



# PLS Notes

**Winter 2020/2021**

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## PLS WELCOMES NEW STAFF AND PROJECTS

**Sarah Nawab** joined PLS as an Equal Justice Works fellow in October 2020, returning after having completed her second law school internship at PLS in 2019. During her law school career, Sarah also undertook internships in the areas of civil rights and criminal defense.

Sarah's project aims to provide trauma-informed legal services and rights education to incarcerated women, strengthen the reentry network for women, and increase public awareness about the unique issues women face during incarceration. Sarah invites all women - both cis and trans - all other trans folks, and gender-non-conforming folks to write to her about the issues they are facing in custody, particularly issues relating to medical and mental health care, pregnancy and reproductive health care, conditions of confinement, and sexual abuse and harassment. Please write to Sarah at "Sarah Nawab, Prisoners' Legal Services, 50 Federal St., 4th Floor, Boston MA 02110.

## THE RACIAL EQUITY IN CORRECTIONS INITIATIVE (REICI)

Racial inequality is evident in every stage of the criminal legal system. Much of the available data, though limited, focuses on front end issues such as policing, arrests, prosecutorial decisions, and sentencing, as well as back end issues such as re-entry. However, little data is available which sheds light on the experiences of black and brown prisoners during their incarceration. Prisons and jails are

undoubtedly some of the most archaic and damaging examples of institutional racism. The same racial inequities and disparate impact that plagues black and brown communities (i.e. health care, jobs, education, policing, criminal justice, religion, etc.) exist within the prison system where there is far less transparency, a dehumanizing culture, and little accountability.

To begin to address some of these systemic issues, PLS is launching the Racial Equity In Corrections Initiative (REICI). REICI is an organization-wide effort to eliminate institutional racism and its impact on black and brown prisoners in the day-to-day operations of Massachusetts' prisons and jails. REICI's mission is to build awareness, solutions, and leadership to combat institutional racism and the discriminatory treatment of black and brown prisoners in day-to-day correctional operations through client and legislative advocacy; community building and education; internal efforts designed to increase staff understanding of racial equity work and develop anti-racist policies; and litigation.

Specifically, REICI will:

- Investigate and track incidents of discriminatory treatment against black and brown prisoners and provide individual advocacy.
- Challenge corrections policies, regulations and decisions which create or worsen existing racial disparities through litigation and legislative and policy advocacy.
- Build awareness around the various forms of discriminatory treatment and its impact on black and brown prisoners by engaging with prison affinity groups, communities and impacted families via REICI's Community Liaison Project (CLP), media, outside organizations, legislators, and correctional staff of color.
- Establish a legislative agenda aimed at combating institutional racism in prisons and jails
- Collect and analyze data regarding racial inequities in corrections focusing on issues such as programming; access to medical and mental health services; classification; discipline; visitation; religious and cultural freedom; and diversity of administrators and correctional staff.
- Continue to develop and implement strategies to achieve the stated goal(s) of REICI through collaboration with black and brown prisoners, related affinity groups and other community partners.

## **SOUZA BARANOWSKI CORRECTIONAL CENTER LITIGATION AND NORTHSIDE PROJECT**

In the last issue of PLS Notes, we informed you all about our ongoing progress in addressing the rampant brutality that was inflicted upon prisoners by correctional staff in January and February of 2020 at Souza Baranowski Correctional Center.

For anyone who is unaware, on January 10, 2020, there was an incident at Souza Baranowski Correctional Center in which prisoners allegedly assaulted three correctional officers. The Department of Correction responded over the next few weeks by using extreme and unnecessary force on dozens of people incarcerated at SBCC in what seemed to be an orchestrated effort at retaliation and intimidation. PLS received over 200 complaints from prisoners at SBCC: over 130 complaints of use of excessive force by correctional staff, and over 75 complaints related to other inhumane conditions of confinement. The force described included shooting incarcerated individuals with pepper balls and taser guns, spraying them with chemical agents, ripping their hair out of their heads, ordering dogs to bite them, and physical beatings. The violence was in many instances racialized, with white officers targeting prisoners of color and using racial slurs against them.

We have now been joined by the private law firm Hogan Lovells, who will be co-counseling in the lawsuit that we intend to file regarding the brutality that occurred at SBCC. They are a well-respected firm and are very motivated to succeed in this litigation. For now at least, all communication will continue to be through PLS.

We plan to seek class certification in the case for both injunctive relief (policy changes, orders to do something or not do something, or other non-money relief) and for damages (money paid to compensate for your injuries or violation of your rights). The focus of the claims will be on the excessive use of force, racial discrimination and denial of medical and mental health care. We wish it were possible for us to take on a case where every person who was harmed could be individually represented, but that just isn't possible for us to do, so we are trying to construct the case in the way that we hope will result in the greatest benefit to the most prisoners impacted and that will result in systemic change to prevent this kind of brutality from happening again.

### Conditions on Northside

In addition to the extreme brutality that occurred in the wake of the January 10 incident, the DOC also

reorganized the prison. The North side of SBCC has now effectively become a super maximum security facility. Prisoners are locked in 21.5 hours daily. They have no access to programming or education. They are permitted only non-contact visits. They have severely restricted canteen access. The people are not there pursuant to any disciplinary process and are not awaiting any investigation or other action. They have no hearings. They are placed there based on their disciplinary history and perceived “institutional adjustment”. We have received reports that people of color are disproportionately placed in the North side. We have also heard from a number of prisoners that doing time in the North side is worse than doing time in Restrictive Housing.

On October 24, the coalition Massachusetts Against Solitary Confinement (MASC) led a protest against the harsh and inhumane conditions at SBCC. About 100 people gathered in downtown Shirley and rallied, with the following demands:

- An end to the north side supermaximum conditions
- Increased access to programming, education, work, and out of cell time throughout the prison
- An independent investigation and accountability for violence against prisoners by correctional staff
- Immediate, public hearings regarding conditions at SBCC with accessibility for people incarcerated there either remotely or in-person
- An overhaul of the classification system that leads to black and brown people being disproportionately placed in maximum security and a substantial reduction in the population held in maximum security.

We have determined that we are unable to include the conditions issues in the litigation about the brutality at SBCC in January and February of this year. It is important to focus that case on excessive use of force and the harm that was caused by the assaults. However, PLS and its Racial Equity In Corrections Initiative (REICI) have started a project to advocate for improved conditions at SBCC, focused on Northside and with a racial equity lens. We are currently gathering information about conditions and we anticipate doing systemic advocacy, public education, community outreach, and public policy work to try to address and improve the harsh conditions at SBCC. Please continue to contact PLS to report conditions at SBCC; your input is crucial to helping us determine the direction of our systemic advocacy and demands that we should make. We are also interested in reviewing grievances regarding the conditions on Northside, and any responses from the administration, if you have grieved, and are able to send copies to PLS, attention REICI North Side Project.

## Have you been in non-DDU Restrictive Housing for 180 days or more?

If you are in RHU (other than DDU) for 90 days, you have a right to a review hearing. At 180 days, and every 90 days after that, you have a right to have the hearing be recorded. Please make the request for recording when they give you the required 48 hour hearing notice. Then, after your hearing, please write to Matthew Mahlan, Prisoners’ Legal Services, 50 Federal St., 4th Floor, Boston MA, and tell him 1) the date of your hearing and the prison where it took place, and 2) that they did record it, or that they refused your request for recording, if that was the case.

## Committee for Public Counsel Services Innocence Program

Have you been convicted of a crime in Massachusetts that you did not commit? If so, please contact the CPCS Innocence Program. They may investigate your case, represent you or assign you a lawyer, or seek forensic testing. They will review your case even if DNA testing is not an option, and even if you pled guilty despite actually being innocent.

To apply, please write or call:

CPCS Innocence Program  
21 McGrath Highway, 2nd Floor  
Somerville, MA 02143  
617-209-5666

Calls will be accepted Tuesdays and Thursdays. DOC prisoners may call collect.

## PLS CONTINUES TO LITIGATE FOR RELIEF AMIDST COVID-19 PANDEMIC

In April, PLS filed a class action lawsuit along with an emergency motion for a preliminary injunction seeking release of incarcerated people throughout Massachusetts due to COVID-19. PLS gathered affidavits and presented live testimony from incarcerated people about unsafe conditions and practices in DOC and county facilities, such as the lack of masks, hand sanitizer, and social distancing. PLS also gathered affidavits from medical and public health experts to explain to the court the unique danger prison presents for the spread of infectious diseases, and the high-risk of serious illness or death that older people and people with certain chronic diseases face if they contract COVID. PLS argued that these conditions were unconstitutionally dangerous and required a reduction of the prison and jail population in order to allow for adequate social distancing.

In June, the Massachusetts Supreme Judicial Court denied our motion for a preliminary injunction, but agreed that the situation inside the Commonwealth's jails and prisons is "urgent and unprecedented, and that a reduction in the number of people who are held in custody is necessary." The Court found that, at least at that point, the DOC's efforts to address the COVID-19 emergency had not been constitutionally inadequate. The Court cautioned the DOC, however, that a continued lockdown as a means of controlling the spread of the virus might itself become a constitutional violation, given the harsh and punitive conditions of the lockdown.

The SJC sent the case to Superior Court in Suffolk County, on an emergency basis, for discovery and, if necessary, trial. The parties are currently in discovery, in which each side may seek documents and take depositions—sworn testimony—from the other. PLS has gathered nearly 2,000 pages of documents from the DOC concerning its response to the pandemic, and will continue to gather more information as the situation continues to develop.

As we entered fall, we have seen a second wave of COVID-19 hit communities throughout the Commonwealth, and there have been several very serious outbreaks in prisons and jails. In early October, nearly one third of people incarcerated at the Massachusetts Alcohol and Substance Abuse Center (MASAC) tested positive. Essex County Correctional Center also had 137 people test positive. As of the date of this writing, December 8, 2020, there are serious outbreaks at MCI-Norfolk, MCI-Concord, MCI-Shirley and NCCI-Gardener. We have also seen the numbers of staff testing positive rise at a number of other prisons and jails.

On October 30, PLS filed an emergency motion to require the DOC to establish a home confinement program. In its opinion in June, the SJC rejected the DOC's argument that it lacked statutory authority to release prisoners to home confinement. In fact, the law requires the DOC to establish committees to evaluate prisoners for home confinement. Nevertheless, despite the passage of more than five months since the SJC's opinion, and despite the urgency of taking steps to reduce the prison population to allow for greater social distancing, the DOC has not implemented a home confinement program.

On November 6, the Court held oral argument on a different motion -- PLS's motion for class certification. We were successful in getting the class of DOC prisoners certified by the Court but the Court declined to certify the class of county prisoners.

As of December 8, 2020, we have had several hearings on the emergency motion for home confinement, but the Court has not yet determined if it will require DOC to implement a program. If the Court does require DOC to implement a program, it will likely only end up applying to a small number of incarcerated people.

PLS is currently preparing to file a new emergency motion for preliminary injunction, arguing that the DOC is violating the constitutional rights of incarcerated people through deliberate indifference to an objective risk of serious harm. This will be based on the clear fact that DOC's efforts have not been sufficient to prevent the spread of the virus, and yet the agency continues to resist releasing prisoners.

Please do not hesitate to call or write to our office if you have information to share. If you need personal assistance with a medical matter or otherwise, remember that our telephone intake is Monday from 1-4 pm, or you can write to open an intake.

### What would you like to learn more about?

PLS wants to hear from you about what issues you may want included in future Notes. Please write to us to let us know what you might want to learn more about so that we can respond to your needs. Send letters to Jesse White, Staff Attorney, Prisoners' Legal Services, 50 Federal St., 4th Floor, Boston MA 02110.

## SUIT AGAINST SECURUS HANGS ON DESPITE ADVERSE RULING

Pearson v. Hodgeson is a class action lawsuit against Bristol County Sheriff Thomas Hodgson and Securus Technologies, the prison phone company. It alleges that kickbacks (referred to as “commissions” by the defendants) received by Sheriff Hodgson from Securus are illegal under state law because the Sheriff lacks the legislative authority to receive these payments. These kickbacks effectively doubled the price of telephone calls for family members, loved ones, and attorneys who accepted telephone calls from people in any of the Bristol County jails.

If successful, this case would impact all counties in Massachusetts that have a contract with Securus Technologies, and maybe the DOC as well. PLS filed this lawsuit in May of 2018 with the National Consumer Law Center, Harvard’s Legal Services Center, and Bailey Glaser, LLP as co-counsel. The defendants removed the case to federal court and on December 20, 2019 the court denied defendants’ Motion to Dismiss. In July 2019 plaintiffs filed a Motion for Partial Summary Judgment and sought class certification, and defendants filed a Motion for Judgment on the Pleadings. Unfortunately, on June 22, 2020, the court granted the defendants’ Motion for Judgment on the Pleadings, dismissing the plaintiffs’ claims. The court held that the Sheriff had the explicit authority to receive the commissions by doubling the cost of telephone calls, relying partly on language in M.G.L. c. 127, § 3, despite the fact that both plaintiffs and defendants agreed that this statute does not provide this authorization.

In July, PLS and co-counsel filed a Motion for Reconsideration asking the federal court to amend the judgment or certify the issue to the state Supreme Judicial Court, because it is a question of state law. That motion is currently pending.

## HAMPDEN COUNTY ADDED TO SUIT OVER USE OF PRISON FOR SUD CIVIL COMMITMENT

As readers of PLS notes may know, PLS is actively suing to stop the incarceration of people civilly committed for SUD treatment under G.L. c. 123, § 35 (“Section 35”), Doe v. Mici, Suffolk Super. No. no. 1984CV00828. In 2016, the state stopped holding civilly committed women at MCI-Framingham (unless they would otherwise be incarcerated due to criminal charges).

But civilly committed men are still held in the DOC’s Massachusetts Alcohol and Substance Abuse Center (MASAC), and the DOC has a contract with Hampden County that allows male patients to be housed in the Ludlow House of Correction as well. The suit claims that sending men, but not women, to prison constitutes gender discrimination. It also constitutes disability discrimination, as it punishes men for having substance use disorder and perpetuates the harmful stigma surrounding that disease. And it violates constitutional due process, as it is a deprivation of liberty that does not serve the purpose the statute intended it for - treatment.

The 2019 complaint included plaintiffs from MASAC and named the Department of Correction as a defendant. In October 2020, the complaint was amended to add plaintiffs from the Hampden County Section 35 program and to name Hampden Sheriff Nicholas Cocchi as a Defendant. While Hampden has tried to portray its program as civilian in nature and treatment-focused, the Hampden plaintiffs describe an environment indistinguishable from prison. The amended complaint also includes a new description of life in MASAC after the DOC removed guards from inside the compound in early May, a setting still bound by many rules of prison life and still harshly punitive in many ways - including the use of isolation.

The Court has previously certified the case as a class action with regard to MASAC patients, and now a motion to add a class of Hampden County patients should be heard and decided in the coming weeks. This work was done with the invaluable collaboration of the law firm Goodwin Procter, which has teamed with PLS to litigate this case.

**Are you in a DOC facility and  
have a drug or alcohol  
problem?**

PLS is investigating the lack of access to proper treatment for addiction to drugs and alcohol (also known as “substance use disorder”) at DOC facilities. Please contact PLS if you have substance use disorder (addiction to opioids, cocaine, benzos, alcohol, K2, or any other drug, including prescription drugs) and you would be willing to share your experience seeking treatment with us.

## DOJ INVESTIGATION FOUND THE MASSACHUSETTS DEPARTMENT OF CORRECTIONS TO VIOLATE CONSTITUTIONAL RIGHTS

In November 2020, after a two-year investigation, the U.S. Department of Justice (DOJ) issued an extensive report regarding conditions for prisoners in mental health crisis at Massachusetts Department of Correction (DOC) institutions. The report concluded there was reason to believe the DOC was in violation of the Eighth Amendment to the U.S. Constitution due to its failure to provide proper supervision, mental health care, and housing for such prisoners. The findings document how the DOC failed to properly supervise prisoners on mental health watch on numerous occasions, often resulting in prisoners engaging in self-harm. The report also concluded that prisoners on mental health watch were subjected to overly restrictive, isolating, and unnecessarily harsh conditions, and that they were not provided with adequate mental health care. As a result of the investigation and findings, the DOJ has listed a number of things that the DOC must do to fix the problems.

The DOJ investigation was based on interviews, prison tours, and reviews of documents, including policies, mental health records, investigative and incident reports, and disciplinary reports. The 28-page investigation report notes that during a 13-month period in 2018 and 2019, the DOC put 106 prisoners on mental health watch in segregated housing for periods of 14 consecutive days or longer, despite a policy that sets a goal of keeping people on mental health watch for no more than four days. While mental health watch is supposed to protect against suicide, four of the eight prisoners who died by suicide since 2018 were on mental health watch at the time of their deaths. The report found that objects used to self-harm, such as razors and batteries, were not removed from suicidal prisoners' cells. Further, prisoners reported that correctional officers gave them razors "specifically to self-harm." The report also highlights specific incidents of prisoners on mental health watch engaging in self-harm, with correctional officers failing to intervene or encouraging self-injury, and found that security staff are not adequately trained in preventing self-harm by prisoners. Rather than treating suicidal prisoners, the report found that DOC instead chose to place such individuals in segregated housing, and that, in some cases, the DOC staff were clearly aware of potential problems and intentionally disregarded them. The investigation found that since 2018, four of the eight DOC prisoners who died by suicide in Massachusetts correctional facilities, were on mental health watch at the times of their death, or a few days prior to their death.



### PLS Has Moved!

New Address:

50 Federal Street, 4th Floor,  
Boston, MA 02110

The investigation further discovered that correctional officers assigned to constant 1:1 mental health watch, fell asleep when they were assigned to supervise prisoners in mental health crisis and at risk of self-harm. In a 2017 internal affairs investigation related to a DOC prisoner who died while on constant 1:1 watch, investigators determined that the mental health worker had difficulty staying awake during his 1:1 assignment.

All of the information acquired from the investigation occurred prior to the COVID-19 pandemic. The isolation and limited access to mental health care has dramatically worsened at the prisons since COVID-19. Mental health treatment has severely decreased and prisoners are required to remain in their cells for much longer periods of time each day. In addition, recreational time and general contact with other prisoners and staff is limited, due to social distancing requirements. Elizabeth Matos, the executive director of Prisoners' Legal Services of Massachusetts, stated that PLS has observed its clients' mental health "decompensating due to the never-ending lockdowns, having limited family contact, lack of access to real programming and treatment, and the ever-present threat of coronavirus infection with no ability to prevent it."

Massachusetts U.S. Attorney Andrew Lelling, whose office co-authored the report, said in a statement that the DOC "fails to properly supervise and accommodate prisoners suffering from serious mental health issues." Advocates said the report is disturbing but not surprising. Elizabeth Matos said, "Access to mental health care is not only extremely limited inside jails and prisons, it is counter-therapeutic. People are routinely placed on mental health watch when they are experiencing a crisis, which is widely referred to as worse than solitary confinement." Carol Rose, executive director of the ACLU of Massachusetts, said similarly that while the ACLU is "deeply concerned" by the findings, it is not surprised. "Far too many people are incarcerated in conditions that threaten their health, safety, and human dignity on a daily basis."

The DOJ gave the DOC a list of remedial actions that they need to undertake in order to fix the problems. These actions include improving access to mental health care for prisoners on mental health watch, hiring new mental health clinicians, providing more training for officers, and bringing disciplinary actions against officers who fail to comply with the policies. In addition the DOJ is requiring the DOC to improve the conditions for prisoners on mental health watch, in order to minimize isolation and provide more privileges. The DOC, which cooperated with the investigation, will have 49 days to take those actions, or the DOJ could file a lawsuit. Jason Dobson, a spokesman with the DOC, said the department “continues to work closely with DOJ and has already begun to address the issues raised in the report and maintain the significant progress we have already made,” including by no longer selling razors at certain facilities, implementing new training for correctional officers, and having DOC officials regularly meet to develop strategies to intervene with particular prisoners who have a history of self-harm.

On November 23, Massachusetts Against Solitary Confinement (MASC) held a public forum regarding the DOJ report. Speakers included prisoners’ rights advocates and attorneys, licensed social workers and clinicians, and formerly incarcerated community leaders. Organizers created a list of demands, including:

- Implement sweeping policy change to eliminate the practice of isolating people who are in a mental health crisis by placing them in solitary confinement or other demoralizing and degrading conditions. People experiencing a mental health crisis should be placed in a therapeutic environment that fosters stabilization, healing, and growth, not punishment and shame.
- Accountability must include discipline, up to and including termination of all persons who played a role in fostering the conditions that resulted in the constitutional deprivations found by the Justice Department. This should include all levels of DOC personnel or staff, including those who directly or indirectly encouraged self-harming behavior or ignored the serious medical needs of people experiencing a mental health crisis.
- Transparency and independent oversight must increase so that the community can properly monitor what happens to our family, friends, and neighbors while they are incarcerated. To advance this goal, DOC should eliminate unfair and burdensome charges for telephone usage currently in place that block communication between those who are incarcerated and their loved ones and advocates.

- District Attorneys and courts should avoid incarcerating people who live with serious mental illness. Prisons are incubators and accelerators of mental illness and offer little to no chance of rehabilitation. We would all be better served if those suffering from serious mental illness are in a community-based therapeutic environment that can address their underlying issues.
- At a bare minimum, DOC must be required to collect and report data on LGBTQ individuals held in solitary confinement and mental health watch

Prisoners’ Legal Services and numerous other community groups continue to push for substantive change that is needed in order to remedy the constitutional violations that the DOJ found in its report. PLS believes that DOC must address root causes for the culture of punishment that continues to permeate the system, cultivate a culture of transparency and accountability, and prioritize treatment and rehabilitation in order to prevent people from experiencing crisis and provide appropriate treatment when crisis occurs. We will continue to advocate as the DOJ negotiates with DOC regarding next steps and potential remedies.

## LIKE TO READ?

**Order Free Books from the Prison Book Program!**

**Send a letter with your favorite authors and books to:  
Prison Book Program  
1306 Hancock St.  
Suite 100  
Quincy, MA 02169**

## CARES ACT STIMULUS CHECK

On September 24, 2020, a U.S. District Court ordered the U.S. Department of the Treasury, the U.S. Internal Revenue Service and the United States of America to stop withholding CARES Act stimulus funds from people in state and federal prisons on the sole basis of their incarcerated status. As a result of this ruling, a large number of incarcerated people in the State of Massachusetts are entitled to CARES Act monies. Attorneys litigating the class action believe the Court's order makes available the \$1,200 stimulus checks for up to 1.5 million people who are incarcerated throughout the United States. This is a great win for those incarcerated individuals, who are now eligible to get the stimulus check that they rightfully deserve.

In essence, the benefits from the CARES Act is a \$1,200 stimulus check, or \$2,400 for married couples filing jointly, plus \$500 per qualifying child. The original deadline to file claims for the check was October 15, 2020. Through court orders the deadline was extended first to October 30, 2020, and then to November 4, 2020 for claims by mail and the deadline for online filing was extended to November 21, 2020. However, if these deadlines were missed, incarcerated individuals are still able to file for the stimulus check next year. The stimulus check payment is a credit for the year 2020, and it can be requested next year during tax filing season by filing a 2020 tax return, including by individuals without taxable income. Congress authorized advanced payments in order to bring relief to US citizens during the ongoing COVID pandemic. Prisoners can file online through the IRS website if they have access to the internet or by mail using a simplified paper tax return.

Since the ruling in late September, PLS has undertaken quick efforts in notifying people incarcerated in Massachusetts prisons and jails of the ruling and what they need to do in order to file for the stimulus funds. PLS sent out a packet to well over 700 incarcerated people in Massachusetts giving information from the Harvard Prison Legal Assistance Project about the CARES Act and explaining how to file for the stimulus. The packet gave valuable information about how you can still get the check even if you did not file taxes and have not held a paying job outside of prison. The packet also explained how individuals can make a claim even without a bank account and the IRS will mail a check.

Please know, however, that beyond the advice included in the information packet, PLS is unable to provide assistance related to obtaining the CARES Act stimulus check. We are not tax attorneys, and we do not have the resources to conduct individualized advocacy or provide individual advice to all of our clients on this issue.

PLS advocated with the Department of Correction to ask that they ensure access to informational materials regarding the stimulus, the necessary forms, and that they facilitate mailing. It is our understanding that the DOC placed fliers throughout the prison system about the CARES Act ruling and eligibility for the stimulus payment and that they passed out the necessary claims forms. The DOC also assured PLS that it would cover the cost of postage for mailing in claims and it will ensure that all checks received are deposited into prisoner canteen accounts.

The IRS has advised that it is currently taking 4-6 weeks to process claims, from the time the claims "are approved" by the IRS. There may be delays and it may take longer. However, once a payment goes out, the IRS has indicated that it will let claimants know by letter that the payment was made or an email advising you when the claim is "approved".

## Contact Us About Transgender Issues

### PLS Would Like to Hear from You About Your Treatment Under the New Transgender Law and DOC Regulations

The Criminal Justice Reform Act requires that prisoners who have a gender identity that differs from the prisoner's sex assigned at birth be addressed in a manner consistent with their gender identity, provided with access to commissary items, clothing, programming, educational materials and personal property that are consistent with their gender identity, searched by an officer of the same gender identity if the search requires a prisoner to remove all clothing or includes visual inspection of genitals, and housed in a correctional facility with prisoners with same gender identity unless it is certified in writing by the correctional administrator that placement would not ensure the prisoner's health or safety or that placement would present management or security problems.



## PLS ANNUAL RETREAT

On September 30, PLS convened virtually to begin its annual retreat. Spanning over a three day period, this retreat gave staff the opportunity to take stock of the organization's ongoing work, barriers and abuse faced by our clients, and propose new ways to broaden our impact. Staff also had the opportunity to propose and vote on new projects to be added to PLS' agenda for the upcoming year.

On day one, staff and board members reviewed the current work of the organization in three broad categories: litigation, projects, and legislation. The first category consisted of seven issues ranging from solitary confinement to medical care to telephone costs. The second category included five projects that covered areas such as restrictive housing, immigrant detention conditions, community partnerships, and the Prison Rape Elimination Act (PREA). Lastly, the third category covered legislative efforts focused on issues from parole reform to the abolition of section 35 to the collection of racial-bias data.

On the second day, PLS discussed new proposed projects and began the day with a presentation from strategic planners on how to improve the efficacy of the organization's work while furthering its commitment to racial justice and anti-racism. Staff Attorney LaToya Whiteside then presented her project, Racial Equity in Corrections Initiative (REICI), which is an organization-wide effort to eliminate institutional racism and its impact on black and brown prisoners in the day-to-day operations of Massachusetts' prisons and jails. Paralegal Angel Mendez-Flores presented a proposal to limit the amount of time that prisoners spend in restrictive housing as they await action, and Staff Attorney Jesse White proposed an ambitious plan to address the many problems with the Northside of Souza Baranowski Correctional Center, which largely operates like a super maximum security facility. Other proposals were also presented.

The third and final day of the retreat began with a review of projects on PLS's agenda that are awaiting action. These projects included:

- Challenge to inadequate treatment of Hepatitis C in county jails.
- Challenge to use of Code C by the Department of Corrections
- Challenge to lack of substance use disorder (SUD) treatment in correctional facilities.
- Challenge to video visitation costs

Given its commitment to furthering racial justice work on behalf of our clients as well as all of the additional unanticipated advocacy that arose this year with the brutality lawsuit being developed out of the assaults at Souza Baranowski Correctional Center and the *Foster v. Mici* class action, PLS has limited resources to add cases to its docket this year. As such, PLS has decided to focus on and develop the Racial Equity in Corrections Initiative (REICI) and work towards resolution in its pending litigation. The staff will reconvene in six months to assess the progress of REICI, reevaluate the organization's capacity, and, if possible, add new projects.

## IMPORTANT 2ND CIRCUIT DECISION ABOUT EXHAUSTION OF ADMINISTRATIVE REMEDIES

On October 5, 2020, the United States Court of Appeals for the Second Circuit, which covers the states of New York, Connecticut, and Vermont, issued a decision regarding the Prison Litigation Reform Act (PLRA) and the requirement that prisoners must exhaust administrative remedies (meaning must complete the grievance process) before filing suit. This decision combines two cases, *Hayes v. Dahkle* and *Dickinson v. York*, and considers the requirements outlined by grievance regulations that apply to both state and county facilities.

In *Hayes v. Dahkle*, the Second Circuit ruled on whether a prisoner must wait indefinitely for prison officials to respond to a final appeal before filing suit in federal court. In this case, Hayes, a prisoner in a New York state correctional facility, filed a complaint in federal court under 42 U.S.C. §1983, alleging correctional staff violated his First and Eighth Amendment rights when they assaulted him and retaliated against him for filing grievances. This complaint was filed after Hayes followed the New York State Department of Corrections and Community Supervision (DOCCS) Grievance Procedure all the way through a final appeal to the Central Office Review Committee (CORC). According to DOCCS procedures, CORC has 30 days to render a final decision on a grievant's appeal. At the time that Hayes filed his suit in federal court, these 30 days for a CORC decision on his appeal had expired. This raised the question of whether the PLRA, which requires the exhaustion of all available administrative remedies before bringing a civil action in court, also requires a prisoner to wait indefinitely until prison officials issue a final response prior to commencing suit in a federal court.

The Second Circuit held in its October 5th decision, that because the DOCCS Grievance Procedures imposed a mandatory deadline for CORC to respond to an appeal, a prisoner exhausts all administrative remedies when they follow the procedure in its entirety but CORC fails to respond within the allotted 30 days.

The Second Circuit explained that the term “shall,” which was used in the DOCCS regulations, usually implies a requirement, unlike the term “may,” which usually allows an agency’s discretion. Therefore, the regulation that stated, “The CORC shall review each appeal and render a decision on the grievance ... within 30 calendar days from the time the appeal was received” was interpreted to impose a mandatory time requirement on CORC’s decisions. The court stated that exhaustion requirements are designed to ensure that prisoners properly use all steps set out by agencies, but may not be used to allow prison officials to stall the resolution of complaints for an indefinite period of time. The Second Circuit also declined to impose a reasonableness requirement for the length of time for CORC to respond, as it was found nowhere in the text of the regulations and would leave prisoners and courts to blindly speculate how long one must wait before filing suit.

In deciding *Dickinson v. York*, which followed the same reasoning as *Hayes*, the Second Circuit ruled in the same October 5th decision that similar to state correctional facilities, the grievance procedures of New York County Jails imposed a mandatory deadline for final appeal decisions, and when these deadlines pass, a prisoner has exhausted the available administrative remedies and may file suit.

The Second Circuit is now the seventh of the Circuit Courts of Appeals to rule on similar prison grievance procedures and mandatory deadlines, all finding that administrative remedies are exhausted or unavailable when the prison officials do not respond within the time allotted in the regulations. This decision follows those of the Third, Fourth, Fifth, Seventh, Eighth, and Tenth Circuits. These decisions have paved the way for significant changes in litigation for incarcerated individuals, as courts often dismiss cases on exhaustion grounds because the agency waited to make final-level decisions for weeks, months, and sometimes even years after the regulations required them to respond.

When comparing this recent Second Circuit decision to the Massachusetts Department of Corrections regulations on the process for filing grievances, there are some similarities, as the DOC regulations state in 103 CMR 491.16 (13) that the reviewing authority shall respond to the grievant’s appeal within 30 business days from the receipt of the appeal, unless a written extension is granted. While these decisions from the Second Circuit and the other circuit courts provide important context for cases here in the First Circuit, it is important to remember that the decisions of circuit courts are not binding on other circuits. These cases can be used, however, as persuasive reasoning to encourage a similar outcome here in the First Circuit.

## Hepatitis C in the Counties and Department of Correction

We want to hear from you if you are (or were recently) a prisoner in a Massachusetts State Prison or county jail or house of correction and have concerns about Hepatitis C, including if:

- You have asked to be tested for Hepatitis C but have been denied testing; (You can ask for testing by putting in a sick call slip)
- You have Hepatitis C but have not been evaluated recently, or told whether and when you will be treated for it;
- You have Hepatitis C and would like to pursue treatment; or
- You have other questions or concerns about Hepatitis C treatment.

Hepatitis C is an infection spread through contact with infected blood that can lead to liver disease if not appropriately treated. Hepatitis C is a silent disease and many who are infected are unaware of their infected status. Individuals who have been incarcerated are at increased risk for this infection. According to the Centers for Disease Control and Prevention (CDC), risk factors for Hepatitis C include but are not limited to:

- Contact with surfaces, equipment, or objects that have infected blood on them;
- The sharing of needles for injectable drug use;
- Use of tattoo and piercing equipment; or
- Less commonly through sexual intercourse.

**If you have questions or concerns about Hepatitis C, please contact Al Troisi at 9004 for state prisoners and (617) 482-4124 for county prisoners or write to PLS at Prisoners' Legal Services 50 Federal Street, 4th Floor, Boston, MA 02110.**

## UPDATE ON LEGISLATION

The current legislative session was extended because of COVID-19, but it is set to come to a close on December 31, 2020. PLS prioritized a number of bills, all of which are listed below along with their current status.

“An Act relative to inmate telephone calls” (S.2846) would end telephone call profiteering and allow families to stay in touch without cost. This bill was reported out favorably by its original committee and moved forward in the process to the committee on Senate Ways and Means, which also reported it out favorable. It is waiting to be brought to the floor for a vote, but it is unclear whether or not that will happen this session. Advocates continue to fight hard for its passage.

“An Act to strengthen inmate visitation” (S.2662/H.2047) expands visitation rights for incarcerated people and their families. This bill was reported out favorably from its original committee and moved to the Committee for Ways and Means. The bill was not acted upon by the Committee for Ways and Means, and we do not anticipate that the Legislature will pass it this session.

“An Act relative to parole” (H.4607) would increase the number of people on the parole board in order to increase the speed of decision making, and ensure that its membership includes people with experience in the fields of psychiatry, psychology, social work, or the treatment of substance use disorder. The current parole board is stacked with members who have primarily law enforcement backgrounds, which leads to it acting mainly as a gatekeeper rather than a fair avenue for release. The bill was initially broader in scope, but it was redrafted by the committee to be narrower before being reported out favorably and sent to the Committee for Ways and Means. The bill has stalled in Ways and Means and we do not anticipate that it will pass this session.

“An Act relative to education and programming for the incarcerated” (S. 1391/H. 2127) would provide every incarcerated person with baseline rights to programming and education during their incarceration. The bill was reported out favorably from its committee and moved forward to the Committee for Ways and Means, which did not act on it. We do not anticipate that it will pass this session.

“An Act to collect data on LGBTQI prisoners held in restrictive housing” (S.905, H.1341) would collect voluntarily disclosed data about LGBTQI prisoners held in restrictive housing. The bill did not pass in the ordinary legislative process, but much of its substance ended up being adopted into the Budget.

“An Act ensuring access to addiction services” (H.4531) would ensure that people could no longer be incarcerated in a prison or jail solely for purposes of substance use disorder treatment. This bill has not yet been acted upon by its committee.

Two bills would have created baseline standards around use of force for incarcerated people, “An Act to create uniform standards in use of force, increase transparency, and reduce harm” (S.1362/H.2087) would have created standards for planned and emergency cell entrance, the use of chemical agents, the use of kinetic impact weapons, and the use of restraint chairs. The Senate Bill was “sent to study”, which means that the Committee determined that more research was needed before they could act on the bill. When a bill is “sent to study” that generally means that the bill will not pass. The House bill was not acted upon by the Committee. The second bill, “An Act to reduce harm by creating baseline standards for use of force by K9s in correctional facilities” (H.2114) would have created baseline standards to limit the use of K9s in use of force. No action was taken by the Committee on this bill and we do not anticipate that it will pass this session.

“An Act establishing presumptive parole” (H.1541) would have created a presumption that a person who is up for parole should be released from custody. No action was taken on this bill in Committee and we do not anticipate that it will pass this session.

“An Act to reduce mass incarceration” (S.826/H.3358) would have ended Life Without Parole sentencing and would have ensured that anyone currently incarcerated on a Life Without Parole sentence would be parole eligible once they served 25 years. The Senate bill was sent to study and the committee did not act upon the House bill. The bill will not pass this session.

“An act to provide criminal justice reform protections to all prisoners in segregated confinement” (S. 2413) would have ensured that the protections in the Criminal Justice Reform Act that apply to Restrictive Housing units would also apply in other forms of segregated confinement that do not meet the definition of restrictive housing. The bill was sent to study and will not pass this session.

### COVID Legislation

When COVID hit, a lot of legislative efforts were put on hold indefinitely as policymakers shifted their focus towards responding to the crisis. PLS also shifted focus, working with Representative Lindsay Sabadosa to advocate for her emergency decarceration legislation, which would have taken important and necessary steps to release people from incarceration in order to prevent continued spread of the virus in our jails and prisons.

Unfortunately, “An act regarding decarceration and COVID-19” (H. 4652) still sits in committee and has not been acted upon. However, during the budget process, PLS worked with a number of Legislators to ensure that critical decarceration measures were included in the budget that was passed by the House and Senate. The Governor vetoed the decarceration language, and as of December 15, we are advocating that the Legislature override the Governor’s veto. If the decarceration language is passed, it would include that:

- DOC must conduct routine surveillance testing for COVID-19 consistent with public health best practices
- The commissioner shall take all measures possible to release, transition to home confinement or furlough individuals who can be safely released, prioritizing populations most vulnerable to serious medical outcomes associated COVID-19
- The DOC shall consider, but not be limited to, the following mechanisms for release: (i) the use of home confinement (ii) the expedition of medical parole petition review; (iii) the use of furlough; (iv) the maximization of good time; and (v) awarding credits to provide further remission from time of sentence for time served during periods of declared public health emergencies impacting the operation of prisons

### Racial Justice Legislation

As was highlighted in the last issue of PLS Notes, in response to the local and national Black Lives Matter movement, the Legislature also filed emergency racial justice legislation including policing reforms. Unfortunately, correctional officers were left out of the definition of law enforcement officers included in bills and therefore the use of force provisions will not apply to correctional staff and will not impact conditions of confinement in prisons and jails. The final version of the bill included a few provisions that are of particular importance for incarcerated people:

- It creates a commission to review and make recommendations on training, use of force, records access, and creating an independent body for certification/decertification of correctional officers and the power to receive, investigate and adjudicate claims. Prisoners’ Legal Services is named as a member of the commission.
- It creates a commission on structural racism in corrections to investigate and study disparate treatment of persons of color incarcerated at state and county correctional facilities and determine the role of structural racism in those disparities. Prisoners’ Legal Services is a member of this commission.
- It requires data collection and reporting on injuries and deaths caused by correctional staff

- It creates new criminal penalties for correctional officers who commit indecent assault and battery and sexual assault on people in custody
- It creates permanent commissions on the status of Africans Americans, Latinos, Persons with Disabilities, and social status of black men and boys
- It modifies the public records law to ensure that records of law enforcement misconduct investigations are not exempt from disclosure

The Governor returned the bill to the Legislature with a number of amendments that would weaken parts of the bill that apply to training for police officers, use of facial recognition technology, and use of force by police. The Legislature now has to re-negotiate the bill or return it to the Governor and risk that he may veto. Once the Legislature acts on the Governor’s proposed amendments, the bill will return to the Governor’s desk where he can either sign it, veto it, or take no action.

### Priorities for Next Session

PLS is still in the process of determining what legislation we will prioritize for the next session. We have been meeting with stakeholders in the community and have also been gathering input from our clients about what they would like to see prioritized. At this time, we are considering the following list of possible priorities:

- Visitation: similar to what was filed this session
- No Cost Calls: refiling for no cost calls if it does not pass this session
- Solitary: pushing the envelope forward in ending solitary confinement
- Medical Parole reform
- Parole Board reform
- Racial Justice: working towards racial equity and accountability in corrections
- Section 35: following up on legislation to end incarceration of people for substance use disorder treatment if it does not pass this session
- Excessive Use of Force: following up on the use of force legislation that did not pass this session
- LWOP: seeking an end to life without parole sentencing
- Decarceration: working towards decarceration in light of COVID-19 and other public health imperatives
- Oversight: Building a new independent mechanism for oversight of corrections

We will continue to keep you all updated through PLS Notes regarding legislation. If you have any suggestions for policy priorities for PLS, please write to Jesse White, Prisoners’ Legal Services, 50 Federal St., 4th Floor, Boston MA 02110.

## **ANNOUNCEMENT: PLEASE CALL PLS THROUGH THE MAIN LINE**

PLS staff have been getting an increased number of calls going to their direct lines from clients, rather than coming through the main line and receptionist. We ask our clients to please call the receptionist to be directed to the appropriate staff person who can help you. We understand that it can sometimes be difficult to get through to PLS staff, and you may decide to call us directly because you believe it will help you get the help you need more quickly and effectively. However, calling our direct lines actually makes it less likely that people will be able to get through to us when they need to and it may take longer to route you to the person responsible for your intake.

PLS staff are sometimes unable to answer direct calls because the volume is overwhelming, particularly since January with the numerous assaults reported from Souza, and the volume only increased during the pandemic. If we attempted to answer all calls we would not be able to accomplish the advocacy, litigation, and policy work that we are doing when we are not speaking with our clients. By calling the receptionist we can make sure that we are prioritizing calls appropriately and balancing them with other work we need to accomplish to help our clients. We apologize for any frustration but unlike CPCS, which has thousands of attorneys at its disposal, we have less than 10. We appreciate your patience and are always ready to hear any suggestions or feedback regarding our intake system, which we continually strive to improve.

We are a small staff of 20. We open approximately 2000 new intakes every year and carry full litigation and policy workloads, which have all increased dramatically over the last few months. This is an extremely busy time for the office and we are doing all we can to advocate on your behalf during this incredibly challenging time for you and your families. Please keep in mind that we are also working from home and juggling children and caring for loved ones. We deeply appreciate your patience and understanding and know that it is not easy given the conditions you are enduring right now.

As a reminder, all new matters have to go through our regular intake process, detailed below, so we will not be able to help you if you call someone directly for a new issue. For follow up issues, we ask that you to go through the receptionist so that we can make sure that you are sent to the correct person and so that we are not duplicating work. The receptionist is also in the best position to relay to you when we are available to take your call.

Please know that our phone lines are generally open from 9am-11am and from 1pm-4pm on weekdays. We are able to assist with new issues if you call on Mondays between 1pm-4pm. **Please remember that new intakes are also opened or followed up on by writing to us at Prisoners' Legal Services, 50 Federal St., 4<sup>th</sup> Floor, Boston MA 02110.**

## **PLS INTAKE INFORMATION**

For assistance with new issues, please call during our regular intake hours, Monday afternoons from 1pm–4pm. State prisoner free speed dial line: 9004 (please note that the \* and # are no longer used), County Prisoner collect call line: 617–482–4124. To report a guard on prisoner assault, please call any weekday from 9am–11am or 1pm–4pm. If you cannot reach PLS by phone, please write to “Intake”, 50 Federal St., 4th Floor, Boston MA 02110.

## **ATTENTION: PLS is eager to hear from non-English speakers who need our help**

PLS hears from a significant number of prisoners for whom English is not their first language, particularly Spanish speakers. Since PLS has the ability to have letters translated and to continue communication with prisoners through interpreters, would readers please encourage such prisoners contact PLS for assistance? Thank you.

PLS Notes está disponible en español. Pídale si gusta. Además PLS está buscando ayuda de prisioneros quien habla español que pueden servir como contactos con la gente que no hablan inglés. Aceptamos llamadas y cartas en español igual como en inglés.

## PBS FILM ON ILLEGAL STERILIZATIONS IN PRISONS

On November 23, 2020 PBS aired *Belly of the Beast*, a documentary film directed by Erika Cohn that exposed illegal sterilizations in California prisons. The documentary outlined unconscionable treatment endured by women at the California Correctional facilities. The women were subjected to intentional and forced sterilization, with the majority of the women being Black and Latinx.

The documentary followed Kelli Dillon, a 24 year old prisoner serving a sentence at the Central California Women's Facility. Ms. Dillon underwent forced sterilization after being told she had an abnormal pap smear and needed a cone biopsy to determine whether she had cancer. The doctor questioned her regarding whether she wanted to have more children in the future. Dillon stated she wanted to have more children after she completed her prison sentence. The doctor then asked her if she wanted to have a hysterectomy if the biopsy came back positive for cancer. Dillon agreed to the hysterectomy only if it was cancerous. Dillon's results came back negative for cancer, however, the doctor performed a hysterectomy on Dillon regardless of her position against such procedure.

Dillon realized the doctor's actions were illegal and she teamed up with a human rights lawyer to stop these unlawful sterilization of prisoners. Dillon and her lawyer Cynthia Chandler, founder of the prison abolition organization Justice Now, uncovered evidence of multiple women subjected to forced sterilization at the Central California Women's Facility. Cynthia Chandler and Corey G. Johnson, a reporter at the Center for Investigative Reporting, investigated modern-day coercive sterilization in California and the history of eugenics in the United States. Their investigation further uncovered a series of crimes, from inadequate access to healthcare to sexual assault and illegal sterilizations. The doctors and prison officials contended during interviews that the procedures were in each prisoner's best interest and conducted for the overall social benefit. Cohn notes that when she began making the film, many people did not believe her when she told them what was happening in the prisons, despite "hundreds of testimonials." By Cohn's calculations, nearly 1,400 sterilizations took place from 1997 to 2013.

"I hope people will see from this film that we are witnessing systemic racism and population control, which, along with lack of access to healthcare during the pandemic, is part of a broader conversation. We need calls for accountability," Cohn stated.

### Contribute to PLS Notes

If you have a case you are litigating or another matter that you are working on that you would like highlighted in PLS Notes, please send submissions to:

Jesse White, Staff Attorney  
50 Federal St., 4th Floor  
Boston, MA 02110

Please know that space in PLS Notes is limited, and we cannot promise inclusion of any submission.



PLS NOTES - WINTER 2020-2021



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