

Kay Richard 0:06

Good morning.

Heidi Handler, Regulations Counsel 0:09

My name is Heidi handler and I'm regulations counsel for the Massachusetts Department of Correction. I would like to welcome you to the public hearing for 103 CMR 900 County Correctional Facilities. Also present and listening to your comments today are Timothy Gotovich, director of the Policy Development and Compliance Unit for the Department and reviewing authority for 103 CMR 900 and Kathleen Richard Program Coordinator III and Judith Elliot, paralegal specialist are present and assisting me in conducting this virtual public hearing today. Please note that this hearing is being recorded, and the recording will serve as the official minutes for the hearing. The recording will be posted and available on the Department's website shortly after today's hearing. I would like to briefly discuss the process for the hearing today. For those of you who are not aware in Massachusetts pursuant to the Administrative Procedures Act, whenever an agency promulgates a new regulation or changes to an existing regulation, the agency is first required to submit the regulation with the proposed changes to a public comment period. Pursuant to the APA, the Department began accepting comments to 103 CMR 900 on July 23, 2021. Normally, we would continue to accept written comments until 5pm. Today the day of the hearing. However, in order to allow every person that wishes the opportunity to comment to do so, we are extending the public comment period to next Friday, August 20, 2021 at 5pm. With regard to the purpose of today's hearing, the purpose is to receive comment on proposed amendments to 103 CMR 900 County Correctional Facilities. The existing version of 103 CMR 900, has been in place since May of 2009. The proposed regulation is being promulgated in order to address changes necessitated by the passage of the criminal justice reform act and also bring the rate regulation up to date with current practices. With regard to the format of today's hearing, the administrator Ms. Richard has muted the audio for all persons attending the public hearing. Ms. Richard will unmute individuals when it is their time to offer comments. In addition, the videos is off for all attendees. Only individuals identified as panelist panelists and a list of people wishing to provide comments will appear on screen throughout the hearing. As attendees you will not be seen on video and you will not have the opportunity or ability to mute or unmute your audio or screenshare. If you wish to speak as an attendee, Ms Richard will activate your video and audio when you are called to speak. At that point, everyone attending will be able to see you and hear you. This change will also allow you to screenshare once you have finished speaking, you will be returned to the webinar and will no longer be visible or audible to others. Please note, however, that the presentation or screen sharing of any inappropriate material will result in your video and screen sharing privileges being terminated. Lastly, I would like to point out that the list of speakers that will be speaking will remain in on the screen throughout the hearing. This is a dynamic list, as it will change if individuals identify that they would like to speak with regard to the speakers. The order will be as follows. Those note that have notified the Department in advance of a desire to speak will be called first. Next additions will be made to this list from those individuals participating in the webinar on

In order to indicate a desire to speak, click on the raise hand feature. That feature should be at the bottom of your screen if you are watching on a computer or in the More button if you are viewing this from a cell phone. Once you have clicked the raise hand feature, you will be added to the list. If you are calling in from a cell phone only on audio at the MS Rashard will unmute all audio callers. After all video callers have spoken and allow any audio caller wishing to speak to express interest in doing so. She will then unmute all callers again. And she will then mute all callers again. And we will proceed with the list of any individuals who have called in any indicated desire to speak one at a time. I would like to request that you limit your comments to less than 10 minutes so that we may allow all who wish to be given an opportunity to be heard to do so. If you encounter any technical issues during this webinar, please call 617-727 3300 extension 1124 and we will try to assist you with regard to the reviewing authority who is listening today. Pursuant to Department policy, the Department has a senior level manager attached to every regulation whose responsibility is to monitor the application of the regulation. They are also that person is also responsible to conduct annual reviews of the regulation under his her or their charge in order to assess the effectiveness and to determine whether the particular regulation is meeting its purpose. As I mentioned, Timothy Gotovich is the reviewing authority for 103 CMR 900. He is the director of the policy and development and compliance unit for the Department and has held this position since January 6 of 2020. Before becoming director of PDCU he held the position of Deputy Director of PDCU from 2012 through January of 2020. He was also an auditor within PDCU from 2000 to 2012. Before his assignment to PDCU. He held various positions within the Department, including director of security at MCI Framingham and correctional program officer AB please note that Mr. Gotovich and others from the Department would be reading all of your comments and listening to your comments today. But we will not be answering questions. Again. Mr. Gotovich is verse virtually present, and will read and accept whatever written comments you wish to provide, but no one from the Department will be answering questions today. In way of closing, I would like to thank everyone who is attending this virtual public hearing on behalf of the Department of Correction. The public comment period is integral to the establishment of effective regulations. Following the conclusion of this hearing, the Department will take all comments that we have gathered in this process back to Commissioner Carol mici. After considering them, the Department may make further revisions to these regulations as appropriate. The Department will publish the final version of the regulation into the Massachusetts register where it will be promulgated and become effective. Now, in order to call the list and accept public comments on proposed regulation 103 CMR 900 County Correctional Facilities, I am going to turn over the hearing to miss Kathleen Richard. Thank you. Good morning, folks.

Kay Richard 9:43

Good morning folks. I just have to go on record that saying it is Friday, August 13. I don't know what that means for hearing but let's hope it's a good one. We do just have a few folks on the list this morning. As Miss Handler said I will go through the list we will have plenty of time to allow everyone to speak If you think of something after the fact, again, please use that raise hand feature. If you're on a PC, it's going to

be on the bottom of your screen. If you're on an iPhone or Android, you go down to the bottom lower right, there should be three ellipses for more, and you're raising and feature is there. If all else fails, please go ahead and call that number on your screen and somebody will get in touch with you while this meeting is going on. So without further ado, I am going to allow Ms. Elizabeth Matos, Executive Director of Prisoner Legal Services to speak and Ms. Matos if you can just bear with me one moment. I will go ahead and get you here. Hi, good morning.

Liz Matos, PLS 10:55

Good morning. How are you? Can you see me hear me? Okay. Yeah, I think you were still on. Great, and I'm catching your audio. Anyone else there? Yeah. Can you hear me?

Kay Richard 11:14

Okay, there we go. should be good now. Just make sure

Liz Matos, PLS 11:19

Can you hear me?

Kay Richard 11:19

Yep, absolutely.

Around my fault. Thank you so much.

Liz Matos, PLS 11:22

No problem. Thank you so much for having me today. My name is Elizabeth Matos. I'm the Executive Director Prisoner's Legal Sservices. And I am very grateful for the opportunity to speak with you today. I do want to just note that the last time I testified before you, I had a couple of my boys chasing each other fighting over Legos. So luckily, I don't have that today. But I do have folks cutting trees down right outside my window. So hopefully you will be able to hear me. Okay. We are submitting written testimony as well. But I'll focus my comments on a few key areas. I'm mainly a few kind of overarching principles, we think these, this is an opportunity to really have more uniform standards for the counties and a number of areas that I'll talk about today. But that's the recurring theme. In these these comments. Also, just a couple of

things to point out that the Department could also take the opportunity to do uniformly is to shift language from the use of the word inmate, which is quite outdated now in using incarcerated person, which is certainly more humanizing. And there has been a significant trend over the years towards that terminology. Similarly, with 920.17, it means disabilities, instead of using the word handicapped, which is great, that is not now being taken out. I think really the most common and appropriate terminology is persons with disability. So it'd be great if we could see that used in the regulations in terms of 103 CMR 924 security and control. These regulations really offer an opportunity to create baseline standards in uniform expectations with respect to use of force. I want to highlight that there is pending legislation that is similar to legislation that we engage with the Department about last session Senate Bill 1541 and House Bill 2480. That was similarly trying to create your uniform standards for the counties around use of force and basically bring them in more in line with what the DSC has been doing. But as you likely know many counties have outlined practices related to use of force including overuse of canines, restraint, shields, chemical agents and kinetic impact weapons that for example, I know Sheriff Popinure is going to be testifying afterwards. But Essex County regularly uses canines to respond to use of force, which is an aberration in terms of other counties, not just here in Massachusetts, but nationally. Suffolk County also uses restraint chairs far more than any other county and almost automatically after replant use of force in whist, Worcester County, regularly uses the FM 303, a kinetic impact weapon that actually killed the woman in Boston after the Red Sox won the World Series a few years ago, and should really never be used in the cell because there's not enough space in that kind of interaction could actually be fatal, similar to how it was for the woman several years ago. And I wanted to highlight that in that particular piece in 924.06. We want to just know about videotaping we would suggest that videotaping of strip searches is not generally accepted practice anymore, and is definitely rare in the Commonwealth. And we're not alleging that in corrections nationwide, but incarcerated people, you know, especially women's fear and trauma of being videotaped naked in such a highly vulnerable state, and anxiety inducing the worry that the recording would be widely disseminated or viewed, we think far outweigh any perceived security rationale, and by referring to strip searches being reported without stating under what circumstances this might occur. You know, even the example provided in the regulation that during the use of force isn't really clear. So whether whether video recording is subject to any limitations besides gender, the gender of the recorder, the provision really endorses a practice that should be rejected. And that most allowed only under very narrow, clearly defined and emergency situations. That would be our suggestion there. Um, the next section 924.07, you know, really, this proposed regulations not specified instances of inappropriate usage of chemical agents, kinetic impact weapons or electronic control devices, which of these, and this has been a consistent problem. Basically, these folks to an excellent geography depending on where you are in the county is really subject to very different practices. And that is something I think makes little sense in doesn't really serve a purpose for the DOC or for folks who are getting disparate treatment depending on where you are

in 924.09, and the use of force so it's been a little more time here. So use of this use of force regulation should require correctional officers to employ de escalation tactics and techniques prior to using physical force. And no, this is already to some extent used in the DOC, less clear to what extent this is happening

in the counties. It's a crucial step to preventing unnecessary pain and suffering and further physical force should only be used to prevent the escape from custody of an incarcerated person prevent imminent harm to an identified identify a person where the amount of force views is proportional to the threat of an arm. The current regulation allows for use of force in much broader circumstances and we suggest that the use of a chokehold, which has already been banned in many other jurisdictions in context by should also be banned for correctional officers. on tours of canines, the proposed regulation seeks to create a baseline standard use of force for canines, which is great, but we started in part to search for fleeing escapees for crowd control into search and detection of contraband, but we suggest that it should be further limited, as the current language still allows for use of canines in circumstances where they're likely unnecessary. If so, we should suggest that canines should only be used, if necessary, as part of a coordinated response to it by a tactical team to major disturbance, which is generally described as a hostile situational riot. And we further suggest that with respect to the course, to Section subsection three incarcerated people should be removed from any area where canines are conducting contraband searches, and all other reasonable efforts should be made to minimize contact incarcerated people have canines. And then unfortunately, part four of the of the proposed regulation permits the use of canines canines to monitor outdoor movement between physical buildings. But we really feel like this undermines the goal of minimizing contact with canines generally and creates a unnecessary atmosphere of fear and intimidation, especially for people who have been traumatized by dog bites or have justifiable fears of dogs in cages. And so regarding 924 12, and the use of restraint equipment, pls is aware that several county jails and houses of correction currently use restraint chairs automatically following everything you support that gave the example of Suffolk County already suggests that the regulation prohibits the use of four and five point restraints except when they are the least restrictive means available to prevent substantial threat of imminent harm or restraint chair is, by definition really traumatic experience and so should only be used as a last resort. In addition, in the number four, the proposed regulation requires that incarcerated people who are restrained must be assessed by medical staff every two hours. Given the kind of stress of being restrained, we believe that the restrained person should be checked on by medical staff and offered an opportunity to exercise every 30 minutes Just in case was there have been incidents of acute mental distress when folks are in restraint shares, and then jumping down to restrictive housing in 902.01. So we acknowledge the fact that the Department is codifying in the regulations statutory reforms to restrictive housing passed in 2018. It is clear that many counties have ignored compliance with these provisions and in bad is the subject of conversation in the legislatively established restrictive housing oversight commission. And so, our hope is that the DOC in its periodic inspections of counties and otherwise will provide much needed oversight here, we encourage you to include as much as possible in these regulations that reflect the findings of the Falcon report, specifically that restrictive housing is harmful and unnecessary. And that a shift from the punitive model to rehabilitative models called for, um.. the counties have consistently not produced the reports required by the CJRA and that is also something that can be addressed here. I'm also according up with DOC considers 22 our confinement to be restrictive housing and regulated as such, but the county's just to highlight this consistently referred to restrictive housing as anything that is over that is not over 22 hours. So the regulation should really clarify that anyone held in a cell for 22 hours a day is entitled to protections that apply to restrictive housing, because that is a difference between how the DOC encounters or interpret a map. So just jumping down to certifications for people held in restrictive housing, it's clear that most counties are

entirely non compliant with the statutory provision requiring the certifications be less or just at the county's be required to maintain rosters of all persons held for protection in all who have smmi or health and restrictive housing for 72 hours or longer. And copies of all certifications issued. The regulation should also require that these certifications be individualized and not pro forma. So a couple more things. I know we're short on time, we are submitting these, um, just regarding pregnant and postpartum versus we acknowledge and appreciate Of course, the exclusion of postpartum persons from restrictive housing. But the proposed regulation allows the use of restrictive housing. If there is an individualized document determination of serious risk, a person who has just given birth in prison is almost certainly in a compromised mental state just after that in any risk of harm to self or others should be addressed in a treatment setting possible rather than a restrictive policy. postpartum person cannot safely be housed in general population should be transferred to a treatment unit in the facility or numbness available should be committed to treatment if possible. And that's just to add some additional protections there, recognizing what happens after after similar delivers a baby. in what condition people are generally in situations out of cell time in 926.05. The proposed regulation maintains a minimum of only five hours per week out of cell, which excludes showers and phone calls, though it does require facility administrators to assess the feasibility of further out of cell time. You know, the current proposed legislation currently proposed legislation provides a minimum four hours daily of upsell time in segregated confinement. So we would urge that a minimum out of cell time be at least two hours a day, seven days a week, five hours seems incredibly restrictive, and not in line with with best practices. So I'll just say one more thing around health care services, and post Sorry, I wanted to mention something about searches as well if that's okay, so I'll jump down to visiting one or three months. Um, so this assignment is an approval process. One concern we had there is that given the critical importance of visitation to the neatness of community connections, that successful rehabilitation recommend the sheriff's be required to provide notice regarding any proposed changes to visitor approval processes, with an obligation to first consider input from stakeholders including folks who are incarcerated family members, and then in terms of searches visitors, which is 954, subsection two, there's a strong likelihood here, we're just going to highlight this given all the attention to structural racism and corrections and parole Commission's have something to be aware of that there's a likelihood of racial bias in the search procedures that are left entirely to the discretion of correctional staff. So we would suggest that just as a best practice, and to guard against that, that five party of black indigenous persons of color who are staff members be assigned, perhaps the visiting, to visiting hours that someone is there who can sort of pay more attention to those things, and also that if there's going to be a more intrusive search, that a chain of command perhaps be implemented before that is done. Also as an additional just guard against potential bias that could happen there. The section also allows for searches of visitors by use of drug sniffing dogs, we certainly oppose the use of drug sniffing dogs, search visitors is an issue that's come up in the past, but search by use of the canine is intrusive, intimidating. And we have heard accounts that visitors subjected to use of canines have suffered anxiety, panic, and the dogs sniff them, sometimes invasive and private parts and things of that nature. So visitors are afraid of or allergic to dogs, fear retaliation, that they asked correctional staff for an accommodation of their needs around that. So it's something to be aware of, but also that false alerts are fairly well known in this area, and may result from traces of drugs and clothing as a result of incidents of contact. And so the potential for a canine to falsely alert as a result of unconscious signaling or cueing from its handler can also lead potentially to racial bias in searches. So we would just caution against the

use of canines for for searching visitors. I really appreciate the opportunity again, to testify and just highlight some of the things that are breaking testimony, and certainly get that to you before August 20. And like the today, but I'm also happy to answer any questions when I mentioned or clarify anything.

Kay Richard 27:20

Thank you very much Lizz for your testimony. And yes, I look forward to those. Those comments as soon as you're able to get those by next week. They'll be great. Great. Thank you.

Liz Matos, PLS 27:29

You're welcome. Thank you.

Kay Richard 27:43

Sorry Folks, I'm just gonna go ahead and move on to Sheriff Coppinger of Essex County. Sheriff you just one moment.

Okay, Sheriff Coppinger Are you should be able to go ahead and speak you can unmute yourself. And if you wish to turn your video on, you may do that as well. Good morning, Sheriff. I do believe you're still on mute. I believe the muting is on yourend sir.

Kevin Coppinger, Sheriff, Essex County 28:58

Better

Kay Richard 28:58

Ah, much better.

Kevin Coppinger, Sheriff, Essex County 28:59

All right. Technology is good. As long as you hit the right button. I guess

Kay Richard 29:03

It's only been a couple years. We're still working here now.

Kevin Coppinger, Sheriff, Essex County 29:07

Well, first of all, thank you for the opportunity to offer some testimony and also thank you for going through those changes I'm sure was a monumental task that takes a lot of man hours and I appreciate you taking a look at this. And in the best interest of all my comments are going to be really focused on the one of the the 924.10 series on the use of canines. And I do ask that you do this when you look at this or at least listen to my comments. And from your point of view, look at it from a safety and security perspective. Facilities like I was here in in Essex, you know, if we don't have the proper tools and resources to maintain adequate levels of safety and security, individuals are put at risk of serious personal injury or even worse. I do support the proposed changes to 924.10. And in particular, paragraph three, line four regarding monitor During outdoor inmate movement, proper use of canines, especially in a facility like the Essex County Jail and House of Correction here in Middleton are a key resource as I mentioned in protecting and saving lives. Restricting the use beyond a reasonable level would seriously impair our ability to maintain that critical level of safety and security within our facility. Strong policy, good training and proper personnel selection and key ingredients to a successful canine program. I strongly believe and I'm speaking for Essex County at the moment our current program serves us well. Essex County's Middleton facility with its college like campus have 10 separate buildings all within the fence. With lots of space in between presents unique and significant safety and security concerns that canine patrols help offset. Our inmate population count is the highest in the state amongst our peers. And during peak movement times many as 100 plus inmates could be in the traversing the open areas. At any given time. Canine units are assigned to the yards to monitor these areas and to ensure help excuse me and to ensure safety. While one can I can't wait one prevents, I strongly believe that the mere presence in the yard is a major deterrent to violent and disruptive behavior. Now I took office as sheriff in in January of 2017, following a long career in in local police. And since then I've taken fall, the following steps to revise canine program. In August of 2019 policy was updated with new restrictions as to when canine units are utilized in an inmate housing unit or programming area. And it better defines our responses to inmate disturbances. And as an aside, I have sent the copy of that new policy commission Mici and under a separate cover several months ago. So it is in your should be in your file someplace. And if it's not, I will certainly share it with you or anybody else that would like to take a look. We have updated increased our in service training in many areas including canine operations. These trainings including de escalation techniques have focused on safety as a top priority, yet as a result, resulted in a decrease in canine responses. We have also seen that the mere presence of a canine team a short distance away is a huge deterrent to further violent behavior. In my opinion, these revisions are working and I'm going to offer you some statistics to prove my point. In 2017. The first year I was up here in Essex canines responded to 388 incidents, we have four incidents did result in a bite 2018, those incidents were reduced to 289. With one incident that resulted in a bite by 2019 number of incidents was at 142 with zero bites 2020. Those responses were down to 92 with zero incidents resulting in a bite. And as of July 27 of 2021. Our responses are 331 with zero bites once again, yes, the



331 is a spike over the other two but the reason being is we did obtain a passive canine use strictly for drug searches. And when we use them for a search we do and we do count that as an incident. That's why those numbers are up. Those canines are only used for drug searches. So you can see the last bite we had here in Essex County was in 2018. And I do attribute that success based on our policy training and how we how we're running operations here. A couple of quick points I just want to off of is you know based on the original design, most housing units here in Essex County maintain an inmate officer ratio of 120 to 220 inmates in the housing units with two offices. That can be difficult. Many of my fellow sheriffs in the houses of correction the jails across the Commonwealth are more modern. They have smaller pods and their inmate to staff ratios are much more manageable. canine teams at least within the perimeter, not on the floors, as I've said before, you know offer reliable and immediate support when needed, and God forbid we need them but they could be a quick force multiplier if something goes bad. Since canines were first deployed, in essence, county Department has been subject to 28 Mass Department of Corrections in eight American Correctional Association audits. We have an ACA accredited agency since 2000. And of course, as I'm sure you know, canine operations are included in these audits and looked at closely. I can't add policy as strong and detailed. In fact, the United States District Court district of Massachusetts recently upheld our policy and a 2018 civil proceeding as the elected Sheriff of Essex County have pledged to maintain a safe environment for all who enter our facility. canine units are an integral part of that equation and need to be maintained in the present form. As Sheriff is the individual responsible for the day to day operations of our facilities. My concerns reflective upon all those who work live in our visit our facilities. As a law enforcement professional with over 37 years of service, I cannot in good conscience support any unnecessary hamstringing Oh, by canine program, as it will decrease safety within our facility for not only staff and inmates, but for all those who enter through our doors. In closing, and once again, I do support the revisions to 929 2410. As written, I will also like to share with you that additional written testimony signed by all 14 of the Massachusetts sheriffs will be forthcoming to you prior to the August 20 deadline. Thank you for your time and consideration in this very important matter. I appreciate your help. And I wish you all the best. Thank you.

Kay Richard 36:01

Thank you very much, Sheriff and I am in receipt of your your comments that you did submit, we'll look forward to the remainders. Thank you.

Kevin Coppinger, Sheriff, Essex County 36:06

Thank you.

Kay Richard 36:09

At this time, we actually do not have any remaining participants who have chosen to raise their hand I do have a few folks on the phone and I will check in with them. So again, if you would like to speak we actually have no one waiting. And if you wish, you may go ahead and use that raise hand feature. I am just gonna check in with Ms. Hill. I know you had mentioned you may want to speak and haven't used the feature. Are you going to be speaking to the Secretary this morning? You do have the ability to unmute.

Carrie Hill, Executive Director MSA 36:51

Good morning. Thank you so much. Now we'll be providing written testimony. But thank you for asking. Thank you very much.

Heidi Handler, Regulations Counsel 36:59

Alright, since we have the time, I'm going to go ahead and go through each each person on the list. folks can go ahead and unmute themselves. And just give you one more opportunity since we've got the time to live during his witness anybody. So again, I'm going to go ahead and unmute everyone or get people to speak should they wish and I will go ahead and call you by me. Okay, air, Aaron Eastman. Aaron Eastman. Also, thank you. Thank you, Attorney Patel. All said thank you. Thank you. Ann Taylor. Also, thank you, man. Thank you. Brianna Ruta. Also, thank you. I've got a Greg Arpin from Dukes. HCSD Roman. Ian Taylor. Jessica Weber, Ken Schaefer. Mary Keith. Michael Rogers. Representative Liz, Malia, Mr. Schaefer, I was just offering you the opportunity to speak I'm just going through the list. If you wish to speak you can speak up now. Okay, Michael Ryan. PCS de Suffolk County Sheriff's Department. Plymouth County, Rene and at this time, I don't have anyone calling in on the phone lines. I will turn this over to this hammer but I just wanted to go ahead and say thank you everyone for joining today. I do hope later this afternoon or by Monday that this webinar will be posted on the Massachusetts Department of Corrections website at [mass.gov/DOC](https://mass.gov/DOC). Scrolling down to the bottom of public information this will be there as well as once there are The comment period has closed I will go ahead and be posting those on our website for folks to get as well. Thank you kindly. Here is Ms. Handler.

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