

September 16, 2020

John H. Melander, Jr.  
Deputy General Counsel  
Executive Office of Public Safety and Security  
One Ashburton Place, Room 2133  
Boston, MA 02108

RE: Public Hearing on Proposed Regulations 501 CMR 17.00 Medical Parole

Dear Mr. Melander:

I am writing on behalf of the Massachusetts Office for Victim Assistance (MOVA) in response to the proposed regulations provided by the Executive Office of Public Safety and Security (EOPSS) regarding medical parole in the Commonwealth. Medical parole decisions have significant impact on victims and survivors of crime and there are specific amendments to the proposed regulations that EOPSS should consider to ensure that victims are informed, present, and heard throughout the process.

*Providing Notice to Victims*

The regulations speak of notifying victims in writing of different events in the medical parole decision process and we echo this as being important. Best practice in the field of victim services involves both written and telephonic communication with survivors to better support them in the moment and refer them to necessary resources. We encourage you to adopt both written and telephonic notice as a preferred practice in these regulations whenever the victim's contact information is available to staff in the Department of Correction Victim Service Unit.

It is also unclear in the proposed regulations when a victim will be provided notification of a medical parole hearing. Victims will need some advanced notice to determine their interest and ability to take part in person or through some other means. This should be further outlined in these regulations. We recommend following the notification standards set forth in [120 CMR 400.02\(2\)\(a\) and \(b\)](#) which provide for advanced notice of at least 60 days to victims eligible to participate in a hearing, including victims of a crime carrying a life sentence, resulting in death, or violent crimes and sex offenses, and at least 30 days to victims of all other crimes.

*Victim Testimony at Hearings (501 CMR 17.07)*

We are grateful that 501 CMR 17.07 allows victims receiving notice of a petitioner's petition for release to provide written statements. However, as written these regulations only afford those victims who have lost someone to a Murder under [M.G.L. Chapter 265 §1](#) the opportunity to request or be heard in a hearing. This unfortunately excludes other victims of violent crime who would otherwise be offered an opportunity to be heard in the regular parole process as provided by statute and regulation.

As written, families who have lost a loved one to violence where the conviction stands as manslaughter, motor vehicle homicide, or other case resulting in death would not be afforded an opportunity to request a hearing or be heard. These individuals currently are afforded this opportunity to be heard prior to a parole decision in accordance with [M.G.L. Chapter 127 §133C](#). This process is further outlined in regulations [120 CMR 400](#) and [120 CMR 401](#). Families of homicide victims suffer the same reality and loss, regardless of the crime determined by a jury or a judge.

501 CMR 17.07 further excludes participation in hearings by survivors of sexual assault, child sexual abuse, and other violent crimes. These same victims are deemed eligible to be heard in a Victim Access Parole Hearing by [M.G.L. Chapter 127 §133E](#). While we recognize the medical parole process is outlined as different than the traditional parole process, we recommend you seek to ensure the same rights to be heard prior to release to those populations of victims already identified in statute and regulation.

We also request that any impact statements provided by a victim during a medical parole hearing be included as part of the administrative record.

#### *Assessing Safety*

Proposed 501 CMR 17.00 identifies times in the process that participants (Superintendent, Sheriff, Commissioner, etc.) should evaluate concerns or safety risk by releasing the petitioner. Wherever appropriate we recommend the reviewer consider any threatening contact between the petitioner, or a third party on their behalf, to the named victim and/or their family during their incarceration.

We also request any information shared during a medical parole review or included in the administrative record that would pose threat to the safety of a victim, including contact information or address, be kept confidential and not be disseminated. This is similarly outlined in [120 CMR 500](#).

#### *Reconsideration of Medical Parole Decisions*

The regulations as proposed do not offer any expectation of victim notification in the event that a medical parole decision is under reconsideration. While it is the understanding of MOVA that the Department of Corrections is already providing notice to victims, the regulations should codify that practice to ensure victims have the most up to date information regarding their safety and important planning decisions.

#### *Victim Notice prior to release*

501 CMR 17.12 envisions notification “not less than 24 hours before a prisoners release”. This is inadequate for a victim’s ability to plan, adjust to the decision, and take steps to ensure their safety. While we recognize this is the language outlined in the medical parole statute, we recommend inclusion of a notification timeframe that can ensure these outcomes. We recommend considering inclusion of language similar to current parole regulations [120 CMR 400.02](#) and DCJIS regulations [803 CMR 9.09](#) that ensure victims 14 days advanced notice of an inmate’s release.

We are grateful to have the opportunity to comment on these regulations and continue building on our shared commitment to victim rights in the Commonwealth. Thank you for your consideration of this matter. If I can be of any assistance to you as you review the above recommendations, please do not hesitate to contact me.

Sincerely,



**LIAM T. LOWNEY**  
*Executive Director*