HOUSE . . . . . No. 1762

By Mr. Walsh of Boston, petition of Martin J. Walsh relative to creating a psychiatric security review board within the Department of Mental Health to evaluate the conditional release of certain persons found not guilty by reason of mental illness. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT ESTABLISHING JUDICIAL JURISDICTION OVER CERTAIN INDIVIDUALS INCLUDING THOSE ON CONDITIONAL RELEASE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of Chapter 123, as appearing in the 1994 Official Edition, is hereby amended by inserting after the words "the following meanings", in line 3, the following paragraph:—

"Acquittee", any person who has been adjudicated not guilty by reason of mental disease or defect.

"Board", the psychiatric security review board.

SECTION 2. Section 1 of Chapter 123, as so appearing, is hereby further amended by inserting after the words "limit freedom of movement", in line 83, the following paragraph:—

"Serious bodily injury", bodily injury that creates a permanent disfigurement, protracted loss or impairment of a function of a body member, limb or organ, or substantial risk of death.

SECTION 3. Chapter 123, as so appearing, is hereby amended by inserting after Section 1 the following section:—

Section 1A. (a) There shall be in the department, but not subject to its jurisdiction, a board, consisting of five members, to be appointed by the governor, with the advice and consent of the council, for terms of five years.

(b) The membership of the board shall be composed of a psychologist with expertise in forensic psychology, who shall initially be appointed to a term of three years; a psychiatrist with expertise in

forensic psychiatry; a member of the general public who shall initially be appointed for a term of three years; an attorney who is a member of the bar of the Commonwealth, who shall initially be appointed for a term of three years; and a person qualified by knowledge, education, or experience in the administration of criminal justice.

(c) The board shall have jurisdiction over persons committed to its authority by a court of competent jurisdiction, pursuant to paragraph (d) of Section sixteen C of this chapter; may revise, alter or amend the conditions of release pursuant to paragraph (a) of Section seventeen A of this chapter; shall supervise all persons committed to its jurisdiction, make such investigations as may be necessary in connection therewith, determine whether violations of conditional release exist in specific cases, and decide the action to be taken thereto.

SECTION 4. Chapter 123, as so appearing, is hereby amended by inserting after Section 16 the following sections:—

Section 16A. (a) When a defendant charged with an offense involving a substantial risk of serious bodily injury or death, or actual bodily injury, is found not guilty by reason of mental illness or defect of the offense charged, the court having jurisdiction over the criminal proceedings shall order that the acquittee be hospitalized for examination and observation at a public facility, a private facility licensed by the department to perform forensic evaluations or, if the person is a male, at the Bridgewater state hospital. Such period of examination shall not exceed forty days unless, before the expiration of such forty day period, the facility superintendent or medical director of the Bridgewater state hospital believes that observation for more than forty days is necessary. In such event, the superintendent or medical director shall so notify the court, in writing, that an extension of the forty day period is necessary, specifying the reason or reasons for which further observation is necessary. Upon receipt of such request, the court may extend said observation period, but in no event shall the period exceed sixty days from the date of the initial court order for hospitalization.

(b) At the conclusion of the examination or the observation period, the examining physician or psychologist shall forthwith provide the court with a written, signed, report of his findings on the

issue of whether the acquittee is mentally ill and the discharge of such person from a facility would create a likelihood of serious harm. The court shall provide such reports to the district attorney with jurisdiction of the criminal case, and to the defendant or his counsel, and shall notify such parties and the superintendent or medical director with custody of the defendant of the date on which the court will hold a hearing to determine whether the defendant shall be committed for further treatment in accordance with Section sixteen B of this chapter. The hearing shall be held as soon as practicable, but in no event more than seventy-five days from the date of the initial court order for hospitalization pursuant to paragraph (a) of this section. Pending hearing and decision rendered pursuant too paragraph (b) of Section sixteen B of this chapter, the acquittee shall be held at the facility or Bridgewater state hospital.

(c) Upon motion by the district attorney or the attorney for the acquittee, the court shall order the defendant to be examined by a separate expert, who shall have access to all records of the acquittee and who shall file with the court a written, signed, report of such expert's findings on the issue of whether the defendant is mentally ill and the discharge of such person from a facility would create a likelihood of serious harm. The court shall provide such reports to all parties entitled to notice of the hearing pursuant to paragraph (b) of this section.

(d) For purposes of this section and Section sixteen B of this chapter, a mentally ill person shall mean any person presently suffering from a mental illness, or suffering from mental illness in a state of remission when the illness may, with reasonable medical probability, become active.

Section 16B. (a) Notwithstanding the procedures for civil commitment set forth elsewhere in this chapter, when a defendant charged with an offense involving a substantial risk of serious bodily injury or death, actual bodily injury, is found not guilty by reason of mental illness or defect of the offense charged, the court having jurisdiction over the criminal proceedings shall commit the acquittee to the department or, if the person is a male and the court finds that failure to retain the acquittee in strict custody would create a substantial likelihood of harm to himself or others, to Bridgewater state hospital, upon a finding, after hearing pursuant to paragraph (b) of Section sixteen A of this chapter, that such acquittee is mentally ill

and the discharge of such person from a facility would create a likelihood of serious harm.

The hearing shall be a civil proceeding, and the burden of proof shall be upon the Commonwealth to prove by clear and convincing evidence that the acquittee is mentally ill and the discharge of such person from a facility would create a likelihood of serious harm. No commitment shall be ordered to Bridgewater state hospital unless the acquittee is a male and the court finds that the failure to retain the acquittee in strict custody would create a substantial likelihood of harm to himself or others by reason of mental illness or defect.

The acquittee may waive his right to such hearing in writing with the advice and consent of counsel. In the event that the acquittee so waives his right to a hearing, the court may order the acquittee's commitment upon evidence from a qualified expert that the acquittee is mentally ill.

(b) The court shall render its decision within ten days of the completion of the hearing or, if the hearing has been waived, within ten days of the submission of expert evidence on the acquittee's mental condition provided that, for reasons stated in writing by the court, the administrative justice for the district court department may extend said ten day period.

(c) The court shall fix a maximum term of commitment, which shall not exceed the maximum sentence that could have been imposed if the acquittee had been convicted of the most serious offense charged. Such term of commitment may be extended only in accordance with civil commitment procedures set forth in Section eight of this chapter.

The court may further order any acquittee committed pursuant to this section to be restricted in his movements to the buildings and grounds of the facility or Bridgewater state hospital. If such restrictions are ordered, they shall not be removed except with the approval of the court.

(d) Each acquittee committed pursuant to this section shall be subject to periodic review in accordance with the provisions of Section four of this chapter. An annual report, based on such review, shall be forwarded to the court with jurisdiction of the criminal case, or to the court with jurisdiction of the facility to which the acquittee has been committed or Bridgewater state hospital, provided that jurisdiction has been transferred. Such report shall contain an

102 opinion, supported by clinical findings, as to whether the acquittee is
103 in need of continued hospitalization or other treatment offered by the
104 department or Bridgewater state hospital.
105 Section 16C. (a) If, at any time prior to the expiration of a term of
106 commitment ordered pursuant to paragraph (c) of Section sixteen B
107 of this chapter, any person believes that an acquittee committed for
108 treatment under such section no longer presents a substantial risk of
109 serious bodily injury or death to others, a substantial risk of an
110 imminent threat of physical injury to the acquittee himself or others,
111 resulting from mental illness or defect, he shall petition for the con-
112 ditional release of the acquittee to the court that committed the
113 acquittee, or to the court of jurisdiction of the facility to which the
114 acquittee has been committed or of Bridgewater state hospital, pro-
115 viding the committing court consents to the transfer of jurisdiction.
116 (b) Within seven days of receiving a petition made pursuant to
117 paragraph (a) of this section, the court shall order notice of the time
118 and place for hearing to be given to the superintendent or medical
119 director with custody of the committed acquittee, the district
120 attorney of the district from which the person was committed, and
121 such other persons as he considers proper; and such hearing shall be
122 held promptly. The court shall appoint an attorney to represent any
123 applicant whom it finds to be indigent.
124 The applicant or the committed acquittee may retain an expert to
125 testify at the hearing. If the person wishing to secure such expert tes-
126 timony is unable to afford the expert's fee, the court shall appoint an
127 additional qualified psychologist or qualified psychiatrist to perform
128 an examination. Upon motion by the district attorney or the superin-
129 tendent or medical director, the court shall order such person to be
130 examined by a separate expert, who shall have access to all records
131 of the acquittee. If the committed acquittee refuses, without good
132 cause, to be interviewed by an expert as ordered under this section,
133 such acquittee shall be deemed to have waived his right to a hearing
134 on his petition, and the petition shall be dismissed upon motion filed
135 by the district attorney or the superintendent or medical director.
136 Any expert who conducts an examination of the committed
137 acquittee shall file with the court a written, signed, report of such
138 expert's findings on the issues of.whether such person is mentally ill
139 and whether such person presents a substantial risk of serious bodily
140 injury or death to others, a substantial risk of an imminent threat of

physical injury to the person or others. The court shall provide such report to the committed acquittee and all persons entitled to notice under paragraph (b) of this section.

The person who is the subject of the petition may be brought before the court at the hearing upon a writ of habeas corpus, upon a request approved by the court. Pending the decision of the court, such person shall be retained in the custody of the superintendent or medical director.

(c) Hearings on petition for the release of a person committed pursuant to Section sixteen B of this chapter shall not be held more than once a year, unless all parties requiring notice of such hearing consent thereto.

(d) If the court decides that the person no longer presents a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, and can be properly monitored on conditions necessary for ensuring the safety of the person and others including, but not limited to, conditions requiring continued medications or other treatment, the court shall commit the person to the psychiatric security review board for the remainder of the 166 period of commitment imposed under paragraph (c) of Section sixteen B of this chapter, provided that no person shall be released directly from Bridgewater state hospital.

(e) At a hearing for release on conditions of any person committed pursuant to Section sixteen B of this chapter, the petitioner shall bear the burden of proof, by a preponderance of the evidence.

SECTION 5. Chapter 123, as so appearing, is hereby amended by inserting after Section 17 the following sections:

Section 17A. (a) The psychiatric security review board shall conduct a hearing to set conditions of release within thirty days of transfer of commitment pursuant to paragraph (d) of Section sixteen C of this chapter. Pending the hearing before the board, the person's placement shall remain unchanged.

(b) Not less than fifteen days prior to a hearing before the board, the department shall submit to the board reports and records relative to the person's need for continued care and treatment in the community. Copies of any materials furnished to the board shall be provided

to the committed person or his representative, and to counsel for the Commonwealth.

(c) The board may require any person committed to its jurisdiction to submit to an examination by a qualified psychiatrist or psychologist, chosen by the board. A written report of the examination shall be submitted to the board not less than ten days prior to a hearing pursuant to this section. Copies of the report shall be furnished to the committed person or his representative, and to counsel for the Commonwealth.

Section 17B. The board shall designate a capable person or appropriate public or private agency to supervise the committed person's compliance with the conditions imposed on his release by the board.

Section 17C. (a) Any person may apply to the board for the modification of the terms of conditional release ordered by the board. An application for modification shall be accompanied by a statement setting forth the facts in support of the application. The board shall send copies of such application and statement to the person who is the subject of conditional release, or his representative, and to counsel for the Commonwealth.

(b) The board shall commence a hearing for review of such application no more than thirty days after its receipt of the application.

(c) An application for modification by a person subject to release conditions shall not be filed more than once every six months.

Section 17D. If a determination is made by the board that a person committed to its jurisdiction has violated a condition of release, the board may restrain or authorize the restraint of the person for a period not to exceed three days, excluding Saturdays, Sundays, and legal holidays. Prior to the conclusion of the calculated three day period, the board shall either release the person on such conditions as it deems necessary for the safety of the person or others, or petition a court of competent jurisdiction for the revocation of conditional release. A hearing on such petition shall be commenced no longer than ten days after the filing of the petition with the court. Notice of the petition and hearing shall be given to the person or his representative, and to counsel for the Commonwealth.

Section 17E. The psychiatric security review board shall not have the authority to discharge a person committed to its jurisdiction from commitment to its jurisdiction.

Section 17F. (a) The court may order revocation of a person's release on conditions if the court. determines, upon a preponderance of the evidence, after hearing, that (1) the conditions of release have not been fulfilled; and (2) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental illness that causes the person to present a substantial risk of serious bodily injury or death to the person or others, or an imminent threat of physical injury to the person or others.

(b) The court may retain jurisdiction to revoke a conditional release for no longer than the period of commitment ordered pursuant to paragraph (c) of Section sixteen B of this chapter.

(c) If the court finds that the conditional release should be revoked, the court shall immediately order the person recommitted to the custody of the superintendent who had custody of the committed person prior to his release, or, if the person is a male and the court finds that the failure to retain such person in strict security could create a likelihood of serious harm, the court shall commit the person to Bridgewater state hospital.

Section 17G. (a) Victims and family members, as defined in Section one of Chapter two hundred and fifty-eight B, shall be permitted to attend all proceedings held pursuant to Sections sixteen B, sixteen C, seventeen C and seventeen F of this chapter. These proceedings shall be open to the public a aicss the judge, in his discretion, makes a determination that the proceedings should be close to the public in the interest of justice.

(b) Prior to the conditional release or discharge of any person committed pursuant to Sections sixteen B, sixteen C, seventeen C, or seventeen F of this chapter, the district attorney with jurisdiction over the initial criminal proceedings shall take reasonable steps to notify victims and family members, as defined in Section one of Chapter two hundred and fifty-eight B, of such release or discharge.

SECTION 6. Chapter 123, as so appearing, is hereby amended by inserting after section 30 the following section:—

Section 30A. It shall be a criminal act, as set forth in Section sixteen B of Chapter two hundred and sixty-eight, for a person committed to a facility, Bridgewater state hospital, or the jurisdiction of the psychiatric security review board, pursuant to the provisions of

Sections fifteen, sixteen, sixteen B, sixteen C, seventeen, seventeen F, or eighteen to be absent without authorization as defined in this chapter.

SECTION 7. Chapter 268, as appearing in the 1994 Official Edition, is hereby amended by inserting after Section 16A the following section:—

Section 16B. A person committed to a facility, Bridgewater state hospital, or the jurisdiction of the psychiatric security review board, pursuant to the provisions of Sections fifteen, sixteen, sixteen B, sixteen C, seventeen, seventeen F, or eighteen, who is absent without authorization from a facility, Bridgewater state hospital, of who, while committed to the jurisdiction of the psychiatric security review board, leaves the Commonwealth without written authorization from the psychiatric security review board, may be pursued and shall be recaptured and returned to the facility from which he escaped or was absent without authorization, Bridgewater state hospital or, in the case of a person committed to the jurisdiction of the psychiatric security review board, the last facility in which he was hospitalized.

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