



PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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March 27, 2020

Francis V. Kenneally
Clerk of the Supreme Judicial Court
John Adams Courthouse
1 Pemberton Square, Suite 1400, Boston, MA 02108

Re: SJC-12926 -Response of Prisoners Legal Services to the April 2, 2020 Letters of the Department of Correction and the Fourteen Sheriffs

Dear Clerk Kenneally:

Prisoners' Legal Services of Massachusetts (PLS) submits this letter in response to the Court's Order of April 1, 2020 requiring the Department of Correction and the Sheriffs to report on the distance between prisoners in sleeping arrangements, dining and recreation. Based on our years of experience monitoring prisons, and visiting and speaking with prisoners, it is clear to PLS that social distancing is impossible in the vast majority of DOC and county facilities. As the DOC acknowledges in its April 2 letter, the great majority of prisoners sleep, eat, recreate, and engage in other activities within six feet of other prisoners.

Even where space permits, enforcing six feet of distance in living, dining, recreation and other common spaces is simply not possible. As the spokesperson for Bristol County House of Correction acknowledged earlier this week, "Six feet apart is practically impossible in any correctional setting, in any jail, in any prison, in any state, in any county,

anywhere.”¹ Furthermore, regardless of physical distance, all prisons have ventilation systems that circulate shared air throughout the facility, so that prisoners are effectively breathing in the same air all the time. And adequate sanitation is impossible in shared spaces with constant traffic.

1. Housing arrangements

Dormitory style housing

Most prisons rely on dormitory-style housing in which prisoners share common space for sleeping, eating and recreation and use common toilets, sinks and showers. DOC has acknowledged that 22.5 percent of its prisoners are housed in dormitories of between 3 to 114 people, and Bristol County houses 64 percent of its population in dorms. It is almost impossible to control personal space or maintain constant sanitation in a dormitory setting. Further, many dorms are overcrowded and failing to meet Department of Public Health standards governing floor space in the sleeping areas.²

- At NCCI Gardner, a prisoner reported he is in a dorm with a 16 person capacity. There are four such dorms that share one bathroom with six stalls, eight sinks, and three urinals. There is one shower for all the men. Another prisoner reported that he is in an open dorm with 30 men. A family member reported that their loved one lives in a 20’ x 30’ room with 15 other prisoners who sleep on two- tiered bunks. There are eight sets of bunks in the room set about four feet apart. A prisoner in H building reported that he lives in dorm style housing with 42 people on the second floor and 36 people on the first floor. Each

¹ <https://theappeal.org/lawsuit-ice-massachusetts-coronavirus/>

² See, e.g. September 24, 2019 letter from DPH re NCCI Gardner. <https://www.mass.gov/doc/north-central-correctional-institute-in-gardner-september-24-2019/download> (accessed April 2, 2020).

set of bunk beds is approximately two floor tiles apart and “at any given time I am coughed on by five different people if I am on my bed.”

- An attorney observed recently at Essex County that there was a unit of women sent there from drug court, held in a room full of cots spaced approximately 18 inches apart.
- At Old Colony Correctional Center a prisoner in the RTU reported that there are approximately 84 prisoners in his unit, and approximately 50 of those are in double cells. On April 1 a memo was distributed saying prisoners are required to sleep opposite each other so that the person on the bottom bunk would have his head below the person on the top bunk’s feet. One prisoner reported that in order to comply with this memo he would have to put his face within 3 feet of the toilet, he is in a unit with 110 prisoners, 100 of whom are double bunked. The unit shares 8 telephones, within 6 inches of each other, and shares 9 showers.
- A prisoner at MCI Norfolk reported that many cells are shared by between 2-6 prisoners, and can be as small as 8x6 feet. A prisoner in a single cell reported that he still has to use a communal toilet and showers.
- A prisoner at Hampshire County reported that they live in rooms of approximately 14-16 people, in bunk beds. The bunk beds are approximately 2 feet apart. Approximately 60 people share 7 sinks, 7 toilets, and 7 showers.
- A prisoner in at Plymouth County reported that his unit has cells that hold up to 5 persons each. The cells are approximately 10x12 feet.
- In Essex County the Voke Units 1-3 are all dorms and hold somewhere between 50-100 people.

- In Bristol County ICE detention there are two dorm style units which hold between 47-57 people each, currently.

Medical and assisted living units

Of greatest concern is the use of dormitory-style housing in medical units and assisted living units, which house many of the most vulnerable prisoners, including those at MCI Norfolk and MCI Shirley. For example, the Clinical Stabilization Unit (CSU) at MCI-Norfolk holds some sixteen prisoners, largely elderly, with medical conditions such as COPD and congestive heart failure, who live, sleep and eat in close proximity to each other. The CSU at MCI-Shirley raises similar concerns.

Double- and triple-celled housing

Most DOC cells were designed to hold only one person. For example, the most recent DPH inspection of MCI Shirley finds that almost every unit violates the DPH crowding regulations because the cells are double-bunked.³ Even where cells are designed for two or more prisoners, it is inevitable that some prisoners who are double- and triple-bunked will share a cell with a COVID carrier and be at extreme risk of infection. Indeed, we have already begun hearing such accounts. One prisoner at MCI-Shirley reported that his cell-mate who is bedridden and non-verbal was recently tested for COVID. The results are not back yet. The prisoner is also elderly and immunocompromised, but his cellmate is nevertheless is forced to feed and care for him since staff have not entered the cell for days. This morning, a prisoner at MCI Norfolk reported that all units are about to be locked down.

³ See December 4, 2019 inspection report finding “inadequate floor space in all cells, cells double-bunked.” <https://www.mass.gov/doc/mci-shirley-december-4-2019/download>

As many of the facilities reported in their letters to the court, prisoners in two-person cells are asked to lie at opposite ends of the bed (head to foot) to create six feet of distance. Given the close quarters and poor circulation, it is hard to imagine this offers any meaningful protection at all.

Restrictive Housing

Although the Court excluded from its Order prisoners in disciplinary isolation, it should be noted that prisoners held in restrictive housing units (RHUs), or equivalent treatment units such as the Secure Treatment Program (STP) at Souza Baranowski Correctional Center, face particular hazards. First, they are escorted by two Corrections Officers each time they leave their cell for showers, recreation, medical appointments, or programs, which means close contact with officers. An STP prisoner reported today that handcuffs are not sterilized between uses. Second, even in a RHU, there are many communal surfaces such as telephones, the kiosk used for canteen and email, and the shower (which is reportedly is cleaned only once a week in the STP, where prisoners with mental disturbances are known to smear feces and blood on themselves and their cell). Finally, prisoners are double-celled in some RHUs, and thus the risk of exposure to an infected cellmate is extreme.

DOC has already started locking down entire prisons, such as MCI Shirley, in response to positive or suspected COVID-19 cases, effectively converting the institution into restrictive housing. This is not a sustainable response to the inevitable spread of COVID-19. Indefinite lock-ins will take too great a toll on the mental health of vulnerable prisoners, and will also not be effective at controlling the virus since it requires officers and medical staff to go cell to cell all day long, bringing food and medicine, as well as monitoring the health of prisoners.

Quarantine for new arrivals

Hampden County, Plymouth County and likely other jurisdictions have established separate housing units for newly admitted prisoners, who are held together for a two- week quarantine period. This subjects all persons who are forced into these settings to potential infection, as if one person newly entering is an asymptomatic carrier of COVID-19, they will easily transmit it to others who are newly entering who may not yet have it

2. Medication dispensary lines and other wait lines in health units

Prisoners who need medication or medical care are often forced to be in close proximity to each other. Medical units are small and prisoners who are called to these units for appointments will frequently wait together in small rooms where they cannot maintain distance from one another. Many prisoners receive medication in “medication lines” where they will stand one right behind another while they wait to receive their prescribed medications. Some examples are below:

- At South Bay a prisoner reported that when he goes to the infirmary to get chronic care check-ups, he waits with 10-15 people in a small room with no separation.
- At Plymouth County Correctional Center a prisoner reported that if you are called to a medical appointment there is an 8x10 area where you will wait in close proximity with others. Prisoners in line to receive medication are also back to back, with no separation.
- At MCI Shirley prisoners have reported that medication lines are not spaced out at all, and prisoners are packed in, sometimes fifty at a time, back to front.
- At Old Colony Correctional Center there is no social distancing during medication lines, and nurses are not wearing gloves or masks while handing out medications or examining people.

- At NCCI Gardner a prisoner in C Dorm reported that there was only about a foot of space between prisoners during medication lines.
- At the Suffolk County House of Correction a prisoner reported that they are right next to each other during medication lines with no distancing.
- At Barnstable County House of Correction a prisoner reported that everyone is close to one another during medication lines, not even one foot apart.
- At Nashua St. Jail a prisoner reported that there will usually be approximately 8-10 people in line for medications, one right in front of another.

3. Chow halls

Prisoners almost universally eat in close proximity to each other. Even where there are staggered meal times to increase social distancing, many prisoners share the same tables and chairs, without proper decontamination between uses. Below are some recent reports:

- At NCCI Gardner, prisoners go to the chow hall to get their meals, and then have the choice whether to eat together there, or to return to their units, many of which are dormitory settings. A prisoner in C Dorm reported on April 2 that approximately 150 prisoners eat in the chow hall at any given time, and it is impossible to be more than one foot apart from each other. A prisoner in H Building reported that he eats with 78 other people, and it is impossible to maintain distance while in line or while eating.
- At MCI Shirley, as of March 27, a prisoner reported that chow was being run as usual, with approximately 300 people eating together. The tables were all full so everyone was touching each other, and the tables were not being wiped down between services.
- At Old Colony Correctional Center a prisoner on Unit A-2 reported that the facility had cut down on the number of people eating together, but still approximately 70-100 people

are in the chow hall at once. People are unable to maintain distance, especially while in line waiting for food. While eating, people are approximately two feet apart from one another.

- At Barnstable County, a prisoner in Unit A reported that the unit has a day room where all 20 prisoners housed there eat together.
- At the Massachusetts Alcohol and Substance Abuse Treatment Center (MASAC) a person civilly committed reported that 80 people eat together and they are not able to comply with social distancing.
- At MCI Concord, a report on April 2 stated that they are calling for people to come to chow block by block, but that still means that everyone lines up and sits down elbow to elbow and hip to hip. There are generally about 100 people eating together at a time.
- At the Suffolk County House of Correction, a prisoner reported that they all eat together in the same room on the unit, usually about 4-5 feet apart.
- At the Plymouth County Correctional Center, for the last week and a half or two weeks they have one tier out at a time, they all come to the same room, eat at the same tables, and sit at the same chairs. There are not enough tables to stay six feet apart while eating.
- At MCI Norfolk, there are approximately 14 tables in the chow hall, each with four seats about a foot apart side by side and three feet apart across the table.

4. Recreation

Prisoners continue to recreate together in common areas, in many cases without the ability to effectively socially distance and ensure decontamination of common spaces. Many of these recreation areas are very small, caged in enclosures where there is little room to spread out.

Some relevant reports from recent calls with our clients include:

- In Nashua St. Jail there are 40 prisoners in unit 2-1 and they all come out of their cells to recreate at the same time. People sit at tables together, with four people to a table. Phones are right next to one another, approximately 1.5' apart, and shared amongst the prisoners.
- In NCCI Gardner approximately 78 people recreate together in a shared space, often with only 2' between them. The prisoners share five phones, which are half an arms' length apart. In the gym, there are 50-60 prisoners sharing space and 40-50 prisoners use the weight room at one time.
- In Plymouth County Correctional Facility in the FS1 block there are currently approximately 25-27 people, who are let out in groups of approximately 10-15 to recreate in a space approximately the size of a basketball court. They all eat at the same tables and sit in the same chairs. On the morning of April 2, the chairs where people sit to watch television, which had been right next to each other, were spaced out haphazardly, but people are already pushing them back together.
- At Old Colony Correctional Center, in the Recovery Unit, approximately 25 prisoners recreate together in a shared space, generally no more than a foot or two apart from each other. In the Residential Treatment Unit for prisoners with mental illness, the men congregate throughout the day, often sitting at tables of four together. Recreation times are crowded (especially because no programs are currently offered) and the only way to maintain six feet distance would be if they locked everyone into their cells. People work out using the same weights, play games with one another, and share the same showers without appropriate decontamination. The telephones are shared and all in a row right next to one another.

- At Suffolk County House of Correction in the CWP unit, prisoners are tasked with cleaning areas all over the jail. They then come together to recreate in a room where they cannot maintain six feet of distance from each other. There are approximately 10 people in the unit.
- In Hampshire County, prisoners have reported that they spend their out-of-cell time in day rooms of about 30 people or in a crowded gym where they are unable to socially distance.
- At MCI Concord, prisoners recreate together in the yard, which is packed because there is no programming and prisoners need to exercise. They are playing basketball, handball, soccer, and sharing telephones which are not cleaned between uses. Four blocks are allowed to go to the yard at a time, which means potentially up to 300 people at once.
- In Hampshire County, prisoners spend out of cell time in day rooms or in the gym, sharing space with approximately 30 people and unable to remain six feet apart.
- In Barnstable County, Unit A has a day room shared by approximately 20 people at a time, unable to create appropriate distance from each other.

5. Other group activities.

Regardless of what prisons and jails are able to do to maintain social distancing, there is so much sharing of communal spaces and surfaces that transmission is unavoidable. Prisoners use the same chairs, the same tables, the same phones, and communal showers and restrooms, to name a few. In the general public we can clean as frequently as necessary to protect ourselves, but prisoners do not have the same control over sanitation. PLS has also received multiple

reports of inadequate laundering of clothing because of lack of hot water and understaffing.

Some examples of communal activities creating a risk of transmission are below:

- At Souza Baranowski Correctional Center, a kitchen worker reported that he is around 15 men while working approximately 12 hours a day. Everything there is communal, the phones and kiosks are pushed down the tier and they are not wiped down, and showers are all shared.
- At Old Colony Correctional Center, a prisoner reported on April 2 that they were still holding Alcoholics Anonymous groups, with fifteen to twenty people unable to maintain six feet distance. Prisoners have contact with other prisoners and staff when their vitals are checked, during group programming, during cell searches, when medicine is passed out, during clinical meetings, during movement, and when canteen is distributed.
- At Plymouth County Correctional Center four to six officers are distributing canteen to groups of two to three prisoners at a time.
- At Hampshire County Correctional Facility as of March 24 prisoners were still going to educational programs together or else they would face discipline.

6. Unsanitary Conditions

DOC's claim that it can keep the prisons clean to mitigate the spread of COVID-19 is undermined by Department of Public Health facility health and sanitation reports. Virtually every report describes literally hundreds of violations of DPH health and safety standards, with the same violations repeated from inspection to inspection. For example, the most recent report from the Massachusetts Treatment Center found 271 repeat violations, and observed that:

“Throughout the facility, bathrooms and shower areas were observed to be poorly maintained resulting in unsanitary conditions. *The CSP is concerned with the increased risk of disease*

transmission with the high number of inmates being exposed to such unsanitary conditions.”

(emphasis supplied) ⁴ Not surprisingly, COVID-19 is now spreading uncontrollably through the Treatment Center.

The following is a sample of recent complaints regarding sanitation during the COVID crisis:

- Prisoners from the MTC and NCCI- Gardner reported that as of March 25 there were memos posted about sanitation, but neither liquid soap nor hand sanitizer was available.
- On March 25, prisoners at the Worcester House of Correction reported they were given no extra soap or cleaning supplies.
- On March 27, a prisoner at MCI Shirley reported that all staff now have and are supposed to wear masks, but that in the Health Service Unit many DOC staff and medical staff were not wearing their masks while talking to prisoners, including the medical doctor, the health services administrator, nurses, and COs. He also reported that he was part of a "sanitation team" that he was spraying down and cleaning all over the prison, but they had not been called out in four days. Tables in the Chow Hall were not being wiped down between services.
- On March 30, a civilly committed person at the Massachusetts Alcohol and Treatment Center reported there were no soap dispensers in bathrooms and that the detainees were not allowed to use bathrooms in the chow hall to clean their hands.
- On March 31, a prisoner at SBCC reported that officers make breakfast in the morning with no gloves or masks and cough all over the food, possibly contaminating everything.

⁴ See <https://www.mass.gov/doc/massachusetts-treatment-center-bridgewater-february-27-2019/download>.

He also reported that he is not allowed to take a shower for hours after working all day in the kitchen.

The Importance of More Detailed Data and Information

There is no further time for information gathering before the Court takes action. However, requiring only system-wide percentages of prisoners sleeping, eating, and recreating within six feet of each other makes it very difficult to ascertain whether there are specific facilities or units within facilities where the lack of distancing is particularly problematic. For example, although only a small percentage of prisoners live in medical settings, such as the CSU at MCI Norfolk, they are the most vulnerable and housing them together in dorms is particularly dangerous. PLS submits that going forward the Court should order DOC and the Sheriffs to include the following information in the bi-weekly population updates called for by the Special Master.

1. For each facility following information regarding the configuration of each housing unit:
 - design capacity⁵
 - current census
 - how is the unit configured (dormitory; number of single-, double- or triple- cells)
 - number of functioning toilets, sinks and showers and ratio of each to prisoners in the unit.

⁵ DOC is obligated by statute to compare the “design capacity” to the actual population in its overcrowding reports. G.L. c. 799, § 21. Design capacity refers to the number of prisoners the facility was designed to hold, whereas “operational capacity,” reflects merely DOC’s judgment about how many prisoners it can manage in the facility. The main difference, as a practical matter is that the Operational Capacity reflects DOC decision to double- bunk cells that were designed for one person, and house more people in a dorm than it was built to hold.

- Square footage of common space and any rules regarding use of common space.
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2. For each facility, the following information regarding use of personal protective equipment (PPE) such as masks and gloves, to staff, prisoners, and others entering the facility:
- What proportion of each of these groups is issued PPE?
 - What equipment is issued?
 - How frequently is it issued?
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3. For each facility the following information regarding medical units and medical practices
- Identify units used and number of beds available for quarantine of suspected cases and configuration (e.g. single cell, double cell, dormitory);.
 - Identify units used and number of beds available for isolation of confirmed cases and configuration;
 - Number of COVID tests administered and the number of positive tests;
 - Number of COVID tests available currently and expected in the future.
 - What proportion of staff in medical, quarantine, and isolation units have personal protective equipment (PPE), including masks, gloves and gowns; how frequently is it issued; how frequently do they change it each day.

Thank you for your attention to these urgent concerns.

April 2, 2020

Respectfully submitted,

PRISONERS' LEGAL SERVICES OF
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/s/

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