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:


PETITION OF:

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

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


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

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

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

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

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

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

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

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

2) All individuals who are included in the populations that the CDC has classified as vulnerable (such as those who are immunocompromised or immunosuppressed and those with
asthma, cancer, heart disease, lung disease, immunodeficiency and diabetes; and pregnant people);

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

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

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

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

The Sheriffs shall send to the Committee for Public Counsel Services a list of all prisoners who fit within one of the above six categories who they have decided to not release. CPCS shall assign an attorney to every prisoner in the Houses of Correction whose name appears on this list to assure that the Sheriffs are aware of the circumstances of every potentially qualifying prisoner. For any prisoner that is serving time for simple possession of controlled substance or fits into these categories (1-6, above) that Sheriffs do not release, the Sheriff must make written findings detailing the factual basis for denying release as well as the efforts made by the Sheriff to develop a safe release plan. These findings shall be forwarded to the Committee for Public Counsel Services.
Also, pursuant to the State of Emergencies of March, 2020, the Commissioner of the Department of Correction in the Commonwealth, in conjunction with the Superintendent of each Department of Correction facility and the Parole Board, shall review the case of each incarcerated person and work with public health officials, the Committee for Public Counsel Services, the relevant District Attorney’s Office and community leaders to immediately decarcerate any individual who poses no immediate physical threat to the community, including all individuals incarcerated for the simple possession of controlled substances. Additional releases shall include:

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

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

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

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

5) Individuals who are within 6 months of completing their sentence shall be released on parole;
unless clear and convincing evidence shows that the prisoner would pose an immediate physical threat to the community even if released under appropriate conditions and community supervision.

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

SECTION 2. Chapter 27 of the MGL shall be amended by adding section 5A as follows:

"Pursuant to the State of Emergencies of March, 2020, the Parole Board shall review the case of each individual who is within six months of their initial parole eligibility date or who has reached their initial parole eligibility date, but was denied parole. The Parole Board shall work with the Committee for Public Counsel Services, the relevant District Attorney’s Office, public health officials and community leaders to immediately decarcerate any individual who poses no immediate physical threat to the community. Additional releases on parole shall include:

1) All individuals incarcerated due to technical violations of parole shall be immediately reparoled;
2) All individuals who are within 6 months of their initial parole eligibility date shall be paroled; and

3) All individuals who have been denied parole at prior hearings shall be released on parole immediately, unless clear and convincing evidence shows that the prisoner would pose an immediate physical threat to the community even if released under appropriate conditions and community supervision.

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

For prisoners who are serving a parole eligible life sentence and who are waiting for the Parole Board to issue a Record of Decision from an already conducted parole hearing, the Parole Board shall issue in a written decision setting forth the Board’s vote on the case. That written decision setting forth the vote shall be issued immediately and sent to the prisoner and the prisoner’s attorney. If parole is denied, the prisoner shall be considered for parole under paragraph #3 above.
SECTION 3. Chapter 27 of the MGL shall be amended by adding section 2A as follows:

"Pursuant to the State of Emergencies of March, 2020, the Commissioner of the Department of Correction and all Sheriffs along with public health officials, including the Massachusetts COVID-19 response command center, shall work to ensure appropriate health and safety policies and practices are implemented in all correctional facilities in the Commonwealth and specifically to minimize the sharing of cells and to ensure that there are sufficient medical quarantine beds and enough staff to promote the health and safety of staff, those incarcerated, and visitors at all Department of Correction facilities and all Houses of Correction and County Jails."

SECTION 4. Chapter 27 of the MGL shall be amended by adding section 2B as follows:

"Pursuant to the State of Emergencies of March 2020, the Commissioner along with public health officials shall provide to all individuals who are incarcerated soap, disinfectant, cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, extra uniforms free of charge, free phone calls, and free emails. All incarcerated individuals shall be allowed daily access to telephone calls, emails and recreation time in addition to other measures that will mitigate tension and the prolonged austere conditions prisoners will be subject to during this time. These provisions will remain in effect until the CDC declares the COVID-19 pandemic to be over and for 180 days thereafter."