COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. No. 2384CV01349

JOHN DOE 1, JOHN DOE 2, and JOHN DOE 3, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	**CLASS ACTION COMPLAINT**
v.	)	
MASSACHUSETTS PAROLE BOARD,	)	
Defendant.	)	

I. INTRODUCTION

1. Named Plaintiffs and members of the proposed class are parole eligible incarcerated persons with mental health conditions, cognitive challenges, and other mental disabilities. Their opportunity to secure release on parole is significantly diminished or denied entirely due to the Massachusetts Parole Board's (the "Board") ongoing failure to provide the accommodations necessary to ensure meaningful access to the parole process and fair consideration for parole by the Board. They therefore bring this class action for declaratory and injunctive relief against the Board for ongoing violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* ("Section 504"), and cognate state laws.

2. In its May 2017 opinion in *Crowell v. Massachusetts Parole Board*, the Supreme Judicial Court ("SJC") stated that Title II of the ADA and parallel state provisions prohibit the Defendant from engaging in practices that effectively deny equal access to parole to incarcerated

people with disabilities.[1] The SJC found that, as with any other public entity subject to the ADA, the Board is required to take affirmative measures to accommodate individuals with disabilities who may appear before it in pursuit of "the benefits of [its] services, programs, or activities," thereby affording such individuals an equal opportunity to access the entirety of the parole process. This includes reasonable modifications in the Board's substantive decision-making so long as the accommodations do not change the fundamental nature of parole.[2]

3. Despite the clear directive in *Crowell*, the Board maintains policies and practices that systematically deprive "qualified individuals" – here, incarcerated persons with mental disabilities – of the reasonable accommodations necessary for them to effectively present their case to the Board and, ultimately, be safely paroled to the community.

4. In maintaining these policies and practices, the Board has, among other things:

- Failed to establish adequate or timely procedures to screen incarcerated persons for mental disabilities that may require accommodation.
- Failed to identify, and make available to parole candidates, the range and type of available reasonable accommodations that such candidates with mental disabilities may require.
- Failed to assign counsel (timely or at all) or offer other accommodations to qualified parole candidates with mental disabilities during the complex process of parole preparation and during hearings themselves (which last up to three hours and involve numerous questions delivered by multiple Board members).
- Unfairly penalized parole candidates with mental disabilities for conduct, appearance, and/or presentation during parole hearings caused by their disability.
- Failed to provide necessary assistance in developing "an appropriate release plan in advance of a parole hearing," including identifying "appropriate post-release programming." *Crowell*, 477 Mass. at 112.

[1] See *Crowell v. MA Parole Board*, 477 Mass. 106 (2017).

[2] The Board is also precluded by the ADA from imposing or applying "criteria or methods of administration…[t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability" as well as "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(3)(i), (8).

- Failed to ensure that parole candidates receive a professional evaluation of their mental condition, including how any related limitations may interact with the criteria for parole, as well as a recommendation for an appropriate reentry plan that might reduce the risk of recidivism.
- Failed to consider in its assessments of parole readiness whether and to what extent disability may affect the parole candidate's conduct, disciplinary history, and/or ability to access prison programming, work, or educational opportunities during incarceration.
- Failed to consider how symptoms stemming from the candidate's disability could affect their behavior both in the parole hearing and on parole.
- Failed to coordinate with the Department of Correction ("DOC") to ensure that qualified incarcerated persons receive accommodations necessary to access rehabilitative or educational programs the Board may determine are needed.
- Failed to coordinate with state agencies such as the Department of Mental Health ("DMH"), Department of Public Health ("DPH"), and Department of Developmental Services ("DDS") to ensure that persons the Board might deem qualified for parole release with appropriate services do not remain incarcerated simply because such services are unavailable (or are available but not offered due to the Board's failure to coordinate).
- Failed to consider whether reasonable modifications to parole conditions could mitigate any risk a parole candidate with mental disabilities might pose if released.
- In rendering parole decisions, failed to consider the availability of "risk reduction programs designed to reduce recidivism" that could allow the parole candidate with mental disabilities to safely reenter the community *Crowell*, 477 Mass. at 112-13.

5. The Named Plaintiffs seek relief from the Board's discriminatory practices on behalf of a class of all parole eligible persons with mental disabilities, including, without limit, diagnosed mental disorders or illnesses; cognitive, intellectual, and/or developmental disabilities; and/or traumatic brain injury ("TBI").[3] Plaintiffs seek (i) a declaratory judgment that the Board's policies and practices violate the ADA, Section 504, and cognate Massachusetts laws and regulations; and (ii) a permanent injunction directing the Board to modify its policies and

[3] The ADA defines "disability" as (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(2).

practices to ensure that no one is denied the opportunity to be released on parole because of a mental disability.

II. THE PARTIES

6. Plaintiff John Doe 1 ("JD 1") is a 58-year-old Massachusetts resident who has been incarcerated in facilities operated by the DOC since approximately September 1985, or for nearly 38 years. He is currently housed at Old Colony Correctional Center (OCCC), a medium security DOC prison located in Bridgewater, Massachusetts. JD 1 has been denied parole at least a dozen times since achieving initial parole eligibility in July 2004. JD 1 is a "qualified individual" with mental disabilities under the ADA and is legally entitled to reasonable accommodations to ensure his access to all aspects of the parole process.

7. Plaintiff John Doe 2 ("JD 2") is a 42-year-old Massachusetts resident who has been incarcerated in facilities operated by the DOC since December 2001, or for more than 22 years. He is currently housed at OCCC. He first became parole eligible in November 2016, but did not go before the Board until December 2017, at which time he was denied parole and another chance to seek parole for 5 years (a 5-year "setback"). JD 2 was denied parole a second time, with a 1-year setback, after a second hearing in December 2022. JD 2 is a "qualified individual" with mental disabilities under the ADA and is legally entitled to reasonable accommodations to ensure his access to all aspects of the parole process.

8. Plaintiff John Doe 3 ("JD 3") is a 65-year-old Massachusetts resident who has been incarcerated in facilities operated by the DOC since 1980, or for approximately 43 years. He is currently housed at OCCC. He has been denied parole four times, beginning in 2004, with a 5-year setback issued by the Board each time. JD 3 is a "qualified individual" with mental

disabilities under the ADA and is legally entitled to reasonable accommodations to ensure his access to all aspects of the parole process.

9. Defendant the Board is a Massachusetts state agency, with a principal place of business located at 12 Mercer Road in Natick, Massachusetts. The Board is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1), and, as confirmed in *Crowell*, is therefore subject to Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and its related implementing regulations, 28 C.F.R. § 35. The Board is tasked with administering all aspects of parole in Massachusetts and is solely responsible for determining whether and under what conditions to grant parole to all parole-eligible individuals in the state. G.L. c. 27, § 5; G.L c. 127, § 128; G.L. c. 127, § 130.

III. BACKGROUND

1. THE SJC'S HOLDING IN *CROWELL* AND THE BOARD'S RESPONSE

10. In *Crowell,* the SJC ruled in favor of a parole candidate with mental disabilities related to Traumatic Brain Injury (TBI) who claimed his rights against disability discrimination were violated because the Board had denied him a fair hearing and based its decision on his disability without considering whether reasonable modifications, including assistance in developing an appropriate release plan, could allow him to qualify for parole. The Court held that the ADA and other federal and state laws prohibiting disability discrimination require that the Board make reasonable modifications to parole hearings and in their decision-making process.

11. The Board's awareness that an individual seeking parole has a disability that "could potentially affect his ability to qualify for parole" triggers its duty "to determine whether reasonable modifications could enable the [candidate] to qualify for parole without changing the fundamental nature of the parole." *Crowell*, 477 Mass. at 113.

12. The SJC further stated that where a person has a significant mental disability, "it is difficult to see how the board could proceed without a professional evaluation" of the impact of the disability on the individual's institutional record and behavior at the parole hearing, as well as to help identify post-release programming that might diminish the risk of recidivism and improve the likelihood of successful reentry. *Id.* at 114, n. 16. See also 28 C.F.R. § 35.130(h) (2016) (safety concerns justifying parole denial must be "based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities").

13. As set forth in detail below, in the six years since *Crowell* was decided, the Board has essentially ignored the Court's instructions. It has not meaningfully modified outdated procedures and methodology and, instead, has continued to conduct business as usual – effectively denying incarcerated persons with mental disabilities fair consideration for parole.

14. The Board failed to establish an effective screening process for identifying incarcerated persons with mental disabilities approaching their parole date. It allows individuals entitled to accommodations under *Crowell* and the ADA to go without, when even a cursory review of available records would indicate that the parole candidate needs assistance. Moreover, the Board has not exercised its authority to appoint a single mental health expert for purposes of evaluating a parole candidate's ability to access the parole process or suitability for release.

15. The *Crowell* decision should have prompted a renewed focus at parole hearings on the interplay between a candidate's mental disability and their institutional adjustment and ability to rejoin society (with appropriate supports). In practice, however, neither the Board's written decisions, nor its ultimate conclusions, show any material adjustment, as the Board continues to "cut and paste" conclusory language into boilerplate decisions that are bereft of the considerations demanded by *Crowell*.

2. CHALLENGES FACED BY PERSONS WITH MENTAL DISABILITIES IN THE CRIMINAL LEGAL SYSTEM

16. Persons with mental disabilities are disproportionately represented in Massachusetts' criminal and correctional system. In the state prison system, as of year-end 2022, 41% of male inmates and 79% of female inmates had an open mental health case, while 34% and 74%, respectively, had a "serious mental illness" (SMI) – that is, major affective disorder, schizophrenia, and bipolar disorder, among many others.[4] Not surprisingly, a significant proportion of incarcerated persons are also prescribed psychotropic medication, including 29% of male inmates and 65% of female inmates (see note 4, below). More recent data obtained through a public records request shows an even higher rate of mental health concerns: as of December 5, 2022, 50% of DOC's total custody population had an open mental health case (2,933 of 5,875 incarcerated persons).[5]

17. Those with mental disabilities are at a severe disadvantage in terms of their ability to cope with the special challenges presented by the prison environment. Nationally, only about one-third of persons incarcerated in state facilities (and 17% of those in jail) will receive any form of mental health treatment.[6]

18. Individuals with mental disabilities may face challenges in maintaining compliance with rigid rules. Among other things, many have difficulty focusing on required

---

[4] See *MA DOC Inmate Quick Statistics by Gender*, Dec. 31, 2021, at https://www.mass.gov/service-details/quick-statistics (accessed June 8, 2023).

[5] Data for the number of open mental health cases was obtained via an October 11, 2022, records request, while the custody count was derived from data updated weekly by the DOC. See *MA DOC Daily Custody, COVID-19 Facility Cell Housing Report*, Dec. 5, 2022, at https://public.tableau.com/app/profile/madoc/viz/MADOCCELLCAPACITY/CellCapacityHome.

[6] See Houser KA, Vîlcică ER, Saum CA, Hiller ML. *Mental Health Risk Factors and Parole Decisions: Does Inmate Mental Health Status Affect Who Gets Released,* at 1.2, Int. J. Env. Research and Pub. Health, Aug. 2019 ("Mental Health and Parole Decisions"), at 1.2 (https://pubmed.ncbi.nlm.nih.gov/31426341/, accessed June 8, 2023).

tasks or responding to staff instruction, inviting discipline. As a result, one of the Board's primary metrics for assessing candidates' readiness for release – compliance with prison rules and orders – presents a clear barrier for many people with mental disabilities when the Board fails to consider disability-related needs.

19. Behavioral issues and symptoms of mental disability may give rise to conflict with staff and other prisoners, impair attention or perception of events, and reduce program participation – all key elements in the Board's analysis of release readiness.

20. Effective exclusion from employment opportunities and rehabilitative or educational programs; loss of recreational time; and, most troubling, isolation in solitary confinement (during which time mental health treatment is often halted or significantly reduced, just when the person's mental health most rapidly declines) create a "perfect storm" of circumstances for mental health deterioration.[7]

21. Further, imprisoned persons with mental disabilities often go unidentified or misdiagnosed, leaving them without access to critical services and accommodations. These may include participating in work and rehabilitation programs; preparing for parole and other proceedings; securing assistance with filling out forms (to obtain medications, seek medical treatment, submit a grievance, etc.); and, more generally, seeking help to understand prison rules and norms.

22. Because work and program participation, mental health program and treatment compliance, and disciplinary history are significant parole release factors, the Board's ongoing

[7] *Id.*

failure to consider the interplay between these factors and a person's mental disability has a direct, discriminatory impact on parole outcomes.[8]

3. PAROLE IN MASSACHUSETTS

a. The Philosophy of Parole

23. Approximately 95% of all incarcerated people will re-enter society, many through parole.[9] Parole is designed to allow a "step-down" approach from prison – it provides a "step" between a person's imprisonment and unfettered and unsupervised release into the community. Reentry into society represents an extraordinary life change for incarcerated persons (particularly those with lengthy sentences). For this and many other reasons, individuals released to community supervision have lower rates of recidivism than those released directly back into the community without support.[10] Achievement of these goals is entrusted to the Board, which has primary responsibility for all aspects of the parole process.

b. Parole Mechanics

24. Upon being convicted of a crime in Massachusetts, a criminal defendant may receive a sentence with or without the possibility of parole. Individuals in county facilities sentenced to terms of more than sixty days are generally parole eligible after serving half their sentence. Individuals in state facilities are generally parole eligible after serving their minimum sentence, which can reach as high as 15 to 25 years for those serving life sentences.[11] The Board

---

[8] Program availability in DOC facilities is woefully inadequate. For educational classes alone, as of March 1, 2023, an astonishing 67% (4065) of DOC's custody population of 5860 were wait-listed for these critical programs, which include vocational training and GED preparation courses.

[9] James, N., *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, at 1, Congressional Research Service, U.S. Dept. of Justice, Jan. 2015, at https://fas.org/sgp/crs/misc/RL34287.pdf (accessed June 8, 2023).

[10] See Clark, C., et al., *Assessing the Impact of Post-Release Community Supervision on Post-Release Recidivism and Employment*, Florida Dept. of Corr., Florida State Univ. Coll. of Criminology & Crim. Justice, Dec. 2015, at https://www.ojp.gov/pdffiles1/nij/grants/249844.pdf (accessed June 8, 2023).

[11] "Good conduct" credits are subtracted from the minimum term of most state prison sentences and can thereby reduce the parole eligibility date.

conducts each parole eligible person's "initial" parole hearing, as well as all subsequent "review" hearings. Except in the case of life sentences, review hearings occur annually. For life sentences, the Board determines the so-called "setback" period when it denies parole, which can be from one to five years.

25. Parole hearings for individuals serving sentences of less than life comprise approximately 97% of all parole hearings and are conducted by a single Board member. By contrast, hearings for individuals serving life sentences must be conducted by the full Board at their central office and are open to the public.

26. Scheduled parole hearings are typically postponed for persons serving House of Correction ("HOC") sentences who have been committed by reason of mental illness to Bridgewater State Hospital ("BSH"). [12] For these individuals, parole hearings may be postponed indefinitely, depending on when their commitment period expires (or, more typically, at the conclusion of multiple back-to-back commitment periods).[13] BSH is the lone DOC facility designated for providing evaluation and treatment of people with significant behavioral health issues who also purportedly require "strict security". Because of this, individuals with the most profound mental disabilities in the prison population often face significant delays before being considered for parole or may even complete their sentences without having an opportunity to go before the Board.

[12] There are 19 county-level HOCs, which are run by sheriff's offices and house pre-trial detainees and those serving sentences of 2.5 years or less. By contrast, there are 16 state-level prisons, which are operated by the DOC and house persons serving sentences of greater than 2.5 years.
[13] This is true for all parole eligible persons committed to BSH, save for those housed in two specifically designated "BSH units" located within OCCC. These individuals typically have their parole hearings in the ordinary course.

c. The Board Fails to Screen for Mental Disabilities Requiring Accommodation

27. The information necessary to determine if an incarcerated person seeking release on parole needs assistance due to a mental disability is readily available to the Board. The Board is granted access by statute to a large quantity and broad variety of information concerning candidates, including the candidate's institutional and criminal history, reports of physical, medical, mental, or psychiatric examinations, parole staff recommendations, disciplinary reports, classification reports, work evaluations, and records of educational and programming participation. Letters of support or opposition are also available to the Board.

28. Institutional Parole Officers (IPOs) employed by the Board are charged with assisting the Board and the parole candidate in the parole preparation process. Among other things, IPOs provide a list of people scheduled for parole hearings each month to the relevant facility's Mental Health Director, presumably for purposes of identifying incarcerated persons with mental disabilities. However, this process either does not routinely take place or is done *pro forma*. In any case, no meaningful analysis regarding the need to offer accommodation happens in advance of hearings.

d. Difficulties Faced by Parole Candidates in Obtaining Accommodations

29. Potential parolees with mental disabilities capable of realizing their need for accommodations in the parole process face significant obstacles.

30. Applying for parole is a difficult process for even the most competent imprisoned persons. Parole candidates must gather, review, analyze, and prepare to present evidence to the Board from typically copious records. They also must prepare and submit a detailed release or reentry plan along with a comprehensive autobiography. Success is also contingent on the parole candidate's ability to effectively communicate with the Board during interviews and hearings, as well as coordinate with other agencies and outside actors in creating a release plan.

31. Prior to scheduled parole hearings, candidates are required to complete a complex, pre-hearing questionnaire that requires detailed handwritten responses to key questions relating to parole suitability, including presentation of the candidate's proposed release plan. Parole candidates must also identify housing assistance, group home placements, and/or community support services to address their mental health or self-care needs.

32. This pre-hearing questionnaire, which has not significantly changed since the *Crowell* case was decided, offers no information concerning a person's rights under *Crowell*, nor does it ask candidates if they need assigned counsel or other types of accommodation. Moreover, the questionnaire form provides almost no space in which to provide answers to questions of considerable complexity.

33. The services parole candidates are tasked with securing as part of their release plan are in short supply and difficult for anyone to access, let alone for incarcerated persons with mental disabilities. The provision of such assistance is thus a necessary and reasonable accommodation for a prisoner with a mental disability. But the process of seeking such an accommodation is itself so cumbersome that it is beyond the capacity of most prisoners with mental disabilities.

34. The Board's *Guidelines for Accommodation Requests*, which were not issued until 2019 (or two years after the *Crowell* decision) do not offer meaningful relief or address the concerns identified by the SJC in *Crowell*. They focus entirely on accommodations designed to facilitate participation in the hearing itself and ignore the obvious need for support in pre-hearing preparation and in devising a suitable release plan. These *Guidelines* do little more than memorialize the Board's pre-existing policy of improperly shifting the burden of identifying persons with qualifying mental disabilities from the Board's plate to that of incarcerated persons.

35. Requesting any accommodation from the Board involves completing a form that requires detailed descriptions of the candidate's disability and how it will affect the person's ability to meaningfully participate in parole hearings. It also requires submission of likely inaccessible supporting medical documentation prepared by a qualified medical professional. The *Guidelines* are silent as to how candidates might get help in completing the form or how they might obtain the necessary verifying documentation, even though it is unrealistic to expect those with a serious mental disability to manage this on their own.

36. In theory, IPOs meet with parole candidates to collect information about the person's medical and mental health history, current treatment, and service needs upon release. In practice, these meetings – if they happen at all – are cursory and typically occur far too late in the process to allow for timely assistance to candidates trying to prepare a case. Interactions between IPOs and parole candidates are so scant that most parole candidates do not even know the name of their IPO.

37. As a result, accommodation requests are typically initiated only by a small subset of those who might qualify. These are typically parole candidates who retain private attorneys or who otherwise have a robust support network outside of prison.

38. In fact, the only genuine assistance parole candidates typically receive is from lawyers, but the Board throws up significant hurdles in both securing and facilitating such representation. For example, the pre-hearing questionnaire is sent directly to the parole candidate and not to counsel. Documents gathered by the Board to assess the candidate are not shared with counsel timely as a matter of course, even when requested well in advance, and counsel are not notified of, nor allowed to participate in, any meetings between IPOs and the parole candidate.

39. Further, decisions to assign counsel at no cost through the Committee for Public Counsel Services ("CPCS")[14] typically only happen in the "11th hour" – or even during parole hearings themselves. The Board maintains no rules concerning the timing of such referrals – and when the Board does refer a case to CPCS, it makes no effort to reduce barriers between candidate and counsel, even when the lawyer was assigned *explicitly* for the purpose of helping persons with mental disabilities due to lack of capacity.

40. The Board's slowness in identifying cases for referral to CPCS invariably causes significant delays, as the referral is just the first step in a long process. Once appointed, the attorney must meet with the parole candidate multiple times, review extensive medical and prison records, locate, interview, and prepare supporting witnesses, and draft a voluminous parole petition. In most cases, providing competent representation also requires counsel to apply for payment of funds from the court to retain one or more experts (such as a forensic psychologist or licensed social worker). Once retained, the expert must prepare an evaluation, which kicks off its own lengthy process of review and preparation.

41. The process of preparing for a parole hearing is a heavy lift for the parole candidate and counsel alike, thus the Board's delay in referring cases for assigned counsel results in significant delays in parole review, often costing the parole candidate many months or even years of continued incarceration. Depending on the length of the underlying sentence, a late referral can moot parole entirely, as the incarcerated person may "wrap" his sentence before a new hearing date is scheduled.

42. In sum, the Board does not adequately screen candidates for their capacity to make a case for parole; fails to consistently appoint counsel when it is clearly indicated (and,

[14] CPCS is the sole state agency responsible for providing criminal (and certain non-criminal) legal services to indigent persons entitled by law to representation by an attorney. See G.L. c. 211D, §§ 1-16.

when it does make an appointment, does so far too late); fails to timely discern or consider providing other needed accommodations; fails to assist qualified parole candidates in developing appropriate release plans; and generally fails to provide even the most basic assistance and coordination necessary to properly prepare for parole hearings. Rather than promoting and facilitating accommodation for individuals with disabilities, the Board's existing procedures create nearly insurmountable barriers.

e. Bias and a Lack of Reasonable Accommodations at Parole Hearings

43. The substance of countless parole decisions reflects the Board's use of biased criterion and its failure to acknowledge the impact of mental disabilities.

44. Moreover, in questioning during parole hearings, Board members appear not to consider candidates' cognitive limitations. For example, they routinely fail to simplify compound questions posed to such individuals to render them more understandable.

45. Further, the Board employs the same aggressive approach it takes with the general prison population when it evaluates candidates with emotional or cognitive limits. Board members ask invasive, deeply personal, and wide-ranging questions covering the details of events spanning decades. These questions often ping-pong across decades and demand extraordinary attention to detail, as even the slightest inconsistency with prior responses will typically be viewed as dissembling. Parole candidates with mental disabilities often appear confused and unable to comprehend, or meaningfully participate in, the proceedings. This further lessens their ability to effectively answer questions to address the Board's concerns.

46. In some cases, parole candidates are so clearly lacking competence to meaningfully participate that the Board halts the hearing mid-stream, to refer the candidate for appointment of counsel. But this may not happen until the second, third, or even fourth parole

hearing. Finally, in a significant number of cases, an incarcerated person's limiting disability is simply never recognized by the Board.

47. Parole decisions in non-life sentence cases are notably brief, typically comprising only a few sentences, while "lifer" decisions provide relatively more detail and discussion. But a common thread in all parole decisions is the Board's failure to consider whether alleged negative prison conduct or a parole candidate's failure to access prison work or programming is connected to a mental disability. Moreover, in lifer cases, the requisite written decisions are significantly delayed, taking an average of eight to nine months from the time of the hearing.

48. The long period for producing lifer decisions cannot be attributed to thoroughness. The Board's lifer decisions are typically no more than two to four pages in length and largely consist of a description of the underlying crime copied from prior decisions and a verbatim quote of the parole standard set forth in 120 CMR 300.04.[15] Where parole is denied, the language is routinely copied from one decision to the next and rarely consists of anything more than vague, conclusory verbiage such as "[the parole candidate] has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society."[16] The decisions in non-lifer cases are even more cursory.

49. More than one Massachusetts court has noted this tendency. *See*, *e.g.*, *Deal v. Mass. Parole Board*, 484 Mass. 457, 466-67 (2020) (criticizing perfunctory denial, noting that "apart from two sentences specific to [the parole candidate], the [Board's] 'decision' is

[15] The governing legal standard provides that parole shall be granted if the Board is "of the opinion that there is a reasonable probability that … the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." 120 CMR 300.04.

[16] The quotes in paragraphs 48 and 50 are copied from existing Board decisions; namely, *Frank Mota Life Sentence Decision* (Jan. 19, 2023); *Gino Gaillardetz Life Sentence Decision* (Aug. 25, 2022); and *Edward Martin Life Sentence Decision* (June 6, 2023), respectively. See Life Sentence Record of Decisions (RODs) | Mass.gov (accessed June 8, 2023).

boilerplate language used in virtually all forty-five of the … parole decisions … reviewed" in amicus brief); *Jimenez v. Mass. Parole Board*, C.A. No. 2084-CV-01946-H, *Memo. and Order* (Dec. 28, 2021, Dkt. 16) (finding fault with denial consisting of "standard boilerplate [language] routinely used by the [Board] as is evidenced by other [Board] decisions submitted by plaintiff").

50. Likewise, denial decisions are typically devoid of actionable advice, instead providing only vague exhortations, such as the oft repeated "the Board encourages [the parole candidate] to continue working towards his full rehabilitation" or "the Board needs to see continued positive institutional adjustment as well as commitment to rehabilitative programs …" This boilerplate language prevents unsuccessful parole candidates with disabilities from understanding what specific classes, programs, conduct, or other steps they must take to meet the parole standard as the Board sees it.

51. Where a mental disability is present and acknowledged, the typical parole decision fails to consider "whether reasonable modifications could enable the [person seeking parole] to qualify for parole without changing the fundamental nature of the parole." *Crowell*, 477 Mass. at 113.

52. Board decisions often fault persons for submitting release plans it deems unsatisfactory, thereby laying blame at the foot of the parole candidate for failing in what is often an insurmountable challenge: obtaining complex cooperative transition and permanent support arrangements between multiple state agencies and/or community nonprofits, all without the guarantee of release or any idea when such release will occur if parole is granted. Such coordination is often beyond the mental, psychological, physical, and/or financial capacity of persons with disabilities. To complicate matters further, such placement and other services often

cannot be secured ahead of release, due to the requirements of the subject state agency or nonprofit organization.

53. Yet the Board routinely conditions positive parole votes on approval of community placements, as well as ongoing treatment or programming, among other things. Alternatively, the Board will simply deny parole where a candidate has been unable to secure such services.

54. As just two examples, plaintiffs JD 2 and JD 3 were both penalized (and denied parole) by the Board for failing to secure services from DMH, where DMH had refused to assess their eligibility for services prior to release and/or refused to specify what services it was prepared to provide. Their candidacies failed because it was impossible to arrange for the services required by the Board ahead of release.

55. The Board makes no effort to address this "Catch 22" by assisting in securing the services upon which it has either denied or conditioned parole, despite its statutory mandate to work with other state agencies such as DMH, DDS, and DPH to facilitate individuals' transition into the community. When parole is conditionally granted, the Board's failure to assist in fashioning an appropriate release plan often results in unnecessary delays, leaving incarcerated individuals in a state of legal and physical limbo, sometimes for months or years on end. This may lead to mental or physical deterioration, as programming and classes are halted while the parole candidate awaits proper placement.

56. The Board is indisputably aware of the challenges faced by parole candidates. Long before the *Crowell* decision, the Board was put on notice many times of the incongruity of certain parole conditions requiring specific outcomes outside the control of either the Board or

the parole candidate. The Board nonetheless continues to engage in practices that place parole effectively out of reach for persons with disabilities.

IV. NAMED PLAINTIFFS' ALLEGATIONS

57. The Named Plaintiffs have suffered from the practices described herein, as follows:

1. John Doe 1 (JD 1)

58. Plaintiff JD 1 is a 58-year-old man who has been incarcerated since 1985, serving two concurrent, non-life sentences of 30 to 50 years each. JD 1 was denied parole approximately sixteen times since achieving initial parole eligibility in June 2004. The Board has reviewed JD 1 for parole suitability annually since 2004[17] but has never affirmatively identified him as someone who might require accommodations, despite the many indices of significant mental disorders in his voluminous records. Instead, JD 1 sought help on his own through outside advocacy organizations, which in turn raised his case with CPCS. CPCS secured assigned counsel for JD 1 approximately three or four years ago, thus JD 1 has been represented at his most recent few review parole hearings. In short, for at least 12 to 13 years, JD 1 was unrepresented – and when he finally did secure counsel, it was solely through his own efforts.

59. JD 1 has a long and well-documented history of cognitive disability, severe mental illness, and a range of learning disabilities. Prison records cite "visual and auditory processing delays combined [with] ADHD, phonetic decoding challenges, and specific reading/writing disabilities per documentation … [and] pre-natal and post-natal issues." JD 1

[17] On three occasions from 2005 to 2011, JD 1 missed his annual parole hearing. According to parole records, JD 1 purportedly waived his right to hearings in 2005 and 2009, while the entry for 2011 simply states, "client moved". Given JD 1's limited literacy skills and the lack of assistance proffered, it is unclear whether he was fully aware of the implications of executing these "voluntary" waivers. Indeed, the Board appears to have no consistent or discernable procedure for waiving parole hearings.

has dyslexia, reads at only a second to third grade level, and struggles with writing to such a degree that the DOC provides him with assistance in drafting grievances, filling out forms to obtain materials from the Perkins School for the Blind library, and even in submitting simple "sick slips" (requests for medical assistance).

60. JD 1 also suffers from a variety of mental disorders, including schizoaffective disorder; non-specified cognitive disorder; acute PTSD; acute borderline personality disorder; an arachnoid brain cyst; cortical atrophy; a history of lead exposure; ADHD; bipolar disorder; chronic depression; and "major neurocognitive disorder due to another medical condition, with behavioral disturbance". He takes numerous prescribed psychotropic medications designed to help stabilize his behavior and emotions.

61. The Board knows or should know of all these conditions, which are described in questionnaires and other documents submitted since 2004 in connection with JD 1's parole hearings and which have been otherwise corroborated in numerous ways in available mental health records.

62. The early years of JD 1's incarceration proved to be profoundly difficult. Following his arrest in August 1985, JD 1 was committed to BSH for competency evaluations on three separate occasions in rapid succession, from August 1985 until February 1987. Consistent with other such reports maintained in JD 1's record, historical expert reports cited JD 1's precarious mental state, including his tendency to rapidly decompensate under stress, his "psychotic" and hallucinatory episodes, his "specific paranoid delusional system," and his repeated episodes of self-harm (*e.g.*, fashioning a noose to hang himself, cutting himself, and punching himself repeatedly in the face).

63. JD 1 was again committed to BSH in June 1989, where he remained for ten months. During this admission, one counselor noted that JD 1's "entire life is marked with physical and sexual abuse" as a partial explanation for his self-destructive and depressive behavior, including "instances of legitimate suicidal intent."

64. In response to mental health crises, the DOC, in almost every instance, issued a disciplinary report ("d-report") and punished JD 1, with placement in disciplinary solitary confinement; restricted access to phone calls and/or visits; or the loss of privileges such as television or recreation time. Indeed, in May 1990, one BSH practitioner specifically noted that JD 1 "tends to evoke very strong punitive responses from caretakers and peers," adding that "he is likely to have a very difficult adjustment on his return to prison [from BSH]."

65. The impact of this punitive and non-therapeutic approach is profound, as the Board regards any accumulation of d-reports in a negative light – regardless of the nature of those reports and whether they reflect an underlying mental health condition that might not be manifest in a less oppressive, more therapeutic setting.

66. Nearly all JD 1's d-reports occurred before 2010. Since then, JD 1 has been charged with a rule infraction on only three occasions. Two such charges were for minor transgressions and the third was dismissed with no sanctions imposed when another prisoner was identified as having incited the incident in question.

67. In the last 20 years, JD 1 has not been returned to BSH. He has stabilized and undergone remarkable personal growth, with improved self-awareness. As of May 2020, JD 1 had earned 1,100 days' of "good time" for participation in work, education, and programming, even though his illiteracy limits the range of programming he can access.

68. In February 2018, JD 1's mental health practitioner described him as "at a low risk of harm to self and others," and as of June 2020, JD 1's official risk classification dropped to "low," meaning he has a low risk of recidivism, which ought to make him a prime candidate for parole and reentry into the community.

69. The record of JD 1's recent parole review hearings have included a "Mental Health Parole Contact Sheet", which form discusses the provision of appropriate mental health care supports upon his release into the community. The recommended supports for JD 1 are simple, inexpensive, and easily attainable, but the Board has continued to ignore these recommendations, denying parole without consideration of how provision of these supports could address any risk resulting from JD 1's release. The Board has also consistently failed to obtain any sort of professional mental health evaluation of how JD 1's disability might have affected his institutional behavior, or a recommendation regarding a post release plan that might diminish the risk of recidivism. Instead, in denial after denial, the Board has continued to cite JD 1's history of d-reports as a key factor in its decisions, ignoring his relatively spotless record since 2010.

70. The Board also ignored the obvious relevance of JD 1's mental health disability to his institutional record, harshly judging him for disciplinary infractions mostly meted out for acts of self-harm (even though the DOC now acknowledges that disciplinary reports should not be given for acts of self-harm). In short, the Board has essentially continued the pattern of punishing JD 1 for his disabling mental health problems.

2. John Doe 2 (JD 2)

71. JD 2 is 42 years old and currently serving a life sentence with the possibility of parole. He was raised in Puerto Rico and moved to Massachusetts alone at the age of 17. His formal education terminated in the seventh grade.

72. JD 2 was arrested in December 2001 at the age of 21 and has appeared before the Board twice thus far. In December 2017, the Board denied parole and issued the maximum possible setback of five years. Following his next hearing in December 2022, JD 2 was again denied parole, but granted another review hearing in one year.

73. Prior to being sentenced and committed to DOC in March 2004, JD 2 was held at the Suffolk County HOC where he attempted suicide at least two times. At the time of his arrest in 2001, JD 2 was also suffering from severe substance use disorder.

74. The voluminous institutional, criminal, medical and mental health records provided to the Board in connection with JD 2's parole hearings reveal a long history of severe mental and learning disabilities (among other things, he struggles with reading, writing, and processing auditory information), substance use disorder, and likely TBI.

75. JD 2's learning disabilities kept him from accessing most DOC programs or obtaining a GED or High School Equivalency Test (HiSET) certificate. Indeed, it took JD 2 approximately seven years and eight separate attempts before he was finally able to satisfactorily complete a basic English as a Second Language course (in June 2012).

76. After two suicide attempts while awaiting trial, JD 2 was diagnosed with bipolar disorder and schizophrenia. He was committed to BSH for "mental health problems" four times, beginning with a 20-day stay in December 2001. JD 2 endured his longest stay at BSH in 2010, at which time he remained hospitalized for 103 days. According to DOC records, this 2010

transfer was prompted by "symptoms of paranoid schizophrenia." He experienced heightened "paranoid delusions" that fellow prisoners were "out to get him." When JD 2 was confined at MCI-Concord in 2013 and 2014, he "had several Mental Health referrals and was placed on a 15-hour [Mental Health Watch]."

77. However, JD 2's current condition is vastly improved. He has not returned to BSH since 2010, has been medication compliant for years, and has benefited from placements in specialized DOC mental health treatment units.

78. In early November 2016, in anticipation of an initial parole hearing scheduled for November 29, JD 2 filled out the parole questionnaire, which asked if he would be represented at hearing. He wrote, "with all do [sic] respect, I don't have legal representation, I don't have the funds."

79. The form also asked about current medical and mental health issues, to which JD 2 responded, "with all do [sic] respect, I got mental health issues." He also reported taking two psychotropic medications; namely, perphenazine, an anti-psychotic; and benztropine, which treats symptoms of Parkinson's disease or involuntary movements caused by certain other drugs, including anti-psychotics.

80. The record of communication between JD 2 and the Board regarding his initial parole hearing reveals evident confusion. On November 10, 2016, JD 2 signed a form waiving his initial parole hearing. Although the Board took no steps to assign counsel to JD 2, six days later, he submitted a request to *postpone* the hearing, noting "I need time to prepare [with] my attorney."

81. Despite these conflicting messages and JD 2's extensive record of mental illness, the Board somehow failed to identify him as someone needing assistance and did not refer him to CPCS for assignment of counsel.

82. JD 2's initial parole hearing was finally held on December 12, 2017 – more than a year after the originally scheduled date. More than eleven months later, on November 27, 2018, the Board denied parole. The decision summarily concludes that JD 2's "behavior in prison, as well as his mental health" rendered him a "threat to the community if released." But the Board neither articulated why JD 2's mental health made him a risk nor relied on the expert opinion of a mental health professional, submitted as part of JD 2's parole packet. Moreover, the Board failed to order its own mental health evaluation of JD 2.

83. The Board's 2018 record includes a 2014 letter from a New York City reentry services non-profit organization that operates in the area to which JD 2 hoped to be paroled. This organization offered to meet with him within 30 days of his release to coordinate the assistance of a "skilled discharge team" that would also connect JD 2 to "mental health, medical, and support services," as well as "any necessary medications."

84. The Board discounted this offer of support, essentially requiring release to a Massachusetts program, notwithstanding that "such a plan would be contingent on [DMH] approval, which [JD 2] didn't have." The Board neither confirmed (or disavowed) the *bona fides* of the NYC organization's offer of support nor facilitate a Massachusetts based release plan.

85. Nowhere in its decision does the Board consider (i) the extent to which some form of accommodation may have allowed JD 2 to access certain programming; or (ii) whether accommodations could reduce any risk posed by JD 2's release, were he granted parole. Finally,

the Board again did not order a mental health evaluation of its own. In denying parole, the Board vaguely "encouraged" JD 2 to "continue working towards his full rehabilitation."

86. JD 2's second parole hearing took place on December 20, 2022. As is typical, counsel obtained by JD 2's family did not receive parole preparation documentation concerning AM from the Board until the evening before the hearing.

87. During JD 2's hearing on his second attempt to be conditionally released from prison, the Board again failed to consider the impact of, or the extent to which, JD 2's deficit in cognitive functioning and mental health diagnoses impacted his parole presentation. According to JD 2's attorney, in its initial decision denying parole in 2017, the Board had been primarily concerned with two things: JD 2's mental health diagnoses and his failure at that juncture to access alcohol and drug addiction ("AA/NA") programming.

88. The evidence presented at JD 2's second hearing suggested that both issues had been fully addressed. JD 2 was and had always been medication compliant, was otherwise compliant with the treatment plan offered in DOC's specialized mental health unit and had been preliminarily approved for DMH services. Further, there was no dispute at the hearing that JD 2 had been sober for 22 years and had regularly participated in AA/NA meetings since the 2017 hearing. Board members acknowledged these facts, noting also that JD 2 enjoyed "great family support and financial support."

89. The hearing colloquy strongly suggests the Board's belief, consistent with the psychological reports in the record, that JD 2 could be safely released into the community if afforded access to an appropriate DMH living situation and services. But the Board denied parole because it could not have assurance in advance of release (due to the DMH determination

of eligibility process) that DMH would reach precisely the same conclusions as the Board and offer what the Board deemed necessary.

90. This concern has existed for decades and was not new in 2022, though the Board routinely cites this interagency failure as grounds to deny or delay parole to candidates with mental disabilities, leaving incarcerated persons with mental disabilities to languish unnecessarily in prison because they fail to secure an unqualified promise of services or treatment which they have no power to obtain. This is a barrier that does not exist for parole candidates without mental health challenges.

91. In the six years encompassing JD 2's two parole hearings, the Board has taken no steps to coordinate or communicate with DMH (or any other agency or nonprofit group) to help design a suitable release plan for JD 2, nor has it referred him to CPCS for assigned counsel, despite his obvious mental health struggles.

3. <u>John Doe 3 (JD 3)</u>

92. JD 3 is a 66-year-old man serving a life sentence with the possibility of parole. He has been incarcerated since April 1980. JD 3 was denied parole following hearings in 2004, 2009, 2014, and 2019, receiving the maximum five-year setback each time.

93. As a child, JD 3 experienced mental, physical, and sexual abuse, which contributed to increasing substance abuse issues beginning at a very young age. Collectively, these experiences exacerbated his mental health challenges which began to manifest in his early childhood. By age 15, JD 3 was diagnosed with "impulse disorder" and schizophrenia, which included hallucinations and delusions. Prior to his incarceration at age 22, JD 3 was also hospitalized due to mental health concerns on several occasions, including admissions to

McLean Hospital in 1974, Westwood Lodge in 1975, Boston University Medical Center in 1978, and Taunton State Hospital in 1978.

94. Over the course of his incarceration, JD 3 has taken various psychotropic medications and required various specialized housing and treatment arrangements to address his mental health needs. In addition, JD 3 was admitted to BSH four times. However, his last BSH stint occurred nearly a quarter century ago, in 1999.

95. JD 3's mental health history is thoroughly documented in institutional records available to the Board, beginning with a diagnosis during his first stay at BSH in 1980 of "paranoid-type schizophrenia and antisocial personality disorder." The diagnosis of schizophrenia or schizoaffective disorder has been a constant in JD 3's life and incarceration history. References to JD 3's mental illness, symptoms, history, and ongoing treatment are peppered throughout the hundreds of pages comprising his DOC medical and other records.

96. The Board is acutely aware of JD 3's mental health history. Both the Board's decisions and hearing records for JD 3 are replete with references to his "history of trauma and substance abuse" and diagnoses of schizophrenia, beginning long prior to his incarceration. The Board clearly views JD 3's documented "complicated history of physical and sexual abuse, psychiatric symptoms, and drug and alcohol abuse" as linked to his criminality.

97. Despite its evident awareness of JD 3's serious mental health disabilities, JD 3 was never identified by the Board as qualifying for assigned counsel or any other form of accommodation. Instead, for his 2014 and 2019 hearings, JD 3 secured *pro bono* legal representation on his own, in the form of student attorneys. In other words, for a decade, JD 3 faced the parole preparation and hearing process without any assistance and when assistance finally appeared, it was only through JD 3's own efforts.

98. In connection with JD 3's most recent hearing, which took place on October 24, 2019, JD 3 submitted a detailed psychiatric "case consultation" completed by Elizabeth Albrinck, Psy.D., and Dr. Robert Kinscherff, Ph.D., J.D. ("2019 Report"). This report contained extensive background details about all aspects of JD 3's life, including sections on his childhood, family, education, employment, legal/criminal history, and mental health challenges. It then summarized the results of a Drug Attitude Inventory (DAI) and two separate risk assessment tools; namely, the Inventory of Offender Risks, Needs, and Strengths, or (IORNS); and the Level of Service/Case Management Inventory (LS/CMI).[18]

99. The 2019 Report is explicit about JD 3's "long-standing and clear history of chronic schizophrenia" but noted that, in the intervening decades since his incarceration, JD 3 had learned to manage and control his illness through consistent psychiatric treatment and appropriate medication. Indeed, in recent years, "his clinical presentation largely involves symptoms which are *not* associated with risk of threatened or actual violence" (emphasis in original). In sum, the 2019 Report concluded as follows:

> Over the 30 years since his last violent attack in 1989, [JD 3's] mental status, judgment, and behavior has consistently and increasingly stabilized and improved. He has had a minimal and non-violent disciplinary history since his re-entering general population in 1999 at OCCC. Most significantly, [JD 3] has consistently remained in psychiatric treatment with good results and has proactively presented himself for clinical attention at times when he felt as though he may require medication adjustment or additional supports. He has been consistently willing to take prescribed psychiatric medication and profiles as likely to continue engagement with psychiatric care … from a forensic behavioral health perspective, the bizarre elements of [JD 3's] governing offense speak far more to the contribution of acute psychosis at the time of the offense and contribute little to understanding his current risk of violent misconduct. [JD 3] has not engaged in threatened or actual violence in three decades, the criminogenic attitudes which may have contributed to his other charges [have] not been apparent for decades, and he demonstrates a consistent engagement with psychiatric care.

[18] This is the same – and only – risk assessment tool used by the Board. For parole candidates, the LS/CMI evaluation is apparently conducted by the IPO rather than a trained mental health professional.

100. Finally, the 2019 Report presents a detailed, multi-phased transition plan to ease JD 3 carefully back into the community. It advises "prompt referral for an eligibility determination for DMH services," implicitly suggesting that JD 3 will qualify. Under the plan, JD 3 would thereafter transition to a DMH inpatient unit, "where he can be monitored closely to ensure his compliance with medication and assist with initial phases of community re-entry." After this, to support adherence to psychiatric care and establish the "routines of his daily life that have helped him adjust to the impairments of his mental illness," JD 3 "may be assigned case management supports and housing (at least initially in a group home or other situation where he can be supported by staff …)."

101. In addition to the 2019 Report, the record before the Board was replete with other significant indicators that JD 3 would be successful on parole. Among many other things, the record reflects JD 3's decades of compliance with medication, which the Board acknowledged, as well as his consistent engagement in individual clinical sessions and group treatment, his conversion to Islam and subsequent dedication to his faith, a clean disciplinary record since 2017, his participation in the Spectrum program, and completion of both an associate and bachelor's degrees.

102. Nonetheless, the Board denied parole once again in a decision issued more than eight months after JD 3's parole hearing, on June 30, 2020. The Board's decision relies almost exclusively on JD 3's mental health status, citing, without support from the record, concern about JD 3's ability to "handle the stress of living outside the [DOC] at this time," and repeatedly referencing JD 3's mental health diagnoses and hospitalization history, as well as the long-abated delusions and substance abuse that led to the governing offense more than 43 years ago.

103. In reaching its conclusion, the Board ignores the 2019 Report – yet it failed to order its own mental health evaluation of JD 3. Moreover, the Board's reasoning lacks any genuine risk or mitigation analysis or even a shred of useful instruction for JD 3 on what it would take to address the Board's concerns prior to the next parole hearing. Instead, the Board advises him "to engage in recommended treatment and programming," without acknowledging JD 3's decades-long commitment to these very things.

104. In each of its three most recent parole decisions concerning JD 3, the Board cites his extraordinary programming and academic accomplishments, his scant disciplinary history, his multi-decade medication compliance, his commitment to individual counseling and group therapy, the fact that he has been asymptomatic since at least 1999, his devotion to Islam, his employment and his "positive job and housing evaluations." Yet, each time, the Board denied parole, based on irreversible events from the distant past, while failing to even address whether and to what extent community support and/or a treatment plan could mitigate any perceived risk to public safety. An honest decision from the Board would simply state that JD 3 is not eligible for parole because of his crime and his mental illness – unacceptable grounds (alone) for denying parole.

V. CLASS ACTION ALLEGATIONS

105. This action is properly maintained as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure.

106. The plaintiff class consists of all incarcerated post-disposition persons in Massachusetts with a qualifying mental disability, including without limit those with mental illness, intellectual cognitive disability, and/or traumatic brain injury, who are or will become eligible for parole. A qualifying mental disability is defined as (A) a mental impairment that substantially limits one or more of the major life activities of the subject person; (B) any person

with a record of such an impairment; or (C) any person who is regarded as having such an impairment.

107. The members of the class are so numerous that joinder of all members is impracticable. In 2020 and 2021 (the most recent years for which such data is available), the Board conducted 3,625 and 2,578 parole release hearings, respectively, of which 127 and 146 were for parole candidates with life sentences. In 2019, these figures were 4,294 and 137, respectively, and in 2018, the numbers were 4,532 and 111, respectively. Based on the prevalence of those with mental illness, cognitive disability, and/or brain injury-related disability among the incarcerated population, it is likely that *at least* several hundred people meet the class definition at any given moment in time.

108. Defendant has acted or failed to act in a manner that is generally applicable to each member of the putative class, making class-wide injunctive and declaratory relief appropriate and necessary.

109. The questions of law and fact raised by the Named Plaintiffs are common to, and typical of, all members of the putative class. They include, without limit:

a. Whether the Board's existing policies and practices fail to identify incarcerated persons with a qualifying mental disability and thus fail to provide reasonable accommodations to such persons, denying them a meaningful opportunity to participate in the parole process.

b. Whether, more broadly, the Board's existing policies and practices deny class members a meaningful opportunity to participate in the parole process, even where class members have been identified as having a qualifying mental disability.

c. Whether reasonable modifications to, or the provision of reasonable accommodations in connection with, the Board's parole preparation, hearing, and substantive decision-making processes would provide class members a meaningful opportunity to participate in the parole process without fundamentally altering the nature of parole, 28 C.F.R. § 35.130(b)(7)(i).

d. Whether Defendant unlawfully discriminates against class members in violation of the ADA, 42 U.S.C. § 12132; Section 504, 29 U.S.C. § 794; Section 103 of the Massachusetts Equal Rights Act, G.L. c. 93; and/or Article 114 of the Massachusetts Declaration of Rights and Constitution.

110. The Named Plaintiffs' claims are typical of the claims of the class. All plaintiffs have suffered, or will suffer, from the legal violations described herein.

111. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of the legal issues presented in this case.

112. The Named Plaintiffs will fairly and adequately represent the interests of the class. They have no interest adverse to the interests of other members of the class and have retained counsel who are competent and experienced in class action, disability, and complex civil rights litigation. They have committed sufficient resources to fully litigate this case through trial and any appeals.

VI. CLAIMS FOR RELIEF

113. Based on the foregoing allegations, plaintiffs assert the following claims for relief.

Count One
Disability Discrimination in Violation of the Americans with Disabilities Act, 42 U.S.C. § 12132

114. The Board is a "public entity" as defined in Title II of the ADA. 42 U.S.C.A. § 12131(1). The Massachusetts parole system, including without limit the parole preparation, the parole hearing, and the Board's substantive parole decision-making processes are services, programs, or activities of the Board. 42 U.S.C. § 12132.

115. Each of the Named Plaintiffs and members of the putative class has a mental disability and is a "qualified individual with a disability" as defined in 42 U.S.C § 12102(1) and 42 U.S.C. § 12131(2).

116. The Board discriminates against Named Plaintiffs and members of the putative class by reason of their disabilities in violation of 42 U.S.C. § 12132 and its implementing regulations in the following ways:

a. By excluding them from equal and meaningful participation in the parole process and denying them a meaningful opportunity to obtain liberty through parole relative to candidates for parole without disabilities.

b. By failing to make reasonable modifications to its policies, practices, or procedures in violation of 28 C.F.R. § 35.130(7)(i), which modifications must ensure timely identification of incarcerated persons with mental disabilities so that their need for reasonable accommodations may be timely ascertained and addressed.

c. By imposing "eligibility criteria that screen out or tend to screen out" individuals with mental disabilities from qualifying for parole in violation of 28 C.F.R. § 35.130(b)(8).

d. By consistently failing to adequately consider parole candidates' medical and mental health profiles, the nature and impact of mental disabilities in prisons, appropriate evaluative criterion for rendering parole decisions involving persons with mental disabilities, and the availability of risk reduction and other programs designed to assist parole candidates upon release, the Board unlawfully denies parole to persons with disabilities "based … on mere speculation, stereotypes, or generalizations about individuals with disabilities," not "actual risks," in violation of 28 C.F.R. § 35.130(h).

e. By not considering the individualized needs of, and potentially suitable accommodations for, parole candidates with mental disabilities, denying them "an individualized assessment, based on … current medical knowledge or on the best available objective evidence … to ascertain" the nature of any genuine public safety risk and whether supportive services or other accommodations might mitigate any such risk, and instead summarily concluding that persons with mental disabilities invariably pose a threat to public safety regardless of rehabilitative efforts, in violation of 28 C.F.R. § 35.139(b).

f. By failing to coordinate with other state agencies and service providers to develop release plans with appropriate services for those who would otherwise be suitable for parole, and thereby unlawfully excluding the plaintiffs from accessing "the most integrated setting appropriate to the needs of qualified individuals with disabilities" in violation of 28 C.F.R. § 35.130(h).

117. As a proximate cause of Defendant's violation of the rights of Named Plaintiffs and members of the putative class under the ADA, such individuals with mental disabilities have suffered and continue to suffer from unequal treatment by the Board and unequal access to the parole process.

118. Defendant's failure to comply with the ADA has resulted, and will continue to result, in harm to Named Plaintiffs and members of the putative class, many of whom will continue to face proceedings before the Board, either without accommodation or with insufficient accommodation. This harm will continue unless and until the Board makes modifications to its policies, practices, and procedures in keeping with the dictates of the ADA.

Count Two
Disability Discrimination in Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 701

119. Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 701 *et seq*., states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that receives Federal financial assistance.

120. The operations of the Board constitute programs or activities within the meaning of 29 U.S.C. § 794(b), The Board is a state agency that receives Federal financial assistance within the meaning of 29 U.S.C. § 794(a), Thus, the parole process is a "program or activity" that receives Federal financial assistance.

121. By consistently failing to accommodate individuals with mental disabilities in the parole process, as set forth in detail above, the Board has prevented Named Plaintiffs and members of the putative class from equal and meaningful participation in the parole process and from partaking of the benefits thereof, in violation of Section 504 of the Rehabilitation Act.

122. Defendant's failure to comply with the Rehabilitation Act has resulted in harm to Named Plaintiffs and members of the putative class, and Defendants are liable to Named Plaintiffs and members of the putative class for the harm suffered therefrom. Defendant's violations of the Rehabilitation Act will continue to result in such harm unless and until Defendant makes modifications to its policies, practices, and procedures in keeping with the dictates of the Rehabilitation Act.

Count Three
Disability Discrimination in Violation of the Massachusetts Equal Rights Act, G.L. c. 93, § 103

123. By consistently discriminating against and failing to accommodate individuals with mental disabilities in the parole process, as set forth in detail in the counts enumerated above, the Board has prevented Named Plaintiffs and members of the putative class from receiving full and equal benefit of the laws and proceedings governing the parole process relative to parole candidates without disabilities, in violation of the Massachusetts Equal Rights Act, G.L. c. 93, § 103.

Count Four
Disability Discrimination in Violation of Article 114 of the Massachusetts Declaration of Rights and Constitution

124. By consistently discriminating against and failing to accommodate individuals with mental disabilities in the parole process, as set forth in detail in the counts enumerated above, the Board excludes from, and denies, Named Plaintiffs and members of the putative class,

all qualified handicapped individuals with mental disabilities, solely by reason of their handicap, meaningful participation in the parole process and partaking of the benefits thereof, in violation of Article 114 of the Massachusetts Declaration of Rights and Constitution.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully ask that this Court:

1. Declare that Defendant's ongoing failure to provide incarcerated persons with mental disabilities equal and meaningful participation in, and access to the benefits of, the parole preparation, hearing, and substantive decision-making process, violates Title II of the ADA; Section 504; Section 103 of the Massachusetts Equal Rights Act, G.L. c. 93; and Article 114 of the Massachusetts Declaration of Rights and Constitution.

2. Declare that Defendant's ongoing failure to reasonably accommodate incarcerated persons with mental disabilities in the parole process and/or otherwise make reasonable modifications to its policies, practices, or procedures violates Title II of the ADA; Section 504; Section 103 of the Massachusetts Equal Rights Act, G.L. c. 93; and Article 114 of the Massachusetts Declaration of Rights and Constitution.

3. Issue an injunction requiring that Defendant fully comply with the laws and associated regulations set forth above by, without limit:

   i. Amending and updating all relevant Board policies, procedures, rules, forms, and personnel training, as needed to give adequate instruction to Board members and staff concerning what the Board must do to prevent the illegal conduct cited herein.

   ii. Actively identifying the range and type of available accommodations for incarcerated persons with mental disabilities and widely disseminating such information to all parole eligible incarcerated persons in Massachusetts.

   iii. Actively screening all sentenced persons incarcerated in DOC facilities for qualifying mental disabilities no less than the following number of times: at the inception of each such person's incarceration, at such point in time as each

such person becomes parole eligible, and at least eighteen months ahead of any such person's scheduled parole hearing (and, if not previously conducted within the preceding eighteen months, as soon as reasonably possible ahead of any scheduled parole revocation hearing).

iv. Actively screening all sentenced persons incarcerated in HOC facilities for qualifying mental disabilities no less than the following number of times: at the inception of each such person's incarceration, at such point in time as each such person becomes parole eligible, and at least three to six months ahead of any such person's scheduled parole hearing (and, if not previously conducted within the preceding three to six months, as soon as reasonably possible ahead of any scheduled parole revocation hearing).

v. Ensuring effective, robust, and timely coordination with the DOC and HOCs to ensure that incarcerated persons with mental disabilities serving parole eligible sentences have equal access to all programming and educational/vocational classes, particularly any such programming or educational/vocational classes specifically noted by the Board in any decision to deny parole.

vi. Providing incarcerated persons with mental disabilities timely access to and information regarding reasonable accommodations, including without limit referral to CPCS, or any successor agency, for appointment of legal counsel, such that they can fully access the parole preparation process and parole hearings.

vii. Upon a revocation of parole and return to custody, actively screening all returning incarcerated persons for qualifying mental disabilities, regardless of any prior mental health screenings conducted during one or more previous incarcerations.

viii. Promptly notifying CPCS, or any successor agency, in the event of a return to custody (for any reason, including without limit, parole revocation) of any formerly incarcerated person previously referred to CPCS for assignment of legal counsel or other assistance due to their mental disability.

ix. No less than 90 days before a scheduled parole hearing, or promptly upon receipt by the Board from a third party, providing parole candidates with mental disabilities and, where applicable, their legal counsel with all records or other documentation submitted to the Board for review in connection with any parole proceedings, regardless of the source of such records or other documentation.

x. Including legal counsel in all communications and meetings with incarcerated persons with mental disabilities concerning any scheduled parole hearing, including without limit all such communications or meetings with IPOs or

other Board staff pertaining to legal rights, parole preparation, the pre-hearing questionnaire, and/or any other parole-related matters.

xi. Ensuring that appropriate parole eligible individuals with a mental disorder receive a professional evaluation to assess the effect of their condition on their institutional conduct, as well as a recommendation regarding a post release plan that might diminish the risk of recidivism.

xii. Engaging in effective, robust, and timely coordination and collaboration with outside state agencies and other relevant entities to ensure that parole candidates with mental disabilities have a viable release plan, including access to all appropriate services or programs the Board determines are necessary for them to be successful on parole.

xiii. Conducting parole hearings involving parole candidates with mental disabilities in a manner that is sensitive to, and accounts for, each such person's specific disability or disabilities (*e.g.*, where the candidate has difficulty with auditory processing, avoiding complex hypothetical scenarios and instead posing simple, one-part questions).

xiv. Promptly providing incarcerated persons with mental disabilities and their legal counsel, where applicable, with any decision to grant, deny, revoke, or rescind parole.

xv. In every parole denial concerning parole candidates with mental disabilities in which the Defendant concludes any such candidate poses a public safety risk due in whole or in part to the mental disability or disabilities in question, Defendant must at a minimum provide a detailed explanation as to why the alleged risk posed is unacceptable notwithstanding (a) the candidate's efforts at rehabilitation, and (b) the availability of any reasonable modifications designed to mitigate such risk.

4. Award all costs and reasonable attorneys' fees incurred by the plaintiffs in prosecuting this action.

5. Award such other and further relief as the Court may deem just and proper.

Dated: June 12, 2023

Respectfully submitted,

PLAINTIFFS JOHN DOE 1-3,
By their attorneys,

M. Claire Masinton, BBO # 646718
Ivy L. Moody, BBO # 708708
Mental Health Legal Advisors Committee
100 Hancock Street, 10th Fl.
Quincy, MA 02171
(617) 338-2345
cmasinton@mhlac.org
imoody@mhlac.org

Tatum A. Pritchard, BBO # 664502
Disability Law Center
11 Beacon Street, Suite 925
Boston, MA 02108
(617) 723-8455
tpritchard@dlc-ma.org

James R. Pingeon, BBO # 541852
Michael Horrell, BBO # 690685
Prisoners Legal Services
50 Federal Street, 4th Fl.
Boston, MA 02110
(617) 482-2773
jpingeon@plsma.org
mhorrell@plsma.org