

SENATE No. 1255

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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:
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</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>

SENATE No. 1255

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1255) of James B. Eldridge, Tom Sannicandro, William N. Brownsberger, Gloria L. Fox and other members of the General Court for legislation to reduce recidivism, curb unnecessary spending, and ensure appropriate use of segregation. Public Safety and Homeland Security.

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.

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

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

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

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

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

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

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

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

28 “Serious mental illness,” constitutes:

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

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

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

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

42 SECTION 2.

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

45 Section 39. Segregation units; segregation; facilities.

46 (a) Subject to the requirements of section 39A and section 39B of chapter 127, at the
47 request of the superintendent of any correctional institution of the commonwealth, the
48 commissioner may authorize the confinement in a segregation unit within any correctional
49 institution of the commonwealth, of any prisoner whose continued retention in the general
50 institution population poses a substantial threat: (1) to the safety of others; (2) of damaging or
51 destroying property; or (3) to the operation of a state correctional facility. Segregation should be

52 for the briefest term and under the least restrictive conditions practicable and consistent with the
53 rationale for placement.

54 (b) No prisoner may be held in disciplinary segregation for longer than fifteen days,
55 including time spent in segregation previous to the disciplinary conviction. After fifteen days, a
56 prisoner may be held in non-disciplinary segregation only pursuant to the provisions of section
57 39B of this chapter.

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

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

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

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

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

73 (1) Recreation shall take place in a congregate setting, unless doing so would create a
74 significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or
75 the facility. If congregate recreation is denied to a prisoner in non-disciplinary segregation for
76 such reasons, a determination shall be made, written reasons provided to the prisoner, and the
77 prisoner shall be re-evaluated for recreation in a congregate setting on a weekly basis.

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

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

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

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

91 (6) Prisoners in non-disciplinary segregation shall have access to all vocational,
92 educational and rehabilitative programs comparable to the general population, to the extent
93 consistent with the safety and security of the institution. They shall be permitted to retain

94 program materials, complete program assignments, and continue upon return all uncompleted
95 programs they were in prior to placement in non-disciplinary segregation.

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

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

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

101 SECTION 3.

102 Said chapter 127, as so appearing, is hereby amended by inserting after section 39, the
103 following section:

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

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

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

111 (2) Pregnant;

112 (3) Deaf or Blind;

113 (4) Under 18 years of age; or

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

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

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

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

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

135 (ii) If the prisoner is not initially determined to have a serious mental illness or to be at
136 risk of substantial harm from segregation, and is placed in segregation, the prisoner shall be
137 evaluated by a qualified mental health professional at least once per week. Such professional
138 shall arrange for an out-of-cell meeting with any prisoner for whom a confidential meeting is
139 warranted in the clinician's professional judgment, and shall include: assessment of current
140 mental status and condition; assessment of current risk of suicide or other self-harming behavior;
141 and review of all available mental health records at the initial assessment and any new records
142 thereafter. If a prisoner refuses a face-to-face interview, the professional shall document in the
143 progress note all attempts made to engage with the prisoner. Any prisoner who is determined
144 after such an evaluation to have a serious mental illness or to be at risk of substantial harm from
145 segregation shall be removed from segregation within forty-eight hours of such determination.
146 Prisoners who are determined to have serious mental illness or be at risk of substantial harm
147 from segregation, but who are awaiting transfer to a secure treatment unit, shall be offered
148 additional mental health services as clinically indicated and as required by section 39A(d).

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

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

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

158 (d) A prisoner who has been determined to pose an immediate and significant threat
159 under the provisions of section 39 and section 39B of chapter 127, but who is excluded from
160 segregation by any provision of section 39A(a) and (b), may be held in segregation on an
161 emergency basis only if, within twenty-four hours of his or her placement in segregation, the
162 commissioner or designee certifies in writing: the reason why the prisoner may not be safely held
163 in the general population; efforts that are being undertaken to find appropriate housing, whether
164 within the department or through transfer to another jurisdiction; the status of such efforts, and
165 anticipated time frame for resolution. A copy must be provided to the prisoner.

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

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

174 SECTION 4.

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

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

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

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

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

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

200 (3) A prisoner shall be permitted to request that the Board record the hearing and the
201 Board shall then do so. The recording shall be preserved by the Superintendent or designee and
202 shall be accessible to the prisoner or his representative for reference and, upon request, shall be
203 provided with a duplicate copy, which shall be provided at no charge if the prisoner is indigent.

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

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

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

218 (7) The prisoner shall receive a notice stating the prisoner's right to appeal and to submit
219 written objections within five days of the prisoner's receipt of the Non-disciplinary Segregation
220 Board's written decision. Any appeal and objections should be addressed to the Associate
221 Commissioner of Programs, Treatment and Classification, and submitted by the prisoners or his
222 or her representative to a staff person. The staff person shall deliver them to the correctional
223 counselor before the close of his tour of duty. The correctional counselor shall promptly submit
224 the name of any prisoner who has filed an appeal to the Associate Commissioner of Programs,
225 Treatment and Classification.

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

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

241 the commissioner shall allow five days from receipt of the commissioner's written decision in
242 which to file a written statement or objections pursuant to subsection (3) above.

243 (b) Determinate sentencing to non-disciplinary segregation shall not be allowed. The
244 department shall institute a program that allows every prisoner to earn his or her way out of non-
245 disciplinary segregation through positive behavior. The trajectory for a prisoner to earn his or her
246 way out of such housing shall be graduated and must be less than ninety days.

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

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

256 (3) Correctional authorities shall provide a copy of the plan to the prisoner and ensure the
257 prisoner understands its contents. At intervals not to exceed 30 days, a team consisting of a
258 correctional administrator and mental health clinician shall conduct and document an evaluation
259 of each prisoner's progress under the individualized plan. The evaluation shall consider the
260 prisoner's mental health status and address the extent to which the prisoner's behavior, measured
261 against the plan, justifies the need to maintain, increase or decrease the level of controls and

262 restrictions in place at the time of the evaluation and recommend whether the prisoner should be
263 returned to a lower-level custody or removed from non-disciplinary segregation.

264 (4) If it is determined that the prisoner has substantially complied with the plan, the
265 prisoner shall be removed from non-disciplinary segregation and returned to a lower custody
266 level. Otherwise, the team must determine whether the prisoner's progress toward compliance
267 with the individual plan warrants a reduction of restrictions, increased programming, removal
268 from non-disciplinary segregation and/or return to lower level custody.

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

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

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

288 SECTION 5.

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

291 Section 39C. Reentry from segregation.

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

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

305 (2) The department shall prepare a reentry plan for every person who is held in
306 segregation at any point within six months of his or her mandatory release date or parole release
307 date. SECTION 6.

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

310 Section 39D. Segregation oversight.

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

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

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

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

324 (4) The oversight committee shall gather information regarding:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

372 (xv) Other relevant data and statistics as identified by the oversight committee.

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

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

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

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

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

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

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

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

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

397 SECTION 7.

398 Section 40 of said chapter 127, as so appearing, is hereby amended by:

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

402 Striking out the second paragraph and inserting in place the following paragraph: All
403 isolation units, segregation units, disciplinary units, or any cell where the prisoner is confined to

404 this cell for the purpose of disciplinary segregation, must provide light, ventilation, adequate
405 sanitation facilities, adequate clothing, adequate furnishings, regular meals, and the opportunity
406 for recreation at least one hour per day. Under the supervision of the department of mental
407 health, all prisoners confined to isolation and disciplinary units shall be given periodic mental
408 and psychiatric examinations, and shall receive such medical and psychiatric treatment as may be
409 clinically indicated.

410 SECTION 8.

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

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

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

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

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

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

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