PLS NOTES

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New Health Services Provider for DOC

The Department of Correction has awarded its new health care contract, covering medical, dental, and mental health care, to the Massachusetts Partnership for Correctional HealthCare LLC (MCPH). The new contract begins on July 1, 2013.

MPCH is a subsidiary of Centurion, which is a joint venture between two private corporations: MHM Correctional Services, Inc., the current mental health provider to the DOC, and the Centene Corporation, a Fortune 500 company that operates managed care programs for Medicaid in several states. In Massachusetts, Centene operates CeltiCare, a managed care organization that provides health insurance to legal immigrants who qualify for the Commonwealth Bridge program. The DOC contract appears to mark Centene's first foray into prison health care.

This transition will affect all DOC prisoners. Since MHM currently provides DOC mental health services, that transition may be less noticeable, but for medical care, the departure of UMass Correctional Health and arrival of MPCH will likely bring changes in personnel, policy, and practice. Prisoners seeking treatment should be prepared to remind providers of their needs (tests, outside consultations, etc.) frequently, using the sick slip and medical grievance processes, so as not to fall through the cracks. This is especially true for prisoners who have an outside consult or procedure approved by UMass which does not take place before the change in providers on July 1. It is not clear whether MPCH will honor commitments previously made, or will subject those requests to additional review.

There may also be staffing vacancies during the transition. Fewer providers at the prison may mean longer than average waits to be seen. Again, prisoners should be prepared to submit new sick slips, medical grievances, or attend staff access as needed in order to be seen in a timely way.

PLS is eager to hear how this major transition is progressing. DOC prisoners with serious health needs that are not being met are urged to seek help from PLS. Depending on the needs and facts of each case, PLS may be able to advocate on behalf of such prisoners, or may advise the prisoner on how to advocate for him, or her, self.

HIV Litigation Goes to Summary Judgment

On May 22, the federal district court heard oral arguments on the defendants' summary judgment motions in PLS's challenge to the method by which HIV medications are distributed in the DOC. The action, brought on behalf of five prisoners against UMass Correctional Health, the DOC, and several of their officials, challenges the defendants' decision to remove all HIV medications from the Keep on Person (KOP) program.

The KOP program allows qualified prisoners to keep their medicine in their cell, taking it as prescribed, and obtaining a refill when needed. Prisoners who do not take KOP medications on time, or who otherwise prove unreliable with KOP medications, may be suspended or terminated from the program, meaning they must attend a med line for every dose of their medication, every day.

The five plaintiffs had taken KOP medications reliably for years, with positive results. Nevertheless, UMCH and the DOC removed them from the KOP program regardless of their individual histories. While they first suggested that the change was made to improve adherence to the medication, the defendants later acknowledged that the change was made to save money. On occasions when prisoners are moved between prisons, or are released from DOC custody, the medications are supposed to be forwarded to them but sometimes are not. While KOP medications that are left behind must be destroyed, medications held at the med line may be reused.

On behalf of the plaintiffs, PLS contends that this action was discriminatory under the Americans with Disabilities Act, as the only meds taken out of the KOP program were HIV medications. PLS also asserts that the change has had negative effects on the plaintiffs' health (as they miss more doses of medicine now, and suffer from more side effects, than they did under KOP) and privacy (as daily med line attendance has led to involuntary disclosures of their HIV-positive status to others). Defendants contend that forcing all HIV patients to attend med line has had only positive effects on patient health, does not discriminate, saves a significant amount of money, and does not lead to unintended violations of privacy. The defendants' motions ask the court to dismiss the case before trial; the plaintiffs and PLS have opposed and asked the court to deny the motions. A ruling is expected later this year.

APRIL 3, 2013 TESTIMONY OF PRISONERS' LEGAL SERVICES IN SUPPORT OF SENATE BILL 1133:

AN ACT REDUCING HEALTH CARE COSTS THROUGH EXTRAORDINARY MEDICAL PLACEMENT

PLS provided testimony in support of this bill on April 4, 2013. The testimony, which is summarized below, was prepared by PLS Director Leslie Walker and PLS attorneys Joel Thompson and Lizz Matos, and was submitted to the Joint Committee on Public Safety and Homeland Security.

This bill (S. 1133) addresses extraordinary medical placement of Massachusetts' prisoners who have terminal, debilitating or incapacitating conditions.

The prison population includes a small number of men and women who have a terminal, debilitating or incapacitating medical condition. Although their number is small, they leave a big footprint. Caring for these people in a prison setting is difficult and expensive. Treating the prisoner and assisting him or her with basic daily tasks consume substantial medical staff time, leaving less time for other patients. Such prisoners often cannot live in general population and require special infirmary or other housing, which is limited. They also consume much security staff time, as officers must transport them to and from outside hospitals and provide round-the-clock supervision when they are hospitalized.

The burgeoning prison population is also an older population. In the Department of Correction alone, prisoners age 50 or older, who comprised 13 percent of the DOC population in 2002, now total over 20 percent of the population (almost 2,500 prisoners). As of 2011, nearly 600 DOC prisoners were over 60 years old; 163 were over age 70. It is well acknowledged that prisoners age more quickly and are sicker than the general population; in prison, 50 years old is considered elderly.

The challenge of caring for ill and elderly prisoners is magnified by the overcrowding in our state and county prisons. As of December 2012, both the DOC and the county facilities were operating at 140% of their design capacity, and the situation is only getting worse. State officials anticipate that the Commonwealth will need to build separate, specialized long-term care units for the chronically ill and disabled, enough to hold over 600 prisoners by 2020.

This bill represents one important step toward recognizing and confronting these realities. It embodies a humanitarian impulse that has for too many years been absent from the Commonwealth's criminal justice system. Massachusetts should join the many states that have some provision to move certain prisoners out of prison for medical reasons. Such a measure has been recommended repeatedly over the years; the DOC Advisory Council (successor to the Harshbarger Commission) did so in 2005. A health care consultant to the DOC pointed out in 2011 that at least thirty other states have enacted a medical discharge law, and that Massachusetts was one of only five states not to have any program in place to allow for the release of dying prisoners. In its most recent Strategic Plan, the Department of Correction endorsed the concept of a medical release law for the seriously and terminally ill.

Over the years PLS has met clients with end-stage cancer, with other lethal diseases, or with multiple debilitating medical problems. Their care is difficult, they cannot tend to themselves, and they are repeatedly shuttled back and forth between prison and outside hospitals. It makes sense to enable correctional authorities to issue a medical release to these prisoners, where they find no risk to public safety and are able to secure a placement for the patient in the community. Extraordinary medical placement is a tool of which the Commonwealth should avail itself.

Plaintiffs Needed for Suit Against Parole Board Decision Delays

Prisoners' Legal Services is preparing to file a court case challenging the manner in which the Parole Board conducts revocation proceedings for individuals serving second degree life sentences. It is PLS' position that the Parole Board's procedure and the resulting delays violate Massachusetts regulations concerning parole revocations and the constitutional rights of second degree lifers subject to it. The case will seek only declaratory and injunctive relief, not money damages. The goal is to put an end to the Parole Board's improper procedure and the terrible effects that it can have on those awaiting decisions and their families, including the delay in the start date of setbacks.

PLS is looking for potential plaintiffs for this case, and is also tracking the timeline of the Parole Board's decision-making in individual cases.

Please contact PLS attorney Jim Pingeon as soon as possible if you are a second-degree lifer and: (1) your parole has been revoked in the past six months or (2) you are currently waiting for your final parole revocation decision from the full Board. When you contact us, please let us know the date of each decision and hearing that you have received concerning your revocation and whether you have exercised your right to appeal the Parole Board's revocation decision. If you have not appealed yet, we suggest that you appeal the decision right away and include in your grounds for appeal that the Parole Board's procedure and the long delay in issuing your revocation decision violated your constitutional right to Due Process and applicable state regulations. Appeals must be filed within 30 days of the date you received the written decision. *You must appeal the Parole Board's decision if you wish to be eligible for inclusion in PLS' intended court case.*

Plaintiffs Needed for Litigation Challenge to DOC Policy Charging Cell Phone Possession as Escape

The DOC currently treats possession of a cell phone as possession of escape tools or attempted escape. While clearly contraband, cell phones have no specific relationship to any particular criminal activity or to escape plans. Nonetheless, the punishment policy for cell phones adds many points to the classification score of affected prisoners, and those points essentially never go away, condemning them to maximum security or at least ensuring that they never go below medium security regardless of how many programs they complete or how much they work while incarcerated.

If you are facing disciplinary action for possession of a cell phone, or have been reclassified as a result of points added for a cell phone conviction, and wish to challenge this, PLS would like to hear from you. Please understand that any legal action that PLS takes around cell phone punishments will be an attempt to change the policy, and will *not* seek money damages. Send information to PLS attorney Lizz Matos.

Cambridge Jail One Step Closer to Closure

Both of the institutions under the control of the Middlesex County Sheriff have been subject to overcrowding orders for many years. In 1989, in a case called *Richardson v. Sheriff of Middlesex County*, the Superior Court enjoined the sheriff from housing more than 200 prisoners in the Cambridge Jail, from allowing more than one man to sleep in each cell, and a number of other requirements. (PLS represents the plaintiffs in *Richardson.)*

In 1993, in a case called *Doyle v. Sheriff of Middlesex County,* similar restrictions were placed on the Billerica House of Correction. There, the cap (after modifications to the governing injunction in 1998) was set at 835 prisoners, including a maximum 50 pretrial detainees.

The available physical space at the Cambridge Jail has not increased since the injunction issued in 1989. However, over the years any pretense of compliance with the 200 cap order has evaporated, with the population there on many months exceeding 400. There are bunks in the corridors, and mattresses on plastic boats have been used as well. In addition, the Jail consists of the top floors of a building so contaminated with asbestos that all of the other state offices that once occupied its lower floors have long since moved out.

A cap order was last made for the Billerica House of Correction in 1998, for 865. Considerable construction, and some demolition, has occurred there in the last 15 years, and the physical capacity of the HOC is now 1,010, more than the actual population at that facility. There are, however, problems with program and other support function space at Billerica if it is filled to its bunk capacity.

The *Richardson* and *Doyle* cases have been consolidated in order to facilitate a comprehensive solution to the overcrowding at both Middlesex County facilities. The Superior Court has authorized a cap of 1,010 at Billerica and has authorized, temporarily, the movement of detainees from the Cambridge Jail to the HOC provided that they are kept separate from convicted prisoners there in all locations aside from the HSU.

The court has also approved an increase in the cap at Cambridge from 200 to 230, although there is no physical capacity increase in Cambridge that would justify the change. The sheriff must tell the court by June 20th exactly where the 230 jailers will be placed; no one is to be without a bed.

Meanwhile, the Commonwealth and the Middlesex Sheriff have signed contracts in hand for 37 million dollars of construction at Billerica, which is slated for completion ten months from now, in April of 2014. Supposedly, that work will add enough bed and program space to Billerica to accommodate all of the pretrial detainees in the Cambridge Jail and allow its closure.

Even if the construction and prisoner transfers associated with "solving" Middlesex's overcrowding problem go smoothly, the result will be yet another exercise in the political cowardice that characterizes sentencing policy in Massachusetts: $37 million to try to build a way out of a population crisis generated by sentences that are too long, good time that is insufficient, and parole that is rarely granted.

State Drug Lab Scandal Continues to Affect Open and Closed Drug Cases

The mess created by the misconduct of Annie Dookhan, who was a chemist at the Jamaica Plain laboratory that performed drug testing on evidence for criminal prosecutions in much of Eastern Massachusetts, continues.

Defendants currently facing charges based on evidence tested in the Jamica Plain drug lab where Dookhan worked should speak with their criminal defense attorneys about how mishandling of drug evidence may affect their cases. People who are serving sentences for drug convictions in Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, or Suffolk Counties may have had their evidence "tested" by Dookhan and should seek legal advice.

If you were convicted of a drug offense in any of those counties and would like to have your case screened for assignment of counsel, call the Committee for Public Counsel Services at 617-482-6212 or 1-800-882-2095 and ask to be connected with the "drug lab intake" extension. DOC prisoners may call CPCS at the following preauthorized speed dial: *9009#. CPCS can also be contacted at 44 Bromfield Street, No. 2, Boston, MA 02108.

PLS Initiatives for 2013

PLS has identified several areas of concern for attention in 2013. These issues can receive a combination of attention via client advocacy, legislative advocacy, and litigation.

Stop Solitary. PLS will focus on reducing the use of solitary confinement in DOC and county facilities.

Medical release. This work will be focused on developing a mechanism for early release of prisoners who are seriously ill or infirm.

Section 35 commitments at MCI-Framingham. PLS will continue work with the multi-organization coalition that is exploring ways to challenge confinement of civilly committed women, without adequate treatment, at MCI-Framingham.

Staff assaults at ECCF (Essex HOC). The Essex County Correctional Facility has for several years shown a pattern of frequent brutality against prisoners in custody there. Related issues are misuse of restraint chairs and K-9s. PLS plans to address these problems via litigation.

Sex offender classification and parole. Currently the DOC precludes all prisoners who are eligible for SDP commitment from placement in minimum security. This mandatory classification override is inconsistent with the statute that requires DOC to assess who is likely to be committed under chapter 123A. PLS intends to address this in court. The case will also challenge the parole board's interpretation of the provision in the SDP statute that requires six months' notice to the D.A. before the prisoner can be released. The parole board interprets the statute to permit delaying notice to the D.A. until parole is actually granted rather than six months before the parole eligibility date. In the many instances where the parole board never paroles the prisoner, he or she is prevented from ever going below medium security during his or her sentence and consequently loses programming opportunities, including work release, that are important aids to re-entry.

Discrimination against wheelchair users in DOC custody. PLS is looking at the practices of assigning wheelchair users to the infirmary because of a shortage of handicap cells, at the chronic shortage of wheelchair pushers, and poor accessibility to and quality of wheelchairs. *PLS is looking for prisoners who have been assigned to HSU because of a shortage of handicap cells, who need pushers and have for substantial periods of time not had a pusher, or who have been assigned wheelchairs that are broken, lacking footrests, etc., and who have been unable to access programs and recreation because of defective wheelchairs or lack of pushers*. Depending on individual circumstances, prisoners with these accessibility problems may be suitable plaintiffs in litigation designed to improve access to handicap cells, prison programs, and proper wheelchairs. Prisoners with wheelchair issues should contact PLS attorney Joel Thompson or paralegal Al Troisi.

Prisoners held illegally on immigration detainers. ICE sometimes places immigration detainers on prisoners just before or at the time of their scheduled release. The ICE detainer is valid for only 48 hours, but many prisons and jails routinely hold people for weeks or months on immigration detainers.

Report Slams Massachusetts Criminal Justice Policies

In March, the Massachusetts Criminal Justice Coalition (MCJC) presented a 40-page report on Massachusetts sentencing, corrections, and parole policies. The report, entitled *Crime, Cost, and Consequences: Is It Time to Get*

Smart on Crime? was written by MassInc and Community Resources For Justice.

The MCJC contains experts with wide experience in criminal justice, including prosecutors and prison officials, defense lawyers, community organizers, and business people who share a concern that the commonwealth needs to change its criminal justice system. The concern is heightened by the knowledge that these government functions currently cost taxpayers $1.2 billion a year in incarceration costs alone. Furthermore, Massachusetts trails other states in adopting reforms that actually have been shown to both reduce costs and improve public safety.

The fact is that crime rates are dropping nationally and in Massachusetts. While other states have closed prisons in response to this drop, Massachusetts continues to build them because increased sentences and decreased parole rates have more than made up for the decrease in actual criminal acts and convictions.

As the five year recession continues, Massachusetts corrections budgets are squeezing funding for public health, higher education, and local aid.

"This new report looks to models developed elsewhere, including in many "red states" that have stopped prison construction, reduced mandatory sentences, and invested in evidence-based programs to cut cost and increase public safety. Instead of spending more on what doesn't work, states like Arkansas, Georgia, South Carolina, and Texas are spending less on what does."

Highlights

The report identifies four "cost drivers" resulting from current Massachusetts sentencing policies. First, is an estimated $150 million annually to keep convicts incarcerated for about one-third longer than was the case in 1990. Second, reducing the number of prisoners serving drug sentences to 1985 levels would save $90 million annually. Third, the estimated cost of over-classification – growth from eight to eighteen percent of prisoners in maximum security from 1990 to 2012, runs up an additional $16 million annually.

Fourth, "[t]he cost of elevated repeat offending resulting from unsupervised release and inadequate reentry programming. If Massachusetts could reduce the number of recidivists by just 5 percent, it would generate up to $150 million in annual savings. New data following the 2005 release cohort show that about 60 percent of inmates exiting state facilities and a similar fraction of those leaving county facilities are convicted on new charges within six years of release. In FY 2011, nearly two-thirds of drug offenders and almost 60 percent of non-drug offenders received sentences where the minimum and maximum were very similar. This sentence structure limits parole eligibility, reducing the incentive offenders have to take steps to self-rehabilitate while in prison. It also means more offenders return to the community without supervision. In 2011, nearly half of inmates released to the street from DOC facilities received no supervision."

The fact that people who have done time earn on an average 40% less over their working lives than they would have had they not gone to prison (a national estimate) means that

Massachusetts workers lose $760 million annually in wages, and that the state is deprived of the tax income that would have been generated by those lost wages.

"Incarceration also has important implications for the communities that disproportionately bear the burden of sending and receiving offenders. Just 10 Massachusetts cities, representing only one-quarter of the state's population, suffered from more than half of all violent crime committed in the Commonwealth in 2010. Homicides, which cause the most social upheaval, were even more highly concentrated, with more than two-thirds of all murders in the state occurring in these 10 communities. Similarly, 10 communities received half of all DOC inmates released to the street in 2011."

The report concludes that if Massachusetts continues on the course of endless adoption of revenge-driven sentencing and parole policy which it has pursued over the last thirty years (exemplified by the 2012 adoption of "three strikes" legislation), the state will spend over $2 billion during the next decade on sentencing and prison policies that produce little demonstrable public safety benefit.

Recommendations

1. Place a moratorium on the expansion of state and county prisons;

2. Empower the Sentencing Commission to revisit the state's approach to sentencing and sanctions;

3. Clearly delineate responsibility for all post-release supervision to the Parole Board and pretrial and diversion to the Probation Department;

4. Expand the use of community supervision and pre-release;

5. Make Boston's Emergency Reentry Program a model for urban centers across the state;

6. Complete an extensive survey of conditions of confinement, programming, and program quality across the system;

7. Standardize data systems and reporting protocols, and funnel information to a central research center;

8. Understand how the state's corrections system can be oriented toward Justice Reinvestment and develop a strategy to build a culture of data-driven decision-making with the agencies.

Esta publicación está disponible in español. Pídela por escrito si quiere.

Prisoners' Legal Services now has a Facebook page :

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PLS also has a Twitter feed:

https:/twitter.com/plsma.

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