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OFFICE OF THE DISTRICT ATTORNEY FOR THE NORFOLK DISTRICT

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By email: John.melander@mass.gov

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

Re: Written Comment on Proposed Regulation 501 CMR 17.00

Dear Deputy General Counsel Melander:

On behalf of Norfolk District Attorney Michael W. Morrissey, this letter comments on new proposed regulations pertaining to medical parole, 501 CMR 17.00, and advocates for promulgation of regulations concerning notification of medical parole proceedings subsequent to an initial denial of a medical parole petition to victims and the District Attorney having jurisdiction of the underlying criminal offense

Under G.L. c. 127, §119A(c)(2) & (d)(2): "Upon receipt of the petition and recommendation. . .the commissioner shall notify, in writing, the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, the prisoner, the person who petitioned for medical parole, if not the prisoner and, if applicable under 258B, the victim or the victim's family that the prisoner is being considered for medical parole." The persons given notice have an opportunity to submit written statements, G.L. c. 127, §119A(c)(2) & (d)(2), and if the prisoner was convicted and serving a sentence for murder under G.L. c. 265, §1, the district attorney or victim's family may request a hearing. G.L. c. 127, §119A(c)(2).

The statute makes no explicit mention of reconsideration of medical parole petitions. The current and proposed regulations, with minor alteration, both allow where the prisoner experiences a significant and material decline in medical condition, the

Commissioner may reconsider the previous decision on the petition without requiring a new petition to be submitted. 501CMR17.14(4).

By providing for the District Attorney with jurisdiction over the underlying crime to have notice and an opportunity to be heard, with the additional opportunity to request a hearing for a murder conviction, the Legislature recognized the District Attorney's important role in medical parole hearings. The District Attorney has information about the details of the prisoner's underlying crime and its effects, as well as general or specific safety concerns that may have arisen from the crime. The District Attorney's staff, including victim-witness advocates, often have long-established relationships with the victim or victim's family, which facilitates obtaining their input as to safety concerns that may arise from a prisoner's release before the completion of their sentence.

Notice of reconsideration of a previously denied medical parole petition provides victims with time to safety plan and promotes confidence in the judicial system. The same rationale for notification when an application for medical parole is initially filed applies equally to any reconsideration after a prior denial; the District Attorney and victims may have additional relevant information to share given the new information as to the prisoner's changed condition. Although this office has received notice of recent reconsiderations of medical parole petitions this was not initially the case. Regulations should make clear that the District Attorney of the jurisdiction of the underlying offense as well as victims, must receive written notice of any reconsideration of medical parole.

Additionally, regulations should be promulgated to include victim notification for certiorari actions under G.L. c. 249, §4. Under G.L. c. 127, § 119A(g): "[a] prisoner, sheriff or superintendent aggrieved by a decision denying or granting medical parole" may file a certiorari action under G.L. c. 249, §4. Under the Victims' Bill of Rights, G.L. c. 258B, §3(b), victims and family members have the right "to be present at all court proceedings related to the offense committed against the victim," unless the victim is to testify and the court determines the person's testimony would be materially affected by their presence, and under §3(t), have the right to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody. Certiorari actions constitute an appeal of the denial of medical parole, and may include a hearing in which the victims or victim's family may have interest in knowing about or attending. Victims have the right to learn from the Department of Correction that there is a pending Superior Court action relating to the denial of the medical parole petition, as well as notice of any hearing.

Sincerely,

/s/ Pamela Alford

Pamela Alford
Assistant District Attorney