

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>

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:

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

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

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

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

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

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

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

37 Chapter XX

38 INDEPENDENT CORRECTIONAL OVERSIGHT OF MATTERS RELATING TO
39 STRUCTURAL RACISM

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

41 Section 2. Definitions

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

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

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

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

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

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

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

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

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

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

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

67 There shall be in said office an anti-racism corrections inspector general, who shall be the
68 administrative head of said office and who shall be appointed by the attorney general, the state
69 auditor and the chair of the black and latino caucus and confirmed by a majority vote of the
70 community council for a term of five years. The person so appointed shall be selected without
71 regard to political affiliation and solely on the basis of integrity, expertise in the area of structural
72 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

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

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

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

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

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

113 Section 4. Employees, partisan activity, funding

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

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

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

124 Section 5: Purpose

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

129 Section 6: Duties

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

- 133 1) canteen, inmate benefit funds and disbursements
- 134 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

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

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

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

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

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

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

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

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

199 Section 7. Powers and enforcement, access to facilities

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

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

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

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

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

210 4) Identify systemic issues and responses relating to dismantling structural racism in
211 corrections upon which the Governor, Legislature, Attorney General or other authorities as
212 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,

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

260 Section 8. Access to records, public disclosure, reporting

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

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

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

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

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

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

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

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

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

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

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

315 Section 9. Annual and Interim Reports.

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

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

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

332 Section 10. Prevention of retaliation

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

336 1) Take any action against an incarcerated person or correctional employee because
337 of the disclosure of information by said person(s) to the office which the person(s) reasonably
338 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.