

Lifers' Group Inc. Fast Facts: FALLING STATE PRISONER NUMBERS: INCIDENTAL TO PANDEMIC COURT CLOSURE OR REAL EXPEDITED RELEASE?

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BACKGROUND

There is extensive evidence that the most severe and deadly Covid-19 outbreaks in Massachusetts and the United States are occurring in prisons. Prisoner case rates in MA and the U.S. consistently run 3 to 5 times the community rates(1). Prisoners are especially vulnerable because of overcrowding, confined spaces, inadequate sanitation and poor access to health care. As of early November 2020, the MA community rate of infection is approximately 2,500/100,000 while the state prisoner rate is in excess of 10,000/100,000 (2). The elderly and those with pre-existing conditions are especially vulnerable to severe infection and death. The average age of hospitalized patients is 65 while for those dying it is 78 years(3).

Massachusetts has the highest percentage of elderly prisoners relative to all other states, with 13% aged 60 and older and 31% aged 50 or older(4). A major reason is that MA also has the highest percentage of prisoners (16%) serving Life Without Parole (LWOP) sentences. Prisoners are also known to age 10-15 years prematurely because of chronic and debilitating conditions and limited health care(5). Overall, 50% of state prisoners are either over 60 years of age or have underlying medical conditions putting them at high risk for severe Covid-19 outcomes(6). In addition to dying, there are serious long-term health consequences of infection, including cardiovascular, pulmonary, neurological and psychological damage(7).

On June 2, 2020, the MA Supreme Judicial Court (SJC) made clear that the MA-DOC needed to release prisoners to reduce the risks of infection(8). In their concurrence, three justices explicitly noted that "...The DOC has the opportunity and, indeed, the obligation to begin preparing for [the fall/winter resurgence]... Policies may not be constitutionally sufficient after the department has had time to consider and plan its response to a now-foreseeable threat."(9). The DOC has not heeded this warning.

DATA

The Table summarizes admissions and releases of MA-DOC prisoners for the period of April 1 through October 31 for the years 2016-2019. Each year over 1400 prisoner were released and approximately 1200 admissions resulted from new court commitments. In 2020, however, criminal admissions were virtually eliminated by the pandemic. Releases are ongoing as prisoners must be released upon sentence completion. There were only 630 parole releases April-November(10) as compared with 618 in 2019 even though the SJC had urged expedited release. However, the overall state prisoner population decreased by only about 900 (jurisdiction, from 7972 to 7062 and custody, from 7642 to 6725) between April and November.(11). Remarkably, compared to prior years, this represents approximately 500 fewer prisoners released during the pandemic rather than the increase in releases required by the SJC!

COMMENTS & CONCLUSIONS

Unlike Massachusetts, other states have decreased prisoner populations during the pandemic(12). Connecticut made large reductions in their prison population and California's Governor ordered release of 9000 prisoners. New Jersey, after earlier releasing 1000 prisoners, released 2000 on November 4, with another 1000 due to be released(13). Meanwhile, MCI-Norfolk, the site of the latest and largest outbreak in the MA-DOC, has seen a reduction of only 34 prisoners (1267 to 1233) between April and November. Not surprisingly, the current outbreak spread widely throughout the crowded prison with over 200 prisoners infected and at least 5 hospitalized(14).

The failure of the DOC to take advantage of the lack of new criminal

commitments to substantially reduce prison crowding has contributed to the surge of prison cases, resulting in a rate of cases four times that seen in the community. This inexplicable failure to follow SJC guidance may now constitute a constitutional violation under the Eighth Amendment and Art. 26.

The preponderance of elderly and Life Without Parole sentenced prisoners renders the MA prison population particularly vulnerable. Making LWOP prisoners eligible for parole after serving 25 years would substantially reduce the large number of elderly prisoners in Massachusetts who, if released, present the lowest risks to public safety.

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ADMISSIONS & RELEASES OF MA-DOC CRIMINALLY SENTENCED JURISDICTION PRISONERS^a

Year	Admissions Apr 1 - Oct 31			Releases Apr 1 - Oct 31		
	New Court Commitment	Parole Violation	Total	Sentence Completion	Parole Granted	Total
2019	1165	154	1319	867	618	1485
2018	1229	133	1362	864	570	1434
2017	1276	135	1411	914	531	1445
2016	1270	114	1384	1016	595	1611

^a Data from "Prison Population Trends" for 2016-2019, MA-DOC, Milford, MA.

ENDNOTES

1. Strassle C, Jardas E, Ochoa J, et al. "Covid-19 Vaccine Trials and Incarcerated People-The Ethics of Inclusion". N Engl J Med 383:1897-99 (2020); Saloner B, Parish K, Ward JA, et al. "Covid-19 Cases and Deaths in Federal and State Prisons". J Am Med Assoc, 324:602-3 (2020); Jimenez MC, Cowger TL, Simon LE, et al. "Epidemiology of Covid-19 Among Incarcerated Individuals and Staff in Massachusetts Jails and Prisons". JAMA Netw Open 3(8):e2018851.doi:10.1001 (2020); Lifer's Group Fast Facts: "Excessive Rates of Covid-19 Cases and Deaths in Massachusetts State Prisons" August 2020 (accessible at www.realcostofprisons.org/writing).
2. Covid-19 Dashboard, MA Dept of Pub Health, Nov 6, 2020; SJC-12926, CPCS v Chief Justice of the Trial Court (henceforth SJC-12926), November 4, 2020.
3. Covid-19 Dashboard, MA Dept of Pub Health, October 14, 2020.
4. Foster & others v Commissioner of Correction & others (No. 1), June 2, 2020 (henceforth Foster v Commissioner).
5. ACLU, "At America's Expense" (ACLU, June 2012); Foster v Commissioner.
6. Foster v Commissioner.
7. del Rio C, Collins LF, & Malani P. "Long-Term Health Consequences of Covid-19" J Am Med Assoc 324:1723-4 (2020).
8. Foster v Commissioner (Gaziano, J, slip op. 62).
9. Id. (Gants, J, concurring, slip op. 13).
10. SJC-12926, November 4, 2020.
11. Ibid.
12. Tully T. "New Jersey to release more than 2000 prisoners in one day". Boston Globe, A12, November 5, 2020.
13. Ibid.
14. SJC-12926; As of Nov 11, the SJC has reported only 162 cases at Norfolk. However, direct count of prisoners put into group isolation confirms at least an additional 130 cases after the 72 cases posted Nov 4. See also Coleman V. "Commute sentences, advocates urge". Boston Globe, B1, Nov 11, 2020.

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