

October 8, 2019

Sen. James B. Eldridge, Chair
Joint Committee on the Judiciary

Rep. Claire D. Cronin, Chair
Joint Committee on the Judiciary

RE: An Act to Collect Data on LGBTQI Prisoners Held in Restrictive Housing (H.1341/S.905)

Dear Chairman Eldridge, Chairwoman Cronin, and members of the Joint Committee on the Judiciary,

The Fenway Institute at Fenway Health would like to provide testimony in support of H.1341/S.905, An Act to Collect Data on LGBTQI Prisoners Held in Restrictive Housing. The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), as well as people living with HIV and the larger community. We do this through research and evaluation, education and training, policy analysis, and public health advocacy. We are the research division of Fenway Health, a federally qualified health center in Boston, MA.

As health care providers and public health researchers, we are well aware of the significant, long-term harm that many incarcerated people experience as a result of solitary confinement or restrictive housing. This is unsurprising, given the physically unhealthy, extremely stressful, and psychologically traumatizing living conditions in solitary confinement. Research has shown that those who experience solitary confinement are more likely to report PTSD symptoms and develop psychiatric disorders compared to those who have not experienced solitary confinement. The extreme social and sensory deprivation of solitary confinement can result in long lasting harm to the emotional, cognitive, social, and physical health of people who are incarcerated. Solitary confinement also generally entails limited or no access to education and training services, impacting future employability and opportunities for success upon release. The U.S. Supreme Court has called the practice “barbaric,” and the United Nations describes it as “torture.”

While the Massachusetts Department of Corrections claims that it no longer uses solitary confinement, formerly incarcerated individuals dispute this claim.

Unfortunately, research suggests that incarcerated LGBTQI people may be subjected to solitary confinement more frequently than their heterosexual, cisgender peers. A study from Columbia Law School found that solitary confinement “remains the default placement for periods of days, months, years, and in some cases, decades” for incarcerated LGBTQ people and people living with HIV. A 2015 survey of LGBTQ inmates found that over 85% of respondents reported being placed in solitary confinement, with nearly half reporting spending as much as 2 years in confinement. Facilities may have policies in place that require LGBTQI inmates to be segregated into solitary confinement based solely on their identities in order to protect them from potential

abuse. While LGBTQI prisoners are at higher risk of abuse, isolating them in protective custody is not the best way to address this problem.

The Prison Rape Elimination Act (PREA) requires correctional staff to be more aware of indicators of sexual abuse, including sexual orientation and gender identity, and to respond accordingly. In theory, this would help increase surveillance of and dramatically reduce sexual violence against incarcerated LGBTQI people without the need for solitary confinement as protective custody.

However, despite the good intentions of PREA, anecdotal evidence from currently and formerly incarcerated LGBTQI people indicate that PREA is being misinterpreted and misused by staff. PREA states that facilities may ban same-sex sexual activity, but that same-sex sexual activity should not be considered abuse if the facility determines that the conduct was not coerced. We've heard first-person accounts of staff misinterpreting casual and harmless acts involving LGBTQI-identified inmates such as hugging, incidental contact (brushing one's leg against another person's), or simply spending time together as signs of sexual relationships or abuse. This can lead to solitary confinement as a punishment. Worse, homophobic or transphobic staff may purposefully target LGBTQI prisoners by initiating PREA investigations for harmless acts, during which inmates are held in solitary confinement.

The first step in ending the misuse of PREA and bringing oversight to the disproportionate use of solitary confinement against incarcerated LGBTQI people is to pass this bill, An Act Relative to the Collection of Data on LGBTQI Prisoners Held in Restrictive Housing. We have no reason to doubt the personal accounts we've heard from incarcerated LGBTQI people, and these stories may be telling a much bigger tale of systemic abuse. This bill would require facilities in Massachusetts to regularly collect data and report on the status of LGBTQI prisoners held in restrictive housing. This transparency and data will provide clarity around how solitary confinement is being used, and it will allow us to hold facilities accountable for the ways in which LGBTQI inmates are being mistreated.

Sincerely,

Tim Wang, MPH
Senior Policy Analyst
The Fenway Institute