

HOUSE No. 1868

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 Uytterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</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.