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March 23, 2020

VIA EMAIL

Charles D. Baker, Governor
Massachusetts State House
24 Beacon Street, Room 280
Boston, MA 02133

Thomas A. Turco, Secretary
Executive Office of Public Safety and Security
1 Ashburton Place, Suite 2133
Boston, MA 02108

Commissioner Carol Mici
Dept. of Correction Central Headquarters
50 Maple Avenue
Milford, MA 01364

Peter Koutoujian, Sheriff and Mass. Sheriffs'
Association President
Middlesex Sheriff's Office
400 Mystic Avenue, 4th Floor
Medford, MA 02155

Gloriann Moroney, Esq., Chair
Mass. Parole Board Central Office
12 Mercer Road, Natick, MA 01760

Re: Maintaining Prisoner Safety During COVID-19 Pandemic

Dear Governor Baker, Secretary Turco, Commissioner Mici, and Sheriff Koutoujian:

As the Commonwealth braces for the full impact of COVID-19, we know that each of you share our concern for the effect on all Massachusetts residents. We write today concerning a population of residents at particular risk of infection – individuals with disabilities and serious medical conditions in our correctional facilities.

It is well understood that contagions like COVID-19 introduced into a jail, house of correction, or prison can quickly infect a large proportion of both prisoners and staff. This does not just pose a threat within prison walls, but also to the community at large when staff return home to their families and friends.

The Protection and Advocacy System for Massachusetts



Moreover, a significant number of prisoners in Massachusetts correctional facilities fall within the high-risk groups more likely to develop serious illness or die if infected with COVID-19. Our jails and prisons hold individuals who have an array of disabilities and serious medical conditions, including cardiovascular diseases, diabetes, hepatitis, chronic obstructive pulmonary disease, chronic kidney diseases, and cancer. Some of these individuals are housed in specific facilities or specialized units based on their need for mental health and medical treatment and/or for assistance and accommodations related thereto.¹ There are also many elderly prisoners. Indeed, as of January 1, 2018, there were well over 900 individuals over 60 years of age under the jurisdiction of DOC alone.² Not surprisingly, these groups overlap quite a lot.

The Disability Law Center (DLC) has a federal mandate as the Commonwealth's Protection and Advocacy Agency³ (P&A) to protect and advocate for individuals with disabilities, including those who are criminally and civilly detained in correctional facilities. In keeping with this mandate, we write to request that you take the following steps to ensure the health and safety of prisoners with disabilities and serious medical conditions in your care and custody during this public health crisis:

- (1) Immediately identify every individual in the custody of DOC and county correctional facilities who have disabilities and/or medical conditions that place them at high risk for serious illness if they are infected by COVID-19;
- (2) Approve, on an expedited basis, release of individuals identified per paragraph (1) who are eligible for release on some form of supervised release (e.g., parole, medical parole, temporary furlough, home confinement,) or through executive clemency mechanisms (commutation or pardon);
- (3) Approve, on an expedited basis, release of individuals identified per paragraph (1) who are within six (6) months of completing their sentence and do not pose an immediate threat of physical harm to the community;
- (4) Approve, on an expedited basis, release of individuals identified per paragraph (1) who are currently awaiting parole revocation or have been revoked on the basis of technical violations and return them to community parole supervision;
- (5) For individuals identified per paragraph (1) who are not released, implement protocols to minimize their risk of exposure to COVID-19, including through provision of hygiene supplies and available personal protective equipment, and increased cleaning and sterilization in the Health Services Units, the SNF, ADLs,

¹ Such units include the Assisted Daily Living (ADL) Units at MCI-Norfolk and MCI-Shirley; the Skilled Nursing Facility (SNF) at MCI-Shirley; the Bridgewater Units at Old Colony Correctional Center (OCCC), Residential Treatment Units (RTUs), Secure Treatment Programs (STPs), and the Behavior Management Unit (BMU).

² Massachusetts Department of Correction, *Prison Population Trends 2017*, at https://www.mass.gov/files/documents/2018/09/28/PrisonPopTrends_2017_Final.pdf.

³ This mandate was first codified through the passage of the Protection & Advocacy for People with Developmental Disabilities (PADD) Act, 42 U.S.C. § 15043(a). Congress extended the protections of the PADD Act, incorporating them by reference into legislation protecting persons with other forms of disabilities. This includes the: Protection & Advocacy for Mentally Ill Individuals (PAMII), 42 U.S.C. § 10805, Protection & Advocacy for Individual Rights (PAIR) Act, 29 U.S.C. § 794e(f), and the Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) Act, 42 U.S.C. § 300d-53(k).

RTUs, STPs, the BMU, Bridgewater State Hospital, and the Bridgewater Units at OCCC;

- (6) Ensure that individuals identified per paragraph (1) are not held in prolonged isolation on the basis of their disabilities and/or medical conditions – absent a COVID-19 diagnosis – and are provided daily access to outdoor recreation time, contact with their families, friends, and attorneys through telecommunications;
- (7) In consideration of measures to limit or prohibit visitation, ensure that all individuals with disabilities and/or serious medical conditions in Massachusetts correctional facilities receive daily access to free telecommunications, including standard telephones, amplified telephones, captioned telephones (CapTel), and videophones;
- (8) Ensure that all individuals diagnosed with mental illness and any other individuals experiencing mental health crisis have the ability to receive confidential meetings with mental health clinicians, as opposed to only contacts with mental health clinicians at cell doors; and
- (9) Ensure that access to regular medical services for all individuals with disabilities and/or chronic medical conditions are not interrupted or truncated.

DLC calls upon the Commonwealth to treat the above as continuing obligations during the pendency of any Massachusetts State of Emergency and National State of Emergency related to COVID-19. In addition, in order to have maximum effect in lowering the threat to vulnerable prisoners as well as to the prisoner population as a whole and correctional staff, these actions should be undertaken swiftly before COVID-19 is introduced into Massachusetts correctional facilities; DLC understands that, currently, diagnosed cases of COVID-19 are limited to the Massachusetts Treatment Center (three prisoners, one staff person). To be clear, the above requests are intended to supplement and inform the measures state agencies must take to protect *ALL* prisoners from infection, such as those suggested by Prisoners Legal Services, Mental Health Legal Advisors Committee, and the American Civil Liberties Union of Massachusetts.

Further, DLC requests in its P&A role that the DOC, Parole Board, and Sheriffs' Association, to the extent it has developed guidance for Sheriff's Departments, please provide any written policies and protocols adopted related to this crisis, including those concerning:

- (1) Prevention and mitigation of both COVID-19 introduction into correctional facilities and spread to prisoners and staff;
- (2) Screening and testing for individuals presenting symptoms that may be indicative of COVID-19 infection and for individuals exposed to other who have presented symptoms or tested positive;
- (3) Quarantine of individuals who have tested positive or present symptoms that may be indicative of COVID-19 infection;
- (4) Increased cleaning and sterilization of living quarters, communal bathrooms, communal eating areas, areas for the provision of medical and mental health services, medical equipment, phones, assistive technology, etc.

- (5) Access to information for prisoners and staff concerning COVID-19 and recommended safety precautions to prevent infection;
- (6) Provision of personal protective equipment, soap, disinfectant, cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, and extra uniforms;
- (7) Access to mental health and medical services unrelated to COVID-19; and
- (8) Access to recreation, telecommunications, and other programming.

Thank you very much for taking the time review and consider these requests during this unprecedented crisis. Please contact DLC will any questions concerning these requests. We look forward to learning more about your current efforts and plans to protect this vulnerable population.

Sincerely,



Marlene Sallo
Executive Director