

**HOUSE . . . . . No. 1868**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Lindsay N. Sabadosa***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regarding decarceration and COVID-19.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/18/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>6/8/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>6/23/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/3/2021</i>

**HOUSE . . . . . No. 1868**

By Ms. Sabadosa of Northampton, a petition (accompanied by bill, House, No. 1868) of Lindsay N. Sabadosa, Erika Uyterhoeven and Jack Patrick Lewis relative to pretrial services during the COVID-19 declaration of emergency. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act regarding decarceration and COVID-19.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION I. Chapter 276 is amended by adding the following section 99H: "Pursuant to  
2 the State of Emergencies of March, 2020, Pretrial Services shall review each individual pretrial  
3 case where the individual is detained awaiting trial and work with public health officials, the  
4 Committee for Public Counsel Services, the relevant District Attorney’s Office, the relevant  
5 court, Sheriffs, and the Public Health system to immediately decarcerate within 14 days any  
6 individual who poses no immediate physical threat to the community, including all individuals  
7 charged with the simple possession of controlled substances. Additional releases shall include:

8 1) All pretrial individuals who are being detained pretrial solely because they are unable  
9 to afford cash bail under \$10,000, except that for charges that qualify for a dangerousness  
10 hearing the District Attorney, may request a dangerousness hearing;

11 2) All pretrial individuals who are over fifty years of age, except that for charges that  
12 qualify for a dangerousness hearing, the District Attorney may request a dangerousness hearing;

13           3) All pretrial individuals who are included in the populations that the CDC has classified  
14 as vulnerable (such as those who are immunocompromised or immunosuppressed and those with  
15 asthma, cancer, heart disease, lung disease and diabetes; and pregnant people), except that for  
16 charges that qualify for a dangerousness hearing, the District Attorney may request a  
17 dangerousness hearing; and

18           4) All pretrial individuals awaiting a violation of probation hearing based on an alleged  
19 technical violation of their probation.

20           For any incarcerated pretrial person that is charged with the simple possession of  
21 controlled substance or fits into these categories (1-4 above) that Pretrial Services does not  
22 release, Pretrial Services must make written findings detailing the factual basis for denying  
23 release as well as the efforts made by the Pretrial Services to develop a safe release plan.

24           Also, pursuant to the State of Emergencies of March, 2020, all Sheriffs overseeing a  
25 House of Correction in the Commonwealth shall review the case of each incarcerated person that  
26 is in the Sheriff's custody and work with public health officials, the Committee for Public  
27 Counsel Services, the relevant District Attorney's Office and community leaders to immediately  
28 decarcerate any individual who poses no immediate physical threat to the community, including  
29 all individuals incarcerated for the simple possession of controlled substances. Additional  
30 releases shall include:

31           1) All individuals who are over fifty years of age;

32           2) All individuals who are included in the populations that the CDC has classified as  
33 vulnerable (such as those who are immunocompromised or immunosuppressed and those with

34 asthma, cancer, heart disease, lung disease, immunodeficiency and diabetes; and pregnant  
35 people);

36 3) All individuals who qualify for medical parole shall be released with the support  
37 specified in the current Medical Parole law; the sheriffs' offices shall provide to Prisoners' Legal  
38 Services the names of all individuals who presumptively qualify for medical parole or who have  
39 asserted a claim to qualify for medical parole but are not released under the this provision;

40 4) All individuals who are being detained solely because of warrants for failure to pay  
41 fines and fees;

42 5) All individuals who are within 6 months of completing their sentence; and

43 6) All individuals incarcerated due to technical violations of probation and/or parole,  
44 unless clear and convincing evidence shows that the individual would pose an immediate  
45 risk to public safety if released even under appropriate conditions and community supervision.

46 The Sheriffs shall send to the Committee for Public Counsel Services a list of all  
47 prisoners who fit within one of the above six categories who they have decided to not release.  
48 CPCS shall assign an attorney to every prisoner in the Houses of Correction whose name appears  
49 on this list to assure that the Sheriffs are aware of the circumstances of every potentially  
50 qualifying prisoner. For any prisoner that is serving time for simple possession of controlled  
51 substance or fits into these categories (1-6, above) that Sheriffs do not release, the Sheriff must  
52 make written findings detailing the factual basis for denying release as well as the efforts made  
53 by the Sheriff to develop a safe release plan. These findings shall be forwarded to the Committee  
54 for Public Counsel Services.

55 Also, pursuant to the State of Emergencies of March, 2020, the Commissioner of the  
56 Department of Correction in the Commonwealth, in conjunction with the Superintendent of each  
57 Department of Correction facility and the Parole Board, shall review the case of each  
58 incarcerated person and work with public health officials, the Committee for Public Counsel  
59 Services, the relevant District Attorney's Office and community leaders to immediately  
60 decarcerate any individual who poses no immediate physical threat to the community, including  
61 all individuals incarcerated for the simple possession of controlled substances. Additional  
62 releases shall include:

63 1) All individuals who are over fifty years of age shall be released and placed on parole;

64 2) All individuals who are included in the populations that the CDC has classified as  
65 vulnerable (such as those who are immunocompromised or immunosuppressed and those with  
66 asthma, cancer, heart disease, lung disease, immunodeficiency and diabetes; and pregnant  
67 people) shall be released and placed on parole;

68 3) All individuals who qualify for medical parole shall be released with the support  
69 specified in the current medical parole law; the Department of Correction shall provide to  
70 Prisoners' Legal Services the names of all individuals who presumptively qualify for medical  
71 parole or who have asserted a claim to qualify for medical parole but are not released under the  
72 this provision;

73 4) Individuals incarcerated solely due to technical violations of probation and/or parole  
74 shall be reprobated or reparaoled,

75 5) Individuals who are within 6 months of completing their sentence shall be released on  
76 parole;

77 unless clear and convincing evidence shows that the prisoner would pose an immediate  
78 physical threat to the community even if released under appropriate conditions and community  
79 supervision.

80 The Department of Correction shall send to the Committee for Public Counsel Services a  
81 list of all prisoners who fit within one of the above five categories who they have decided to not  
82 release. CPCS shall assign an attorney to every prisoner in the Department of Correction whose  
83 name appears on this list to assure that the Department of Correction officials are aware of the  
84 circumstances of every potentially qualifying prisoner. For any prisoner that is serving time for  
85 simple possession of controlled substance or fits into these categories (1-5, above) that the  
86 Department of Correction does not release, the Department of Correction must make written  
87 findings detailing the factual basis for denying release as well as the efforts made by the  
88 Department to develop a safe release plan. These findings shall be forwarded to the Committee  
89 for Public Counsel Services.”

90 SECTION 2. Chapter 27 of the MGL shall be amended by adding section 5A as follows:  
91 "Pursuant to the State of Emergencies of March, 2020, the Parole Board shall review the case of  
92 each individual who is within six months of their initial parole eligibility date or who has reached  
93 their initial parole eligibility date, but was denied parole. The Parole Board shall work with the  
94 Committee for Public Counsel Services, the relevant District Attorney’s Office, public health  
95 officials and community leaders to immediately decarcerate any individual who poses no  
96 immediate physical threat to the community. Additional releases on parole shall include:

97 1) All individuals incarcerated due to technical violations of parole shall be immediately  
98 reparaoled;

99           2) All individuals who are within 6 months of their initial parole eligibility date shall be  
100 paroled; and

101           3) All individuals who have been denied parole at prior hearings shall be released on  
102 parole immediately,

103           unless clear and convincing evidence shows that the prisoner would pose an immediate  
104 physical threat to the community even if released under appropriate conditions and community  
105 supervision.

106           The Parole Board shall send to the Committee for Public Counsel Services a list of all  
107 prisoners who fit within one of the above three categories who they have decided to not parole to  
108 the community. CPCS shall assign an attorney to every prisoner whose name appears on this list  
109 to assure that the Parole Board is aware of the circumstances of every potentially qualifying  
110 prisoner. For any prisoner that is serving time for simple possession of controlled substance or  
111 fits into these categories (1-3, above) that the Parole Board does not release on parole, the Parole  
112 Board must make written findings detailing the factual basis for denying release as well as the  
113 efforts made by the Parole Board to develop a safe release plan. These findings shall be  
114 forwarded to the Committee for Public Counsel Services.”

115           For prisoners who are serving a parole eligible life sentence and who are waiting for the  
116 Parole Board to issue a Record of Decision from an already conducted parole hearing, the Parole  
117 Board shall issue in a written decision setting forth the Board’s vote on the case. That written  
118 decision setting forth the vote shall be issued immediately and sent to the prisoner and the  
119 prisoner’s attorney. If parole is denied, the prisoner shall be considered for parole under  
120 paragraph #3 above.

121 SECTION 3. Chapter 27 of the MGL shall be amended by adding section 2A as follows:  
122 "Pursuant to the State of Emergencies of March, 2020, the Commissioner of the Department of  
123 Correction and all Sheriffs along with public health officials, including the Massachusetts  
124 COVID-19 response command center, shall work to ensure appropriate health and safety policies  
125 and practices are implemented in all correctional facilities in the Commonwealth and specifically  
126 to minimize the sharing of cells and to ensure that there are sufficient medical quarantine beds  
127 and enough staff to promote the health and safety of staff, those incarcerated, and visitors at all  
128 Department of Correction facilities and all Houses of Correction and County Jails."

129 SECTION 4. Chapter 27 of the MGL shall be amended by adding section 2B as follows:  
130 "Pursuant to the State of Emergencies of March 2020, the Commissioner along with  
131 public health officials shall provide to all individuals who are incarcerated soap, disinfectant,  
132 cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, extra uniforms free  
133 of charge, free phone calls, and free emails. All incarcerated individuals shall be allowed daily  
134 access to telephone calls, emails and recreation time in addition to other measures that will  
135 mitigate tension and the prolonged austere conditions prisoners will be subject to during this  
136 time. These provisions will remain in effect until the CDC declares the COVID-19 pandemic to  
137 be over and for 180 days thereafter.