

# PLS NOTES

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## **Class Action Filed to Compel DOC to Treat Hepatitis C**

Prisoners' Legal Services (PLS) and National Lawyers Guild member firms Shapiro, Weissberg & Garin and David Kelston filed *Paszko, et al. v. Commissioner of Correction, et al.* in federal court on June 10. The plaintiffs are DOC prisoners with Hepatitis C (HCV) liver disease. Plaintiffs seek an order that will compel DOC and its contractual health care provider, Massachusetts Partnership for Correctional Health Care (MPCH), to provide new medications that cure HCV to DOC prisoners who can benefit from them. More than 1,500 DOC prisoners have Hepatitis C but DOC is treating only two or three. As a result, hundreds of prisoners are in danger of losing their lives because the Department of Correction refuses to provide medicine that will cure their potentially fatal disease.

Urszula Masny-Latos, Executive Director of the Massachusetts chapter of the National Lawyers Guild, said: "It is the responsibility of the state,

which spends millions to incarcerate thousands of people, to provide adequate medical care for them. Without such care, many of them will develop serious complications of this disease, and some will die. These people were sentenced to incarceration, not death."

Hepatitis C, an infectious disease which causes progressive damage to the liver and ultimately liver failure, is widely prevalent in prisons and jails. New medications approved by the FDA in 2014 are a dramatic improvement over their predecessors, curing nearly one hundred percent of patients, with few side effects. The DOC and MPCH have stopped using the old medications, but have failed and refused to provide prisoners with the new treatment.

"Hepatitis C afflicts over 1,500 of the Department of Correction's 10,000 prisoners," said Leslie Walker, Executive Director of Prisoners' Legal Services. "The Department used to treat up to 100 prisoners at a time with the best available medication. Today that number is two or three, even though the new medicines are superior in every way to the old ones. Such foot-dragging is unacceptable."

The price of these recently approved medications has been closely scrutinized in Massachusetts and nationally, with reports of prices exceeding \$90,000 for a full treatment. Critics, including some lawmakers, have decried the high prices, while the pharmaceutical companies that produce the drugs have pointed to their value – requiring only weeks of treatment rather than lifelong treatment, as is common with other chronic diseases, and avoiding enormous future costs associated with treating liver failure and wider spread of the disease. "The new medications are expensive, but cost is no excuse for the violation of the constitutional rights of prisoners," said Jonathan Shapiro, of Shapiro Weissberg & Garin, which is co-counseling the lawsuit on behalf of the National Lawyers Guild. "These medications are

not a luxury; they are the standard of care for treating Hepatitis C. The defendants have a constitutional obligation to provide adequate medical treatment, and they are not meeting that obligation. They are hurting not only prisoners with Hepatitis C, but the public health as well. Wider treatment of Hepatitis C will stop the spread of this disease, not just in prison but in the community.”

“Everyone knew these medications were coming, long before FDA approval,” added Joel Thompson, staff attorney at Prisoners’ Legal Services, which is co-counseling the lawsuit. “The defendants themselves told prisoners to hold off, to wait until newer, better medications arrived. Those medications are here, and while everyone else is making significant investments in treatment – including MassHealth and other publicly funded health care systems – the Department of Correction and its provider are not.”

The lawsuit complaint alleges that the DOC and MPCH are violating the Eighth Amendment rights of state prisoners by denying essential Hepatitis C treatment, including the new medications. The complaint asks the court to order the defendants to immediately provide treatment for a proposed class of the more than 1,500 prisoners in DOC custody who have Hepatitis C.

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## **Will Sentencing Change?**

Eight hundred people packed the Gardener Auditorium in the State House on June 9, to voice support for repeal of mandatory minimum sentences for drug crimes. Testimony continued for several hours. Supreme Judicial Court Chief

Justice Ralph Gants was the first to testify in support of repeal. He pointed out that a drug dealer who sells to support his habit and one who sells purely for the cash, or even the girlfriend who helps package the drugs, are all likely to get the same sentences under the present system, although they don’t deserve the same sentences and would not receive the same sentences from a judge who had discretion.

The district attorneys, whose main spokesman was Suffolk County D.A. Dan Conley, oppose repeal. But Attorney General Maura Healey submitted written testimony that favored repeal of the mandatory sentencing provisions in present law and certain other penalties that create more problems than they solve, such as automatic suspension of drivers’ licenses for drug crimes. Healey pointed out that most drivers’ license suspensions for drug possession stem from incidents that have nothing to do with a vehicle. "Automatic license suspensions for non-vehicle-related drug offenses unnecessarily prevent people from rebuilding their lives, getting to work, and caring for their families," Healey said. More than sixty state senators and representatives have signed on as sponsors of the repeal legislation.

PLS has **other legislative priorities** including:

H.1628 and S.843 are the House and Senate versions (identical wording) of a compassionate release law that would authorize the court that sentenced a prisoner to allow him or her to be transferred to hospice care in the community or at home if a doctor finds that the individual is incapacitated by a fatal or final illness or condition.

H.1170 would require that the Parole Board include members with mental health, social work, and criminal defense backgrounds, as opposed to the present makeup, which is almost all police and other law enforcement professionals.

H.1559 creates presumptive parole, which means that when a prisoner reaches parole eligibility the parole board would have to justify in writing any reasons it has for NOT paroling the individual. It also requires that prisoners serving two or more years be paroled six months before the end of their sentence, except for those still serving existing mandatory minimums or who have chosen to decline parole.

H.1167 requires screening of all state and county prisoners for substance abuse history on entrance into a jail or prison and, if they have such a history, that they be offered treatment on request.

H.1171 requires the Department of Mental Health (DMH) to supervise and monitor DOC mental health care, including by review of the contracts that DOC makes with mental health care providers. Standards of treatment would be set by DMH.

H.1381 requires quarterly reporting of data relating to solitary confinement, by unit, and covering length of confinement, number of suicides, and racial composition of solitary confinement units.

H.1475 and S.1255: divert vulnerable prisoners from solitary confinement, including pregnant women, youth and prisoners with serious mental illness. The proposal also requires procedural protections before a prisoner can be sent to solitary confinement, and requires that prisoners not be released directly from solitary confinement to the community.

S.1133 is also directed at moderating solitary confinement. Among its provisions are a general limit on disciplinary segregation to 15 days. To extend disciplinary segregation beyond that, a statement of reasons for the extension and a hearing to determine what conditions the prisoner must meet in order to be released, along with a conditional release date, must be provided.

Other bills of interest include

H.1279 allows courts to send county prisoners who are awaiting trial to community corrections programs.

H.1382 establishes community-based sentencing alternatives for people convicted of non-violent crimes who are primary caretakers of dependent children.

S.756 restores sentencing discretion for probation violations after a suspended sentence, so that courts are not required to impose the entire suspended term.

S. 767, which allows bail for defendants accused of probation violations.

H.1584 and S.802 both provide that pre-trial detention be based on risk of not returning to court rather than ability to pay bail. These bills also propose to create a Pretrial Services Agency within the Probation Department for both risk assessment and supervision of pre-trial defendants.

CORI issues receive the attention of several proposals. H.1248 allows hearings for the purpose of determining whether records of persons falsely or mistakenly accused should be expunged, and allows the Probation Department to seal juvenile records if certain conditions are met, and authorizes expungement after five years upon request. (Expungement is much better for the CORI subject than sealing because it means that the record is completely erased.) There are also proposals to expunge or seal juvenile and youthful offender records after a period, either upon request or automatically.

Naturally, not all of the proposed bills are positive. Sen. Bruce Tarr sponsors S.916, which would repeal the “ban the box” protections for ex-offenders so that employers could ask about prior criminal history “up front” on job application forms. There are two proposals to greatly expand

wiretap authorizations to investigations of offenses other than organized crime activities. And there are the usual spate of proposals to drug test recipients of public assistance, prohibit assistance to people who themselves, their parents, children, and other relatives have drug convictions or who are in drug treatment (!), because, presumably, the poor can never be punished enough. And one particularly creative proposal, S.1294, sponsored by Sen. Richard Ross, would create a drug dealer registry featuring, name, date of birth and photo.

These are only a few of the more than 100 criminal justice bills now before the legislature. Some are excellent ideas and others are terrible. All of them are assigned to a joint committee, usually the Judiciary Committee or the Committee on Public Safety and Homeland Security. Joint committees are made up of members from both the state House of Representatives and the state Senate. The joint committees hold hearings or series of hearings that cover all of the bills assigned to them. A list of all criminal justice bills, the committees they are assigned to, and which groups or community organizations are working to see them enacted, is kept up to date on the website of the **Criminal Justice Policy Coalition**, at <http://www.cjpc.org>.

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## **Donate to PLS!**

Please consider donating to PLS. Readers with internet access can go to PLS' website at [www.plsma.org](http://www.plsma.org). The donation page is secure, and your donation is tax deductible.

## **Reaching PLS**

County Prisoner Collect: 617-482-4124  
Massachusetts State Prisoners: \*9004#  
Intake hours: Modays 1-4 P.M. (general pop.);  
9-11 and 1-4 daily (seg.)  
PLS, 10 Winthrop Sq., Boston MA 02110

# **Statement of the Massachusetts Anti-Shackling Coalition**

On the first anniversary of the state's historic law to guarantee minimum standards for pregnant women in prison and jail, we reaffirm our belief that all women deserve a safe, healthy pregnancy, birth experience and postpartum recovery, including prenatal care, adequate nutrition, and support during labor and birth.

We were pleased to see this law passed unanimously and signed into law in May 2014, reflecting the wide support in our Commonwealth for the principle that all women deserve care when they are pregnant. We are pleased to see that progress has been made and policies at some prisons and jails now comply or nearly comply with the law's limits on the use of restraints on women who are pregnant, in labor and giving birth, and in postpartum recovery.

However, we are disappointed that at some prisons and jails practices that violate the law continue to be enshrined in policy. Worse yet, we are deeply concerned to learn that women are still being shackled in violation of the law and even in violation of policies that—on paper—uphold the law.

We know that even after the passage of the law, women have been shackled to the hospital bed after giving birth, restrained on the way back to prison or jail after having their baby, and even shackled with waist chains and leg irons inside of prison. In many cases, women are still being driven to court or doctor's appointments in vans without seat belts, compromising their safety— or missing important court dates because those in charge do not have appropriate vehicles ready. It is

unacceptable for prisons and jails to be violating the law and jeopardizing the health of women and their pregnancies.

We are especially concerned that the Department of Correction (DOC) and sheriffs are not implementing all of the statute's requirements intended to ensure the health of pregnant women. It appears that by this one-year mark, the DOC has failed even to begin the process, mandated by the law, of developing uniform, statewide health standards for pregnant women incarcerated in Massachusetts. We call upon the DOC to actively engage in this process with the Department of Public Health and create minimum standards that mirror care in the community and institute widely accepted models of care that protect the health of pregnant and postpartum women.

Despite the law's requirement that prisons and jails provide appropriate clothing and undergarments, women are routinely forced into standard-issue clothes that are much too large or much too small. We are especially concerned that pregnant women are not receiving enough food or a healthy diet. Women report being hungry throughout pregnancy and being given food that is simply empty calories. We call for prisons and jails to act in good faith with the law's requirements and provide appropriately sized maternity clothing as women progress through their pregnancies. Additionally, we call for the statewide health standards to specifically address the dietary requirements for pregnant women, providing for fresh fruits and vegetables and sufficient fiber and nutrition to support a healthy pregnancy, beyond a set caloric requirement.

The Commonwealth has made a commitment to health care for all, which promotes the well-being of pregnant women and gives every baby a healthy start in life. We call on the Secretary of Public Safety to ensure that the state Department of Correction and all county Sheriffs fully comply with the law and take seriously the health and

treatment of pregnant women who are incarcerated.

#### **Coalition Member Organizations:**

Prisoners' Legal Services; Prison Birth Project  
NARAL Pro-Choice Massachusetts; National  
Lawyers Guild - Massachusetts Chapter; Prison  
Policy Initiative; Real Cost of Prisons Project  
Families for Justice as Healing; Massachusetts  
Chapter of the National Organization for Women  
Black and Pink - Boston; Out Now  
Unitarian Universalist Urban Ministry  
National Association of Social Workers (MA  
Chapter); Jane Doe, Inc., the Massachusetts  
Coalition Against Sexual Assault and Domestic  
Violence; Coalition for Effective Public Safety  
Criminal Justice Policy Coalition; American  
Friends Service Committee, New England  
Regional Office, Healing Justice Program

For more information contact:

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lpetit@plsma.org

or

The Prison Birth Project  
PO Box 1253, Northampton, MA 01061  
collective@theprisonbirthproject.org

## **If You Are Pregnant And Incarcerated**

### **Contact PLS for information about your rights.**

In May 2014, Massachusetts passed a law, G.L. c. 127, § 118, making it illegal to shackle pregnant women for transportation in most circumstances, outlawing restraints on women in labor and requiring correctional facilities that hold women to provide basic prenatal education and care. This law is very important in strengthening the rights of pregnant women incarcerated in Massachusetts. Its requirements apply to all women incarcerated in the state, regardless of what facility they are in.

PLS has a new project called **Keeping Promises to Women in Prison: Monitoring Implementation of the Massachusetts Law to Prevent Shackling and Promote Safe Pregnancies**. This project is sponsored by the **National Institute for Reproductive Health**.

If you are a pregnant woman incarcerated in Massachusetts, **please contact PLS for assistance in obtaining the rights provided by this law and to help us track and address any improper use of restraints on pregnant and post-partum women**. If you feel the correctional or medical staff are not following the requirements of the law, you should file a grievance (a medical grievance if it is medical staff who are not following the law, a facility grievance if it is the correctional staff not following the law) and be sure to appeal any denial of that grievance. You should file the grievance even if you also contact PLS for assistance.

If you are restrained while you are in labor, this office will advocate for you to be removed from restraints immediately. You can contact us from any DOC facility at \*9004# or any county facility by calling collect at 617-482-4124. If you are unable to call, you can also ask your medical provider or your family to contact our office to report this problem. We will need your signed releases of information to get any information when we advocate, so **we will need releases of information on file with this office in advance if you think you will be incarcerated when you give birth. If you are expecting to give birth while incarcerated, please contact PLS in advance of your due date and discuss your situation with us**.

Please encourage other pregnant prisoners to also contact PLS. Even if you don't want us to contact the facility regarding your situation, we would appreciate you contacting us to let us know what your experience was so that we can assess whether each facility is following the law.

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

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

## **PLS Seeks Information on Treatment of Prisoners with Mobility Disabilities**

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

## Relief for People Affected by State Drug Lab Scandals

### *Update on Annie Dookhan/Hinton Lab Scandal*

If you were convicted of a drug offense in which the alleged drugs were tested by former chemist Annie Dookhan at the Department of Public Health (DPH) Hinton Laboratory in Jamaica Plain, you probably know that the Supreme Judicial Court held in 2014 (in a case called *Commonwealth v. Scott*) that, if you file a motion to vacate your guilty plea, it will be presumed that there was serious government misconduct in your case. To win the motion to vacate the plea, you will have to show that it is reasonably probable that, if you had known of Dookhan's misconduct, you would not have pleaded guilty.

**Now, according to a May 2015 decision by the Supreme Judicial Court (*Bridgeman v. DA's for Suffolk and Essex Counties*), individuals who move to vacate their guilty pleas in Dookhan-related cases, face no risk of further penalty. More specifically, this decision means that if an individual succeeds in vacating his or her guilty plea in a Dookhan-related case: 1) He cannot then be charged with a more serious crime; 2) Charges in the case that were reduced cannot be reinstated in their original, more serious form; 3) Charges that were dismissed or nolle prossed cannot be reinstated; and 4) If a defendant is re-convicted following a new trial, she cannot receive a harsher punishment than the sentence originally imposed.**

*If you have such a case that you want screened for the assignment of counsel, please call the Committee for Public Counsel Services (CPCS) main number 617-482-6212 or 1-800-882-2095 and ask to be connected to the drug lab hotline.*

*You can contact the CPCS drug lab hotline directly at 617-516-5832. DOC prisoners may call CPCS at the following preauthorized speed dial: \*9009#. CPCS accepts collect calls.*

### *Information on Sonja Farak/Amherst Lab Scandal*

If you were convicted of a drug offense out of Hampden, Hampshire, Franklin or Berkshire County between 2004 - 2013, the alleged drugs in your case may have been tested by former chemist Sonja Farak at the DPH Amherst Drug Laboratory. ***Serious concerns have been raised about the reliability of these test results.*** It is *hoped* that the "exposure cap" provided for individuals affected by the Annie Dookhan scandal, whereby individuals seeking to vacate their pleas in Dookhan-related cases are not at risk of further penalty (see above paragraph for more detail), will also be applied to cases involving Sonja Farak, but the law on this question has not yet been established.

If you believe that you have such a case that you want screened for the assignment of counsel, please call the Committee for Public Counsel Services (CPCS) drug lab hotline at one of the above numbers.

### **Sonja Farak/Hinton Drug Lab Cases**

Sonja Farak worked at the Hinton Drug Lab in 2003-2004. During her years at the Amherst Drug Lab she handled several thousand Hinton Drug Lab samples sent to the Amherst lab for testing due to a backlog. If you believe you were convicted in an *Eastern Massachusetts* drug case in which Sonja Farak analyzed the alleged drugs, you may also call the CPCS drug lab hotline, at one of the above numbers, to request screening for assignment of counsel.

