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PLS NOTES

FALL/WINTER 2018
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LANDMARK CRIMINAL JUSTICE REFORM LEGISLATION **BECOMES LAW**

CRIMINAL JUSTICE REFORM ACT

On April 13, 2018, after passing the Massachusetts House of Representatives, the Massachusetts Senate, and going through a conference committee process, the omnibus Criminal Justice Reform Act (CJRA) was signed into law. The CJRA has many positive provisions spanning juvenile justice reform, protections for primary caregivers, mandatory minimums reform, CORI reform, reduction of fees and fines, bail reform, increased opportunities for diversion, decriminalization of certain low level offenses and increased transparency. Below are summaries of several provisions in the law particularly relevant to prison conditions.

I. Solitary Confinement (“Restrictive Housing”)ⁱ

PLS worked with numerous coalition and community partners, including the coalition Massachusetts Against Solitary Confinement (MASC) and the Criminal Justice Working Group, to pass critical reforms to solitary confinement as part of the CJRA. The originally proposed reforms changed considerably during the challenging legislative process. Under the new law, solitary confinement was renamed “Restrictive Housing”. All provisions of the law apply to county facilities and state prisons, except there are a few limited provisions that only apply to long term disciplinary solitary confinement in the Departmental Disciplinary Unit (DDU).

A. Procedural Protections

The law seeks to provide procedural protections in both administrative and disciplinary solitary confinement. Solitary confinement is only authorized for discipline or if housing in the general population would pose an “unacceptable risk” to the safety of others, property, or the operation of a correctional facility.

All solitary confinement placements will be reviewed by a panel including one security staff, one program staff and one mental health staff to determine whether restrictive confinement “continues to be necessary to reasonably manage risks of harm.” Prisoners in the DDU will be reviewed for possible release after six months and then every 90 days thereafter. Prisoners awaiting a disciplinary hearing will be reviewed every 15 days. All other prisoners will be reviewed every 90 days. Prisoners in solitary confinement for more than 60 days will (i) have 24 hours written notice of placement reviews; (ii) have the opportunity to participate in reviews in person or in writing; (iii) upon review, if no placement change is ordered, be provided with a written statement as to the evidence relied on and the reasons for the placement decision; and (iv) not more than 15 days after the initial placement and upon placement review, if no placement change is ordered, be advised as to behavior

standards and program participation goals that will increase the prisoner's chances of a less restrictive placement upon next placement review.

B. Conditions of Confinement

The law seeks to improve conditions of confinement in solitary confinement units. The Commissioner must create regulations "to maximize out of cell activities in restrictive housing and to maximize outplacement from restrictive housing" consistent with safety. Those in solitary over 60 days must have access to vocational, educational and rehabilitative programs equivalent to the general population to the extent compatible with safety and security and must receive earned good time sentence reductions the same as in general population. All in restrictive housing except for those under disciplinary sanction for the first 15 days in the state and 10 days in counties shall have visits, canteen purchases, and property privileges equivalent to the general population. All in restrictive housing shall have meals equivalent to general population; showers at least three days a week; visits and communication (with some limitations); reading and writing materials; radio or television after 30 days; medical and psychiatric examinations and treatment; the same access to disability accommodations as the general population (except where inconsistent with security).

C. Serious Mental Illness:

Prisoners with serious mental illness (SMI) or who are otherwise clinically contraindicated may not be held in restrictive housing except under certain limited circumstances.

The definition of what constitutes a serious mental illness has been greatly improved under the new law. It now includes, "a current or recent diagnosis by a qualified mental health professional of 1 or more of the following disorders described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders: (i) schizophrenia and other psychotic disorders; (ii) major depressive disorders; (iii) all types of bipolar disorders; (iv) a

HEPATITIS C IN THE DEPARTMENT OF CORRECTION

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 PLS or NLG, with as much detail as you can give about your specific issue

neurodevelopmental disorder, dementia or other cognitive disorder; (v) any disorder commonly characterized by breaks with reality or perceptions of reality; (vi) all types of anxiety disorders; (vii) trauma and stressor related disorders; or (viii) severe personality disorders.” The law also gives appropriate flexibility to mental health professionals to divert a prisoner away from solitary upon a finding “that the prisoner is at serious risk of substantially deteriorating mentally or emotionally while confined in restrictive housing, or already has so deteriorated while confined in restrictive housing, such that diversion or removal is deemed to be clinically appropriate.” Mental health professionals are required to make rounds in every restrictive housing unit, conduct out of cell confidential meetings with prisoners, and remove prisoners from restrictive housing if clinically contraindicated.

D. Other Vulnerable Populations

Solitary confinement in excess of 72 hours for purposes of protective custody is prohibited under the new law unless there is certification of necessity and efforts to find appropriate housing. Prisoners may not be held in solitary because they are, or are perceived to be, lesbian, gay, bisexual, transgender, queer, or intersex. Pregnant prisoners may not be held in solitary confinement. The DOC must create regulations about the restrictive housing placement of prisoners with permanent physical disabilities.

E. Re-entry:

Prisoners with anticipated release dates of less than 120 days may not be placed in restrictive housing unless it is limited to 5 days or less or unless the prisoner poses substantial and immediate threat. Prisoners in solitary within 180 days of release must be offered reentry programming including re-socialization programming.

F. Oversight and Accountability:

The law has established an oversight committee for solitary confinement, consisting of officials from state agencies in charge of corrections, public health,

and mental health; representatives from the Sheriffs’ Association, the correction officers’ union, PLS, the Disability Law Center, MA Association for Mental Health, National Association of Social Workers; and others. The Committee will make annual reports to the legislature. The Commissioner must publish and provide to the oversight committee a wide range of data on prisoners held in solitary confinement, including mental illness, disabilities, suicides, reason for placement in solitary, and numbers released to the community from solitary.

PLS will closely monitor compliance with the new law. PLS is also engaged in litigation that challenges solitary confinement practices. Updates will be provided in a future issue.

**PLS WELCOMES ALL INFORMATION
REGARDING POSSIBLE VIOLATIONS ONCE THIS
LAW COMES INTO EFFECT STARTING
DECEMBER 31, 2018. FREE STATE SPEED DIAL:
9004, COUNTY COLLECT CALLS: 617-482-4124,
ADDRESS: 50 FEDERAL ST., 4TH FLOOR,
BOSTON MA 02110**

II. Medical parole (also known as compassionate release)

PLS worked with numerous community and coalition partners to ensure that some form of compassionate release would be included as part of the CJRA. Prior to this legislation, Massachusetts stood as one of the last states without any statutory path to medical or compassionate release. The law that ultimately passed provides for "Medical parole", which refers to releasing a prisoner from incarceration who the Commissioner of the Department of Correction has determined has a "permanent cognitive or physical incapacitation" that is irreversible and so debilitating that the prisoner "does not pose a public safety risk" as determined by a licensed physician **or** has a

"terminal illness" that will likely cause the death of the prisoner within 18 months as determined by a licensed physician and that is "so debilitating that the prisoner does not pose a public safety risk".

A prisoner, the prisoner's attorney, the prisoner's next of kin, a medical provider of the correctional facility or a member of the department's staff can file a written petition with the superintendent of the prisoner's facility to apply for medical parole. The Superintendent of the facility where the prisoner is housed (or in a county facility, the county Sheriff), will review the petition and develop a recommendation "as to the release of the prisoner" or not, within 21 days, sending it to the DOC commissioner.

Upon receipt of the recommendation, the Commissioner will notify, in writing, (1) the district attorney for the county where the prisoner was sentenced, (2) the prisoner, (3) the person who petitioned for medical parole if not the prisoner and (4) if applicable, the victim or the victim's family. Parties who receive the notice may prepare written statements. In cases of a 1st degree homicide, the DA or the victim's family may request a hearing.

The Commissioner will issue a written decision within 45 days after receiving the petition. If the commissioner finds terminal illness or permanent incapacitation, finds that the prisoner will "live and remain at liberty without violating the law" and "the release will not be incompatible with the welfare of society", the prisoner will be released on parole.

The parole board will supervise the released prisoner and may "revise, alter or amend the terms and conditions of medical parole at any time." If a parole officer receives "credible evidence" of the released prisoner's failure to comply with conditions or if the former prisoner's condition improves so the released prisoner would no longer be eligible for medical parole, the parole officer will arrest the person and bring them before the parole board for a hearing. The board can decide to return the prisoner to custody and be given credit only for the time s/he was compliant.

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

III. Visitation

In recognition of the critical importance of in-person visitation to prisoners and their families, including the substantial body of evidence showing its positive rehabilitative effects and impacts on successful re-entry, the legislature included a provision prohibiting correctional institutions from eliminating or unreasonably limiting in-person visitation or from coercing, compelling or pressuring a prisoner to forego in-person visitation. Specifically, there must be at least 2 opportunities for in person visitation in a 7 day period. Video visitation is permitted as an option but cannot replace in-person visitation.

PLS is currently engaged in litigation regarding new highly restrictive visitation policies implemented by DOC- further information is provided below.

IV. Prison Telephone Rates

The new law requires the DOC and the Department of Telecommunications and Cable to study and report to the legislature on prison telephone rates, including current rates in the DOC and county facilities; comparison with residential service; and "commissions" paid by consumers as part of their bill but then kicked back to the prison. PLS is currently engaged in litigation regarding telephone rates.

V. LGBTQI prisoners

The new law requires that prisoners in state or county facilities who have a gender identity that differs from the prisoner's sex assigned at birth with or

without a gender dysphoria or other mental health diagnosis 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 WELCOMES ANY AND ALL REPORTS OF HOUSING AND OTHER REQUESTS UNDER THE PROVISIONS OF THIS LAW THAT HAVE BEEN DENIED. FREE STATE SPEED DIAL: 9004, COUNTY COLLECT CALLS: 617-482-4124, ADDRESS: 50 FEDERAL ST., 4TH FLOOR, BOSTON MA 02110

The law also establishes a special commission to study the health and safety of lesbian, gay, bisexual, transgender, queer, and intersex prisoners in correctional institutions, jails and houses of correction. The commission will consist of 8 members with 1 member being appointed by each of the following, the DOC, MA Sheriffs Association, the SJC for a former judge, the Governor for a health care provider with experience in transgender health, NASW, PLS, and two appointed by the Attorney General- one with expertise in working with formerly incarcerated LGBTQI people and one with expertise in legal advocacy for LGBTQI individuals. Members are provided access to prisons and jails, are allowed to interview prisoners and staff, and will gather information including the number of prisoners who have received a GD diagnosis or transition-related healthcare, the number of prisoners denied GD

diagnoses, the number denied requests for alternative housing or facility placement, and any training provided to staff and contracted health professionals on LGBTQI cultural competency. The committee will prepare and submit a report within 3 years to the Governor, Attorney General and Joint Committee on the Judiciary.

VI. Education and Programming:

The law requires that educational programming to obtain a high school equivalency certificate be made available in the DOC and in the county correctional facilities to persons committed for not less than 6 months who have not obtained a high school degree or equivalency. The provision only mandated 1 educational program and does not specify if the program must be available in each DOC facility or how it will be made available to all prisoners who have not obtained a high school equivalency or diploma.

VII. Juvenile Units

The new law provides that the Commissioner or county correctional superintendents may establish young adult units or designate certain correctional officers to exclusively supervise prisoners between the ages of 18-24 years of age so that they can benefit from age appropriate guidance, interventions and programming. Such officers should be selected based on demonstrated experience and commitment to working with young adults and shall receive specialized training. The provision allows for, but does not mandate, the establishment of these units.

LAW PASSED IN RESPONSE TO COUNCIL OF STATE GOVERNMENTS STUDY:

In April, the Legislature passed a law that made a number of changes to how prisoners in Massachusetts can get Earned Good Time (EGT) credits to reduce their sentences. The changes are complicated, but below is a basic overview of them. The changes go into effect on January 13, 2019. PLS has a new publication that gives a more detailed and broader

overview of Earned Good Time, including both the new changes as well as the rules that have not been changed. If you would like a copy of that, please send a request by mail to PLS, or call us to request one.

Please remember that EGT will continue to be provided at the discretion of DOC, and DOC will likely be creating regulations to govern EGT credits now that the new law is passed. The law changes the maximum amount of good time that the DOC *can* provide, but it does not require DOC to provide EGT.

**MASSACHUSETTS INCREASES EARNED
GOOD TIME, PAROLE, AND WORK RELEASE
OPPORTUNITIES**

- DOC prisoners can now earn up to a maximum of 7 ½ days of EGT credits per month per program or activity, up to a maximum of 15 days per month for all programs or activities (the maximum in DOC used to be 5 days per program and 10 days overall). Prisoners in Houses of Correction can earn up to 5 days per month per program or activity, up to a maximum of 10 days per month.
- The DOC can also give a one-time additional 10-day credit for any program or activity the DOC chooses; however, for prisoners incarcerated in county jails and houses of correction, the program or activity has to last at least 6 months.
- All EGT credits earned cannot total more than 35% of the maximum sentence.
- The DOC can also award a “completion credit” of up to 80 days to prisoners in DOC facilities for completion of a program or activity the DOC chooses, but these “completion credits” cannot exceed 17½% of the prisoner’s maximum sentence.
- Many prisoners serving mandatory minimum sentences are now eligible for EGT, parole

permits, and work release. However, there are complicated exceptions to this change in the law. For more information, please contact PLS to request the more detailed publication regarding the EGT law that we have created.

- These new provisions do not apply to Massachusetts prisoners being held in a facility in another state or in a federal facility. They also do not apply to prisoners serving a sentence in Massachusetts that was imposed by another state or the federal government.

These are just some of the changes in this new law – it also contains changes to parole, probation and pretrial services.

**MAT (MEDICATION ASSISTED
TREATMENT) PILOT PROJECT**

This past August, the Legislature passed “An Act for Prevention and Access to Appropriate Care and Treatment of Addiction,” and the Governor signed it several days later. This new law expands access to treatment for people suffering from opioid use disorder (opioid addiction), especially by providing access to FDA-approved opioid treatment medications, called “Medication Assisted Treatment,” or “MAT.” These medications include methadone, suboxone and Vivitrol (naltrexone). The law includes several pieces that will improve addiction treatment in Massachusetts corrections.

Department of Correction/state prisoners

- **Medication Assisted Treatment in certain DOC facilities:** The DOC must offer MAT, when clinically appropriate or recommended by a qualified addiction treatment specialist, to prisoners in several facilities:
 - Massachusetts Alcohol and Substance Abuse Center (MASAC), which houses men who have been civilly committed for substance use treatment under Section 35 (Mass.

General Laws Chapter 123, Section 35);

- MCI Framingham and South Middlesex Correctional Center (SMCC);
 - MCI Cedar Junction, but only to prisoners who were already receiving opioid agonist or partial agonist (methadone or suboxone) treatment immediately before being incarcerated, and only during the first 90 days as part of a medically managed detoxification, AND during the last 90 days of their sentence, as part of a re-entry treatment plan.
- **Continuing MAT for Prisoners who were already on it:** The DOC must also ensure that prisoners or detainees entering MASAC, MCI-Framingham or SMCC who were receiving MAT immediately before incarceration or commitment, continue to have it available unless they voluntarily discontinue the treatment or qualified addiction specialist determines it is no longer medically necessary.
 - **Addiction Specialists:** The DOC must ensure access to a qualified addiction specialist at MASAC, MCI- Framingham and SMCC.
 - **Counseling:** Treatment in these facilities must also include behavioral health counseling.
 - **No Coercion:** No incentives, rewards or punishments shall be used to encourage or discourage a state detainee's or prisoner's decision to receive medication-assisted treatment.
 - **Re-entry Treatment Plans:** 120 days before a prisoner's expected discharge date, a qualified addiction specialist shall conduct an

assessment of them. If the specialist concludes that the prisoner requires treatment for opioid use disorder, they will create a re-entry treatment plan. Plans may include medication-assisted treatment during the final 90 days of incarceration (which would require transfer to MASAC, MCI-Framingham, MCI-Cedar Junction, or SMCC) and must ensure that the prisoner is directly connected to an appropriate provider or treatment site in the area where they will reside upon release. As part of a treatment plan, the facility will request reinstatement or apply for MassHealth benefits at least 30 days prior to release.

MAT Pilot Program in Houses of Correction for Franklin, Hampden, Hampshire, Middlesex and Norfolk Counties

- The Sheriffs in Franklin, Hampden, Hampshire, Middlesex and Norfolk counties will set up pilot programs to provide MAT for opioid use disorder, working with the Department of Public Health and other agencies. These pilot programs must go into effect by September 1, 2019.
- Each of these counties' Houses of Correction will:
 - Have the capacity to administer all drugs approved by the federal Food and Drug Administration for use in medication-assisted treatment for opioid use disorder;
 - Provide MAT to prisoners who were receiving MAT immediately before incarceration, and will not involuntarily change or stop that treatment unless a qualified addiction specialist concludes it is no longer appropriate;

- Provide MAT for at least 30 days prior to release for prisoners who a qualified addiction specialist determines it is medically appropriate;
- Make behavioral health counseling part of an opioid use disorder treatment program;
- Not use incentives, rewards or punishments to encourage or discourage a person's decision to receive MAT;
- Make every possible effort to directly connect, prior to release, a prisoner receiving MAT to an appropriate provider or treatment site in the area in which the person will reside upon release; and
- Request reinstatement or apply for MassHealth benefits for prisoner receiving MAT not less than 30 days before that person's release.

While we at PLS are glad that Massachusetts is beginning to provide these medications to some prisoners with opioid use disorder, we also believe that all who need it should have access to this treatment, as well as to high-quality addiction counseling. PLS will continue to push for universal access to MAT in all state prisons and jails.

**ARE YOU IN A DOC FACILITY AND
HAVE A DRUG OR ALCOHOL
PROBLEM?**

**PLS IS INVESTIGATING THE LACK OF
ACCESS TO PROPER TREATMENT FOR
ADDICTION TO DRUGS AND ALCOHOL
(ALSO KNOWN AS "SUBSTANCE USE
DISORDER") AT DOC FACILITIES. PLEASE
CONTACT PLS IF YOU HAVE SUBSTANCE
USE DISORDER (ADDICTION TO OPIOIDS,
COCAINE, BENZOS, ALCOHOL, K2, OR ANY
OTHER DRUG, INCLUDING PRESCRIPTION
DRUGS) AND YOU WOULD BE WILLING TO
SHARE 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.**

DOC Imposes Harsh New Restrictions on Visitation: Lawsuits Filed

On March 23, 2018, the Department of Correction (DOC) put new rules in place that severely restrict the ability of prisoners to receive visitors. The DOC made these changes despite the fact that dozens of community members and prisoners expressed their opposition to the changes at a public hearing in September 2016.

Because of these changes, visits by friends and family have gone way down. The main changes are:

- DOC now requires prisoners to put the people they want to visit on a list, and has a cap on the number of visitors a prisoner can receive: five if the prisoner is in maximum security; eight in medium security; and ten in minimum security or pre-release.
- Prisoners can only change their visitor lists twice a year, even if a visitor moves away, dies, or can no longer visit.

- Visitors cannot visit more than one prisoner in the entire DOC system, unless the prisoners are immediate family members of the visitor.
- Visitors have to provide a lot of personal and private information on a “pre-authorization form,” even though the DOC has given no guarantee that it will protect their privacy. Some visitors have not filled out these forms because of these concerns, which means they cannot visit.

Many prisoners have received fewer visits since the new rules went into effect. Some have received none. Visitors report that there are long delays for their forms to get approved.

Visits are essential to prisoners’ well-being and to their successful re-entry to the community when they are released. Prisoners and their families know this first-hand, but numerous studies have shown this as well. Maintaining their connections to family, friends, and community is key to prisoners’ rehabilitation and to reducing recidivism. The DOC claims that the new rules are necessary to prevent smuggling of drugs into prisons. But the DOC has not shown that visitors are a significant source of drug smuggling, or that these rules would do anything to combat it.

Prisoners filed four lawsuits *pro se* (without attorneys) challenging the new rules, claiming that they violate state law and the Constitution. All the lawsuits aim to remove the new rules and protect prisoners’ rights to visitation. Prisoners’ Legal Services now represents the prisoners in two of the four lawsuits, and has added additional prisoners as plaintiffs in those lawsuits. The lawsuits were filed in different courts, but they were recently all moved to Suffolk Superior Court (“consolidated”), so that they can move forward together and avoid having different Judges reach inconsistent or contradictory decisions.

Not surprisingly, the DOC has asked the Courts to dismiss the lawsuits. Once the Court has completed the consolidation process, arguments on the motions to dismiss in each case will be heard.

Even though the new rules are in effect, prisoners and their families continue to voice their concerns. On September 13, 2018, the DOC held a public hearing on its policy to allow visitors to be searched by drug-sniffing dogs. Though DOC has been implementing this policy for some time, it was forced to hold a public hearing in order to continue the policy as the result of a lawsuit filed by PLS. At the hearing, numerous people spoke out against not only the use of drug sniffing canines but also against the visiting restrictions the lawsuits are challenging.

One mother, whose son is at Souza Baranowski Correctional Center and limited to five visitors, stated, "I have a huge family, my son has siblings." She asked DOC officials, "Can either of you pick five people you deal with on a regular basis for six months? Can you narrow it down to five? Can Governor Baker narrow it down to five?" She stated her belief that the restrictions are "geared toward breaking the families, breaking the inmates."ⁱⁱ PLS testified at the hearing against the visitation restrictions and against the use of drug sniffing dogs.

PLS will continue to challenge these unfair restrictions on prisoners’ visitation rights and will update the community in PLS Notes, on the PLS website, and on social media.

**MOTHER OF PERSON INCARCERATED AT
SBCC TO DOC OFFICIALS:**

**“I HAVE A HUGE FAMILY, MY SON HAS
SIBLINGS... CAN EITHER OF YOU PICK
FIVE PEOPLE YOU DEAL WITH ON A
REGULAR BASIS? CAN GOVERNOR BAKER
NARROW IT DOWN TO FIVE?”**

The lawsuits are:

Todd et. al. v. Turco, 1885-cv-00275 (originally filed in Worcester Superior Court as Stote et. al. v. Turco) (PLS represents the plaintiffs)

Lyons et. al. v. Turco, 1881-cv-00529 (originally filed in Middlesex Superior Court as Meas v. Turco) (PLS represents the plaintiffs)

Hudson et. al. v. Turco, 1884-cv-00860, (originally filed in Suffolk Superior Court) (plaintiffs represent themselves, *pro se*)

Vaughn v. Turco, 1881-cv-00523 (originally filed in Middlesex Superior Court) (plaintiff represents himself, *pro se*)

Other PLS Litigation

Archer and others v. Chairman of the Massachusetts Parole Board

This case challenged the way the Parole Board conducts parole revocation proceedings for individuals with second degree life sentences. Because a person on parole has a constitutionally protected liberty interest in remaining in the community, a parole revocation hearing must be conducted promptly, within about 60 days after the parolee has been returned to custody. At the revocation hearing, the Board must decide two questions. First, did the person violate one of his parole conditions. Second, even if the evidence shows that he did violate a condition, was the violation serious enough to justify revoking parole, or should he be re-paroled back to the community.

The plaintiffs alleged that the Board unlawfully divided the final parole revocation proceedings of second degree lifers into two separate hearings. At the first hearing, the Board decided only whether the parolee violated a condition of parole; it put off addressing re-parole to a second hearing conducted before all the members of the Parole Board. As a result, the Board failed to complete the revocation process by the 60 day deadline.

After the Appeals Court ruled that plaintiffs had stated a valid claim that their revocation hearings violated their constitutional rights, the parties agreed to settle the case. The Settlement makes it clear that the Board must decide re-parole at the revocation hearing. Significantly, it also requires the Board to describe and document any mitigating factors and circumstances, and the intermediate sanctions it considered as an alternative to re-incarceration.

PLS IS EAGER TO HEAR FROM NON-ENGLISH SPEAKERS WHO NEED PLS' 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.

These new requirements will apply to all revocation hearings, not just lifer hearings. In addition, the Board agreed to move up the date of next parole release hearing of each of the individual plaintiffs to make up for the past delays.

Reaves v. Department of Correction, et al.

PLS represented a quadriplegic prisoner at trial in federal court in September on claims that DOC violated his rights under federal laws protecting disabled people. We were disappointed that the jury returned verdicts for the Defendants on all counts.

Jane Doe v. Massachusetts Department of Correction, et al.

Jane Doe is a woman with Gender Dysphoria who has been receiving hormone therapy and other treatment for almost 40 years. In 2016, she was sentenced to a term of 3-4 years and incarcerated at MCI Norfolk, where she was forced to live, shower, and use the bathroom with male prisoners. She was also subjected to strip searches by male officers who patted down her breasts. She sought an order requiring the Department of Correction to transfer her to the woman's prison at MCI Framingham, and more generally to ensure that she is treated as a woman by the Department of Correction. The case was filed on November 15, 2017. We are co-counsel with GLAD and Goodwin Procter. On March 5, 2018, the court granted Plaintiff's motion for a preliminary injunction ordering private showering facilities and prohibiting strip searches by male correctional officers. On June 14, 2018, the court denied Defendant's motion to dismiss, ruling that Plaintiff may very well prevail on her ADA and Equal Protection claims, and ordering the parties to confer about possible settlement. The case is still pending, but the DOC has granted Plaintiff Doe a number of the requested accommodations.

Pearson v. Hodgson

This class action case, which was filed in May of 2018, is an outgrowth of the Petition we filed with the Massachusetts Department of Telecommunications and Cable challenging exorbitant prison phone rates. The complaint alleges that the kickback received by Bristol County Sheriff Hodgson from the prison phone company, Securus, is illegal under state law. The kickback effectively doubles the cost of phone calls for prison families and other consumers. PLS is co-counseling with the National Consumer Law Center, the Harvard's Legal Services Center and Bailey Glaser, LLP. If successful, this case will not only

impact prisoners held at the Bristol county jail, but at all county facilities in Massachusetts that contract with Securus Technologies, and perhaps the DOC as well. In addition, it will significantly lower prison phone rates and return millions of dollars to the families and friends of prisoners who have paid these exorbitant phone rates over the last four years.

Cantell, et al. v. Commissioner of Correction, et al.

This is a class action case filed on January 20, 2012, bringing due process claims on behalf of all prisoners who are or will be confined in long term non-disciplinary segregation in a SMU. It requests that all prisoners confined under conditions as restrictive as a DSU be given the procedures described in the DSU regulations. On October 21, 2016 the SJC overturned an appeals court ruling that had dismissed the case as moot and clarified that DOC continues to be obligated to follow the DSU regulations in all restrictive segregation units. On June 23, 2017, the Superior Court allowed our motions to amend the complaint as well as our motion for class certification. On January 23, 2018, the court denied Defendants' motion to dismiss our amended claims, and established an expedited discovery schedule.

Battle, et al. v. Sheriff, Bristol County

This is a class action challenge to solitary confinement practices at the Bristol County House of Correction and Jail. We are co-counsel with the Mental Health Legal Advisor's Committee. The complaint was filed January 9, 2018 on behalf of all Bristol prisoners who have a mental illness. Plaintiffs challenge the failure to exclude prisoners with mental illness from segregation; the failure to take mental illness into account in the disciplinary process; and the failure to provide adequate mental health care, particularly to prisoners in segregation. As a result of these failures, the suicide rate in Bristol County is alarmingly high, twice that of other Massachusetts county correctional facilities and three times the suicide rate for jails nationally. We have filed a motion for class certification supported by detailed affidavits from prisoners and a declaration from our expert psychiatrist. Defendants' filed a motion to dismiss the case, which was denied.

Nathanson v. Commissioner of Correction (now called ***Carey v. Commissioner***)

This case challenged the new Department of Correction policy of subjecting prison visitors to a search by a drug detecting dog as part of the initial screening search. If the dog alerts to the possibility of drugs, the visitor must agree to submit to a further search, including a pat search or strip search. PLS has challenged this policy on grounds that it violates existing Department regulations, and was promulgated without a public hearing as required by the Administrative Procedures Act. There are six plaintiffs, including attorneys and family members of

prisoners. PLS is co-counseling with private attorney, Leonard Singer, and the ACLU. On February 28, 2019, the court issued a preliminary injunction barring DOC from using dogs to search lawyers, but denied our motion asking for a similar bar against searches of regular visitors. On April 19, 2018, the SJC ruled that DOC had violated the Administrative Procedures Act by implementing the dog policy without holding a public hearing to give affected individuals the right to comment. The court stayed its ruling for 180 days to give DOC time to hold a public hearing should it decide it wants to continue dog searches. The DOC held the public hearing on September 13, 2018.

IF YOU HAVE BEEN BITTEN BY A K-9 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.

BIG CHANGES AT PLS

**THE INDOMITABLE LESLIE WALKER
RETIRES, LIZZ MATOS TAKES THE HELM**

After 17 years of strong leadership defending the rights of Massachusetts prisoners, Leslie Walker, PLS Executive Director, has retired. During her tenure, Leslie built PLS into a force to be reckoned with, as we fought alongside our community partners, allies, and clients for the human and civil rights of Massachusetts prisoners. Under Leslie's leadership, PLS helped ensure that terminally ill and incapacitated prisoners would have the opportunity for medical parole, that pregnant prisoners would no longer be shackled during their labor and delivery, and that prisoners with Hepatitis C have access to proper treatment. She fought to reduce the use of solitary confinement and increase protections for people in

solitary. Leslie was a dauntless advocate for more humane policies, better protections, and legal progress.

Looking ahead, PLS will continue to fight for prisoners' rights. We will continue our legal advocacy for humane conditions of confinement and appropriate medical care for our clients and we will continue to fight against excessive use of force and abusive policies and practices. Lizz Matos is the new Executive Director, and she has spent her entire career working to protect the rights of vulnerable people. She worked as an immigration advocate and a legal aid attorney practicing housing, education, disability, and

PLS HAS MOVED!

New Address:

50 Federal St., 4th Floor, Boston MA 02110

immigration law before spending the last seven years as a staff attorney for PLS. Lizz is firmly committed to PLS' mission and is a strong and tireless advocate for our clients.

PETER COSTANZA RETIRES FROM PLS WITH A STRONG LEGACY

After more than three decades serving prisoners at PLS, Peter Constanza took a well-deserved retirement. As a PLS attorney, Peter doggedly and successfully litigated many cases, including overcrowding and conditions of confinement cases against the DOC and several counties. He also served as Acting Director at the turn of the millennium, guiding PLS with a steady hand. Readers of PLS Notes have Peter to thank for his many years editing our newsletter.

Peter's compassion and dedication to his clients was legendary, as well as his warmth and dry humor. We will miss him and we wish him well.

PLS WELCOMES NEW STAFF

We have brought in some amazing new staff people to replace our departing staffers.

Alex Sugerman-Brozan joined PLS as a staff attorney in May. Back in 2001, he interned as a law student at PLS, and is excited to return 17 years later. During that time, he spent several years representing low-income health care consumers, five years working on class-action lawsuits against pharmaceutical companies for deceptive marketing and price gouging, and eight years fighting to protect the rights of employees and unions at a union-side labor and employment law firm.

Christine Sunnerberg graduated from Northeastern University School of Law in 2017. She first became involved with PLS during law school,

completing her first internship in 2015. She has joined PLS this year as a part-time staff attorney working on brutality litigation. When she is not working at PLS, she owns and runs a criminal defense and prisoners' advocacy law firm based in the South Shore.

David Milton has been a civil rights lawyer for almost 15 years. From 2007 to 2018, David was an associate, then partner at the Law Offices of Howard Friedman, a small, private law firm in Boston focusing on police misconduct, prisoners' rights, and First Amendment litigation. David represented plaintiffs in individual and class action lawsuits on behalf of victims of false arrest, excessive force, and wrongful conviction, and on behalf of prisoners and detainees challenging inhumane conditions of confinement, illegal strip-searches, denial of medical care, and wrongful death.

Peter Berkowitz has been a practicing lawyer for about 40 years. He has practiced in New York, Puerto Rico, and Massachusetts. During much of Peter's career he had a small law firm in Puerto Rico specializing in criminal defense and civil rights law suits against abusive police officers. He was also one of the founders and a staff attorney at the Puerto Rico Institute for Civil Rights in San Juan, PR. For a while Peter taught a federal litigation course at the University of Puerto Rico. After moving to Massachusetts in 2001 he worked at PLS for a few years before returning to work in Puerto Rico. Peter is excited to be back at PLS part-time with its wonderful staff of legal workers and lawyers.

Martha Peña joined PLS as a brutality paralegal this November, 2018. Martha graduated from Northeastern University in May 2018 with a Bachelor's of Science in Criminal Justice and Political Science.

PLS INTAKE INFORMATION

For assistance with new issues, please call during our regular intake hours, Monday afternoons from 1pm-4pm. State prisoner free speed dial line: 9004 (please note that the * and # are no longer used), County Prisoner collect call line: 617-482-4124. To report a guard on prisoner assault, please call any weekday from 9am-11am or 1pm-4pm. If you cannot reach PLS by phone, please write to "Intake", 50 Federal St., 4th Floor, Boston MA 02110.

While at Northeastern, Martha worked as an investigator for the Bronx Defenders and as a house manager for a domestic violence shelter called Transition House. Martha is excited and thankful to be working for PLS.

LaToya Whiteside joins PLS as a Staff Attorney. She is a graduate of Spelman College and Rutgers School of Law - Newark. After law school, she served as a federal law clerk in E.D.P.A. and later went on to work in employment and labor law, immigration and family law. Prior to attending law school, she worked in the mental health field as a substance use counselor in Asheville, North Carolina, her hometown. In her spare time, she enjoys being a mother, traveling and all things related to good food.

ⁱPlease note we use the terms solitary confinement and restrictive housing interchangeably throughout this article.

ⁱⁱ Quotes taken from MassLive, “Restrictive state prison visitation policies spur outrage, lawsuits”, (September 17, 2018), available at:

https://www.masslive.com/politics/index.ssf/2018/09/restrictive_state_prison_visit.html

**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.**

PLS NOTES ESTÁ DISPONIBLE EN ESPAÑOL. PÍDALO SI QUIERES. 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
50 Federal St., 4th Floor
Boston MA 02110