



PLS Notes

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PLS adds New Staff Attorney Mario Paredes

Mario Paredes is the proud son of two immigrant parents from Guatemala. Mario graduated from Lehigh University in 2011 with a B.S. in Finance and Management and then earned his Master's degree in Higher Education from Harvard in 2012 and his Juris Doctorate degree from Boston University in 2018. Before pursuing a career in legal advocacy, Mario spent several years working with various community-based organizations, schools, and nonprofits. While in law school he served as a Massachusetts Bar Foundation Legal Fellow with Kids in Need of Defense and as a Rappaport Fellow at the Massachusetts State House with Senator Brownsberger. He currently serves as a staff attorney and a Bart J. Gordon Fellow with Massachusetts Law Reform Institute and Prisoners' Legal Services, on their Immigrant Detention Conditions Project, and sits on the board of the local immigrants' rights non-profit Centro Presente.

New Immigrant Detention Conditions Project

The focus of the Immigrant Detention Conditions Project recently launched by Prisoners' Legal Services (PLS) and Massachusetts Law Reform Institute (MLRI) is to advocate on behalf of immigrants civilly detained in Massachusetts county jails. The project aims to improve conditions faced by detained immigrants including discrimination, placement in solitary confinement, language access

needs, medical and mental health care, food and sanitation, and access to programming and services. Please contact PLS through our regular intake process regarding conditions issues faced by immigrant detainees.

Important Updates about Solitary Confinement

Senator Jamie Eldridge Files New Legislation related to Solitary Confinement

As detailed in the previous issue of PLS Notes, the Criminal Justice Reform Act (CJRA) required substantial reforms to the use of solitary confinement (“restrictive housing”) in the Commonwealth. The Department of Correction created new units which do not technically meet the definition of “restrictive housing”, and are therefore outside the protections provided in the CJRA. Senator Jamie Eldridge filed legislation to ensure that all prisoners housed in units that are more restrictive than general population are provided with CJRA protections. The legislation would also clarify and enhance some of the procedural and conditions based protections provided by the CJRA.

“An Act to Provide Criminal Justice Reform Protections to All Prisoners in Segregated Confinement” (S. 2413) creates an umbrella term, “segregated confinement”, defined as a housing placement separate from general population. The bill would establish that DOC may only utilize 5 types of segregated confinement: restrictive housing, disciplinary restrictive housing, secure adjustment units, secure treatment units, and mental health watch.

This bill would provide that prisoners in all forms of segregated confinement must receive placement reviews to ensure they are only separated from the general population when and for as long as it remains necessary to reasonably manage risks of harm. It enhances procedural due process protections and establishes an appeals process to the Superior Court after a prisoner has been held in segregated confinement for more than 90 days.

This bill would also enhance protections for prisoners who have a serious mental illness (SMI) as defined by law. It would prohibit placing prisoners with SMI in segregated confinement units other than secure treatment units and mental health watch. Secure treatment units would be defined to include any security level and would be required to meet minimum standards and out of cell time. This bill would also require that a prisoner be placed on mental health watch if there is risk of serious self-harm, however, after 72 hours the prisoner must receive enhanced clinical care at a specialized hospital.

This bill would clarify and enhance conditions protections, including prisoners’ rights to visitation, television and radio, canteen access, and disability accommodations, and would apply these protections to all segregated confinement units other than mental health watch instead of just restrictive housing units.

This bill would prohibit the placement of certain prisoners in secure adjustment units just as they are prohibited from placement under current law in restrictive housing. Such prisoners include, people with a serious mental illness, pregnant prisoners, LGBTQI prisoners, and prisoners facing threats.

This bill would require monthly reporting on the number of prisoners held in all types of segregated confinement and would require data reporting on voluntarily disclosed sexual orientation and/or gender identity. It would amend the rights and responsibilities of the current Restrictive Housing Oversight Committee to expand the committee’s purview to all of segregated confinement, add a member to the committee who has personally experienced segregated confinement, and clarify certain rights of committee members, including the right to make surprise inspections, to speak to the press or public, to receive necessary information from the department, and to review nonpublic information.

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.

The bill has been assigned to the Joint Committee on Public Safety and Homeland Security, which will determine whether the bill moves forward in the legislative process. There is no hearing yet scheduled.

Restrictive Housing Oversight Committee

The Restrictive Housing Oversight Committee, which was established by the Criminal Justice Reform Act, continues to meet each month and has begun conducting visits to evaluate conditions in solitary confinement units across the Commonwealth. The Committee was discussed in greater detail in the previous issue of PLS Notes. If you would like to share information regarding solitary confinement with the restrictive housing oversight committee, PLS recommends that you send a letter to:

Michaela Martini, Criminal Justice Advisor
Executive Office of Public Safety and Security (EOPSS)
One Ashburton Place Boston MA 02108, Room 2133

You should specify that you are submitting this letter to the Restrictive Housing Oversight Committee for review to inform its work, and that you would like it to be distributed to all members of the committee for review. **PLEASE KNOW THAT ANYTHING YOU SUBMIT TO THE COMMITTEE WILL NOT BE CONFIDENTIAL.** EOPSS may choose to share your letter with your facility or otherwise disclose it, and it will be public information.

Further Action

PLS established an internal “Solitary Confinement Committee” particularly focused on conditions of confinement and due process in solitary confinement. PLS is looking at potential litigation to enforce the CJRA where DOC is non-compliant, we are monitoring DOC compliance with due process protections provided by the settlement agreement in *Cantell v. Commissioner*, and we are participating in the Restrictive Housing Oversight Committee. We are also working closely with community allies and legislators to move policy reforms forward, in particular, prioritizing support of “An Act to Provide Criminal Justice Reform Protections to All Prisoners in Segregated Confinement” (S. 2413), detailed on page 2.

Have you been in Restrictive Housing for 180 days or more?

If you are in RHU 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 Kate Piper, Prisoners’ Legal Services, 50 Federal St., 4th Floor, Boston MA, and tell her 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 have 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.

ISSUE OF THE ISSUE

Welcome to a new column in PLS Notes! We hope to answer one question in each issue about rights in Massachusetts prisons.

For our first Issue of the Issue, we answer:

How do I get a medical or religious diet?

What kinds of special diets are available?

1. Therapeutic/medical diets: These are diets that are medically necessary for specific diagnosed medical conditions. To get one of these diets, you need an order from medical staff. Some of the therapeutic diets are:

- Diabetic diets
- Bland diet (no sauces, gravies, spices, seasonings, etc.)
- Clear Liquid Diet (usually only used for a short period, often before a medical test or procedure)
- Full Liquid Diet (often before a test or procedure, or for patients who cannot chew regular food, such as after jaw surgery)
- Ground diet (all food is ground up or soft, for patients who have difficulties chewing and/or swallowing)
- Pureed diet (all food is completely pureed, for patients who have more severe difficulties chewing and/or swallowing)
- Gluten free diet
- Dialysis diet (for patients on kidney dialysis)

2. Religious diets: Certain religions have specific dietary requirements. For instance, Muslims don't eat pork, and are required to eat meat that is "halal," which means that the animal is slaughtered in a particular way. Some Jews follow a "kosher" diet: they also don't eat pork, shellfish, and certain other foods; they do not eat meat and dairy products during the same meal; and animals must also be slaughtered in a particular way. Some Buddhists and Hindus adhere to vegetarian (no meat or fish) or vegan diets (no meat or fish or products from animals, including eggs and dairy). All of these religions, and many others, have fasting days during the year in which no food is eaten. Muslims fast from sunup to sundown during the entire month of Ramadan, and Jews fast on certain days of the year, including Yom Kippur (the day of atonement).

Many people are vegetarians or vegans not for specific religious reasons, but for reasons of health, concern for animal welfare and environmental sustainability, and other reasons. However, the DOC considers vegetarian and vegan diets to be religious diets, and will only grant them to people on the basis of religious belief. See below for more on this.

How do I request a therapeutic (medical) diet?

Department of Correction (DOC) Facilities

If you believe you have a medical or dental condition that requires a special therapeutic diet, discuss it with a medical provider at a medical visit, or submit a sick slip requesting to be seen. A Wellpath physician or dentist has to write a prescription for a therapeutic diet. Whether to grant you a therapeutic diet is up to the medical provider, the same as it is with any medical care, prescriptions, or procedures.

If you do receive a prescription for a therapeutic diet, Health Services will send a Diet Order Form to Food Services, listing your specific dietary needs, the type of diet, how long it should last for, and any special preparation instructions. They will also enter it into IMS.

Once your diet is prescribed, you have to show your ID at meals and sign for your special meal. Therapeutic diets don't necessarily continue forever. The physician is supposed to review it every 120 days to make sure you still need it.

Therapeutic diets have to comply with the nutritional standards of the American Dietician Association and of "comparable palatability to regular meals." In other words, they can't taste worse than the regular meals.

Every institution is required to have its own Institutional Procedure on Therapeutic Diets. This procedure covers how these meals are prepared and distributed, but it also covers how you can submit complaints about therapeutic meals. You should review the one at your institution, which should be available through the Library.

What happens if I refuse a therapeutic meal, or take a meal from the regular menu?

Staff are supposed to record in a log whenever you either refuse your therapeutic meal (or fail to pick it up), or if you are seen taking a meal or an item from the regular meal line. You may be referred to the Health Services Unit if this is recorded. Different facilities have different specific procedures for this.

For instance, some will only refer you to the HSU if you have skipped a therapeutic meal for a certain number of meals.

The specifics are listed in each facility's Institutional Procedure. However, you cannot be disciplined for failing or refusing to take a therapeutic meal.

This is different from religious diets, where you can be disciplined (see below). You can be disciplined if you give away your therapeutic meal or any portion of it to another prisoner.

County Houses of Correction and Jails

If you are in a county House of Correction or Jail, the process may differ from DOC. The regulation on medical diets in county facilities, 103 CMR 928.05, says only:

Written policy and procedure shall govern medical and dental diets prescribed by appropriate medical and dental personnel. There shall be provisions for such diets to be reviewed and rewritten when necessary.

This means that each county facility *should* have a policy and procedure for prescribing therapeutic diets, and that policy is likely available in the library. If there is no policy, submit a sick slip to discuss with the medical provider whether you need a therapeutic diet.

How do I request a religious diet?

Department of Correction (DOC) Facilities

The First Amendment to the U.S. Constitution protects prisoners' rights to practice their religion. Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to help ensure these rights. For DOC facilities, DOC regulations provide a procedure to request a religious diet. 103 CMR 471.08(5) says:

(a) Inmates whose religion places restrictions on diets should be permitted access to a special religious diet. However, in limited situations where the institution/Department is not able to meet all aspects of a special religious diet request due to security and/or facility limitations, the institution shall make every effort to provide a reasonable accommodation to the diet request. Requests for special religious diets shall be initiated by interested inmates, using the Special Diet Request Form, which is available in all inmate libraries. The form shall be submitted to the Superintendent's designee...

(b) Where religious holidays specify particular dietary requirements (e.g., Passover, month of Ramadan), special arrangements should be made so that inmates are able to adhere to their religious beliefs.

You can request a form from your facility's library. You should also be able to get or read a copy the Religious Programs and Services Regulation (103 CMR 471) and the DOC Religious Services Handbook from the library. **Pay close attention to the section of the Religious Services Handbook titled "Standard Operating Procedures: Special Diets,"** which is on page 9 of the current version of the Handbook.

Submit your request form to a chaplain or whatever individual your facility has designated. You may want to send a copy to the superintendent as well. State the basis for your request. If you are a member of a specific religion, describe the specific religious commandment requiring the diet you request. If you are making a request based on a purely personal religious belief (which you also have the right to do), you should state that you have a sincere, religious belief which requires that you adhere to the diet that you are requesting.

The standard available religious diets in the DOC are kosher, halal, vegetarian and vegan. If you are requesting a religious diet that is NOT one of these, then ask for and complete an Inmate Religious Services Form and submit it to the Superintendent.

If you have been bitten by a K9 while incarcerated, please contact PLS



Essex County Correctional Facility (ECCF) posts K9s throughout the correctional facility, including in the yard and outside the chow hall. Prisoners at ECCF have contact with the K9s daily, and K9s respond to every incident at the facility, including every fight and every use of force. K9 officers are given broad discretion to direct their K9s to bite prisoners, and PLS has had many clients contact us to report being bitten and injured by K9s. PLS is committed to getting the ECCF policy changed so that prisoners at ECCF and elsewhere are not subjected to this cruel and unusual practice.

What happens after I submit my request for a religious diet?

If you are requesting one of the four standard religious diets: The chaplain or designee will check whether you have a “religious affiliation” listed in IMS. During your initial intake when you first came to the DOC, you were most likely asked what religion, if any, you are, and it is recorded in IMS. If the diet you are requesting is the one associated with your religious affiliation (for instance, if you are Muslim and request a Halal diet, or are Jewish and request a kosher diet), your request will normally be granted. However, if your religious affiliation is “inconsistent with the submitted request,” (for instance, if you are not Jewish and request a kosher diet), then the chaplain or designee is supposed to interview you about the “sincerity of your religious belief.”

Adventism, Rastafarianism, and others) in order to make a request. However, on the Special Diet Request form, you should state that you have a sincere, religious belief which requires that you adhere to a vegetarian or vegan diet and provide as much detail as possible. The chaplain or designee may interview you to verify the sincerity of your beliefs as it relates to the diet.

County Houses of Correction and Jails

If you are in a county House of Correction or Jail, the process may differ. The regulation on food services in county facilities, 103 CMR 928.06, says only:

Written policy and procedure shall provide for religious diets for those inmates whose religious beliefs require the adherence to religious dietary laws which must be pre-approved by a certified clergy of appropriate religious belief.

The regulation on religious services in county facilities, 103 CMR 936.06, says only:

- (1) Written policy and procedure shall grant inmates the right to their religious beliefs, subject only to the limitations necessary to maintain institutional order and security.
- (2) The Sheriff/facility administrator shall provide the opportunity for inmates to participate in religious services and counseling on a voluntary basis.

This means that each county facility *should* have a policy and procedure for requesting a religious diet, and that policy is likely available in the library. If there is no policy, or no specific form, put your request in writing to a chaplain and the superintendent, following the same guidelines described above, and if your request is denied or not answered, you can file a grievance.

What happens to my therapeutic or religious diet if I am transferred to another facility?

If you are being transferred from one DOC facility to another, your diet orders are in IMS and should automatically transfer. For any other transfer (one county to another, DOC to county, county to DOC, or out of state), you should request that your diet order be included with your transfer paperwork, but there is no guarantee that the new facility will honor the order from the old facility. You may have to start the process over again.

If you have additional questions about this, please contact PLS through our regular intake process. Our capacity to advocate in this area is very limited, but we do have information we can send to you and may be able to offer advice that is more specific to your circumstances.

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.

If you are requesting a different religious diet: The Superintendent will forward your completed Inmate Religious Services Form to the Religious Services Review Committee for a formal decision.

If your request is denied, you can file a grievance challenging the denial.

Once your request for a religious diet is approved, it is entered into IMS. You show your ID at every meal and sign for your religious diet at every meal.

If you take any item from the mainline meal, or fail to access a special meal, you can be issued a disciplinary ticket for misuse or waste of property and charged restitution for the cost of the special meal.

What if I want a vegetarian or vegan diet but not for religious reasons?

The DOC considers vegetarian and vegan diets to be religious diets, so the only way to get one is to follow the procedure for religious diets. However, you do not need to practice a religion for which vegetarian or vegan diets are common (such as Buddhism, Hinduism, Seventh Day

Medical Records Fees

On May 31, 2019, the Department of Correction updated its medical records policies to reflect current law regarding fees it may charge for prisoners to obtain their medical records. According to 103 DOC 607.05 (9), a prisoner may only be charged 5 cents per page for copying costs and a \$5.00 charge if searching/segregating the records takes more than four hours. The policy further specifies that no charge shall be made for prisoners who have been declared indigent under the provisions of 103 DOC 157.06. Finally, no charge shall be made for production of records for the purpose of supporting a claim or appeal under any provision of the Social Security Act or any deferral or state financial needs based benefit program.

This is a substantial change from previous policy, which permitted a \$15 charge just for pulling a prisoner's health records, and then an additional 50 cents per page for the first 100 pages of copying, and 25 cents per page for additional pages. Wellpath should be charging fees in accordance with the new policy. If you are being charged excessive fees in accordance with the previous policy, PLS recommends submitting a grievance and appeal, if you are denied.

Pro Se Plaintiff Survives Motion to Dismiss in Case About False D-Ticket

On October 28, 2018, pro se plaintiff Mr. Onyx White obtained a federal court order in his favor, denying a motion to dismiss that had been filed by Defendant Officers Brian Schwenk and Lucia Schwenk. Mr. White will be allowed to go forward in his case, which alleges that Officer Lucia Schwenk filed a false disciplinary report against him and that she and her husband, Officer Brian Schwenk, instructed other prisoners to assault and harass him in order to prevent him from exposing Lucia Schwenk's misconduct. Mr. White is suing the Schwenks for violating his constitutional rights and for intentional infliction of emotional distress.



Contact Us

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.

Implementation of Medical Parole

Since April 13, 2018, Massachusetts law has allowed terminally ill or incapacitated prisoners to be released on medical parole. The law is G.L. c. 127, § 119A. Prisoners who are permanently physically or cognitively incapacitated or are terminally ill with less than 18 months to live can apply to be released on medical parole. Even those who have sentences with no parole eligibility, including natural lifers, can be eligible for medical parole. When the medical parole law was passed, it was hoped that it would serve the purposes of 1) allowing those whose medical condition means that they do not pose a risk to society to be released to the community to pass their last days, and, at the same time, 2) relieving the prisons and jails of providing security for those too debilitated to need it and providing resource intensive medical care for extremely sick and incapacitated prisoners.

Under the law, the decision to grant or deny a petition for medical parole is the responsibility of the DOC

Commissioner. There are policies and regulations that govern this process- Executive Office of Public Safety and Security regulations are at 501 C.M.R. 17.00; DOC policy and required forms are at 103 DOC 603, Parole Board policy is at 120 PAR 700. The process described in the regulations should be completed by a written decision from the Commissioner within 66 days from the petition being filed. The Supreme Judicial Court is deciding a case that addresses some issues with the medical parole law and how it is carried out, including whether the law requires that the prisoner/petitioner create a medical parole plan or whether it requires that DOC create that plan. *Buckman & Cruz v. Massachusetts DOC, et al.*, SJC No. 12725. We are hopeful that a decision will issue soon. As it stands now, DOC prisoners/petitioners can ask the IPO for assistance in creating a parole plan by using the form included in 120 PAR 700. Even after the SJC decision in *Buckman/Cruz*, problems will remain to be worked out in the petitioning process as well as with availability of placements in appropriate care facilities for those who are eligible but who do not have the home of a family member or friend to go to.

Since the medical parole statute went into effect more than eighteen months ago, PLS is aware of five people who have been released on medical parole out of about 38 applications filed. One of those released was a woman, five were men. All of the people released had been prisoners in DOC prisons, rather than houses of correction. Several were serving natural life sentences prior to receiving medical parole. Sadly, we are aware of at least six prisoners who passed away prior to receiving a decision on their petition for medical parole. DOC is very demanding in interpreting the standard for those eligible. The Commissioner's decisions usually rely on a number of different factors for each petitioner and her denials have relied on reasons including: living in general population; refusing recommended health or mental health care; disciplinary history; lack of medical documentation; ability to walk with a walker; and holding a job, even if very minor in its responsibilities.

PLS has been filing medical parole petitions for clients, as have some other attorneys and law school clinical programs. If you believe you may be eligible for medical parole, please reach out to PLS. We will screen those who contact us and try to either refer to other counsel or represent those who appear to meet the criteria of the law. If you know of someone else within the prison who you think may be eligible, please reach out to us and provide us with their name or ID number so that we can contact them. This is particularly important for people who may be too old or infirm or cognitively impaired to be able to reach out for help themselves.

Are you Currently or Recently Incarcerated at a Women's Prisons or Jail?

Because the majority of DOC prisoners are men, the majority of PLS's clients are men. PLS is committed to understanding the needs of women and non binary people in Massachusetts prisons and jails in order to better advocate for them. If you are interested in sharing information about your experience at MCI Framingham, South Middlesex Correctional Center, the Women's Correctional Center in Chicopee, or the women's units at South Bay HOC, please contact PLS. Please share this information with any currently or recently incarcerated women who may be interested in speaking with PLS.

Write to PLS at 50 Federal Street, 4th Fl., Boston, MA 02110 or call and ask to speak with attorney Becky Shapiro or Paralegal Martha Peña (free state speed dial: 9004; county collect calls: 617-482-4124).



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.

Legislation Updates

Legislative Hearing on November 13, 2019: There was a hearing at the Statehouse in front of the Joint Committee of Public Safety and Homeland Security on November 13, 2019. PLS testified in support of bills that would protect and improve prisoner visitation (H. 2041/S.1379), increase access to programming and education (H.2127/S.1391), improve the parole system and parole board (S. 1390) and ensure that telephone calls could be made at no cost to prisoners and their families (S.1372).

Thank you everyone who helped spread the word about this hearing and who submitted written testimony. There was a large turnout from the community, particularly in support of the no cost telephone calls and visitation bills; it was standing room only. There were very powerful and compelling stories shared by families about the importance of visitation and telephone calls. We were successful in highlighting some of the stories you and your family members shared and believe that we left legislators with a better understanding of how the visitation process can be for you and your families.

Additionally, our office was recently informed that the Senate version of the visitation bill was removed from the Public Safety Committee and placed in the Joint Committee on Children, Families and Persons with Disabilities. This will hopefully increase the chances of the bill moving forward in the legislative process. The deadline for bills to be reported out of committee is in February so please continue to spread the word about this effort and keep the momentum going! There may be a second hearing on the bill so stay tuned for that. **In the meantime, we ask that you encourage your family members to report any visiting room issues directly to PLS and submit written testimony to the Public Safety Committee and to the Committee of Children, Families and Persons with Disabilities.**

Legislative Hearing on October 8, 2019: “An Act to Reduce Mass. Incarceration” (S.826/H.3358) which would allow all people serving life sentences the opportunity for a parole hearing after serving was heard before the Joint Committee of the Judiciary on October 8, 2019. There was a huge turnout in support of this bill, with numerous community groups, family members, friends, and other supporters speaking out about the humanity of incarcerated persons and the capacity for redemption and rehabilitation. There were also a number of panelists who spoke out against the bill, primarily surviving victims of homicide. Prisoners’ Legal Services organized several panels in support of the bill and our Executive Director Lizz Matos spoke in favor, asking that the Committee report the bill out favorably so that it

could move forward in the legislative process. At this hearing, PLS also submitted testimony on a number of other bills, in support of reduced telephone call rates (H.3452), in support of legislation that would bar solitary confinement for greater than 48 hours for persons 21 years old or younger (H.1539), in support of legislation that would require greater transparency and data reporting regarding use of solitary confinement against LGBTQI prisoners (S.905/H.1341), and against legislation that would make it more difficult to be diverted from solitary if you have a serious mental health issue.

Legislative Hearing on September 26, 2019: PLS testified before the Joint Committee on Mental Health, Substance Use and Recovery in support of “An Act ensuring access to addiction services” (S.1145/H.1700). This bill would ensure that people can no longer be sent to prison or jail, without being charged with or convicted of any crime, for involuntary treatment for alcohol and substance use disorders.

Legislative Hearings on July 11, 2019 and July 16, 2019: PLS testified before the Joint Committee on Public Safety and Homeland Security in favor of bills that would create baseline standards in use of force practices for all prisons and jails in the Commonwealth (S.1362/H.2087 “An Act to create uniform standards in use of force, increase transparency, and reduce harm” & H.2114 “An Act to reduce harm by creating baseline standards for use of force by K9s in correctional facilities”). These bills aim to curtail policies and practices around use of chemical agents, use of canines, and use of kinetic impact weapons. The bills also seek to promote de-escalation and other practices which would reduce unnecessary and excessive force against incarcerated persons and increase transparency in the use of force.

What’s Next? At this point, each committee determines whether or not to report the bills that they have in their committees out favorably to the full legislature. Generally, this must happen by February 5th, 2020. If a bill is reported out favorably from committee, then it will move forward in the legislative process. If the bill is not reported out, then the bill will not move forward. Bills that do not move forward this session may be re-filed next session. In many instances it will take a bill several legislative sessions to gain the momentum needed to be reported out favorably and move forward for a vote. We should find out in February whether or not bills have been reported out from committee favorably or not, and in the meantime PLS continues to advocate. If you or your loved ones would like to get involved in advocating for legislation, please contact Jesse White, Pro Bono and Policy Counsel, Prisoners’ Legal Services, 50 Federal St., 4th Floor, Boston MA 02110.

Litigation Updates

Case Against Bridgewater State Hospital Reached Settlement

The class action case *Minich v. Spencer, II* sued for declaratory relief and monetary compensation because of the excessive and abusive use of seclusion and restraint at Bridgewater State Hospital, which used these techniques 100 times more frequently than any other psychiatric hospital in the country. On May 12, 2016, the court denied Defendants' Motion to Dismiss in a groundbreaking decision stating that Bridgewater patients had stated a claim that their abysmal treatment and confinement under conditions more onerous than those in DMH hospitals violated the Americans with Disabilities Act, the Massachusetts Restraint Law, as well as their due process rights under the Federal Constitution. After mediation, we have agreed to a settlement of \$1.5 million dollars for the class members, contingent on the approval of the court and the Legislature.

Case regarding Discrimination Against Deaf and Hard of Hearing Prisoners Reached Partial Settlement

Briggs, et al. v. Department of Correction, et al. is a class action case filed in December 2015 on behalf of prisoners with hearing impairments who allege that the DOC discriminates against them in virtually all aspects of prison life. Specifically, DOC (1) fails to provide access to auxiliary aids and services, such as hearing aids or ASL interpreters, necessary to permit access to educational, vocational, and rehabilitative programming, medical and mental health care, and religious services; (2) denies deaf and hard of hearing individuals adequate, equally effective, and reliable means of communication with individuals outside of prison by failing to provide videophones or other assistive technology; (3) places deaf and hard of hearing individuals at serious risk of harm by not having an adequate emergency notification system; (4) fails to provide adequate interpretative services and auxiliary aids at disciplinary and classification hearings and (5) discriminates against deaf and hard of hearing prisoners in work assignments. On June 22, 2018, plaintiffs reached a settlement agreement with the Medical Defendants, resulting in class members receiving access to ASL interpreters for medical appointments and hearing aids that had been previously denied. DOC has also installed videophones to allow deaf prisoners to make telephone calls to friends, family, and attorneys. After extensive discovery, we entered into a settlement agreement with the Defendants, which is currently pending final approval. The agreement addresses all issues in the case except for the need for emergency alarms, which will have to go to trial.

Prisoners' Right to Vote

All Massachusetts prisoners had the right to vote until 2000, when an amendment to the Massachusetts constitution took the right to vote away from individuals incarcerated on a felony conviction.

Voting By Absentee Ballot

Prisoners are only *not eligible* to vote if they are incarcerated for a felony conviction on Election Day. People incarcerated for other reasons, such as misdemeanors, pre-trial detention, and civil commitments are allowed to vote by absentee ballot. People with felony convictions who are no longer in prison are eligible to vote even if they are on probation or parole, regardless of their criminal record.

You ARE eligible to vote in prison if any of the following apply to you on Election Day:

- You are awaiting trial on misdemeanor or felony charges but not currently incarcerated for a felony conviction.
- You are incarcerated for a non-felony offense.
- You are civilly committed but not incarcerated for a felony conviction.
- You are on probation or parole.

You must also be (1) a U.S. citizen, (2) a resident of Massachusetts, and (3) 18 years or older on Election Day.

If you are incarcerated but eligible to vote because you fit into one of the categories listed above, you are considered a "specially qualified voter" and you do not have to be registered to vote.

If you were not a Massachusetts resident immediately prior to your incarceration, contact the town clerk of the town you lived in most recently before incarceration for voting instructions.

If you were a Massachusetts resident immediately prior to your incarceration and you choose to vote while in custody, you can vote by absentee ballot.

For more information, please contact PLS through intake by writing to Prisoners' Legal Services, 50 Federal St., Boston MA 02110, or contact us by telephone (state speed dial 9004, county collect call 617-482-4124) on Monday afternoon between 1pm-4pm and ask for the PLS voting information sheet.

Mass POWER Campaign to restore the right to vote for all

Massachusetts Prisoners and Organizers Working for Enfranchisement and Restoration (Mass POWER) is a campaign working to “break the chains off the ballot box” and pass a new amendment that would restore the right to vote to all incarcerated individuals in MA. The coalition of organizations that has convened Mass POWER includes Emancipation Initiative, Families for Justice As Healing, the National Council of Incarcerated and Formerly Incarcerated Women and Girls, the Harvard Prison Divestment Campaign, the African American Coalition Committee at MCI-Norfolk, and the Black Latino Asian Cultural Committee (BLACC) at Souza-Baranowski Correctional Center.

With the help of over 500 volunteers across MA, Mass POWER estimates that the movement gathered over 20,000 voter signatures. This number is substantial for a new campaign, though it fell short of the 80,239 signatures needed to move the amendment towards the ballot in 2022. The fight is not over, however, as Mass POWER continues to organize to re-enfranchise prisoners across the Commonwealth. Mass POWER estimates that between 8,200 and 9,000 individuals incarcerated in MA on felony convictions would re-gain the right to vote if a constitutional amendment is passed.

If you have any questions for Mass POWER, you can contact them at (857) 244-1661. You can find more information about Mass POWER at masspowervote.org.

Donate Your Vote Campaign for Re-enfranchisement

In the meantime, Mass POWER has partnered with Emancipation Initiative (EI) on EI's #DonateYourVote2020 campaign. EI has run #DonateYourVote since 2016, working to re-enfranchise people incarcerated on felony convictions by partnering them with community members.

If you would like more information, please write to:

Emancipation Initiative
PO Box 912
Norwood, MA 02062

You can also find more information about Donate Your Vote 2020 on Emancipation Initiative's website at emancipationinitiative.org.

Second Chance Pell: An Update On Pell Grant Funding and Postsecondary Education for Massachusetts Prisoners

In 1994, Bill Clinton signed into law the Violent Crime Control and Law Enforcement Act, a hallmark policy of the “tough on crime” era of the ‘80s and ‘90s. The crime bill, which included increased funding for prisons and encouraged harsher sentences, also made federal and state prisoners ineligible for Pell Grant funding. Pell Grants are need-based subsidies awarded by the Federal Student Aid branch of the Department of Education to students for their undergraduate education. Over 3 million students were receiving Pell Grants during the 1993-94 school year, but only 25,168 of those students were incarcerated. Of the \$5.3 billion dollar budget, \$34.6 million was awarded to prisoners, which amounts to less than 0.007% of the total funds. Even so, supporters of this provision argued that it was unfair to provide incarcerated students with funding while non-incarcerated students were still struggling to pay for college.

In July of 2015, the Department of Education introduced the Second Chance Pell Experimental Sites Initiative (SCP), a first step towards reversing the 21-year ban on Pell Grant access for prisoners. In partnership with 67 colleges across the United States, Second Chance Pell provided funding for 12,000 prisoners at over 100 facilities to access Pell Grants through participating schools, and the Initiative set out to examine the overall impact of access to Pell Grants on educational programs in prisons.

Educational programs for prisoners provide an array of benefits, such as improved prison environments and a more educated workforce. Importantly, these programs directly address recidivism too. The Department of Justice funded a study through the RAND Corporation, which found that prisoners who participate in educational programming are 43% less likely to return to prison when compared with prisoners who were not enrolled in any educational programming. Education in the prison system is also staggeringly cost-effective: RAND Corporation argued that every dollar spent on postsecondary education would yield 5 saved dollars, which would mean a 400% return on investment over 3 years.

The initiative has impacted thousands of incarcerated students since its initiation. Between the start of Second Chance Pell and August 2018, 954 credentials have been given to incarcerated students, 578 of whom graduated in prison with Certificates, Associates, or Bachelors degrees, and 34 of whom graduated in their communities. In the Fall 2017 term, 4,900 students participated in 1,000 Second Chance Pell classes, which marked a 231% increase in participation from the Fall 2016 term.

While incarcerated individuals are still banned from receiving Pell Grants, this Experimental Sites Initiative serves as a temporary pathway to accessing funding for educational programming. Pell Grants given through SCP are prioritized for prisoners who are likely to be released within 5 years of their enrollment. There remain two provisions that still make certain incarcerated individuals ineligible for Pell Grants, and those include: prisoners who were convicted for drug possession or sale while receiving Pell Grant funding and prisoners who are involuntarily civilly committed after incarceration for sexual offenses.

In 2016, Mount Wachusett Community College (MWCC) was chosen by the Department of Education as one of the 64 educational institutions currently participating in Second Chance Pell. MWCC is the only college in Massachusetts that has partnered with the Massachusetts Department of Correction for this initiative, and they offer a Business Certificate for prisoners at NCCI-Gardner and MCI-Shirley. MWCC President Daniel M. Asquino said the following about the college's involvement with SCP: "The power of education to transform lives cannot be underestimated. In Massachusetts and across the country, more money is spent on incarcerating prisoners than is spent on public education. In the long run, society and taxpayers are better served by investing in programs that help people become contributing members of their communities."

According to the Massachusetts Department of Correction, 23 prisoners have completed postsecondary educational programming with Pell Grant assistance through Mount Wachusett Community College since Fall 2016. Here are 25 more incarcerated students whose completion is pending. According to MWCC's website, 22 prisoners at MCI-Shirley graduated with Certificates in Small Business Management in June 2018. 16 of them achieved high honors and 6 finished with a perfect GPA. Additionally, 15 students at NCCI-Gardner were awarded Small Business Management Certificates, and 10 of those finished with a GPA higher than 3.3.

Along with Boston University, MIT, and Tufts University, MWCC was named one of the anchor institutions of the New Prison Education Consortium. The Consortium is funded by the Vera Institute of Justice and the Andrew W. Mellon Foundation, and is working towards increased access to postsecondary education at every prison in Massachusetts.

In Massachusetts, there are 232 incarcerated people enrolled in postsecondary educational programs, and 71 of those students are receiving Pell Grant assistance through MWCC. Separate from the Second Chance Pell Program, Boston University's Metropolitan College offers the BU Prison Education Program at MCI-Norfolk and MCI-Framingham. Through the Prison Education Program, incarcerated students can earn a Bachelor of Liberal Arts in Interdisciplinary Studies or an Undergraduate Certificate in Interdisciplinary Studies, and 142 prisoners have earned a Bachelor of Liberal Arts through this program since 2008. In partnership with Bunker Hill Community College, Tufts University offers an Associate of Arts at MCI-Concord. Emerson College offers a Bachelor of Arts at MCI-Concord, and Boston College offers liberal arts courses at MCI-Shirley. The academic partnership programs with Bunker Hill Community College, Tufts University, Emerson College, and Boston College are all recently established, and have yet to offer Associates or Bachelors degrees to participants.

PLS INTAKE INFORMATION

For assistance with new issues, please call during our regular intake hours, Monday afternoons from 1 pm–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.

Along with Massachusetts universities' increased focus on postsecondary educational opportunities in prisons, politicians across the country are taking up the cause of providing Pell Grants to incarcerated students. In April of this year, Hawaiian Senator Brian Schatz introduced the Restoring Education And Learning Act of 2019 (REAL Act), which would reintroduce incarcerated students' eligibility for Pell Grants. The REAL Act, co-sponsored by Senators Mike Lee of Utah and Richard Durbin of Illinois, would remove the ban present in the Higher Education Act of 1965. The Institute for Higher Education Policy, along with 54 other organizations, sent a letter to Senators Lamar Alexander and Patty Murray, Senate education committee leaders, endorsing the REAL Act.

Second Chance Pell was approved for the 2019-2020 school year. The duration of the experiment is unclear, however experiments run through the Department of Education typically last 3-5 years. Mount Wachusett Community College plans to continue its partnership with the Second Chance Pell program for as long as funding is approved.

If you have a high school degree or equivalency and you are interested in applying for the Mount Wachusett Community College program or any other college program that may be available for you, reach out to the head teacher at your facility to ask about the application process.

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 with us your experience with accessing treatment in DOC.



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.

Holiday Message

Although the holiday season is traditionally a time to gather with family and spend time with those we love, we know that the majority of our clients are lucky if they are able to just speak with family by phone over the holidays much less be visited by family members that often live many miles away or just cannot get to the prison. Complicating this is the unconscionably high cost of phone calls and excessive limits on visitation.

It may not be much, but we want you to know that we are thinking of each of you this holiday season and that we continue to fight to eliminate the cost of phone calls and improve access to visitation. We will also continue to advocate for a more humane system that instills, rather than diminishes, a sense of self-worth and hope.

Wishing you all a safe, peaceful and healthy holiday season from all of us at PLS.

ES

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.



PLS Has Moved!

New Address:

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

Prisoners' Legal Services of MA
50 Federal Street, 4th Floor
Boston, MA 02110