

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
No. SJC-12926

COMMITTEE FOR PUBLIC COUNSEL SERVICES AND MASSACHUSETTS
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

v.

CHIEF JUSTICE OF THE TRIAL COURT, ET AL.

COMMONWEALTH'S RESPONSE TO EMERGENCY PETITION
FOR RELIEF PURSUANT TO G.L. c. 211, § 3

Now comes the Office of the Middlesex District Attorney (hereinafter “the Commonwealth”) and offers the following response to Petitioners’ request for extraordinary relief. We share the concern of Petitioners and agree that extraordinary circumstances warrant extraordinary relief. Ensuring the safety of all Massachusetts residents is the highest priority for our Office. In light of the dangers posed by the spread of COVID-19 and the heightened risk for detainees and others held in concentrated groups, our Office is committed to taking appropriate steps to mitigate further infection. Moreover, as rates of infection increase, corrections officials and civilian staff are also placed at the same risk.

In addition to the risk of COVID-19 transmission posed by the close-quarters housing of inmates in the custody of the Department of Correction, our Office is also sensitive to the Due Process and Eighth Amendment rights of defendants incarcerated pending trial or other significant court events. The present dilemma is unprecedented in both size and scope, and navigating the many unique issues presented will require the

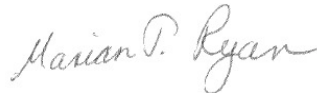
cooperation of all parties in the criminal justice system. Our Office is committed to working with our law enforcement partners and Petitioners to ensure that defendants' rights are secured and their well being safeguarded.

Accordingly, we are implementing a thorough review of inmates at the House of Correction to identify all nonviolent offenders and medically compromised prisoners who can be released without danger to the community. To execute this policy, we are already working closely with the Sheriff, our law enforcement partners, victims and the defense bar. Our Office is also taking proactive steps to both minimize the number of nonviolent offenders being held pre-trial pursuant to G.L. c. 276, § 58, and advising our Assistant District Attorneys to consider the serious health risks posed by detention to the defendant, other incarcerated individuals, and the community in formulating bail arguments and before moving forward in probation detention and dangerousness hearings.

At the same time, our Office is mindful of the public safety concerns engendered by the large-scale release of prisoners envisioned by Petitioners, particularly given the proposed limitations on otherwise reasonable conditions of release. We have concerns about an approach that prioritizes the unconditional release of certain classes of inmates without proper oversight and structure; for example, individuals with addictions who are at an increased risk of overdosing without adequate supervision or who will be released to the streets or a shelter – making themselves and others more prone to exposure and infection. In short, identifying the best course of action to mitigate future risk requires nuanced discussion and cooperation of all parties; not a blanket policy that prioritizes release over proper safeguards.

Given the urgent and extraordinary nature of the COVID-19 epidemic, we believe that the most efficient way for the Court to address this matter is to immediately convene an emergency committee comprised of the various stakeholders in the criminal justice system. This group would include representatives from the various prosecutors' offices, the Petitioners, the Department of Correction, the various Sheriff's offices, the Parole Board, the Attorney General and the Trial Court. This working group will act rapidly to identify policies that can be immediately implemented to reduce the population of incarcerated defendants. Areas of disagreement can also be quickly identified and resolved before the Single Justice.

Respectfully Submitted,
For the Commonwealth,



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