



## PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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January 14, 2021

Commissioner Carol Mici  
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Attorney General Maura Healey  
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Monica Bharel MD, MPH  
Commissioner of Public Health  
Department of Public Health  
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Dear Commissioner Mici, Attorney General Healey, and Commissioner Bharel:

The unrelenting COVID-19 outbreaks in our prisons is an emergency in our Commonwealth. Immediate action must be taken to release people in order to prevent further sickness and death and protect public health. On January 12, 2021, at least 19 are confirmed to have died from contracting COVID while in custody of the Department of Correction.<sup>1</sup> Twelve of these individuals perished since November 20, 2020.<sup>2</sup> Approximately 35% of the total prison population has tested positive for the virus.<sup>3</sup>

We commend the state for including those who work and live in carceral settings among those being prioritized for vaccine distribution and for recognizing that such an evidence-based public health decision, recommended by the CDC and American Medical Association, is imperative to protect us all. However, during the long 10 plus months of this pandemic, public health experts have also called for reducing prison and jail populations in an effort to prevent both outbreaks and community spread. Until the vaccines take full effect, which will be months from now, at best, many more will needlessly die or become permanently disabled from contracting the virus. This can be prevented by taking some basic and immediate steps.

Even with the imminent arrival of the vaccines, experts are clear that we must continue to be vigilant about social distancing and all other public health precautions.<sup>4</sup> For this reason, and because releases from

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<sup>1</sup> The Department has officially reported [17 deaths in custody from COVID-19](#) and Prisoners' Legal Services (PLS) is aware of at least two people who died from COVID-19 shortly after being granted medical parole on their deathbeds. To PLS' knowledge, the DOC does not include those three people in the official death count.

<sup>2</sup> <https://www.wbur.org/news/2020/11/30/massachusetts-prisoners-coronavirus-medical-parole-deaths>

<sup>3</sup> <https://www.mass.gov/doc/sjc-12926-special-masters-weekly-report-172021/download>

<sup>4</sup> "It's important for everyone to continue using all the tools available to help stop this pandemic as we learn more about how COVID-19 vaccines work in real-world conditions. Cover your mouth and nose with a mask when

the DOC are far too few to create the requisite space for social distancing, the Legislature recently enacted the following:

“given the continued prevalence and threat of COVID19 within department of correction facilities, the commissioner of correction shall release, transition to home confinement or furlough individuals in the care and custody of the department who can be safely released, transitioned to home confinement or furloughed with prioritization given to populations most vulnerable to serious medical outcomes associated with COVID-19 according to the Centers for Disease Control and Prevention’s guidelines.”<sup>5</sup>

The language should be read as a legislative mandate for the DOC to act prudently and expeditiously to release people in a way that clearly mitigates against the prevalent threat of COVID-19 in the Commonwealth’s prisons and jails.<sup>6</sup> The Legislature knew, when it passed this law, that prisoners were being prioritized for the vaccine. The mandate is not to simply wait until the vaccines take effect, but to release people now to save lives and improve the public health crisis raging out of control within and without congregate settings. Below are recommendations for immediate action.

### **Medically vulnerable according to CDC guidelines**

The budget language specifies that release priority should be given to “populations most vulnerable to serious medical outcomes associated with COVID-19 according to the Centers for Disease Control and Prevention’s guidelines.” It is well established that age increases risk for death and serious medical complications from COVID-19.<sup>7</sup> CDC data shows that 8 out of 10 COVID deaths in the US have been adults age 65 and older.<sup>8</sup>

As of January 1, 2020, 29% of the DOC population was age 50 or older, and 12% of the DOC population was age 60 or older.<sup>9</sup> The prison population is subject to “accelerated aging” and is generally considered geriatric at age 50 or 55 because of both pre-existing inequities in access to health care and because living conditions inside prisons are hard on physical and emotional health.<sup>10</sup>

In addition to being high risk for COVID-19 complications, prisoners over the age of 50 are at low risk to be re-arrested upon re-entry into the community. Research is clear that people “age

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around others, stay at least 6 feet away from others, avoid crowds, and wash your hands often.”

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/expect.html>

<sup>5</sup> Chapter 227 of the Acts of 2020, Section 2, line item 8900-01, available at <https://malegislature.gov/Budget/FY2021/FinalBudget>

<sup>6</sup> The legislation goes on to state that the DOC “shall consider, **but shall not be limited to considering**” a number mechanisms for release, including home confinement without statutory exclusions, furlough, expedited medical parole, maximizing good time by eliminating program requirements, and creating new credits for time served during a public health emergency. Although DOC is mandated to consider these mechanisms, it is not limited to them, and it is required to release by any means all those who can be safely released.

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

<sup>8</sup> *Id.* Adults age 50-64 are four times more likely to be hospitalized and 30 times more likely to die than adults age 18-29; adults age 65-74 are 5 times more likely to be hospitalized and 90 times more likely to die than adults age 18-29; adults age 75-84 are 8 times more likely to be hospitalized and 220 times more likely to die than adults age 18-29; and adults 85 and older are 13 times more likely to be hospitalized and 630 times more likely to die than adults age 18-29.

<sup>9</sup> <https://www.mass.gov/info-details/january-1-snapshot-dashboard>

<sup>10</sup> See *Foster v. Comm'r of Correction*, 484 Mass. 698, 702-03 (2020) (“Prisoners also have been shown to age more rapidly than the general population, typically developing the chronic conditions and disabilities associated with old age ten to fifteen years earlier than their nonincarcerated counterparts.”).

out” of crime,<sup>11</sup> meaning that our elders are the least likely among us to pose a threat to public safety but the most at risk of succumbing to COVID. Of the people who have died so far in DOC custody, most, if not all, have been elderly and/or have had underlying medical conditions listed by the CDC.<sup>12</sup>

We urge the DOC to quickly review all persons in its custody age 50 or older for potential release, prioritizing the oldest first, as well as all those with comorbidities.

### **Persons eligible for minimum security or pre-release settings**

As of January 4, 2021, there were 262 people incarcerated in minimum security and 298 people in pre-release prisons in addition to others eligible for minimum or pre-release according to their classification and risk assessment.<sup>13</sup> Recently, the women’s pre-release prison, South Middlesex Correctional Center, experienced a major COVID outbreak, with about 40% of the population testing positive.<sup>14</sup>

Pre-release prisons are generally designed for people preparing for release and, in ordinary times, these prisons include enhanced programming, work opportunities, and an environment far less restrictive than in higher security prisons. During COVID, however, programming and release planning have been curtailed or non-existent.

The DOC individually evaluates, through its classification system, the people housed at minimum security and pre-release prisons. Given that these individuals are in the lowest security settings in the DOC, they should also be prioritized for consideration for release.

### **Public health emergency credits and earlier release for those nearing release dates**

Like New Jersey, the Department should immediately grant public health emergency credit to everyone who has served time during the pandemic, and should institute day for-a-day credit going forward until the end of the state of emergency. New Jersey is among the states that have instituted such measures in response to this public health travesty.

Incarcerated people are enduring unprecedented and extreme conditions of confinement. The damage to the mental health of those in these settings could have permanent and long-term effects. They have been cut off from visits with loved ones and had limited access to phone calls. Despite being in state custody, many have gone completely ignored and self-harmed while in acute crisis. They are experiencing endless and repeated lockdowns during which many are locked in their cells for 23-24 hours daily. Even when not subjected to solitary-like conditions, this predominantly medically compromised population has been under the constant threat of

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<sup>11</sup> [https://www.sagepub.com/sites/default/files/upm-binaries/60294\\_Chapter\\_23.pdf](https://www.sagepub.com/sites/default/files/upm-binaries/60294_Chapter_23.pdf)

<sup>12</sup> For example, of the four incarcerated people who died from December 28-January 1, three of them were in their sixties or seventies. <https://commonwealthmagazine.org/health/four-prisoners-die-of-covid-19-during-holiday-week/>

<sup>13</sup> <https://www.mass.gov/doc/weekly-inmate-count-11162020/download>

<sup>14</sup>

[https://www.milforddailynews.com/story/news/2021/01/06/south-middlesex-correctional-center-outbreak-terrifies-loved-ones-covid/6562785002/;](https://www.milforddailynews.com/story/news/2021/01/06/south-middlesex-correctional-center-outbreak-terrifies-loved-ones-covid/6562785002/)

<https://www.milforddailynews.com/story/news/2021/01/05/covid-outbreak-framingham-south-middlesex-correctional-center-prison-jail-covid-testing/4133683001/>

infection from the coronavirus at many times the risk of almost any other population in society because they live in close quarters with others and lack the ability to socially distance.

Providing enhanced credits to incarcerated persons for enduring extraordinary conditions during this pandemic is justifiable on its own, but could also result in releases for those who are already within weeks or months from their release dates. Reducing the population is what public health experts have called for and this is among the safest and most logical ways to do so.

### **Evaluation of risk and considerations for public health and safety**

When considering who can be safely released pursuant to the mandate in the new legislation, PLS urges DOC to adopt the principle that public health and public safety are interrelated. COVID-19 dramatically changed the way we understand public health and safety. We are bearing witness to a second wave of COVID across the country that is overwhelming our health care systems, causing countless tragic and premature deaths, and contributing to serious short and long-term illness. Prisons and jails in Massachusetts account for many of the largest clusters of illness. In Gardner, for example, the mayor recently released a video acknowledging that Gardner has the largest COVID outbreak in the state, largely attributable to NCCI-Gardner.<sup>15</sup> Containing spread in prisons is essential to containing community spread.

Thank you for your time. We are available to discuss the contents of this letter at your earliest convenience. In the meantime, lives hang in the balance and a new legislative mandate provides an additional path for quick and needed action.

Sincerely,



Elizabeth Matos

Executive Director

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Thomas Turco III

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[https://www.youtube.com/watch?v=8XEqeeZtHMw&fbclid=IwAR2vC5Gt1UUcIG45EX1O6NvEv-KWjVg1KCL\\_pv80xEILzMLa5MqiEOeU7RY](https://www.youtube.com/watch?v=8XEqeeZtHMw&fbclid=IwAR2vC5Gt1UUcIG45EX1O6NvEv-KWjVg1KCL_pv80xEILzMLa5MqiEOeU7RY)

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