

SENATE No. 1296

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 promote humane conditions of confinement.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|--------------------------------|-------------------------------------|------------------|
| <i>Cynthia Stone Creem</i> | <i>First Middlesex and Norfolk</i> | |
| <i>Ruth B. Balseer</i> | <i>12th Middlesex</i> | <i>1/23/2017</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>1/26/2017</i> |
| <i>Jack Lewis</i> | <i>7th Middlesex</i> | <i>1/27/2017</i> |
| <i>Barbara A. L'Italien</i> | <i>Second Essex and Middlesex</i> | <i>1/31/2017</i> |
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> | <i>1/31/2017</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>2/2/2017</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>2/2/2017</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>2/2/2017</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> | <i>2/3/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>2/3/2017</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>2/3/2017</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/3/2017</i> |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> | <i>2/3/2017</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>4/6/2017</i> |
| <i>Joseph A. Boncore</i> | <i>First Suffolk and Middlesex</i> | <i>5/15/2017</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>7/18/2017</i> |
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> | <i>9/28/2017</i> |

SENATE No. 1296

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1296) of Cynthia S. Creem, Ruth B. Balser, Jason M. Lewis, Jack Lewis and other members of the General Court for legislation to promote humane conditions of confinement. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote humane conditions of confinement.

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 most
2 recent official edition, is hereby amended by inserting the following definitions:

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

5 “Non-disciplinary segregation,” the segregation of a prisoner who poses a substantial
6 threat to the safety of others or to the safe and secure operation of the facility. Non-disciplinary
7 segregation includes all forms of segregation except disciplinary segregation.

8 “Segregation,” a housing placement where a prisoner is confined to a cell for at least 22
9 hours per day.

10 “Serious mental illness,” constitutes:

11 (1) A current diagnosis or recent significant history of one or more of the following
12 disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental
13 Disorders: (i) schizophrenia and other psychotic disorders; (ii) major depressive disorders; or (iii)
14 bipolar disorders, all types;

15 “Recent significant history” shall be defined as a diagnosis specified above in section (1)
16 upon discharge within the past three years from an inpatient psychiatric hospital or other
17 correctional facility.

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

23 (3) A diagnosis of one or more of the following disorders, as described in the most recent
24 edition of the Diagnostic and Statistical Mental Disorders that manifests with episodes of
25 psychosis or depression: (i) anxiety disorders, all types, (ii) trauma and stressor related disorders;
26 or (iii) severe personality disorders; or

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

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

33 “Section 39. Segregation units; segregation; facilities.

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

41 (b) All segregation units shall provide regular meals, fully furnished cells, adequate
42 sanitation facilities, adequate clothing, at least one hour per day of exercise and recreation,
43 outside if weather permits, rights of visitation and communication by those properly authorized,
44 and such other privileges as may be established by the superintendent or administrator.

45 Under the supervision of the department of mental health, all prisoners confined to
46 segregation units shall be given periodic mental and psychiatric examinations, and shall receive
47 such medical and psychiatric treatment as may be clinically indicated.

48 (c) Segregation units that house prisoners in non-disciplinary segregation should provide
49 living conditions that approximate those in general population, and, at a minimum, must meet the
50 following standards:

51 (1) Prisoners shall be offered two hours of out-of-cell recreation seven days per week.

52 (2) Prisoners shall have the same right to make canteen purchases and to retain
53 property in their cells as prisoners in the general population at the same facility, except where
54 inconsistent with the security of the unit.

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

59 (4) Prisoners shall have the same access to vocational, educational and rehabilitative
60 programs as the general population, to the extent consistent with the safety and security of the
61 unit.

62 (5) Prisoners shall be offered daily showers.

63 (6) Prisoners shall have access to a radio or television.

64 (7) Prisoners shall be eligible for and have opportunities to receive earned good time
65 credits pursuant to chapter 127, section 129D while in segregation.”

66 SECTION 3. Said chapter 127, Section 39A, as so appearing, is hereby amended by
67 striking the phrase “within a state correctional facility, as defined in section 1 of chapter 125”
68 after the phrase “Prior to placement in a segregation unit,” and by adding the word “daily” after
69 the words “shall make,” so that Section 39A subsection (a) shall read as follows:

70 “(a) Prior to placement in a segregated unit, all inmates shall be screened by a qualified
71 mental health professional to determine whether the inmate has a serious mental illness and
72 whether there are any acute mental health contraindications to placement in a segregated unit.

73 The screening shall be conducted in accordance with clinical standards adopted by the
74 department of correction.

75 A qualified mental health professional shall make daily rounds in each such segregated
76 unit and may conduct an out-of-cell meeting with any inmate for whom a confidential meeting is
77 warranted in the clinician's professional judgment. Inmates in such segregated units shall be
78 evaluated by a qualified mental health professional in accordance with clinical standards adopted
79 by the department of correction.”

80 SECTION 4. Said chapter 127, Section 39A subsection (b), as so appearing, is hereby
81 amended by: adding the words “as described in subsection (d),” after the words “of any person,”;
82 striking out the phrases, “or where no secure treatment bed is available,” and “in accordance with
83 clinical standards adopted by the department of correction” and replacing them with the words
84 “or who is otherwise at risk of suffering substantial harm in segregated housing”; by striking out
85 the words “for more than 30 days”; and by adding the words “or returned to general population”
86 after the words “placed in a secure treatment unit,” so that the first sentence of Section 39A
87 subsection (b) shall read as follows:

88 “Except in exigent circumstances that would create an unacceptable risk to the safety of
89 any person, a segregated inmate diagnosed with a serious mental illness or who is otherwise at
90 risk of suffering substantial harm in segregated housing shall not be housed in a segregated unit
91 and shall be placed in a secure treatment unit or returned to general population.”

92 SECTION 5. Said chapter 127, as so appearing, is hereby amended by inserting after
93 Section 39A subsection (b), the following paragraphs:

94 “(c) Except in exigent circumstances, no prisoner may be held in segregation if he or she:

95 (1) Is pregnant, is in the postpartum period, or has recently suffered a miscarriage or
96 terminated a pregnancy;

97 (2) Has a significant auditory or visual impairment;

98 (3) Is 21 years of age or younger;

99 (4) Is 65 years of age or older;

100 (5) Has a serious medical condition which cannot effectively be treated in segregated
101 confinement; or

102 (6) Would not otherwise be in segregation but for the fact that they are perceived to
103 be lesbian, gay, bisexual, transgender, or intersex.

104 (d) A prisoner who is excluded from segregation by any provision of section 39A may be
105 held in segregation because of exigent circumstances only if, within seventy-two hours of his or
106 her placement in segregation, the commissioner or designee, or sheriff or designee certifies in
107 writing: the reason why the prisoner may not be safely held in the general population; efforts that
108 are being undertaken to find appropriate housing; the status of such efforts, and anticipated time
109 frame for resolution. A copy must be provided to the prisoner.

110 (1) A prisoner who is held in segregation on an exigent basis under the provisions of
111 section 39A(d) must be offered at least three hours per day of out-of-cell activities.

112 (2) If such prisoner has been excluded from segregation due to mental illness, he or
113 she must be given two out-of-cell mental health treatment sessions per week.

114 (3) In no event shall a prisoner held in segregation on an exigent basis under any
115 provision of section 39A be held in segregation for longer than 15 consecutive days unless the
116 commissioner or designee, or sheriff or designee, reviews his or her status every seven days and
117 explains in writing what alternative placements have been considered and why no such
118 alternative is feasible.”

119 SECTION 6. Said chapter 127, as so appearing, is hereby amended by inserting after
120 section 39A the following section:

121 “Section 39B. Reentry from segregation.

122 (a) Any prisoner who is within 180 days of his or her mandatory release date or parole
123 release date shall not be placed in segregation unless the commissioner or the sheriff, or his or
124 her designee, certifies in writing, based on a preponderance of the evidence, that the presence of
125 the prisoner in the general population would pose a serious risk of harm to others and all other
126 less-restrictive options have been exhausted. The department or county correctional facility shall
127 make quarterly reports as to the number of certifications made pursuant to this section 39B and
128 the reasons therefor.

129 (b) Any prisoner within 180 days of his or her mandatory release date or parole release
130 date and who is held in a segregation unit shall be offered reentry programming including but not
131 limited to: housing assistance, assistance obtaining state and federal benefits, employment
132 readiness training, and programming designed to help the person rebuild interpersonal
133 relationships, such as anger management and parenting courses. The department or county
134 correctional facility shall prepare a written reentry plan for every person in a segregation unit
135 who is within 180 of his or her mandatory release date or parole release date.”

136 SECTION 7. Section 40 of chapter 127 of the General Laws, as so appearing, is hereby
137 amended by inserting the words “or segregation” after the word “isolation,” and the words
138 “including the Departmental Disciplinary Unit” after the word “unit,” so that the first paragraph
139 of Section 40 reads as follows:

140 “For the enforcement of discipline, an inmate in any correctional institution of the
141 commonwealth may, at the discretion of its superintendent, be confined, for a period not to
142 exceed fifteen days for any one offence, to an isolation or disciplinary segregation unit, including
143 the Departmental Disciplinary Unit.”

144 SECTION 8. Section 41 of chapter 127 of the General Laws, as so appearing, is hereby
145 amended by inserting at the beginning of the first paragraph the words “Subject to the
146 requirements of Sections 39, 39A, and 39B of Chapter 127 of the Massachusetts General Laws,”
147 and by inserting the word “or segregation” after word “isolation,” each time that it appears, so
148 that the first paragraph of Section 41 reads as follows:

149 “Subject to the requirements of Sections 39, 39A, and 39B of Chapter 127 of the
150 Massachusetts General Laws, the superintendent or keeper of a jail or house of correction may
151 set aside in such jail or house of correction one or more cells to be used as isolation or
152 segregation units, and for the enforcement of discipline may confine any inmate thereto; but no
153 prisoner shall be confined to such isolation or segregation unit for more than three days without
154 informing the sheriff or the county commissioners thereof and of the reasons therefor; and in no
155 case for more than ten days for any one offence.”