

SENATE No. 1511

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>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/31/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/31/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/9/2023</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>5/18/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>7/24/2023</i>

SENATE No. 1511

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1511) of James B. Eldridge, Liz Miranda, Michael J. Barrett, Vanna Howard and others for legislation to provide criminal justice reform protections to all prisoners in segregated confinement. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1578 OF 2021-2022.]

The Commonwealth of Massachusetts

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

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 6
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; (5) mental health watch; (6) accountability program unit; and
8 (7) security watch.

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

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

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

“Security watch”, any 24-hour observation initiated through security threats or suspicion of ingesting substances including drugs.

“General population”, any housing placement where a prisoner is not held in segregated confinement. In no event shall any general population unit have conditions that are similar to or more restrictive than segregated confinement. These conditions shall include a prisoner's access to: out of cell time; the yard, gym and other recreational spaces; the law library; religious services; canteen; personal property; visitation, including both the total available visitation time and the opportunity for contact visits; telephones and video visits; opportunities to earn a wage and opportunities to earn good time. All such access shall be maximized as much as possible.

SECTION 1A. Section 1 of chapter 127 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out, in line 70, the figure “22” and inserting in place thereof the following figure:- 21

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

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

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

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

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

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

SECTION 7. Said section 39 of said chapter 127, as so appearing, is hereby amended by striking numeral (v), in lines 19 and 20, and replacing it with the following words “(v) access to a tablet and a radio or television, in accordance with the prisoner’s preference, if the confinement exceeds 48 hours.”

SECTION 8. Said section 39 of said chapter 127, is hereby amended by striking numeral (x) in subsection (b) and inserting the following two numerals in its place: (x) access to personal property unless contraindicated by qualified clinical mental health providers; (xi) other rights and privileges as may be established or recognized by the commissioner.

SECTION 9. Said section 39 of said chapter 127, as so appearing, is hereby amended by inserting at the end of subsection (d) the following sentences: Mental health treatment provided in segregated confinement shall be confidential and utilize best practices by professional standards. Medication alone, without therapy, does not constitute sufficient treatment; provided, however, that a prisoner may decline therapy without medication disruption if the prisoner does not want to participate in therapy. A minimum of 50 minutes of therapy per week shall be offered to every prisoner in segregated confinement by qualified clinical mental health providers.

SECTION 10. Said section 39 of said chapter 127, as so appearing, is hereby amended by inserting after subsection (e) the following subsection:- (f) Prisoners in segregated confinement shall be offered time out of cell indoors or outdoors, in accordance with the prisoner's preference, at least once a day unless contraindicated by qualified clinical mental health providers.

SECTION 11. Subsection (b) of said section 39 of said chapter 127, as so appearing, is hereby amended by inserting after the first sentence the following two sentences:- If canteen privileges or disability accommodations are deemed inconsistent with the security of the unit,

such determination must be reviewed by the placement review examiners at each placement review, at which time the placement review examiners must override the determination if there is not substantial evidence to support it. The placement review examiners shall provide written explanation of their determination and all evidence relied upon, and all such determinations are final agency decisions.

SECTION 12. Said section 39 of said chapter 127, as so appearing, is hereby amended by striking out, in lines 34 and 41, the words “restrictive housing” and inserting in place thereof the following words:- segregated confinement

SECTION 13. Said section 39 of said chapter 127, as so appearing, is hereby amended by striking out, in lines 36, 37, 38 and 39, the words “or restrictive housing is otherwise clinically contraindicated based on clinical standards adopted by the department of correction and the qualified mental health professional’s clinical judgment” and inserting in place thereof the following words:- “. A prisoner with a serious mental illness or who is otherwise clinically contraindicated for restrictive housing, disciplinary restrictive housing or secure adjustment units, based on clinical standards adopted by the department of correction and the qualified mental health professional’s clinical judgment, shall only be placed in secure treatment units, mental health watch or general population units. Secure treatment units may be any level of security deemed appropriate for the population. They shall meet minimum standards for mental health treatment, programming and education, as established by the department’s director of behavioral health in consultation with the department of mental health. They shall have minimum out of cell time of no less than 5 hours daily. All secure treatment units must be co-directed by one correctional staff person and 1 clinical staff person, with equal authority in the unit. All clinical treatment and supervision of prisoners placed in secure treatment units shall be

provided by qualified clinical mental health providers. The mental health providers will make the determination regarding readiness for the prisoner to be moved to a less restrictive unit.”

SECTION 14. Said section 39 of said chapter 127, as so appearing, is hereby amended by striking out, in line 47, the words “restrictive housing” and inserting in place thereof the following words:- segregated confinement other than a secure treatment unit or mental health watch

SECTION 15. Section 39A of said chapter 127, as so appearing, is hereby amended by striking out, in line 1 , the words “restrictive housing” and inserting in place thereof the following words:- segregated confinement other than a secure treatment unit or mental health watch

SECTION 16. Said section 39A of said chapter 127, as so appearing, is hereby amended by inserting after the words “restrictive housing” in line 4 the following words:- , “disciplinary restrictive housing or a secure adjustment unit”

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

SECTION 18. Said section 39A of said chapter 127, as so appearing, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:- “(d) a prisoner who is pregnant or who is in the first 8 weeks of the postpartum recovery period after giving birth shall not be placed in segregated confinement.”

113 SECTION 19. Said section 39A of said chapter 127, as so appearing, is hereby amended
114 by striking out subsection (e) and inserting in place thereof the following subsection:- (e) Persons
115 with permanent physical or developmental disabilities shall not be placed in segregated
116 confinement.

117 SECTION 20. Said section 39A of said chapter 127, as so appearing, is hereby amended
118 by inserting after subsection (f) the following subsection:- (g) A prisoner 21 years of age or
119 younger or 55 years of age or older shall not be placed in segregated confinement.

120 SECTION 21. Section 39B of said chapter 127, as so appearing, is hereby amended by
121 striking out, in lines 1, 4, 17, 34 and 35, the words “restrictive housing” and inserting in place
122 thereof the following words:- segregated confinement

123 SECTION 22. Said section 39B of said chapter 127, as so appearing, is hereby amended
124 by inserting after the word “39A”, in line 4, the following words:- or subsection (a) of section
125 39I,

126 SECTION 23. Said section 39B of said chapter 127 is hereby amended by striking from
127 subsection (a) numerals (iv) and (v) and inserting in place thereof:- (iv) is being held for any
128 other reason, every 30 days.

129 SECTION 24. Said section 39B of said chapter 127, as so appearing, is hereby amended
130 by inserting after the words “restrictive housing” in lines 11 and 12 the following words:- ,
131 disciplinary restrictive housing, a secure adjustment unit or a secure treatment unit following an
132 allegation or finding of a disciplinary breach

SECTION 25. Said section 39B of said chapter 127, as so appearing, is hereby amended by striking out, in line 20, the word “or” and inserting in place thereof the following word:- and

SECTION 26. Said section 39B of said chapter 127, as so appearing, is hereby amended by inserting after the word “writing” in line 20 the following words:- and be represented by an advocate of the prisoner’s choosing including, but not limited to, a legislator, law student, lawyer, paralegal or other legal representative

SECTION 27. Said section 39B of said chapter 127, as so appearing, is hereby amended by striking out, in lines 22 and 23, the words “the evidence relied on and the reasons for the placement decision” and inserting in place thereof the following words:- “(1) any negative effects of segregated confinement on the prisoner and the extent to which such effects may be impacting the prisoner’s behavior and perceived level of risk, (2) whether a reasonable probability of safety for the prisoner and third parties could be achieved if the prisoner were confined to general population or a less restrictive form of segregated confinement than the prisoner has been assigned to, (3) the factual basis or bases for the placement decision, (4) a written description of any statements made by the prisoner during the hearing and (5) attaching all supporting records and all records submitted by the prisoner”

SECTION 28. Said section 39B of said chapter 127, as so appearing, is hereby amended by striking out subsection (d).

SECTION 29. Said section 39B of said chapter 127, as so appearing, is hereby amended by inserting after subsection (e) the following two subsections:- (f) There shall be a presumption in favor of release to the general population at every placement review, and a prisoner may only be retained in segregated confinement if there is clear and convincing evidence that the prisoner

poses an unacceptable risk in the general population as provided in subsection (a) of section 39, documented in writing. If a prisoner is being held in segregated confinement awaiting a disciplinary hearing or on any other awaiting action or investigation status, the prisoner shall be reviewed every 3 days by clinical staff and they shall be returned to the general population once clinical staff determine the prisoner no longer poses a threat of harm to themselves or others, in no event greater than 15 days. Any time on any awaiting action status shall be credited towards any subsequent disciplinary offense, and no disciplinary sanction shall be extended as the result of such credit. (g) If a placement review causes a prisoner to be held in segregated confinement for more than 90 days over a one-year period, the placement review shall constitute a final agency decision. The prisoner may file a complaint challenging the prisoner's placement in segregated confinement in the superior court for the county in which the inmate is incarcerated or otherwise being held or in Suffolk county in accordance with section 14 of chapter 30A. The superior court shall determine if there is substantial evidence to support the determination of the placement review. If there is substantial evidence to support the determination of the placement review then the court shall: (1) uphold the placement in segregated confinement or (2) make other orders the court deems consistent with justice. If there is not substantial evidence to support the determination of the placement review then the court shall: (1) order that the prisoner shall be housed in the general population; (2) order that the prisoner shall be housed in a less restrictive form of segregated confinement than the prisoner is currently confined to; (3) order that the prisoner shall be housed in the type of segregated confinement that the department assigned the prisoner to; or (4) make other orders the court deems consistent with justice. The availability of review under this section shall not be construed to limit any judicial remedies otherwise available.

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

SECTION 31. Section 39D of said chapter 127, as so appearing, is hereby amended by striking out, in lines 2 and 3, the words “restrictive housing” and inserting in place thereof the following words:- segregated confinement

SECTION 32. Said section 39D of said chapter 127, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The commissioner shall publish a report quarterly and provide directly to the segregated confinement oversight committee and to the special commission to study the health and safety of lesbian, gay, bisexual, transgender, queer and intersex prisoners in correctional institutions, jails and houses of correction, as to each segregated confinement unit within each state correctional facility, and every 6 months as to each segregated confinement unit within each county correctional facility: (i) the number of prisoners as to whom a finding of serious mental illness has been delineated by diagnosis and the number of such prisoners held for more than 15 days; (ii) the number of prisoners who have committed suicide or committed non-lethal acts of self-harm; (iii) the number of prisoners according to the reason for their segregated confinement; (iv) a listing of prisoners with names redacted, including an anonymized identification number that shall be consistent across reports, age, race, gender and ethnicity and, if known, the voluntary self-identified sexual orientation, as defined in section 3 of chapter 151B, and gender identity, as defined in section 7 of chapter 4, of each prisoner subjected to segregated confinement, whether the prisoner was pregnant during time spent in restrictive

housing, whether the prisoner has an open mental health case, the date of the prisoner's
commitment to segregated confinement, the length of the prisoner's disciplinary term, if
applicable and a summary of the reason for the prisoner's commitment; (v) the number of
placement reviews conducted for each type of segregated confinement and the number of
prisoners released from each type of segregated confinement as a result of such placement
reviews; (vi) the length of original assignment to and total time served in segregated confinement
for disciplinary purposes for each prisoner released from said confinement as a result of a
placement review; (vii) the count of prisoners released to the community directly or within 30
days of release from segregated confinement; (viii) the known disabilities of every prisoner who
was placed in segregated confinement during the previous 3 months; (ix) the number of mental
health professionals who work directly with prisoners in segregated confinement; (x) the number
of transfers to outside hospitals directly from segregated confinement; (xi) such additional
information as the commissioner may determine; (xii) the number of prisoners subjected to each
type of segregated confinement; (xiii) the number of prisoners held in segregated confinement
for more than 15 days; (xiv) the number of prisoners 21 years of age or younger subjected to
each type of segregated confinement; (xv) the number of pregnant prisoners subjected to each
type of segregated confinement; (xvi) the racial and ethnic composition of prisoners subjected to
each type of segregated confinement; (xvii) the sexual orientation and gender identity
composition of prisoners subjected to each type of segregated confinement who have voluntarily
disclosed during Prison Rape Elimination Act screenings or voluntarily disclose and self-identify
at any other time during their incarceration their sexual orientation, as defined in section 3 of
chapter 151B or gender identity, as defined in section 7 of chapter 4; (xviii) the number of
prisoners subjected to multiple stays in each type of segregated confinement in a given reporting

period; (xix) the rate of recidivism for individuals that were subject to segregated confinement.
The information shall be published in a commonly available electronic, machine readable format.

SECTION 33. Said section 39D of said chapter 127, as so appearing, is hereby amended
by inserting the following subsection:-

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

SECTION 34. Section 39E of said chapter 127, as so appearing, is hereby amended by
striking out, in line 2, the words “restrictive housing” and inserting in place thereof the following
words:- segregated confinement

SECTION 35. Section 39F of said chapter 127, as so appearing, is hereby amended by
striking out, in lines 3 and 8, the words “restrictive housing” and inserting in place thereof the
following words:- segregated confinement other than mental health watch

SECTION 36. Said section 39F of said chapter 127, as so appearing, is hereby amended
by striking out, in line 4, the words “restrictive housing” and inserting in place thereof the
following words:- segregated confinement

245 SECTION 37. Section 39G of said chapter 127, as so appearing, is hereby amended by
246 striking out, in lines 1, 26, 27, 36, 40, 41, 42, 43, 44, 45 and 47, the words “restrictive housing”
247 and inserting in place thereof the following words:- segregated confinement

248 SECTION 38. Said section 39G of said chapter 127, as so appearing, is hereby amended
249 by striking out, in line 6, the word “9” and inserting in place thereof the following word:- 10

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

253 SECTION 40. Said section 39G of said chapter 127, as so appearing, is hereby amended
254 by striking out, in line 29, the word “The” and inserting in place thereof the following words:-
255 All members of the

256 SECTION 41. Said section 39G of said chapter 127, as so appearing, is hereby amended
257 by inserting after the word “institutions” in lines 29 and 30, the following words:- , including for
258 surprise inspections,

259 SECTION 42. Subsection (c) of said section 39G of said chapter 127, as so appearing, is
260 hereby amended by inserting after the first sentence the following four sentences:- No
261 restrictions shall be placed on the ability of members of the committee to speak with the public
262 or the press about public aspects of the committee’s work. The committee may ask the
263 department and sheriff’s departments to develop new data and information relating to the use of
264 segregated confinement. The committee shall be entitled to review nonpublic information and
265 records, including, but not limited to, personnel records and prisoner records. The committee

shall be entitled to review and obtain copies of all public information and records, including all public information that is segregable from non-public information and records.

SECTION 43. Said chapter 127, as so appearing, is hereby amended by inserting after section 39H the following section:- Section 39I. (a) A prisoner may be placed on mental health watch only if it is determined by a qualified mental health professional's clinical judgment that the prisoner requires observation to protect the prisoner from a risk of serious self-harm.

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

(c) All prisoners who have been placed on mental health watch shall be fully clothed, limited only by patient safety considerations. Clothing shall be substantially similar to that which is worn in general population, and any limitations to clothing shall be determined only by a qualified clinical mental health professional.

(d) All menstruating prisoners shall be provided with appropriate personal hygiene supplies throughout the duration of their menstrual cycle.

(e) All prisoners who have been placed on mental health watch shall be provided a minimum of 2 blankets of the same or of substantially similar quality to blankets provided in general population.

(f) All prisoners who have been placed on mental health watch shall be offered time out of cell indoors or outdoors, in accordance with the prisoner's preference, at least once daily unless contraindicated by qualified clinical mental health providers.

SECTION 44. Chapter 127 of the General Laws is hereby amended by inserting after section 48B the following section:-

Section 48C: The commissioner and administrators of state prisons and county facilities shall maximize out of cell time and opportunities for prisoner participation in education, training, employment and all other programming including programming related to rehabilitation, health care and substance use. All prisoners shall have the opportunity to access at least 1 hour of programming daily at least 5 days per week. With the exception of restrictive housing and security or operational emergencies, no prisoner shall be locked into a cell for more than 16 hours daily.

SECTION 45: Section 48 of Chapter 127 is hereby amended by adding after the first sentence of the second paragraph the following sentence:- Every state and county correctional facility must have at least one general high school equivalency class available and shall ensure access to higher education.