HOUSE DOCKET, NO. 1910 FILED ON: 1/15/2025

HOUSE . . . . . No. 2656

The Commonwealth of Massachusetts

PRESENTED BY:

Jack Patrick Lewis and Samantha Montaño

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:	DATE ADDED:
Jack Patrick Lewis	*7th Middlesex*	*1/15/2025*
Samantha Montaño	*15th Suffolk*	*1/15/2025*
Lindsay N. Sabadosa	*1st Hampshire*	*1/17/2025*

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By Representatives Lewis of Framingham and Montaño of Boston, a petition (accompanied by bill, House, No. 2656) of Jack Patrick Lewis, Samantha Montaño and Lindsay N. Sabadosa for legislation to promote rehabilitation including guaranteed health, treatment and safety for incarcerated LGBTQI+ persons. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2357* OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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:

SECTION 1. Section 13 of chapter 125 of the General Laws is hereby amended by adding the following paragraph:-

The superintendent of each state correctional facility and administrator of each county correctional facility shall designate 1 staff member as the LGBTQI+ coordinator. The LGBTQI+ coordinator shall:

(i) ensure compliance with housing compatibility standards;

(ii) coordinate education, employment, and program placement for incarcerated persons who are LGBTQI+, as defined in section 1 of chapter 127;

(iii) support self-facilitated LGBTQI+ groups and leisure activities as defined in section 32C;

(iv) after consulting with incarcerated persons, ensure at least one periodical is available in each institutional library pertaining to living well with HIV and at least one periodical pertaining to the LGBTQI+ community, and

(v) perform other necessary responsibilities. The LGBTQI+ coordinator shall be a Correctional Program Officer employed by the Massachusetts Department of Correction or a licensed clinical social worker in houses of correction.

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

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

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

“Incarcerated Person”, inmate, prisoner, or detainee.

"Consensual", free from fraud, force, or coercion; provided, however, that any sexual contact or relations between correctional officers and incarcerated persons shall not be deemed consensual.

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

Section 21A. Upon intake at a correctional facility, each incarcerated person shall be provided an opportunity to voluntarily disclose their sexual orientation and gender identity, provided further that an incarcerated person may also disclose this information at any time during their incarceration. The correctional facility shall document the information which shall be made available to the LGBTQI+ coordinator, staff persons who use the information for classification purposes and any other purpose related to implementing the National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA), and any other staff persons designated by the commissioner of correction or sheriff; provided, however, that the commissioner and sheriffs shall minimize access to sensitive information. Aggregated data on the number of incarcerated persons who voluntarily disclosed their sexual orientation and gender identity shall be made publicly available on an annual basis for each correctional facility; provided, however, that the report shall not include any personally identifiable information.

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

Upon intake at a correctional facility, each incarcerated person shall be provided an opportunity to voluntarily disclose personally held homophobic or transphobic sentiments,

provided further that the incarcerated person may also disclose this information at any time during their incarceration. The correctional facility shall document the information, whether it is provided by the incarcerated person or observed by facility staff at any time. Anyone who discloses, is reasonably believed to harbor, or demonstrates behavior consistent with homophobic or transphobic sentiments shall not be housed in the same cell as someone who identifies as LGBTQI+ or who may be perceived as LGBTQI+; provided that no person shall be punished for disclosure or nondisclosure of such information. Information obtained consistent with this section shall not be shared with the Department of Probation or the Parole Board. Aggregated data on the number of incarcerated persons who disclose, are reasonably believed to harbor, or demonstrate behavior consistent with homophobic or transphobic sentiments shall be made publicly available on an annual basis for each correctional facility; provided, however, that the report shall not include any personally identifiable information.

SECTION 5. Said chapter 127, as so appearing, is hereby amended by inserting after section 32A the following 3 sections:-

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

Each correctional facility shall make publicly available on their websites anonymized data, aggregated annually, no later than June 30, that is required by Standard 115.87 of the National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act, 28 C.F.R. Part 115, promulgated pursuant to the federal Prison Rape

Elimination Act of 2003, codified in 34 U.S.C. §§ 30301 to 30309, inclusive, hereinafter the PREA Standards, publicly available on their website.

For each PREA investigation conducted, the correctional facility shall make publicly available on their website the factual basis for each PREA investigation, including, but not limited to, whether it was initiated by staff, an incarcerated person, or a third party; a detailed description of the alleged incident, whether the investigated behavior was consensual, and the general location of the alleged incident, evidence relied upon to determine final investigatory outcomes, and any actions taken to respond to the allegation.

Furthermore, the department will report on the race, age, disability status, sexual orientation, and gender identity of incarcerated persons involved delineated by whether they were a victim, perpetrator, or consensual party to said investigation; provided however, that the detailed description of the complaint shall not include any personally identifiable information of incarcerated persons.

Annually, each correctional facility shall make publicly available on their website the incident-based data that would be necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice; provided, however, that the data shall not include any personally identifiable information of incarcerated persons. All formal or informal institutional grievances and federal Americans With Disabilities Act requests related to sexual abuse or the general wellbeing of LGBTQI+ persons and those living with HIV shall be redacted and made publicly available on each correctional facility's website.

Section 32C. (a) Notwithstanding any general law or special law to the contrary, the state auditor shall be provided with access to all PREA-related records, including, but not limited to,

all information contained in each facility's PREA database and any information provided to any PREA auditor before, during or after a PREA audit, including documents or records reviewed on-site. The state auditor shall also be provided access to all state prisons and houses of correction in the commonwealth and shall be allowed to privately interview incarcerated people, and staff to the extent practicable. (b) The state auditor shall prepare an annual report, produced not later than February 1, analyzing risk factors and systemic issues regarding sexual abuse in state prisons and houses of correction, as well as specific recommendations to improve outcomes. The state auditor shall submit its annual report to the governor, the attorney general and the joint committee on the judiciary, and the report shall be publicly available.

Section 32D. Each correctional facility shall provide meaningful opportunities for LGBTQI+ incarcerated persons to:

(i) congregate;

(ii) form and self-facilitate self-help or support groups;

(iii) receive LGBTQI+ themed literature in the institutional library, including one commonly read periodical about living well with HIV and one commonly read periodical about the LGBTQI+ community; (iv) watch LGBTQI+ movies free of charge; and

(v) celebrate June as Pride month. Provided further, each correctional facility shall allow visitors to participate in subsection (ii) and subsection (v).

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

SECTION 6. Section 38F of said chapter 127, as so appearing, is hereby amended by striking out Section 38F and inserting in place thereof the following:-

Section 38F. An incarcerated person shall not file any claim that may be the subject of a grievance under section 38E unless the incarcerated person has exhausted the administrative remedy established pursuant to said section 38E; but the court shall consider such claim if a final administrative resolution of a grievance filed pursuant to said section 38E has not been decided within 180 days from the date of filing such a grievance, or if the incarcerated person can demonstrate to the court that exigent circumstances exist which, if delayed pursuant to the requirements of this section, would jeopardize the life or seriously impair the health of the incarcerated person, or, for actions seeking equitable relief; or if the claim by an incarcerated person is directly related to sexual abuse, serious bodily harm, or medical issues.

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

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

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

(f) No incarcerated person shall be placed in restrictive housing, removed from general population, or disciplined in any way for reporting in good faith an act of sexual abuse, provided

that an incarcerated person may request to be removed from general population for their own safety at any time.

(g) Any incarcerated person that engages in consensual sexual activity shall not be removed from general population. Provided further, such behavior shall not be grounds for removal of visitation, or phone privileges, provided further, any guilty finding on a disciplinary report for consensual sexual activity shall not be used in determining the classification status or parole eligibility of an incarcerated person.

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

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

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

16A: Each correctional facility shall ensure that an incarcerated person that requests access to medication to prevent the transmission of HIV be provided such medication at no cost to the incarcerated person, provided further, that reasons for requesting said medication shall be kept confidential between the medical provider and incarcerated person and not be shared with security or administrative staff, provided however, that said medication shall only be provided if clinically appropriate.

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

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

SECTION 10. Section 32A of said chapter 127, as so appearing, is hereby amended by adding the following sentence:-

Any incarcerated person with a gender dysphoria diagnosis shall also be housed in a single occupancy cell, unless they request otherwise, provided that the facility is at or below 90% occupancy on the day of assignment.

SECTION 11. Said chapter 127 is hereby amended by inserting after section 39H the following section:-

Section 39I. The Commissioner and sheriffs shall ensure that all mental health providers within their facilities, hired or contracted, are trained in and can demonstrate cultural competency in working with LGBTQI+ individuals.