

A CONDENSED PLAP GUIDE TO THE 2018 MASSACHUSETTS BILL S.2371 “AN ACT RELATIVE TO CRIMINAL JUSTICE REFORM” (ALSO POPULARLY CALLED THE CRIMINAL JUSTICE REFORM ACT)-ABRIDGED TO INCLUDE SECTIONS RELEVANT TO CURRENTLY INCARCERATED ADULTS

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A more detailed guide is also available on request.

DISCLAIMER: THIS IS A SUMMARY OF COMPLEX, RECENTLY PASSED LEGISLATION PREPARED BY LAW STUDENT VOLUNTEERS. IT IS ONLY PREPARED FOR CONVENIENCE, AND IS NOT A SUBSTITUTE FOR REVIEWING AND/OR RELYING ON THE ACTUAL LEGISLATION, WHETHER AS AN ENDORSED BILL OR IN ITS FINAL STATUTORY FORM. THIS SUMMARY IS BASED ON THE LEGISLATION IN ITS CURRENT FORM, AND WE MAY NOT MAKE CHANGES TO IT IF THE LAW CHANGES IN THE FUTURE.

Text of the bill can be found here: <https://malegislature.gov/Bills/190/S2371>

The Massachusetts General Laws can be found here: <https://malegislature.gov/Laws/GeneralLaws>

Another section-by-section summary can be found on the website of a MA state senator:
<https://willbrownsberger.com/section-by-section-of-criminal-justice-reform-package/>

Citations to the Massachusetts General Laws are written as M.G.L. ch.x §x

Citations to the Massachusetts Acts of 2003 are written as Mass. Acts of 2003, ch. x §x

Citations to other parts of this bill are written as **S.2371 §x**.

§83. Defines “state prison” as “any prison owned, operated, administered or subject to the control of the department of correction including, but not limited to: Massachusetts Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk; Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution, Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional Institution, Plymouth; Massachusetts Correctional Institution, Warwick; and Massachusetts Correctional Institution, Monroe.” M.G.L. ch.125 §1

§84. Directs sheriffs to collect the following information for everyone committed to a correctional institution: probation central file number; fingerprint-based state identification number; race and ethnicity; offense-based tracking number; type of release; type of admission; length of sentence; jail credit from pretrial incarceration; earned time; program participation and outcome during incarceration; case disposition; and bail amount or reason if no bail set. Data on the population of each jail and house of correction shall be assembled into a quarterly report, which shall be delivered to the secretary of public safety and security, the house and senate chairs of the joint committee on the judiciary, the house and senate chairs of the joint committee on public safety and homeland security, and the clerks of the house of representatives and the senate. M.G.L. ch.126 §40

§85. Adds definitions of “disciplinary restrictive housing” and “exigent circumstances.” M.G.L. ch.127 §1

§86. Adds definitions of “placement review” and “serious mental illness.” M.G.L. ch.127 §1

§87. Adds definition of “restrictive housing.” M.G.L. ch.127 §1

§88. Repeals the provision requiring superintendents of correctional institutions to keep records of the people punished by isolation and the duration of their punishments. M.G.L. ch.127 §4

§89. Requires addiction specialists to examine any inmate committed for thirty days or more for substance use disorder. M.G.L. ch.127 §16

§90. Provides for the collection of the probation central file number, offense-based tracking number, and fingerprint-based state identification number of all persons imprisoned. M.G.L. ch.127 §23

§91. Establishes that inmates who have a gender identity that differs from their assigned sex will be addressed consistent with their identity; provided with access to commissary items, clothing, programming, educational materials and personal property consistent with their identity; searched by officers of the same identity when the search involves nudity or inspection of the anal cavity or genitals; and housed in a correctional facility with inmates with the same identity, unless the commissioner or sheriff certifies that the placement would not ensure the prisoner’s health or safety or that it would present management or security problems. M.G.L. ch.127 §32A

§92. Provides that a correctional institution shall not prohibit or unreasonably limit visitations, nor coerce an inmate to forego or limit visitations. Unreasonable limitations on visitations include providing an inmate fewer than two opportunities for visitations a week, though correctional officers maintain the right to temporarily suspend visitation privileges for good cause, including because of misbehavior or during an emergency. A correctional institution may use video or other methods for inmate communication with visitors, but such communications shall not replace in-person visitation. M.G.L. ch.127 §36B

§93. Provides that an inmate may be confined in restrictive housing to discipline the inmate or if his retention in general population poses an unacceptable risk to the safety of others, to property, or to the operation of the correctional facility. Restrictive housing units must provide meals that meet the same standards as those for general population prisoners; access to showers at least three days a week; rights of visitation and communication by those properly authorized, provided that the authorization may be diminished for disciplinary reasons for a period not to exceed fifteen days in a state correctional facility or ten days in a county correctional facility for each offense; access to reading and writing materials unless clinically contraindicated; access to a radio or television if confinement exceeds thirty days; periodic mental and psychiatric examinations; medical and psychiatric treatment as clinically indicated; the same access to canteen purchases and privileges to retain property as prisoners in the general population, provided, that such access and privileges may be diminished for disciplinary reasons for a period not to exceed fifteen days in a state correctional facility or ten days in a county correctional facility for each offense; the same access to disability accommodations as prisoners in general population, except where inconsistent with the security of the unit; and other rights and privileges as may be established by the commissioner. Before placement in restrictive housing, an inmate shall be screened by a mental health professional to determine if restrictive housing is clinically contraindicated. A mental health professional shall make rounds in every restrictive housing unit and may conduct an out-of-cell meeting with an inmate when deemed necessary to determine whether restrictive housing is clinically contraindicated.

Provides that an inmate shall not be held in restrictive housing if she has a serious mental illness or a finding has been made that restrictive housing is clinically contraindicated unless, not later than 72 hours after the finding, the commissioner or sheriff certifies the reason why the inmate may not be held in the general population; that there is no available placement in a secure treatment unit; that efforts are being undertaken to find appropriate housing; and the anticipated timeframe for resolution. A copy of the certification shall be provided to the inmate. An inmate in restrictive housing shall be offered additional mental health treatment. Establishes that, if an inmate needs to be separated from general population to protect him from harm, he shall be placed in a housing unit that provides approximately the same conditions as in general population, provided, that the prisoner may be placed in restrictive housing for not more than 72 hours while suitable housing is located. An inmate shall not be held in restrictive housing to protect him from harm by others for more than 72 hours unless the commissioner or sheriff certifies the reason why the inmate may not be safely held in the general population; that there is no available placement in a unit comparable to general population; that efforts are being undertaken to find appropriate housing; and the anticipated timeframe for resolution. A copy of the certification shall be provided to the inmate.

Establishes that an inmate's gender or sexual identity or pregnancy shall not be grounds for placement in restrictive housing. The department shall promulgate regulations regarding the placement or prohibition of placement of persons with permanent physical disabilities in restrictive housing.

Provides placement reviews for all inmates confined to restrictive housing every 72 hours if the inmate has been confined for posing a risk to himself, others or the facility; every 15 days if he is awaiting adjudication of an alleged disciplinary breach; not later than six months and every ninety days after if he has been committed to disciplinary restrictive housing; every 90 days if he is being held for any other reason. After a placement review, the inmate shall remain in restrictive housing only if it is determined that he poses an unacceptable risk or if the commissioner or sheriff re-certifies a statement declaring the necessity of keeping him in restrictive housing and the ongoing efforts to move him. If an inmate's placement in restrictive housing is expected to last more than sixty days, he shall have 24 hours written notice of placement reviews; have the opportunity to participate in reviews; be provided with a statement as to the reasons for any decision not to change his placement; and be advised on the actions that might increase his chances of a less restrictive placement upon the next placement review if, not more than 15 days after the initial placement and upon placement review, no placement change is ordered. An inmate who is committed to a secure treatment unit following a disciplinary breach shall receive placement reviews not less frequently than inmates confined to restrictive housing.

Provides that the commissioner shall establish standards to maximize out-of-cell activities in restrictive housing and outplacements from restrictive housing.

Directs the commissioner to promulgate regulations governing the training and qualifications of employees deployed to restrictive housing.

Directs the commissioner to publish a monthly report on the number of prisoners held in the restrictive housing units of each state and county correctional facility and provide it to the restrictive housing oversight committee. The commissioner also must publicly make available a quarterly report on the restrictive housing units within each state correctional facility and an annual report on the restrictive housing units within each county correctional facility, tracking the number of inmates who have been found to be seriously mentally ill and who have been held for more than thirty days; the number of inmates who have committed suicide or non-lethal acts of self-harm; the number of inmates according to the reason for their restrictive housing; the number of inmates in disciplinary restrictive housing and an anonymous report of their, age, race, gender, and ethnicity, whether they have an open mental health case, the date of their commitment to discipline, the length of their term and the reason for their commitment, the number of placement reviews conducted and the number released from restrictive housing as a result of such reviews, the length of original assignment to and total time served in disciplinary restrictive housing for each inmate released as a result of a placement review, the number of inmates released to the community within thirty days of release from restrictive housing, the known disabilities of every inmate who was placed in restrictive housing during the previous three months, the number of mental health professionals who work directly with inmates in restrictive housing, and the number of transfers to outside hospitals directly from restrictive housing. Correctional facility administrators shall furnish all information deemed necessary to create this report.

Provides that inmates held in restrictive housing for more than sixty days shall have access to vocational, educational, and rehabilitative programs to the maximum extent possible and shall receive good time for participation at the same rates as the general population.

Establishes policies to ensure that an inmate with an anticipated release date of less than 120 days is not placed in restrictive housing, unless the placement is limited to not more than five days or the inmate poses a substantial and immediate threat. Any inmate who has fewer than 180 days until his release date and is held in restrictive housing shall be offered reentry programming that shall include substantial resocialization programming in a group setting, regular mental health counseling, housing assistance, assistance obtaining state and federal benefits, employment readiness training, and programming designed to help rebuild interpersonal relationships.

Establishes a restrictive housing oversight committee, made up of public safety, correctional, mental health, criminal justice, social services, and law enforcement professionals. The committee shall gather information on the use of restrictive housing in correctional institutions to determine the impact of restrictive housing on inmates, rates of violence recidivism, incarceration costs, and self-harm within correctional institutions. The

committee shall be provided access to all correctional institutions consistent necessary for their duties and shall be allowed to interview prisoners and staff. The committee shall annually submit to the house and senate recommendations on restrictive housing, including ways to minimize its use and improve outcomes for inmates and facility safety. For each institution, the report will document the criteria for placing an inmate in restrictive housing; the specialized training received by staff who work with inmates in restrictive housing; the results of evaluations of the process of restrictive housing; the impact of use of restrictive housing on order and control in correctional facilities; the cost of housing an inmate in restrictive housing compared with the cost of housing an inmate in general population; and the conditions of restrictive housing in the commonwealth. M.G.L. ch.127 §39–39H

§94. Repeals the statutes establishing the use of isolation units in correctional institutions. M.G.L. ch.127 §40–41

§95. Provides that at least one educational program leading to a high school equivalency certificate is available to persons who are committed to a correctional facility for not less than six months. M.G.L. ch.127 §48

§96. Allows the establishment of young adult correctional units or the designation of individual corrections officers to exclusively supervise young adults, who are 18 to 24 years of age. Such officers shall receive specialized training, which may include: supervising and counseling young adults; psycho-social and behavioral development of young adults; cultural competency; rehabilitation of young adults; educational programs; and relevant community-based services and programs. M.G.L. ch.127 §48B

§97. Defines “medical parole plan,” “department,” “permanent incapacitation,” “secretary,” and “terminal illness.”

Establishes that an inmate may be eligible for medical parole due to a terminal illness or permanent incapacitation. The inmate, her attorney or next of kin, a medical provider, or an employee of the department of corrections must provide a written petition, which the superintendent shall review. The superintendent or sheriff shall develop a recommendation as to release not more than twenty-one days after receipt of the petition and shall transmit the recommendation to the commissioner, alongside a medical parole plan, a written diagnosis by a physician, and an assessment of the risk for violence that the inmate poses to society. The commissioner shall notify the district attorney for the jurisdiction where the inmate’s initial offense occurred, the inmate, the person who petitioned for medical parole, if not the inmate, and, if applicable, the victim or the victim’s family that the inmate is being considered for medical parole. The parties who receive the notice shall have an opportunity to provide written statements; if the inmate was convicted of murder, the district attorney or victim’s family may request a hearing.

Provides that the commissioner shall issue a decision, accompanied by a statement of reasons therefor, not later than forty-five days after receipt of a petition. If the commissioner determines that an inmate is terminally ill or permanently incapacitated such that if she is released she will live without violating the law, she shall be released on medical parole. The parole board shall impose terms for medical parole that shall apply through the date upon which her sentence would have expired. Not less than 24 hours before the date of a prisoner’s release on medical parole, the commissioner shall notify the district attorney for the jurisdiction where the inmate’s initial offense occurred, state police, the police in the locale in which the prisoner shall reside and, if applicable, the victim or the victim’s family of the prisoner’s release and the terms and conditions of the release.

Establishes that a person granted medical release shall be under the jurisdiction and control of the parole board, which may alter the terms and conditions of a medical parole at any time. If a parole officer receives information that a person has failed to comply with a condition of his medical parole or has discovered that the terminal illness or permanent incapacitation has improved such that he would no longer be eligible for medical parole, the officer shall immediately arrest him and bring him before the board for a hearing. If the board confirms the parole officer’s finding, the person shall resume serving the balance of his sentence.

Allows for an inmate, sheriff, or superintendent aggrieved by a decision denying or granting medical parole to petition for relief.

Mandates that the commissioner shall file an annual report with the senate and the house of representatives addressing the number of inmates in custody who applied for medical parole and the race and ethnicity of each applicant; the number of inmates who have been granted medical parole and the race and ethnicity of each one;

the nature of the illness of the applicants; the counties to which the inmates have been released; the number of inmates who have been denied medical parole, the reason for the denial, and the race and ethnicity of each one; the number of inmates who have petitioned for medical parole more than once; the number of inmates released who have been returned to custody and the reason for each one's return; and the number of petitions for relief sought. M.G.L. ch.127 §119A

§98 Indigent prisoners serving a life sentence for a crime committed before the age of 18 have the right to an attorney at a parole hearing and the right to funding for experts. M.G.L. ch.127 §133A

§99 If a person is imprisoned for not paying a fine, the dollar value of each day's imprisonment is increased to §90. M.G.L. ch.127 §144

§100 A court will not send a person to a correctional facility for an unpaid fine, if payment of that fine would have caused substantial financial hardship to that person or their immediate family or dependents. This is determined by a hearing. If financial hardship is found the court can impose an alternative, including community service.

A court will not send a person to a correctional facility if they are not represented by counsel during the proceeding (unless counsel is waived). No fee will be charged for providing counsel, where an indigent person requires counsel solely for non-payment of a fine.

Courts may consider alternatives to incarceration for persons not paying their fines

A person under the age of 18 will not be incarcerated or committed to the department of youth services solely for not paying a fine.

A person who is already incarcerated and faces the financial hardship outlined above, may petition the court to be discharged, and if the court finds financial hardship it must discharge the petitioner. No fee is charged for the filing of this petition. M.G.L. ch.127 §145

§ 202. Inserts new chapter on Restorative Justice.

Defines "community-based restorative justice program." Defines "restorative justice." M.G.L. ch.276B §1
Participation in a restorative justice program is voluntary and may be available to both juvenile and adult defendants. A defendant may be diverted pre-arraignment or at any stage of a case with the consent of the D.A. and the victim. Its resolution can be final with judicial approval. If the defendant completes the program the charge will be dismissed. If they do not complete the program, the case will be returned to the court. M.G.L. ch.276B §2

Persons charged with a sexual offense, an offense against a family or household member, or an offense resulting in serious bodily injury or death. M.G.L. ch.276B §3

Participation in a restorative justice program is not to be used as evidence or admission of guilt, delinquency or civil liability in legal proceedings. Statements made during the program will be confidential and not subject to disclosure or use in criminal or civil investigation, prosecution, or proceedings. M.G.L. ch.276B §4

Establishes a restorative justice advisory committee to review the programs, comprised of 17 members serving 6-year terms. The committee will monitor and assist the programs. It will track the use of programs through a partnership with an educational institution and may make legislative, policy and regulatory recommendations. Designates metrics for evaluating the programs including outcomes, recidivism rates, criteria for involvement and training, cost savings, training guidelines for facilitators, disparities in use, and best practices. The committee will compile an annual report. M.G.L. ch.276B §5

§ 210. Adds language that the parole board shall not assess the parole fee upon a person granted a parole permit for the first year the person is on parole. Mass. Acts of 2003, ch. 26 §368

§ 211. Adds language that parole board may waive payment of parole fee if payment would constitute a substantial hardship for individual, immediate family, or person's dependents and that the waiver will remain in effect for the period that the person is determined unable to pay the monthly parole fee. Mass. Acts of 2003, ch. 26 §368

§ 212. Adds language that parole board shall not assess the surcharge upon a person granted a parole permit for the first year the person is on parole. Mass. Acts of 2003, ch. 26 §368

§ 213. Adds language stating that the parole board may waive payment of parole fee if payment would constitute a substantial hardship for individual, immediate family, or person's dependents and that the waiver will remain in effect for the period that the person is determined unable to pay the monthly parole fee. Mass. Acts of 2003, ch. 26 §368

§ 218. Establishes a special commission to study the health and safety of LGBTQI prisoners to evaluate current access to healthcare services and outcomes. The commission will interview prisoners and staff and will gather information on the number of prisoners diagnosed with gender dysphoria or have transition-related health issues; the number of prisoners denied diagnoses of gender dysphoria; the number denied requests for alternate housing or facility placements on the bases of gender identity; training provided to staff.

§ 219. Establishes a special commission to study the prevention of suicide among correction officers in Massachusetts correctional facilities. The commission will review the state of suicide prevention programs and develop model plans, recommend program changes, highlight budget priorities and recommend best practices.

§ 221. Establishes a task force to examine and study the treatment and impact of individuals ages 18 to 24 in the court and correctional systems. The task force will evaluate the advisability, feasibility and impact of changing the age of juvenile court jurisdiction to defendants younger than 21 years of age. It will also make recommendations for the establishment, implementation and provision to young adults committed to the department of correction of increased and targeted programming.

§ 223. Establishes a panel of justice-involved women to review and report on the impact of the act and other criminal laws on women and make annual recommendations on gender-responsive and trauma informed approaches to address the pretrial, incarceration and rehabilitation needs of justice-involved women.

§ 230. Sets Dec. 31, 2018 deadline for compliance with regulations regarding segregation units. M.G.L. ch.127 §§39B, 39E

§ 231. Sets deadline for appointments (October 1, 2018) to the restorative justice advisory committee established in S.2371 §202 and a deadline for first meeting (December 1, 2018). M.G.L. ch.276B §5

§ 232. S.2371 §2, 5, 8, 10, 12, 13, 14, 15, 16, 17, 27, 31, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 80, 81, 130, 132, 161, 168, 172, 185, and 207 will take effect 90 days from the effective date of the act.

§ 233. S.2371 §18, 74, 106, 108, 110, 125, and 227 will take effect July 1, 2019.

§ 234. S.2371 §19 and 23 will take effect 1 year after effective date of act.

§ 235. Change to DNA processing-time requirements will apply to convictions and adjudications enter on after 1 year after effective date of act.

§ 236. S.2371 §25, 26, 85, 86, 87, 88, 89, 91, 92, 93, 94, 95, and 96 will take effect December 31, 2018.

§ 237. S.2371 § 45, 46, 49, 50, 51, 57, and 111 that will apply to offenses committed after the effective date of act.

§ 238. S.2371 § 47, 48, 52, 53, 54, 55, 56, and 60 will apply to initial convictions occurring on or after effective date of act.

§ 239. S.2371 §84, 90, 103, 104, 186, 187, 188, 189, 190, 191, 192, 193 194, and 195 will take effect six months after the effective date of act.