

**SENATE . . . . . No. 1511**

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**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>

**SENATE . . . . . No. 1511**

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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.

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[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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 SECTION 18. Said section 39A of said chapter 127, as so appearing, is hereby amended  
110 by striking out subsection (d) and inserting in place thereof the following subsection:- “(d) a  
111 prisoner who is pregnant or who is in the first 8 weeks of the postpartum recovery period after  
112 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



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

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

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

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

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

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

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

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

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

186 (b) The commissioner shall publish a report quarterly and provide directly to the  
187 segregated confinement oversight committee and to the special commission to study the health  
188 and safety of lesbian, gay, bisexual, transgender, queer and intersex prisoners in correctional  
189 institutions, jails and houses of correction, as to each segregated confinement unit within each  
190 state correctional facility, and every 6 months as to each segregated confinement unit within  
191 each county correctional facility: (i) the number of prisoners as to whom a finding of serious  
192 mental illness has been delineated by diagnosis and the number of such prisoners held for more  
193 than 15 days; (ii) the number of prisoners who have committed suicide or committed non-lethal  
194 acts of self-harm; (iii) the number of prisoners according to the reason for their segregated  
195 confinement; (iv) a listing of prisoners with names redacted, including an anonymized  
196 identification number that shall be consistent across reports, age, race, gender and ethnicity and,  
197 if known, the voluntary self-identified sexual orientation, as defined in section 3 of chapter  
198 151B, and gender identity, as defined in section 7 of chapter 4, of each prisoner subjected to  
199 segregated confinement, whether the prisoner was pregnant during time spent in restrictive

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

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

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

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

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

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

242 SECTION 36. Said section 39F of said chapter 127, as so appearing, is hereby amended  
243 by striking out, in line 4, the words “restrictive housing” and inserting in place thereof the  
244 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

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

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

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

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

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

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

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

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

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

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