



**Written Testimony before the  
Commonwealth of Massachusetts  
Joint Committee on the Judiciary**

Regarding

Bill H.4652, An Act Regarding Decarceration and COVID-19

May 5, 2020

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(on behalf of its low-income clients)**

Chair Eldridge, Chair Cronin, Vice Chair Chang-Diaz, Vice Chair Day, and Members of the Joint Committee on the Judiciary, thank you for inviting testimony regarding Bill H.4652, An Act Regarding Decarceration and COVID-19. On behalf of the low-income clients of the National Consumer Law Center,<sup>1</sup> I urge the Joint Committee on the Judiciary to vote H.4652 favorably out of committee and to support the bill's prompt passage to address emergency needs.

COVID-19 is rapidly spreading through prisons and jails, including those in Massachusetts, where people are housed in close contact with each other in dormitory-style settings and double cells and forced to share showers, toilets, and sinks.<sup>2</sup> Such conditions render social distancing impossible, putting incarcerated people and correctional facility staff, as well as the families of staff and their communities, at grave

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<sup>1</sup> Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

<sup>2</sup> See The Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (May 1, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

risk of infection.<sup>3</sup> Already, at least 7 people detained in Massachusetts' prisons and jails have died of COVID-19,<sup>4</sup> and 470 have tested positive.<sup>5</sup>

The Massachusetts Supreme Judicial Court has released a small number of people held pretrial, but much more is urgently needed to save lives, slow infection, and reduce the strain on the health care system. H.4652 is an important next step. The bill requires the release of certain groups of people, including those who are particularly susceptible to the virus, nearing the end of their sentence, and incarcerated for minor violations, subject to certain constraints to protect public safety.

### **Massachusetts Should Release Individuals Detained Solely Due to their Inability to Afford Bail, Fines, and Fees**

Importantly, H.4652 recognizes that people who are being detained because of their inability to afford financial obligations to the state should be promptly released, and should not have their lives put at risk as a result of their economic challenges. The bill requires release of pretrial individuals detained solely because they are unable to afford cash bail under \$10,000 and all individuals detained solely because of warrants for failure to pay fines and fees, subject to public safety protections. This is both a moral and public health imperative.

Already, studies have repeatedly demonstrated how the poorest criminal defendants suffer the harshest consequences in our criminal justice system, including spiraling cycles of debt and incarceration suffered when they and their families cannot afford bail, fines, or fees.<sup>6</sup> These individuals should not also face the risk of serious illness and even death as a result of their financial constraints. Moreover, criminal justice debt stemming from fines and fees is disproportionately borne by low-wage workers without job security and people of color.<sup>7</sup> These populations are experiencing the financial stress caused by the pandemic most acutely, with many losing jobs or hours and unable to pay bail, fines, and fees through no fault of their own.<sup>8</sup>

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<sup>3</sup> Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., & Josiah D. Rich, M.D., *Flattening the Curve for Incarcerated Populations - COVID-19 in Jails and Prisons*, NEW ENG. J. OF MEDICINE (Apr. 2, 2020), [nejm.org/doi/full/10.1056/NEJMp2005687](https://doi.org/10.1056/NEJMp2005687).

<sup>4</sup> See The Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (May 1, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

<sup>5</sup> Tracking COVID-19 in Massachusetts Prisons and Jails, Total Positive Tests (May 4, 2020), <https://data.aclum.org/sjc-12926-tracker/>.

<sup>6</sup> See ABBY SHAFROTH & LARRY SCHWARTZOL, CONFRONTING CRIMINAL JUSTICE DEBT: THE URGENT NEED FOR COMPREHENSIVE REFORM (2016), <https://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-1.pdf> at p.3

<sup>7</sup> See ABBY SHAFROTH, CRIMINAL JUSTICE DEBT IN THE SOUTH: A PRIMER FOR THE SOUTHERN PARTNERSHIP TO REDUCE DEBT (2018), <https://www.nclc.org/images/pdf/criminal-justice/white-paper-criminal-justice-debt-in-the-south-dec2018.pdf>

<sup>8</sup> See, e.g., Keith Wardrip & Anna Tranfaglia, *Which Workers Will Be Most Impacted?* (2020), <https://www.philadelphiafed.org/covid-19/covid-19-equity-in-recovery/which-workers-will-be-most-impacted>.

## **Massachusetts Should Ensure Those Who Remain Incarcerated Have Access to Communications and Essential Sanitation Products Free of Charge**

At the same time that individuals are being released, steps must be taken to help protect and support individuals who remain incarcerated and their loved ones. Along with the implementation of effective health and safety policies and the provision of essential supplies like soap and cleaning products free of charge, communication is among these individuals' most important needs. Because personal visitation has been suspended to prevent the spread of COVID-19, incarcerated people and their families face being cut off from each other entirely at a time when the need to connect and check in on one another's health and well-being is especially high.

Even absent a global crisis that has already left over 26 million people unemployed, phone calls can be prohibitively expensive to families, who are overwhelmingly low-income and people of color.<sup>9</sup> One-third of families with incarcerated loved ones go into debt trying to stay connected.<sup>10</sup> Families with a loved one inside a Massachusetts county jail can pay as much as \$7.50 for a 15-minute call. And families with loved ones inside state prisons pay \$1.40 for a 15-minute call, which appears to be a better rate until it is compared to the rates charged by the Commonwealth's neighbors, New York (\$0.65) and Rhode Island (\$0.44).

The National Consumer Law Center's clients are harmed by these unaffordable phone costs. We currently represent consumers challenging what we allege is an unlawful kickback scheme between Bristol County's sheriff and telecom giant Securus Technologies.<sup>11</sup> We allege that this arrangement is nearly doubling the cost of calls made by incarcerated people.<sup>12</sup> The only way people incarcerated in Bristol County can communicate by phone with their loved ones is through the privatized calling system operated by Securus. For all our clients, the excessive cost of Securus phone calls has created needless financial hardship—and prevented them from having more regular contact with their loved ones. One of our clients, who had a medical issue preventing him from writing letters by hand, had no other way to communicate with his 95-year-old mother and disabled sister, both of whom live over 100 miles away.

The high cost of calls forced another one of our clients, Kellie Pearson, to navigate impossible decisions between meeting basic needs and maintaining contact with her fiancé, who was incarcerated pretrial. Ms. Pearson estimates that she spent thousands

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<sup>9</sup> See Brian Highsmith, Written Testimony before the Judiciary Committee of the Connecticut General Assembly, 2019 Regular Session (March 25, 2019), <https://www.nclc.org/images/testimony-hb6714-ct-gen-assembly.pdf>.

<sup>10</sup> SANETA DE VUONO-POWELL, ET AL., ELLA BAKER CENTER FOR HUMAN RIGHTS, FORWARD TOGETHER, AND RESEARCH ACTION DESIGN, WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 9 (2015), <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

<sup>11</sup> Securus Technologies has a near monopoly in Massachusetts—90% of incarcerated people in the Commonwealth are dependent on its phone services. Mass. Dept. of Corr., "Study and Report of the Department of Correction" (2018).

<sup>12</sup> Complaint, *Pearson v. Hodgson*, No. 1:18-cv-11130 (D.Mass. July 30, 2018), <http://www.nclc.org/images/pdf/litigation/securus-complaint.pdf>

of dollars on charges to speak to her fiancé using the Securus phone system while he was incarcerated, severely straining the family budget. Her teenage daughter had to rush through conversations with her father so the call didn't get too expensive. As Ms. Pearson described, "It was crushing to her." Ms. Pearson was overwhelmed by bills, and eventually had to tell her fiancé that they could no longer afford to talk regularly. As reported by the *Boston Globe*, he took his life just days later.<sup>13</sup>

The widespread job loss and economic hardship caused by the COVID-19 crisis will exacerbate the financial strain on those, like our clients, who already struggle to stay connected. Unless the Commonwealth provides access to free phone calls, many families will simply be unable to afford to communicate with loved ones at all during this national emergency.

Although the burden on families is substantial, cost should not be a concern for the Commonwealth. The actual cost of providing telephone service is pennies per minute, and Massachusetts should take this opportunity to renegotiate its rates so that they are similar to those adopted in New York and Rhode Island.<sup>14</sup> Current rates are so high due to "site commissions"—a kickback from the phone service provider to the correctional facility, funded by the inflated costs the provider imposes on incarcerated people and their families.

H.4652 recognizes some of the reasons free communication is critical: the "mitigat[ion of] tension and the prolonged austere conditions" that incarcerated people "will be subject to during this time." The benefits of free communication also extend far beyond the current crisis. Those who maintain contact with their families during incarceration are more likely to reenter successfully and experience lower rates of recidivism after release.<sup>15</sup> As one researcher summarized, "Every known study that has been able to directly examine the relationship between a prisoner's legitimate community ties and recidivism has found that feelings of being welcome at home and the strength of interpersonal ties outside prison help predict postprison adjustment."<sup>16</sup>

The need for communication is even greater during this global emergency, when family members inside and outside the Commonwealth's custody are facing grave threats to their own health and that of their loved ones, and are limited to calls and emails to check on each other's health and provide each other support during this difficult time.

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<sup>13</sup> Maria Cramer, *Lawsuit challenges the high cost of calling from jail*, BOSTON GLOBE (May 3, 2018), <https://www.bostonglobe.com/metro/2018/05/03/lawsuit-challenges-high-cost-calling-from-jail/q17v1CL0bZBhxOXd9qOBRP/story.html>.

<sup>14</sup> Bonita Tenneriello & Elizabeth Matos, *The Telephone Is a Lifeline for Prison Families. And Calls Are Outrageously Expensive*, WBUR (Jan. 27, 2020), <https://www.wbur.org/cognoscenti/2020/01/27/cost-of-phone-calls-prison-bonita-tenneriello-elizabeth-matos>.

<sup>15</sup> Ryan Shanahan & Sandra Villalobos Agudelo, *The Family and Recidivism*, AMERICAN JAILS (Sept. 2012), <https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf>.

<sup>16</sup> Joan Petersilia, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 246 (2006) (emphasis in original).

The cost of a call should never prevent an incarcerated person from communicating with loved ones, and it is more essential than ever that all those incarcerated in Massachusetts be allowed daily access to free communication.

For these reasons, I urge you to vote H.4652 out of committee favorably and to do everything in your power to quickly pass this legislation.

Thank you for your consideration.

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