PLS NOTES

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Essex County Sheriff Refunds Medical Fees

In February, Prisoners' Legal Services, together with attorneys David Kelston and Jeffrey Thorn acting on behalf of the National Lawyers' Guild, settled Bentley v. Sheriff, Essex County. The case is a class action challenging the Essex County Sheriff's unauthorized fees for medical care, including a $30 "medical processing fee" charged to all prisoners on admission to the Essex County Correctional Facility (ECCF) in Middleton. Other challenged charges included fees for sick calls, doctor calls, dentist calls, and medication. The case was filed in the fall of 2011 following successful resolution of similar litigation against the Bristol County Sheriff. In December of 2011, the Essex Sheriff agreed to stop collecting the fees.

Agreement on refunds of money already collected was reached and approved by the Superior Court on February 11, 2014. Refunds will be made to all prisoners subjected to the medical fees at ECCF from three years prior to the filing of the case (that is, back to October 7, 2008), to when the Sheriff stopped collecting the fees on December 15, 2011. Refunds will be distributed in two ways. Prisoners currently in the Essex County Correctional Facility (ECCF) either received refunds directly into their accounts already, or will have their refunds directly deposited into their accounts in approximately two months.

Anyone who had medical fees taken from them between October 2008 and December 2011 and who has not already received a refund should fill out and submit a claim form. The notice of settlement and the claim form will be available three ways: (1) posting on the PLS web site and Facebook page, (2) by mailing a claim form to anyone who requests one from the claims administrator, and (3) by mailing the claim form and notice of settlement to the address last known to ECCF or PLS of every person not currently in the custody of the Essex Sheriff who has not already received a refund and had medical fees of more than $20 taken from their account during the claim period. A short form of the settlement notice will also be published in the Eagle Tribune and Salem News.

The claims administrator address is:

Essex County Claims Administrator
P.O. Box 2007, Chanhassen, MN 55317-2007

A toll-free telephone number will be provided shortly.

People from whom the sheriff took less than twenty dollars will not be mailed claim forms automatically, but they are welcome to write or call the claims administrator and ask for a form, which will be processed normally.

The deadline for submitting a claim under the settlement agreement will be in **May, 2014.** The exact date is not yet set, but will be announced on

the internet. Claim forms will have to be received within two weeks of that deadline.

PLS Presents Written Testimony Against Solitary to the Senate Judiciary Committee

There is a national campaign in progress, spearheaded by the ACLU, to drastically reduce the psychosis-generating practice of solitary confinement in prisons and jails, as well as eliminate it entirely from being used on children. In 2012 the Massachusetts Supreme Judicial Court ruled that holding an inmate for 10 months in solitary confinement with only periodic informal review of his custody was unlawful. PLS' client was originally placed in solitary confinement after throwing a cup of pudding on another prisoner. Though initially sentenced to only seven days in solitary, the prisoner remained there for the next 10 months. In concluding that this 10-month term in solitary was unreasonable, the court noted that, in addition to restrictions on his recreation and access to visitation and programming, the prisoner did not have an effective mechanism for contesting his placement in solitary. While stopping short of prohibiting the use of solitary confinement, the court's ruling firmly establishes that prisoners are entitled to a mechanism for challenging their placement in solitary.

On February 25, 2014, PLS Executive Director Leslie Walker attended and presented testimony of PLS to the United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights hearing on Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences. The testimony pointed out, among other things, that alternatives to solitary confinement have been implemented to a limited extent in Massachusetts, with excellent results. "In response to litigation, the Massachusetts Department of Correction (DOC) has created two secure residential treatment units for prisoners with serious mental illness who would otherwise be held in segregation. A recent study by the DOC's mental health contractor, MHM Services, Inc., found that prisoners in these treatment units had sharp decreases in the number of 'use of force' incidents, assaults, suicide precautions, and disciplinary reports. These decreases were dramatic both during their time in the treatment units and during the six months after their release from the units, as compared to the six months before their admission.

For example, the average participant was involved in 1.21 "use of force incidents" and 0.86 staff assaults during the six months before entering the unit; during the period 3-6 months after leaving the unit, they had no use of force incidents or staff assaults.

PLS' testimony may be found on the office's web site, at http://www.plsma.org/wp-content/uploads/2014/02/PLS-of-MA-Testimony-Senate-Judiciary-Subcommittee-2014-2-25.pdf. PLS will mail a copy of its Washington, D.C. testimony to anyone who requests it.

PLS' phone numbers are: *9004# for DOC prisoners and (617) 482-4124 (collect) for county prisoners. The regular business number is (617) 482-2773.

Superior Court Refuses to Ban Drug-Sniffing Dog Searches of Visitors

In January the Superior Court denied plaintiffs' motion for a preliminary injunction against the new DOC policy of subjecting prison visitors to searches by drug-detecting dogs as part of initial routine screening. Under the policy, if the dog alerts to possible drug scent, the visitor must agree to a further search, including a pat or *strip* search.

PLS is challenging the policy on grounds that it violates existing DOC regulations and was promulgated without a public hearing as required by the state's administrative procedures act. There are six plaintiffs, including attorneys and family members of prisoners.

The ruling is not final, as it denies a motion for a preliminary injunction prior to trial. The court did prohibit the DOC from applying the dog search rule to lawyers, but that is no comfort at all to prisoners' friends and loved ones. This litigation will continue. Private attorney Leonard Singer and the ACLU represent the plaintiffs along with PLS.

PLS will keep the public updated on community and legal response to the new dog search policy on its web site, Facebook page and Twitter feed.

Donate to PLS!

The simplest way to donate to PLS is by charging your donation to your credit card. There is a link to a form for doing this on the home page of PLS' website at www.plsma.org. The donation page is secure, and your donation is tax deductible. Or send a donation to PLS, 10 Winthrop Square, 3d floor, Boston, MA 02110

Call for Stories About Canine Searches, Solitary Confinement, and Lack of Disability Accommodation

->PLS is looking for accounts of visitor experiences with the new DOC visitor search policy involving the use of drug-detecting dogs.
->PLS is also looking for accounts from present or former state or county prisoners of their experiences in solitary confinement, especially long-term solitary. Please send "solitary stories" to PLS. Let us know if we can include your name or whether you prefer to remain anonymous.
->Additionally, PLS is looking for present or former state or county prisoners who are blind or significantly visually impaired or deaf or hard of hearing to discuss any accommodations or lack thereof including participation in educational programming, prison employment and/or access to program activities while incarcerated.

Individual stories can capture the degradation of dog searches, isolation, and lack of accommodations for disabilities in ways that the general public, juries and legislators can understand much better than dry statistics.

CPCS Innocence Program

If you have been convicted of a crime in Massachusetts that you did not commit, and/or you believe you may be eligible to seek forensic analysis under the state's new innocence law, "Chapter 278A," the CPCS Innocence Program may be able to help you.

The CPCS Innocence Program aims to provide counsel for indigent defendants who are actually innocent of the crime(s) of which they have been

convicted in Massachusetts. CPCS considers both DNA and non-DNA cases, and is particularly interested in cases in which forensic testimony may have contributed to a wrongful conviction, including: blood group testing, compositional analysis of bullet lead ("CBLA"), microscopic hair analysis, fingerprints, bite mark analysis, fiber analysis, cause of death, time of death, shaken baby syndrome, handwriting analysis, or cause of fire. CPCS has federal funding to hire experts and perform DNA testing that could help establish innocence in violent felony cases.

For assistance with your innocence claim or request for forensic analysis under Chapter 278A, please submit a Questionnaire or contact CPCS:

Ira Gant, Staff Attorney
Elly Kalfus, Support Specialist
Lisa M. Kavanaugh, Director

CPCS Innocence Program
21 McGrath Highway
Somerville, MA 02143
(617) 623-0591

Anti-Shackling Law For Women in Childbirth Nears Approval

Both houses of the Massachusetts legislature have unanimously approved legislation to severely limit shackling of pregnant prisoners during childbirth. Governor Patrick has announced that he will sign it.

Massachusetts has until very recently been one of the states that persisted in the barbaric practice of shackling incarcerated women to the delivery table during childbirth. This practice continued despite years of opposition from criminal justice reformers. Now, Governor Patrick has filed emergency regulations that ban the practice and announced his support for legislation that would end the practice permanently. At this writing, the House and Senate versions of the bill differ. The two versions must be reconciled before the governor can sign it.

The Senate version of the proposed legislation provides that all female prisoners, shall be screened on admission and assessed for pregnancy by a nurse and shall be informed of the results of any medical tests administered for screening.

Pregnant prisoners must receive counseling and written material on pregnancy options and correctional facility policies and practices regarding care and labor. Facilities housing females must ensure that at least one member of their medical and nursing staff is trained in pregnancy-related care, including nutrition, high-risk pregnancy, addiction and substance abuse during pregnancy, and childbirth education.

Pregnant and postpartum prisoners shall be provided regular prenatal and postpartum medical care at the prison or jail where they are housed. This includes periodic health monitoring and evaluation during pregnancy; opportunity for at least one hour of walking movement each day; a diet containing nutrients necessary for pregnancy, including prenatal vitamins and supplements; written information regarding prenatal nutrition, maintaining a healthy pregnancy, and childbirth; and screening for depression after giving birth. The Department of Correction, in consultation with the Department of Public Health, must develop standards of care for pregnant and postpartum prisoners that meet the standards set by the National Commission on Correctional Health Care and the American Dietetic Association. Pregnant and postpartum prisoners shall be provided appropriate clothing, undergarments, and sanitary materials. If pregnant prisoners require specialized care that is unavailable at the correctional facility, they shall have access to it at an outside hospital.

If a prisoner is suffering from postpartum depression, she shall have regular access to a mental health clinician. Before release, prison medical personnel shall provide pregnant prisoners counseling and discharge planning to ensure continuity of pregnancy-related care, including uninterrupted substance abuse treatment.

Women who are in their second or third trimester, or in post-delivery recuperation, must be transported to and from visits to medical providers and court proceedings in a vehicle with seatbelts and shall not be placed in restraints during transportation, except handcuffs in front under extraordinary circumstances.

A prisoner who is in labor, delivering her baby, or who is being transported or housed in an outside medical facility for the purpose of treating labor symptoms, shall not be placed in restraints.

An woman in post-delivery recuperation shall not be placed in restraints, except under extraordinary circumstances, documented in writing by the officer.

In no case shall leg or waist restraints be used on any woman during the second or third trimester of pregnancy, labor, delivery, or during post-delivery recuperation.

If a corrections officer is present in the room during the pregnant inmate's physical examinations, labor, or childbirth, the employee shall be female and positioned at the head of the bed so as to maintain maximum patient privacy.

Pregnant inmates shall receive labor and delivery care in an accredited hospital and shall not be removed to another penal institution for the purpose of giving birth. During post-delivery recuperation, a prisoner shall be kept in such hospital until the attending physician certifies that she may safely be removed.

Lifer Parole Report Released

In March, the Norfolk Lifers' Group released its seventh report analyzing parole decisions for lifers. The report is based on detailed analysis of the 137 Records of Decision published by the Parole Board for 2013, along with records of decisions from 2009-2012.

One hundred thirty one of the 137 parole decisions in 2013 were unanimous. Of the 137, 21, or 15%, were approved for parole and 116, or 85%, were denied. "This is the lowest overall approval rate since the Norfolk Lifers' Group began compiling data for paroles for lifers in 2003," says the report. The average approval rate for initial hearings before the present Parole Board in 2013 was 58% lower than the average approval rate for 2009 and 2010. The average approval rate for review hearings before the present Parole Board in 2013 was 50% lower than that average approval rate in 2009 and 2010. Again, these numbers are for lifer parole hearings only.

The report analyzes parole data every which way statistically. There are sections for initial hearings, review hearings, reasons for returns, approval factors, denial factors, setbacks, destinations of approved lifers, lifers not convicted for 2d degree murder, and time between hearing dates and signoff on the Records of Decision. In some ways the report is most interesting for its non-numerical observations. For example, the end of the report contains selected excerpts from records of favorable decisions, denials, and "problematic responses from lifers at hearings." That section provides some good examples of what not to say, and what impressions not to give, at a parole hearing. The underlying purposes of the report are to increase scrutiny of the Parole Board's performance and to look for patterns in the decisions that provide guidance to lifers about what kinds of things they should be doing in

prison if they ever want a realistic chance at parole.

For example, one valuable conclusion offered by the report is that the present Parole Board highly values "Active Program Participation." This does not mean collecting completion certificates for every course and program in sight. It means demonstrated success in programs that specifically address those issues that have been identified as important for the particular prisoner. Put another way, that's not just interest in programs for the sake of programs, but *intelligent* interest in programming. This is a useful test for the Parole Board to have, because it leads to an approach that recommends particular programs as they are available. (Of course, it does nothing to address the severe shortage of program spots, which is a DOC issue, not a Parole Board issue.)

On the other hand, another factor mentioned frequently by the Board in its favorable decisions is, "four goals of punishment met." Although the "four goals" are defined as "punishment, deterrence, public protection, and rehabilitation," those terms are sufficiently vague – especially the first two, so as to not really tell a prisoner what he ought to do to demonstrate that his time in has served those purposes. In short, it's an incantation, not a road map.

The report also pulls no punches on the subject of the delays between parole hearings and sign-off on parole decisions. "In 2010, prior to Josh Wall becoming chairman, the average length of delay was 58 days." In 2010-11 the average was 261 days. The longest delay was 452 days. In 2013 that delay dropped just a little bit, to 257 days. However, the average delay for decisions published in November and December of 2013 dropped to 125 days. The report expresses hope that this reflects the decline of the backlog of decisions inherited by the Wall Parole Board when it took office, but it will take a few more months of data to determine whether the delays will abate. Bear in mind that the Parole Board's own regulations provide that lifers who have been denied paroles be notified within 21 days.

The report is 23 pages long. This article touches only on some of its highlights. The full report is available from the Norfolk Lifer's Group at MCI-Norfolk.

For those with internet access, the report, along with reports from previous years, is available at www.realcostofprisons.org. The Parole Board's website, www.mass.gov/parole, publishes the Records of Decision for the hearings themselves.

Issues with the "Annie Dookhan" drug cases continue to be explored by the courts. If you were convicted of a drug offense in Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, or Suffolk Counties and would like to have your case screened for assignment of counsel, call the Committee for Public Counsel Services at 617-482-6212 or 1-800-882-2095 and ask to be connected with the "drug lab intake" extension. DOC prisoners may call CPCS at the following preauthorized speed dial: *9009#. CPCS can also be contacted at 44 Bromfield Street, No. 2, Boston, MA 02108.

Calling All Prison Artists

By Barbara J. Dougan, Esq., FAMM Massachusetts Project Director

FAMM (Families Against Mandatory Minimums) invites Massachusetts prisoners to submit artwork to be used on a series of notecards. The notecards will be used by FAMM to thank its members who make donations or lend a hand, as well as for other occasions. When I buy notecards in a store, I often stand in the card section and think, "None of these cards captures the essence of our work." Who can best express what our work means? YOU!

What we need. We are interested in all sorts of designs, to be used for "thank you" cards,

"congratulations" cards, "we're sorry" cards and anything in between. The artwork can be happy, sad, funny or angry (but keep it clean). We hope to select several designs to print. Details:

-> Material: White paper, no glue or paste

-> Color: Black ink or pencil is best, to keep printing costs down. If in color, colored pencils or felt markers; no paint, please.

-> Size: The notecards will be about 4 by 6 inches. We can reduce larger sized drawings but details may be lost, so if you submit a larger piece aim for a clear and bold design.

Please note that we won't be able to return artwork to you. You may want to make a copy of your design before you mail it to us.

What we can offer you. Unfortunately, we can't pay you. But if your design is selected, we will put your name on the card (unless you request that we don't). Who knows? Maybe this could help you get a job in graphic design or similar work after you are released.

First Massachusetts, then the world! OK, maybe not the world. But if we come up with some good notecards to use in Massachusetts, then FAMM's main office in Washington, D.C. may decide to use the cards nationwide.

Credit where credit is due. We got the idea for this project from our friend Lois Ahrens and the Real Cost of Prisons Project's *Comix from the Inside*, which features terrific cartoons by incarcerated men and women on its website. Thank you, Lois and RCPP!

We look forward to seeing your entries.

The address of FAMM's Massachusetts Project, to which you should mail submissions, is

FAMM Massachusetts Project, P.O. Box 54, Arlington, MA 02476

Please submit your artwork by May 1.

Overcrowding by the Numbers

Did you know….

On 3/3/2014 there were 10,683 people in DOC prisons in Massachusetts, plus another 430 people under DOC jurisdiction but in county houses of correction (346), federal or interstate custody. Overall, the DOC's prisons were at 133% of design capacity. A few prisons, mostly at lower security, (Shirley and Gardner Minimums) were under capacity. Notably, though, MCI-Cedar Junction was at only 82% of capacity.

The worst overcrowding in any DOC facility, was, as it has been for years, the Awaiting Trial Unit at MCI-Framingham: 436%. MCI-Concord was next, at 189%.

On the same date total occupancy of Massachusetts County Jails and Houses of Correction was 11,113. This includes the 346 DOC prisoners in the counties. County facilities were at an average of 127% of capacity. The worst county crowding was at the Lawrence Correctional Alternatives Center (265%), followed by ECCF in Middleton (248%) and the Franklin County Jail and House of Correction, at 160%.

The counts are published on the DOC's web site on a weekly basis.

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