



PLS Notes

Summer 2021

Executive Director: Elizabeth Matos
Editors: Angel Mendez-Flores &
Jesse White

Prisoners' Legal Services
50 Federal Street, 4th Floor
Boston MA 02110
Phone: 617.482.2773
County Prisoner Collect: 617.482.4124
Massachusetts State Prisoner Calls: 9004
www.plsma.org

INSIDE THIS ISSUE

- **New Women's Incarceration and Reentry Project**
- **Changes to Prisoners' Mail Processing**
- **Litigation Updates**
- **Legislative Updates**
- **Reduction Requirement of Prisoner Population**
- **Police Reform Bill**
- **No New Women's Prison Campaign**
- **Accessing Release to Supervision (RTS)**
- **Exhaustion Under the PLRA**
- **Intake Announcement**

NEW WOMEN'S INCARCERATION AND REENTRY PROJECT AT PLS.

The Women's Incarceration and Reentry Project (Women's Project) was made possible through an Equal Justice Works Fellowship sponsored by General Electric Company and Choate, Hall & Stewart. The purpose of the project is to, with the direction and leadership of currently and formerly incarcerated women, expand and deepen PLS services to incarcerated women throughout the Commonwealth to be more responsive to their needs, and to pass the mic to incarcerated women to share their stories, needs, and insights, with the goal of affecting systemic change.

Historically, incarceration has been framed as a men's issue. However, our system also incarcerates women, and this incarceration harms women, families, and communities. PLS is committed to serving incarcerated women, both cis and trans, other trans folks, and gender-non-conforming folks throughout the Commonwealth, and transforming our ideas of safety to include and uplift all women.

The Women's project has been providing direct services to incarcerated women, largely related to medical care. We have also conducted outreach to incarcerated women and are interviewing currently and formerly incarcerated women and attending meetings of and building and strengthening connections with grassroots organizations doing incredible work to help incarcerated people. Another specific goal of the project is to find systemic and structural ways to address sexual violence and harassment, something we know is prevalent in the carceral system. We also know that this will be very difficult to address on an individual, case-by-case basis, and aim to address these issues in a manner that is consistent with the needs of our clients.

The Women's Project has done a lot of work in response to the ongoing COVID-19 crisis. Much of the advocacy on that front has

been around the closure of South Middlesex Correctional Center (SMCC) and the subsequent transfer of the women incarcerated there to various county facilities. These transfers were very risky public health-wise. The women at SMCC had just experienced an outbreak where over 40% of the incarcerated population was infected, and it seemed unconscionable to transfer them somewhere new after that where they might face another outbreak. Transfers are also destabilizing and could be retraumatizing. The Women's project wrote individual and systemic advocacy letters requesting release, rather than transfer, of women incarcerated at SMCC. We also partnered with grassroots organizations to push for media coverage and legislator attention. Finally, we prepared to litigate in case that became necessary. That multifaceted and cooperative campaign resulted in four women being released who otherwise would have been incarcerated in county facilities.

On the reentry front, PLS has made connections with organizations providing reentry services for women and has begun outreach to women who will be leaving prison soon to see if they need assistance connecting with reentry resources. PLS also wrote a letter of support to a local zoning board as part of a grassroots campaign supporting Stacey Borden, a formerly incarcerated woman and founder of New Beginnings Reentry Services (NBRS), seeking to open a reentry home for women leaving prison; the zoning board ultimately approved the reentry home, called NBRS Women & Empowerment, which is slated to open this fall.

PLS is committed to the safety, human rights, and dignity of all women, and is in solidarity with Massachusetts community organizations like Families for Justice as Healing, Black and Pink Massachusetts, New Beginnings Reentry Services, and Justice 4 Housing, who are reimagining safety and uplifting all women.

The Women's Project is currently working on surveying women, both cis and trans, other trans folks, and gender-non-conforming folks to get a better understanding of their experiences and needs, particularly around sexual violence, and we will soon be conducting interviews about these issues as well. The results from these surveys and interviews will be completely anonymized. To learn more about these surveys and interviews, or to participate, please write a letter to:

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

NEW CHANGES TO PRISONERS' MAIL PROCESSING

On April 3, 2021, the Executive Office of Public Safety and Security ("EOPSS") adopted new regulations regarding the DOC's handling of prisoner mail. The revised regulations, which are encoded as 103 CMR 481.00, change the DOC's mail policy in several significant ways:

Non-privileged Mail

Under 103 CMR 481.12, if the Commissioner of the DOC determines that incoming non-privileged mail "creates an unacceptable risk for introduction of contraband," the Commissioner may require all incoming non-privileged mail to be photocopied. The Commissioner may also authorize a third-party vendor to photocopy and process this mail. Under this system, incarcerated individuals will no longer receive original paper mail, and will instead receive only a photocopy of letters or photographs mailed to them (or an electronic copy if they have a tablet on which they can read and store their mail). The DOC will provide color photocopies of mail "consisting of colored or crayon drawings, color photographs/pictures and greeting cards utilizing color." However, all other correspondence - including letters on yellow paper, and signatures or return address labels that appear in color - will be copied in black-and-white. Individuals may receive original photos if they are from "verifiable photo-printing companies."

Under the new regulations, DOC officials are prohibited from reading incoming or outgoing mail, except in limited circumstances. Under 103 CMR 481.13 and 481.14, officials may read incoming or outgoing mail "only to prevent interference with institutional goals of security, order, discipline, or if the correspondence might facilitate, encourage, or instruct in, criminal activity."

Privileged Mail

Under 103 CMR 481.11, each DOC facility has the discretion to implement an Attorney Verification System ("AVS") for the verification of privileged attorney-client mail. Attorneys who wish to correspond with a client at a facility that has implemented AVS must first submit an AVS participation form. The DOC will then issue numerical codes and/or individualized stickers to the attorney so they can mark their mail as privileged. Privileged mail is presumed to have no contraband, and officials may only open privileged mail in the recipient's presence for the purposes of checking for contraband or receiving/receipting funds for the recipient.

The DOC has argued that these changes were a necessary response to an increase in contraband in both privileged and non-privileged mail. But advocacy organizations - including PLS and CPCS - strongly oppose these changes. As we and many others argued at a January 29, 2021 public hearing on the revisions, this new system is an expensive, inefficient, and unnecessarily intrusive response to the relatively few instances of contraband in mail that unfairly punishes the vast majority of prisoners who have not abused the mail system. According to public procurement documents, the DOC estimates that it will spend over a million dollars annually on a mail copying contract. The DOC has also announced that it intends to contract with Smart Communications, a Florida-based company that has already been heavily criticized for its flawed prison mail processing in other states. For example, individuals in the Pennsylvania DOC - which contracts with Smart Communications - have reported significant delays in processing, sections of photos being cut off, and mail that was returned to its sender without explanation. PLS has already heard from one client whose pleadings were rejected by a court because he could only submit a photocopied proof of delivery card instead of an original.

We know that paper mail is an irreplicable source of emotional connection for many of you to loved ones outside of prison, including children. And we recognize that the DOC's fixation on contraband distracts from the more urgent problem of its lack of adequate substance use disorder treatment for prisoners. PLS is currently looking into potential policy solutions to this problem, including legislation and a public records request on the DOC's contracting process. We are also aware of at least one pending *pro se* lawsuit on the matter and will be following its progress. We will continue to oppose the revised policies in whatever way we can, and welcome any thoughts or suggestions you have.

For those of you who have loved ones on the outside with internet access, the text of the revised mail regulations and the meeting minutes to the January 2021 public hearing can be found here:

<https://www.mass.gov/doc/103-cmr-481-inmate-mail-0/download>

<https://www.mass.gov/doc/103-cmr-481-hearing-minutes/download>

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.c

LITIGATION UPDATES.

Briggs, et al. v. Department of Correction, et al.

This class action was filed in December 2015 on behalf of deaf and hard-of-hearing prisoners who alleged that the DOC was discriminating against them in virtually all aspects of prison life. Specifically, DOC was (1) failing to provide access to auxiliary aids and services, such as hearing aids and ASL interpreters that are necessary to have access to educational, vocational, and rehabilitative programming, medical and mental health care, and religious services; (2) denying 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) placing deaf and hard of hearing individuals at serious risk of harm by not having an adequate emergency notification system; (4) failing to provide adequate interpretative services and auxiliary aids at disciplinary and classification hearings and (5) discriminating against deaf and hard of hearing prisoners in work assignments. We are co- counseling with WilmerHale and the Washington DC Lawyers' Committee for Civil Rights.

On June 22, 2018, plaintiffs reached a settlement agreement with the medical defendants resulting in class members receiving hearing aids that had been previously denied. After mediation, we entered into a separate settlement agreement with the Defendants that was approved by Judge O'Toole on November 6, 2019. In accordance with this agreement, the DOC has, among other things, installed videophones and captioned telephones in all prisons, and provided prisoners with vibrating watches so people are less likely to miss count, medline and other activities. The agreement also requires each institution's ADA coordinator to meet with each person who has a hearing impairment to determine what accommodations they need. DOC also hired two ASL interpreters.

However, the settlement agreement left unresolved the issue of emergency notification systems, including visual alarms that we believe are necessary to protect people in case of fire. The Defendants filed a motion for summary judgment on that issue and we filed our opposition on January 28, 2020, along with various motions seeking to strike affidavits submitted by DOC. The court has not yet scheduled a hearing on these motions.

We are, in the meantime, monitoring compliance with the settlement agreement. The monitor conducted her first site visit in September of 2020, inspecting MCI Shirley, SBCC, and Gardner.

She conducted her second site visit in April of 2021, inspecting MCI Norfolk, Cedar Junction, Old Colony, and the Treatment Center. The monitor has also produced three reports discussing DOC's compliance with the agreement. Although there has been progress in many areas, some issues still persist. **People who feel they are not receiving the accommodations they are entitled to should contact PLS, by writing to or calling and asking to speak with Alphonse Kamanzi.**

Foster, et al. v. Mici, et al.

PLS continues to litigate the class action lawsuit it filed in April 2020 seeking the release of incarcerated people throughout Massachusetts due to COVID-19. Though the Supreme Judicial Court denied our emergency motion for a preliminary injunction last spring, it stated that "a reduction in the number of people who are held in custody is necessary," and it referred to the Superior Court where litigation has continued.

In October, PLS filed a motion in the suit asking the Superior Court to require DOC to institute a home confinement program. Though the court denied that motion on December 18, DOC has since implemented a limited home confinement program, and a handful of people have now been released to home confinement.

As the levels of COVID-19 spiked again during the fall and winter, PLS prepared another emergency motion for preliminary injunction arguing that DOC's efforts to contain the virus had failed and that it was therefore unconstitutional for the defendants to continue refusing to release people. In particular, PLS noted Commissioner Mici's disregard of a budget amendment enacted in late December requiring her to "release, transition to home confinement or furlough" those in her custody "who can be safely released, transitioned to home confinement or furloughed," with prioritization given to those most vulnerable to COVID-19. (*cont.*)

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 Angel Mendez-Flores, Paralegal, Prisoners' Legal Services, 50 Federal St., 4th Floor, Boston MA 02110.

The Superior Court denied the second motion for preliminary injunction in February, but it allowed PLS to move to amend the complaint to add a new claim related to the budget. The motion to amend was granted on March 29. PLS is also appealing the denial of the second motion for preliminary injunction and has asked the Supreme Judicial Court to review the decision.

Medical Parole

Since April 13, 2018, Massachusetts law allows people who are terminally ill or permanently incapacitated to be released on medical parole, similar to compassionate release in other states. The medical parole law is G.L. c. 127, § 119A, and it applies to people in prison with fewer than 18 months to live, or who are permanently incapacitated. The statute defines “permanent incapacitation” as a physical or cognitive incapacitation that appears to be irreversible, and that is so debilitating that they are no longer a public safety risk. Typically, physical incapacitation refers to those who need significant assistance completing their activities of daily living, such as walking or getting dressed, and people with either advanced dementia or Alzheimer’s disease are considered cognitively incapacitated. All state and county sentenced prisoners in Massachusetts can be eligible for medical parole, even those whose sentences have no parole eligibility, such as people serving natural life.

According to an affidavit filed by DOC Commissioner Mici on January 22, 397 individual medical parole petitions were filed as of that date. Of those, 310 petitions were filed since April 1, 2020. Commissioner Mici has granted 45 of those petitions with 31 grants since the pandemic began.

In the event that a medical parole petition is denied, the mechanism to challenge that denial is a certiorari action under G.L. c. 249, § 4. A certiorari in this instance seeks the Court’s determination that the medical parole denial was arbitrary and capricious or not supported by the record. Possible outcomes include affirming the Commissioner’s denial, remanding to the Commissioner for a new decision that comports with the law, or overruling the denial and ordering release on medical parole. While DOC takes the position that the Court only has the authority to remand petitions to the Commissioner, multiple courts have ordered that prisoners be granted medical parole rather than giving the Commissioner the opportunity to deny again.

An individual has 60 days from the date of the denial to file a certiorari petition in state superior court, typically Suffolk County. If you are interested in filing a certiorari petition, PLS recommends that you immediately write to Commissioner Mici to request a copy of the Administrative Record for your petition.

Also call the PLS Medical Parole Team to ask for our info sheet on medical parole certioraris and the sample complaint and pleadings we provide.

On May 19, 2021, the SJC issued two rulings regarding medical parole that addressed a number of questions referred to the court. The first, *Harmon v. Commissioner of Correction*, was consolidated with another case, *Racine v. Commissioner of Correction*, on appeal. In *Harmon*, the SJC ruled:

- 1) The death of the plaintiff in a certiorari contesting a petition denial moots that certiorari, meaning the case is dismissed if the prisoner dies, unless the case raises an issue of public importance that might happen again, in which case a court may issue a ruling despite the plaintiff’s death.
- 2) The Commissioner must accept subsequent petitions even if previous petition(s) have been denied. This voids 501 CMR 17.44(4), the medical parole regulation that only allowed the submission of requests for reconsideration of a denied petition if the petitioner has had a significant and material decline in health. Petitioners may now submit subsequent medical parole petitions despite a previous denial.
- 3) The medical parole statute only applies to convicted persons serving a sentence, and not to pretrial detainees, who may instead seek modification of bail based on changed circumstances. (*cont.*)

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.

There is growing concern about parole revocation in the event that the parole board believes a medical parolee's condition has improved after their release. PLS knows of two such cases thus far. We are also concerned about revocation due to technical violations of parole conditions, and know of three medical parolees who have faced such a revocation. The Parole Board takes the position that they have no authority to re-parole a medical parolee, even if they find the individual to be medical parole eligible and not a danger to public safety. The issue of medical parole revocation due to technical parole violations is currently before the SJC, and PLS filed an amicus brief in this case, which is when an outside party assists one side or the other by filing a brief to offer information or insight into the issues presented in the case to positively influence the court's decision.

PLS continues to file some medical parole petitions for clients with a life expectancy of less than 18 months, and/or for clients who are permanently incapacitated. More recently, given our limited capacity and current availability of appointed counsel through CPCS, we often review inquiring clients for potential eligibility and refer those who appear to qualify to CPCS who assigns an attorney to file the petition. If you believe that you qualify for medical parole or you have had your medical parole revoked, please reach out to PLS. If you know someone who may be eligible but is unable to reach out on their own, please write or call us with their name or ID number and location, so that we may contact them about the possibility for medical parole. **Write to PLS at 50 Federal Street, 4th Fl., Boston, MA 02110 or call and ask to speak with Paralegal Kate Piper (free state speed dial: 9004; county collect calls: 617-482-4124).**

Doe v. Mici

PLS has for many years been trying to end the use of prison for people civilly committed for substance use treatment under G.L. c., 123, § 35 ("Section 35"). Previous litigation helped end the use of prison for female patients, and ended the use of the Mass. Treatment Center to house male patients. In March 2019, 10 men held in the DOC's Massachusetts Alcohol and Treatment Center (MASAC) sued to end all use of prison for civilly committed patients. Incarcerating people only because they need treatment for substance use disorder only perpetuates the idea that addiction is a moral failing rather than the disease it is. The Goodwin Proctor law firm is co-counsel with PLS.

Pen Pal Invitation!

Unitarian Universalist Mass Action has volunteers who would like to be your pen pal! If you would like a pen pal, please send your name, facility and anything you'd like to share about yourself to:

**UU Mass Action
40 Mechanic St., Suite 306
Marlborough, MA 01752**

You can also email:
lwagner@uumassaction

The legal claims are: (1) Incarcerating civilly-committed men but not women constitutes gender discrimination; (2) civil commitment to a correctional institution for treatment of a medical condition constitutes unlawful disability discrimination. By subjecting men to stigma and punishment instead of treatment, Section 35 perpetuates unwarranted negative stereotypes, and reinforces the perception that they are second-class citizens unworthy of bona-fide treatment. (3) Civil commitment to a prison violates constitutional due process. Incarceration in a prison, rather than in an appropriate treatment facility, represents a substantial departure from accepted professional judgment, practice, and standards. Their confinement in a traumatic and counter-therapeutic environment sabotages the possibility of recovery and bears no reasonable relation to the purpose of Section 35. The suit seeks a declaratory judgment that Plaintiffs' incarceration is unlawful a permanent injunction prohibiting the civil commitments under Section 35 to a correctional facility.

A class of plaintiffs held in MASAC was certified in July 2019. Since then, Plaintiffs held in the Section 35 program run by the Hampden County Sheriff's office have joined the case, and a motion is pending to certify those plaintiffs to represent as a class of all held by Hampden County. (*cont.*)

Both Hampden County and the DOC have attempted to present a less correctional image. DOC removed correctional officers from the interior of MASAC and placed Wellpath in charge of operations. Hampden moved patients out of the House of Corrections and into a former pre-release building, and those supervising operations are not called corrections officers. However, in an amended complaint detailing conditions after these changes, patients in both facilities recount the many ways in which the environment in each is still that of a prison. The Defendants have sought to dismiss “facial claims,” which argue that on its face Section 35 is unlawful because it allows use of a prison, which would leave the lawsuit to depend on actual conditions in MASAC and Hampden County. But the Plaintiffs maintain that no matter how well the facility is operated, the very fact of being sent to correctional custody is stigmatizing, sending the wrong message both to the patient and to the community. And so Section 35, by allowing any use at all of prisons, is unlawful. Argument has not yet been heard on that motion. Discovery will continue this year, with trial expected in Spring 2022.

Pearson v. Hodgson

PLS Succeeds in Vacating Dismissal of Suit Against Securus; Question Certified to SJC.

After a disappointing ruling in June 2020 that resulted in dismissal of our case against Securus and the Bristol County Sheriff, on March 31, 2021 PLS and co-counsel succeeded in convincing the federal court judge to reconsider her decision, vacate the dismissal, and certify the relevant legal question to the Massachusetts Supreme Judicial Court.

This case, *Pearson v. Hodgson*, is a class action lawsuit against Bristol County Sheriff Thomas Hodgson and Securus Technologies, the prison phone company, alleging kickbacks 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, and maybe the DOC as well

LEGISLATIVE UPDATES.

PLS has an ambitious legislative agenda, which is informed by the input we have received from our clients, their family members, and community organizations we are in coalition with to try to reduce the harms caused by the prison system. The Legislative session is two years long, so we will be working on the below priorities for 2021-2022. We aim to get as many of these measures passed as we can, while also educating Legislators and the public regarding the prison system and the necessity for change.

During the legislative process we have multiple opportunities to engage with legislators and the public about these issues. There will be legislative hearings on all of these bills, as well as some briefings. We will also meet directly with legislators to speak more in depth about how these bills address structural problems. We want to lift up the voices of our clients and families, centering your experiences and your expertise while we engage in our legislative advocacy and public education efforts.

Please know that you can submit written testimony about any of the below bills by mailing it directly to the contact information provided after the bill summary. Please do not mail testimony to PLS because we will not be able to submit it for you.

If you would like to participate in educating policy makers and the public around these bills, please write to:

**Jesse White, Pro Bono and Policy Counsel
Prisoners' Legal Services,
50 Federal St. 4th Floor
Boston, MA 02110.**

Please let us know in your letter what bill or bills you have interest in and how you would like to be involved. Some possibilities for involvement include:

- Involving your family members and loved ones in meetings with legislators and in other community efforts around these bills,
- Meeting with legislators who visit prisons to speak with incarcerated people directly about their experiences and needs, and
- Sharing your experiences with us so that we can share them, anonymously if you prefer, with legislators, the media, and the public

Our Legislative priorities follow:

Solitary Confinement

We are working with the coalition Massachusetts Against Solitary Confinement, led by people who have experienced solitary confinement, in support of two important bills that would reform solitary and mental health watch. (*cont.*)

An Act to provide criminal justice reform protections to all prisoners in segregated confinement (S.1578, H.2504) would expand Criminal Justice Reform Act protections so that they would apply to all segregation units, create baseline protections for general population including 8 hours minimum out-of-cell time, clarify and enhance rights to out-of-cell time, visitation, television and radio, canteen access, and disability accommodations in segregation, and improve on due process protection, including allowing for representation by counsel at placement reviews. The bill also prohibits segregated confinement for pregnant and postpartum prisoners, prisoners with permanent physical or developmental disabilities, and prisoners 21 years old or younger or 55 or older. The House version of the bill would limit solitary confinement for purposes of discipline, or when awaiting action on a disciplinary ticket, to no more than 15 days. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133. **An Act to ensure the constitutional rights and human dignity of prisoners on mental health watch (S.1283, H. 2089)** was a bill written in response to the scathing DOJ report finding that DOC's mental health practices violate prisoners' constitutional rights. This bill would reform the mental health watch system, including creating baseline standards for mental health care, limits for use of mental health watch and improved conditions of confinement for persons placed on mental health watch. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Mental Health, Substance Use, and Recovery Chairs Adrian C. Madaro and Julian Cyr, 24 Beacon Street, Room 33, Boston, MA 02133.

Visitation

We are continuing in our efforts from the last legislative session to try to improve the visitation system. **An Act to strengthen family and community connection with incarcerated people (S.1550, H.2440)** would roll back the limitations placed on visitation by DOC when it changed the regulations in 2018. It would also guarantee all incarcerated people the opportunity for at least three in person visits a week, ensure that no visitor would be excluded solely because they are formerly incarcerated or because they have volunteered in a prison or jail, ensure contact visitation wherever that is feasible, ensure that incarcerated people can hold their minor children and that they and their visitors can use the restroom, require reasonable dress codes, prohibit visitation-related disciplinary sanctions greater than 15 days, and ensure that loved ones may see their incarcerated friends and family members if they are transferred to a hospital and are in critical condition or in imminent danger of death.

The bill would still allow for video and other electronic communication, but ensure that such communication must be supplemental to and not replace in-person visitation, and must be provided without cost. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

No Cost Calls

We are working in coalition with Families for Justice as Healing, the Building up People Not Prisons Coalition, and the No Cost Calls Coalition to pass **An Act relative to inmate telephone calls (S.1559)** and **An Act relative to telephone service for inmates in all correctional and other penal institutions in the Commonwealth (H.1900)**. These bills would guarantee that telephone calls between incarcerated people and their families would be provided by DOC and the County jails without costs or fees. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133 and the Joint Committee on the Judiciary Chairs James B. Eldridge and Michael S. Day, 24 Beacon Street, Room 136, Boston, MA 02133.

Use of Force

Especially in the wake of the widespread and racialized assaults at SBCC in Jan-March 2020, use of force reform is timelier and more important than ever. Unfortunately, the policing bill (An Act Relative to Justice, Equity, and Accountability in Law Enforcement in the Commonwealth) that passed last session did not substantively address use of force in corrections, where transparency is low and where excessive force occurs frequently. **An Act to create uniform standards in use of force, increase transparency, and reduce harm in correctional facilities (H.2480, S.1541)** would create uniform minimum standards for state prisons, county jails, and houses of correction in order to minimize unnecessary and excessive use of force against incarcerated people and increase transparency in use of force. This bill would create minimum standards for de-escalation, spontaneous, and planned use of force, use of law enforcement K9s, the use of chemical agents, the use of kinetic impact weapons, and the use of restraint chairs in correctional settings. It also establishes baseline standards for transparency in use of force, including minimum data reporting and records access. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

Medical Parole

The Criminal Justice Reform Act (CJRA), passed in 2018, created a new medical parole system in Massachusetts, intended to ensure that people who are terminally ill or permanently incapacitated who do not pose a threat to public safety could be released from prison to receive appropriate medical care in the community. Unfortunately, DOC has exploited loopholes in the law and interpreted its provisions very narrowly in order to release very few people on medical parole. **An Act to remove barriers to medical parole (S.1599, H.2448)** strengthens the current medical parole law by clarifying eligibility determinations, providing access to cognitively disabled persons, ensuring a path to placement of eligible prisoners for whom private placement cannot be found, improving the revocation process, and encouraging prompt court resolution of court challenges to denials. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

Ending Life Without Parole (LWOP)

We are working in coalition with people currently serving LWOP sentences, family members, and a number of organizations under the umbrella of the "Campaign to End Life Without Parole" to try to put a stop to the inhumane life without parole sentence. **An Act to Reduce Mass Incarceration (H.1797)** would allow for parole eligibility for all people serving life sentences after 25 years. It is retroactive, meaning that if it were to pass, all people currently incarcerated on first degree life sentences would be parole eligible after 25 years. It also creates a voluntary restorative justice program. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on the Judiciary Chairs James B. Eldridge and Michael S. Day, 24 Beacon Street, Room 136, Boston, MA 02133.

Parole Board

It has never been clearer, as the Parole Board has utterly failed to facilitate release for people during the course of the COVID-19 pandemic, how desperately the parole system needs reform. We are working with the Coalition for Effective Public Safety to pass **An Act to promote equitable access to parole (S.1560, H.2503)**. This bill would improve the efficiency and balance of the parole board, account for the rights and needs of persons with certain disabilities, improve transparency, and reduce the amount of time prisoners must wait between parole reviews. It will require that parole be granted at the parole eligibility date unless the parole board determines that the individual would violate the law if released under appropriate conditions and community supervision.

Correction:

In the last issue of PLS Notes, we accidentally wrote that "An Act to reduce mass incarceration (S.826/H.3358), filed last legislative session (2019-2020), "will" pass. We meant to write "will not" pass. The bill, which would have ended Life Without Parole sentencing, did not pass in the legislative session. There is a substantially similar bill that has been filed for the 2021-2022 Legislative Session and we are again fighting for it to pass. Please see the Legislative Update section starting in page 7 for more information. We are very sorry for our mistake.

The bill provides new protections for persons who are accused of technical (non-criminal) parole violations, and for persons on parole greater than three years without violating the law. The bill would create a presumption in favor of termination of parole. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

Voting Rights

PLS believes in the full enfranchisement for all incarcerated persons, regardless of their underlying conviction. Right now, the law allows for people who are pre-trial, those who are civilly committed, and those who are serving misdemeanor offenses to vote, but excludes people who are serving felony sentences from voting. As we continue to fight for the right to vote for all persons, which will have to be accomplished through a constitutional amendment, we also know that even those who retain the right to vote behind bars often face insurmountable barriers to casting a ballot. We are working with the Democracy Behind Bars coalition to pass **An Act to protect the voting rights of eligible incarcerated people (S.474, H.836)**, which would create a long overdue system to ensure that eligible incarcerated voters can exercise their rights. This bill would require sheriffs to facilitate voting and provide all eligible voters ballot applications, voting materials, and a private place to vote, ensure municipal, in-person polling locations are available in jails in the most populous counties, ensure eligible incarcerated voters' ballot applications are not rejected by elections officials, and improve registration and participation for people recently released from incarceration. If you would like to submit written testimony to support this bill, please mail it to Office of Representative Daniel J. Ryan, Chair Joint Committee on Election Laws State House, Room 36 BOSTON, 02133-1053 or Office of Senator Barry Finegold Joint Committee on Election Laws State House, Room 511 BOSTON, 02133-1053

Prison Construction Moratorium

PLS is supporting Families for Justice as Healing and the National Council of Incarcerated and Formerly Incarcerated Women and Girls in their efforts to pass **An Act establishing a jail and prison construction moratorium (S.2030, H.1905)**. This bill would create a five year prison and jail construction moratorium to give the Commonwealth a chance to shift spending priorities away from punishment and incarceration, give communities the opportunity to create and sustain solutions that address the root causes of incarceration, allow the state to fully implement criminal justice reforms intended to reduce mass incarceration, and pause the process of building a new women's prison, which would incarcerate generations of women and girls to come, in order to decarcerate and implement alternatives. The bill would not stop the state from routine maintenance or making essential repairs. During the moratorium the state could focus on diversion, pre-trial release, community-based sentencing, clemency, parole, and medical parole. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on the Judiciary Chairs James B. Eldridge and Michael S. Day, 24 Beacon Street, Room 136, Boston, MA 02133 and to the Joint Committee on State Administration and Regulatory Oversight Chairs Marc R. Pacheco and Antonio F.D. Cabral, 24 Beacon Street, Room 22, Boston MA, 02133.

Substance Use Disorder

National studies show that half of all prisoners meet the DSM-V criteria for Substance Use Disorder ("SUD"), yet only a small percentage receive drug treatment during their incarceration. While the DOC began implementing Medication Assisted Treatment (MAT) at a few of its prisons, access to this life saving treatment is limited and fraught with unnecessary barriers. DOC and the county systems also fail to provide evidence-based and comprehensive treatment for non-opiate substance use disorders. The solutions offered by the Department of Correction and many county jails are punitive, including disciplinary tickets, long stints in solitary confinement, crackdowns on mail, telephone calls, and visitation. **An Act establishing a commission to review substance use in correctional facilities (S. 1598, H.2509)** would require Massachusetts correctional facilities to provide data and statistical information related to substance use trends and the programmatic rehabilitation needs of prisoners. The commission will use the data to produce an annual report and make recommendations aimed at reducing substance use in prisons and jails in Massachusetts. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133

Media Access:

Correctional facilities in the Commonwealth operate largely outside of public scrutiny, and with little accountability. Although it is axiomatic that "sunlight is the best disinfectant", news media representatives are currently unable to visit and communicate freely with incarcerated people. **An Act relative to media access and transparency in correctional facilities (S.1638, H.2513)** would increase transparency by ensuring that media representatives have appropriate and reasonable access to visitation, telephone calls, and other communication with incarcerated people. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

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.

Section 35

We are continuing our fight from last session to put an end to the incarceration of men for substance use disorder treatment. Alone in the country, Massachusetts commits men with alcohol use disorder or substance use disorder (SUD) to prison when there are not enough beds elsewhere. Under G.L. c. 123 § 35, (“Section 35”) men and women may be involuntarily committed for SUD treatment for up to 90 days if a court finds that they pose a risk to themselves or others. In 2016, Section 35 was amended to prohibit incarceration for women, a step which Governor Baker hailed in his 2019 inaugural address. **An Act ensuring access to addiction services (S.1285, H.2066)** would do the same for men by requiring that all Section 35 beds, for men as well as women, be in facilities approved by the DPH or the DMH, and not in correctional facilities. It will require that people with SUD be treated as patients. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Mental Health, Substance Use, and Recovery Chairs Adrian C. Madaro and Julian Cyr, 24 Beacon Street, Room 33, Boston, MA 02133.

Decarceration

Although the state of emergency has lifted, we know that COVID risks remain high in prisons and jails and that DOC continues to rely on lockdowns, which are taking a serious emotional and physical toll on prisoners, to manage the spread of illness. We also know that prisons and jails have always been and will continue to be sites of public health crises. **An Act regarding decarceration and COVID-19 (H.1868)** would provide for responsible decarceration amidst the ongoing public health threat. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on the Judiciary Chairs James B. Eldridge and Michael S. Day, 24 Beacon Street, Room 136, Boston, MA 02133.

RIGHTS Act:

PLS is supporting the work of Black and Pink Massachusetts in trying to pass **An Act to Promote Rehabilitation Including Guaranteed Health, Treatment, and Safety for Incarcerated LGBTQI+ People (S.1566, H.2484)**. This bill would address the most basic needs of incarcerated LGBTQI+ people and those living with HIV by ensuring incarcerated LGBTQI+ people have the right to safer housing, healthcare, and affirming programming. If you would like to submit written testimony to support this bill, please mail it to the Joint Committee on Public Safety and Homeland Security, 24 Beacon St., Room 26 Boston, MA, 02133.

STATE BUDGET REQUIRES DOC TO REDUCE PRISONER POPULATION.

In December 2020, Governor Charlie Baker approved the budget for the state government of Massachusetts for the fiscal year 2021. The 2021 fiscal year ranges from July 1, 2020 to June 30, 2021. Included in the budget for the state government is the budget for the Department of Corrections. The DOC portion of the state budget includes language requiring the DOC to reduce the prison population. Specifically, the budget states that the Commissioner shall prioritize the release of those most vulnerable to serious medical outcomes associated with COVID-19 according to the Centers for Disease Control and Prevention’s guidelines.

The budget further explains that the DOC must consider, but is not limited to considering, the following pathways to release: home confinement, furlough, medical parole, maximization of good time by eliminating mandates for participation in programming for those approaching their release date and awarding special time credit towards a sentence served during periods of declared public health emergencies impacting prisons.

Due to these parameters, PLS is advocating for release of individuals with serious medical concerns outlined by the CDC and/or those within one year of their release date. Since the language urging for the release of prisoners was only included in the DOC portion of the budget, we’re only able to advocate for those serving sentences in DOC facilities.

If you believe you qualify for this type of advocacy, please reach out to PLS. Please include your age, your release or parole eligibility date (if applicable), if you have a place to live upon release, any medical conditions that you have, and if you have previously tested positive for COVID-19 and when. You can write to PLS at 50 Federal Street, 4th Fl., Boston, MA 02110 or call and ask to speak with Felicity Dei Rossi (free state speed dial: 9004).

The budget requirement will end on June 30, 2021 but PLS is fighting to include similar language in the new budget, which will run from July 1, 2021 through June 30, 2022.

HOW THE POLICE REFORM BILL WILL IMPACT CORRECTIONAL FACILITIES.

While police violence is certainly nothing new, the murders of George Floyd and Breonna Taylor in 2020 spurred an uncharacteristic scrutiny of policing and its relationship to systemic racism. But police brutality is not the only form of state-sanctioned violence that continues to plague the United States. Incarcerated people face similar brutality at the hands of correctional officers every day, brutality that is often covered-up, undocumented, and without consequences.

A recent bill in the Massachusetts legislature aims to address the general permanence of anti-black racism across the state, making sweeping changes to use of force practices for policing outside of prison walls. Unfortunately, it largely excluded prison brutality from its reach. Most notably, the bill purposely excludes correctional officers from its definition of law enforcement, leaving violence behind bars intact.

Prisons and jails were not completely left out, however. Among its numerous objectives, this bill creates commissions to (1) study and make recommendations surrounding the use of force by correctional officers, (2) study structural racism and the disparate treatment of people of color behind bars and (3) study structural racism in the parole process. It further seeks to increase access to information and expand data collection to those ends.

Three Main Commissions

The bill creates three commissions related to prisons and jails. The first will review and make recommendations on the training of COs, regulations around the use of force, and access to records. It will also review and make recommendations on the creation of an independent body that would have the power to certify and de-certify COs and to receive, investigate and adjudicate claims of CO misconduct.

The commission will report its findings, recommendations, and any proposed legislation to the house of representatives, senate, and joint committee on public safety and security by the end of this year.

Chaired by a former judge, this commission will consist of 18 additional members. 5 members will come from advocacy backgrounds (PLS, Citizens for Juvenile Justice, NAACP, ACLU, and Lawyers for Civil Rights), 6 members from law enforcement, the president of the Massachusetts Bar Association, 2 members appointed by the Black and Latino Legislative Caucus, 2 members appointed by the House Asian Caucus, and 2 members appointed by the governor, one of whom will be a member of the LGBTQ community, and one of whom will be a formerly incarcerated woman.

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.

The second commission is on structural racism in corrections. It will study the disparate treatment of people of color incarcerated at state and county correctional facilities and determine the role of structural racism in those disparities. It will investigate prison policies and procedures, and thoroughly review access to educational, vocational and other programming options for incarcerated people.

It will be made up of 17 members: 4 members of the house of representatives, one of whom will be a member of the Black and Latino Legislative Caucus, and one of whom will be a member of the House Asian Caucus; 2 members of the senate; 2 members appointed by the governor, one of whom will be the secretary of public safety and security; 2 members of law enforcement; and 8 advocacy groups including PLS, ROCA, GLBTQ Legal Advocates & Defenders, the ACLU, UTEC, the Urban League of Eastern Massachusetts, the Massachusetts Coalition for the Homeless, and the New England Chapter of the American Immigration Lawyers Association.

This commission, which has already started meeting, is chaired by Senator Eldridge and Representative Vargas. At its conclusion, the commission will submit its report, recommendations, and any draft legislation to the Massachusetts house of representatives and the senate by September 30, 2021.

Third, the bill establishes a special legislative commission on structural racism in the parole process. The commission will thoroughly investigate the disparate treatment of people of color and will determine the role that structural racism plays in those disparities. The commission will study, for example, whether racism plays a role in who is granted or denied parole, or in the conditions of release. The commission will then submit its report and recommendations, together with any draft of legislation, to the house of representatives and the senate by September 20, 2021, although they may seek extension.

The commission will consist of 13 members: 3 members of the house of representatives (1 of whom is a member of the Black and Latino Legislative Caucus and 1 of whom is a member of the House Asian Caucus); 2 members of the senate; 2 members appointed by the governor (1 of whom will be a member of the parole board); the executive director of the ACLU of MA, the president of the Boston branch of the NAACP New England Area Conference, the executive director of ROCA, Inc.; the executive director of the Massachusetts Coalition for the Homeless, Inc., the chief executive officer of Utec, Inc.; and the executive director of PLS.

Additional Commissions

Additionally, the bill creates a permanent commission on the status of Black people in Massachusetts. The commission will consist of 3 members appointed by the governor from a list of at least 5 nominees provided by the Massachusetts branches of the NAACP New England Area Conference, 3 members appointed by the president of the senate, and 3 members appointed by the speaker of the house of representatives.

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

The primary function of the commission will be to serve as a resource regarding issues affecting Black people in Massachusetts: it will make policy recommendations and ensure equitable access to government services, amend exclusionary policies, and promote solutions that address the impact of discrimination against Black people. The commission will further promote research and inform the public on the current and historical implications of systemic anti-Black racism in Massachusetts, while also serving as a liaison between government and private interest groups, among other tasks.

The bill creates similar permanent commissions on the status of individuals who are Latinx, and individuals who are disabled, and a separate commission on the social status of Black boys and men in Massachusetts.

Other Relevant Aspects of the Bill

In addition to the commissions, the bill calls for data collection on injuries and deaths caused by correctional officers and related to law enforcement more generally. It also creates new criminal penalties for correctional officers who commit indecent assault and battery and sexual assault on people who are incarcerated.

Finally, the bill eliminates the personnel and medical records exemption to the public records law for law enforcement misconduct investigations, making law enforcement misconduct investigation records more readily accessible. Correctional officers are included in the definition of law enforcement for this particular provision of the bill.

PLS SUPPORTS “NO NEW WOMEN’S PRISON” CAMPAIGN.

Prisoners’ Legal Services of Massachusetts (PLS) supports the “No New Women’s Prison” campaign, led by Families for Justice as Healing (FJAH) and the National Council of Incarcerated and Formerly Incarcerated Women and Girls (National Council).

The Department of Correction (DOC) has attempted to keep its process of building a new women’s prison secret by skirting legal requirements to notify the public of its process. Since 2019, FJAH and the National Council have been working to halt this process by challenging DOC’s multiple failures to adhere to public notice requirements as they attempt to build this new prison in secret. Most recently, FJAH, the National Council, and organizing coalition Building Up People Not Prisons (BUPNP) organized a protest in front of the headquarters of HDR, the design and architecture firm DOC retained - without public input - to build the prison.

Each year, many women contact PLS reporting instances of sexual abuse and harassment from guards, the majority of whom are male. Women often face serious and systematic sexual violence and other abuse prior to incarceration, and in many cases, the criminal charges brought against them resulting in their incarceration stem from the state’s failure to provide resources to community systems of care and safety. The resources that should have been available to these women and their communities are instead directed to policing, prosecution, punishment, and incarceration. During incarceration, women are subjected to further violence, abuse, and trauma by guards and by the prison system as a whole. This cycle reinforces a vicious system of imprisonment and systems of patriarchy, White supremacy, and rape culture. We must reshape how we respond to violence and trauma.

DOC claims that the new prison will be “trauma informed,” justifying its decision to build a new prison by stating that it will be a better kind of prison than that which currently exists. However, research tells us that there is no such thing as a “trauma-informed prison.” According to Susan Sered, Professor of Sociology at Suffolk University and Senior Researcher at Suffolk University’s Center for Women’s Health and Human Rights, “[i]ncarceration in and of itself often retraumatizes women and damages women’s mental health.” Prisons, by their very nature, have failed since their inception to heal trauma and instead exacerbate trauma. Taxpayer funds currently being funneled towards building a new women’s prison should instead be invested in community systems of care and safety, such as safe and stable housing, therapeutic services, substance use treatment, education, and employment opportunities.

The Massachusetts Correctional Institution in Framingham (MCI-F) is the oldest women’s prison in the country, and PLS is aware that it is in a state of unacceptable disrepair, including toxicity. DOC has known about these unacceptable conditions since the Division of Capital Asset Management and Maintenance (DCAMM) completed a study of the MCI-F campus in 2014. Yet, DOC then waited until 2019 - five years after the study - to announce and begin its plans to build a new women’s prison. DOC is responsible for MCI-F’s decline and current unacceptable conditions but has chosen now, a moment in which women’s incarceration rates in Massachusetts are declining and are at a historic low, to build this new prison.

The priority should be releasing women from incarceration via clemency, commutation, medical parole, parole, and full implementation of the primary caretakers law and criminal justice reform act. Women who cannot be released due to mandatory sentencing structures could serve their time in community based placements. DOC also should not build a new women’s prison because, if cells are built, the state will find a way to fill them, thus reversing all the progress made in lowering women’s incarceration rates. Building a new prison assumes that we will need to incarcerate our daughters, our granddaughters, and our great granddaughters in a prison that will also inevitably fall into disrepair. We believe that the Commonwealth can do better by women then continuing to try to incarcerate their way out of the social problems that lead to violence and harm. The governor should use his clemency and commutation powers to release as many women as possible from incarceration. For those who cannot be released, we know that the Commonwealth can find safe alternatives to new construction. DOC is responsible for the decline of MCI-F and must now take responsibility for moving women out of MCI-F, without wasting taxpayer dollars on a new prison.

PLS is committed to the safety, human rights, and dignity of all women, and is in solidarity with Massachusetts community organizations like Families for Justice as Healing, Black and Pink Massachusetts, New Beginnings Reentry Services, and Justice 4 Housing, who are reimagining safety and uplifting all women.

THE BASICS OF RELEASE TO SUPERVISION (RTS).

Release to Supervision is a type of parole for people in DOC custody that can be earned through “Completion Credits.” It does not apply for people who are serving county sentences. DOC awards 40, 60, or 80 days of “Completion Credits” for the successful completion of an approved program. Completion Credits do **not** change a wrap-up date but instead create a mandatory parole on the “Release to Supervision Date” for DOC prisoners who are not released on their regular parole eligibility date and who have been awarded at least 30 days of completion credits. (cont.)

The release to supervision date is calculated by subtracting all Earned Good Time (EGT), Boost Time, Camp Time, and Completion Credits from the maximum term. But the total number of completion credits you may earn cannot total more than 17.5% of the maximum or 35% of the minimum term on the sentence. When granted parole through the release to supervision date, the individual has the same privileges, rules, policies, procedures, and jurisdiction of the Parole Board as if they had been granted any other type of parole.

Who is eligible for RTS?

Most prisoners in DOC custody are eligible for RTS. However, people who are serving a mandatory minimum sentence are not eligible for parole until they have served the mandatory minimum, unless it is otherwise provided by law. People considered under the law to be “habitual offenders” and people who are serving life sentences are not eligible for a parole permit under release to supervision. Lastly, release to supervision does not apply to individuals who are serving a Massachusetts sentence in an institution in another state or a federal government’s institution, and it also does not apply to people serving time in a Massachusetts DOC facility but who are serving a sentence imposed by another state or the federal government.

How to Access RTS?

Prisoners must submit a parole plan that must be reviewed and approved by the Parole Board. The Commissioner will give the Parole Board all information that she has about the individual’s case and prison time for their consideration of the parole plan. The terms and conditions may be revised, altered, and amended and may be revoked by the Parole Board at any time.

EXHAUSTION UNDER THE PLRA: A BRIEF OVERVIEW AND COMMON BARRIERS.

Under the Prison Litigation Reform Act (“PLRA”), incarcerated individuals must exhaust all administrative remedies available to them in their correctional institution before filing a lawsuit in federal court. This requirement is typically referred to as “exhaustion.” Exhaustion requires you to complete *any and all* processes that your correctional agency or institution has made available to you for the purposes of informing them of your problem, *before* filing your lawsuit. In most cases, this process is the institutional grievance system, but there may be other processes through which you can make your complaint. For example, you may have the opportunity to bring an appeal through the disciplinary process if you were issued a disciplinary ticket.

In order to fully exhaust your remedies, you must comply with all applicable deadlines and procedural rules. In addition, most grievance systems have multiple steps. If this is the case, you are required to provide the information requested at each step, and to appeal to any next stages. Your claim is only exhausted once you have completed all possible appeals. You must also exhaust every individual claim you plan to bring in a future lawsuit. The ACLU recommends the following:

“[T]he safest course is always: with respect to each claim you want to raise, and each defendant you want to name, in your eventual lawsuit, you should file a grievance and appeal that grievance through all available levels of appeal.”

In general, it is best to be as thorough and detailed as possible regarding each and every claim as you go through the grievance process. This includes mentioning the individuals who harmed you by name.

Attention

Prisoners' Legal Services is looking into the Massachusetts Parole Board's failure to provide necessary accommodations to people with mental health issues or cognitive disabilities. If you have a mental or cognitive disability that has caused you difficulty accessing parole -- for example, difficulty preparing for or participating in your parole hearings, or trouble developing a parole plan -- we would be very interested in talking to you about it. Please write to or call Prisoners' Legal Services and ask to speak with staff attorney Michael Horrell.

Although many people find that the grievance process is unhelpful and a waste of their time and energy, the process must be completed in order to protect your right to file a lawsuit, if you think you may wish to do so in the future. If you do not complete the grievance process, a Court will dismiss your claims, unless you can prove that the grievance process was unavailable to you.

The Supreme Court has laid out in general terms the circumstances under which the grievance system may be considered “unavailable” under the law: “there are three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief. First, an administrative procedure is unavailable when it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. Next, an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use—i.e., some mechanism exists to provide relief, but no ordinary prisoner can navigate it. And finally, a grievance process is rendered unavailable when prison administrators thwart inmates from taking advantage of it through machination, misrepresentation, or intimidation.” *Ross v. Blake*, 136 S. Ct. 1850, 1853-54, 195 L. Ed. 2d 117 (2016).

It is difficult to know how each Court will interpret whether or not the administrative process was available. The critical thing to remember is to make every possible effort to complete the grievance process through every step of appeal, and to document all of the efforts that you make, in order to protect your right to sue.

If you cannot file a grievance because your institution refuses to give you the relevant forms, then that administrative remedy is considered to be unavailable, which means that you may go directly to court. If your grievance system has multiple steps, but the agency or institution does not respond at a certain step, then you must continue on to the next step until you have reached the final appeal stage. If the grievance system does not allow you to continue appealing without a response or decision from the institution or agency, then you have reached the end of the administrative process and have fully exhausted that administrative remedy. If you do not receive a response to your final appeal and the response deadline has passed, then your claim is also considered to be exhausted.

Keep in mind that exhaustion under the PLRA applies only to claims involving prison conditions. If you are bringing a state post-conviction claim or federal habeas petition under 28 U.S.C. § 2241, there may be separate exhaustion requirements, but the PLRA does not apply.

If you encounter problems accessing the grievance process, we recommend that you make several requests to staff at your institution for an opportunity to grieve. We further recommend that you make a request in writing to the Superintendent, explaining that you are trying to grieve and being denied access. Make a copy of this written request for your own records and keep any response that you receive. If your requests are denied, you should keep a detailed account of when each request was made, what you asked for, and how staff responded. We also recommend that you keep detailed records of the complaint(s) you would have made if the process had been available to you. In addition, your institution’s prisoner manual may be a good place to look for information about any available complaint processes. Your correctional agency may also have a grievance policy, which can often be found on its website or in the law library.

DOC will frequently move to dismiss lawsuits on the basis that a person did not include information about exhaustion in their complaint. Please know that you do not have to include information about exhaustion in a complaint that you file with the court stating your claims. Exhaustion is a defense that DOC has to assert and they have the burden of proving that you did not exhaust. Once they have asserted this defense, however, you will need to provide documentation of your completion of all relevant administrative processes, or documentation of how they were unavailable to you.

Additional Resources:

Know Your Rights: The Prison Litigation Reform Act (PLRA) – American Civil Liberties Union:
https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf

Chapter 14: The Prison Litigation Reform Act – Jailhouse Lawyers’ Manual – Columbia Human Rights Law Review:
<http://jlm.law.columbia.edu/files/2017/05/26.-Ch.-14.pdf>

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.

ANNOUNCEMENT: PLEASE CALL PLS THROUGH THE MAIN LINE

Every year, Prisoners' Legal Services receives close to 2,000 different requests from prisoners for assistance across a wide range of issues, with access to needed medical and mental health care being the most common problem raised through the intake process. In this past year alone, we opened 564 new intakes on medical issues, and we focus a significant amount of our advocacy efforts in this area.

Because PLS has a very small team, of which only 13 people can provide legal support and advocacy, we are unable to advocate on every matter brought to our attention through intake as we either do not have the capacity that they would require, or do not have legal ground to stand on with respect to many problems raised by clients. Unfortunately, the reality is that much of the law governing prisons and jails is not favorable to those incarcerated, and leaves us as advocates little room to ground our arguments in law. Instead we must focus our attention on advocacy that addresses the most urgent needs and has strong prospects for success due to legal precedent. These include a myriad of issues, including but not limited to, advocacy for medical treatment and mental health care, access to medication assisted treatment, and advocacy for clients with SMI status to be released from solitary confinement.

Unfortunately, there are some issues that we historically have been unsuccessful at resolving, such as verbal harassment from correctional officers. We also cannot typically advocate on visitation, classification and property matters, and do not have the capacity to take on disciplinary matters, in which case we refer clients to the prison disciplinary clinics at Harvard Law School and Boston College Law School. Because we focus on issues related to conditions behind bars and the rights of those incarcerated, we are unable to represent or advise on any criminal matters, including criminal appeals. We also cannot represent you in other areas of law such as family or benefits law. However, over time, we have developed a library of self-help materials in these areas that we will send you in order for you to better understand the law and help you self-advocate.

We know that many clients who contact us want to, at some point, litigate the issue that they have called about if it goes unresolved. PLS cannot bring individual litigation on behalf of all of our clients who need it, and although we are trying to expand our referral resources, the process is a slow one. The individual harms experienced by our clients often have systemic and structural causes, and so we try to focus our limited litigation resources on systemic litigation, rather than individual lawsuits. Some examples of systemic litigation include our COVID-19 litigation, Cantell, Deaf and Hard of Hearing, SBCC brutality class action, and the Hep C case. The individual advocacy that we do informs where we focus our litigation and policy resources.

PLS staff are sometimes unable to answer client calls because the volume is overwhelming. If we took all calls we would not have enough time to accomplish the advocacy, litigation, and policy work that we do every day. We apologize for any frustration that this may cause. We appreciate your patience and are always ready to hear any suggestions or feedback regarding our intake system, which we continually strive to improve.

As a reminder, most new matters must go through our regular intake process, which is detailed below, so we will not be able to help you immediately if you call someone directly for a new issue. For follow-up on established issues, we ask that you go through the receptionist by calling the main line, so that you are sent to the correct person for the issue at hand and to ensure the prison/jail you are calling from recognizes the number as PLS and does not record the call. The receptionist is also in the best position to relay to you when your advocate will be available to take your call.

If you are calling to discuss an existing intake, report a staff assault on a prisoner, or because you believe you are eligible for medical parole, you may call throughout the week (Monday-Friday, 9am-11am or 1pm-4pm). For assistance with all other new issues, please call during our regular intake hours, Monday afternoons from 1pm-4pm. When there is a Monday holiday, intake will occur on Tuesday. State prisoner free speed dial line: 9004 (please note that the * and # are no longer used), County Prisoner collect call line: 617-482-4124. Please keep in mind that there is a very high volume of calls coming in during intake on Mondays, and not everyone gets through. If you cannot reach PLS by phone, you can open an intake by writing to us at 50 Federal St., 4th Floor, Boston MA 02110. Please note that if you raise a new issue in a letter to us, the matter will be assigned to the advocate on intake and not necessarily to the advocate the letter was addressed to.

Contribute to PLS Notes

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

Angel Mendez-Flores
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.

Know Any Non-English Speakers?

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 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.

PLS NOTES- WINTER 2020-2021



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