

SENATE No. 1578

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>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/22/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/23/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/26/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/26/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/3/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/10/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/15/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/2/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>4/2/2021</i>

SENATE No. 1578

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1578) of James B. Eldridge, Jack Patrick Lewis, Jason M. Lewis, David Henry Argosky LeBoeuf and other members of the General Court 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. 2413 OF 2019-2020.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Second General Court
(2021-2022)**
—————

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

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

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

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

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

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

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

49 SECTION 8. Said section 39 of said chapter 127, is hereby amended by striking numeral
50 (x) in subsection (b) and inserting the following two numerals in its place: (x) access to personal

51 property unless contraindicated by qualified clinical mental health providers; (xi) other rights and
52 privileges as may be established or recognized by the commissioner.

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

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

64 SECTION 11. Subsection (b) of said section 39 of said chapter 127, as so appearing, is
65 hereby amended by inserting after the first sentence the following two sentences:- If canteen
66 privileges or disability accommodations are deemed inconsistent with the security of the unit,
67 such determination must be reviewed by the placement review examiners at each placement
68 review, at which time the placement review examiners must override the determination if there is
69 not substantial evidence to support it. The placement review examiners shall provide written
70 explanation of their determination and all evidence relied upon, and all such determinations are
71 final agency decisions.

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

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

92 SECTION 14. Said section 39 of said chapter 127, as so appearing, is hereby amended by
93 striking out, in line 47, the words “restrictive housing” and inserting in place thereof the

94 following words:- segregated confinement other than a secure treatment unit or mental health
95 watch

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

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

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

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

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

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

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

120 SECTION 22. Said section 39B of said chapter 127, as so appearing, is hereby amended
121 by inserting after the word “39A”, in line 4, the following words:- or subsection (a) of section
122 39I,

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

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

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

132 SECTION 26. Said section 39B of said chapter 127, as so appearing, is hereby amended
133 by inserting after the word “writing” in line 20 the following words:- and be represented by an

134 advocate of the prisoner's choosing including, but not limited to, a legislator, law student,
135 lawyer, paralegal or other legal representative

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

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

148 SECTION 29. Said section 39B of said chapter 127, as so appearing, is hereby amended
149 by inserting after subsection (e) the following two subsections:- (f) There shall be a presumption
150 in favor of release to the general population at every placement review, and a prisoner may only
151 be retained in segregated confinement if there is clear and convincing evidence that the prisoner
152 poses an unacceptable risk in the general population as provided in subsection (a) of section 39,
153 documented in writing. If a prisoner is being held in segregated confinement awaiting a
154 disciplinary hearing or on any other awaiting action or investigation status, the prisoner shall be
155 reviewed every 3 days by clinical staff and they shall be returned to the general population once

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

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

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

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

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

201 prisoners released from each type of segregated confinement as a result of such placement
202 reviews; (vi) the length of original assignment to and total time served in segregated confinement
203 for disciplinary purposes for each prisoner released from said confinement as a result of a
204 placement review; (vii) the count of prisoners released to the community directly or within 30
205 days of release from segregated confinement; (viii) the known disabilities of every prisoner who
206 was placed in segregated confinement during the previous 3 months; (ix) the number of mental
207 health professionals who work directly with prisoners in segregated confinement; (x) the number
208 of transfers to outside hospitals directly from segregated confinement; (xi) such additional
209 information as the commissioner may determine; (xii) the number of prisoners subjected to each
210 type of segregated confinement; (xiii) the number of prisoners held in segregated confinement
211 for more than 15 days; (xiv) the number of prisoners 21 years of age or younger subjected to
212 each type of segregated confinement; (xv) the number of pregnant prisoners subjected to each
213 type of segregated confinement; (xvi) the racial and ethnic composition of prisoners subjected to
214 each type of segregated confinement; (xvii) the sexual orientation and gender identity
215 composition of prisoners subjected to each type of segregated confinement who have voluntarily
216 disclosed during Prison Rape Elimination Act screenings or voluntarily disclose and self-identify
217 at any other time during their incarceration their sexual orientation, as defined in section 3 of
218 chapter 151B or gender identity, as defined in section 7 of chapter 4; (xviii) the number of
219 prisoners subjected to multiple stays in each type of segregated confinement in a given reporting
220 period; (xix) the rate of recidivism for individuals that were subject to segregated confinement.
221 The information shall be published in a commonly available electronic, machine readable format.

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

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

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

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

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

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

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

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

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

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

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

265 SECTION 43. Said chapter 127, as so appearing, is hereby amended by inserting after
266 section 39H the following section:- Section 39I. (a) A prisoner may be placed on mental health

267 watch only if it is determined by a qualified mental health professional's clinical judgment that
268 the prisoner requires observation to protect the prisoner from a risk of serious self-harm.

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

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

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

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

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

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

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

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