

SENATE No. 2413

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 provide criminal justice reform protections to all prisoners in segregated confinement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>9/24/2019</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>11/18/2019</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	<i>11/20/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>12/2/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>12/4/2019</i>

SENATE No. 2413

By Mr. Eldridge, a petition (accompanied by bill) (subject to Joint Rule 12) of James B. Eldridge for legislation to provide criminal justice reform protections to all prisoners in segregated confinement. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to provide criminal justice reform protections to all prisoners in segregated 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 2018
2 Official Edition, is hereby amended by inserting after the definition of “Victim” the following 4
3 definitions:-

4 “Segregated confinement”, a housing placement where a prisoner is separated from the
5 general population. The department shall only utilize the following types of segregated
6 confinement: (1) restrictive housing; (2) disciplinary restrictive housing; (3) secure adjustment
7 units; (4) secure treatment units; and (5) mental health watch.

8 “Secure adjustment unit”, a housing placement designed to provide access to cognitive
9 behavioral treatment, education, programs, structured recreation, leisure time activities and
10 mental health services for prisoners diverted from or released from restrictive housing.

11 “Health services unit”, a general population housing placement designed to deliver
12 healthcare services to prisoners.

13 “Mental health watch”, a housing placement intended to protect a prisoner from serious
14 self-harm.

15 SECTION 2. Said section 1 of said chapter 127, as so appearing, is hereby amended by
16 striking out, in lines 27 and 30, the words “restrictive housing” and inserting in place thereof the
17 following words:- segregated confinement

18 SECTION 3. Said section 1 of said chapter 127, as so appearing, is hereby amended by
19 striking out, in lines 31 and 32, the words “clause (iv) or (v) of”

20 SECTION 4. Said section 1 of said chapter 127, as so appearing, is hereby amended by
21 striking out the definition of “secure treatment unit” and inserting in place thereof the following
22 definition:-

23 “Secure treatment unit”, a housing placement of any security level that is designed to
24 provide an alternative to restrictive housing for prisoners diagnosed with serious mental illness,
25 and which provides clinically appropriate mental health treatment, programming, out of cell
26 time, education, programming, and other services in accordance with clinical standards adopted
27 by the department of correction in consultation with the department of mental health.

28 SECTION 5. Section 39 of said chapter 127, as so appearing, is hereby amended by
29 striking out, in line 10, the words “restrictive housing unit” and inserting in place thereof the
30 following words:- segregated confinement units other than mental health watch

31 SECTION 6. Said section 39 of said chapter 127, as so appearing, is hereby amended by
32 inserting after the word “authorized” in line 14 the following words:- commensurate with the
33 rights of general population prisoners

34 SECTION 7. Said section 39 of said chapter 127, as so appearing, is hereby amended by
35 inserting after the word “television” in line 19 the following words:- , in accordance with the
36 prisoner’s preference,

37 SECTION 8. Subsection (b) of said section 39 of said chapter 127, as so appearing, is
38 hereby amended by inserting after the first sentence the following two sentences:- If canteen
39 privileges or disability accommodations are deemed inconsistent with the security of the unit,
40 such determination must be reviewed by the placement review examiners at each placement
41 review, at which time the placement review examiners must override the determination if there is
42 not substantial evidence to support it. The placement review examiners shall provide written
43 explanation of their determination and all evidence relied upon, and all such determinations are
44 final agency decisions.

45 SECTION 9. Said section 39 of said chapter 127, as so appearing, is hereby amended by
46 striking out, in lines 34 and 41, the words “restrictive housing” and inserting in place thereof the
47 following words:- segregated confinement

48 SECTION 10. Said section 39 of said chapter 127, as so appearing, is hereby amended by
49 striking out, in lines 36, 37, 38, and 39, the words “or restrictive housing is otherwise clinically
50 contraindicated based on clinical standards adopted by the department of correction and the
51 qualified mental health professional’s clinical judgment” and inserting in place thereof the
52 following words:- . A prisoner with a serious mental illness or who is otherwise clinically
53 contraindicated for restrictive housing, disciplinary restrictive housing, or secure adjustment
54 units, based on clinical standards adopted by the department of correction and the qualified
55 mental health professional’s clinical judgment, shall only be placed in secure treatment units,

56 mental health watch, or general population units. Secure treatment units may be any level of
57 security deemed appropriate for the population. They shall meet minimum standards for mental
58 health treatment, programming, and education, as established by the department of correction's
59 director of behavioral health in consultation with the department of mental health. They shall
60 have minimum out of cell time of no less than five hours daily. All secure treatment units must
61 be co-directed by one correctional staff person and one clinical staff person, with equal authority
62 in the unit. All correctional officers stationed in secure treatment units shall receive specialized
63 training with a particular focus on psychiatric and cognitive disabilities.

64 SECTION 11. Said section 39 of said chapter 127, as so appearing, is hereby amended by
65 striking out, in line 47, the words "restrictive housing" and inserting in place thereof the
66 following words:- segregated confinement other than a secure treatment unit or mental health
67 watch

68 SECTION 12. Section 39A of said chapter 127, as so appearing, is hereby amended by
69 striking out, in lines 1 and 2, the words "restrictive housing" and inserting in place thereof the
70 following words:- segregated confinement other than a secure treatment unit or mental health
71 watch

72 SECTION 13. Said section 39A of said chapter 127, as so appearing, is hereby amended
73 by inserting after the words "restrictive housing" in line 4 the following words:- , disciplinary
74 restrictive housing, or a secure adjustment unit

75 SECTION 14. Said section 39A of said chapter 127, as so appearing, is hereby amended
76 by striking out, in lines 12, 17, 20, 22, 34, 35, 38, and 39, the words "restrictive housing" and
77 inserting in place thereof the following words:- segregated confinement

78 SECTION 15. Section 39B of said chapter 127, as so appearing, is hereby amended by
79 striking out, in lines 1, 4, 5, 17, 33, 34, and 35, the words “restrictive housing” and inserting in
80 place thereof the following words:- segregated confinement

81 SECTION 16. Said section 39B of said chapter 127, as so appearing, is hereby amended
82 by inserting after the word “39A” in line 4 the following words:- or subsection (a) of section 39H

83 SECTION 17. Said section 39B of said chapter 127, as so appearing, is hereby amended
84 by striking out, in lines 8 and 9, the words “not later than 6 months and”

85 SECTION 18. Said section 39B of said chapter 127, as so appearing, is hereby amended
86 by inserting after the words “restrictive housing” in lines 11 and 12 the following words:- ,
87 disciplinary restrictive housing, a secure adjustment unit, or a secure treatment unit following an
88 allegation or finding of a disciplinary breach

89 SECTION 19. Said section 39B of said chapter 127, as so appearing, is hereby amended
90 by striking out, in line 20, the word “or” and inserting in place thereof the following word:- and

91 SECTION 20. Said section 39B of said chapter 127, as so appearing, is hereby amended
92 by inserting after the word “writing” in line 20 the following words:- and be represented by an
93 advocate

94 SECTION 21. Said section 39B of said chapter 127, as so appearing, is hereby amended
95 by striking out, in lines 22 and 23, the words “the evidence relied on and the reasons for the
96 placement decision” and inserting in place thereof the following words:- (1) any negative effects
97 of segregated confinement on the prisoner and the extent to which such effects may be impacting
98 the prisoner’s behavior and perceived level of risk, (2) whether a reasonable probability of safety

99 for the prisoner and third parties could be achieved if the prisoner were confined to general
100 population or a less restrictive form of segregated confinement than the prisoner has been
101 assigned to, (3) the factual basis or bases for the placement decision, (4) written description of
102 any statements made by the prisoner during the hearing and (5) attaching all supporting records
103 and all records submitted by the prisoner

104 SECTION 22. Said section 39B of said chapter 127, as so appearing, is hereby amended
105 by striking out subsection (d).

106 SECTION 23. Said section 39B of said chapter 127, as so appearing, is hereby amended
107 by inserting after subsection (e) the following subsection:-

108 (f) If a placement review causes a prisoner to be held in segregated confinement for more
109 than 90 days over a one-year period, the placement review shall constitute a final agency
110 decision. The prisoner may file a complaint challenging the prisoner's placement in segregated
111 confinement in the superior court for the county in which the inmate is incarcerated or otherwise
112 being held or in Suffolk county in accordance with section 14 of chapter 30A. The superior court
113 shall determine if there is substantial evidence to support the determination of the placement
114 review. If there is substantial evidence to support the determination of the placement review then
115 the court shall: (1) uphold the placement in segregated confinement or (2) make other orders the
116 court deems consistent with justice. If there is not substantial evidence to support the
117 determination of the placement review then the court shall: (1) order that the prisoner shall be
118 housed in the general population; (2) order that the prisoner shall be housed in a less restrictive
119 form of segregated confinement than the prisoner is currently confined to; (3) order that the
120 prisoner shall be housed in the type of segregated confinement that the department assigned the

121 prisoner to; or (4) make other orders the court deems consistent with justice. The availability of
122 review under this section shall not be construed to limit any judicial remedies otherwise
123 available.

124 SECTION 24. Section 39C of said chapter 127, as so appearing, is hereby amended by
125 striking out, in line 4, the words “restrictive housing” and inserting in place thereof the following
126 words:- segregated confinement

127 SECTION 25. Section 39D of said chapter 127, as so appearing, is hereby amended by
128 striking out, in lines 2 and 3, the words “restrictive housing” and inserting in place thereof the
129 following words:- segregated confinement

130 SECTION 26. Said section 39D of said chapter 127, as so appearing, is hereby amended
131 by striking out subsection (b) and inserting in place thereof the following subsection:-

132 (b) The commissioner shall publish a report quarterly and provide directly to the
133 segregated confinement oversight committee and to the special commission to study the health
134 and safety of lesbian, gay, bisexual, transgender, queer and intersex prisoners in correctional
135 institutions, jails and houses of correction, as to each segregated confinement unit within each
136 state correctional facility, and every six months as to each segregated confinement unit within
137 each county correctional facility: (i) the number of prisoners as to whom a finding of serious
138 mental illness has been delineated by diagnosis and the number of such prisoners held for more
139 than 15 days; (ii) the number of prisoners who have committed suicide or committed non-lethal
140 acts of self-harm; (iii) the number of prisoners according to the reason for their segregated
141 confinement; (iv) a listing of prisoners with names redacted, including an anonymized
142 identification number that shall be consistent across reports, age, race, gender and ethnicity, and,

143 if known, the voluntary self-identified sexual orientation, as defined in section 3 of chapter
144 151B, and gender identity, as defined in section 7 of chapter 4, of each prisoner subjected to
145 segregated confinement, whether the prisoner was pregnant during time spent in restrictive
146 housing, whether the prisoner has an open mental health case, the date of the prisoner's
147 commitment to segregated confinement, the length of the prisoner's disciplinary term, if
148 applicable, and a summary of the reason for the prisoner's commitment; (v) the number of
149 placement reviews conducted for each type of segregated confinement and the number of
150 prisoners released from each type of segregated confinement as a result of such placement
151 reviews; (vi) the length of original assignment to and total time served in segregated confinement
152 for disciplinary purposes for each prisoner released from said confinement as a result of a
153 placement review; (vii) the count of prisoners released to the community directly or within 30
154 days of release from segregated confinement; (viii) the known disabilities of every prisoner who
155 was placed in segregated confinement during the previous 3 months; (ix) the number of mental
156 health professionals who work directly with prisoners in segregated confinement; (x) the number
157 of transfers to outside hospitals directly from segregated confinement (xi) such additional
158 information as the commissioner may determine; (xii) the number of prisoners subjected to each
159 type of segregated confinement; (xiii) the number of prisoners held in segregated confinement
160 for more than 15 days; (xiv) the number of prisoners 21 years of age or younger subjected to
161 each type of segregated confinement; (xv) the number of pregnant prisoners subjected to each
162 type of segregated confinement; (xvi) the racial and ethnic composition of prisoners subjected to
163 each type of segregated confinement; (xvii) the sexual orientation and gender identity
164 composition of prisoners subjected to each type of segregated confinement who have voluntarily
165 disclosed during Prison Rape Elimination Act (PREA) screenings or voluntarily disclose and

166 self-identify at any other time during their incarceration their sexual orientation, as defined in
167 section 3 of chapter 151B, or gender identity, as defined in section 7 of chapter 4; (xviii) the
168 number of prisoners subjected to multiple stays in each type of segregated confinement in a
169 given reporting period; (xix) the rate of recidivism for individuals that were subject to segregated
170 confinement.

171 The information shall be published in a commonly available electronic, machine readable
172 format.

173 SECTION 27. Said section 39D of said chapter 127, as so appearing, is hereby amended
174 by inserting the following section:-

175 (d) The commissioner with consultation from the administrators of county correctional
176 facilities, the department of public health, the department of youth services, the Fenway Institute,
177 and input from other stakeholders shall develop policies and procedures for prisoners to
178 voluntarily disclose their sexual orientation and/or gender identity during initial intake to state
179 and county correctional facilities and upon placement in segregated confinement. The collection
180 of sexual orientation or gender identity information voluntarily provided by prisoners placed in
181 or currently held in segregated confinement must be collected by members of the special
182 commission on the health and safety of lesbian, gay, bisexual, transgender, queer, and intersex
183 prisoners.

184 SECTION 28. Section 39E of said chapter 127, as so appearing, is hereby amended by
185 striking out, in line 2, the words “restrictive housing” and inserting in place thereof the following
186 words:- segregated confinement other than mental health watch

187 SECTION 29. Section 39F of said chapter 127, as so appearing, is hereby amended by
188 striking out, in lines 3 and 8, the words “restrictive housing” and inserting in place thereof the
189 following words:- segregated confinement other than mental health watch

190 SECTION 30. Said section 39F of said chapter 127, as so appearing, is hereby amended
191 by striking out, in line 4, the words “restrictive housing” and inserting in place thereof the
192 following words:- segregated confinement

193 SECTION 31. Section 39G of said chapter 127, as so appearing, is hereby amended by
194 striking out, in lines 1, 26, 27, 36, 40, 41, 42, 43, 44, 45, and 47, the words “restrictive housing”
195 and inserting in place thereof the following words:- segregated confinement

196 SECTION 32. Said section 39G of said chapter 127, as so appearing, is hereby amended
197 by striking out, in line 6, the word “9” and inserting in place thereof the following word:- 10

198 SECTION 33. Said section 39G of said chapter 127, as so appearing, is hereby amended
199 by inserting after the word “designee” in line 18 the following words:- , 1 of whom shall be an
200 individual who has personally experienced segregated confinement

201 SECTION 34. Said section 39G of said chapter 127, as so appearing, is hereby amended
202 by striking out, in line 29, the word “The” and inserting in place thereof the following words:-
203 All members of the

204 SECTION 35. Said section 39G of said chapter 127, as so appearing, is hereby amended
205 by inserting after the word “institutions” in lines 29 and 30, the following words:- , including for
206 surprise inspections,

207 SECTION 36. Subsection (c) of said section 39G of said chapter 127, as so appearing, is
208 hereby amended by inserting after the first sentence the following four sentences:- No
209 restrictions shall be placed on the ability of members of the committee to speak with the public
210 or the press about public aspects of the committee's work. The committee may ask the
211 department of correction and sheriff's departments to develop new data and information relating
212 to use of solitary confinement. The committee shall be entitled to review nonpublic information
213 and records, including personnel records and prisoner records. The committee shall be entitled to
214 review and obtain copies of all public information and records, including all public information
215 that is segregable from non-public information and records.

216 SECTION 37. Said chapter 127, as so appearing, is hereby amended by inserting after
217 section 39G the following section:-

218 Section 39H. (a) A prisoner may be placed on mental health watch only if it is
219 determined by a qualified mental health professional's clinical judgment that the prisoner
220 requires observation to protect them from a risk of serious self-harm.

221 (b) A prisoner who has been placed on mental health watch for more than 72 hours and
222 continues to require observation to protect them from a risk of serious self-harm, as determined
223 by a qualified mental health professional's clinical judgment, shall receive enhanced clinical care
224 at a specialized hospital.