



PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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Information about COVID Class-Action Lawsuit

We are writing in response to your request for information regarding the global COVID-19 pandemic and the risk that you may suffer substantial harm if you are not released from prison or jail. We appreciate that this is an extraordinarily stressful time for most of our clients, and we have been and will continue to advocate that the Commonwealth must release as many prisoners as possible as soon as possible in order to stop the spread of infection. We have also advocated for improved conditions in order to reduce harm, including free phone calls and emails, increased access to personal hygiene products, sanitation, and personal protective equipment, and an end to the Department of Correction lock down.

Prisoners' Legal Services has filed a class action lawsuit to seek release of prisoners in response to the COVID-19 pandemic. We have defined the class as “all prisoners who are incarcerated at prisons and jails in Massachusetts, including two subclasses: (1) All prisoners who are at high risk for serious complication or death from COVID-19 due to underlying medical condition or age (the “medically vulnerable subclass”); and (2) All prisoners civilly committed to a correctional facility under G.L. c. 123 §. 35 for treatment of an alcohol or substance use disorder (the “Section 35 subclass”).” There are eleven named plaintiffs who are representing the interests of the class in this case. The Defendants in the case are Governor Charlie Baker, Commissioner Carol Mici, Secretary of the Executive Office of Public Safety and Security Thomas Turco, and Parole Board Chair Glorianne Maroney.

We are asking the Court to order the Defendants to release as many prisoners as necessary to ensure that no prisoner has to eat, sleep, or recreate within 6 feet of another person. We have asked for prisoners who are medically vulnerable to be prioritized for release.

If we were in touch with you prior to filing suit about the possibility of being named a plaintiff and you did not end up being named as a plaintiff, please know that you nonetheless remain a member of the proposed class as we have defined it and that we are seeking relief for the entire class, not just the named plaintiffs. However, we have no way of knowing or predicting how the Court will rule or what relief it may order, if any, and we cannot say whether individual prisoners will ultimately get released. We will continue fighting as hard as we can to protect the health and safety of all prisoners across the Commonwealth.

Specifically, we are seeking the following relief from the Court, for the duration of the COVID-19 emergency:

We are asking the Court to order that the Defendants may not:

- House any prisoner in any correctional facility where the population exceeds the Design/Rated capacity of that institution;

- House any prisoner in a cell, room, dorm, or other living area that does not meet the minimum size standards established by the Department of Public Health in 105 CMR 451.320-322;
- House any prisoner in a cell, room, dorm, or other living area where they must sleep, eat, or recreate within six feet of another person;
- Maintain any Medical or Health Services Unit, or medication distribution area, in which prisoners must wait for or receive treatment or medication within six feet of another person, other than their medical provider;
- Transfer any prisoner from a county jail to the DOC; or
- Confine any person in a correctional facility for purposes of drug or alcohol treatment under G.L. c. 123 § 35.

We are asking that the Court order the Defendants to immediately reduce the number of people who are confined in prisons and jails by at least a sufficient number to ensure that all of the above requirements can be met, prioritizing release for people who are medically vulnerable to serious illness or death from COVID-19. We have noted multiple mechanisms by which Defendants could release prisoners:

- Expanded use of home confinement;
- Expanded use of furloughs, including allowing furloughs for longer than the 14 days authorized by G.L. c. 127, § 90A;
- Maximizing the award of good conduct deductions, including completion credits and “boost time” under G.L. c. 127, § 129D, and authorizing the award of more such deductions than is permitted by § 129D;
- Identifying all prisoners who may qualify for medical parole, under G.L. c. 127, § 90A, taking all necessary steps to ensure that a medical parole petition is filed immediately, and granting medical parole to those who qualify as quickly as possible and in no event more than one week after the petition is filed; Maximizing the use of commutation and clemency; and
- Maximizing the use of the Governor’s emergency powers and all other available mechanisms to grant releases to all those who are vulnerable to serious illness and death from COVID-19 due to age or underlying medical condition, and all those who are within one year of release, unless there is clear and convincing evidence that such release would pose a risk to public safety outweighing the public health risk of their continued incarceration.

We have also asked the Court to order the Parole Board to:

- Exercise its authority under G.L. c. 127, § 130, and 120 Code Mass. Regs. § 200.10 (2017), to make all persons serving house of correction sentences eligible for early parole;
- Consider the dangers posed by COVID-19 when it evaluates whether “release is not incompatible with the welfare of society,” as required by G.L. c. 27, § 130;
- Presumptively grant parole to all parole eligible individuals unless it makes a determination based on clear and convincing evidence that the person cannot live at liberty without violating the law;
- Expedite the actual release of all individuals who have been granted parole or medical parole contingent on approval of a home plan or satisfaction of some other condition;

- Ensure that no prisoner is held beyond his “release to supervision date” under G.L. c. 127, § 130B; and
- Conduct parole hearings for all parole eligible prisoners no later than 60 days prior to their parole eligibility date, as required by G.L.c. 127, § 136.

Individual Advocacy and Claims for Release

Other than medical parole, PLS is not doing individual advocacy or filing individual claims for release right now, because we are focusing our limited resources on advocating for prisoners throughout the system as a whole.

We are continuing to work on medical parole petitions for prisoners who are terminally ill or permanently incapacitated. **If you believe you qualify for medical parole, please contact us and we will assess whether or not we can provide you with assistance.** You can write to us at Prisoners’ Legal Services, 50 Federal St., 4th Floor, Boston MA 02110. If you are in a state prison you may call us by using our free speed dial line, 9004. If you are in a county jail or house of correction, you can use our collect call line 617-482-4124.

We also remain available to do individual advocacy for any needed medical care. Please contact us if you suspect you have COVID-19 and are in need of medical advocacy.

Litigation by the Committee for Public Counsel Services (CPCS), Massachusetts Association of Criminal Defense Attorneys (MACDL), and the American Civil Liberties Union (ACLU)

In a separate lawsuit, CPCS, MACDL, and the ACLU sought release for prisoners. On April 3 2020, the Supreme Judicial Court granted limited relief wherein prisoners who are held pretrial on bail and have not been found dangerous or charged with a violent or otherwise excluded offense (which includes sex offenses) are entitled to a hearing within two business days of filing their motions, where they will be entitled to a rebuttable presumption of release.

If you are awaiting trial, you should contact your criminal defense attorney to see if you may qualify for a petition for release. If you are post conviction and currently in need of intervention in your criminal case to try for release, or if your trial lawyer is not addressing a pre-trial matter with you, you can call CPCS at 617-482-6212 and ask for the COVID hotline.

Thank you for contacting us, we hope that we can all work together to reduce the harm you are experiencing during this crisis.