



PLS Notes

Summer 2019

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A Big Win in Lawsuits Challenging the DOC Visitation Restrictions

In the December 2018 issue of PLS Notes, we reported on a set of lawsuits that PLS is involved in, challenging new DOC regulations that made it much harder for prisoners to receive visits from loved ones and friends. There has been extensive research showing what prisoners and their families already know: Visits are an essential lifeline for prisoners and help them maintain their connections to their communities, reducing recidivism, promoting successful reentry, and increasing prison security.

These new DOC rules put caps on the number of visitors each prisoner could receive, prohibit visitors from visiting more than one prisoner throughout the entire DOC system unless all the prisoners they want to visit are their immediate family members, force visitors to fill out a complicated and invasive pre-approval form that requires them to provide extensive private information, and put other harsh restrictions in place.

The DOC filed motions in the cases asking the Court to dismiss them. On April 30, 2019, the Court held a hearing on those motions, and on June 17, 2019, the Court issued its decision, announcing that it was denying the DOC's motions and allowing the case to proceed.

In its decision, the Court decided that the plaintiffs made plausible claims that the regulations violate two state laws protecting the rights of prisoners to receive visits. The Court found that the caps may violate Mass. General Laws Chapter 127 Section 36C, which prohibits the DOC from unreasonably limiting in-person visitation of

inmates. It also found that another section, Chapter 127 Section 37, which gives a prison superintendent the discretion to deny a visitor that the superintendent believes “would be injurious to the interests of the institution,” suggests that denial of visitors is intended to be an decision on a person-by-person basis, rather than a blanket restriction such as the one that the numerical cap put into place.

The Court also allowed the plaintiffs’ claim that the visitation rules violate their First Amendment rights of association to go forward. In doing so, the Court accepted the Plaintiffs’ argument that the caps on the number of visitors may be unreasonable because the DOC based those caps on the average number of visitors each prisoner receives and ignored the fact that many prisoners receive no visitors at all.

One of the DOC’s main justifications for the new restrictive rules is to cut down on smuggling of drugs into DOC facilities. The Court, however, recognized that these rules ironically hurt those most who are less likely to try to introduce contraband:

“The real question focuses upon whether any reduction in contraband will flow rationally from a limit upon the number of visits to prisoners who have a large number of family and community connections...Arguably, there is no rational basis to believe that fewer visits to that group of prisoners will result in less contraband. On the contrary...prisoners with family and community visitors are less likely to commit misconduct in prison.” The Court’s decision means that the cases will now move forward. There is also a bill pending in the Massachusetts legislature, “An Act to Strengthen Inmate Visitation” (House Bill No. 2047 and Senate Bill No. 1379) that would address the DOC’s negative changes to the visitation rules and protect prisoners’ rights to receive visitors without unnecessary restrictions. We will continue to report on these lawsuits and these bills as they progress.

Restrictive Housing: What’s Changed and What’s Ahead

The restrictive housing provisions of the Criminal Justice Reform Act (CJRA), which was enacted on April 13, 2018, went into effect on January 1, 2019, creating a legal definition for “restrictive housing”, which is a housing placement where a prisoner is confined to a cell for more than 22 hours per day. The statute, which was reviewed in detail in the December issue of PLS Notes, requires new reviews, conditions, and privileges for prisoners in RH. Shortly after the December PLS Notes issue, the Department of Correction (DOC) promulgated regulations in response to the law.

On February 19th, 2019, the DOC held a public hearing on the new regulations as it is required to do by law. Community members and advocates showed up in large numbers in opposition to the regulations. Prisoners’ Legal Services submitted testimony stating that the law “was a necessary step in the right direction that gives the DOC an opportunity to shift resources away from the outdated vestiges of the “tough on crime” era and towards programming, rehabilitation, education, and re-entry work that is necessary to increase public safety and reduce harm.” But at that point we noted, “While implementation is not yet complete, these regulations make clear that, rather than seize this opportunity, the DOC intends to continue to rely on solitary confinement as a linchpin of its management practices and find new ways to weave it into the fabric of the state correctional system.” Despite clear community opposition to the proposed regulations, DOC adopted them nearly in full.

Shortly after these regulations were promulgated, PLS settled the lawsuit *Cantell v. Commissioner*, a class action that brought due process claims on behalf of all prisoners confined in long term non-disciplinary segregation. This settlement establishes additional protections in the placement reviews that prisoners must receive in RH, but leaves unresolved other issues related to enforcement of the CJRA. And the CJRA itself leaves much work to do in addressing the horrific and unnecessary harm of solitary confinement. Below is a summary of the major changes that have occurred since the new law came into effect, and the work that lies ahead. We encourage prisoners currently or recently in RH to reach out to us with any concerns.

Placement Reviews

Reviews in Non-Disciplinary Restrictive Housing

Prisoners in RH are now entitled to a number of different

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



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

reviews, depending on their status. Reviews (other than the 30-day review) are to be conducted by a Placement Review Committee (PRC) consisting of one security staff person, one programming staff person, and one clinical staff person. Every Monday, Wednesday and Friday the PRC will review all prisoners in non-disciplinary RH (not serving a disciplinary sanction) to determine whether (1) the prisoner's placement in Restrictive Housing is reasonably expected to last more than 30 days; (2) continued placement in Restrictive Housing is appropriate (3) transfer to a Secure Adjustment Unit is appropriate; or (4) release from Restrictive Housing is appropriate. Prisoners should only be held in restrictive housing following a placement review if the Superintendent or a designee determines that the prisoner poses an "unacceptable risk" to the safety of others, of damage or destruction of property, or to the operation of the facility.

If the Placement Review Committee decides that a prisoner is likely to spend more than 30 days in RH, then prisoners in non-disciplinary RH are entitled to the following:

- Within 15 days they must be served with written behavior standards and program participation goals that will increase their chances of a less restrictive placement upon next Placement Review.
- Prisoners who have serious mental illness (SMI) will be reviewed by the PRC every 72 hours, with advance notice, an opportunity to oppose their restrictive housing placement in writing in reviews every 72 hours, and a written, appealable decision. Prisoners held in RH solely because they have a safety need verified by the DOC must have the same reviews. In addition, as required by the CJRA, both groups must receive notice every 72 hours of efforts undertaken to place them outside of restrictive housing and how long they are expected to remain in restrictive housing.
- Prisoners who are held in RH because they are awaiting a disciplinary report must be reviewed by the PRC every 15 days, with a similar opportunity to oppose their placement in writing and an appealable written decision.
- By 30 days, all must have a hearing before a single Correctional Program Officer (CPO) making the same determinations described above for the PRC.
- By 90 days, and every 90 days thereafter, all must have a hearing before the PRC, with the same written, appealable decision.

One of the important aspects of the *Cantell* settlement is

that the hearing notice must not only state the administrative reason for RH (awaiting transfer, for example) but also tell the prisoner why they are thought to pose an unacceptable risk "in sufficient detail to permit the inmate to prepare for the review." By the same token, a decision to keep a prisoner in RH must say why the prisoner is thought to pose an unacceptable risk, and describe the evidence supporting that decision (unless safety or security would be affected). It is our hope that this will allow for more effective prisoner participation in reviews and, where appropriate, review by courts in certiorari actions. The settlement also requires assistance and accommodations for prisoners with limited English proficiency, hearing limitations, and other disabilities, and requires that reviews not be conducted at cell-front. It also provides that anyone held in non-disciplinary RH for 180 days may have their hearing recorded then and at every 90-day hearing thereafter. The 30 day CPO reviews were also added by the settlement.

Reviews in the Departmental Disciplinary Unit (DDU)

The DOC disciplinary regulations, 103 CMR 430.00 et. seq. comply with the CJRA requirement that prisoners serving disciplinary sanctions will be reviewed by a Placement Review Committee 180 days after the effective date of the sanction and every 90 days thereafter, with notice beforehand and a written decision afterward, as described above. Unfortunately, the DOC has interpreted the CJRA to require only a written review and not an in-person hearing. PLS disagrees with this interpretation and is contemplating options to enforce the statute.

Reviews in the Secure Treatment Units (STP and BMU)

Prisoners with serious mental illness are supposed to be diverted away from RH. In some cases, they will be placed in a Secure Treatment Unit, either the Secure Treatment Program or the Behavioral Management Unit. The DOC is required by the CJRA to provide placement reviews for prisoners in the STUs at the same intervals as it does for prisoners in RH. The DOC takes the position, however, that these placement reviews are not required to have the same procedural protections as the placement reviews for prisoners in RH, and so it has created a separate placement review process for people in the STUs, governed by 103 CMR 425.00 et. seq.

Under the regulations prisoners in the STUs will have their status reviewed every 72 hours by a multidisciplinary treatment team, which will discuss any identified issues or concerns. The review may include consideration of the reason for placement, security issues, disciplinary issues, classification status, conflicts, mental health issues, program needs, compliance with treatment plan goals and

objectives, and any other pertinent information. The DOC has failed to provide for prisoner participation in these reviews, has failed to provide for consideration of whether placement in the highly restrictive STU environment remains appropriate, and has failed to provide for the provision of written behavior standards and program participation goals that would make a less restrictive placement more likely.

Privileges and Conditions

The CJRA and DOC regulations governing non-disciplinary restrictive housing provide a number of minimum standards for conditions in RH units. We are highlighting only a few here. First, while the CJRA requires that prisoners in RH be given access to a radio or television, the DOC interprets this as allowing it to decide which, while PLS interprets this as leaving the choice to the prisoner. The CJRA gives prisoners in RH access to canteen purchases and privileges to retain property in their cells as provided for the general population, although this can be diminished for the enforcement of discipline up to 15 days for each offense or where inconsistent with the security of the unit. Prisoners should also have the same telephone privileges as the general population, but DOC has determined that Superintendents may set limits on the permitted number of telephone calls. PLS believes this limitation is contrary to the CJRA. The CJRA also ensures that prisoners in RH have the same access to disability accommodations as in general population, except where inconsistent with the security of the unit.

Under the DOC regulations, prisoners should be able to retain their personal tablets upon initial entry to Restrictive Housing (subject to any disciplinary sanctions), and upon request, after initial entry to RH, prisoners who do not possess personal tablets will be provided with radios and headphones to use while in Restrictive Housing.

The CJRA requires that prisoners in RH over 30 days shall have access to vocational, educational and rehabilitative programs “to the maximum extent possible consistent with the safety and security of the unit” and shall receive good time for participation at the same rates as the general population (which is included in the DOC regulations). In addition, step down programs shall also be offered. Any prisoner in RH who has fewer than 180 days until release shall be offered re-entry programming.

The CJRA also requires DOC to promulgate regulations that will “maximize out-of-cell activities in restrictive housing and outplacements from restrictive housing consistent with the safety of all persons.” The DOC’s regulations address this, leaving it in the discretion of the Superintendent or designee, but under the *Cantell* settlement it must promulgate the regulations required

by the CJRA by the end of August.

Secure Adjustment Units

The CJRA expanded the number of people who must be diverted or excluded from RH. It expanded the definition of serious mental illness, provided that persons generally should not be in RH for their own protection, should not be in RH on the basis of their sexual orientation or gender identity, and should not be in RH if they are pregnant. It also requires that prisoners must be regularly reviewed and released from RH if they do not pose a risk that justifies holding them in RH.

In response, DOC created a new type of unit called a “Secure Adjustment Unit” (SAU) that is not technically RH, but that remains more restrictive than the general population. SAUs will not be subject to the protections provided by the CJRA, because they will not meet the definition of RH. Regulations governing SAUs are 103 CMR 423.00 *et seq.* These regulations require a minimum of 3 hours a day of recreation and out-of-cell programming, bringing them just outside the definition of RH, although DOC has stated that prisoners in the SAUs will be out of their cells for 5 hours a day or longer.

Currently, the primary SAU is at MCI-Concord. DOC has stated that it plans to move prisoners serving DDU sanctions from MCI-Cedar Junction to Souza Baranowski Correctional Center, and turn the DDU into an SAU. The former DDU will also have a “Limited Privileges Unit” where prisoners will go who would have been incarcerated in 10-Block, as DOC has closed the 10-Block unit. PLS will continue to monitor the SAUs and invites those held in SAUs to contact us with more information as those units evolve.

The Road Ahead

There are many areas in which litigation may be necessary to enforce the CJRA: DDU prisoners are denied reviews with full hearings; prisoners in the STUs do not get the reviews required by the CJRA; and prisoners in RH do not yet have the full range of privileges and programs the CJRA requires. We are also keeping an eye on the SAUs to see how they evolve.

At the same time, it is clear that the CJRA did not end the over-use of restrictive housing or remedy conditions in RH. Through participation in the Restrictive Housing Oversight Committee (see article page 6) and other channels, we will press for oversight and further change.

Jury Verdict against Officers for Excessive Use of Force

On June 28, 2019 a federal jury found that Officer Robert Bashaw used excessive force against Mr. Jason Shultz in violation of his eighth amendment right to be free from cruel and unusual punishment. The jury also found that Officer Keith Houle encouraged, condoned, acquiesced, or failed to intervene in the constitutional violation. The incident at issue in the case happened on May 21, 2015, when Mr. Schultz was assaulted and injured by officers during a planned use of force at Souza Baranowski Correctional Center. Mr. Schultz filed the lawsuit *pro se* (meaning without a lawyer representing him) on August 31, 2016. Mr. Schultz survived a motion for summary judgment (a motion to dismiss the case) filed by the Defendants and successfully litigated the case *pro se* until pro bono counsel were appointed by the Court on April 19, 2019 in anticipation of trial. Prisoners' Legal Services' (PLS) Rapid Response to Brutality Project (RRBP) responded to the initial incident and took photographs of Mr. Schultz' injuries that were used as critical evidence in the trial. PLS also investigated the incident, obtaining records and information that we shared with Mr. Schultz and with Pro Bono counsel as they prepared for trial. The jury awarded Mr. Schultz \$72,501 dollars against Officers Bashaw and Houle, \$7501 in compensation for the harm done to him, and \$65,000 in punitive damages. The jury also awarded prejudgment interest on the compensatory damages.

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



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



Medical Parole Now Available In Massachusetts

In April of 2018 the Criminal Justice Reform Act (CJRA) was signed into law. As a result, "a prisoner may be eligible for medical parole due to a terminal illness or permanent incapacitation." These provisions are in the Massachusetts General Laws at G.L. c. 127, § 119A (a-i). Only those who are terminally ill or who are permanently incapacitated may be eligible for medical parole. The statute defines **terminal illness** as "a condition that appears incurable, as determined by a licensed physician, that will likely cause the death of the prisoner in not more than 18 months and that is so debilitating that the prisoner does not pose a public safety risk." **Permanent incapacitation** is defined as "a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, and that is so debilitating that the prisoner does not pose a public safety risk."

The law applies to state prisons, county jails and houses of correction in Massachusetts. In state prison the superintendent will review your request and then submit it to the DOC Commissioner or designee who will then decide your request for medical parole. In county jails and houses of correction, the sheriff or designee review the request before submitting it to the DOC Commissioner for a final decision.

The commissioner has granted very few petitions for medical parole thus far; PLS is only aware of four individuals who have been released under the law. Denied petitions can be appealed in court by filing a certiorari (cert) action. A cert action challenges an administrative decision—in this case a medical parole denial. You can also file a new petition while the cert action is pending with the court. There is no limit to how many times a person can petition for medical parole. In fact, one of the individuals released on medical parole petitioned three times as his condition worsened, before medical parole was finally granted.

Right now, PLS is advocating with the Legislature, DOC and DPH to ensure a proper interpretation of the statute so that those who qualify for medical parole and who pose a minimal public safety risk are actually released to more appropriate settings.

In addition to PLS, the Boston University School of Law (BUSL) and the Boston College Law School have programs that represent individuals petitioning for medical parole. They operate on the school calendar, and will accept new requests starting in late August/September 2019.

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To reach the BC Defenders, write to: BC Defenders, Medical Release and Lifer Parole Clinic, Boston College Law School, 885 Centre Street, Newton, MA 02459. To reach Ruth Greenberg of the BUSL medical parole program, write or call: Ruth Greenberg, 450b, 166 Paradise Rd, Swampscott, MA 01907; (781) 632 5959.

PLS is also filing medical parole petitions. If you think you, or someone you know who may be too ill to contact us, might meet the requirements for medical parole and would like assistance in petitioning, please call or write to PLS. We take calls about new issues on Monday afternoons from 1pm-4pm. Our hotline number from any DOC prison is 9004. If you are calling from a county facility, please call collect at 617-482-4124. You can also write to us at 50 Federal St., 4th Floor, Boston MA 02110.

Contact Us



Please contact PLS if you or someone you know might qualify for medical parole, particularly if the person isn't capable of contacting PLS or applying for medical parole themselves. Free state speed dial: 9004, county collect calls: 617-482-4124, address: 50 Federal St., 4th Floor, Boston MA 02110

Criminal Justice Reform Act Established Oversight of Department of Correction and County Facilities

As part of the criminal justice reform legislation that passed last legislative session, a number of oversight committees were formed. PLS staff persons sit on two of these committees, and they are particularly relevant to persons who are currently incarcerated.

Restrictive Housing Oversight Committee

The Restrictive Housing Oversight Committee (RHOC) was created to gather information about restrictive housing in the state prisons and county jails and houses of correction in order to determine the impact of restrictive housing, otherwise known as solitary confinement or segregation, on incarcerated people, rates of violence, recidivism, incarceration costs, and self-harm within correctional facilities.

The law mandates that the RHOC must be provided access to all correctional institutions and is allowed to interview prisoners and staff. Every year the RHOC must submit to the Massachusetts House and Senate Chairs of the Joint Committee on Public Safety and Homeland Security a report about restrictive housing. The RHOC must offer recommendations on the use of restrictive housing, including ways to minimize its use and improve outcomes for prisoners and facility safety.

The Committee is Chaired by the Undersecretary of the Executive Office of Public Safety, Andrew Peck, and the other members of the committee are: Christopher Fallon (Department of Correction, Deputy Commissioner/Prisons Division), Anthony Riccitelli (Department of Mental Health), Hollie Matthews (Department of Correction, Deputy Director of Research and Planning), Sean Medeiros (Department of Correction, Assistant Deputy Commissioner, Central Sector), Sheriff Thomas Bowler (Berkshire County Sheriff), Judge Geraldine Hines, Marlene Sallo (Disability Law Center), Robert Fleischner (Massachusetts Association for Mental Health), Brandy Henry (National Association of Social Workers), and Bonita Tenneriello (Prisoners' Legal Services).

If you would like to share information regarding solitary confinement with the restrictive housing oversight committee, PLS recommends that you send a letter to:

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

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

Special Commission to Study Health and Safety of LGBTQI Prisoners

The Special Commission to Study Health and Safety of LGBTQI Prisoners was created to evaluate current access to appropriate healthcare services and health outcomes of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex prisoners. The commission is tasked with gathering information including (i) the number of prisoners who have received diagnoses of gender dysphoria or transition-related healthcare; (ii) the number of prisoners who have been denied diagnoses of gender dysphoria or transition-related healthcare; (iii) the number of denied requests for an alternative housing

or facility placement by prisoners in connection with their gender identity and the reasons for the denial; and (iv) training provided to department staff and contracted health professionals on lesbian, gay, bisexual, transgender, queer and intersex cultural competency.

The commission must prepare a report with specific recommendations to improve outcomes for LGBTQI prisoners, a timeline for tasks to be achieved, and recommendations for improving prisoner health and safety. The final report, including evaluation of implementation of the commission's recommendations, will be submitted to the governor, the attorney general, and the joint committee on the judiciary and it will be publicly available.

The commission includes eight members. It is chaired by Jennifer Gaffney (Department of Correction, Deputy Commissioner), and the other members are Casey Calipso (social worker), Pam Klein (specialist in transgender medical care), Sheriff Patrick Cahillane, Jennifer Levi (GLAD, Transgender Rights Project Director), Honorable David Mills (retired judge), Lizz Matos (Prisoners' Legal Services, Executive Director) and Michael Cox (Black and Pink, Director of Policy).

If you would like to share information regarding the treatment of LGBTQI prisoners with the commission, you may send a letter to:

John H. Melander, Jr., Deputy General Counsel
Executive Office of Public Safety and Security (EOPSS)
One Ashburton Place Boston MA 02108, Room 2133

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

If you would like to submit a letter confidentially with identifying information redacted you may send it to Commission member Michael Cox at the below address.

Michael Cox
B&P Boston
PO Box 1718
Jamaica Plain, MA 02130



Contact Us

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

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

PLS Files Lawsuit Against Incarceration of Men Civilly Committed for Substance Abuse Treatment

Over 30 states have laws that allow people with Substance Use Disorders (addictions to drugs or alcohol) to be involuntarily committed for treatment. But only Massachusetts sends some of those people to prison without having been charged or convicted of a crime.

"Section 35," as the law is known, allows a family member, doctor, police officer, or certain others to ask a Court to force a person with an Alcohol Use Disorder or Substance Use Disorder (SUD) into involuntary treatment for up to 90 days if "there is a likelihood of serious harm as a result of the person's alcohol or substance use disorder." Families use Section 35 for all kinds of reasons: their loved one refuses to get help, they may be worried their loved one will overdose and die, they may have tried to get their loved one into a substance use treatment program but can't find space or can't afford

one, or their loved one may agree to being “sectioned,” as it’s often called.

About 75% of men sectioned under this law are sent either to a prison run by the Department of Correction (the Massachusetts Alcohol and Substance Abuse Center - MASAC) or to the Hampden County House of Correction. This is mainly because there are not enough treatment beds at the only community treatment program open to men who are sectioned (the Men’s Addiction Treatment Center - MATC).

Women with SUDs used to suffer the same fate until April, 2016, after PLS filed a lawsuit and the Legislature changed the law so that women who are sectioned can only be sent to civilian treatment programs in the community.

On March 14, 2019, PLS filed a class action lawsuit against the Department of Correction, the Department of Public Health, and various state officials. The lawsuit was brought by ten men who were all incarcerated at MASAC under Section 35, but who were not charged with or convicted of any crime. The suit claims that sending civilly committed men to prisons and jails when women are sent only to community facilities is illegal and unconstitutional gender discrimination. It also argues that since SUD is recognized as a disease and a disability, the practice is disability discrimination that violates the Americans with Disabilities Act. No other individuals are incarcerated purely for treatment of a disease. Section 35 reflects a longstanding and ongoing prejudice and bias against individuals with alcohol and substance use disorders. Finally, the suit claims that Section 35 violates the substantive due process provisions of both the U.S. and Massachusetts constitutions.

The case was filed in Suffolk Superior Court and Plaintiffs recently received an order from the court certifying the case as a class action. In addition, the State’s Section 35 Commission recently released a report recommending that the Commonwealth end the practice of civilly committing people to jails and prisons for SUD treatment. PLS has also filed legislation on this issue, which is sponsored by Senator Cindy Friedman and Representative Ruth Balser (S.1145 and H.1700).

If you or a loved one has been sent to MASAC or Hampden under Section 35 and would like to share the experience, please contact PLS through the 9004 direct speed dial number.



Are you in a DOC facility and have diabetes?

PLS is investigating problems experienced by people with diabetes in Department of Correction (DOC) custody, particularly any problems relating to the diabetic diet DOC offers. Please contact PLS if you have diabetes and would be willing to share with us your experiences with obtaining a proper diabetic diet and with managing your diabetes more generally. **Write or call and ask to speak with Al Troisi or David Milton (free state prison speed dial: 9004, address: 50 Federal St., 4th Floor, Boston MA 02110).**



Contribute to PLS Notes

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

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

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

Summary of Bills

In the 2019-2020 legislative session, Prisoners' Legal Services (PLS) is prioritizing several bills designed to protect and foster the human rights of prisoners. Last session, the Legislature passed the landmark Criminal Justice Reform Act, which included a wide array of reforms to the prison system. Prisoners' Legal Services views this as a critical and necessary starting point, but we hope that our policy work can help continue to push forward reform and reduce some of the harms caused by the prison system.



An Act to strengthen inmate visitation

S.1379/H.2047 (Sen. Chang-Diaz and Rep. Decker)

The opportunity for incarcerated people to regularly visit with their friends, family, and community members is critical to the health and welfare of prisoners and their loved ones. Maintaining relationships while incarcerated is also fundamental to the humanity of prisoners and to that of their friends and families on the outside who are impacted by their absence and incarceration. Unfortunately, the Massachusetts Department of Correction has been moving in the wrong direction on visitation, implementing restrictive policies and protocols that inhibit and reduce visitation, severing prisoners' relationships with people in the community despite research showing that increased access to visitation improves rehabilitation, institutional security, and re-entry.¹

A top priority of PLS is the passage of **An Act to Strengthen Inmate Visitation**, which would scale back limitations placed on visitation and encourage maximizing access to visitation. Specifically, the bill would eliminate the current cap system, limit and control accessibility to personal information, allow for prisoners to update their pre-authorized visitor lists upon request, and prohibit the exclusion of visitors based solely on their past criminal record or incarcerations.

The bill also requires that the dress code be far more reasonable and that clothing or accessories that do not pose a threat to security be permissible. Prisoners in restrictive housing would be provided the same access to visitation as prisoners in general population, except that visitation may be restricted for up to 15 days for a disciplinary offense. Finally, prisons and jails would be required to provide daily access to visitation if a prisoner is transferred to an outside facility or hospital and is in critical condition or in imminent danger of death.

Telephone Call Rates



An Act relative to inmate telephone calls (S.1372, Sen. Brownsberger); An Act relative to telephone service for inmates in all correctional and other penal institutions in the Commonwealth (H.3452, Rep. Tyler) and An Act relative to inmate telephone call rates (S.1430, Sen Montigny).

Like prison visitation, telephone access helps prisoners maintain critical relationships with people on the outside. Family and friends of incarcerated individuals depend on telephone conversations to communicate with their loved ones when they are unable to visit. They are also incredibly important for prisoners with children and sick and disabled loved ones to stay informed and offer moral support. Finally, the phone is a critical tool for the majority of prisoners who will reenter society so that they can do their best to establish support networks, housing, employment, or rehabilitation programs. The high cost of these calls creates an unnecessary barrier to the outside world. Furthermore, the DOC and county facilities receive kickbacks from the telephone companies which drive up costs and it is the loved ones of prisoners, many who are already burdened with financial stress, who bare this cost.

PLS is supporting two bills that will end outrageously high prison phone rates. S.1439 and H. 3452 would require that prisons negotiate for the lowest price to consumers and end kickbacks that inflate rates. S. 1372 would

¹ See Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, Annual Review of Sociology 89, 100 (2003); C.F. Hairston, *Family Ties During Imprisonment: Important to Whom and for What?*, J.Soc.& Soc. Welfare, at 85, 97 (Mar. 1991); Rebecca L. Naser & Christy A. Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 W.Criminology Rev. 20, 21 (2006); Mancini, Christina, *Examining External Support Received in Prison and Concerns About Reentry Among Incarcerated Women* Feminist Criminology 1557085115579483 (2015); Cochran, Joshua C. *Breaches in the Wall Imprisonment, Social Support, and Recidivism* Journal of Research in Crime and Delinquency, vol. 51 no. 2 200-229 (March 2014); Bales, William D., *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?* Journal of Research in Crime and Delinquency (2008); Cochran, Joshua, *The Ties that Bind and the Ties that Break: Examining the relationship between visitation and prisoner misconduct*, Journal of Criminal Justice, V. 40, pp. 433-440 (June 2012); Gary C. Morh, Director, Ohio Dept. of Rehabilitation and Correction, *An Overview of Findings in the Visitation, Offender Behavior Connection*; Jorge Renaud, *More Money, Less Love: Video Only Visitation Policies in Jails-The Bottom Line*, Texas Criminal Justice Coalition; Minnesota Department of Correction, *The Effects of Prison Visitation on Offender Recidivism* (November 2011); Megan M. Mitchell, Kallee Spooner, Di Jia, Yan Zhang, *The Effect of Prison Visitation on Re-Entry Success: A meta-analysis*, Journal of Criminal Justice 47, 74-83 (2016)

require that prison and jail phone calls be provided free of charge.



Use of Force

An Act to create uniform standards in use of force, increase transparency, and reduce harm (S. 1362/H. 2087, Sen. Barrett and Rep. Keefe); An Act to reduce harm by creating baseline standards for use of force by K9s in correctional facilities (H. 2114, Rep. Keefe and Rep. Nguyen)

Force is overused as a tool of correctional management in Massachusetts prisons and jails. Most prisoners will return to our communities, and we do public safety a grave disservice by relying on force for punishment and control during their incarceration. In the Worcester County House of Correction, correctional officers routinely use the Riot Control Weapon FN 303 on prisoners during planned cell extractions. In Essex County Correctional Facility, dogs can be sicced on prisoners as part of a routine response to prisoner fights. At Suffolk County House of Correction, prisoners are strapped into a restraint chair as a matter of course following planned uses of force. In most correctional facilities, gas is utilized without regard for prisoners' disabilities or health concerns. There is also little oversight of the use of force inside prisons and jails, with many facilities refusing to disclose records, video recordings, and data.

An Act to create uniform standards in use of force, increase transparency, and reduce harm would require the Commissioner of the DOC to create uniform minimum standards in state prisons, county jails, and houses of correction in order to minimize unnecessary and excessive use of force against incarcerated persons, increase transparency in the use of force, and decrease the harm that results to both incarcerated persons and custodial staff when incidents escalate into use of force.

The bill would establish uniform standards to decontaminate prisoners who have been sprayed with chemical agents during use of force, and bar the use of chemical agents against prisoners who are actively committing suicide, against prisoners with intellectual disabilities, respiratory illnesses, cardiac diseases, and against those who may have a cognitive, psychiatric, or other disability that is impeding their ability to understand or comply with orders. The standards would bar the use of kinetic impact weapons, or 'less lethal' weapons, like the FN 303, which shoot rubber bullets, in cell extractions. The standards would ensure that restraint chairs are only utilized where they are the least

restrictive means available to prevent harm. The bill would also establish minimum data reporting and records access requirements.

The Senate version of the bill and a separate bill in the House of Representatives, **An Act to reduce harm by creating baseline standards for use of force by K9s in correctional facilities**, would bar the use of dogs for use of force except as part of a coordinated response to a major disturbance, limiting their ordinary use to searches for contraband, escapees, and perimeter security.

Parole



An Act relative to parole S.1390/H.3457 (Sen. Creem and Rep. Vargas & Rep. Miranda), An Act establishing presumptive parole (H.1541, Rep. Dave Rogers)

Our parole system is broken. On the front end, the Commonwealth has dismal rates of parole release. In 2013, we paroled only 34 percent of all individuals eligible for release who actually attended hearings. Over half of scheduled parole hearings do not happen because they are either waived or postponed. In 2016, 83% of the people returned to prison from parole were returned for a "technical violation", meaning they did not commit a new crime.²

Though the Parole Board has the responsibility to assess behavioral risk factors and parole persons with conditions that will support successful re-entry, the Parole Board is made up almost entirely of persons with law enforcement backgrounds instead of backgrounds in psychology, social work, or substance use disorder. The Parole Board is also inefficient in rendering decisions, leaving prisoners waiting up to a year or more before receiving their decisions.

An Act Relative to Parole would work to improve the Parole Board. The bill will increase Parole Board membership from seven to nine and allow six members to sit at the full Board for second-degree lifer hearings. The bill would also require that at least three members of the Parole Board have at least five years of experience in the fields of psychiatry, psychology, social work, or the treatment of substance use disorder and that one of those members be a licensed mental health professional. The bill would require the Parole Board to use evidence based standards in making decisions and would require that assistance be given to those who need it to find medically appropriate placement. The bill would also

² Prison Policy Initiative, "Red states, blue states: What do these mean for people on parole?" (2019) <https://www.prisonpolicy.org/blog/2019/01/02/parole/>

require that the Parole Board provide assistance to persons who may need reasonable accommodations in order to be released on parole as a result of a disability. The bill would increase the transparency of the Parole Board and decrease the set-back period for those denied parole from a maximum of 5 years to 3 years. In addition, the bill mandates that parole hearings take place and the decisions be issued at least 30 days prior to the parole eligibility date.

An Act establishing presumptive parole is a separate bill that would require that prisoners be released on parole at the time of their hearing unless there is clear and convincing evidence that the prisoner would violate the law if released under appropriate conditions. It further requires the Parole Board to consider whether reasonable accommodation would make a prisoner suitable for parole and requires the parole board to identify potential resources for such prisoners that would mitigate any risks that have been identified.



An Act to Reduce Mass. Incarceration

(H. 3358/S. 826; Rep. Livingstone, Sen. Boncore)

An Act to Reduce Mass. Incarceration would abolish Life Without Parole (LWOP) in Massachusetts and provide for the for parole eligibility for every person serving a life sentence after no more than 25 years. Currently, one out of every four Massachusetts prisoners are serving life or virtual life sentences, giving us the 6th highest rate of such sentences in the country.³ Twelve percent of people in Massachusetts prisons have been sentenced to life in prison without the possibility of parole. The only state with a higher percentage of prisoners serving LWOP is Louisiana, at 13%.⁴

It is well known that people age out of crime, meaning that the likelihood that a person would commit a crime decreases substantially with age. However, in Massachusetts DOC, incarcerated men over the age of 60 increased by 41% between 2010 and 2018, going from 642 to 909 persons. During the same time period, the male population overall declined by 18% from 10,634 to 8,670.⁵ If these trends continue, by 2024, the DOC population of men over 60 will be approximately 1,281 and will account for 18% of the total male population.

An Act Repealing Mandatory Life Without Parole is a separate bill which would ban mandatory life without parole, returning discretion to the judiciary to determine on an individual basis whether someone subject to an LWOP sentence should have the opportunity for parole after 35 years. Unlike the bill discussed above, it is not retroactive.

Substance Use Disorder in Correctional Facilities



An Act establishing a commission to review substance use in correctional facilities (S.1425/H.1746, Sen. Jehlen and Rep. O'Day); An Act relative to education and programming for the incarcerated (S.1391/H.2127, Sen. Creem and Rep. Santiago)

There are two bills regarding treatment for persons with substance use disorder who are incarcerated. Though nearly half of prisoners have substance use disorder, only a small percentage receive any treatment. According to Prison Policy Initiative, "In 2017, the Massachusetts Department of Public Health... found that 'the opioid overdose death rate is 120 times higher for those recently released from incarceration compared to the rest of the adult population.' Shockingly, in 2015, opioids accounted for almost 50% of all deaths among formerly incarcerated people. This is especially horrifying given that proven treatment methods for opioid use disorders exist – they just aren't accessible to people in and recently released from prison."⁶ There is an urgent need for correctional facilities to provide prisoners with adequate treatment for substance use disorder.

An Act establishing a commission to review substance use in correctional facilities would require Massachusetts correctional facilities to provide data and statistical information related to substance use trends and the programmatic rehabilitation needs of prisoners to a commission that will then use such data to produce an annual report and to guide recommendations aimed at treating substance use disorder in prisons and jails in Massachusetts.

An Act relative to education and programming for the incarcerated is aimed at reducing relapse triggers, idleness, and boredom, and increasing opportunities for incarcerated persons to participate in positive programming. It would mandate at least eight hours a day of out of cell time at all facilities and opportunities for prisoners to participate in institutional programs and education, including substance use programming.

³ Sentencing Project, *Still Life: America's Increasing Use of Life and Long Term Sentences*, (2017)

<https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>

⁴ Prison Policy Initiative, "Red states, blue states: What do these mean for people on parole?" (2019)

<https://www.prisonpolicy.org/blog/2019/01/02/parole/>

⁵ Massachusetts Department of Correction Inmate and Prison Research Statistics,

<https://public.tableau.com/profile/madoc#!/vizhome/MADOCJan1Snapshot/Jan1Snapshot>

⁶ <https://www.prisonpolicy.org/blog/2018/12/07/opioids/>



An Act Ensuring Access to Addiction Services

(S.1145 and H.1700, Sen. Friedman and Rep. Balsler)

M.G.L. c. 123 § 35 allows for individuals who have substance use disorder and who may be at risk of harming themselves or others to be involuntarily committed for treatment. However, Massachusetts has failed to provide sufficient community systems of care, such as hospitals, where people may be sent when they have been committed. As a result, men are sent to correctional facilities where they are subjected to strip searches and arbitrary punishments, including solitary confinement, for even minor rule infractions and where they do not get the treatment they need so desperately.

In 2016, as the result of litigation and advocacy by Prisoners' Legal Services and others, Section 35 was amended to prohibit incarceration for women who were civilly committed for substance use disorder. This bill seeks to provide men with the same protection, ensuring that all individuals who are committed under Section 35 are provided with treatment, not incarceration.



An Act to collect data on LGBTQI prisoners held in restrictive housing

(S.905/H.1341, Sen. Cyr and Rep. Balsler)

The Criminal Justice Reform Act (CJRA) mandated that prisoners cannot be placed in solitary confinement because of their gender identity and/or sexual orientation. In order for this provision of the Criminal Justice Reform Act to be appropriately monitored and fully implemented, data must be collected on LGBTQI prisoners who are held in restrictive housing. This bill would require state and county correctional facilities to collect data on voluntarily disclosed sexual orientation and gender identity of prisoners in restrictive housing.

A number of other important bills that we are supporting include:



- *An Act ensuring access to addiction services*
- *An Act relative to treatment, not imprisonment*
- *An Act to improve public safety by facilitating access to addiction services*
- *An Act transferring Bridgewater State Hospital from the Department of Correction to the Department of Mental Health*
- *An Act relative to ensuring quality mental health services in state correctional facilities*
- *An Act reducing recidivism and promoting family relationships during incarceration*
- *An Act to prevent the imposition of mandatory minimums based on juvenile adjudications*
- *An Act relative to community corrections: increasing access to reentry programs*
- *An Act relative to expungement/ An Act relative to expungement, sealing and criminal record provisions*
- *An Act to eliminate mandatory minimum sentences related to drug offenses*
- *An Act relative to probation violations*
- *An Act promoting family stability by further reforming criminal offender record information, increasing access to employment and preventing unfair accrual of debt*
- *An Act providing easier and greater access to record sealing*
- *Proposal for a legislative amendment to the Constitution relative to voting rights and An Act Relative to Voting Rights*

Support These Acts to Advance Prisoners' Rights

If you, a family member or friend would like to get involved in the passage of these bills, PLS would love to be in touch. Please contact us at Prisoners' Legal Services, 50 Federal St., 4th Floor, Boston MA 02110, 617-482-2773 (for family and friends), 9004/9005 (state speed dial line), 617-482-4124 (county collect call line).

PLS INTAKE INFORMATION

For assistance with new issues, please call during our regular intake hours, Monday afternoons from 1 pm–4 pm. 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 9 am–11 am or 1 pm–4 pm. If you cannot reach PLS by phone, please write to "Intake", 50 Federal St., 4th Floor, Boston MA 02110.

Hepatitis C in the Department of Correction



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

We want to hear from you if you are (or were) a prisoner in the Department 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 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 have not been assigned a priority level for treatment; or
- You have other questions or concerns about Hepatitis C treatment.

PLS and the National Lawyers Guild are monitoring the settlement in Fowler v. Turco, a class action concerning the testing, evaluation, and treatment of Hepatitis C in the DOC. The settlement calls for universal testing for Hepatitis C (the prisoner can decline testing), regular assessments of those who have Hepatitis C to determine their priority level for treatment, and treatment to be given within certain time frames to those who qualify. The settlement also limits the reasons why the DOC can deny treatment to prisoners who otherwise qualify for it.

If you have questions or concerns about Hepatitis C, please contact NLG at 41 West St., Suite 700 Boston MA 02110 or PLS, 50 Federal St. 4th Floor, Boston, MA 02110, State Speed Dial Line: 9004; County Collect Call Line: 617-482-4124.

PLS is investigating the lack of access to proper treatment for addiction to drugs and alcohol (also known as "substance use disorder") at DOC facilities. Please contact PLS if you have substance use disorder (addiction to opioids, cocaine, benzos, alcohol, K2, or any other drug, including prescription drugs) and you would be willing to share with us your experience with accessing treatment in DOC - **the contact person you should write to or ask to speak with is Christen Escobar, paralegal.**



PLS Has Moved!

New Address:
50 Federal Street, 4th Floor,
Boston, MA 02110

A white speech bubble containing the letters 'ES' in a bold, blue, sans-serif font, centered on a dark blue background.

PLS Notes está disponible en español. Pídalo 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.

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

[Addressee]
[Address Line 1]
[Address Line 2]
[City/State/Zip]