

HOUSE No. 3956

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes and Liz Miranda

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 creating an independent correctional oversight office to facilitate the recommendations of the Special Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/20/2023</i>
<i>Liz Miranda</i>	<i>Second Suffolk</i>	<i>1/20/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/15/2023</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/15/2023</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>7/13/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>11/15/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>11/15/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>11/15/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>11/15/2023</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>11/15/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>11/15/2023</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>11/15/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>11/15/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>11/15/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/30/2024</i>
<i>Pavel M. Payano</i>	<i>First Essex</i>	<i>1/30/2024</i>

HOUSE No. 3956

By Representative Holmes of Boston and Senator Miranda, a joint petition (accompanied by bill, House, No. 3956) of Russell E. Holmes, Liz Miranda and others for legislation to authorize an independent correctional oversight office to facilitate the recommendations of the Special Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act creating an independent correctional oversight office to facilitate the recommendations of the Special Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth.

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. The General Court hereby adopts the following findings of the Special
2 Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth
3 Final Report:

4 (i) Structural racism exists within commonwealth’s correctional system resulting in the
5 disparate treatment and impact of Black, Indigenous, and People of Color (BIPOC) including
6 incarcerated individuals, correctional staff and other intersecting identities including LGBTQ+,
7 immigrant status and language; and

8 (ii) Structural racism within correctional facilities manifests in 4 forms:

9 (1) Institutional Racism. This form of racism includes policies, procedures and cultural
10 practices of commonwealth's correctional system that perpetuate racial inequality. Such
11 inequalities are most prominently in healthcare education, access, diagnosis, and treatment;
12 services to BIPOC immigrants and English Language Learners; cultural and ethnic affinity group
13 programming and services; job and workforce development opportunities; data systems tracking
14 staff and incarcerated individual experiences; and the lack of transparency in budgeting and
15 decision-making;

16 (2) Systemic Racism. The joint operation of institutions operating within and in
17 conjunction with the commonwealth's correctional system that produce racialized outcomes,
18 even in the absence of racist intent;

19 (3) Interpersonal Racism. The individual interactions of correctional community
20 members, including incarcerated persons and correctional staff, within commonwealth's
21 correctional system that result in the disparate treatment of BIPOC correctional community
22 members, including incarcerated persons and staff; and

23 (4) Internalized Racism. This includes individual and community attitudes, beliefs and
24 prejudices about race held by commonwealth's correctional system community members that
25 result in disparate treatment and impact of BIPOC correctional community members, including
26 incarcerated persons and correctional staff.

27 SECTION 2. Chapter 12A of the General Laws is hereby amended by adding the
28 following section:-

29 Section 16. (a) As used in this section the following terms shall, unless the context clearly
30 requires otherwise, have the following meanings:

31 “Administrator”, a person charged with administration of a program, an office or a
32 division of the department or administration of a private agency.

33 “BIPOC”, Black, Indigenous and People of Color.

34 “Correctional community members”, incarcerated persons and correctional staff who
35 identify as BIPOC.

36 “Correctional facility”, any building, enclosure, space, structure, or vehicle used for the
37 custody, control and rehabilitation of committed offenders or of such other persons as may be
38 placed in custody therein in accordance with law regardless of whether the facility is owned,
39 operated, or controlled by a county sheriff or by the department of correction; provided however,
40 this shall not include the facilities operated by the department of youth services.

41 “Department”, department of correction, house of corrections and county jails.

42 “Private agency”, an entity that contracts with the department or contracts to provide
43 services to another entity that contracts with the department.

44 “Record”, any recording in written, audio, electronic transmission, or computer storage
45 form, including but not limited to a draft, memorandum, note, report, computer printout, notation
46 or message, and includes but is not limited to medical records, mental health records, case files,
47 clinical records, financial records and administrative records.

48 (b) There is hereby established within the office an anti-racism division. The division
49 shall be called the Inclusion, Diversity, Anti-Racism, and Equity Unit, hereinafter referred to as
50 IDAREU.

51 (c)(1) There shall be in the office an anti-racism corrections inspector general, who shall
52 be the administrative head of division and who shall be appointed by the attorney general, the
53 state auditor and the chair of the black and latino caucus and confirmed by a majority vote of the
54 community council for a term of 5 years. The person so appointed shall be selected without
55 regard to political affiliation and solely on the basis of integrity, expertise in the area of structural
56 racism including at least 5 years experience designing and implementing anti-racist strategies,
57 tools and materials and demonstrate ability in statistics, law, management, public administration,
58 investigation, criminal justice administration or other closely related fields.

59 (2) In case of a vacancy in the position of anti-racism corrections inspector general, their
60 successor shall be appointed in the same manner for the unexpired term. No person shall be
61 appointed for more than 2 five-year terms.

62 (3) Appointing authorities shall make due efforts to assure that BIPOC community
63 members have notice when the position is vacant.

64 (4) No former or current employee of the department of correction or county correctional
65 facility shall be appointed to the position within 10 years after such former or current period of
66 service with the department or county.

67 (5) The anti-racism inspector general may be removed from office, for cause, by a
68 majority vote of the attorney general, the chair of the black and latino caucus and a majority vote
69 of members of the community advisory board. Such a cause may include substantial neglect of
70 duty, gross misconduct or conviction of a crime. The reasons for removal of the anti-racism
71 corrections inspector general shall be stated in writing and shall include the basis for such
72 removal. Such writing shall be sent to the clerk of the senate, the clerk of the house of

73 representatives and to the governor at the time of the removal and shall be deemed to be a public
74 document.

75 (d)(1) There shall be an anti-racism corrections inspector general community council
76 which shall consist of 10 members including the attorney general or a designee, the state auditor
77 or a designee, a designee of Prisoners' Legal Services of Massachusetts, 2 members appointed by
78 the speaker of the house of representatives none of whom may be members of the General Court,
79 2 members appointed by the president of the senate none of whom may be members of the
80 General Court, and 3 members appointed by the black and latino caucus none of whom may be
81 members of the General Court.

82 (2) At least 1 member of the council shall be an immediate family member of an
83 incarcerated person serving in a department correctional facility at the time of their appointment;
84 at least one additional member shall be an immediate family member of an incarcerated person
85 who served in a county correctional facility within the last 5 years at the time of their
86 appointment; at least 1 additional member shall be a formerly incarcerated person who served in
87 a department correctional facility within the last 5 years at the time of their appointment; at least
88 1 additional member shall be a formerly incarcerated person who served in a county correctional
89 facility within the last 5 years at the time of their appointment. At least 5 council members shall
90 be directly impacted by structural racism.

91 (3) Appointing authorities shall make due effort to assure BIPOC populations have notice
92 when advisory board positions are vacant.

93 (4) The appointed members shall serve for a term of 5 years and shall be compensated for
94 work performed for the anti-racism corrections inspector general council at such rate as the

95 secretary of administration shall determine and shall be reimbursed for expenses necessarily
96 incurred in the performance of their duties. The anti-racism corrections inspector general shall
97 meet with the council at least quarterly and may consult or request the assistance of members of
98 the anti-racism community council with respect to the duties and responsibilities of the office.

99 (e)(1) The anti-racism corrections inspector general may, subject to appropriation,
100 appoint and may remove such employees, as they deems necessary to perform the duties of their
101 office.

102 (2) With the exception of the attorney general, and the state auditor, no member of the
103 anti-racism corrections inspector general council or officer or employee of IDAREU shall hold,
104 or be a candidate for, any elective public office while an officer or employee, or for 3 years
105 thereafter, nor shall he hold office in any political party or political committee, or participate in
106 any political campaign of any candidate for public office while an officer or employee.

107 (3) The anti-racism inspector general, with the advice and consent of the inspector
108 general and the anti-racism corrections community council may apply for and receive federal
109 funds in order to fulfill the duties and responsibilities of the office.

110 (f) IDAREU shall act to dismantle structural racism and ensure the equitable treatment of
111 all prisoners and correctional staff in the day-to-day operations of commonwealth's correctional
112 system by assuring accountability, transparency and compliance with anti-racism standards as
113 established by the office.

114 (g)(1) The anti-racist corrections inspector general may investigate, inspect, examine,
115 review, or otherwise assess any aspect of corrections facilities or systems as it relates to the day-
116 to-day operations or conditions including, but not limited to:

- 117 (i) canteen, inmate benefit funds and disbursements
- 118 (ii) searches including cell searches, pat searches, strip or bodily searches;
- 119 (iii) classification;
- 120 (iv) covid-19;
- 121 (v) educational, vocational and other programming;
- 122 (vi) institutional employment and re-instatement of employments upon discipline;
- 123 (vii) gang designation;
- 124 (viii) staff recruitment, training, supervision, and discipline;
- 125 (ix) food services;
- 126 (x) inmate funds;
- 127 (xi) mail distribution and dissemination;
- 128 (xii) incarcerated person deaths, injuries, or harassment;
- 129 (xiii) housing;
- 130 (xiv) incidents of assault, battery, or sexual misconduct;
- 131 (xv) medical or mental health care, including care provided to incarcerated persons by
- 132 third parties;
- 133 (xvi) violence among incarcerated persons;
- 134 (xvii) conditions of confinement;

- 135 (xviii) incarcerated person disciplinary processes;
- 136 (xix) incarcerated person grievance processes;
- 137 (xx) substance use disorder treatment;
- 138 (xxi) family visitation and communication practices;
- 139 (xxii) rehabilitation, reentry, and integration practices;
- 140 (xxiii) misidentification;
- 141 (xxiv) personal property;
- 142 (xxv) re-entry services; and
- 143 (xxvi) use of force

144 (2) The anti-racism corrections inspector general shall review legislation and regulations
145 relating to programs and operations of corrections and shall make recommendations concerning
146 the effect of such legislation or regulation in an effort to dismantle structural racism.

147 (3) The anti-racism corrections inspector general may utilize resources necessary to
148 effectively perform its duties, including but not limited to, conducting interviews with
149 incarcerated community members without molestation from the department or county, and
150 utilizing such tools as surveys, documents, records, reports, statistics and studies to develop and
151 implement minimum anti-racism standards and policies in corrections.

152 (4) The anti-racism corrections inspector general shall conduct a comprehensive review
153 of all correction records and data collection processes for the purpose of establishing and

154 implementing a statewide uniform racial data collection system. The data collected shall be
155 disaggregated by age, race, ethnicity, language, sex, gender identity and sexual orientation. Such
156 data shall be used to track and monitor the day-to-day operations of the department and county
157 and to alleviate the adverse impact of structural racism and ensure correctional compliance with
158 applicable laws, regulations and policies as related to the health, safety, welfare and
159 rehabilitation of incarcerated persons.

160 (5) The anti-racism corrections inspector general shall investigate thoroughly and
161 completely, all grievances and complaints alleging disparate treatment or impact of BIPOC
162 correctional community members. Such investigations shall be performed independently without
163 regard for department and county processes or findings.

164 (6) The anti-racism corrections inspector general shall regularly confer with the anti-
165 racism corrections inspector general co mmunity council and its designees for input into the
166 office's activities and priorities. Additional input shall be sought from impacted community
167 members at large which shall include a minimum quarterly public meeting.

168 (7) The anti-racism inspector general shall work to identify other state agencies
169 responsible for investigating, auditing, reviewing, or evaluating the management and operation
170 of state agencies, and coordinate with these agencies to share information in the furtherance of
171 this office's duties.

172 (8) The anti-racism corrections inspector general shall maintain, monitor, and provide a
173 system of response for a statewide toll-free telephone number, a collect telephone number, a
174 website, and a mailing address for the receipt of grievances, complaints and inquiries relating to
175 structural racism in corrections.

176 (9) The anti-racism corrections inspector general shall provide, information to
177 incarcerated persons, representatives of incarcerated persons, agencies working with incarcerated
178 persons, impacted family members, and department and county staff, as it relates to the duties
179 and functions of the offices.

180 (10) The anti-racism corrections inspector general may identify and implement ways in
181 which management functions can better assist in the performance of the duties and functions of
182 the office.

183 (h) The office shall be independent of any supervision or control by any executive
184 agency.

185 (i) The office shall have all powers necessary or convenient to carry out and effectuate its
186 purposes, including, but not limited to, the power to:

187 (i) surveying all prisoners housed in the department and county to establish baseline
188 racial data, including surveying incarcerated persons to allow for an independent assessment of
189 the racial make-up and other identities of incarcerated persons;

190 (ii) Initiate and conduct investigations to carry out and effectuate its purpose;

191 (iii) Identify systemic issues and responses relating to dismantling structural racism in
192 corrections upon which the department and county shall implement

193 (iv) Identify systemic issues and responses relating to dismantling structural racism in
194 corrections upon which the Governor, Legislature, Attorney General or other authorities as
195 identified by the office shall act;

196 (v) recommend and facilitate the implementation of minimum statewide anti-racism
197 standards for correctional operations;

198 (vi) hire and employ staff to perform duties and exercise the same powers as the anti-
199 racism corrections inspector general;

200 (vii) ensure compliance with relevant statutes, rules, regulations, and policies concerning
201 corrections facilities, services, and treatment of incarcerated persons under the jurisdiction of the
202 department and within each county;

203 (viii) hire and employ staff or otherwise appoint designees to perform duties and exercise
204 the same powers as the anti-racism corrections inspector general;

205 (ix) enter into agreements or other transactions with a person, including, but not limited
206 to, a public entity or other governmental instrumentality or authority in connection with its
207 powers and duties of this office;

208 (x) execute all instruments necessary or convenient for accomplishing the intended
209 purpose of this office;

210 (xi) enter into agreements or other transactions with a person, including, but not limited
211 to, a public entity or other governmental instrumentality or authority in connection with the
212 powers and duties of this office;

213 (xii) appear on its own behalf before boards, commissions, departments or other agencies
214 of municipal, state or federal government;

215 (xiii) apply for and accept subventions, grants, loans, advances and contributions of
216 money, property, labor or other things of value from any source, to be held, used and applied for
217 its purposes; and

218 (xiv) provide and pay for advisory services and technical assistance as may be necessary
219 in its judgment to carry out this chapter and fix the compensation of persons providing such
220 services or assistance.

221 (j) The anti-racism corrections inspector general, its employees, designee or
222 organizational members of the community council working in furtherance of the office's
223 intended purposes may enter any part or all of any place where prisoners in this state are kept and
224 shall be immediately admitted to such place as they desire.

225 (k) The anti-racism corrections inspector general, its employees, designee or
226 organizational members of the community council working in furtherance of the office's
227 intended purposes may consult and confer with any prisoner, department and county employees,
228 privately and confidentially without molestation. Such communications may be both formally
229 and informally, in person, by video conference, by phone, and by mail.

230 (l) The anti-racism corrections inspector general may hold public hearings, subpoena
231 witnesses and documents and to require that witnesses testify under oath.

232 (m) The anti-racism corrections inspector general may make referrals to any other civil or
233 criminal enforcement authority as it may see fit.

234 (n) Failure of the department or county to cooperate or otherwise interfere with the
235 performance of the duties of this office shall result in sanctions, fines or demotion. The office,

236 for just cause, may impose fines, demote correctional administrators and staff, or otherwise limit
237 correctional staff interactions with incarcerated persons and their property until such time
238 deemed necessary by the office. All determinations shall be made in writing and subject to
239 appeal and corrective action by the department or county within 90 days. The department or
240 county shall respond in writing to the determination to impose fines, sanctions or demotion of
241 staff within 30 days of the decision. Failure to respond shall make null and void the opportunity
242 for appeal by the department or county.

243 (o)(1) The anti-racism corrections inspector general has the right to access, inspect, and
244 copy any information, records, documents, or video or audio recordings in the possession or
245 control of the department or county that the anti-racism corrections inspector general considers
246 necessary. No claim of restriction or privilege under state law shall limit the anti-racism
247 corrections inspector general's rights under this paragraph. The department or county shall assist
248 the corrections inspector general in obtaining any necessary releases for those documents which
249 are restricted or privileged under federal law.

250 (2) Following a written demand from the anti-racism corrections inspector general, the
251 department or county shall provide the requested material within 20 days unless the anti-racism
252 corrections inspector general consents to an extension of that time frame. Any failure to obey the
253 request may be punished by imposition of fines or sanctions. Where the material requested by the
254 anti-racism corrections inspector general pertain to an incarcerated person's death, threats of
255 bodily harm including, but not limited to, sexual or physical assaults, or the denial of necessary
256 medical treatment, the material shall be provided within 5 days unless the anti-racism corrections
257 inspector general consents to an extension of that time frame.

258 (3) Upon notice and request by the anti-racism corrections inspector general, a state,
259 county, or municipal government agency, other than the department or a county sheriff, that has
260 information, records, documents, or video or audio recordings relevant to a complaint or an
261 investigation conducted by the anti-racism corrections inspector general shall provide the anti-
262 racism corrections inspector general with access to the material not later than 20 days unless the
263 anti-racism corrections inspector general consents to an extension of that time frame.

264 (4) Disclosure of any information, records, documents, or video or audio recordings in
265 the possession or control of the department or county as requested by the anti-racism corrections
266 inspector general shall not be released to the public. The office may release information from the
267 department or county in the form of reports and other informational tools developed by the office
268 in performance of his duties and responsibilities.

269 (5) The anti-racism corrections inspector general shall work with the department or
270 county to minimize disruption to the departments or county's operations due to the anti-racism
271 corrections inspector general activities and shall comply with the department's or county's
272 security clearance processes, provided those processes do not, in the sole judgment of the anti-
273 racism corrections inspector general, impede the anti-racism corrections inspector general from
274 carrying out the duties and intended purpose of this office.

275 (6) The anti-racism corrections inspector general shall conduct investigations, audits and
276 reports relating to the administration of the programs and operations of the department and
277 county, and may make recommendations to address any identified issues as it relates to
278 dismantling structural racism. At the conclusion of such investigation, the anti-racism corrections

279 inspector general shall produce a public report on the outcome of the investigation, which may
280 include any recommendations to the department or county.

281 (7) Upon request by the anti-racism corrections inspector general, the department or
282 county shall, within the time specified, inform the anti-racism corrections inspector general about
283 any action taken on the recommendations or the reasons for not complying with the
284 recommendations and an anticipated timeline for completion. The department and county shall
285 be provided with a specified time when sanctions or fines may be imposed for any failure to
286 comply with the recommendations of the office.

287 (8) The anti-racism inspector general shall make public the results of its findings after
288 reasonable notice to the department and county. Correctional administrators may be provided an
289 opportunity to review reports and provide feedback about them to the anti-racism corrections
290 inspector general before their dissemination to the public; provided, however that the release of
291 the reports is not subject to approval from any entity or person outside the office nor it is
292 contingent of the review of the report by the facility. Reports shall apply legal requirements, best
293 correctional practices, and other criteria to objectively and accurately review and assess a
294 facility's policies, procedures, programs, and practices; identify systemic problems and the
295 reasons for them; and recommend possible solutions to those problems as it pertains to
296 dismantling structural racism.

297 (p)(1) Annually, on or before September 15, the anti-racism inspector general shall
298 provide to the legislature, the governor, the attorney general, and community council a summary
299 of reports and investigations made under the IDAREU for the preceding year. The summary
300 provided shall be provided electronically. The summaries shall include recommendations and an

301 update on the status of recommendations made in prior summaries, if any. The recommendations
302 may address issues discovered through investigations, evaluations, surveys, inspections, reviews
303 and other related means of performing the duties of this office that will: (i) increase
304 accountability and legislative oversight of Commonwealth's correctional system; (ii) improve
305 operations of the department and county; (iii) deter and identify structural racism in correction
306 polices, practices, and regulations; and (iv) identify inconsistencies between statutory
307 requirements and requirements as established by this office in an effort to dismantle structural
308 racism. The summaries shall not contain any confidential or identifying information concerning
309 the subjects of the reports and investigations.

310 (2) Within the discretion of the anti-racism inspector general, summaries of reports,
311 investigations and other job functions in the furtherance of this offices purpose shall be published
312 on the office's website and made accessible to incarcerated person quarterly.

313 (q) Any person who has authority to recommend, approve, direct or otherwise take or
314 affect action against incarcerated persons or correctional employees shall not, with respect to
315 such authority:

316 (i) take any action against an incarcerated person or correctional employee because of the
317 disclosure of information by said person to the office which the person reasonably believes
318 evidences wrongdoing under the office;

319 (ii) take any action against an incarcerated person or correctional employee as a reprisal
320 for the submission of an allegation of wrongdoing to the office by such person; or

321 (iii) take any action against an incarcerated person or correctional employee as a reprisal
322 for providing information or testimony pursuant to an investigation by the office.