



Center for Public
Representation

June 27, 2023

The Honorable Antonio F.D. Cabral
Chair, Joint Committee on State Administration & Regulatory Oversight
24 Beacon Street, Room 466
Boston, MA 02133

The Honorable Nicholas P. Collins
Chair, Joint Committee on State Administration & Regulatory Oversight
24 Beacon Street, Room 312-D
Boston, MA 02133

Dear Chair Cabral, Chair Collins, and Honorable Members of the Committee:

Re: Testimony in support of H.2985, An Act Transferring Bridgewater State Hospital from the Department of Corrections to the Department of Mental Health

The Center for Public Representation (CPR) respectfully submits this testimony in support of H.2985, An Act Transferring Bridgewater State Hospital (BSH) from the Department of Corrections (DOC) to the Department of Mental Health (Rep. Balsler). We strongly support the transfer of care, oversight and responsibility for individuals with psychiatric disabilities who are committed to BSH pursuant to a criminal matter and who need hospital-level mental health care to the Massachusetts Department of Mental Health (DMH). DMH administration and oversight would facilitate more humane, dignified and respectful treatment of people with mental illness who are subject to secure custody in BSH. It would also address the unjustified discrimination in the professional standards and legal rights that DOC applies in its correctional facilities compared to those applicable to DMH hospitals.

CPR is a national non-profit civil rights firm engaged in systemic reform initiatives on behalf of people with disabilities in the Commonwealth, as well as in multiple states across the country, including Alabama, Texas, Georgia, Kansas, Oklahoma, North Carolina, New Hampshire, Indiana, and others. CPR partners with law firms, disability protection and advocacy programs, and national organizations in legislation, policy reforms, and impact litigation that seeks to end segregation and expand opportunities for integrated community living. We are dedicated to enforcing and expanding the rights of people with disabilities and others who are in segregated settings. Our mission to enforce and expand the rights of people with disabilities includes applying a race equity lens to our systems reform work, with a goal of racial equity and community inclusion for all people.

People with serious mental illness, including those housed in BSH, are in need of humane, ethical, and non-discriminatory treatment, not punishment. Transfer of the administration and oversight of BSH to the Department of Mental Health is consistent with national standards and practices, would lead to better outcomes for patients, and is part of the solution championed by families and people with disabilities.

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Representative Balser, in an interview with WBUR, noted that that “there is a significant problem around the criminalization of people with mental illness.”¹ People held in BSH are held pre-trial for evaluation, observation, restoration, and long-term treatment; are sent to BSH from other prisons to receive mental health treatment; or are civilly committed. These are all people with significant mental health treatment needs.

It is well known that within the criminal justice system, people of color are vastly over-represented. A Harvard report commissioned by Chief Justice Gants of the Massachusetts Supreme Judicial Court found that “the Commonwealth significantly outpaced national race and ethnicity disparity rates in incarceration.”² As demonstrated in the following chart, the racial disparities at BSH reflect the disproportionalities in the criminal justice system generally.

Location	White	Black	Hispanic	Asian or Pacific Isl.
BSH – Non OCCC ³	39%	26%	11%	2%
BSH – at OCCC ⁴	58%	21%	17%	
Mass DOC pop. ⁵	42%	29%	25%	2%
Total				
Massachusetts pop. ⁶	80.6%	9%	12.4%	7.2%

A 2021 study conducted by Mass General and Harvard found that Black people experience disproportionately higher rates of chemical and physical restraint in psychiatric settings.⁷

There is a significant disparity in the professional standards and legal requirements that are applied by DOC at BSH, compared to those applied by DMH at all of its state hospitals, which serve similarly-situated and clinically-comparable forensic clients. Specifically, the rules, rights, and standards governing forced medication differ dramatically. While DMH uses the standards and procedures mandated by both the Supreme Judicial Court and federal courts for involuntary medication, DOC has crafted its own exception to these legal and professional standards. In a report published by the Disability Law Center,⁸ DLC identified over 130 patients from March to August 2021 who received involuntary chemical injections – over half of the patients that were housed at BSH at the time. While DOC and Wellpath, the organization that administers healthcare at BSH on behalf of DOC claims that these chemical injections were authorized by its own

¹ <https://www.wgbh.org/news/local-news/2022/08/09/restraints-and-involuntary-medication-are-widespread-at-corrections-facility-for-people-with-mental-illness-report-alleges>

² <https://hls.harvard.edu/wp-content/uploads/2022/08/Massachusetts-Racial-Disparity-Report-FINAL.pdf>, page 1

³ Population of Bridgewater State Hospital (excluding Old Colony Correctional Center); July 2022 at <https://www.mass.gov/doc/institutional-fact-cards-july-2022/download>

⁴ Population of Bridgewater State Hospital at Old Colony Correctional Center, July 2022; <https://www.mass.gov/doc/institutional-fact-cards-july-2022/download>

⁵ <https://www.mass.gov/doc/prison-population-trends-2021/download>, page 18.

⁶ 2020 U.S. Census

⁷ [Racial Inequality and Seclusion on an Urban-Med Psych Unit: A 2021 B.I.A.S. Report](https://ncpsych.memberclicks.net/committing-to-racial-health-equity-in-psychiatry). See also <https://ncpsych.memberclicks.net/committing-to-racial-health-equity-in-psychiatry>

⁸ <https://www.wgbh.org/news/local-news/2022/08/09/restraints-and-involuntary-medication-are-widespread-at-corrections-facility-for-people-with-mental-illness-report-alleges>

Emergency Treatment Order guidelines, it is clear that these injections were involuntary, and without legal basis. It is undeniable that they would not be permitted at any DMH facility or otherwise conform to state requirements for involuntary medication. DLC found that DOC and Wellpath used ETO's to "control [patient] behavior and, possibly, to inflict punishment upon them for engaging in disruptive, unhygienic, and otherwise unwarranted behaviors."⁹

Furthermore, the way in which many of these injections were administered is inconsistent with accepted professional standards. DLC reported watching videos where many of the patients were manually restrained by staff in riot gear and held down as they were injected with medications. "The pattern and practice of violent staff interactions would not be accepted in a DMH licensed facility."¹⁰

The over-representation of people of color in carceral settings in Massachusetts, in addition to studies showing the disproportionate application of chemical and physical restraint on Black people in psychiatric and emergency department settings, raises additional concerns with respect to DLC's findings on the use of chemical and physical restraints at BSH.

Current DMH regulations protect client rights and are consistent with Massachusetts law. Massachusetts law, which governs both DMH facilities and supposedly applies to BSH, limits restraint and seclusion to "cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide." There are strict requirements as to who may authorize restraint and seclusion, as well as the documentation that must be kept when restraint and seclusion occurs.¹¹

DOC and Wellpath have created their own exception to these legal requirements, and applied its own interpretation of these requirements at BSH. DLC reviewed Wellpath's policy governing "Use of Involuntary Psychotropic Medication" which is applicable to BSH in its July 2021 report.¹² Wellpath's self-designed exception, as incorporated in this policy, unreasonably distinguishes between "Medical Restraint" policies and Emergency Treatment Orders (ETO)'s in a way that justifies the extraordinary use of chemical injections on residents as described in the DLC report. As reflected in the following chart, the impact of this exception is dramatic:¹³

June – November 2021	
Medication Restraint	0
Emergency Treatment Order	370

⁹ DLC, *Public Report: Efficacy of Service Delivery Reforms at Bridgewater State Hospital (BSH) and Continuity of Care for BSH Persons Served* (Jan. 2022), <https://www.dlc-ma.org/wp-content/uploads/2022/02/DLC-BSH-January-2022-Public-Report-2.9.2022.pdf> at 18-19.

¹⁰ <https://www.wgbh.org/news/local-news/2022/08/09/restraints-and-involuntary-medication-are-widespread-at-corrections-facility-for-people-with-mental-illness-report-alleges>

¹¹ ¹¹ DLC, *Public Report: Efficacy of Service Delivery Reforms at Bridgewater State Hospital (BSH) and Continuity of Care for BSH Persons Served* (Jan. 2022), <https://www.dlc-ma.org/wp-content/uploads/2022/02/DLC-BSH-January-2022-Public-Report-2.9.2022.pdf> DLC Public Report, page 16.

¹² See DLC, *A Report on the Efficacy of Service Delivery Reforms at Bridgewater state Hospital (BSH) and Continuity of Care for BSH Persons Served* (July 2021) at 9-14.

¹³ DLC, *Public Report: Efficacy of Service Delivery Reforms at Bridgewater State Hospital (BSH) and Continuity of Care for BSH Persons Served* (Jan. 2022), <https://www.dlc-ma.org/wp-content/uploads/2022/02/DLC-BSH-January-2022-Public-Report-2.9.2022.pdf> DLC Public Report, page 8,

Contrary to SJC rulings, professional standards, state law, and longstanding DMH practices, DOC contends that the Wellpath policy is legally permissible.¹⁴ As cited in DLC's report, "The permissive BSH policy is in stark contrast to DMH regulations, which lawfully define medications given "to control the patient's behavior or restrict the patient's freedom of movement and which is not the standard treatment or dosage prescribed for the patient's condition" as medication restraint subject to usage requirements of other restraints."¹⁵

The overwhelming national trend for the oversight and administration of forensic hospitals is not through the Department of Corrections – but through the state's mental health agency. New Hampshire is the latest state to transfer mental health patients who require secure custody to the Department of Health and Human services from placement at the Secure Psychiatric Unit of Concord State prison and Department of Corrections oversight.¹⁶ Massachusetts is only one of two states in the country that holds forensic clients and civilly committed mental health persons in prison facilities.¹⁷

The families of these individuals, who know the circumstances and needs of their loved ones best, have issued heartfelt pleas for change.

"Our children could be anyone's children, hopefully not, but even your own. Our system (hospitals, police, judiciary) turned their backs on them when they needed help by not making available to them the care they needed. Now, they find themselves justice-involved, with their liberties taken away, and locked in our states' psychiatric hospital. This illness has no cure, but in a proper setting and with proper treatment these individuals can progress and rejoin society. But this can only be accomplished in a proper therapeutic environment, not a punitive prisonlike setting."¹⁸ *Tom Kavanaugh, Family Advocate*

CPR urges the Legislature to transfer jurisdiction of the Bridgewater State Hospital facility to DMH administration and oversight, in order to facilitate more humane, dignified, legally appropriate, and non-discriminatory treatment of people with mental illness who are subject to secure custody in the Commonwealth. We urge the Committee to favorably report H. 2985.

Respectfully submitted.

Mona Igram
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Center for Public Representation

¹⁴ <https://www.wbur.org/news/2022/03/24/massachusetts-prison-officials-bridgewater-state-hospital>

¹⁵ DLC Report, 2022, pg. 17-18. See also 104 CMR 27.12, 104 CMR. 27.12(8)(3)(a).

¹⁶ <https://www.nhpr.org/nh-news/2021-10-08/n-h-officials-outline-plan-for-30-million-24-bed-hospital-for-forensic-patients>

¹⁷ <https://www.youtube.com/watch?v=kp-lhJn4y6w>

¹⁸ <https://ffimi.blog/2023/02/01/nami-board-member-and-family-advocate-adds-his-voice-at-judiciary-oversight-committee/>