

SENATE No. 905

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 collect data on LGBTQI prisoners held in restrictive housing.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|----------------------------|--|------------------|
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>1/22/2019</i> |
| <i>Rebecca L. Rausch</i> | <i>Norfolk, Bristol and Middlesex</i> | <i>1/22/2019</i> |
| <i>Dylan A. Fernandes</i> | <i>Barnstable, Dukes and Nantucket</i> | <i>1/23/2019</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>1/29/2019</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | <i>1/29/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/29/2019</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> | <i>1/30/2019</i> |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> | <i>1/30/2019</i> |
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> | <i>1/30/2019</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/31/2019</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>1/31/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/31/2019</i> |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>1/31/2019</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | <i>1/31/2019</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>2/1/2019</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/1/2019</i> |
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> | <i>2/1/2019</i> |

| | | |
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| <i>Eric P. Lesser</i> | <i>First Hampden and Hampshire</i> | <i>2/1/2019</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> | <i>2/1/2019</i> |
| <i>Harriette L. Chandler</i> | <i>First Worcester</i> | <i>2/1/2019</i> |
| <i>Nika C. Elugardo</i> | <i>15th Suffolk</i> | <i>2/4/2019</i> |
| <i>Patrick M. O'Connor</i> | <i>Plymouth and Norfolk</i> | <i>5/15/2019</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>7/8/2019</i> |

SENATE No. 905

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 905) of Julian Cyr, Jack Patrick Lewis, Rebecca L. Rausch, Dylan A. Fernandes and other members of the General Court for legislation to collect data on LGBTQI prisoners held in restrictive housing. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to collect data on LGBTQI prisoners held in restrictive housing.

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 93 of chapter 69 of the acts of 2018 is hereby amended by inserting
2 after the word “committee,” in line 87, the following words:- “and to the special commission to
3 study the health and safety of lesbian, gay, bisexual, transgender, queer and intersex prisoners in
4 correctional institutions, jails and houses of correction”.

5 SECTION 2. Section 93 of chapter 69 of the acts of 2018 is hereby amended by striking
6 out, in line 87, the word “annually” and inserting in place thereof the following word:- “bi-
7 annually”.

8 SECTION 3. Section 93 of chapter 69 of the acts of 2018 is hereby amended by inserting
9 after the word “made,” in line 89, the following words:- “delineated by diagnosis”.

10 SECTION 4. Section 93 of chapter 69 of the acts of 2018 is hereby amended by striking
11 out, in line 89, the figure “30” and inserting in place thereof the following figure:- “15”.

12 SECTION 5. Section 93 of chapter 69 of the acts of 2018 is hereby amended by striking
13 out, in line 91, the words “as to prisoners in disciplinary restrictive housing”.

14 SECTION 6. Section 93 of chapter 69 of the acts of 2018 is hereby by amended by
15 striking out, in line 94, the word “discipline” and inserting in place thereof the following words:-
16 “restrictive housing”

17 SECTION 7. Section 93 of chapter 69 of the acts of 2018 is hereby amended by inserting
18 after the word “ethnicity,” in line 93, the following words:- “and, if known, the voluntary self-
19 identified sexual orientation, as defined in section 3 of chapter 151B, and gender identity, as
20 defined in section 7 of chapter 4, of each prisoner subjected to restrictive housing, whether the
21 prisoner was pregnant during time spent in restrictive housing”

22 SECTION 8. Section 93 of chapter 69 of the acts of 2018 is hereby amended by inserting
23 after the word “housing,” in line 91, the following words:- “including, but not limited to, the
24 number of prisoners held in restrictive housing based on allegations or investigations of Prison
25 Rape Elimination Act (PREA) violations and the number of prisoners held in restrictive housing
26 who are victims of PREA violations”.

27 SECTION 9. Section 93 of Chapter 69 of the Acts of 2018 is here by amended by striking
28 out, in line 102, the word “and”.

29 SECTION 10. The 19th paragraph of section 93 of chapter 69 of the acts of 2018 is
30 hereby amendedby adding the following clauses:- (xii) the number of prisoners subjected to
31 restrictive housing; (xiii) the number of prisoners held in restrictive housing for more than 15
32 days; (xiv) the number of prisoners 21 years of age or younger subjected to restrictive housing;
33 (xv) the number of pregnant prisoners subjected to restrictive housing; (xvi) the racial and ethnic

34 composition of prisoners subjected to restrictive housing; (xvii) the sexual orientation and gender
35 identity composition of prisoners subjected to restrictive housing who have voluntarily disclosed
36 during Prison Rape Elimination Act (PREA) screenings or voluntarily disclose and self-identify
37 at any other time during their incarceration their sexual orientation, as defined in section 3 of
38 chapter 151B, or gender identity, as defined in section 7 of chapter 4; (xviii) the number of
39 prisoners subjected to multiple stays in restrictive housing in a given reporting period; (xix) the
40 rate of recidivism for individuals that were subject to restrictive housing;

41 SECTION 11. Section 93 of chapter 69 of the acts of 2018 is hereby amended by adding
42 after the 20th paragraph the following paragraph:- “The commissioner with consultation from
43 the administrators of county correctional facilities, the Massachusetts Department of Public
44 Health, the Massachusetts Department of Youth Services, the Fenway Institute, and input from
45 other stakeholders shall develop policies and procedures for prisoners to voluntarily disclose
46 their sexual orientation and/or gender identity during initial intake to state and county
47 correctional facilities and upon placement in restrictive housing. The collection of sexual
48 orientation or gender identity information voluntarily provided by prisoners placed in or
49 currently held in restrictive housing must be collected by members of the special commission on
50 the health and safety of lesbian, gay, bisexual, transgender, queer, and intersex prisoners”.

51 SECTION 12. Section 218 of chapter 69 of the acts of 2018 is hereby amended by
52 striking out subsections (b) and (c), and inserting in place thereof the following subsections:-

53 (b) The special commission shall consist of 10 members: 1 of whom shall be appointed
54 by the department of correction who works in corrections; 1 of whom shall be a sheriff appointed
55 by the Massachusetts Sheriffs Association; 1 of whom shall be a former judge appointed by the

56 chief justice of the supreme judicial court; 1 of whom shall be appointed by the governor who
57 shall be a representative of a healthcare provider with expertise in transgender healthcare; 1 of
58 whom shall be appointed by the national association of social workers; 1 of whom shall be
59 appointed by Prisoners' Legal Services; and 4 members shall be appointed by the attorney
60 general, 2 of whom shall be a representative of an organization specializing in the advocacy,
61 education, direct service and organizing of currently and formerly incarcerated lesbian, gay,
62 bisexual, transgender and queer individuals and 2 of whom shall be a representative of legal
63 advocates with expertise in advocating for lesbian, gay, bisexual, transgender, queer and intersex
64 individuals in the criminal justice system.

65 (c) The members of the special commission shall be provided access to all state prisons
66 and houses of correction in the commonwealth and shall be allowed to interview prisoners and
67 staff to the extent practicable. The special commission shall gather information that includes, but
68 shall not be limited to: (i) the number of prisoners who have received diagnoses of gender
69 dysphoria or transition-related healthcare; (ii) the number of prisoners who have been denied
70 diagnoses of gender dysphoria or transition-related healthcare; (iii) the number of denied
71 requests for an alternative housing or facility placement by prisoners in connection with their
72 gender identity and the reasons for the denial; (iv) the sexual orientation and gender identity
73 composition of prisoners held in restrictive housing who have voluntarily disclosed and self-
74 identified their sexual orientation, as defined in section 3 of chapter 151B, and/or gender
75 identity, as defined in section 7 of chapter 4; and (v) training provided to department staff and
76 contracted health professionals on lesbian, gay, bisexual, transgender, queer and intersex cultural
77 competency.