MAMH
Massachusetts Association for Mental Health

Danna E. Mauch, PhD
President and CEO

Ambassador (ret.) Barry B. White
Chairperson of MAMH Board of Directors

October 21, 2021

The Honorable Walter F. Timilty
Chair, Joint Committee on Public Safety and Homeland Security
Massachusetts State House, Room 213-B
Boston, MA 02133

The Honorable Carlos González
Chair, Joint Committee on Public Safety and Homeland Security
Massachusetts State House, Room 26
Boston, MA 02133

Submitted via email to david.mcneill@mahouse.gov and cara.libman@masenate.gov

Dear Chair Timilty, Chair González, and Honorable Members of the Committee:

RE: In Support of S.1578/H.2504: An Act to provide criminal justice reform protections to all prisoners in segregated confinement (Sen. Eldridge, Rep. Miranda)

On behalf of the Massachusetts Association for Mental Health (MAMH), thank you for the opportunity to submit testimony today. S.1578/H.2504: An Act to provide criminal justice reform protections to all prisoners in segregated confinement would provide critical protections for people with behavioral health conditions incarcerated in Massachusetts.

Formed over a century ago, MAMH is dedicated to promoting mental health and well-being, while preventing behavioral health conditions and associated disability. We are committed to advancing prevention, early intervention, effective treatment, and research for people of all ages. We seek to eliminate stigma and discrimination and advance full inclusion in all aspects of community life. This includes discrimination affecting not only people with behavioral health conditions, but also people who face unequal burdens and barriers to the protections and benefits of citizenship due to their race, ethnicity, gender identity, or disability status. MAMH has a demonstrated track record of furthering its mission by convening stakeholders across the behavioral health and public health communities; disseminating emerging knowledge; and providing subject matter expertise to inform public policy, service delivery, and payment methodologies.

S.1578/H.2504 would address the ongoing use of segregation in Massachusetts prisons by applying the protections and oversight of the Criminal Justice Reform Act (CJRA) of 2018 to all examples of segregated confinement. Currently, DOC restrictive units with more than two hours per day out of cell are not subject to any of the protections, oversight, or transparency

mechanisms provided by the CJRA. Conducting an external review, upon request of the DOC, of these restrictive units that DOC does not consider to fall within the CJRA, the Falcon group found that the units have a punitive culture and "meet the definition of restrictive housing."[1]

The bills would also end Department Disciplinary Unit (DDU) sentences, which Falcon described as having an "innately punitive culture" that "minimizes the interests of rehabilitation or positive behavior change."[2] This is a long-overdue change. Punishing people, without addressing the reasons for their actions, does not serve the correctional system or protect society at large when these prisoners are released. DOC has promised to phase out the DDU, but legislation is necessary to ensure that that promise is kept.

Finally, the bills would improve mental health watch (MHW) conditions in DOC facilities. The DOC places prisoners on MHW when their mental status is so compromised that they place themselves or others at risk. Individuals in such situations require treatment and care. Unfortunately, the reality is that prisoners on MHW have been ignored and mistreated. The bills before you provide that a prisoner who has been placed on mental health watch for more than 72 hours, who continues to require observation to protect risk of serious self-harm, as determined by a qualified mental health professional, shall receive enhanced clinical care at a specialized hospital. The bills also provide that prisoner on MHW shall be fully clothed, if safe, and provided blankets. Prisoners must be allowed out of cell time at least once daily unless contraindicated by a mental health provider.

S.1578/H.2504 are essential to protect prisoners from the harms of restrictive housing to emotional and physical health. Although people with SMI are supposed to be excluded under the CJRA from restrictive housing, the most recently available DOC quarterly reports reveal that restrictive housing is still widely used on persons with mental health issues. A total of 366 prisoners with SMI were held on restrictive housing unit status[3] between October and December 2019. Of those, 76 stayed in restrictive housing for longer than 30 days.[4] And, 262

[1] Falcon, Inc., Elevating the System: Exploring Alternatives to Restrictive Housing, Restrictive Housing Systems Study, Program Validation and Best Practice Recommendations (Mar. 2021), https://www.mass.gov/doc/falcon-report/download at 30.
[2] Ibid.
[3] Inmates on RHU status may be awaiting a rule violation hearing, pending an investigation, pending classification, pending a transfer to another institution, have verified safety needs, or unwilling to accept placement in general population. Inmates in this group may also be awaiting a DDU hearing for a severe disciplinary violation or awaiting DDU transfer after receiving a DDU sanction. Mass. DOC, Quarterly Report on Restrictive Housing (4th Quarter 2019), https://www.mass.gov/doc/restrictive-housing-report-fourth-quarter-2019/download, at 4.
[4] Mass. DOC, Quarterly Report on Restrictive Housing (4th Quarter 2019), https://www.mass.gov/doc/restrictive-housing-report-fourth-quarter-2019/download, at 5.

prisoners with SMI were held on RH-Disciplinary Detention[5] or on DDU Status,[6] with 61 of these persons were so held for over 30 days.[7]

There is compelling scientific evidence that solitary confinement[8] "fails to achieve the penological purposes for which it is ostensibly used, is far more expensive to implement and operate than other correctional regimes, and produces negative psychological and physical consequences that raise serious questions about its constitutionality and its status as a form of torture."[9] A wide range of studies have documented the potentially severe adverse psychological effects of solitary confinement.[10] The topic has been so extensively studied that the renowned psychology professor Craig Haney, reviewing studies to date, writes: "we now have more than sufficient data to conclude that solitary confinement is a harmful practice" and challenges those who say the data isn't adequate to reach such a conclusion.[11] He notes that studies of solitary in prisons are bolstered by substantial scientific literature on the psychological significance of isolation and exclusion in the broader social context, outside a correctional setting.[12]

Yet, the effect of solitary confinement on prisoners, for whom "[P]re-existing traumatic experiences are common" is even more profound, as one is "traumatized yet again by the added stress and deprivation imposed by social isolation."[13] Moreover, solitary confinement

---

[5] Inmates on RH-DD status have resolved pending discipline reports and have been found guilty of, or pled guilty to, a disciplinary violation of 103 CMR 430.00. These inmates serve up to 15 days for one violation, or up to 30 days for multiple violations arising out of the same or substantially connected incident(s). Mass. DOC, Quarterly Report on Restrictive Housing (4th Quarter 2019), https://www.mass.gov/doc/restrictive-housing-report-fourth-quarter-2019/download, at 4.

[6] Inmates on DDU status are currently serving a sanction in the DDU for committing a serious violation of institutional rules. The DDU is located inside MCI-Cedar Junction. Mass. DOC, Quarterly Report on Restrictive Housing (4th Quarter 2019), https://www.mass.gov/doc/restrictive-housing-report-fourth-quarter-2019/download, at 4.

[7] Mass. DOC, Quarterly Report on Restrictive Housing (4th Quarter 2019), https://www.mass.gov/doc/restrictive-housing-report-fourth-quarter-2019/download, at 6.

[8] We use the term "solitary confinement" in our discussion of the clinical literature as that is the term most typically used in such research.

[9] Craig Haney, The Science of Solitary: Expanding the Harmfulness Narrative, Northwestern University Law Review (2020), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1431&context=nulr at 214 (citing studies).

[10] Ibid at 219 & n.25 (citing studies by Kristin G. Cloyes et al., Craig Haney & Mona Lynch, Haney, and Peter Scharff Smith, among others).

[11] Ibid at 221.

[12] Ibid at 221-235.

[13] Ibid at 248 & nn.138-139.

often results in long-lasting physical and psychological damage, including after release from prison.[14]

The effect of solitary on prisoners who were diagnosed with mental illness prior to being put into confinement is even more profound. As professor Haney writes: "Whatever the origins of their mental health symptoms and problems, these prisoners are all uniquely vulnerable to the harmful effects of solitary confinement.[15] The harms of solitary to those with mental health conditions have been documented at length by Dr. Jeffrey L. Metzner and Jamie Fellner.[16] These authors describe how solitary confinement can exacerbate symptoms of illness or provoke recurrence:

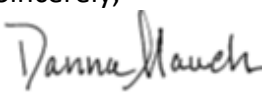
> Suicides occur disproportionately more often in segregation units than elsewhere in prison. All too frequently, mentally ill prisoners decompensate in isolation, requiring crisis care or psychiatric hospitalization.[17]

Given the risks of solitary to prisoners with mental illness, "many legal, human rights, mental health and even correctional organizations have issued recommendations or mandates to exclude the mentally ill from such units."[18] Haney cites, as example, the United Nation's Mandela Rules, which prohibit the placement of persons with mental illness in solitary confinement.[19] Massachusetts should protect prisoners with mental illness, indeed all prisoner, from the disastrous emotional impacts of solitary confinement by enacting these bills.

For all these reasons, we urge you to take swift action to favorably report S.1578/H.2504 out of committee.

Thank you for your consideration.

Sincerely,



Danna Mauch, PhD
President and CEO

---

[14] Ibid at 251-252 & nn.149-153 (describing such impacts as obstacles to reintegration, trauma and psychological aftereffects such as PTSD, and increased likelihood of death during the first year of community reentry, especially from suicide, homicide, and opioid abuse).
[15] Ibid at 253.
[16] Jeffrey L. Metzner and Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, J. Am. Acad. Psychiatry Law (2010), http://jaapl.org/content/38/1/104.
[17] Ibid at 104.
[18] Haney, *supra* note 9, at 253 -254.
[19] Ibid at n.159.