



PROVIDE CJRA PROTECTIONS TO INCARCERATED PEOPLE IN SEGREGATED CONFINEMENT

S. 1578, SEN. ELDRIDGE,
H. 2504, REP. MIRANDA

2021-2022 LEGISLATIVE SESSION

DESCRIPTION

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“I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one’s mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything.”

–Nelson Mandela

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The Massachusetts Department of Corrections announced plans to end the Departmental Disciplinary Unit (DDU) and eliminate restrictive housing “as it is currently defined”, following a report released by the Falcon group determining that the “innately punitive culture” of these units “minimizes the interests of rehabilitation or positive behavior change.” This is promising news and also demonstrates why **legislative action is necessary and urgent** to protect the most vulnerable from cruel conditions of confinement.

“Restrictive Housing” does not encapsulate all forms of solitary confinement and without legislative action we may end up with a solitary confinement system by another name, that is unregulated by current law. “Restrictive Housing” is defined by the Criminal Justice Reform Act (CJRA) as confinement in a cell for 22 or more hours a day. The DOC’s plan to eliminate “restrictive housing as currently defined”, leaves open that it could replace “restrictive housing” with indefinite segregated confinement of 21, 21.5, or even 21.75 hours a day in conditions that remain “innately punitive” and that will continue to “minimize the interests of rehabilitation or positive behavioral change.” Without legislative action, such units will all be outside of the protections currently provided by the CJRA, resulting in a solitary confinement system that is wholly discretionary and without statutory protections.

Indeed, such units already exist. Half of Souza Baranowski Correctional Center has effectively become a supermax, with people incarcerated in “general population” locked in their cells approximately 21.5 hours a day and suffering substantial deprivations of property, visitation, canteen access, access to yard, gym, law library, good time opportunities, work opportunities, and more. In response to the CJRA, DOC created multiple segregated confinement units characterized by 21 hours a day confinement in highly restrictive conditions, including the Secure Adjustment Unit, the Limited Privileges Unit, the Serious Mental Illness Diversion Unit, and the Accountability Programming Unit, none of which are considered “restrictive housing.”



The DOC is initiating a multi-year process that is **under its complete discretion**. The DOC has the power to stop its timeline for ending restrictive housing, create new segregation units as it sees fit, or even stop the process completely. The Falcon report, and the Department of Justice report before it, have made plain that change is necessary and the time is now. We need the Legislature to take action in order to help effectuate that change in as efficient and accountable manner as possible. The solitary confinement provisions of the CJRA were meant to reduce harm and save lives, and now more than ever, it is important that the Commonwealth keeps those promises. *An act to provide criminal justice protections to all prisoners in segregated confinement* will help us do so.

IMPACT

- Expands CJRA protection to all segregated confinement:** Ensures that **all units that are segregated from the general population are protected by the provisions of the CJRA**, regardless of how they are defined.
- Creates baseline conditions protections in general population:** Ensures that general population units cannot have **similar or worse restrictions** than segregated confinement, that no one in general population is locked in their cell for more than 16 hours a day, and that all incarcerated people have access to baseline programming entitlements.
- Improves mental health care:** Despite the prevalence of mental health problems among incarcerated individuals, the plan to eliminate ‘restrictive housing as currently defined’ is still unclear and **the DOC has made no promises to enhance mental health care or protect prisoners with a mental illness**. This bill provides that people who are designated as having a serious mental illness may only be placed in general population or a secure treatment unit which meets minimum standards for mental health treatment, programming and education, and has a minimum of 5 hours out-of-cell time daily. The house version of the bill also establishes that a clinical staff person will be the director of all secure treatment units, while correctional staff is responsible for security.
- Improves mental health watch:** Despite the scathing report issued by the Department of Justice, finding constitutional violations for treatment of prisoners on mental health watch, the Falcon report recommends that the DOC conduct **a mere investigation** into the allegations, one which will likely be under the discretion of the DOC and will not guarantee any improvement of care. This bill establishes a cap of 72 hours for mental health watch, after which a person would need to be transferred to an outside hospital for appropriate treatment if needed. Further, prisoners on mental health watch must have out of cell time, must be fully clothed, provided blankets, and menstruating prisoners must be provided with personal hygiene supplies.

- Improves conditions: This bill would clarify and enhance rights to out of cell time, visitation, television and radio, canteen access, and disability accommodations.
- Expands protections for vulnerable populations: This bill prohibits **any form of segregated confinement, regardless of how it is defined**, for pregnant and post-partum prisoners, prisoners with permanent physical or developmental disabilities, prisoners 21 years old or younger or 55 or older.
- Due process protections: This bill would enhance procedural protections for incarcerated people who are segregated from the general population -- **which would not be impossible as the DOC moves to eliminate restrictive housing** -- and establish an appeals process to the Superior Court. The bill also ensures that if a prisoner is in solitary confinement awaiting a disciplinary hearing they must return to the general population in no later than 15 days. The house version of the bill further provides that disciplinary sanctions cannot exceed 15 days in segregated confinement.
- Data and Oversight: This bill would improve and enhance data reporting requirements and the rights and responsibilities of the restrictive housing oversight committee.

CONTACT

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