



March 27, 2020

Francis V. Kenneally, Clerk
Supreme Judicial Court for the Commonwealth
John Adams Court House
One Pemberton Square - Suite 2500
Boston, MA 02108

Re: Committee for Public Counsel Services and Massachusetts Association of Criminal Defense Lawyers v. Chief Justice of the Trial Court, SJC-12926

Dear Clerk Kenneally:

On behalf of the Massachusetts Office for Victim Assistance (MOVA), I am writing in response to EMERGENCY PETITION FOR RELIEF PURSUANT TO G. L. c. 211, § 3 (“The Petition”), filed by the Committee for Public Counsel Services (CPCS) and Massachusetts Association of Criminal Defense Lawyers to the Superior Judicial Court on March 24, 2020.

MOVA is an independent state agency that seeks to uphold and advance the rights of crime victims and witnesses throughout the Commonwealth of Massachusetts. We provide grant funding, training, and support to over 160 direct service programs throughout the state and engage in public policy advocacy and education at the state and federal levels. MOVA is governed by the Victim and Witness Assistance Board, chaired by Attorney General Maura Healy, and our current membership includes two district attorneys and two public members, one of whom is a survivor of crime.

Victim rights in Massachusetts are statutorily guaranteed through M.G.L. Chapter 258B. While the emergence of COVID-19 in Massachusetts and nationwide presents immense challenges, the Commonwealth should not abandon our obligations under state law to provide victims of crime with their rights in the criminal justice system. In our efforts to respond to COVID-19 concerns within correctional institutions, we must not lose sight of the needs of crime victims whose physical, emotional, and mental safety is in jeopardy. It is of the utmost importance that the Court places victim safety, victim notification, and victim input as critical components to effectively ensure the safe and reasonable release of any incarcerated persons.

Victim safety must be a priority in the discussions relating to the release of offenders who committed crimes against them. The Petition references individuals both during pre- and post-conviction stages of the criminal justice system. It is important to recognize that an offender’s pretrial release is often the most dangerous time for a victim. This is particularly true for domestic violence victims who, due to social distancing, are isolated in their homes more now than ever before with limited access to vital services. The Petition also requests the release of individuals held pretrial, while seeking to “vacate all provisions of probation orders, and cease issuing new

provisions in probation orders” without any mention of conditions related to electronic monitoring, stay away orders, and no contact orders which provide important safeguards to victims of crime. This is particularly dangerous as the Superior Court has indicated through OE-144 *Order Concerning The Imposition of Global Positioning System (GPS) Monitoring As Condition of Release or of Probation* that Courts shall not order GPS monitoring as a condition of release without extenuating circumstances. Limited and/or lack of supervision for individuals released from custody or probation creates a real safety concern and tangible fear for victims of crime.

Throughout the Petition, there is no clear delineation of crime type that applies, or is excluded, to be considered for release. For example, the Petition identifies crimes committed under M.G.L. Chapter 265 to be excluded only for individuals eligible for parole, aged 60 or older, or serving in a house of correction. It is not clear the Chapter 265 exclusion would apply to other individuals identified in the Petition (i.e. those who may be completing a sentence within six months, qualify for medical parole, have underlying medical conditions, etc.). In addition, the mention of Chapter 265 as stated only applies to inmates serving a post-conviction sentence; this means that any individual being held pretrial, regardless of crime, would be eligible for release. This broad approach presents serious safety concerns for both victims and the general public. It is also crucial to note that Ch. 265 is not the only statute that address crimes against persons; other statutes within Massachusetts law, such as M.G.L. Chapter 272, M.G.L. Chapter 209A Violations of Abuse Prevention Orders, and M.G.L. Chapter 258E Violations of Harassment Prevention Orders. In order to protect victims, any crime committed against a person must be excluded from consideration of release.

In the aftermath of a crime, the Victim Rights Law ensures survivors that they will have access to information relative to the status of the offender, regardless of which entity may have custody. Our response to COVID-19 should not change the requirements of our state authorities to provide advance notice of any changes to an offender’s custody status. Furthermore, M.G.L. Chapter 258B ensures “for victims, to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody...” Any changes made in response to this petition should ensure that custodial authorities can provide victims adequate, advanced notice to address safety concerns for them and their families. The Petition does not provide any expectations of notification to victims of crime. Advance notification empowers well-informed decision making and safety-planning and provides physical, mental, and emotional relief to survivors.

Victim input, often through victim impact statements, is an incredibly important opportunity for victims to share the impact the crime has had on their life. Impact statements are used to inform sentencing, sex offender registration, and parole release decisions and conditions. Victims often offer important insights to decisionmakers in strategies necessary to maintain their safety. The Petition requests the release of inmates eligible for standard parole or qualify for medical parole without any mention of following the regulations tied to these procedures, including parole hearings or impact statements. In standard parole decisions, victims may submit a statement describing the impact of the crime and the victims’ opinion and/or recommendation regarding release. It is imperative that victims have a voice in the process, in the same manners in which victim impact statements are accepted in other release proceedings.

Conclusion and Recommendations

Massachusetts is operating through unprecedented times, and our government must react in a way that protects all citizens in a fair and just manner. Victims of crime are already experiencing unique burdens relative to their safety and wellbeing during the COVID-19 crisis. If the Court seeks to grant the petition and proceed with the release of inmates in Massachusetts, MOVA recommends the following actions should apply:

- Consideration of release shall not apply to inmates convicted of *any* crime against a person; not just inclusive of M.G.L. Chapter 265. Domestic violence and sexual assault victims, for example, would not uniformly fit under the Chapter 265 exclusion and are already put in greater risk through social distancing recommendations due to COVID-19. In addition, at a minimum, inmates considered for release should be reviewed on a case by case basis. Every case, individual inmate, and victim associated with a crime have unique needs that must be considered during these monumental decisions. A blanket response or one that differentiates by crime type does not serve the best interest of not only victims, but all parties involved.
- Advanced notice of release must be provided in the same manner and timeframes expected by victims of crime. Regulations established in Department of Criminal Justice Information Service ([803 CMR 9.00](#)) call for no less than a fourteen day period to provide advance notice for any release from custody. While we understand the need for prompt decisions during the COVID-19 response, there must be a clear expectation that victims will have enough time to make necessary safety planning decisions.
- Victims must have an opportunity to provide input in release decisions, similar to regulations [120 CMR 400.00](#). This includes providing ample time for a victim to participate if desired. Given the current circumstances, we recognize a shift from basic protocol may be necessary. MOVA welcomes flexibility in providing victims the opportunity to be heard, including the collection of written statements or remote, teleconference possibilities, but maintain that it is imperative for victims to remain part of the process.

Thank you for your time and your consideration. If I may be of any assistance, please do not hesitate to contact me.

Respectfully Submitted,



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Executive Director

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Certificate of Service

On March 27, 2020, I served a copy of this letter on all parties by email.

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