

SENATE No. 1566

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/24/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/12/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/18/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>3/19/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/19/2021</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>4/2/2021</i>

SENATE No. 1566

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1566) of Julian Cyr, Jack Patrick Lewis, Maria Duaine Robinson, Patrick M. O'Connor and other members of the General Court for legislation to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act to promote rehabilitation including guaranteed health, treatment, and safety for incarcerated LGBTQI+ People.

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 13 of chapter 125 of the General Laws is hereby amended by
2 adding the following paragraph:-

3 The superintendent of each state correctional facility and administrator of each county
4 correctional facility shall designate 1 staff member as the LGBTQI+ coordinator. The LGBTQI+
5 coordinator shall: (i) ensure compliance with housing compatibility standards; (ii) coordinate
6 education, employment, and program placement for incarcerated persons who are LGBTQI+, as
7 defined in section 1 of chapter 127; (iii) support self-facilitated LGBTQ+ groups and leisure
8 activities as defined in section 32C; (iv) after consulting with incarcerated persons, ensure at
9 least one periodical is available in each institutional library pertaining to living well with HIV
10 and at least one periodical pertaining to the LGBTQI+ community, and (v) perform other

11 necessary responsibilities. The LGBTQI+ coordinator shall not be the institutional PREA officer
12 appointed pursuant to section 32B of chapter 127.

13 SECTION 2. Section 1 of chapter 127 of the General Laws, and section 1 of chapter 125
14 as so appearing, is hereby amended by inserting the following definitions:-

15 “LGBTQI+”, lesbian, gay, bisexual, transgender, queer, intersex or not conforming to a
16 specific gender identity or sexual orientation.

17 "General Population", any housing placement where an incarcerated person is not held in
18 restrictive housing. In no event shall any general population unit have conditions that are similar
19 to or more restrictive than restrictive housing. These conditions shall include an incarcerated
20 person’s access to: out of cell time; the yard, gym, and other recreational spaces; the law library;
21 religious services; canteen; all personal property; visitation, including both the total available
22 visitation time and the opportunity for contact visits; telephones and video visits; opportunities to
23 earn a wage, and opportunities to earn good time. All such access shall be maximized as much as
24 possible.

25 “Incarcerated Person”, inmate or prisoner.

26 “Consensual”, free from fraud, force, or coercion, provided, however, that relations
27 involving correctional officers and incarcerated persons shall not be deemed consensual.

28 SECTION 3. Said chapter 127, as so appearing, is hereby amended by inserting after
29 section 21 the following section:-

30 Section 21A. Upon intake at a correctional facility, each incarcerated person shall be
31 provided an opportunity to voluntarily disclose their sexual orientation and gender identity,

32 provided further that this information may be disclosed and documented at any time. The
33 information provided shall only be made available to the LGBTQI+ coordinator and any other
34 staff persons designated by the commissioner of correction or sheriff; provided, however that the
35 commissioner and sheriffs shall minimize access to sensitive information. Aggregated data on
36 the number of incarcerated persons who voluntarily disclosed their sexual orientation and gender
37 identity shall be made publicly available on an annual basis for each correctional facility;
38 provided, however, that the report shall not include any personally identifiable information.

39 SECTION 4. Section 22 of said chapter 127, as so appearing, is hereby amended by
40 adding the following paragraph:-

41 Upon intake at a correctional facility, each incarcerated person shall be provided an
42 opportunity to voluntarily disclose homophobic or transphobic sentiments, provided further that
43 this information may be disclosed and documented at any time. Anyone who discloses, is
44 reasonably reported to harbor, or demonstrates behavior consistent with homophobic or
45 transphobic sentiments shall not be housed in the same cell or housing unit as someone who
46 identifies as LGBTQI+; provided that no person shall be punished for disclosure or
47 nondisclosure of such information. Information obtained consistent with this section shall not be
48 shared with the Department of Probation or the Parole Board.

49 SECTION 5. Said chapter 127, as so appearing, is hereby amended by inserting after
50 section 32A the following 2 sections:-

51 Section 32B. For the purposes of this section, the term “superintendent” shall mean the
52 superintendent of each state correctional facility and administrator of each county correctional
53 facility.

54 Each correctional facility shall make anonymized, aggregate data related to the federal
55 Prison Rape Elimination Act of 2003, codified in 34 U.S.C. §§ 30301 to 30309, inclusive,
56 hereinafter PREA, publicly available on their website annually.

57 For each PREA investigation conducted, the correctional facility shall make publicly
58 available on their website the factual basis for the PREA investigation, including, but not limited
59 to, whether it was initiated by staff, an incarcerated person, or a third party. In addition, the
60 factual basis upon which it was initiated shall include a detailed description of the alleged
61 incident, who initiated the investigation, whether the investigated behavior was consensual, and
62 the general location of the alleged incident, provided further, the department will report on the
63 race, age, disability status, sexual orientation and gender identity of incarcerated persons
64 involved delineated by whether they were a victim, perpetrator, or consensual party to said
65 investigated behavior; provided however, that the detailed description of the complaint shall not
66 include any personally identifiable information of incarcerated persons.

67 For each PREA investigation conducted, each correctional facility shall make publicly
68 available on their website a detailed summary of the investigation and factual basis for the
69 investigatory outcome including the evidence relied upon and steps taken to respond to the
70 allegation; provided however, that the detailed summary of the investigation shall not include
71 any personally identifiable information of incarcerated persons.

72 Annually, each correctional facility shall make publicly available on their website all
73 documents normally provided to the federal Bureau of Justice Statistics pursuant to 34 U.S.C. §
74 30303; provided however, that said documents shall not include any personally identifiable
75 information of incarcerated persons.

76 All formal or informal institutional grievances and federal Americans With Disabilities
77 Act requests related to sexual violence or the general wellbeing of LGBTQI+ persons and those
78 living with HIV shall be redacted and made publicly available on each correctional facility's
79 website; provided, that said documents shall not include any personally identifiable information
80 of incarcerated persons.

81 Section 32C. Each correctional facility shall provide meaningful opportunities for
82 LGBTQI+ incarcerated persons to: (i) congregate; (ii) form and self-facilitate self-help groups;
83 (iii) receive LGBTQI+ themed literature in the institutional library, including one commonly
84 read periodical about living well with HIV and one commonly read periodical about the
85 LGBTQI+ community; (iv) watch LGBTQI+ movies free of charge; and (v) celebrate June as
86 pride month. Provided further, each correctional facility shall allow visitors to participate in
87 subsection (ii) and subsection (v).

88 SECTION 6. Section 38F of said chapter 127, as so appearing, is hereby amended by
89 adding the following sentence:- Any claim that is directly related to sexual violence by an
90 incarcerated person that may be the subject of a grievance pursuant to said section 38E shall be
91 deemed exhausted.

92 SECTION 7. Section 39A of said chapter 127, as so appearing, is hereby amended by
93 striking out subsection (c) and inserting in place thereof the following subsection:-

94 (c) The fact that an incarcerated person identifies as LGBTQI+ shall not be grounds for
95 placement in restrictive housing or removal from the general population, provided however, that
96 an incarcerated person may request to be removed from the general population for their own
97 safety at any time.

98 SECTION 8. Section 39A of said chapter 127, as so appearing, is hereby further amended
99 by striking out subsection (f) and inserting in place thereof the following 4 subsections:-

100 (f) No incarcerated person shall be placed in restrictive housing or removed from general
101 population for reporting an act of sexual violence in good faith, provided that an incarcerated
102 person may request to be removed from general population for their own safety at any time.

103 (g) No incarcerated person who engages in consensual sex shall be removed from general
104 population. Provided further, such behavior shall not be grounds for removal of visitation, or
105 phone privileges, provided further, any guilty finding on a disciplinary report shall not be used in
106 determining the classification status or parole eligibility of an incarcerated person.

107 (h) Public displays of affection, including but not limited to handshakes, hugs, touching
108 of another's hair and other forms of non-sexual contact, shall not be subject to disciplinary
109 action, nor shall such incidents be used as a basis to punish or penalize an incarcerated person in
110 any way.

111 (i) An incarcerated person shall not be confined to restrictive housing except pursuant to
112 section 39 or this section.

113 SECTION 9. Section 16 of said chapter 127, as so appearing, is hereby amended by
114 adding the following 3 sections:

115 16A: Each correctional facility shall ensure that an incarcerated person that requests
116 access to medication to prevent the transmission of HIV be provided such medication at no cost
117 to the incarcerated person, provided further, that reasons for requesting said medication shall be
118 kept confidential between the medical provider and incarcerated person and not be shared with

119 security or administrative staff, provided however, that said medication shall only be provided if
120 clinically appropriate.

121 16B: Each correctional facility shall ensure that any incarcerated person prescribed
122 medication to prevent the transmission of HIV or to control and manage HIV, whether held on
123 pre-trial or committed status, shall be provided a thirty day supply upon release from custody.

124 16C: Each correctional facility shall ensure that an incarcerated person prescribed
125 medication to control and manage HIV shall be permitted to keep said medication on their
126 person or in their cell to ensure regular and timely dosage of said medication.