

Restrictive Housing in Massachusetts Prisons and Jails

**Prepared by the Mental Health Legal Advisors Committee
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What is restrictive housing?

Restrictive housing is when a prisoner is confined to a cell for more than 22 hours a day (except for a mental health evaluation).¹

When restrictive housing is used for discipline, it is called disciplinary restrictive housing.²

Are there rules about restrictive housing?

Yes. There are rules under Massachusetts law³ that apply to county jails and state prisons. There are also Department of Correction (DOC) regulations that apply to state prisons.⁴

For what reasons may a prisoner be placed in restrictive housing?

A prisoner may only be placed in restrictive housing:

- to discipline the prisoner for rule violations OR
- if general population poses an unacceptable risk:
 - to the safety of others;
 - of damage or destruction of property; or
 - to the operation of the correctional facility.⁵

Are there any prohibitions on the use of restrictive housing?

Prisoners may not be placed in restrictive housing:

- If pregnant;⁶
- For being lesbian, gay, bisexual, transgender, queer or intersex or having an uncommon gender identity or sexual orientation;⁷
- If they have a release date of less than 120 days (unless the placement is for no more than 5 days or the inmate poses a substantial and immediate threat);⁸
- To protect the prisoner from harm from others (“protective custody”) except for
 - up to 72 hours while suitable housing is located,
 - after 72 hours, if the DOC Commissioner or a Sheriff (or their designee) certifies that restrictive housing remains necessary.⁹

Additionally, prisoners in state prisons may not be put in restrictive housing for self-injurious behaviors or behaviors related to self-injurious behavior or for reporting self-injurious thoughts or suicidality;¹⁰

There are also special rules for prisoners with Serious Mental Illness (SMI).

What is a serious mental illness (SMI)?

A prisoner has a serious mental illness if the prisoner has:

- A qualified mental health professional gives a current or recent diagnosis of:
 - Schizophrenia/psychotic disorder;
 - Major depressive disorder;
 - Bipolar disorder;
 - Neurodevelopmental disorder, dementia, or other cognitive disorder;
 - Disorder characterized by breaks with reality/perceptions of reality;
 - Any type of anxiety disorder;
 - Trauma and stressor related disorder; or
 - Severe personality disorder;

OR

- A qualified mental health professional finds
 - serious risk of substantially deteriorating mentally or emotionally in restrictive housing, or already has so deteriorated,
 - so that diversion or removal is clinically appropriate.¹¹

How would a facility know a prisoner has an SMI?

Before placement in restrictive housing, a qualified mental health professional must screen to determine if

- the prisoner has a serious mental illness OR
- restrictive housing is otherwise clinically contraindicated (based on standards and on clinical judgment).¹²

What if a prisoner is found to have an SMI?

If a prisoner has SMI or a clinical contraindication for restrictive housing, the prisoner cannot be held in restrictive housing unless

- within 72 hours the DOC Commissioner or Sheriff (or their designee) certifies in writing that restrictive housing remains necessary, noting:
 - The reason the prisoner may not be safely held in general population;
 - There is no available placement in a secure treatment unit

- Efforts are being taken to find appropriate housing and the status of those efforts;
- The anticipated time frame for resolution.¹³

The prisoner shall receive a copy of the certification.¹⁴

What rights does a prisoner have in restrictive housing?

A prisoner in restrictive housing has the right **by statute** to:

- meals meeting the same standards as those received in general population;
- showers at least 3 days per week;
- visitation and communication, although those rights may be limited during discipline for up to 15 days in state facilities and 10 days in county facilities (for each offense);
- reading and writing materials (unless clinically contraindicated);
- access to either a radio or television if held over 30 days (but, as property, these rights may be limited during discipline for up to 15 days in state facilities and 10 days in county facilities (for each offense) or where inconsistent with the unit’s security);
- periodic mental and psychiatric examination;
- medical and psychiatric treatment as clinically indicated;
- canteen purchases and property as enjoyed in general population, although those rights may be limited during discipline for up to 15 days in state facilities and 10 days in county facilities (for each offense) or where inconsistent with the unit’s security);
- disability accommodations as in general population, except where inconsistent with unit security.¹⁵

A prisoner in restrictive housing in a state prison also has the right **by DOC regulation** to:

- shaving not less than 3 days per week;
- clothing, bedding, and linen,
- provided laundry, barbering, and hair care services as in general population;
- legal materials and legal reference material;
- reading materials from the institution library unless clinically contraindicated;
- exercise out of cell – 1 hour per day, 5 days per week, unless security or safety considerations dictate otherwise.
- additional out-of-cell time per 103 DOC 650;
- telephone privileges per 103 CMR 482.00. (Superintendent may limit number of calls.)¹⁶

Prisoners held in restrictive housing for more than 60 days must have access to

- vocational,
- educational, and
- rehabilitative programs
- to the maximum extent possible
- consistent with the safety and security of the unit and

- shall receive good time for participation.¹⁷

DOC must create standards and procedures to maximize out-of-cell activities and outplacements for those in restrictive housing.¹⁸ (These are activities beyond the 5 hours per week of out-of-cell recreation time.) Such additional activities may include, but are not limited to, recreation or programming.¹⁹

What mental health care is provided in restrictive housing?

A qualified mental health professional must

- Make rounds;²⁰
- Conduct out of cell meetings if a confidential meeting is warranted in the professional's judgment;²¹
- Evaluate prisoners for
 - an SMI or
 - if restrictive housing is otherwise clinically contraindicated.²²

Mental health staff must offer a prisoner with SMI in restrictive housing additional mental health treatment in accordance with clinical standards;²³

A prisoner in restrictive housing in a state prison also has the right **by DOC regulation** to:

- Visits from medical staff daily to ensure health and well-being
- If there over 30 days,
 - a treatment plan they monitor weekly,
 - treatment as necessary and
 - steps to aid in transfer back to general population.²⁴

What kind of reviews do prisoners receive in restrictive housing?

Prisoners in restrictive housing must receive placement reviews at set intervals, depending on the circumstances.

For more information about restrictive housing reviews, contact Prisoners' Legal Services of Massachusetts.

What are a prisoner's rights regarding placement reviews?

If a prisoner's stay in restrictive housing may be expected to last more than 60 days, the prisoner must receive

- notice of the review and
- the opportunity to participate in person or in writing.²⁵

After the review, the prisoner shall receive a written statement with the evidence relied on and reason for the decision.²⁶

If no change is ordered, staff must tell the prisoner

- behavior standards and
- program participation goals

that will increase the chance of a placement change at the next review.²⁷

What are a state prisoner's rights in a Department Disciplinary Unit (DDU)?

The DDU is a long-term disciplinary unit where prisoners are segregated. DOC considers the DDU a “disciplinary restrictive housing unit” and has established special rules for it.²⁸ DOC doesn't apply the regular restrictive housing rules to the DDU.²⁹

Prisoners may be held in solitary on the DDU for long periods of time, the maximum being 10 years for violations arising out of one or substantially related incidents.³⁰

The DOC regulations regarding prisoners on the DDU require:

- Screening for SMI or other clinical contraindication requiring diversion from the DDU;³¹
- Placement reviews for those on the DDU after 180 days and every 90 days thereafter;³²
- Exclusion from the DDU of prisoners with SMI or other clinical contraindication unless there is a certification within 72 hours of DDU placement and every 72 hours thereafter (every Mon., Wed., and Fri.) that the prisoner poses an unacceptable risk to others, to property, or to facility operation;
- Advising prisoners after reviews on behavior standards and program goals that will increase the chance of a placement change at the next review.³³

What are a state prisoner's rights on a Health Services Unit (HSU)?

The DOC does not consider HSU placement to be restrictive housing.³⁴ Therefore, the DOC doesn't apply the statutory protections for restrictive housing to HSUs.

What are a state prisoner's rights on a Secure Treatment Unit (STU)?

The STU is an alternative to restrictive housing for prisoners with SMI.³⁵ A STU is a maximum-security residential treatment program.³⁶

DOC doesn't consider the STU to be restrictive housing.³⁷ DOC has a separate set of regulations for prisoners on STUs.³⁸

The DOC regulations on STUs require

- A STU prisoner waiting for a disciplinary hearing or serving disciplinary detention or DDU sanction has status reviewed every 72 hours.

- At the review, a multidisciplinary team discusses the prisoner’s status and any concerns, which includes mental health issues.
- These reviews must be documented.³⁹

What are a state prisoner’s rights on the Secure Adjustment Unit (SAU)?

The SAU is a unit for prisoners leaving restrictive housing when officials believe placement in general population is not possible.⁴⁰

DOC doesn’t consider the SAU to be restrictive housing. DOC has a separate set of regulations for prisoners on SAUs.⁴¹

Neither these regulations nor other DOC policy dictate how many hours out-of-cell a prisoner in the SAU must receive, but DOC confines prisoners in these units for up to 21 hours per day.⁴²

DOC regulations on SAUs require that these prisoners must receive access to

- cognitive behavioral treatment,
- education, programs,
- structured recreation,
- leisure time activities, and
- mental health services for prisoners diverted from or released from restrictive housing.⁴³

ENDNOTES:

¹ G.L. c. 127, § 1; see also 103 CMR 423.06 (restrictive housing excludes DDU, HSU, hospital, medical setting or mental health watch).

² G.L. c. 127, § 1; see also 103 CMR 423.06.

³ The Criminal Justice Reform Act of 2018 amended Mass. Gen. L. c. 127. The relevant sections of chapter 127 are sections 1, 39, 39A – 39H.

⁴ The relevant DOC regulations are 103 CMR 423 (Restrictive Housing) (for non-disciplinary restrictive housing), 103 CMR 425 (Placement Reviews in Secure Treatment Units), and 103 CMR 430 (Inmate Discipline).

⁵ G.L. c. 127, § 39(a); see also 103 CMR 423.06, applicable to state prisons (RH may hold prisoners who pose an unacceptable risk of harm to others, of damage or destruction of property, or to the operation of the facility; requires protection from harm by others; and/or is serving a disciplinary detention sanction).

⁶ G.L. c. 127, § 39A(d); see also 103 CMR 423.09 (applicable to state prisons).

⁷ G.L. c. 127, § 39A(c); see also 103 CMR 423.09 (applicable to state prisons).

⁸ G.L. c. 127, § 39F; see also 103 CMR 423.09 (applicable to state prisons).

⁹ G.L. c. 127, § 39A(b). This provision states that the certification must state: “(i) the reason why the prisoner may not be safely held in the general population; (ii) that there is no available placement in a unit comparable to general population; (iii) that efforts are being undertaken to find appropriate housing and the status of the efforts; and (iv) the anticipated time frame for resolution.” G.L. c. 127, § 39A(b).

¹¹ G.L. c. 127, § 1; see also 103 CMR 423.06 (applicable to state prisons).

¹² G.L. c. 127, § 39(c); see also 103 CMR 423.08 (applicable to state prisons).

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- ¹³ G.L. c. 127, § 39A(a); see also 103 CMR 423.09(2)(a) (applicable to state prisons).
- ¹⁴ G.L. c. 127, § 39A(a); see also 103 CMR 423.09(2)(a) (applicable to state prisons).
- ¹⁵ G.L. c. 127, § 39(b); see also 103 CMR 423.13 (applicable to state prisons)..
- ¹⁶ 103 CMR 423.13.
- ¹⁷ G.L. c. 127, § 39E; see also 103 CMR 423.13 (applicable to state prisons).
- ¹⁸ G.L. c. 127, § 39B(e).
- ¹⁹ 103 CMR 423.14. Facility officials may consider safety and security when identifying these activities. 103 CMR 423.14.
- ²⁰ G.L. c. 127, § 39(d).
- ²¹ G.L. c. 127, § 39(d); see also 103 CMR 423.12 (applicable in state prisons).
- ²² G.L. c. 127, § 39(d).
- ²³ G.L. c. 127, § 39A(a); see also 103 CMR 423.12 (applicable in state prisons).
- ²⁴ 103 CMR 423.12.
- ²⁵ G.L. c. 127, § 39B(c); see also 103 CMR 423.09(1)(d)2; 103 CMR 423.09(3).
- ²⁶ G.L. c. 127, § 39B(c); see also 103 CMR 423.09(1)(d)2; 103 CMR 423.09(3).
- ²⁷ G.L. c. 127, § 39B(c); see also 103 CMR 423.09(1)(d)1.
- ²⁸ 103 CMR 430.
- ²⁹ 103 CMR 423.04.
- ³⁰ 103 CMR 430.25(1)(f).
- ³¹ 103 CMR 430.29.
- ³² 103 CMR 430.30.
- ³³ 103 CMR 430.31.
- ³⁴ 103 CMR 423.06.
- ³⁵ 103 CMR 425.05.
- ³⁶ 103 CMR 425.05.
- ³⁷ 103 CMR 425.05.³⁸ 103 CMR 425.
- ³⁹ 103 CMR 425.08.
- ⁴⁰ 103 CMR 423.11.
- ⁴¹ 103 CMR 423.
- ⁴² Katie Rose Quandt, Massachusetts Department of Correction Gives a Lesson in How to Get Around Solitary Confinement Reforms, Solitary Watch (Nov. 20, 2019), <https://solitarywatch.org/2019/11/20/massachusetts-department-of-correction-gives-a-lesson-in-how-to-get-around-solitary-confinement-reforms/>; Shira Schoenberg, ‘You’re creating monsters’: Advocates say new rules fail to reform solitary confinement in Massachusetts, The Republican (Feb 20, 2019), <https://www.masslive.com/news/2019/02/youre-creating-monsters-advocates-say-new-rules-fail-to-reform-solitary-confinement-in-massachusetts.html>.
- ⁴³ 103 CMR 423.06.