

SENATE No. 1545

The Commonwealth of Massachusetts

PRESENTED BY:

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:	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>3/2/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/2/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/6/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>11/15/2023</i>
<i>Pavel Payano</i>	<i>First Essex</i>	<i>1/8/2024</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>1/10/2024</i>
<i>Robyn K. Kennedy</i>	<i>First Worcester</i>	<i>1/24/2024</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>1/29/2024</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/6/2024</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/6/2024</i>

SENATE No. 1545

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 1545) of Liz Miranda, Rebecca L. Rausch, Patricia D. Jehlen and Joanne M. Comerford for legislation to create an independent correctional oversight office to facilitate the recommendations of the Special Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth. Public Safety and Homeland Security.

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: FACT FINDING

2 Whereas, the Special Legislative Commission on Structural Racism in Correctional
3 Facilities of the Commonwealth Final Report finds:

4 (a) Structural racism exists within Massachusetts Corrections 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, language, etc.

8 (b) Structural racism within Massachusetts correctional facilities manifests in four
9 forms:

1. Institutional Racism – this form of racism includes policies, procedures and cultural practices of Massachusetts corrections that perpetuate racial inequality. Such inequalities are most prominently in healthcare education, access, diagnosis, and treatment; services to BIPOC immigrants and English Language Learners; cultural and ethnic affinity group programming and services; job and workforce development opportunities; data systems tracking staff and incarcerated individual experiences; and the lack of transparency in budgeting and decision-making;

2. Systemic Racism – the joint operation of institutions (i.e. institutional arrangements and interactions) operating within and in conjunction with Massachusetts corrections that produce racialized outcomes, even in the absence of racist intent;

3. Interpersonal Racism – the individual interactions of Correctional community members, including incarcerated persons and correctional staff, within Massachusetts corrections that result in the disparate treatment of BIPOC correctional community members, including incarcerated persons and staff; and

4. Internalized Racism –includes individual and community attitudes, beliefs and prejudices about race held by Massachusetts corrections community members that result in disparate treatment and impact of BIPOC correctional community members, including incarcerated persons and correctional staff.

Whereas, the Special Legislative Commission on Structural Racism in Correctional Facilities of the Commonwealth recommends enactment of legislation mandating the creation of a robust data systems, analysis and reporting with independent oversight to allow for the collection and analysis of racial demographics disaggregated by age, race and ethnicity,

language, sex, gender identity, and sexual orientation; to track and monitor the experiences of BIPOC correctional community members in the day-to-day operations of corrections; and gauge progress dismantling structural racism in Massachusetts Corrections.

SECTION 2. The General Laws are hereby amended by inserting after section 15 of chapter 12A: Office of Inspector General the following:

Chapter XX

INDEPENDENT CORRECTIONAL OVERSIGHT OF MATTERS RELATING TO STRUCTURAL RACISM

Section 1. Short Title – Correctional Oversight to End Structural Racism

Section 2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

“Administrator” means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;

“BIPOC” referring to Black, Indigenous and People of Color;

“Correctional community members” means incarcerated persons and correctional staff who identify as Black, Indigenous Person of Color;

“Correctional facility”, any building, enclosure, space, structure, or vehicle used for the custody, control and rehabilitation of committed offenders or of such other persons as may be placed in custody therein in accordance with law regardless of whether the facility is owned,

operated, or controlled by a county sheriff or by the department of correction; provided however, this shall not include the facilities operated by the department of youth services;

“Department” means the Massachusetts Department of Corrections, House of Corrections and County Jails

“Private agency” means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and

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

Section 2: Establishment of office; appointment; removal of anti-racism correctional inspector general

There is hereby established an anti-racism division of the office of inspector general. The division shall be called the Inclusion, Diversity, Anti-Racism, and Equity Unit, hereinafter referred to as IDAREU.

There shall be in said office an anti-racism corrections inspector general, who shall be the administrative head of said office and who shall be appointed by the attorney general, the state auditor and the chair of the black and latino caucus and confirmed by a majority vote of the community council for a term of five years. The person so appointed shall be selected without regard to political affiliation and solely on the basis of integrity, expertise in the area of structural racism including at least 5 years experience designing and implementing anti-racist strategies,

73 tools, and materials and demonstrate ability in statistics, law, management, public administration,
74 investigation, criminal justice administration or other closely related fields.

75 In case of a vacancy in the position of anti-racism corrections inspector general, his or her
76 successor shall be appointed in the same manner for the unexpired term. No person shall be
77 appointed for more than two five-year terms.

78 Appointing authorities shall make due efforts to assure that BIPOC community members
79 have notice when the position is vacant.

80 No former or current employee of corrections shall be appointed to the position within
81 ten years after such former or current period of service with the department or county.

82 The anti-racism inspector general may be removed from office, for cause, by a majority
83 vote of the attorney general, the chair of the black and latino caucus and a majority vote of
84 members of the community advisory board. Such a cause may include substantial neglect of
85 duty, gross misconduct or conviction of a crime. The reasons for removal of the anti-racism
86 corrections inspector general shall be stated in writing and shall include the basis for such
87 removal. Such writing shall be sent to the clerk of the senate, the clerk of the house of
88 representatives and to the governor at the time of the removal and shall be deemed to be a public
89 document.

90 Section 3. Anti-racism corrections inspector general community council; establishment

91 There shall be an anti-racism corrections inspector general community council which
92 shall consist of ten members including the attorney general or a designee, the state auditor or a
93 designee, a designee of Prisoners' Legal Services of Massachusetts, two members appointed by

the speaker of the house of representatives, two members appointed by the president of the senate, and three members appointed by the black and latino caucus.

At least one member of the council shall be an immediate family member of an incarcerated person serving in a department correctional facility at the time of their appointment; at least one additional member shall be an immediate family member of an incarcerated person who served in a county correctional facility within the last five years at the time of their appointment; at least one additional member shall be a formerly incarcerated person who served in a department correctional facility within the last five years at the time of their appointment; at least one additional member shall be a formerly incarcerated person who served in a county correctional facility within the last five years at the time of their appointment.

At least five council members shall be directly impacted by structural racism.

Appointing authorities shall make due effort to assure BIPOC populations have notice when advisory board positions are vacant.

The appointive members shall serve for a term of five years and shall be compensated for work performed for the anti-racism corrections inspector general council at such rate as the secretary of administration shall determine and shall be reimbursed for expenses necessarily incurred in the performance of their duties. The anti-racism corrections inspector general shall meet with the council at least quarterly and may consult or request the assistance of members of the anti-racism community council with respect to the duties and responsibilities of the office.

Section 4. Employees, partisan activity, funding

The anti-racism corrections inspector general may, subject to appropriation, appoint and may remove such employees, as he deems necessary to perform the duties of his office.

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

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

Section 5: Purpose

IDAREU shall act to dismantle structural racism and ensure the equitable treatment of all prisoners and correctional staff in the day-to-day operations of Massachusetts corrections by assuring accountability, transparency and compliance with anti-racism standards as established by the office.

Section 6: Duties

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

- 1) canteen, inmate benefit funds and disbursements
- 2) searches including cell searches, pat searches, strip or bodily searches;

- 135 3) classification;
- 136 4) covid-19;
- 137 5) educational, vocational and other programming;
- 138 6) institutional employment and re-instatement of employments upon discipline;
- 139 7) gang designation;
- 140 8) staff recruitment, training, supervision, and discipline;
- 141 9) food services;
- 142 10) inmate funds;
- 143 11) mail distribution and dissemination;
- 144 12) incarcerated person deaths, injuries, or harassment;
- 145 13) housing
- 146 14) incidents of assault, battery, or sexual misconduct;
- 147 15) medical or mental health care, including care provided to incarcerated persons by
- 148 third parties;
- 149 16) violence among incarcerated persons;
- 150 17) conditions of confinement;
- 151 18) incarcerated person disciplinary processes;
- 152 19) incarcerated person grievance processes;

- 153 20) substance use disorder treatment;
- 154 21) family visitation and communication practices; and
- 155 22) rehabilitation, reentry, and integration practices.
- 156 23) misidentification
- 157 24) personal property
- 158 25) re-entry Services
- 159 26) use of force

160 (b) The anti-racism corrections inspector general shall review legislation and

161 regulations relating to programs and operations of corrections and shall make recommendations

162 concerning the effect of such legislation or regulation in an effort to dismantle structural racism.

163 (c) The anti-racism corrections inspector general may utilize resources necessary to

164 effectively perform its duties, including but not limited to, conducting interviews with

165 incarcerated community member(s) without molestation from the department or county, and

166 utilizing such tools as surveys, documents, records, reports, statistics, studies, etc. to develop and

167 implement minimum anti-racism standards and policies in corrections.

168 (d) The anti-racism corrections inspector general shall conduct a comprehensive

169 review of all correction records and data collection processes for the purpose of establishing and

170 implementing a statewide uniform racial data collection system. The data collected shall be

171 disaggregated by age, race, ethnicity, language, sex, gender identity, and sexual orientation. Such

172 data shall be used to track and monitor the day-to-day operations of the department and county

and to alleviate the adverse impact of structural racism and ensure correctional compliance with applicable laws, regulations and policies as related to the health, safety, welfare, and rehabilitation of incarcerated persons.

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

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

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

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

(i) The anti-racism corrections inspector general shall provide, information to incarcerated persons, representatives of incarcerated persons, agencies working with incarcerated

persons, impacted family members, and department and county staff, as it relates to the duties and functions of the offices

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

Section 7. Powers and enforcement, access to facilities

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

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

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

2) Initiate and conduct investigations to carry out and effectuate its purpose;

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

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

- 213 5) Recommend and facilitate the implementation of minimum statewide anti-racism
214 standards for correctional operations;
- 215 6) Hire and employ staff to perform duties and exercise the same powers as the anti-
216 racism corrections inspector general;
- 217 7) Ensure compliance with relevant statutes, rules, regulations, and policies
218 concerning corrections facilities, services, and treatment of incarcerated persons under the
219 jurisdiction of the department and within each county;
- 220 8) hire and employ staff or otherwise appoint designees to perform duties and
221 exercise the same powers as the anti-racism corrections inspector general;
- 222 9) enter into agreements or other transactions with a person, including, but not
223 limited to, a public entity or other governmental instrumentality or authority in connection with
224 its powers and duties of this office;
- 225 10) execute all instruments necessary or convenient for accomplishing the intended
226 purpose of this office;
- 227 11) enter into agreements or other transactions with a person, including, but not
228 limited to, a public entity or other governmental instrumentality or authority in connection with
229 the powers and duties of this office;
- 230 12) appear on its own behalf before boards, commissions, departments or other
231 agencies of municipal, state or federal government;

232 13) apply for and accept subventions, grants, loans, advances and contributions of
233 money, property, labor or other things of value from any source, to be held, used and applied for
234 its purposes; and

235 14) provide and pay for advisory services and technical assistance as may be
236 necessary in its judgment to carry out this chapter and fix the compensation of persons providing
237 such services or assistance.

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

242 (d) The anti-racism corrections inspector general, its employees, designee or
243 organizational member(s) of the community council working in furtherance of the office's
244 intended purposes may consult and confer with any prisoner(s), department and county
245 employees, privately and confidentially without molestation. Such communications may be both
246 formally and informally, in person, by video conference, by phone, and by mail.

247 (e) The anti-racism corrections inspector general shall be authorized to hold public
248 hearings, to subpoena witnesses and documents, and to require that witnesses testify under oath.

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

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

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

Section 8. Access to records, public disclosure, reporting

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

(b) Following a written demand from the anti-racism corrections inspector general, the department or county shall provide the requested material within twenty days unless the anti-racism corrections inspector general consents to an extension of that time frame. Any failure to obey the request may be punished by imposition of fines or sanctions. Where the material requested by the anti-racism corrections inspector general pertain to an incarcerated person's death, threats of bodily harm including, but not limited to, sexual or physical assaults, or the

denial of necessary medical treatment, the material shall be provided within five days unless the anti-racism corrections inspector general consents to an extension of that time frame.

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

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

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

(f) The anti-racism inspect investigations, audits and reports relating to the administration of the programs and operations of the department and county, and may make recommendations to address any identified issues as it relates to dismantling structural racism.

(g) At the conclusion of such investigation, the anti-racism corrections inspector general shall produce a public report on the outcome of the investigation, which may include any recommendations to the department or county.

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

(d) The anti-racism inspector general shall may public the results of its findings after reasonable notice to the department and county. Correctional administrators may be provided an opportunity to review reports and provide feedback about them to the anti-racism corrections inspector general before their dissemination to the public; provided, however that the release of the reports is not subject to approval from any entity or person outside the office nor it is contingent of the review of the report by the facility.

(e) Reports shall apply legal requirements, best correctional practices, and other criteria to objectively and accurately review and assess a facility's policies, procedures, programs, and practices; identify systemic problems and the reasons for them; and recommend possible solutions to those problems as it pertains to dismantling structural racism.

Section 9. Annual and Interim Reports.

(a) On or before September 15 of each year, the anti-racism inspector general shall provide to the Legislature, the Governor, the Attorney General, and Community Council a

summary of reports and investigations made under the IDAREU for the preceding year. The summary provided shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, evaluations, surveys, inspections, reviews and other related means of performing the duties of this office that will (1) increase accountability and legislative oversight of Massachusetts corrections, (2) improve operations of the department and county, (3) deter and identify structural racism in correction polices, practices, and regulations, and (4) identify inconsistencies between statutory requirements and requirements as established by this office in an effort to dismantle structural racism. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

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

Section 10. Prevention of retaliation

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

1) Take any action against an incarcerated person or correctional employee because of the disclosure of information by said person(s) to the office which the person(s) reasonably believes evidences wrongdoing under the office;

339 2) Take any action against an incarcerated person or correctional employee as a
340 reprisal for the submission of an allegation of wrongdoing to the office by such person(s); or

341 3) Take any action against an incarcerated person or correctional employee as a
342 reprisal for providing information or testimony pursuant to an investigation by the office.