

**Testimony to the Joint Committee on the Judiciary in Support of “An Act  
regarding decarceration and COVID-19” (H.4652)**

**May 4, 2020**

*“Six feet apart is practically impossible in any correctional setting, in any jail, in any prison, in any state, in any county anywhere”*

– Bristol County Sheriff Thomas Hodgson, SJC-12926

Dear Chair Cronin, Chair Eldridge, and members of the Joint Committee on the Judiciary

**Citizens for Juvenile Justice (CfJJ) is an independent, statewide non-profit organization that strives to improve the Commonwealth’s juvenile justice system through advocacy, research and public education.** We respectfully ask that the Judiciary Committee report out H.4652 favorably.

Recognizing that young people serving sentences in adult facilities will be the least likely to benefit from public-safety oriented decarceration efforts, unless they have underlying health issues, their continued incarceration during this pandemic increases their risk of exposure to the coronavirus. Young adults are also significantly less likely to engage in programming and be connected to their families when compared to their counterparts in the juvenile justice system who are under the care and custody of the Department of Youth Services. **We would like to use this opportunity to contrast how the juvenile and adult systems have responded to COVID-19 as a roadmap for how the state can respond to this public health emergency while ensuring the safety of incarcerated individuals, correctional staff and the communities where they all live.**

**It is important to note that many of the positive actions effectuated by the Juvenile Court and the Department of Youth Services took place voluntarily shortly after the declaration of the State of Emergency, as the extent of the pandemic was becoming evident. By contrast, many of the actions taken by the adult correctional facilities were driven by lawsuits, first to allow attorney access during lock downs, and then followed by an SJC law suit (SJC-12926). Some elements of the adult system (especially DOC and the HOCs) are oriented toward retribution and punishment, and appear to make health-oriented policy and practice change only under threat and direction from the Courts.**

The needs of young people in adult facilities are likely to be overlooked due to perception that they are less vulnerable to COVID-19. Youth in adult facilities have very limited

engagement with family and access to programming and services during lock down conditions, with an increased risk of mental health harm. There is also no data on the impact of COVID-19 and the ensuing policy and practice changes on young people in the adult correctional system.

This legislation aims to reduce the number pre-trial and sentenced individuals in prisons and jails to allow those facilities to practice safe physical distancing for individuals who remain incarcerated and for the staff and contractors in these facilities. The legislation:

- (1) sets certain criteria to allow individuals who can safely serve their confinement at home or other community-based setting to mitigate the spread of COVID-19 in these facilities;
- (2) requires these facilities to immediately address long-standing problems in sanitary conditions to improve hygiene in these facilities; and
- (3) removes barriers for incarcerated individuals to contact their families through free phone calls and emails during this public health emergency.

### **Physical Distancing in Secure Facilities during the COVID-19 State of Emergency**

One clear distinction between the Department of Youth Services and adult correctional facilities is the juvenile justice system's treatment and rehabilitation model that is based on different modalities of treatment. DYS, as a Health and Human Services agency, has modalities that include: (1) secure locked facilities operated by DYS; (2) secure community-based facilities run by contracted non-profit agencies; (3) residential and group homes; (4) DYS-contracted foster homes; and (5) independent living programs for older youth, through community-based case management for youth living at home. This model allow DYS to transition youth from DYS facilities to community-based supervision during their time in custody. Because of this model, there were 309 youth in locked facilities statewide in mid-March. Predating the pandemic, DYS standard practice was to have each youth living in their own room with no double-bunking at any DYS facility. Additionally, showers are private and there is free access to hygiene products.

DYS contracts its medical services with local hospitals (for example, Children's Hospital in Boston and UMass Medical). Youth with COVID-19 symptoms or testing positive are held in separate units that are staffed in a way to maintain DYS's policy prohibiting solitary confinement. This is a significant contrast from the adult system where, with the exception of the Hampden County House of Correction<sup>1</sup>, all other adult correctional facilities contract with for-profit medical companies. As highlighted by a four-part WBUR series, "*Dying on the Sheriff's Watch*"<sup>2</sup>, for-profit medical providers are incentivized to minimize hospitalizations and emergency medical care. In January 2020, the State Auditor released a report finding the Department of Correction's medical contractor delayed access to health care for prisoners and lacked referrals to community-based mental and health care upon

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<sup>1</sup> Hampden County House of Corrections began contracting with a local community health center under former Sheriff Michael Ashe, Jr.

<sup>2</sup> <https://www.wbur.org/inside/2020/03/23/wbur-announces-debut-series-from-wbur-investigations-team-dying-on-the-sheriffs-watch>

release<sup>3</sup>. Additionally, patients residing in medical units or receiving medication in adult correctional facilities (even those with confirmed COVID-19 cases) were held in crowded conditions with not social distancing, which only ended with lockdowns for prisoners.

### Programming during the COVID-19 State of Emergency

Since early March, the Department of Youth Services, in concert with EOHHS, has released guidance regarding hygiene, health protocols and physical distancing. Even with the limitations on physical distancing and moving services to virtual or telephonic access, DYS Commissioner Peter Forbes reiterated that the primary mission of DYS is the rehabilitation of young people in its care and custody and reflected in guidance and policies that are publicly available online<sup>4</sup>.

Decisions on in-person or virtual meetings were decided between a youth and attorney, with screening protocols in place for in-person visits, if necessary. To facilitate virtual attorney-client conversations DYS began procuring devices for youth to allow those conversations and were deliberate in ensuring the confidentiality of these conversations in confinement.

Clinical and medical programming continues in DYS on an in-person basis with physical distancing (and relies on access to personal protective equipment). Education is also a key component of success for youth, and DYS has been planning and expanding remote learning opportunities for youth even with their education staff now working remotely. DYS is also working closely with Department of Elementary and Secondary Education, which provides special education services for youth in DYS custody. DYS and DESE education staff are meeting weekly to plan out educational services for youth. DYS is on the path to provide Google Classroom in almost every facility<sup>5</sup> and is working with staff to support students while their teachers are working remotely. Youth who are enrolled in post-secondary education had no changes in their educational access during the state of emergency

In contrast, attorney visits were initially limited in adult correctional facilities, but currently allowed. It is unclear how attorneys are able to communicate with their incarcerated clients. Educational programming is no longer available, with education staff being denied entry into county Houses of Corrections. DESE provides special education services to youth in adult County Houses of Corrections facilities until age 22, but those services have been curtailed and currently closed off for all youth in adult correctional facilities, leaving students in need of educational instruction completely out in the cold<sup>6</sup>. Currently, most youth in adult facilities are serving under lock down , denied access to

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<sup>3</sup> <https://www.mass.gov/audit/audit-of-the-massachusetts-department-of-correction-doc>

<sup>4</sup> All DYS COVID-19 related guidance and policies are published at <https://www.mass.gov/orgs/department-of-youth-services>

<sup>5</sup> Education staff are developing alternate remote learning capabilities for youth in facilities with aging infrastructure that are a barrier to virtual classrooms.

<sup>6</sup> DESE does not offer educational services to prisoners in the Department of Correction

educational services that can better their future and under an increased their risk of mental and emotional distress.

### **Family connections during the COVID-19 State of Emergency**

One of the biggest barriers for incarcerated individuals is maintaining connections to family. In the best of times, connection to family is a key indicator of a person's ability to successfully re-enter society after incarceration. For young people, family connection is one of five key components of Positive Youth Development – where a young person's ability to success in treatment and upon re-entry is directly correlated with their family's engagement in the treatment during custody and upon re-entry.

Family engagement is a core component of DYS's treatment model. Beyond visitation, parents are an integral part of designing the youth's case plan upon entry until release, and up to a year after release for youth who voluntarily sign on to DYS supports.

Prior to the pandemic, DYS was averaging 677 family visits per month which had to be stopped as a response to the pandemic. Early on, DYS moved family visitation and engagement in case planning to virtual platform, by allowing youth to use DYS-issued iPads to video conference with family and attorneys. DYS issued emergency guidance on virtual family visits<sup>7</sup> allowing youth at least three one-hour virtual visits (on FaceTime, Skype, or WebEx) per week. Virtual family visits will not be withheld as a disciplinary measure.

In contrast, family visitation at adult facilities was immediately curtailed, while family engagement in case planning has never been a tool in adult corrections. In late March, the Department of Corrections issued an FAQ allowing prisoners two free 30-minute calls per week, which was cut almost immediately down to two 20-minute calls.

### **Community-based supervision and release during the COVID-19 State of Emergency**

As mentioned earlier, releases to the community of pre-trial detainees in the adult system were mostly driven by the April 3<sup>rd</sup> SJC ruling allowing expedited hearings for reconsideration of bail. This ruling has driven the vast majority of releases of adults into the community. The SJC ruled that the courts have limited jurisdiction on sentenced individuals, and urged DOC and the Parole Board to utilize tools already within their authority to allow individuals to be supervised in the community through parole. Release of detained and sentenced individuals is not broken down by age, so the impact on youth incarcerated in adult facilities is unclear. However, teenagers and those in their early 20's are largely seen as a low medical risk population, so we are assuming that their release rates are lower than that of older prisoners.

The COVID-19 pandemic set the stage for the juvenile court and the Department of Youth Services to expedite considerations for community-based supervision by mid-to-late March.

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<sup>7</sup> <https://www.mass.gov/guidance/dys-emergency-guidance-regarding-virtual-family-visits>

**Detained Youth:** The decision to detain youth prior to sentencing is driven by prosecutors and judges. Once the Governor issued a State of Emergency, CPCS's Youth Advocacy Department attorneys and District Attorneys' Juvenile Unit prosecutors began negotiating case-by-case decisions to allow more youth who are detained to be released pretrial. On March 25<sup>th</sup> the Juvenile Court issued a Standing Order (3-20) allowing bail considerations to be conducted as emergency matters allowing expedited consideration of a youth's detention status. DYS issued guidance to reduce the time a young person is held in detention once a judge orders a youth's release<sup>8</sup>.

**Committed Youth:** As mentioned earlier, DYS's model allows youth to step-down as they transition from confinement to return home at the end of their time in custody. One of the stages of step down, Grants of Conditional Liberty (GCL), allow youth to be supervised in the community, with DYS working with them to connect to family, housing, education, employment, and community-based programming, including mental health services. The GCL process allows DYS caseworkers to support and guide a young person in their transition back to the community while in the custody of DYS. Since the state of emergency, DYS has worked with youth and their attorneys to expedite considerations of Grants of Conditional Liberty for youth who are within 100 days of being granted these community passes. DYS issued an advisory setting certain criteria for youth they consider to be good candidates for early Grant of Conditional Liberty (release into community supervision)<sup>9</sup>:

- The youth has an approved living arrangement with family or other living situation approved by DYS
- The youth is making or has made progress on their treatment plan, and the treatment team identifies them as a good candidate to return to the community

**Parole:** The SJC, in it's April 3<sup>rd</sup> ruling, urged the Massachusetts Parole Board to expedite releasing over 300 individuals whose requests for parole have already been approved. The delay in the release of those approved for parole resulted in a second lawsuit<sup>10</sup>. As of May 4<sup>th</sup>, 277 individuals have been released on parole, most of whom were released after the second law suit.

### Transparency during the COVID-19 State of Emergency

With the exception of the Middlesex House of Correction<sup>11</sup>, information on MA Department of Correction<sup>12</sup> and other County Houses of Corrections COVID-19 responses and actions have been mostly trickling out from the experiences of attorneys and incarcerated

<sup>8</sup> <https://www.mass.gov/doc/dys-interim-advisory-regarding-bail-processing/download>

<sup>9</sup> <https://www.cfjj.org/s/DYS-Interim-Advisory-RE-Residential-Release-Planning-3-30-2020.pdf>

<sup>10</sup> WBUR, *New Legal Action To Free Massachusetts Prisoners Due To COVID-19*, April 17, 2020.

<https://www.wbur.org/commonhealth/2020/04/17/massachusetts-jail-prison-covid-19-coronavirus>

<sup>11</sup> Middlesex House of Corrections COVID-19 related information is available at

<https://www.middlesexsheriff.org/covid19>.

<sup>12</sup> The Department of Corrections only offered an FAQ available at <https://www.mass.gov/doc/covid-19-qa/download>

individuals but is not publicly available. Census and COVID-19 prevalence data was mandated by the SJC-12926 ruling<sup>13</sup>.

By contrast, the Department of Youth Services has been publicly open with its guidance and policies and has been sharing weekly census and COVID-19 prevalence on a weekly basis with CPCS, even though they are not a named agency in SJC-12926.

Thank you for the opportunity to testify on this legislation and please feel free to reach out with any questions.

Respectfully,

Sana Fadel  
Deputy Director  
Citizens for Juvenile Justice

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<sup>13</sup> Weekly reports are available at <https://www.mass.gov/service-details/committee-for-public-counsel-services-v-chief-justice-of-the-trial-court-sjc-12926>

## Appendix. COVID-19 Cases and Deaths of Incarcerated Individuals

	Total Population		Releases since SJC Order 4/3/2020	Confirmed Covid-19 Cases		Covid-19 Deaths
	Incarcerated Population as of 3/25/2020- DYS 4/5/2020 - HOC 4/6/2020 - DOC	Incarcerated Population as of 5/3/2020 (DYS - 4/23/2020)		Incarcerated Individuals	Staff/Contractors	
DYS Detained	112	88				
DYS Committed in Secure/Residential	197	153		14	26	0
Department of Corrections jurisdiction	8083	7700	23	266	146	7
Department of Corrections custody	7735	7395	14			
Barnstable HOC	204	166	19	0	2	0
Berkshire HOC	169	146	13	0	1	0
Bristol HOC	695	567	37	1	10	
Dukes HOC	11	10	2	0	0	
Essex HOC	1162	1017	56	65	19	1
Franklin HOC	141	122	21	0	5	0
Hampden HOC	931	764	108	0	12	
Hampshire HOC	167	131	14	18	4	
Middlesex HOC	688	593	55	32	37	
Norfolk HOC	425	325	120	1	2	
Plymouth HOC	799	666	48	1	5	
Suffolk HOC	1148	930	63	11	14	
Worcester HOC	712	560	123	0	7	
Total HOC's	7252	5997	679	129	118	1