



January 5, 2021

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

Thomas Turco III
Secretary of Executive Office of Public
Safety and Security
One Ashburton Place – Suite 2133
Boston, MA 02108

Ronald Mariano
Speaker of the House of Representatives
Massachusetts State House
24 Beacon St. - Room 356
Boston, MA, 02133

Karen Spilka
President of the Massachusetts Senate
Massachusetts State House
24 Beacon St. - Room 332
Boston, MA, 02133

Re: The Urgent Need for Parole Reform in Massachusetts

Dear Governor Baker, Secretary Turco, Speaker Mariano and President Spilka:

We are a coalition of agencies, associations, and individuals in Massachusetts who advocate for fairness in criminal and juvenile legal proceedings, corrections and parole, or who work directly with families and communities dealing with disabilities and poverty. With this letter, we are alerting you to pressing and serious concerns about parole in Massachusetts -- concerns which, in light of the COVID-19 pandemic that is devastating Massachusetts prisons and jails -- are now emergencies that must be addressed through immediate action. While the introduction of vaccines may, at some point in the future, alleviate some of the problems tied to COVID, the below listed problems with parole are long-standing and will continue to impact prisoners and their families long after the vaccines are administered. There is a pressing need to address these problems now.

On January 17, 2017, we sent the Governor, the Chief Justice, the Speaker and the Senate President a letter signed by seventy (70) community groups that included a particular emphasis on needed parole reform. The undersigned 73 organizations remain concerned because not only was parole largely omitted from the Criminal Justice Reform Act (St.2018, c.69), but **no meaningful parole reform has occurred during the past six years.**¹

¹ We had recommended both Legislative and Executive policy changes concerning parole that would improve public safety, lower prison populations, reduce recidivism, improve outcomes for those in the criminal legal system and save taxpayer money.

PAROLE IN MASSACHUSETTS: THE FACTS

- More than 21% of incarcerated people in Massachusetts are testing positive for COVID-19 and the numbers are on the rise (despite infrequent testing especially in the houses of correction (HOC)).
- In April 2020, the Supreme Judicial Court urged the Parole Board to expedite parole hearings and releases on parole in order to decarcerate as many people as possible. *CPCS v. Chief Justice of the Trial Court*.
- In June, the Supreme Judicial Court reiterated the need to reduce the population stating that the situation inside the Commonwealth's prisons "is urgent and unprecedented, and . . . a reduction in the number of people who are held in custody is necessary." *Foster v. Commissioner of Correction* (SJC – June 2020).
- In the face of this crisis, the Parole Board's paroling rate has remained low – no higher than it was in 2019.
- Our prisons are filled with many parole eligible people whose release is consistent with public safety and, in the case of the houses of correction, whose sentences will be ending, and they will be going home, if still alive, within the next few months.
- Public health experts say it is imperative for the health of prisoners, the health of the thousands of corrections workers, and the health of the community to significantly reduce the prison population.
- The failure to confront the public health emergency in the Commonwealth's prisons and jails is exacerbating racial inequities. Massachusetts has one of the worst rates of racial and ethnic disparity in its criminal legal and corrections systems in the country. Not actively addressing this problem is tantamount to announcing that in Massachusetts, *Black and Brown lives do not matter*.

We are asking the Executive and Legislative branches to address the problems set out below. The Parole Board has proven that it will not act on its own. Below we propose immediate steps that can be taken to save lives, establish much-needed Parole Board transparency and address racial equity problems with parole.

I. THE PAROLE RELEASE RATE REMAINS LOW, DESPITE THE SJC'S URGENT DIRECTION TO EXPEDITE PAROLE.

We all agree that parole is an important public safety tool that, when properly administered, can greatly reduce the prison population, ease re-entry problems, improve public safety, and result in huge cost-savings for the criminal legal system. But in Massachusetts, we have:

- **Low Parole Release Rates** - Significantly, there has been no increase in the percentage of parole eligible people leaving prison on parole since the start of this pandemic.² In fact, over the past months, the parole release rate appears to have dropped below 2019 rates. Indeed, parole has been dramatically underutilized in Massachusetts since the Council on State Government (CSG) first documented the problem in 2015.³

- **Technical Violations Leading to Incarceration** - Not only is the Parole Board failing to approve strong candidates for parole, but it also continues to incarcerate people who are accused of technical violations of their parole. (The Massachusetts Probation Service, considered among the most modern and effective in the country, has dramatically cut the number of probation surrenders based on technical violations.) Between March and June of 2020, 98 people on parole were returned to prison for allegations of a technical violation. They were incarcerated to await their parole violation hearings, often losing jobs, apartments and school programs while waiting for a hearing. And, 61% of them had their parole revoked and were returned to prison for breaking a parole rule, not for violating any law. From April through October of 2020, 21 petitions to withdraw a parole warrant have been filed asking the Board to permit the person to wait at home for their violation hearing. Only 3 of those have been granted. People on parole should not be returned to prison for technical parole violations, and most certainly not during a pandemic.

ACTIONS NEEDED: **1)** The Governor and the Secretary of the Executive Office of Public Safety and Security (EOPSS) need to direct the Parole Board to work more expeditiously to increase the number of people released on parole and to decrease the number of people incarcerated for technical parole violations. **2)** Incarcerated people need to be paroled on their parole eligibility dates unless the Parole Board can demonstrate actual facts that they will pose a

² In April 2020, at the oral argument in *CPCS v. Chief Justice of the Trial Court*, it became clear that there were over 300 people in custody in Department of Correction (DOC) and HOC facilities who had been granted parole during the previous ten months who were still sitting in prison because the Parole Board had not done its job and established a home plan for them. Even though it was not their job, the Committee for Public Counsel Services (CPCS) immediately appointed counsel to these over 300 clients. As a result of CPCS's efforts, the numbers of people leaving prison on parole shot up during May and June of 2020 because these previously paroled people were finally released.

³ CSG reported that during FY2015 only 19% of the parole eligible prisoners in our houses of correction were released on parole. In FY2015, the Parole Board reported that 46.4% of the parole eligible prisoners serving DOC sentences received positive votes for parole, but 18% of those people "max out and are not released to parole supervision, making our DOC parole rate approximately 38%. These dismal parole rates document missed opportunities to promote public safety and better life outcomes for incarcerated people and those on parole.

danger to public safety if released. (This is “presumptive parole,” a practice recommended by CSG and adopted by many states) **3)** Field parole officers need to be providing support to those on parole, not simply jailing them on technical violations. (When parole is implemented effectively, field parole officers consistently assist with finding housing, locating work opportunities, securing necessary counseling, and otherwise supporting the person. This is how effective parole agencies work in other states and an approach that is presently being modeled by the Massachusetts Probation Department.) **4)** The Parole Board needs to adopt best practices and stop returning people to prison for technical parole violations. **5)** The Legislature needs to adopt presumptive parole legislation.

II. THE PAROLE BOARD IS FAR BEHIND IN ITS WORK: LIFER HEARINGS ARE DELAYED; RECORDS OF DECISION ARE ISSUED LATE AND ARE POORLY WRITTEN; AND COMMUTATION PETITIONS, PARDON PETITIONS AND PETITIONS TO TERMINATE PAROLE GO UNADDRESSED FOR YEARS.

- **Waiting Seven or More Months for a Lifer Parole Decision** - People serving parole eligible life sentences are presently waiting an average of six to seven months to receive the Record of Decision from a life sentence parole release hearing. Some people wait much longer. Our statutory scheme calls for lifer release hearings to be conducted sixty days in advance of the lifer’s eligibility date. The statute anticipates that the decisions would be completed within sixty days and so that they would be issued prior to a person’s eligibility date. Lifers who wait months for positive votes would be better served in the community rather than sitting in COVID infected prisons, and those who wait for negative votes without direction, programs or educational services, have wasted months where they could be working towards a positive parole decision. There is no justification for these long delays.⁴ To many, it is a demonstration of the Parole Board’s lack of respect for those appearing before them.

- **Poorly written lifer decisions** - The “Decision” sections of most of the Records of Decision issued in lifer cases in 2018, 2019 and 2020 are largely word-for-word identical save for the name of the lifer and the length of the setback. They offer little or no guidance as to what a denied lifer should address before their next parole hearing. According to statistics kept by the Lifers’ Group Inc., in 2018, the reason for denial in 83.3% of the decisions was “release incompatible with the welfare of society.” In 46% of the decisions, the reason for denial was “[the incarcerated person] needs longer period of adjustment.”⁵ Those “reasons” are conclusory and provide no guidance to the potential parole applicant. The written decision should instead include detailed reasons for the denial and the specific areas or programs the incarcerated person needs to address to become ready for parole.

- **Commutation Petitions, Pardon Petitions and Termination of Parole Supervision Petitions Go Unaddressed for Years** – During the past five years, the Parole Board has been

⁴ During the first eight months of 2015, when Dr. Charlene Bonner was chairperson of the Board, the wait time for a lifer decision was approximately 60 days.

⁵ Parole Decisions for Lifers 2018, prepared by Lifers’ Group, Inc. (Haas, G.) The Coalition for Effective Public Safety (CEPS) data is in accord with these statistics.

letting these petitions pile up in its office, unaddressed. On October 27, 2020, the Board conducted its first commutation hearing in over six years. It was the first lifer commutation hearing in over ten years. That petition, however, had been filed in 2014 and had gone unaddressed for more than six years. A decision has not yet been issued in that case. Public records requests reveal that hundreds of petitions for pardons, for commutations and for termination of parole supervision have been pending for years.

● **Lifers Who Need to Postpone their Hearing Date Wait a Year for a New Hearing Date** – Lifers who need to ask for a continuance of their hearing date (which is often because they need to have a mental health examination completed before their hearing) are put on a list called “Place on Next Available List” (PONAL). Once placed on PONAL, the wait for a hearing date is often over a year. Prior to 2016, this was never a problem. Short continuances were always easily obtained.

ACTIONS NEEDED: 1) Because the Parole Board has only issued eighteen lifer decisions since August 10, 2020, there are over sixty people who will wait more than sixty days for their lifer decision. There are over thirty-five people on the PONAL, who will wait more than sixty days for a hearing. There must be an action plan to address this backlog of cases in order to get caught up. 2) If the Parole Board’s response to not getting its work done in a timely way is that there are not enough Board members, the Legislature has provided a safety valve for this situation. MGL c. 27 § 7 allows the Secretary of EOPSS to name up to three retired judges or retired Board members to the Parole Board, temporarily, when “a significant number of cases is pending and has been pending for a least thirty days and . . . the active members of the parole board could not dispose of these cases within sixty days.” 3) There is bill pending in the Legislature to expand the number of people on the Parole Board to nine. This bill, No. H4607 in the House Ways and Means Committee, should be passed and enacted now.

III. THERE IS A LACK OF TRANSPARENCY AT THE PAROLE BOARD

In significant ways, the Parole Board is operating out of the public’s view:

● The vast majority of the Parole Board’s hearings are for people serving non-life sentences. Although the Records of Decision in these cases are supposed to be public, M.G.L. c. 127 § 130 (“[s]aid record of decision shall become a public record and shall be available to the public”), the Board does not post the decisions. The Board also refuses to make recordings of these non-lifer cases and, by its own regulations, it prohibits counsel from appearing at these release hearings.⁶ Thus, most of the Parole Board’s hearings (all of the HOC hearings and the vast majority of the DOC hearings) are done in private and no recording is made of the proceedings. The non-lifer parole applicant’s right to appeal an adverse decision is meaningless with no recording of the proceeding and no representation.

● Since June 2020, the Parole Board has been conducting lifer hearings remotely, using a program called WebEx, which operates like Zoom. Even though lifer parole hearings are public hearings, MGL c. 127 § 130, the Board refuses to permit the public to watch these hearings live

⁶ 120 CMR 300.08 provides: “The Parole Board does not permit representation by counsel at initial release hearings or at any review hearing, except for those inmates serving a life sentence with attendant parole eligibility.”

on WebEx. The public is told they can listen to the hearing live via a telephone connection or order a DVD of the hearing via a public records request after-the-fact. There is no reason that the Parole Board, like virtually every other public agency and court, cannot make their public proceedings available live by video. Telephonic access to these hearings would be inadequate under the best of circumstances. Currently, the connection drops frequently and, even more frequently, the calls are inaudible.

- The Parole Board issued its Annual Report for 2019 in October 2020. The report did not include lifer statistics for 2018 or 2019 because, according to the report, “Not all of the life sentence hearings held in 2018 and 2019... had received a record of decision. Statistics on paroling rates for those who had a life sentence hearing in 2018 and 2019 will be published as an addendum at a later date.” This means that some prisoners will have waited two years or more to receive a decision.

ACTIONS NEEDED – 1) Hearings for those not serving life sentences should be recorded. 2) All persons seeking parole should be permitted to have legal representation at their parole release hearings. This could be accomplished by the Parole Board simply amending its own regulations. 3) Hearings for people serving second degree life sentences should be truly public hearings where the public is able to watch the video and listen to the proceeding remotely. 4) The Parole Board should issue its Annual Reports, complete with accurate up-to-date lifer statistics, during the first quarter of the following calendar year.

IV. THERE IS A CRITICAL AND LONG-STANDING NEED TO DIVERSIFY THE BOARD MEMBERSHIP TO INCLUDE MORE MEMBERS WITH HUMAN SERVICE BACKGROUNDS.

As the percentage of people suffering from substance use disorders and mental health disabilities continues to grow in our county houses of correction and state prisons, having Parole Board members who have a thorough understanding of how these disabilities intersect with readiness for parole is an absolute necessity. According to the DOC, approximately 80% of the people incarcerated in Massachusetts state prisons self-report as having substance use issues. Sheriffs estimate that a similar figure is true for the house of correction population. At the end of 2017, the DOC reported that 33% of its population had an “open” mental health case. The County Sheriffs estimate that over 50% of their populations have mental health disabilities.

At present, there is only one Parole Board member, a forensic psychologist, who has education, training and experience in the diagnosis and treatment of people with mental health disabilities and substance use disorders. The other six members have backgrounds in corrections, parole, law, and law enforcement.⁷ With only one member with expertise in complex mental health

⁷ Our state Legislature has long envisioned a Parole Board with a diversified membership. M.G.L. c. 27 § 4 requires that people appointed to the Board have an undergraduate degree and at least five years of experience and training in *one or more* of the following fields: “parole, probation, corrections, law, law enforcement, *psychology, psychiatry, sociology [or] social work*” (emphasis added). Currently, the Board has two members from law enforcement (Moroney, McCarthy), one from law (Coleman) and three from parole and corrections (Dupre, Hurley and Santa). There is no one from psychiatry, sociology, or social work. Only Dr. Bonner, a clinical and forensic psychologist, is from the human services side of the statute. A bill pending in the House Ways and Means Committee, No. H4607, requires that there be three members with backgrounds in Human Services on the Board.

work, many parole cases are mishandled.⁸ See e.g., *Crowell vs. Mass. Parole Board*, 177 Mass. 106 (2017) and *Dacier v. Mass. Parole Board*, No. Suffolk 1884CV00932 (September 25, 2019, Connolly, Rosemary, J.) The Department of Justice is presently investigating whether the Massachusetts Parole Board is violating the Americans with Disabilities Act in its treatment of people with mental health disabilities who are seeking parole.

ACTIONS NEEDED: **1)** The Governor needs to appoint more people to the Parole Board with backgrounds in human services work such as mental health care and treatment, substance use disorder, and trauma and adolescent brain development. **2)** In Massachusetts and across the country, formerly incarcerated members of society have formed organizations to reform prisons. It is time for Massachusetts to have a Board member who has been on parole.⁹ **3)** The Legislature needs to adopt and immediately enact the pending legislation, H.4607, to increase the size of the Parole Board to nine members and diversify membership. **4)** In the meantime, the Board's only psychologist should be assigned to all the most complex mental health cases and regularly sit at parole release hearings conducted at the Residential Treatment Unit at Old Colony Correctional Center.

V. THE NEED FOR RACIAL EQUITY AT THE PAROLE BOARD

It is very well understood that people of color are overrepresented in our prison system. In a time when the Black Lives Matter movement has caused an awakening in the country, it is particularly important to understand and document how race and ethnicity affect parole practices and decisions.

In fact, all the issues discussed in this letter, such as the Parole Board's failure to issue lifer decisions on time, forcing incarcerated lifers to wait up to a year for a parole hearing, putting people back in prison for technical violations, not recording release hearings, not having more human service professionals on the Parole Board, etc., are classic examples of the structural racism that has long existed.

The only racial data reported in the Board's 2019 Annual Report is the "2019 Releases to Supervision by Race/Ethnicity." The Parole Board reports that 2,238 people were released to parole supervision in 2019 (this presumably includes only HOC people and non-lifer DOC people). It reports that 501 (22%) of the released people were "Hispanic/Latino" and 412 (18%) were "African American/Black" and 1,256 (56%) were "Caucasian/White."

It is difficult to draw detailed conclusions about racial equity at the Parole Board from the limited data that has been provided. (For example, we do not know how many Caucasians and people of color were eligible to see the Board and how many saw the Board.) More comprehensive data is necessary to fully understand and address the various ways that racial bias

⁸ Parole hearings for all people serving House of Correction sentences and non-life state prison sentences are conducted by one, two or three Board members. As a result, most incarcerated people seeking parole never see the one psychologist on the Board.

⁹ See Noah Goldberg, *They've been through New York's parole system. That's why they want to change it*, <https://brooklyneagle.com/articles/2019/12/20/theyve-been-through-new-yorks-parole-system-thats-why-they-want-to-change-it/>

may be affecting the Board's policies, practices, and decisions. Standing alone, however, it appears that 56.6% of the DOC population in 2020 identified as people of color but only 40% of the people who were paroled in 2019 were people of color. This statistic is indicative of the structural racism permeating our society.¹⁰

ACTIONS NEEDED: **1)** We request that EOPSS convene a meeting of stakeholders to determine what parole data should be regularly collected and analyzed concerning race and ethnicity. **2)** In the meantime, we request that the following practices and data collection be implemented immediately:

- a) The person's age and race/ethnicity, and other key protected statuses, including but not limited to disability and LGBTQ status, be included in every parole decision, including parole release decisions, parole rescission decisions, and parole revocation decisions.
- b) The race/ethnicity and other key protected statuses of people whose parole is rescinded be collected, analyzed, and published.
- c) The race/ethnicity and other key protected statuses of people whose parole is revoked be collected, analyzed, and published.
- d) The race/ethnicity and other key protected statuses of people who have GPS as a parole condition; have polygraph testing as a parole condition; have a curfew as a parole condition; and have a geographical restriction as a parole condition be collected, analyzed, and published.
- e) The race/ethnicity and other key protected statuses of people who face revocation because of an alleged "association" with a person who has a criminal record be collected, analyzed, and published.
- f) The race/ethnicity and other protected statuses of lifers who are given 1-year, 2-year, 3-year, 4-year and 5-year setbacks be collected, analyzed, and published.

Parole is too important a public safety tool to not be functioning effectively. In this time of public awakening, change is necessary and overdue at the Parole Board. We hope this letter will be an impetus to bringing about meaningful change expeditiously.

We would like to meet with representatives from your various offices to discuss ways to improve parole in Massachusetts. Three people from the undersigned community groups have volunteered to set up meetings with your offices. Please send any replies and possible meeting times to these three people and your responses will be forwarded to the group and zoom meetings will be set up.

1. Jesse White – Prisoners' Legal Services – jwhite@plasma.org
2. Lanny Kutakoff – CEPS Steering Committee - lannykutakoff@msn.com
3. Stacey Borden - New Beginnings Reentry Services – stacey.borden@newbeginningsreentryservices.org

Thank you for taking the time to read and think about these issues and for helping to solve them.

¹⁰ DOC reports that on January 1, 2020, there were 7,602 sentenced people in its prisons. Of those, 3,079 (40.5%) are "white"; 2,205 (29%) are "Black"; and 2,101 (27.6%) are "Hispanic." The Census Bureau's estimates for 2019 for the Massachusetts population are 70% of the population is "White"; 12% is "Hispanic" and 7% is "Black."

Sincerely,

Coalition for Effective Public Safety (CEPS) Steering Committee
Alternative for Community and Environment (ACE)
Black and Pink Massachusetts
Boston College Defenders Lifer Parole Clinic, Dir. Frank R. Herrmann
Boston College Prison Hearing Clinic, Dir. Kari Tannenbaum
Boston Equal Rights League, Inc.
Brookline PAX
Cambridge Bail and Legal Defense Fund
Center for Public Representation
Charles Hamilton Houston Institute of Race & Justice
Children's Law Center of Massachusetts
Citizens for Juvenile Justice
City Mission Boston
Coalition to Unlock Housing
Community Reentry Program Inc.
CORI & Re-entry Project, Greater Boston Legal Services
Council on American-Islamic Relations - Massachusetts (CAIR-MA)
Courageous Conversations Merrimack Valley
Criminal Justice Policy Coalition
Decarcerate Western Massachusetts
Dismas House of Massachusetts
End Mass Incarceration Together (EMIT)
Families for Justice as Healing
First Parish Cambridge: Social Justice Council
Friends for Racial Justice (FORJ), Friends Meeting, Cambridge
Greater Boston Interfaith Organization (GBIO)
Hampden County Lawyers for Justice
Harvard Prison Legal Assistance Project - Managing Att. Joel Thompson
Jewish Alliance for Law and Social Action (JALSA)
Jobs NOT Jails
Justice Resource Institute
Lawyers for Civil Rights
Peace and Social Justice Committee, Friends Meeting, Cambridge
Massachusetts Against Solitary Confinement (MASC)
Massachusetts Association of Criminal Defense Lawyers (MACDL)
Massachusetts Communities Action Network (MCAN)
Material Aid and Advocacy Program (MAAP)
Mental Health Legal Advisors Committee (MHLAC)
Merrimack Valley Project (MVP)
National Association of Social Workers Massachusetts Chapter
National Lawyers Guild-MA
New Beginnings Reentry Services, Inc

New Vision Organization, Inc
Northeastern University School of Law Domestic Violence Institute, Dir. Margo Lindauer
Northeastern University School of Law Prisoners' Assistance Project, Co-Dir. Patricia Garin
League of Women Voters of Massachusetts
New England Innocence Project
Out Now, Springfield
Parole Review for All
Peace and Social Justice Committee of Friends Meeting at Cambridge
Prison Policy Initiative
Prisoners' Legal Services
Progressive Massachusetts
Roca, Inc.
Safe Medford
Social Action Committee of First Unitarian Universalist Society in Newton
Social Justice Coalition of South Church, Andover
Solidarity Lowell
#StuckOnReplay
Suffolk Lawyers for Justice
The Cambridge Bail and Legal Defense Fund
The Criminal Justice Reform Task Force of Congregation Dorshei Tzedek
The Lionheart Foundation
The Massachusetts Bail Fund
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The Real Cost of Prisons Project
Unitarian Universalist Mass Action Network
Urban League of Eastern Massachusetts
VISIONS, Inc.
Welling Coaching and Counseling
Women's Health and Human Rights--Suffolk University
World Peace Foundation at The Fletcher School at Tufts University
350 Massachusetts of Greater Lowell

cc: Gloriann Moroney, Chairperson Mass. Parole Board
Carol Mici, Commissioner Department of Correction
Andrew Peck, Undersecretary for Criminal Justice, EOPSS