

HOUSE No. 2357

The Commonwealth of Massachusetts

PRESENTED BY:

Jack Patrick Lewis and Samantha Montaño

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 promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/19/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>1/22/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>1/22/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/27/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>3/2/2023</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/2/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/7/2023</i>

HOUSE No. 2357

By Representatives Lewis of Framingham and Montañó of Boston, a petition (accompanied by bill, House, No. 2357) of Jack Patrick Lewis, Samantha Montañó and others for legislation to promote rehabilitation including guaranteed health, treatment and safety for incarcerated LGBTQI+ persons. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People.

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 13 of chapter 125 of the General Laws is hereby amended by
2 adding the following paragraph:-

3 The superintendent of each state correctional facility and administrator of each county
4 correctional facility shall designate 1 staff member as the LGBTQI+ coordinator. The LGBTQI+
5 coordinator shall:

6 (i) ensure compliance with housing compatibility standards;

7 (ii) coordinate education, employment, and program placement for incarcerated persons
8 who are LGBTQI+, as defined in section 1 of chapter 127;

9 (iii) support self-facilitated LGBTQ+ groups and leisure activities as defined in section
10 32C;

11 (iv) after consulting with incarcerated persons, ensure at least one periodical is available
12 in each institutional library pertaining to living well with HIV and at least one periodical
13 pertaining to the LGBTQI+ community, and

14 (v) perform other necessary responsibilities. The LGBTQI+ coordinator shall be a
15 Correctional Program Officer employed by the Massachusetts Department of Correction or a
16 licensed clinical social worker in houses of correction.

17 SECTION 2. Section 1 of chapter 127 of the General Laws, and section 1 of chapter 125
18 as so appearing, is hereby amended by inserting the following definitions:-

19 “LGBTQI+”, lesbian, gay, bisexual, transgender, queer, intersex or not conforming to a
20 specific gender identity or sexual orientation.

21 "General Population", any housing placement where an incarcerated person is not held in
22 restrictive housing. In no event shall any general population unit have conditions that are similar
23 to or more restrictive than restrictive housing. General population conditions shall ensure an
24 incarcerated person’s reasonable access to: out of cell time; programming, education, the yard,
25 gym, and other recreational spaces; the law library; religious services; canteen; all personal
26 property; visitation, including both the total available visitation time and the opportunity for
27 contact visits; telephones and video visits; opportunities to earn a wage, and opportunities to earn
28 good time, as available in the facility. All such access shall be maximized as much as possible.

29 “Incarcerated Person”, inmate, prisoner, or detainee.

30 “Consensual”, free from fraud, force, or coercion; provided, however, that any sexual
31 contact or relations between correctional officers and incarcerated persons shall not be deemed
32 consensual.

33 SECTION 3. Said chapter 127, as so appearing, is hereby amended by inserting after
34 section 21 the following section:-

35 Section 21A. Upon intake at a correctional facility, each incarcerated person shall be
36 provided an opportunity to voluntarily disclose their sexual orientation and gender identity,
37 provided further that an incarcerated person may also disclose this information at any time
38 during their incarceration. The correctional facility shall document the information which shall
39 be made available to the LGBTQI+ coordinator, staff persons who use the information for
40 classification purposes and any other purpose related to implementing the National Standards to
41 Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA),
42 and any other staff persons designated by the commissioner of correction or sheriff; provided,
43 however, that the commissioner and sheriffs shall minimize access to sensitive information.
44 Aggregated data on the number of incarcerated persons who voluntarily disclosed their sexual
45 orientation and gender identity shall be made publicly available on an annual basis for each
46 correctional facility; provided, however, that the report shall not include any personally
47 identifiable information.

48 SECTION 4. Section 22 of said chapter 127, as so appearing, is hereby amended by
49 adding the following paragraph:-

50 Upon intake at a correctional facility, each incarcerated person shall be provided an
51 opportunity to voluntarily disclose personally held homophobic or transphobic sentiments,

52 provided further that the incarcerated person may also disclose this information at any time
53 during their incarceration. The correctional facility shall document the information, whether it is
54 provided by the incarcerated person or observed by facility staff at any time. Anyone who
55 discloses, is reasonably believed to harbor, or demonstrates behavior consistent with
56 homophobic or transphobic sentiments shall not be housed in the same cell as someone who
57 identifies as LGBTQI+ or who may be perceived as LGBTQI+; provided that no person shall be
58 punished for disclosure or nondisclosure of such information. Information obtained consistent
59 with this section shall not be shared with the Department of Probation or the Parole
60 Board. Aggregated data on the number of incarcerated persons who disclose, are reasonably
61 believed to harbor, or demonstrate behavior consistent with homophobic or transphobic
62 sentiments shall be made publicly available on an annual basis for each correctional facility;
63 provided, however, that the report shall not include any personally identifiable information.

64 SECTION 5. Said chapter 127, as so appearing, is hereby amended by inserting after
65 section 32A the following 3 sections:-

66 Section 32B. For the purposes of this section, the term “superintendent” shall mean the
67 superintendent of each state correctional facility and administrator of each county correctional
68 facility.

69 Each correctional facility shall make publicly available on their websites anonymized
70 data, aggregated annually, no later than June 30, that is required by Standard 115.87 of the
71 National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape
72 Elimination Act, 28 C.F.R. Part 115, promulgated pursuant to the federal Prison Rape

73 Elimination Act of 2003, codified in 34 U.S.C. §§ 30301 to 30309, inclusive, hereinafter the
74 PREA Standards, publicly available on their website.

75 For each PREA investigation conducted, the correctional facility shall make publicly
76 available on their website the factual basis for each PREA investigation, including, but not
77 limited to, whether it was initiated by staff, an incarcerated person, or a third party; a detailed
78 description of the alleged incident, whether the investigated behavior was consensual, and the
79 general location of the alleged incident, evidence relied upon to determine final investigatory
80 outcomes, and any actions taken to respond to the allegation.

81 Furthermore, the department will report on the race, age, disability status, sexual
82 orientation, and gender identity of incarcerated persons involved delineated by whether they
83 were a victim, perpetrator, or consensual party to said investigation; provided however, that the
84 detailed description of the complaint shall not include any personally identifiable information of
85 incarcerated persons.

86 Annually, each correctional facility shall make publicly available on their website the
87 incident-based data that would be necessary to answer all questions from the most recent version
88 of the Survey of Sexual Violence conducted by the Department of Justice; provided, however,
89 that the data shall not include any personally identifiable information of incarcerated persons. All
90 formal or informal institutional grievances and federal Americans With Disabilities Act requests
91 related to sexual abuse or the general wellbeing of LGBTQI+ persons and those living with
92 HIV shall be redacted and made publicly available on each correctional facility's website.

93 Section 32C. (a) Notwithstanding any general law or special law to the contrary, the state
94 auditor shall be provided with access to all PREA-related records, including, but not limited to,

95 all information contained in each facility's PREA database and any information provided to any
96 PREA auditor before, during or after a PREA audit, including documents or records reviewed
97 on-site. The state auditor shall also be provided access to all state prisons and houses of
98 correction in the commonwealth and shall be allowed to privately interview incarcerated people,
99 and staff to the extent practicable. (b) The state auditor shall prepare an annual report, produced
100 not later than February 1, analyzing risk factors and systemic issues regarding sexual abuse in
101 state prisons and houses of correction, as well as specific recommendations to improve
102 outcomes. The state auditor shall submit its annual report to the governor, the attorney general
103 and the joint committee on the judiciary, and the report shall be publicly available.

104 Section 32D. Each correctional facility shall provide meaningful opportunities for
105 LGBTQI+ incarcerated persons to:

106 (i) congregate;

107 (ii) form and self-facilitate self-help or support groups;

108 (iii) receive LGBTQI+ themed literature in the institutional library, including one
109 commonly read periodical about living well with HIV and one commonly read periodical about
110 the LGBTQI+ community; (iv) watch LGBTQI+ movies free of charge; and

111 (v) celebrate June as Pride month. Provided further, each correctional facility shall allow
112 visitors to participate in subsection (ii) and subsection (v).

113 Section 39A of said chapter 127, as so appearing, is hereby amended by striking out
114 subsection (c) and inserting in place thereof the following subsection:-

115 SECTION 6. Section 38F of said chapter 127, as so appearing, is hereby amended by
116 striking out Section 38F and inserting in place thereof the following:-

117 Section 38F. An incarcerated person shall not file any claim that may be the subject of a
118 grievance under section 38E unless the incarcerated person has exhausted the administrative
119 remedy established pursuant to said section 38E; but the court shall consider such claim if a final
120 administrative resolution of a grievance filed pursuant to said section 38E has not been decided
121 within 180 days from the date of filing such a grievance, or if the incarcerated person can
122 demonstrate to the court that exigent circumstances exist which, if delayed pursuant to the
123 requirements of this section, would jeopardize the life or seriously impair the health of the
124 incarcerated person, or, for actions seeking equitable relief; or if the claim by an incarcerated
125 person is directly related to sexual abuse, serious bodily harm, or medical issues.

126 SECTION 7. Section 39A of said chapter 127, as so appearing, is hereby amended by
127 striking out subsection (c) and inserting in place thereof the following subsection:-

128 (c) The fact that an incarcerated person identifies as LGBTQI+ shall not be grounds for
129 involuntary placement in restrictive housing or involuntary removal from the general population,
130 provided however, that an incarcerated person who identifies as LGBTQI+ may request to be
131 removed from the general population for their own safety at any time.

132 SECTION 8. Section 39A of said chapter 127, as so appearing, is hereby further amended
133 by striking out subsection (f) and inserting in place thereof the following 4 subsections:-

134 (f) No incarcerated person shall be placed in restrictive housing, removed from general
135 population, or disciplined in any way for reporting in good faith an act of sexual abuse, provided

136 that an incarcerated person may request to be removed from general population for their own
137 safety at any time.

138 (g) Any incarcerated person that engages in consensual sexual activity shall not be
139 removed from general population. Provided further, such behavior shall not be grounds for
140 removal of visitation, or phone privileges, provided further, any guilty finding on a disciplinary
141 report for consensual sexual activity shall not be used in determining the classification status or
142 parole eligibility of an incarcerated person.

143 (h) Affectionate, non-sexual contact between incarcerated persons, including but not
144 limited to handshakes, hugs, touching of another's hair and other forms of non-sexual contact,
145 shall not be subject to disciplinary action, nor shall such incidents be used as a basis to punish or
146 penalize an incarcerated person in any way.

147 (i) An incarcerated person shall not be confined to restrictive housing except pursuant to
148 section 39 or this section.

149 SECTION 9. Section 16 of said chapter 127, as so appearing, is hereby amended by
150 adding the following 3 sections:

151 16A: Each correctional facility shall ensure that an incarcerated person that requests
152 access to medication to prevent the transmission of HIV be provided such medication at no cost
153 to the incarcerated person, provided further, that reasons for requesting said medication shall be
154 kept confidential between the medical provider and incarcerated person and not be shared with
155 security or administrative staff, provided however, that said medication shall only be provided if
156 clinically appropriate.

157 16B: Each correctional facility shall ensure that any incarcerated person prescribed
158 medication to prevent the transmission of HIV or to control and manage HIV, whether held on
159 pre-trial or committed status, shall be provided a thirty day supply upon release from custody.

160 16C: Each correctional facility shall ensure that an incarcerated person prescribed
161 medication to control and manage HIV shall be permitted to keep said medication on their
162 person or in their cell to ensure regular and timely dosage of said medication.

163 SECTION 10. Section 32A of said chapter 127, as so appearing, is hereby amended by
164 adding the following sentence:-

165 Any incarcerated person with a gender dysphoria diagnosis shall also be housed in a
166 single occupancy cell, unless they request otherwise, provided that the facility is at or below 90%
167 occupancy on the day of assignment.

168 SECTION 11. Said chapter 127 is hereby amended by inserting after section 39H the
169 following

170 section:- Section 39I. The Commissioner and sheriffs shall ensure that all mental health
171 providers within their facilities, hired or contracted, are trained in and can demonstrate cultural
172 competency in working with LGBTQI+ individuals.