

**SENATE . . . . . No. 2413**

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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>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>9/24/2019</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>11/18/2019</i>

**SENATE . . . . . No. 2413**

By Mr. Eldridge, a petition (accompanied by bill) (subject to Joint Rule 12) of James B. Eldridge for legislation to provide criminal justice reform protections to all prisoners in segregated confinement. Public Safety and Homeland Security.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

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 4  
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; and (5) mental health watch.

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

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

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

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

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

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

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

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

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

34 SECTION 7. Said section 39 of said chapter 127, as so appearing, is hereby amended by  
35 inserting after the word “television” in line 19 the following words:- , in accordance with the  
36 prisoner’s preference,

37 SECTION 8. Subsection (b) of said section 39 of said chapter 127, as so appearing, is  
38 hereby amended by inserting after the first sentence the following two sentences:- If canteen  
39 privileges or disability accommodations are deemed inconsistent with the security of the unit,  
40 such determination must be reviewed by the placement review examiners at each placement  
41 review, at which time the placement review examiners must override the determination if there is  
42 not substantial evidence to support it. The placement review examiners shall provide written  
43 explanation of their determination and all evidence relied upon, and all such determinations are  
44 final agency decisions.

45 SECTION 9. Said section 39 of said chapter 127, as so appearing, is hereby amended by  
46 striking out, in lines 34 and 41, the words “restrictive housing” and inserting in place thereof the  
47 following words:- segregated confinement

48 SECTION 10. Said section 39 of said chapter 127, as so appearing, is hereby amended by  
49 striking out, in lines 36, 37, 38, and 39, the words “or restrictive housing is otherwise clinically  
50 contraindicated based on clinical standards adopted by the department of correction and the  
51 qualified mental health professional’s clinical judgment” and inserting in place thereof the  
52 following words:- . A prisoner with a serious mental illness or who is otherwise clinically  
53 contraindicated for restrictive housing, disciplinary restrictive housing, or secure adjustment  
54 units, based on clinical standards adopted by the department of correction and the qualified  
55 mental health professional’s clinical judgment, shall only be placed in secure treatment units,

56 mental health watch, or general population units. Secure treatment units may be any level of  
57 security deemed appropriate for the population. They shall meet minimum standards for mental  
58 health treatment, programming, and education, as established by the department of correction's  
59 director of behavioral health in consultation with the department of mental health. They shall  
60 have minimum out of cell time of no less than five hours daily. All secure treatment units must  
61 be co-directed by one correctional staff person and one clinical staff person, with equal authority  
62 in the unit. All correctional officers stationed in secure treatment units shall receive specialized  
63 training with a particular focus on psychiatric and cognitive disabilities.

64 SECTION 11. Said section 39 of said chapter 127, as so appearing, is hereby amended by  
65 striking out, in line 47, the words "restrictive housing" and inserting in place thereof the  
66 following words:- segregated confinement other than a secure treatment unit or mental health  
67 watch

68 SECTION 12. Section 39A of said chapter 127, as so appearing, is hereby amended by  
69 striking out, in lines 1 and 2, the words "restrictive housing" and inserting in place thereof the  
70 following words:- segregated confinement other than a secure treatment unit or mental health  
71 watch

72 SECTION 13. Said section 39A of said chapter 127, as so appearing, is hereby amended  
73 by inserting after the words "restrictive housing" in line 4 the following words:- , disciplinary  
74 restrictive housing, or a secure adjustment unit

75 SECTION 14. Said section 39A of said chapter 127, as so appearing, is hereby amended  
76 by striking out, in lines 12, 17, 20, 22, 34, 35, 38, and 39, the words "restrictive housing" and  
77 inserting in place thereof the following words:- segregated confinement

78 SECTION 15. Section 39B of said chapter 127, as so appearing, is hereby amended by  
79 striking out, in lines 1, 4, 5, 17, 33, 34, and 35, the words “restrictive housing” and inserting in  
80 place thereof the following words:- segregated confinement

81 SECTION 16. Said section 39B of said chapter 127, as so appearing, is hereby amended  
82 by inserting after the word “39A” in line 4 the following words:- or subsection (a) of section 39H

83 SECTION 17. Said section 39B of said chapter 127, as so appearing, is hereby amended  
84 by striking out, in lines 8 and 9, the words “not later than 6 months and”

85 SECTION 18. Said section 39B of said chapter 127, as so appearing, is hereby amended  
86 by inserting after the words “restrictive housing” in lines 11 and 12 the following words:- ,  
87 disciplinary restrictive housing, a secure adjustment unit, or a secure treatment unit following an  
88 allegation or finding of a disciplinary breach

89 SECTION 19. Said section 39B of said chapter 127, as so appearing, is hereby amended  
90 by striking out, in line 20, the word “or” and inserting in place thereof the following word:- and

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

94 SECTION 21. Said section 39B of said chapter 127, as so appearing, is hereby amended  
95 by striking out, in lines 22 and 23, the words “the evidence relied on and the reasons for the  
96 placement decision” and inserting in place thereof the following words:- (1) any negative effects  
97 of segregated confinement on the prisoner and the extent to which such effects may be impacting  
98 the prisoner’s behavior and perceived level of risk, (2) whether a reasonable probability of safety

99 for the prisoner and third parties could be achieved if the prisoner were confined to general  
100 population or a less restrictive form of segregated confinement than the prisoner has been  
101 assigned to, (3) the factual basis or bases for the placement decision, (4) written description of  
102 any statements made by the prisoner during the hearing and (5) attaching all supporting records  
103 and all records submitted by the prisoner

104 SECTION 22. Said section 39B of said chapter 127, as so appearing, is hereby amended  
105 by striking out subsection (d).

106 SECTION 23. Said section 39B of said chapter 127, as so appearing, is hereby amended  
107 by inserting after subsection (e) the following subsection:-

108 (f) If a placement review causes a prisoner to be held in segregated confinement for more  
109 than 90 days over a one-year period, the placement review shall constitute a final agency  
110 decision. The prisoner may file a complaint challenging the prisoner's placement in segregated  
111 confinement in the superior court for the county in which the inmate is incarcerated or otherwise  
112 being held or in Suffolk county in accordance with section 14 of chapter 30A. The superior court  
113 shall determine if there is substantial evidence to support the determination of the placement  
114 review. If there is substantial evidence to support the determination of the placement review then  
115 the court shall: (1) uphold the placement in segregated confinement or (2) make other orders the  
116 court deems consistent with justice. If there is not substantial evidence to support the  
117 determination of the placement review then the court shall: (1) order that the prisoner shall be  
118 housed in the general population; (2) order that the prisoner shall be housed in a less restrictive  
119 form of segregated confinement than the prisoner is currently confined to; (3) order that the  
120 prisoner shall be housed in the type of segregated confinement that the department assigned the

121 prisoner to; or (4) make other orders the court deems consistent with justice. The availability of  
122 review under this section shall not be construed to limit any judicial remedies otherwise  
123 available.

124 SECTION 24. Section 39C of said chapter 127, as so appearing, is hereby amended by  
125 striking out, in line 4, the words “restrictive housing” and inserting in place thereof the following  
126 words:- segregated confinement

127 SECTION 25. Section 39D of said chapter 127, as so appearing, is hereby amended by  
128 striking out, in lines 2 and 3, the words “restrictive housing” and inserting in place thereof the  
129 following words:- segregated confinement

130 SECTION 26. Said section 39D of said chapter 127, as so appearing, is hereby amended  
131 by striking out subsection (b) and inserting in place thereof the following subsection:-

132 (b) The commissioner shall publish a report quarterly and provide directly to the  
133 segregated confinement oversight committee and to the special commission to study the health  
134 and safety of lesbian, gay, bisexual, transgender, queer and intersex prisoners in correctional  
135 institutions, jails and houses of correction, as to each segregated confinement unit within each  
136 state correctional facility, and every six months as to each segregated confinement unit within  
137 each county correctional facility: (i) the number of prisoners as to whom a finding of serious  
138 mental illness has been delineated by diagnosis and the number of such prisoners held for more  
139 than 15 days; (ii) the number of prisoners who have committed suicide or committed non-lethal  
140 acts of self-harm; (iii) the number of prisoners according to the reason for their segregated  
141 confinement; (iv) a listing of prisoners with names redacted, including an anonymized  
142 identification number that shall be consistent across reports, age, race, gender and ethnicity, and,



143 if known, the voluntary self-identified sexual orientation, as defined in section 3 of chapter  
144 151B, and gender identity, as defined in section 7 of chapter 4, of each prisoner subjected to  
145 segregated confinement, whether the prisoner was pregnant during time spent in restrictive  
146 housing, whether the prisoner has an open mental health case, the date of the prisoner's  
147 commitment to segregated confinement, the length of the prisoner's disciplinary term, if  
148 applicable, and a summary of the reason for the prisoner's commitment; (v) the number of  
149 placement reviews conducted for each type of segregated confinement and the number of  
150 prisoners released from each type of segregated confinement as a result of such placement  
151 reviews; (vi) the length of original assignment to and total time served in segregated confinement  
152 for disciplinary purposes for each prisoner released from said confinement as a result of a  
153 placement review; (vii) the count of prisoners released to the community directly or within 30  
154 days of release from segregated confinement; (viii) the known disabilities of every prisoner who  
155 was placed in segregated confinement during the previous 3 months; (ix) the number of mental  
156 health professionals who work directly with prisoners in segregated confinement; (x) the number  
157 of transfers to outside hospitals directly from segregated confinement (xi) such additional  
158 information as the commissioner may determine; (xii) the number of prisoners subjected to each  
159 type of segregated confinement; (xiii) the number of prisoners held in segregated confinement  
160 for more than 15 days; (xiv) the number of prisoners 21 years of age or younger subjected to  
161 each type of segregated confinement; (xv) the number of pregnant prisoners subjected to each  
162 type of segregated confinement; (xvi) the racial and ethnic composition of prisoners subjected to  
163 each type of segregated confinement; (xvii) the sexual orientation and gender identity  
164 composition of prisoners subjected to each type of segregated confinement who have voluntarily  
165 disclosed during Prison Rape Elimination Act (PREA) screenings or voluntarily disclose and

166 self-identify at any other time during their incarceration their sexual orientation, as defined in  
167 section 3 of chapter 151B, or gender identity, as defined in section 7 of chapter 4; (xviii) the  
168 number of prisoners subjected to multiple stays in each type of segregated confinement in a  
169 given reporting period; (xix) the rate of recidivism for individuals that were subject to segregated  
170 confinement.

171 The information shall be published in a commonly available electronic, machine readable  
172 format.

173 SECTION 27. Said section 39D of said chapter 127, as so appearing, is hereby amended  
174 by inserting the following section:-

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

184 SECTION 28. Section 39E of said chapter 127, as so appearing, is hereby amended by  
185 striking out, in line 2, the words “restrictive housing” and inserting in place thereof the following  
186 words:- segregated confinement other than mental health watch

187 SECTION 29. Section 39F of said chapter 127, as so appearing, is hereby amended by  
188 striking out, in lines 3 and 8, the words “restrictive housing” and inserting in place thereof the  
189 following words:- segregated confinement other than mental health watch

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

193 SECTION 31. Section 39G of said chapter 127, as so appearing, is hereby amended by  
194 striking out, in lines 1, 26, 27, 36, 40, 41, 42, 43, 44, 45, and 47, the words “restrictive housing”  
195 and inserting in place thereof the following words:- segregated confinement

196 SECTION 32. Said section 39G of said chapter 127, as so appearing, is hereby amended  
197 by striking out, in line 6, the word “9” and inserting in place thereof the following word:- 10

198 SECTION 33. Said section 39G of said chapter 127, as so appearing, is hereby amended  
199 by inserting after the word “designee” in line 18 the following words:- , 1 of whom shall be an  
200 individual who has personally experienced segregated confinement

201 SECTION 34. Said section 39G of said chapter 127, as so appearing, is hereby amended  
202 by striking out, in line 29, the word “The” and inserting in place thereof the following words:-  
203 All members of the

204 SECTION 35. Said section 39G of said chapter 127, as so appearing, is hereby amended  
205 by inserting after the word “institutions” in lines 29 and 30, the following words:- , including for  
206 surprise inspections,

207 SECTION 36. Subsection (c) of said section 39G of said chapter 127, as so appearing, is  
208 hereby amended by inserting after the first sentence the following four sentences:- No  
209 restrictions shall be placed on the ability of members of the committee to speak with the public  
210 or the press about public aspects of the committee's work. The committee may ask the  
211 department of correction and sheriff's departments to develop new data and information relating  
212 to use of solitary confinement. The committee shall be entitled to review nonpublic information  
213 and records, including personnel records and prisoner records. The committee shall be entitled to  
214 review and obtain copies of all public information and records, including all public information  
215 that is segregable from non-public information and records.

216 SECTION 37. Said chapter 127, as so appearing, is hereby amended by inserting after  
217 section 39G the following section:-

218 Section 39H. (a) A prisoner may be placed on mental health watch only if it is  
219 determined by a qualified mental health professional's clinical judgment that the prisoner  
220 requires observation to protect them from a risk of serious self-harm.

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