

HOUSE No. 1475**The Commonwealth of Massachusetts**

PRESENTED BY:

Elizabeth A. Malia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to reduce recidivism, curb unnecessary spending, and ensure appropriate use of segregation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/16/2015</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/16/2015</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	
<i>David M. Rogers</i>	<i>24th Middlesex</i>	
<i>Ellen Story</i>	<i>3rd Hampshire</i>	
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	
<i>John J. Mahoney</i>	<i>13th Worcester</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	

<i>Benjamin Swan</i>	<i>11th Hampden</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	

HOUSE No. 1475

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1475) of Elizabeth A. Malia and others relative to the use of solitary confinement in correctional facilities. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1486 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to reduce recidivism, curb unnecessary spending, and ensure appropriate use of segregation.

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

1 SECTION 1. Section 1 of chapter 127 of the General Laws, as appearing in the 2012
2 official edition, is hereby amended by inserting the following definitions:

3 “Disciplinary segregation,” the segregation of a prisoner from the general population, in a
4 segregated unit or other housing unit, for the purpose of disciplining the prisoner.

5 “Non-disciplinary segregation,” the segregation of a prisoner from the general
6 population, in a segregated unit or other housing unit, for administrative purposes or for reasons
7 unrelated to the enforcement of discipline. Non-disciplinary segregation shall not include
8 emergency confinement as defined in section 39A(d) of this chapter or segregation for
9 documented medical reasons or mental health emergencies.

“Non-disciplinary Segregation Board,” a board appointed by the commissioner for a definite or indefinite term and consisting of three members, one of whom the commissioner shall designate as chairperson. Once appointed, the board is empowered to recommend a prisoner for placement in non-disciplinary segregation. The board may be the same as the DSU Board, as defined by 103 CMR 421.06, or a separate body.

“Qualified mental health professional,” treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients.

“Residential treatment unit,” a general population housing unit within a correctional institution of the commonwealth that is operated for the purpose of providing treatment and rehabilitation for prisoners with mental illness.

“Secure treatment unit,” a maximum security residential treatment program designed to provide an alternative to segregation for prisoners diagnosed with serious mental illness in accordance with clinical standards adopted by the department.

“Segregation unit,” a housing unit in which prisoners are segregated from the general population, whether as non-disciplinary segregation or disciplinary segregation.

“Serious mental illness,” constitutes:

(1) A current diagnosis or recent significant history of one or more of the following disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental

Disorders: (i) schizophrenia and other psychotic disorders; (ii) major depressive disorders; or (iii) bipolar disorders, all types;

(2) A diagnosis of one or more of the following disorders, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, that results in a significant functional impairment : (i) a neurodevelopmental disorder, dementia or other cognitive disorder; (ii) any disorder commonly characterized by breaks with reality, or perceptions of reality; (iii) a severe personality disorder that is manifested by episodes of psychosis or depression; or

(3) A finding that the prisoner is at serious risk of substantially deteriorating mentally or emotionally while confined in segregation, or already has so deteriorated while confined in segregation, such that diversion or removal is deemed to be clinically appropriate by a qualified mental health professional.

SECTION 2. Chapter 127 of the General Laws, as appearing in the 2010 official edition, is hereby amended by striking out section 39 and inserting in place thereof the following section:

Section 39. Segregation units; segregation; facilities.

(a) Subject to the requirements of section 39A and section 39B of chapter 127, at the request of the superintendent of any correctional institution of the commonwealth, the commissioner may authorize the confinement in a segregation unit within any correctional institution of the commonwealth, of any prisoner whose continued retention in the general institution population poses a substantial threat: (1) to the safety of others; (2) of damaging or destroying property; or (3) to the operation of a state correctional facility. Segregation should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement.

(b) No prisoner may be held in disciplinary segregation for longer than fifteen days, including time spent in segregation previous to the disciplinary conviction. After fifteen days, a prisoner may be held in non-disciplinary segregation only pursuant to the provisions of section 39B of this chapter.

(c) A prisoner may be held in non-disciplinary segregation only if:

(1) Pursuant to section 39B, he or she has been found to have committed, while incarcerated within the last five years, (i) an act of violence that resulted or was likely to result in serious injury or death to another, or occurred in connection with an act of non-consensual sex; (ii) two or more discrete acts which cause serious disruption of prison operations; or (iii) an escape, attempted escape, or conspiracy to escape from within a security perimeter or custody, or both; and

(2) Pursuant to section 39B, he or she has been determined to pose an immediate and significant threat to the safety of other prisoners or to the orderly running of the institution.

(d) All segregation units shall provide regular meals, fully furnished cells, at least one hour per day of exercise and recreation, outside if weather permits, rights of visitation and communication by those properly authorized, and such other privileges as may be established by the superintendent.

Segregation units that house prisoners in non-disciplinary segregation must meet the following standards:

(1) Recreation shall take place in a congregate setting, unless doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or

the facility. If congregate recreation is denied to a prisoner in non-disciplinary segregation for such reasons, a determination shall be made, written reasons provided to the prisoner, and the prisoner shall be re-evaluated for recreation in a congregate setting on a weekly basis.

(2) Prisoners in non-disciplinary segregation shall have their basic needs met in a manner comparable to general population, and never have restricted diets nor any order restricting any basic need imposed as a form of punishment.

(3) Prisoners in non-disciplinary segregation shall be afforded out-of-cell time that is comparable to the out-of-cell time afforded to prisoners in the general population at the same facility, to the extent consistent with the safety and security of the institution.

(4) Prisoners in non-disciplinary segregation shall be permitted to make canteen purchases and to retain property in their cells, comparable to prisoners in the general population at the same facility, to the extent consistent with the safety and security of the institution.

(5) Prisoners in non-disciplinary segregation shall have equal access to disability accommodations as persons in general population. Such accommodations shall include, but are not limited to: handicap accessible cells, wheelchairs, walkers, prosthetic devices, canes, eyeglasses, hearing aids, orthopedic shoes, mattresses and cushioning, and special clothing.

(6) Prisoners in non-disciplinary segregation shall have access to all vocational, educational and rehabilitative programs comparable to the general population, to the extent consistent with the safety and security of the institution. They shall be permitted to retain program materials, complete program assignments, and continue upon return all uncompleted programs they were in prior to placement in non-disciplinary segregation.

(7) Prisoners in non-disciplinary segregation shall not be deprived of light, ventilation, personal hygiene, daily showers, mail, or religious observance.

(8) Prisoners in non-disciplinary segregation shall have access to a radio or television.

(9) Prisoners in non-disciplinary segregation shall be eligible for and have opportunities to receive earned good time credits pursuant to chapter 127, section 129D while in segregation.

SECTION 3. Said chapter 127, as so appearing, is hereby amended by inserting after section 39, the following section:

Section 39A. Exclusions from segregation; mental health evaluations; emergency segregation for excluded groups.

(a) No prisoner may be held in a segregation unit or otherwise in disciplinary or non-disciplinary segregation if he or she is:

(1) Found by a clinician to have a serious mental illness or have a significant mental impairment that requires exclusion from segregation, under the screening and periodic review procedures set forth below in section 39A(c);

(2) Pregnant;

(3) Deaf or Blind;

(4) Under 18 years of age; or

(5) Suffering from a medical condition or physical disability which is likely to be worsened by segregation.

(b) No prisoner may be held in segregation solely because he or she requires protection from other prisoners or from staff, or solely because of his or her self-identified transgender status, except on an emergency basis per subsection (d) below. Prisoners seeking protective custody, or those determined by the department to need protective custody, shall be provided the protections specified in the Final Amended Agreement for Judgment in Blaney v. Commissioner, No. J-74-88 (1980) and codified in the department protective custody units regulations, 103 C.M.R. 422, except to the extent that this Act provides for greater protections.

(c) Under the supervision of the department of mental health, all prisoners confined to a segregation unit or otherwise in disciplinary or non-disciplinary segregation, shall be given periodic medical and psychiatric examinations in a setting that preserves confidentiality, and shall receive such medical and psychiatric treatment as may be clinically indicated. A qualified mental health professional shall make daily rounds in each segregation unit.

(1) Prior to placement in disciplinary segregation, non-disciplinary segregation, or otherwise isolated in a segregation unit, all prisoners shall be evaluated by a qualified mental health professional.

(i) If the clinician(s) determines that the prisoner has a serious mental illness, or that segregation would cause a risk of substantial harm to the prisoner, the prisoner shall be diverted from segregation to a mental health step-down unit such as a residential treatment unit, secure treatment unit, prison mental hospital, or other appropriate housing.

(ii) If the prisoner is not initially determined to have a serious mental illness or to be at risk of substantial harm from segregation, and is placed in segregation, the prisoner shall be evaluated by a qualified mental health professional at least once per week. Such professional

shall arrange for an out-of-cell meeting with any prisoner for whom a confidential meeting is warranted in the clinician's professional judgment, and shall include: assessment of current mental status and condition; assessment of current risk of suicide or other self-harming behavior; and review of all available mental health records at the initial assessment and any new records thereafter. If a prisoner refuses a face-to-face interview, the professional shall document in the progress note all attempts made to engage with the prisoner. Any prisoner who is determined after such an evaluation to have a serious mental illness or to be at risk of substantial harm from segregation shall be removed from segregation within forty-eight hours of such determination. Prisoners who are determined to have serious mental illness or be at risk of substantial harm from segregation, but who are awaiting transfer to a secure treatment unit, shall be offered additional mental health services as clinically indicated and as required by section 39A(d).

(2) The department shall ensure that corrections officers, correctional program officers, and other staff interacting with prisoners in segregation units receive training on recognizing signs of mental illness and decompensation and on the proper management of prisoners with serious mental illness or other significant mental impairment.

(3) Placement in segregation solely for self-injurious behavior is prohibited. Disciplinary reports for behavior directly and wholly related to self-injurious behavior, such as destruction of state property, are also prohibited.

(4) Qualified mental health professional staff shall be notified in writing prior to any prisoner with serious mental illness in segregation being served with a disciplinary report.

(d) A prisoner who has been determined to pose an immediate and significant threat under the provisions of section 39 and section 39B of chapter 127, but who is excluded from

segregation by any provision of section 39A(a) and (b), may be held in segregation on an emergency basis only if, within twenty-four hours of his or her placement in segregation, the commissioner or designee certifies in writing: the reason why the prisoner may not be safely held in the general population; efforts that are being undertaken to find appropriate housing, whether within the department or through transfer to another jurisdiction; the status of such efforts, and anticipated time frame for resolution. A copy must be provided to the prisoner.

(1) A prisoner who is held in segregation on an emergency basis under the provisions of section 39A(d) must be afforded at least three hours per day of unstructured out-of-cell recreation, two hours per week of structured individual or group out-of-cell activities, and, to the extent possible, visitation, canteen, property and other privileges equivalent to the general prison population.

(2) If such prisoner has been excluded from segregation due to mental illness, he or she must be given two out-of-cell mental health treatment sessions per week in addition to the requirements of section 39A(d)(1).

SECTION 4. Said chapter 127, as so appearing, is hereby amended by inserting after section 39 and section 39A, the following section:

Section 39B. Non-disciplinary segregation procedural requirements; limitations.

(a) Prisoners shall be entitled to the procedural requirements set forth below before he or she can be held in non-disciplinary segregation, unless a the superintendent of the facility where the prisoner his held or his/her designee certifies in writing that housing the prisoner in the

179 general population prior to complying with these procedural requirements will pose an imminent
180 threat to the safety and security of the prison where the prisoner is housed. If the superintendent
181 or his/her designee so certifies, , a hearing before a Non-disciplinary Segregation Board shall be
182 conducted within five business days of the commencement of segregation. This period may be
183 extended up to thirty days if the commissioner or appropriate deputy commissioner certifies in
184 writing that providing a hearing prior to transfer will pose an imminent threat to the safety and
185 security of the prison where the prisoner is housed and that an extension of the hearing period is
186 necessary to ensure the integrity and reliability of the hearing.

187 (b) The Non-disciplinary Segregation Board shall be appointed by the commissioner
188 and shall consist of three individuals including at least one qualified mental health professional.

189 (1) Within 72 hours of the referral of a prisoner to a Non-disciplinary Segregation
190 Board, the prisoner shall be provided with a written referral summary that shall include the
191 specific aspects of the prisoner's record or other information that the Board may consider, the
192 name of any witnesses whom the presenting officer may call to testify, and copies of any
193 documents that will be introduced. With the written referral summary, the prisoner shall be
194 provided with request forms for making a written request for representation and for a
195 continuance.

196 (2) If the prisoner wishes to be represented by an attorney or law student, have certain
197 witnesses testify, or request a continuance he or she shall complete a written request form within
198 forty-eight hours of receiving said forms.

199 (3) A prisoner shall be permitted to request that the Board record the hearing and the
200 Board shall then do so. The recording shall be preserved by the Superintendent or designee and

shall be accessible to the prisoner or his representative for reference and, upon request, shall be provided with a duplicate copy, which shall be provided at no charge if the prisoner is indigent.

(4) In the event that a prisoner is illiterate or non-English speaking, or when the issues presented are complex, the Superintendent or designee shall appoint a staff member to assist the prisoner in preparing and presenting the prisoner's position at the hearing if the prisoner is unable to secure legal representation.

(5) Prisoners shall have a hearing before a Non-disciplinary Segregation Board to determine, based on a preponderance of the evidence, that the prisoner meets the requirements of section 39(c)(1) and (2). Any Non-disciplinary Segregation Board recommendation that the commissioner place the prisoner in non-disciplinary segregation shall be supported by a preponderance of the evidence that the prisoner meets said requirements.

(6) Within two days of the hearing, the Non-disciplinary Segregation Board shall serve a written decision on the prisoner which shall contain a description of the specific evidence relied on and a particularized statement of the reasons for the decision. The statement shall explain why the placement or retention in non-disciplinary segregation is for administrative and not disciplinary reasons.

(7) The prisoner shall receive a notice stating the prisoner's right to appeal and to submit written objections within five days of the prisoner's receipt of the Non-disciplinary Segregation Board's written decision. Any appeal and objections should be addressed to the Associate Commissioner of Programs, Treatment and Classification, and submitted by the prisoners or his or her representative to a staff person. The staff person shall deliver them to the correctional counselor before the close of his tour of duty. The correctional counselor shall

promptly submit the name of any prisoner who has filed an appeal to the Associate Commissioner of Programs, Treatment and Classification.

(8) No less than five and no more than ten weekdays after the prisoner's receipt of the Board's recommendation, the Associate Commissioner shall review the recommendation of the Board and any appeal or objections filed by the prisoner. Upon review, the Associate Commissioner shall either make his or her own recommendations regarding the placement or approve the recommendation. Any written statement of objections filed by the prisoner shall be attached to the Associate Commissioner's recommendation.

(9) Whether or not the prisoner has submitted an appeal, objections or statement, the commissioner or his designee shall review and act upon the recommendation of the board within five weekdays after review by the Associate Commissioner of Programs, Treatment and Classification. The commissioner's action shall be based upon substantial evidence in the record of the hearing. The Commissioner may sustain and adopt the recommendation in its entirety, modify it, order a rehearing, or entirely reject a recommendation of placement in non-disciplinary segregation. The commissioner shall specify and explain any aspects of his decision and reasoning which are different from those of the Board. If the Commissioner decides that contrary to the Board's recommendation, placement in non-disciplinary segregation is warranted, the commissioner shall allow five days from receipt of the commissioner's written decision in which to file a written statement or objections pursuant to subsection (3) above.

(b) Determinate sentencing to non-disciplinary segregation shall not be allowed. The department shall institute a program that allows every prisoner to earn his or her way out of non-

disciplinary segregation through positive behavior. The trajectory for a prisoner to earn his or her way out of such housing shall be graduated and must be less than ninety days.

(1) Within fifteen days of placement in non-disciplinary segregation, including any time served under section 39B(a), correctional authorities shall develop an individualized plan for the prisoner. If the prisoner has a mental health history or diagnosis, such plan shall be developed in consultation with mental health staff who are familiar with the prisoner.

(2) The plan shall include an assessment of the prisoner's needs, a strategy for correctional authorities and, when warranted, mental health staff to assist the prisoner in meeting those needs, and a statement of the expectations for the prisoner to progress toward fewer restrictions and back to general population, including specific privileges that will be allowed the prisoner once he/she meets certain benchmarks in his/her plan;

(3) Correctional authorities shall provide a copy of the plan to the prisoner and ensure the prisoner understands its contents. At intervals not to exceed 30 days, a team consisting of a correctional administrator and mental health clinician shall conduct and document an evaluation of each prisoner's progress under the individualized plan. The evaluation shall consider the prisoner's mental health status and address the extent to which the prisoner's behavior, measured against the plan, justifies the need to maintain, increase or decrease the level of controls and restrictions in place at the time of the evaluation and recommend whether the prisoner should be returned to a lower-level custody or removed from non-disciplinary segregation.

(4) If it is determined that the prisoner has substantially complied with the plan, the prisoner shall be removed from non-disciplinary segregation and returned to a lower custody level. Otherwise, the team must determine whether the prisoner's progress toward compliance

with the individual plan warrants a reduction of restrictions, increased programming, removal from non-disciplinary segregation and/or return to lower level custody.

(5) A decision by the team to retain a prisoner in non-disciplinary segregation shall be set forth in writing and shall be reviewed by a correctional administrator and approved, rejected or modified.

(c) In no instance shall a prisoner be subjected to non-disciplinary segregation for more than ninety days unless the department conducts a hearing pursuant to section 39B(a) of this chapter by which it establishes: by a preponderance of the evidence that the prisoner, within the previous ninety days, has committed an act which resulted in or was likely to result in serious injury or death to another; or by clear and convincing evidence that there is a significant risk that the prisoner will cause physical injury to prison staff or other prisoners if removed from non-disciplinary segregation. If a decision is made to maintain the prisoner in non-disciplinary segregation for longer than ninety days, the commissioner shall set forth in writing all other alternatives that have been considered and why those alternatives have been rejected, and shall set forth a plan for transitioning the prisoner out of non-disciplinary segregation. Any prisoner subject to non-disciplinary segregation for longer than ninety days shall be entitled to a hearing at least every forty-five days thereafter with the same protections set forth herein.

(d) Subsections (a) through (c) above shall apply to any prisoner who is categorically excluded from placement in non-disciplinary segregation in accordance with Section 39A(a) and (b), but who nevertheless cannot be housed in general population because they pose an immediate threat of personal injury to others.

SECTION 5. Said chapter 127, as so appearing, is hereby amended by inserting after section 39 and sections 39A and 39B, the following section:

Section 39C. Reentry from segregation.

Any prisoner who is within six months of his or her mandatory release date or parole release date shall not be placed in non-disciplinary segregation unless the commissioner, or his or her designee, certifies in writing, based on a preponderance of the evidence, that the presence of the prisoner in the general population would pose a serious risk of harm to others and all other less-restrictive options have been exhausted. The department shall report quarterly to the segregation oversight committee described in section 39D, or any successor committees, on the certifications made pursuant to this section 39C for the entire quarterly period and the reasons therefor.

(1) Any prisoner within six months of his or her mandatory release date or parole release date and who is held in segregation shall have meaningful access to reentry programming including but not limited to: housing assistance, assistance obtaining state and federal benefits, employment readiness training, and programming designed to help the person rebuild interpersonal relationships, such as anger management and parenting courses.

(2) The department shall prepare a reentry plan for every person who is held in segregation at any point within six months of his or her mandatory release date or parole release date.

SECTION 6. Said chapter 127, as so appearing, is hereby amended by inserting after section 39 and sections 39A, 39B, and 39C the following section:

Section 39D. Segregation oversight.

A segregation oversight committee shall be convened to gather information regarding the use of disciplinary segregation and non-disciplinary segregation in Massachusetts correctional institutions, jails and houses of correction, to determine the impact of such confinement on prisoners, rates of violence and self-harm within correctional institutions, recidivism, and incarceration costs.

(1) The members of the oversight committee shall be appointed by the judiciary committee of the Senate.

(2) The oversight committee will include a corrections or law enforcement expert, a former judge, and representation from a disability rights organization, a prisoners' rights organization, and the Massachusetts psychological association.

(3) The members of the oversight committee shall be provided full and unfettered access to all Massachusetts state prisons and houses of corrections, and shall be allowed to interview prisoners and staff for the purpose of monitoring compliance with this Act.

(4) The oversight committee shall gather information regarding:

(i) Criteria for placing a prisoner in non-disciplinary segregation;

(ii) Specialized training provided to staff working with prisoners in disciplinary and non-disciplinary segregation;

(iii) The effectiveness of step-down units to transition prisoners from disciplinary and non-disciplinary segregation to general population units or to the community;

328 (iv) The effect that reducing the use of segregation has on the rate of violence and
329 self-harm by prisoners and on recidivism rates; and

330 (v) Other relevant information as identified by the oversight committee.

331 (5) The oversight committee shall receive quarterly data and statistics from the
332 department and each sheriff concerning the following for each correctional institution, jail, and
333 house of correction, covering the entire quarterly period:

334 (i) The number of prisoners in disciplinary segregation;

335 (ii) The disciplinary sentence length of those prisoners in disciplinary segregation;

336 (iii) The number of prisoners in non-disciplinary segregation;

337 (iv) The length of time those prisoners have been held in non-disciplinary
338 segregation;

339 (v) The number of prisoners in disciplinary and non-disciplinary segregation,
340 respectively, with serious mental illness;

341 (vi) The number of prisoners in disciplinary and non-disciplinary segregation,
342 respectively, with a diagnosed mental illness;

343 (vii) The number of prisoners in disciplinary and non-disciplinary segregation,
344 respectively, with a significant cognitive impairment or identified learning disability;

345 (viii) The number of prisoners in disciplinary and non-disciplinary segregation,
346 respectively, who have requested reasonable accommodations for a disability while in
347 segregation;

348 (ix) The number of prisoners in disciplinary and non-disciplinary segregation,
349 respectively, who have received reasonable accommodations for a disability while in
350 segregation;

351 (x) The number of mental health professionals who work with prisoners in
352 disciplinary and non-disciplinary segregation, respectively;

353 (xi) The number of suicides and, separately, acts of non-lethal self-harm, committed
354 by prisoners held in disciplinary and non-disciplinary segregation, respectively;

355 (xii) The number of planned uses of force on prisoners held in disciplinary and non-
356 disciplinary segregation, respectively;

357 (xiii) The number of transfers to outside hospitals and psychiatric hospitals directly
358 from disciplinary and non-disciplinary segregation, respectively;

359 (xiv) The racial composition of prisoners in disciplinary and non-disciplinary
360 segregation, respectively;

361 (xv) The number of prisoners in disciplinary and non-disciplinary segregation,
362 respectively, who did not complete high school;

363 (xvi) The number of prisoners released directly from disciplinary and non-disciplinary
364 segregation, respectively, to the community;

365 (xvii) The number of prisoners released from disciplinary and non-disciplinary
366 segregation, respectively, within six months of release to the community;

367 (xviii) The number of prisoners released from disciplinary and non-disciplinary
368 segregation, respectively, due to mental decompensation;

369 (xix) The number of prisoners in non-disciplinary segregation who are in segregation
370 because they need protective custody; and

371 (xx) Other relevant data and statistics as identified by the oversight committee.

372 (6) The oversight committee shall publish a report compiling this information and
373 data annually, with the first report being published within one year of the passage of this Act.
374 The oversight committee shall make said report publicly available and shall deliver copies of
375 said report to all relevant legislative committees.

376 (7) The report of the segregation oversight committee shall offer recommendations
377 geared towards limiting the number of prisoners in disciplinary and non-disciplinary segregation
378 in Massachusetts and ensuring segregation is used as a tool of last resort in narrow, well-defined
379 circumstances. The recommendations shall include, but are not limited to:

380 (i) Recommendations as to how the department and each sheriff can adopt a step-
381 down program so that all prisoners in segregation can be returned to general population within
382 fifteen days;

383 (ii) Recommendations as to steps the department and each sheriff can take to abolish
384 the use of segregation;

385 (iii) Recommendations as to how the department and each sheriff can ensure that
386 prisoners experience continuity in programming during segregation;

(iv) Recommendations as to how the department and each sheriff can ensure that no prisoner from an excluded group, as defined in section 39A of chapter 127, is placed in segregation;

(v) Recommendations as to how the department and each sheriff can deliver meaningful mental health treatment to prisoners in segregation;

(vi) Recommendations as to how the department and each sheriff can limit the infractions resulting in segregation placement; and

(vii) Recommendations as to how the department and each sheriff can ensure that no prisoner is released directly from segregation to the community.

SECTION 7. Section 40 of said chapter 127, as so appearing, is hereby amended by:

Inserting in line 4 after the words “to an isolation unit” the following words: a segregation unit, disciplinary unit, or any cell where the prisoner is confined to his cell for approximately twenty-three hours per day for the purpose of disciplinary segregation.

Striking out the second paragraph and inserting in place the following paragraph: All isolation units, segregation units, disciplinary units, or any cell where the prisoner is confined to this cell for the purpose of disciplinary segregation, must provide light, ventilation, adequate sanitation facilities, adequate clothing, adequate furnishings, regular meals, and the opportunity for recreation at least one hour per day. Under the supervision of the department of mental health, all prisoners confined to isolation and disciplinary units shall be given periodic mental and psychiatric examinations, and shall receive such medical and psychiatric treatment as may be clinically indicated.

SECTION 8. Said chapter 127, as so appearing, is hereby amended by striking out section 41 and inserting in place thereof the following section:

(a) Subject to the requirements of section 39A of chapter 127, the superintendent or keeper of a jail or house of correction may set aside in such jail or house of correction one or more cells to be used as isolation units or segregation units, and for the enforcement of discipline may confine any prisoner thereto; but no prisoner shall be confined to such isolation unit for more than three days without informing the sheriff or the county commissioners thereof and of the reasons therefor; and in no case for more than ten days for any one offence.

All such isolation units and segregation units used for disciplinary segregation shall comply with the requirements of section 39(d) of chapter 127. Under the supervision of the department of mental health, all prisoners confined in disciplinary segregation shall be given periodic mental and psychiatric examinations, and shall receive such medical and psychiatric treatment as may be clinically indicated.

(b) Subject to the requirements of section 39A of this chapter, the superintendent of a jail or house of correction may hold a prisoner in non-disciplinary segregation only if, after a hearing and the issuance of a written decision:

(1) The prisoner has been found to have committed, while incarcerated with in the last five years, (i) an act of violence that resulted or was likely to result in serious injury or death to another, or occurred in connection with an act of non-consensual sex, or (ii) two or more discrete acts which cause serious disruption of prison operations; or (iii) an escape, attempted escape, or conspiracy to escape from within a security perimeter or custody, or both; and

429 (2) He or she has been determined to pose an immediate and significant threat to the
430 safety of other prisoners or to the orderly running of the institution.

431 All such isolation units and segregation units used for non-disciplinary segregation shall
432 comply with the requirements of section 39(d) of chapter 127. Under the supervision of the
433 department of mental health, all prisoners confined in non-disciplinary segregation shall be given
434 periodic mental and psychiatric examinations, and shall receive such medical and psychiatric
435 treatment as may be clinically indicated.