardation.
"Dependent funds", those funds which a resident is unable to manage or spend himself as determined by the periodic review.
"Facility", a public or private facility for the care and treatment of mentally retarded persons.
"Fiduciary", any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.
"Funds", all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.
"Independent funds", those funds which a resident is able to manage or spend himself as determined by the periodic review.

"Mentally retarded person", a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the department is substantially limited in his ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community.

A mentally retarded person may be considered mentally ill provided that no mentally retarded person shall be considered mentally ill solely by virtue of his mental retardation.

"Restraint", bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of a resident in his room for the night, or any other means which unreasonably limit freedom of movement.

"Superintendent", the superintendent or other head of a public or private facility.

Section 2. The department shall, in accordance with section two of chapter thirty A and subject to appropriation, adopt regulations consistent with this chapter which establish procedures and the highest practicable professional standards for the reception, examination, treatment, restraint, transfer and discharge of mentally retarded persons in departmental facilities. Said regulations shall be adaptable to changing conditions and to advances in methods of care and treatment and in programs and services for the mentally retarded. Said regulations (1) shall include, but not necessarily be limited to, long and short-term residential care, educational services, and preschool clinical services, (2) shall define the levels of and other aspects of mental retardation as deemed necessary by the department, and (3) shall provide for different procedures for particular facilities or programs.

Section 3. The department shall notify and consult with the permanent guardian or, if there is no such guardian and the mentally retarded person does not knowingly object, the nearest relative of a mentally retarded person, prior to the transfer of said person from one residential facility for the mentally retarded to another. Such notice shall be given at least forty-five days prior to the proposed transfer.

If a permanent guardian has been appointed for a mentally retarded person who is receiving residential services through the department, said department shall request said guardian's consent prior to the transfer by the department of said mentally retarded person from one residential facility for the mentally retarded to another. Said consent shall be requested in writing by registered mail, at least forty-five days prior to the proposed transfer. The request for consent shall include (1) a statement of how the proposed residential transfer from the current facility to the proposed residential facility will result in improved services and quality of life for the retarded ward, (2) the location of the proposed facility and a statement that said guardian may examine the facility, and (3) a statement of the rights of said guardian established by this section. Any objection by the guardian to the proposed transfer shall be in writing and shall contain a statement of the reasons upon which the objection is based. Failure to object in writing within forty-five days shall be deemed to be a consent to said transfer. If the guardian files an objection, the transfer shall not occur unless the department prevails at
an adjudicatory proceeding pursuant to this section.

If the individual service plan developed for the mentally retarded person by the department pursuant to its regulations cannot be fully implemented as a result of the guardian's objection to a proposed transfer, the department shall, within twenty days of receipt of said objection, file a request for an adjudicatory proceeding with the division of administrative law appeals established by section four H of chapter seven, whereupon said division shall be authorized to conduct said proceeding to determine whether the transfer should proceed. The division shall conduct an adjudicatory hearing with ninety days in accordance with the provisions of chapter thirty A, and the burden of proof shall be on the department. During the pendency of said hearing the proposed residential transfer shall not occur. Said mentally retarded person shall have the right to be represented by counsel. The hearing officer shall determine which placement meets the best interest of the ward giving due consideration to the objections to the placement made by the relative or permanent guardian. The hearing officer shall issue a decision within thirty days of the hearing. After the hearing officer renders a written decision the parties shall have twenty days in which to appeal the decision to the superior court and the court shall hear such appeal as expeditiously as possible in open court or in chambers, and at such time and upon such notice, if notice is required as it in its discretion determines.

Notwithstanding the provisions of this section, in the case of an emergency, a transfer from one residential facility for the mentally retarded to another may be made immediately, provided, however, that no mentally retarded person shall be transferred to a facility for the mentally ill and notice of said transfer shall be given to said guardian or relative pursuant to this section within eight hours after said transfer. Failure by said guardian to object in writing within forty-five days of said notice shall be deemed to be a consent to said transfer. In all other respects, the standards and procedures governing a non-emergency transfer shall be the same as those governing an emergency transfer.

Section 4. Each person within the care of the department shall be the subject of a periodic review under the supervision of the superintendent, which shall include, but not necessarily be limited to, (1) a thorough clinical examination, (2) an evaluation of the legal competency of the person and the necessity or advisability of having a guardian or conservator appointed or removed, (3) a consideration of all possible alternatives to continued residential care including, but not necessarily limited to, a determination of the person's relationship to the community and to his family, or his employment possibilities, and of available community resources, foster care and convalescent facilities, and (4) unless a guardian or conservator has been appointed, an evaluation of each person who is a resident of a facility in order to determine how much of his funds shall be designated as dependent funds and how much as independent funds, and the formulation and maintenance of a financial plan for the use of his dependent funds. Said periodic review shall take place at least upon admission, once during the first three months after admission, once during the second three months after admission and annually thereafter. Said person shall be given a physical examination by a physician licensed under the provisions of chapter one hundred and twelve at least once in every twelve-month period during which he is
resident in said departmental facility. The superintendent shall give written notice to said person and his guardian, or, if there is no such guardian and the mentally retarded person does not knowingly object, his nearest relative prior to any such review which is made subsequent to admission. The social service department of the facility shall take part in the review and may utilize community resources. The results of each review shall become part of the official record of the person reviewed.

Following such review, if the person is still in need of care as a resident, the superintendent shall notify the person and his guardian, or, if there is no such guardian and the mentally retarded person does not knowingly object, his nearest relative.

Section 5. No mentally retarded person shall be retained at a facility except under the provisions of sections six and seven.

Section 6. Pursuant to departmental regulations on admission procedures, the superintendent may receive and retain on a voluntary basis any mentally retarded person providing the person is in need of care and treatment and providing the admitting facility is suitable for such care and treatment. The application may be made (1) by a person who has attained the age of sixteen, (2) by a parent or guardian of a person on behalf of a person under the age of eighteen years, and (3) by the duly authorized guardian of a person on behalf of an adult person under his guardianship. Prior to accepting an application for a voluntary admission, the superintendent shall afford the person making the application the opportunity for consultation with an attorney, or with a person who is working under the supervision of an attorney, concerning the legal effect of a voluntary admission. The superintendent may discharge any person admitted under the provisions of this paragraph at any time he deems such discharge in the best interest of such person, provided, however, that if a parent or guardian made the application for admission, fourteen days' notice shall be given to such parent or guardian prior to such discharge.

Section 7. Any person retained in a facility under the provisions of section six shall be free to leave such facility at any time, and any parent or guardian who requested the admission of such person may withdraw such person at any time, upon giving written notice to the superintendent. The superintendent may restrict the right to leave or withdraw to normal working hours and weekdays and, in his discretion, may require persons or the parents or guardians of persons to give three days written notice of their intention to leave or withdraw. Where persons or their parents or guardians are required to give three days notice of intention to leave or withdraw, an examination of such persons may be conducted to determine their clinical progress, their suitability for discharge and to investigate other aspects of their case including their legal competency and their family, home or community situation in the interest of discharging them from the facility.

Section 8. Any person who transports a mentally retarded person to or from a facility for any purpose authorized under this chapter shall not use any restraint which is unnecessary for the safety of the person being transported or other persons likely to come in contact with him.

Restraint of a mentally retarded person may only be used in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide; provided, however, that written authorization for such restraint is given by the superintendent or
director of the facility or by a physician designated by the superintendent for this purpose who is present at the time of the emergency or if the superintendent or director or designated physician is not present at the time of the emergency, non-chemical means of restraint may be used for a period of one hour provided that within one hour the person in restraint shall be examined by the superintendent, director or designated physician. Provided further, that if said examination has not occurred within one hour, the person may be restrained for up to an additional one hour period until such examination is conducted, and the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the examination was not completed by the end of the first hour of restraint.

Any minor placed in restraint shall be examined within fifteen minutes of the order for restraint by a physician or, if a physician is not available, by a registered nurse or a certified physician assistant; provided, however, that said minor shall be examined by a physician within one hour of the order for restraint. A physician or, if a physician is not available, a registered nurse or a certified physician assistant, shall review the restraint order, by personal examination of the minor or consultation with ward staff attending the minor, every hour thereafter.

No minor shall be secluded for more than two hours in any twenty-four hour period; provided, however, that no such seclusion of a minor may occur except in a facility with authority to use such seclusion after said facility has been inspected and specially certified by the department. The department shall issue regulations establishing procedures by which a facility may be specially certified with authority to seclude a minor. Such regulations shall provide for review and approval or disapproval by the commissioner of a biannual application by the facility which shall include (i) a comprehensive statement of the facility's policies and procedures for the utilization and monitoring of restraint of minors including a statistical analysis of the facility's actual use of such restraint, and (ii) a certification by the facility of its ability and intent to comply with all applicable statutes and regulations regarding physical space, staff training, staff authorization, record keeping, monitoring and other requirements for the use of restraints.

Any use of restraint on a minor exceeding one hour in any twenty-four hour period shall be reviewed within two working days by the director of the facility. The director shall forward a copy of his or her report on each such instance of restraint to the human rights committee of that facility and, in the event that there is no human rights committee, to the appropriate body designated by the commissioner of mental retardation. The director shall also compile a record of every instance of restraint in the facility and shall forward a copy of said report on a monthly basis to the human rights committee or the body designated by the commissioner of mental health.

No order of restraint for an individual shall be valid for a period of more than three hours beyond which time it may be renewed upon personal examination by the superintendent, director, authorized physician or, for adults, by a registered nurse or a certified physician assistant; provided, however, that no adult shall be restrained for more than six hours beyond which time an order may be renewed only upon personal examination by a physician. The reasons for the original use of restraint, the reason for its continuation after each renewal and the
reason for its cessation shall be noted upon the restraining form by the superintendent, director or authorized physician or, when applicable, by the registered nurse or certified physician assistant at the time of each occurrence.

When a designated physician is not present at the time and site of the emergency, an order for chemical restraint may be issued by a designated physician who has determined, after telephone consultation with a physician, registered nurse or certified physician assistant who is present at the time and site of the emergency and who has personally examined the patient, that such chemical restraint is the least restrictive, most appropriate alternative available; provided, however, that the medication so ordered has been previously authorized as part of the individual's current treatment plan.

No person shall be kept in restraint without a person in attendance specially trained to understand, assist and afford therapy to the person in restraint. The person may be in attendance immediately outside the room in full view of the patient when an individual is being secluded without mechanical restraint; provided, however, that in emergency situations when a person specially trained is not available, an adult may be kept in restraint unattended for a period not to exceed two hours. In that event, the person kept in restraints must be observed at least every five minutes; provided, further that the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the specially trained attendant was not available. The maintenance of any adult in restraint for more than eight hours in any twenty-four hour period must be authorized by the superintendent or facility director or the person specifically designated to act in the absence of the superintendent or facility director; provided, however, that when such restraint is authorized in the absence of the superintendent or facility director, such authorization must be reviewed by the superintendent or facility director upon his return.

No "P.R.N." or "as required" authorization of restraint may be written. No restraint is authorized except as specified in this section in any public or private facility for the care and treatment of mentally retarded persons.

No later than twenty-four hours after the period of restraint, a copy of the restraint form shall be delivered to the person who was in restraint. A place shall be provided on the form or on attachments thereto, for the person to comment on the circumstances leading to the use of restraint and on the manner of restraint used.

A copy of the restraint form and any such attachments shall become part of the chart of the mentally retarded person. Copies of all restraint forms and attachments shall be sent to the commissioner who shall review them and sign them within thirty days, and statistical records shall be kept therefor for each facility and each designated physician. Furthermore, such reports, excluding identification of mentally retarded persons, shall be made available to the general public at the department's central office.

Responsibility and liability for the implementation of the provisions of this section shall rest with the department, the superintendent or director of each facility or the physician designated by such superintendent or director for this purpose.

Section 9. A mentally retarded person in the care of the department
shall be provided with stationery and postage in reasonable amounts and shall have free and unrestricted mailing privileges.

A mentally retarded person shall have the right to be visited at all reasonable times by anyone unless he is ill or incapacitated and the superintendent determines that such a visit would be unreasonable. A statement of the reasons for any such denial of visiting rights shall be entered in the treatment record of said person.

In addition to the rights specified above and any other rights guaranteed by law, a mentally retarded person in the care of the department shall have the following legal and civil rights: to wear his own clothes, to keep and use his own personal possessions including toilet articles, to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, to have access to individual storage space for his private use, reasonable access to telephones to make and receive confidential calls, to refuse shock treatment, to refuse lobotomy, and any other rights specified in the regulations of the department; provided, however, that any of these rights may be denied for good cause by the superintendent or his designee and a statement of the reasons for any such denial entered in the treatment record of such person.

Section 10. No person shall be deemed to be incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operators licenses or to make a will solely by reason of his admission or commitment in any capacity to the treatment or care of the department or to any public or private facility, nor shall departmental regulations restrict such rights.

Section 11. In addition to the periodic review under section four of this chapter, whenever the superintendent has reason to believe that a person who has been under the care of the department as a resident for more than six months, who is not under guardianship or conservatorship, is unable to care for his property, he shall promptly notify said person's nearest living relative and recommend that the necessary steps be taken for the appointment of a guardian or a conservator.

Section 12. (a) The superintendent may deposit in any bank organized and existing under the laws of the commonwealth funds belonging to persons who are residents at such facility, funds deposited by relatives or friends of such persons, and other funds belonging to such persons except that independent funds shall only be deposited with the consent of the resident. The interest earned by any funds so deposited shall be credited to the account of such person. Such funds shall be held in trust or used for the benefit of such person except that such person shall have an unrestricted right to manage and spend in his sole discretion all his independent funds. The superintendent, subject to the regulations of the department, may also petition the probate division of the trial court to appoint a conservator of the property of a mentally retarded person for the purpose of transferring into trusts such portion of any dependent funds of a person deposited or otherwise held by the superintendent as may be necessary to establish the eligibility of such person for the medical assistance program under chapter one hundred and eighteen E or for supplemental security income payments under the provisions of Title XVI of the federal Social Security Act. The superintendent may establish such a trust on behalf of a mentally retarded person with independent funds only with the consent of such person. No such funds
shall be transferred or held in trust except as is in the best interest of the clients.

(b) Any funds held in trust by the superintendent for any persons who have been discharged from or who have otherwise left any facility of the department, or the custody of the department, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent 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 five per cent 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 may pay such sum to the state treasurer immediately. The balance of such funds, after six years from the date when such funds were paid to the state treasurer, may be used as 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 payments such as may be proved to his satisfaction.

(c) Personal property belonging to or deposited for the benefit of any persons who have been discharged from or who have otherwise left any facility or the custody of the department, which shall have remained unclaimed for more than one year shall be sold, or if without value, otherwise disposed of by the superintendent; provided, however, that no less than thirty days prior to such disposition the superintendent 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 or the person with whom such person last resided. If such person, relative or other person does not within such thirty day period object to such sale or 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.

(d) All fiduciaries of persons who are residents at a departmental facility shall register with the superintendent of such facility on a form supplied by the department.

(e) The department shall establish procedures to make the fiduciaries accountable to the department for all funds belonging to such residents. These procedures shall require an annual report by the fiduciary to the department on a form supplied by the department indicating the manner in which such funds were managed or expended during the report period. The annual report shall be submitted by the fiduciary under penalty of perjury pursuant to sections one and one A of chapter two hundred and sixty-eight.

(f) A fiduciary who fails to register with the department or who fails
to submit an annual report to the department shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars.

(g) A fiduciary who embezzles or fraudulently converts or appropriates money, goods, or property held or possessed by him for the use and benefit of the resident shall be subject to penalties prescribed in section fifty-seven of chapter two hundred and sixty-six.

(h) A guardian, trustee, or conservator shall be removed from his duties upon his conviction of any of the offenses enumerated in paragraphs (f) and (g). The department shall petition the appropriate federal agency for the removal of a representative payee from his duties upon his conviction of any of the offenses enumerated in said paragraphs (f) and (g).

Section 13. If a resident of any facility dies leaving an estate which does not exceed five thousand dollars in value, the superintendent shall notify the nearest living relative of such resident of such fact, and if, after the expiration of thirty days from the date of such notice, no petition for administration of said estate has been filed, the department may provide for the administration of said estate under the provisions of section sixteen of chapter one hundred and ninety-five.

Section 14. Upon the death of any person confined to an institution under the control of the department, the superintendent of such institution shall, if he is of the opinion that the death may have resulted from violence or unnatural causes, immediately notify the district attorney for the district in which the death occurred, giving him the name and address of the person who died and the cause of death.

Section 15. (a) In cooperation with other state departments and agencies, the department shall cause to be given to persons under its care instruction and education as may be appropriate for such persons to undertake, especially persons who are unable to engage in programs for resident-trainees.

(b) In cooperation with other state departments and agencies the department shall cause to be established at each facility programs for persons under its care who would be assisted by performing work in or about such facility. The department shall pay or credit such trainee for work performed by him under said program in accordance with payment schedules established by the department in its regulations and approved by the commissioner of administration.

(c) The department may permit the sale of the work products of any person under its care on such conditions 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 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 paragraph (a) of section twelve.

Section 16. The department may make charges for the care of any person in its facilities. To the extent that any person in its facilities is eligible for third party payment of charges for care, the department shall make said charges for care at rates established by the rate setting commission under chapter six A. To the extent that third party payment is not available, or is not sufficient to pay said charges, the charges may be recovered from said person, or from any person with a legal obligation
to support the person; provided, however, that said person shall be entitled to retain one thousand dollars in cash or personal property; and provided, further, that the department shall make adjustments to the charges based upon said person's individual circumstances. If a superintendent of a facility for the mentally retarded holds the funds of a resident in a dependent funds account, the amount recoverable from the resident which would be paid from the dependent funds shall be deferred until the death of the resident, at which time the accumulated deferred payment shall be owed to the department by the estate of the resident; provided, however that this shall not prevent the department from recovering charges without deferral from any of the resident's funds which are held outside of a dependent funds account.

The department shall not recover charges from a resident of a facility for the mentally retarded until the status of the dependent and independent funds of said resident has been reviewed by the department pursuant to section four of this chapter.

The department also shall establish, by regulation, a system of charges for care in programs funded by or under a contract with the department which is consistent with the provisions of this section.

Section 17. The department shall keep records of the admission, treatment and periodic review of all persons admitted to facilities under its supervision. Such records shall be private and not open to public inspection except (1) upon proper judicial order whether or not in connection with pending judicial proceedings, (2) that the commissioner shall allow the attorney of a patient or resident to inspect records of said patient if requested to do so by the patient, resident or attorney, and (3) that the commissioner may permit inspection or disclosure when in the best interest of the patient or resident as provided in the rules and regulations of the department. This section shall govern the patient records of the department notwithstanding any other provision of law.

SECTION 40. Section 49B of chapter 127 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by inserting after the word "health", in line 23, the words:- , the department of mental retardation.

SECTION 41. Section 10B of chapter 147 of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The commissioner may, upon petition of the commissioner of mental health or the commissioner of mental retardation, appoint as special police officers employees of the department of mental health or the department of mental retardation or employees of the various institutions under the respective jurisdictions of said departments, who shall have the same power to make arrests as the state police for any criminal offence committed in or upon lands or structures within the charge of said departments or of the various institutions under the respective jurisdictions of said departments.

SECTION 42. Said section 10B of chapter 147 of the General Laws, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- They shall serve without pay, except for their regular compensation as employees of the
department of mental health or the department of mental retardation or the various institutions under the respective jurisdictions of said departments, and they shall receive no fees for services for return of any criminal process.

SECTION 43. Section 30A of chapter 149 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 21, the first time it appears, the words:-- , mental retardation.

SECTION 44. Section 30B of said chapter 149, as so appearing, is hereby amended by inserting after the word "health", in line 14, the words:-- , mental retardation.

SECTION 45. Section 28 of chapter 152 of the General Laws is hereby further amended by striking out the last paragraph, added by section 37 of chapter 572 of the acts of 1985, and inserting in place thereof the following paragraph:--

As used in this section the term "minor" shall include mentally retarded persons eighteen years of age or older unless:

(1) the employment takes place in a sheltered workshop which holds either a license from the department of mental retardation or accreditation from the commission on accreditation of rehabilitation facilities; and

(2) a professional vocational specialist evaluates the employee at the employment site, for the specific job performed and such evaluation determines in writing that the employee is appropriate for and capable of such employment; and

(3) the employee has agreed in writing to the written rehabilitation plan or to an accurate verbal description of such written plan.

The division of administration shall keep statistical records on injuries that occur at sheltered workshops. If there appears to be a pattern of such injuries at a particular sheltered workshop, the office of claims administration shall notify the department of mental retardation and such department shall take whatever action it deems appropriate.

SECTION 46. Section 16 of chapter 195 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by inserting after word "health", in lines 8 and 13, the words:-- , the department of mental retardation.

SECTION 47. Section 6A of chapter 201 of the General Laws, as amended by section 2 of chapter 525 of the acts of 1985, is hereby further amended by striking out, in line 27, the word "health" and inserting in place thereof the word:-- retardation.

SECTION 48. Section 7 of chapter 201 of General Laws, as appearing in 1984 Official Edition, is hereby amended by inserting after the word "health," in line 4, the words:-- in the case of a petition filed pursuant to section six, or the department of mental retardation in the case of a petition filed pursuant to section six A.

SECTION 49. Section 13 of said chapter 201, as so appearing, is hereby amended by inserting after the word "health", in line 6, the
words:— in the case of a guardianship established pursuant to section six or the department of mental retardation in the case of a guardianship established pursuant to section six A.

SECTION 50. Section 7 of chapter 206 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 3, the words:— in the case of a mentally ill person or the department of mental retardation in the case of a mentally retarded person.

SECTION 51. The first paragraph of section 24 of chapter 206 of the General Laws, as so appearing, is hereby amended by inserting after the word "health", in line 6, the words:— in the case of mentally ill persons or to the department of mental retardation in the case of mentally retarded persons.

SECTION 52. Section five of chapter two hundred and seven of the General Laws is hereby repealed.

SECTION 53. The last paragraph of section 7 of chapter 268A of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by striking out, in lines 61 and 62, the words "mental health care" and inserting in place thereof the words:— the care of mentally ill or mentally retarded persons.

SECTION 54. No later than March first, nineteen hundred and eighty-seven, the commissioner of mental health shall prepare and submit a transition plan to the special commission established by section seventy-one of chapter two hundred and six of the acts of nineteen hundred and eighty-six, hereinafter referred to in this act as the special commission. Any subsequent amendments to said transition plan shall likewise be submitted to such special commission. Neither said plan nor any subsequent amendments shall become effective until at least thirty days after their submission to said commission. During such thirty day period, said commission shall hold a public hearing regarding said plan or amendments.

Said transition plan shall provide for the transfer of responsibility for services to mentally retarded persons from the department of mental health to the department of mental retardation created by this act, so as to ensure the continuity of such services and so as to protect the rights of employees of the department of mental health. Said transition plan shall include but shall not be limited to the following: a plan for the allocation of employees, positions, property, legal obligations, legal proceedings, orders, rules and regulations, to the department of mental retardation; a specific schedule containing proposed dates for the transfer of all powers and duties relative to mental retardation services and for all of the related transfers required in sections fifty-seven to sixty, inclusive; a plan proposing allocations of expenditures between said departments and transfers of funds from the department of mental health to the department of mental retardation before and during the transition period; and necessary revisions to the budget requests of said departments for fiscal year nineteen hundred and eighty-eight.

Pursuant to said transition plan and notwithstanding section twenty-two of chapter twenty-nine of the General Laws or any other
law to the contrary, sums appropriated to the department of mental health for mental retardation services for fiscal year nineteen hundred and eighty-seven or nineteen hundred and eighty-eight may at the direction of the commissioner of mental health and with the approval of the comptroller be transferred to and expended for the purposes of the commissioner of mental retardation and the department of mental retardation. The commissioner of mental health shall make a monthly report to the comptroller of the amount of funds so transferred, and shall certify that expenditures of such transferred funds are substantiated by detailed records and vouchers retained in the custody of the commissioner of mental retardation.

SECTION 55. The secretary of human services shall appoint a commissioner of mental retardation no later than July first nineteen hundred and eighty-seven. Effective upon the approval of his appointment by the governor, said commissioner shall have all powers necessary to prepare for orderly and timely implementation of the transition according to the plan required in section fifty-four, including the power to sign contracts for services and, subject to appropriation or the transfer of funds by the commissioner of mental health, to employ staff and sign leases.

The commissioner shall appoint local mental retardation citizens' advisory committees pursuant to section twelve of chapter nineteen B within six months of his determination of the geographic service levels of the department pursuant to said section. Insofar as possible, notwithstanding the provisions of section eleven of chapter nineteen B, the five citizen members of the initial statewide advisory council appointed pursuant to said section shall be drawn from designated mental retardation members of mental health area boards selected pursuant to chapter nineteen prior to its amendment by this act. Within one year of the effective date of this section, with the participation of the said statewide mental retardation advisory council and of said local mental retardation citizens' advisory committees, the commissioner shall report to the commission on his designation of geographic levels for service and on the roles of the mental retardation citizens' advisory committees in the department.

SECTION 56. The commissioner of mental health and the commissioner of mental retardation shall provide all information requested by the special commission and shall cooperate in all other respects with said commission, as it (a) oversees the planning for and implementation of the transfer of powers and duties to the department of mental retardation, (b) explores the needs, delivery mechanisms and organizational structures for developmental services to persons with disabilities in the commonwealth, and (c) studies the advisability of increasing the responsibility of the department of mental retardation for such developmental services. Said special commission shall review the amendments to the General Laws contained in this act, and shall propose any additional amendments which it deems necessary to assure effective administration and the protection of client rights.

SECTION 57. All employees of the department of mental health who hold positions at the state schools or other department facilities for
mentally retarded persons and all other employees of such department who are allocated to the department of mental retardation pursuant to the transition plan required in section fifty-four, shall be transferred to the department of mental retardation according to the schedule contained in such transition plan, without interruption of service, without impairment of seniority, retirement or other rights of employees, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such transfer. Nothing in this section shall be construed to confer upon any employee any right not held immediately prior to the date of such transfer, or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited prior to such date.

SECTION 58. The commissioner of mental health shall transfer to the department of mental retardation, according to the schedule contained in the transition plan required by section fifty-four, all books, papers, records, documents, equipment, land, interests in land, buildings, facilities, and other property, both personal and real, which, immediately prior to the dates set forth in such transition plan, are in the custody of the department of mental health, which are allocated to the department of mental retardation pursuant to such transition plan, and which relate to or are maintained for the purpose of services to mentally retarded persons; provided, that all such property held in trust shall continue to be held in trust by the department of mental retardation.

SECTION 59. All duly existing contracts, leases, and obligations of the department of mental health, which relate to services for mentally retarded persons, which are allocated to the department of mental retardation pursuant to the transition plan required by section fifty-four, and which are in effect immediately prior to the dates set forth in such transition plan, shall after such dates be performed by the department of mental retardation. This provision shall not affect any renewal provision or option to renew contained in any such lease in existence on the date of such transfer.

SECTION 60. All petitions, hearings, and other proceedings duly brought before or against, and all prosecutions and legal and other proceedings duly begun by, the department of mental health which relate to services for mentally retarded persons, which are allocated to the department of mental retardation pursuant to the transition plan required in section fifty-four, and which are pending immediately prior to the dates set forth in such transition plan, shall continue unabated and remain in force notwithstanding the passage of this act, and shall be transferred to the department of mental retardation upon such dates as are determined by such transition plan.

Any orders, rules, and regulations duly made, and all licenses, permits, certificates, and approvals duly granted, by the department of mental health which arise from or relate to services for mentally retarded persons, which are allocated to the department of mental retardation pursuant to said transition plan, and which are in force immediately prior to the dates set forth in said transition plan, shall remain in force and effect until superseded, revised, rescinded, or cancelled in accordance
with law, by the department of mental retardation.

SECTION 61. All questions regarding the identification of property, contracts, leases, obligations, petitions, hearings, prosecutions, proceedings, orders, rules, regulations, licenses, permits, certificates and approvals transferred from the department of mental health to the department of mental retardation by this act, shall be determined by the secretary of human services.

SECTION 62. Sections fifty-four, fifty-five and fifty-six of this act shall take effect upon its passage. The remaining sections of this act shall take effect on July first, nineteen hundred and eighty-seven; provided, however, that notwithstanding the provisions of this act, powers and duties vested in the department of mental health or any board, council or official of such department shall be exercised by such department until the date provided for the orderly transfer of such powers and duties by the transition plan required in section fifty-four.

SECTION 63. The special commission relative to the proposed division of the department of mental health into a department of mental health and a department of mental retardation, established under section seventy-one of chapter two hundred and six of the acts of nineteen hundred and eighty-six shall propose legislation regarding services to persons who are developmentally disabled no later than June thirtieth, nineteen hundred and eighty-seven.

Approved December 16, 1986.

EMERGENCY LETTER: December 17, 1986 @ 4:29 P.M.

Chapter 600. AN ACT AUTHORIZING THE TOWN OF GREENFIELD TO CONVEY CERTAIN LAND IN SAID TOWN TO PATRICIA M. DOANE.

Be it enacted, etc., as follows:

SECTION 1. In consideration of the conveyance of a certain parcel of land by Patricia M. Doane to the town of Greenfield, said town is hereby authorized to convey to said Patricia M. Doane a certain parcel of land acquired by said town for water supply purposes in an Order of Taking dated August 7, 1959 and recorded in the Franklin county registry of deeds, Book 1092, Page 249 and further bounded and described as follows:

Beginning on the southerly side of the Gorge Road about 540 feet west of the west line of the Colrain Road; thence westerly along said Gorge Road 200 feet; thence southerly at right angles to said Gorge Road about 260 feet to Kelley Brook, so-called; thence easterly down said brook about 240 feet; thence northerly parallel to and 200 feet east of the west line of the tract hereby described about 180 feet to the place of beginning. Containing 0.83 acres.

Reference may be had to a plan on file in the town clerk's office entitled, "Plan of Land to be Conveyed to Patricia M. Doane - southerly of Old Gorge Road", file No. TCH-43.