



## Legislation Summary:

### **An Act to provide criminal justice reform protections to all prisoners in segregated confinement.**

Bill Number(s): [H.2504](#) and [S.1578](#) (Bill numbers will change as legislation proceeds.)

Sponsors: Representative Liz Miranda and Senator James B. Eldridge

#### **What this bill does, and why it is important:**

This bill aims to curtail the excessive use of solitary confinement (defined as segregated confinement in the bill) in the Massachusetts correctional system. The goal is to reduce the damage being done by solitary confinement to incarcerated people, their mental health, and their families and communities. If passed, the bill would ensure that fewer people are held in solitary confinement, confinement lengths are reduced, appropriate mental health care is provided and living conditions are more humane.

Solitary confinement is used extensively in Massachusetts correctional facilities, often to punish small infractions and non-conforming behavior stemming from mental illness. The enormously consequential decisions to lock people away in solitary confinement are made without due process by corrections officers who are not equipped to assess a person's mental health status or susceptibility to the worst impacts of solitary confinement.

Even worse, Individuals in mental health crisis are held in what is essentially solitary confinement for "mental health watch" without appropriate treatment or counseling, often for prolonged periods. In a November 2020 report, the U.S. Department of Justice (DOJ) castigated the Massachusetts Department of Corrections (DOC) for this practice, asserting that it "violates the constitutional rights of prisoners in mental health crisis" and "places them at substantial risk of serious harm."

Conditions in solitary confinement are harsh, often inhumane. For all but a few hours a day, people are held in very small cells, without personal belongings or access to educational and rehabilitative activities. They are denied visits and mail from their families and allowed no meaningful contact with anyone. They often do not receive appropriate or adequate medical and mental health care. In Massachusetts Correctional Facilities, people have been held in solitary confinement for as long as 10 years for a single offense.

Citing research showing severe physiological and psychological effects from prolonged isolation, the United Nations has stated that solitary confinement for more than 15 days can amount to torture. Even relatively short stints in solitary can disrupt and undermine education and rehabilitation, and the long-term physical and mental health consequences can be devastating. In spite of the harm caused, Massachusetts DOC routinely holds people in solitary confinement for months, and in many cases for years.

In Massachusetts, as throughout the country, Black and Latinx people are overrepresented in the incarcerated population relative to their share of the general population. As a result, a disproportionate number of Black and Latinx people are held in solitary confinement. The severely damaging effects of solitary confinement on incarcerated people and their families compounds the economic and social stress already imposed on communities of color by disproportionate incarceration.

Although portions of the 2018 Criminal Justice Reform Act were aimed at reducing the excessive and harmful use of solitary confinement in the Commonwealth, the Department of Corrections has established policies and practices designed to avoid adopting those reforms. This bill aims to ensure that the changes intended by the 2018 Criminal Justice Reform Act are finally implemented and calls for additional reforms to reduce the harmful effects of solitary confinement. Provisions of this bill include:

- Requiring the provision of basic rights and privileges already specified in the existing law to those held in “segregated confinement” (i.e. any type of solitary confinement), including standard meals, regular showers, access to reading and writing material, and access to canteen purchases and personal belongings (which cannot be withheld for disciplinary purposes for longer than 15 days);
- Providing all incarcerated people with access to at least 1 hour of structured programming each day for 5 days a week, and offering a minimum of 50 minutes of therapy per week to everyone in segregated confinement by qualified clinical mental health providers;
- Requiring that all people held in solitary confinement be given a minimum of 4 hours out of cell time and, for those in Secure Treatment Units and mental health watch, a minimum of 5 hours.
- Allowing visitation, which cannot be diminished for longer than 25 days;
- Requiring assessment of the need for continued mental health watch through in-person interviews with a qualified mental health provider at least once every 12 hours, and stipulating that a person remaining in mental health crisis after 72 hours in mental health watch must be transferred to a suitable mental health facility.
- Requiring the provision of clothing and a minimum of 2 blankets for each person in mental health crisis held in solitary confinement;
- Prohibiting placement of postpartum mothers, people with permanent physical or developmental disabilities and people less than 21 years of age or more than 55 years of age in solitary confinement;
- Mandating the provision of personal hygiene supplies for those who are menstruating;
- Allowing incarcerated individuals to be joined by an advocate of their choice in disciplinary review hearings;
- Requiring the collection and reporting of data on solitary confinement sentences, including demographic information on people placed in solitary confinement. This requirement is intended in part to document and shed light on whether certain groups are being disproportionately sentenced to solitary confinement. For example, there have been first-hand reports that LGBTQ people have been targeted by corrections officials for placement in solitary confinement.

## League Positions

A number of positions held by the League of Women Voters support this bill.

As detailed in [Where We Stand](#), LWVMA supports:

- A sound corrections system which provides opportunities for the rehabilitation of the adults and juveniles;
- Measures to protect the civil and individual rights of the individual and to promote the person's rehabilitation through individualized treatment;
- Measures that provide sufficient prison space to ensure humane living conditions for people who are incarcerated;
- Measures to protect the civil and individual rights of those involved in the justice system; and
- Vocational training and educational opportunities, meaningful and useful prison industries, and drug and alcohol abuse prevention programs, in conjunction with humane living conditions.

As detailed in [Impact on Issues](#), LWVUS:

- Opposes major threats to basic constitutional rights;
- Supports equal rights and equal opportunity for all, and the promotion of social and economic justice, and the health and safety of all Americans;
- Believes that no person or group should suffer legal, economic, or administrative discrimination;
- Supports equal rights for all under state and federal law regardless of race, color gender, religion, national origin, age, sexual orientation, or disability;
- Believes that every U.S. resident should have access to a basic level of care that includes the prevention of disease, health promotion and education, primary care (including prenatal and reproductive health), acute care, long-term care, and mental health care; and
- Believes that every U.S. resident should have access to affordable, quality in- and out-patient behavioral health care, including needed medications and supportive service that is integrated with, and achieves parity with, physical health care.

## Key References

NCCHC. 2016. *Position Statement, Solitary Confinement (Isolation)*. National Commission on Correctional Health Care. 1145 W. Diversey Pkwy, Chicago, Illinois 60614 .

<https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf>

Solitary Confinement Bill Fact Sheet

<https://drive.google.com/file/d/1fbVHFIVDatqvVle7TRC0gGW6LOtZsGh7/view>

Tsai Bishop E, Hopkins B, Obiofuma C, Owusu F. 2020. *Racial Disparities in the Massachusetts Criminal Justice System*. Submitted to Chief Justice Ralph D. Gants, Supreme Judicial Court of Massachusetts. Criminal Justice Policy Program, Harvard Law School. September 2020.

<https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>

UN 2011. Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment. United Nations General Assembly. August 5, 2011.

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U.S. DOJ. 2020. *Investigation of the Massachusetts Department of Corrections*. United States Department of Justice Civil Rights Division. United States Attorney's Office, District of Massachusetts. November 17, 2020.

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