PLS NOTES

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SJC Holds DSU Regs May Apply to SMUs As Well

In October, the Supreme Judicial Court made clear that the Departmental Segregation Unit (DSU) regulations, 103 CMR 421, apply to Special Management Units (segregation) if these units are found to be as restrictive as a DSU. The Court rejected the Department of Correction's arguments that the DSU regulations don't apply to prisoners held awaiting action in SMUs. The Court also clarified the impact of its previous ruling in *LaChance v. Commissioner*, which held that the U.S. Constitution requires some due process protections in SMUs, but fewer than are provided in the DSU regulations. The DOC had argued that the lesser protections in *LaChance* effectively supplanted the DSU regulations, but the SJC held to the contrary, confirming that the regulations still have the force of law.

The plaintiffs in *Cantell et al. v. Commissioner of Correction et al.* all spent time in SMUs under severely restrictive conditions – one hour out of cell Monday through Friday, twenty-four hour lock-in on weekends, three showers a week, severe canteen limitations, almost no programs or other opportunities to earn good time, etc. They argued that they were entitled to the DSU regulations based on the SJC's 2003 decision in *Haverty v. Commissioner*, which held that any prisoner in administrative segregation under such restrictive conditions must be given the benefit of the DSU regulations. The *Cantell* decision upholds this principle and sends the case back to superior court, which must make factual and legal determinations before final judgment.

The DSU hearing requirements originated in *Hoffer v. Fair,* a single justice decision in 1988 that ordered the current DSU regulations to provide due process under the Massachusetts constitution. The regulations require that prisoners may only be held in segregation if there is substantial evidence that they pose a substantial threat. That is determined at a hearing with due process protections, which must be held within 15 days of segregation placement, or 30 days if the prisoner has a pending disciplinary report.

The prisoner may have a lawyer at the hearing (if he can get one—no assigned counsel is available). The prisoner may ask that the hearing be recorded, and he may ask for an interpreter if his English is limited or the issues are complex. There is a limited right to cross-examine witnesses, and informant information is governed by the same rules as in disciplinary hearings. The prisoner is permitted to argue his case and to present documentary and other evidence. The prisoner may also argue that he should be placed in general population or other location instead of a SMU. A written decision is due two weekdays after the hearing.

Those rights include notice of the basis on which he or she is detained, a hearing at which he or she can challenge that basis, and a written post-hearing notice explaining the classification decision.

Perhaps most importantly, if a prisoner is found to pose a risk sufficient to justify segregation, he must be given a conditional release date no more than six months later, "based on the specific aspects of the inmate's record and other information upon which the recommendation is based, including any mitigating information." The prisoner must also be told what conditions he must meet to earn release. Finally, an appeal is available, to the associate commissioner for programs, treatment, and classification.

Now that the Supreme Judicial Court has reversed the dismissal of the plaintiffs' claims in *Cantell,* the case returns to superior court, where the plaintiffs will have an opportunity to prove that conditions in SMUs are such that prisoners held in administrative segregation are entitled to the procedural protections in the DSU regulations.

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Please consider donating to PLS. Every donation helps! Readers with internet access can go to PLS' website at www.plsma.org. The donation page is secure, and your donation is tax deductible.

The state prisoner phone line for PLS is *9004#. Call on Monday afternoons from 1 to 4 P.M. (general population) or 9 to 11 and 1 to 4 (seg).

DOC Regulations Revised

From September 27 to October 6, the DOC held public hearings on proposed changes to several of its regulations. PLS submitted written comments on many of the proposed changes. The hearings covered

103 CMR 155 — Inmate Case Records

103 CMR 157 — Access to and Dissemination of Evaluative Information

103 CMR 180 — Research and Evaluation

103 CMR 410 — Sentence Computation

103 CMR 411 — Deductions From Sentence Policy

103 CMR 420 — Classification

103 CMR 423 — Special Management

103 CMR 454 — Employment Programs Outside a Correctional Facility

103 CMR 455 — Correctional Industries

103 CMR 462 — International Transfer Policy

103 CMR 471 — Religious Services

103 CMR 481 — Inmate Mail

103 CMR 482 — Telephone Use and Access

103 CMR 483 — Visiting Procedures

103 CMR 485 — Volunteers and Volunteer Programs

103 CMR 491 — Inmate Grievance

103 CMR 916, 917, and 918 — County Standards

Additional hearing time was provided on October 6 to cover changes to regulations governing Use of Force (103 CMR 505), Discipline (103 CMR 430),

Observation of Behavior Reports (103 CMR 431), Grievances (103 CMR 491), and Property (103 CMR 403). Changes to the Library (103 CMR 478) and Inmate Funds (103 CMR 405) are also proposed.

Many of the proposed changes are extremely negative. Just one example is the elimination of approved property lists. PLS filed comments that include the following:

"The most notable aspect of the proposed property regulations is the nearly wholesale removal of the detailed lists of approved property for prisoners at different security levels. This proposed change guts the core of the property regulations, leaving them as a mere description of procedures for managing property, rather than a comprehensive description of what property is permitted. PLS opposes this change and strongly encourages the Department to maintain the current lists of approved property. The transfer of the approved property information from the regulation itself to the proposed Standard Operating Procedures serves only to take the regulation of this basic and important part of prison life out of the sphere of the Administrative Procedures Act public comment requirements and permit the Department to make frequent and unchecked changes to the property allowed within its prisons."

"The Standard Operating Procedure mentioned in the proposed regulation does not currently appear on the DOC website, so it is impossible to determine if the Department plans to change the property approved for retention concurrently with the proposed change to the regulation. Even if no change is presently made, this proposed change has a negative impact on prisoners and their families. If the Department is able to easily make changes to the approved property lists at will, allowing the rules of what prisoners can possess to change more frequently, there will be no certainty as to what property a prisoner can maintain. Such instability in the rules will lead to the financial resources of prisoners and their families being squandered when one day's canteen purchase becomes contraband the next. A fluid property system like that proposed would likely create significant confusion and discontent among prisoners and more work for property officers."

There are many changes proposed to the DOC CMRs. PLS submitted dozens of comments. All that material cannot fit into PLS Notes, but we will send copies of our comments to anyone who requests them.

Individual prisoners and organizations other than PLS that are concerned about prisoners also submitted comments to the proposed regulations. The DOC is currently reviewing the comments and will decide what changes, if any, it thinks are merited before the new regulations are put into effect.

Calls For Information

PLS gets its information about what is happening in Massachusetts' prisons and jails from a number of sources. The most important source, however, is prisoners themselves. As 2006 draws to a close, the office is pursuing a number of leads on issues that may become lawsuits or have already become lawsuits. If you have information relevant to the following problems, please let PLS know,

Hepatitis C

PLS and the National Lawyers Guild are pursuing a class action against the DOC and MPCH (the DOC health care contractor) challenging their treatment of prisoners with Hepatitis C. The case is *Fowler, et al. v. Turco, et al.*; U.S.D.C. No. 1:15-

cv-12298-NMG. The court has certified a plaintiff class, consisting of all DOC prisoners who have Hepatitis C. We are now in discovery.

We want to hear directly from prisoners or former prisoners who have been denied treatment, or experienced delays in testing or specialist appointments. PLS also wants to talk to prisoners or ex-prisoners who received or who are now receiving treatment. Your first-hand experiences will help us to present our arguments for more adequate and timely Hepatitis C treatment. Please write to Joel Thompson or Al Troisi at PLS if you have any information about these issues.

PLS also advocates for Hepatitis C patients. If you or someone you know has questions or problems related to Hepatitis C, whether it has to do with screening, monitoring (blood work, liver biopsy, etc.), or treatment, please contact us. As with other issues, we cannot promise advocacy for every request we receive, but we will assess your individual situation to determine whether the prison providers and administration are meeting their obligations, and we will respond accordingly.

Mental Health Care at Worcester County House of Correction

PLS is taking a closer look at the medical and mental health care services in the Worcester County Jail and House of Correction. We would like to hear from anyone who was in Worcester County anytime in the last three years. PLS would like to ask some questions about your experience of health, mental health, and substance abuse care there. If you are willing to answer some questions for us about your experience, please write or call Joel Thompson or Al Troisi.

PLAP Parole Initiative Seeks Information

Harvard Prison Legal Assistance Project (PLAP) is looking for parolees, former parolees, and people who have been denied parole, as part of its ongoing policy work on parole reform. If you would like to share your experiences with the parole process or with being on parole, please contact Harvard PLAP directly by phone, at (617) 495-3127, or in writing to:

Harvard PLAP

6 Everett Street, Suite 5107

Harvard Law School

Cambridge, MA 02138.

PLS Seeks Information on DOC's Treatment of Deaf and Hard of Hearing Prisoners

PLS is looking for information about the experience of deaf and hard of hearing state prisoners in the DOC. For example, PLS would like to know more about any problems those prisoners have with: access to interpreters for medical appointments and administrative hearings, access to educational and rehabilitative programs, access to religious services, awareness of safety alarms and announcements, and their ability to communicate with their loved ones in the community. If you have any information that you would like to share with PLS, please write or call PLS and ask for Tatum Pritchard or Lizz Matos.

Second Chance Pell Grants Start Up

In 2015, the United States Department of Education started the Second Chance Pell pilot program, which is making need-based financial aid available to incarcerated individuals to get access to high-quality education. The pilot is part of a national effort aimed at reducing recidivism and strengthening communities by providing education and job training for eligible prisoners.

In June 2016, the U.S. Department of education announced that 69 colleges and universities in 28 states were selected to participate in the initiative. In total, nearly 12,000 students at more than 100 federal and state prisons will receive Pell Grants to pursue higher education.

Mount Wachusett Community College in Massachusetts (MWCC) is one of the selected colleges and universities. MWCC is working t with the Massachusetts Department of Corrections to provide academic programs to approximately 72 prisoners in the North Central Correctional Institute in Gardner, the Massachusetts Correctional Institute in Shirley, and the Federal Medical Center at Fort Devens.

Prisoners serving life without parole are not eligible for the program. Prisoners who expect to be released within 3 to 5 years are favored for participation.

At this point MWCC is in the midst of developing the details of the program with multiple partners. If everything goes according to plan, the program at MCI-Shirley will start in Spring 2017 and the program at NCCI-Gardner will start in the Fall. Contact re-entry staff for details.

PLS Seeks Information on Treatment of Prisoners with Mobility Disabilities

PLS is seeking information about the experience of persons with mobility disabilities in the DOC and county facilities. For example, PLS would like to know more about problems persons with mobility disabilities have with: accessible housing; mobility assistance devices (e.g., wheelchairs, walkers, canes, braces); access to medical appointments and administrative hearings; access to educational and rehabilitative programs; access to religious services; treatment in segregation; and safety. If you have any information that you would like to share with PLS, please write or call PLS and ask for Maggie Filler.

Attention Bristol County Prisoners

Prisoners' Legal Services is seeking information regarding prisoners who are housed in segregation units at Bristol County House of Correction who may have mental health diagnoses. PLS staff members have recently visited the Bristol County House of Correction as part of an effort to address problems with segregation practices at the North Dartmouth facility. The units of interest are EE, Max, EC, FB and HB. PLS is particularly interested in contacting prisoners who have been repeatedly placed in segregation or who have spent long periods of time in segregation and may have a mental illness. If you have any information you can share with PLS regarding this issue please write or call Bonnie Tenneriello or Al Troisi.

Mandatory License Loss for Drug Possession Eased.

Prior to 2016, the law (G.L. c. 90, §22(f)) provided that a person's driver's license was automatically suspended for five years after conviction of a violation of the Controlled Substances Act, M.G.L. c. 94C. The license suspension had nothing to do with whether the drug offense involved use of a vehicle. The drug conviction appeared permanently on a person's driving record even if the court case was later sealed.

Last year the governor signed legislation that modified the suspension requirement, which dated from the heyday of the so called war on drugs. A defendant can now apply for a hardship license that will allow him or her to drive to work, school, or other legitimate program during the license suspension period, which can be up to (but does not have to be) five years. The old policy of suspending drivers licenses for five years with no hardship provision was not smart crime policy because it makes employment and rehabilitation of people with drug problems much more difficult. It reduced the ability of people to travel to interviews, to apply for jobs within a broader geographical area, and to access treatment facilities, housing, education and training opportunities. Second, the former $500 fee that was required to re-instate a license suspended for drugs was an overwhelming debt for many people out of work who were trying to rebuild their lives. An estimated 7000 people were losing their drivers licenses each year under the old law. Only about 2500 of them were able to "buy back" their driving privileges. That in turn led to numerous (about 700 each year) convictions for driving without a license and all the misery that that entailed – not to mention people driving without insurance. And because drug convictions are recorded on driving records, and driving offenses were not sealed, that led to CORI problems even after the underlying criminal record in the drug case was sealed.

The new law went into effect this past March. The procedure for getting a license back is to ask for a hearing at the registry of motor vehicles. That can be done as soon as any jail time imposed for the underlying drug offense has been completed. At the hearing the defendant tells the registrar why he or she needs the hardship license. If the hearing officer decides *not* to grant the hardship license there must be a written decision including findings supporting the denial. It is reasonable to think that defendants with some proof of a job offer or rehab program participation will be able to get a hardship license.

The persistence of the record of suspension is also eased by a provision in the new law that directs, "[u]pon expiration of the term of suspension of driving privileges suspended under subsection (g), (h) or (i) of section 22 or under section 22½, the registrar shall shield from public access all records of the suspension and the underlying offense, including records of the expiration of the suspension, any hearings or appeals related to the suspension and the reinstatement following the suspension.

Last, but not least, the $500 fee for reissuing a driver's license that has been suspended because of a conviction of drug possession has been eliminated. All of these statutory changes are now in effect.

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Repairs at MCI-Framingham Cause Disruption And Concern

In October, women at MCI-Framingham were suddenly moved out of the four cottage housing units on the compound. This led to widespread concern among the women about possible exposure to asbestos or mold, as well as concern over conditions in their new housing. The DOC told PLS that the cottages were not closed because of asbestos or mold, but because PCBs were found in the window caulk (the sealant around the window panes).

PCBs are chemicals that were widely used in construction between about 1950 and 1979. There are some potential health effects of PCBs. According to the Environmental Protection Agency (EPA), most people have some level of exposure; whether the exposure is harmful depends on how high the level of PCBs is and the length of time during which you are exposed. PLS does not know whether the level of PCB exposure from the caulking at MCI-F is high enough to present health risks.

PLS sent the women who contacted us an EPA information sheet on PCB exposure. Please let us know if you want a copy. PLS is requesting public documents related to the renovations at MCI-F and we will continue to monitor the construction. We will keep you updated as we learn more.

"Stop Solitary" Movement Gains Steam

Across the United States, advocates for prisoners, children of incarcerated people, criminal justice policy organizations, religious groups, budget hawks, and mental health advocates are gradually coming together to end or sharply limit the use of solitary confinement. Some of the reformers are local, some statewide, others national in scope. The briefest of glances at the internet reveals a few of participants: Solitary Watch, ACLU, Stop Solitary Coalition, Prison Hunger Strike Coalition, Black and Pink, Californians United for a Responsible Budget, Prison Hunger Strike Coalition, New York City Jails Action Coalition, CURE, Coalition for Effective Public Safety (CEPS) the National Religious Campaign Against Torture, and the American Friends Service Committee.

In Massachusetts, CEPS is one of the most visible prison reform organizations trying to end solitary confinement. CEPS meets monthly at PLS' office at Winthrop Square. During the spring and summer of 2016, CEPS participated in a book group study of Upper Bunkies Unite, held at the Criminal Justice Policy Coalition office on Columbus Ave. The author, Andrea James, is a former criminal defense lawyer and a former prisoner. The book is a sharp commentary on prison policy and politics, and It is well worth recommending to supportive individuals who have not had prison experience themselves. CEPS also did a public education event on the Boston Common on July 23 that featured a replica of a 6x9' solitary cell to give members of the public a hint about what solitary cell size means psychologically. Another public action, on June 23, involved chalking information about solitary confinement on the sidewalks in front of South Station.

CEPS' Facebook post about the action explained, "CEPS is engaging in public actions on the 23rd of each month to bring attention to the 80,000+ people held in solitary confinement across the U.S. on any given day and to end solitary confinement. This date emphasizes the 23 or more hours every day that people are kept in solitary confinement. Inspired by Prisoner Hunger Strike Solidarity Coalition's (PHSS) action in California, events such as this have been held in Massachusetts since June 2015.

The DOC has remained unmoved by the protest against long term solitary confinement. It has done little to render solitary less dehumanizing, with the exception of reviewing the mental health status of prisoners placed there and diverting some of those with serious mental illness to units that (are supposed to) contain staff with training for working with such individuals, including training on de-escalating crisis situations without using force.

This past fall, another crack in the wall of extreme solitary did open up, in the form of the *Cantell* decision described on the front page of this newsletter. The one-line summary of that decision is that if a prisoner can prove that he is being held in solitary confinement as severe as the DSU, than he or she is entitled to the classification procedures in the DSU regulations regardless of whether the name of the unit he or she is in is "DSU." This may trim the very long DSU "sentences" that are all too frequently imposed.

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