



*The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
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April 2, 2020

Francis V. Kenneally, Clerk
Supreme Judicial Court
John Adams Courthouse
1 Pemberton Square, Suite 2500
Boston, MA 02108

RE: Post-Argument Letter in No. SJC-12926 RE: April 1, 2020 Order

Dear Mr. Kenneally,

This letter is in response to the Order entered on April 1, 2020, directing the Department of Correction to submit to the Court a post-argument letter answering the following questions, based on informed estimates:

1. Approximately what percentage of inmates or detainees sleep within six feet of another inmate or detainee? Individuals in disciplinary isolation should be excluded from this estimate.

The Department of Correction has 11,639 beds. Of this number, 3,226 beds (27.72%) are in single cells, 5,792 beds (49.76%) are in double cells, and 2,621 beds (22.52%) are in dormitory rooms, which vary in size and occupancy from between 3 to 114 inmates. While many bunks in these dormitory rooms are fixed to the floor, other non-fixed bunks are kept as far apart as possible dependent on available space. Based on these numbers, approximately 72% of Department inmates or detainees (collectively referred to as "inmates") either sleep within six feet of another inmate (in a double room) or more than one other inmate (in a dormitory room).

2. Approximately what percentage of inmates or detainees eat meals within six feet of another inmate or detainee?

At present, inmates at MCI-Shirley (Medium), the Souza-Baranowski Correctional Center and the Massachusetts Treatment Center are eating inside their housing units. Inmates have been informed about social distancing and are regularly reminded to do so. The most informed estimate is that approximately 70% of inmates eating within their housing units are eating within six feet from another.

With respect to facilities where inmates eat in a dining hall, inmates have been informed about social distancing, and are regularly reminded to do so,. The most informed estimate is that approximately 70% of inmates or detainees eating in a dining hall eat their meals within six feet from another inmate or detainee.

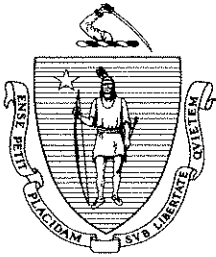
3. Approximately what percentage of inmates or detainees are permitted to be within six feet of each other during recreation periods?

Because of the limitations on space inherent in a correctional setting, The Department acknowledges that inmates are generally able to pass within six feet of one another during recreational periods.

As is relevant, the Executive Order declared by Governor Charles D. Baker on March 23, 2020, declared that production and service sectors identified in its Exhibit A are designated as “COVID-19 Essential Services.” See COVID-19 ORDER No. 13 (March 23, 2020)(“Order”), attached, at p.2, ¶1. The list of Essential Services accompanying this Executive Order includes “personnel in...corrections” under the “Law Enforcement” heading. See COVID-19: Essential Services, attached, at p.10. While the Order prohibits gatherings of more than ten people, it further states that “this limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.” Order at p. 3, ¶3. As corrections are an Essential Service, the ten-person limit contained in the Executive Order would not apply to Department operations as it provides essential services, including housing, feeding, and recreation of inmates in its custody. Moreover, the Order “does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot”, Order at p. 3, ¶3, so this Order would not prohibit gatherings of more than 10 inmates in a Department recreation yard.

Very truly yours,

/s/ Charles W. Anderson Jr.
Charles W. Anderson Jr.
Associate General Counsel



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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER ASSURING CONTINUED OPERATION OF ESSENTIAL SERVICES
IN THE COMMONWEALTH, CLOSING CERTAIN WORKPLACES,
AND PROHIBITING GATHERINGS OF MORE THAN 10 PEOPLE**

COVID-19 Order No. 13

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth. As of March 22, 2020, the Department of Public Health had reported 646 cases of COVID-19, including 5 deaths, with 13 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times, both inside and outside of the home to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, on March 19, 2020, the Federal Cybersecurity and Infrastructure Security Agency issued guidance to assist States that identifies 14 critical infrastructure sectors whose workers provide services and functions that are essential to maintain in order to support a strong response to the COVID-19 pandemic;

WHEREAS, as Governor, I have identified additional services and functions that likewise are essential to promote the public health and welfare of the Commonwealth, and

therefore it is imperative to ensure that workers providing critical services and functions in these State and Federally designated sectors may continue to work to ensure community resilience and continuity of response efforts; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, in order to minimize all unnecessary activities outside of the home during the state of emergency, I hereby order the following:

1. Maintaining Operation of COVID-19 Essential Services and Workforces

The production and service sectors identified in Exhibit A are hereby designated as “COVID-19 Essential Services.” The workforces engaged and working in these production and service sectors are hereby designated as “COVID-19 Essential Workforces.” I shall amend and publish updates to Exhibit A as I determine necessary in response to conditions as they develop.

Businesses and other organizations that provide the services and functions identified as COVID-19 Essential Services in Exhibit A are urged to continue operations during the state of emergency, but to do so with allowance for social distancing protocols consistent with guidance provided by the Department of Public Health.

Restaurants, bars, and other retail establishments that sell food and beverage products to the public provide COVID-19 Essential Services and are designated as such in Exhibit A. These establishments are therefore encouraged to continue to offer food and beverages for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance. Restaurants, bars, or other establishments that offer food or beverages to the public shall not permit on-premises consumption of food or beverages.

2. Temporary Closing of Other Businesses and Organizations

All businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities (“brick-and-mortar premises”) to workers, customers, and the public as of 12:00 noon on March 24, 2020 and shall not re-open to workers, customers, or the public before 12:00 noon on April 7, 2020. Churches, temples, mosques, and other places of worship shall not be required to close their brick and mortar premises to workers or the public; provided, however, that such institutions shall be required to comply with all limitations on gatherings established in section 3 below.

Businesses and other organizations that do not provide COVID-19 Essential Services are encouraged to continue operations where they are able to operate through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by this Order.

3. Limitations on Gatherings

Gatherings of more than 10 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, festivals, weddings, funerals, and any similar event or activity that brings together more than 10 persons in any confined indoor or outdoor space. This limitation shall not apply to the operations or activities of any business or organization in its provision or delivery of COVID-19 Essential Services.

This Order does not prohibit gatherings of more than 10 people in an unenclosed, outdoor space such as a park, athletic field, or parking lot.

Athletic and recreational activities that bring participants into close, physical contact are prohibited even when involving 10 or fewer people and regardless of where conducted.

4. Exceptions

(a) This Order shall not apply to any municipal legislative body or to the General Court or to the Judiciary.

(b) This Order shall not apply to residential schools for special needs students. This Order also does not apply to public and private elementary and secondary (K-12) schools in the Commonwealth, which are subject to the March 15, 2020 Order Temporarily Closing All Public and Private Elementary and Secondary Schools, as may be subsequently amended, which suspended all normal, in-person instruction.

(c) This Order does not apply to the operation of child care programs in the Commonwealth, which are subject to the March 18, 2020 Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs, as may be subsequently amended.

5. Implementing Guidance and Enforcement

The Commissioner of Public Health is directed to issue guidance (“DPH Guidance”), subject to my approval, to implement the terms of this Order. The DPH Guidance shall include a requirement that grocery stores and other retailers with substantial retail grocery sales establish special limited access hours during which elderly and other vulnerable populations may have exclusive access to make grocery purchases.

The Department of Public Health, along with any board of health or authorized agent pursuant to G. L. c. 111, § 30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the DPH Guidance may result in a criminal penalty pursuant to Section 8 of Chapter 639 of the Acts of 1950 or a civil fine of up to \$300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. A criminal complaint for violation of or a motion for an injunction to enforce this Order or the DPH Guidance shall be filed in the district court with jurisdiction for the municipality in which the violation has been charged.

In addition, I hereby direct the Commissioner of Public Health to act under the authority of G. L. c. 17, § 2A and G. L. c. 111, § 6 or any other appropriate authority to supplement the terms of this Order in the event she determines additional measures are required to ensure that the terms of this Order are observed.

This Order supersedes and makes inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the achievement of the objectives of this Order. With respect to work and travel in particular, any order or rule issued by a municipality is hereby made inoperative to the extent: (1) such municipal order or rule will or might interfere with provisions of this Order ensuring the continued operation of COVID-19 Essential Services; or (2) such municipal order or rule will or might interfere with the free travel anywhere within the Commonwealth of any person who is a member of any COVID-19 Essential Workforce where such travel is made in connection with the ongoing operation of COVID-19 Essential Services.

This Order rescinds and revokes the Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, issued March 15, 2020.

If any provision of this Order or the application thereof to any person or entity or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or the application thereof to other persons, entities, and circumstances.

This Order shall be effective at 12:00 noon March 24, 2020 and shall remain in effect through 12:00 noon on April 7, 2020 unless further extended.

Given in Boston at 9:15 AM this 23rd day
of March, two thousand and twenty

A handwritten signature in black ink, appearing to read "Charles D. Baker", written over a horizontal line.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

EMERGENCY ALERTS

Coronavirus Update

Stay informed about coronavirus – COVID-19. Learn more. *Apr. 1st, 2020, 9:00 am* [Read more](#) 

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COVID-19: Essential Services

Learn about businesses and organizations defined as providing "COVID-19 Essential Services" under Governor Baker's March 23, 2020 Emergency Order, updated March 31, 2020

Governor Charlie Baker has issued an [emergency order](#) (</doc/march-31-2020-essential-services-extension-order>) requiring all businesses and organizations that do not provide "COVID-19 Essential Services" to close their physical workplaces and facilities to workers, customers and the public. These businesses are encouraged to continue operations remotely. **Governor Baker's order has been extended until May 4.**

[Frequently Asked Questions about Essential Services](#)

(</info-details/covid-19-essential-business-faqs>).

The Administration also updated the "COVID-19 Essential Services" list which is based on updated federal guidance. The new list goes into effect on April 1 at noon.

Governor Baker also directed the Department of Public Health to issue a Stay at Home Advisory: [Read the Advisory](#)

(</news/dph-public-health-advisory-stay-at-home-advisory-for-individuals-over-70-and-for-those-with>).

The below "Essential Services List" has been issued to list designated businesses and other organizations that provide essential services and workforces related to COVID-19 that shall continue to operate brick and mortar facilities during this time period. This list is based on federal guidance and amended to reflect the needs of Massachusetts' unique economy. Businesses that provide essential services according to the essential services list do not need to take any further action in order to continue operating. Businesses will not receive a designation or certification from the Commonwealth specific to their individual company. While these businesses are designated as essential, they are urged to follow social distancing protocols for workers in accordance with guidance from the Department of Public Health.

Businesses and organizations not on the list of essential services are encouraged to continue operations through remote means that do not require workers, customers, or the public to enter or appear at the brick-and-mortar premises closed by the order.

Restaurants, bars, and other establishments that sell food and beverage products to the public are encouraged to continue to offer food for take-out and by delivery if they follow the social distancing protocols set forth in Department of Public Health guidance continue operations. On-premises consumption of food or drink is prohibited.

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Health Care/ Public Health / Human Services

- Workers who perform critical clinical research, development, and testing needed for COVID-19 response.
- Healthcare providers and Caregivers including physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, optometrists, speech pathologists, chiropractors, other providers of mental and behavioral health care, peer support and recovery coach workers, personal care attendants, home health aides and home care workers, and diagnostic and therapeutic technicians and technologists.
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical and biomedical facilities (including Ambulatory Health and Surgical, Blood Banks, Medical Clinics, Community Mental Health Centers, Comprehensive Outpatient rehabilitation, Methadone/OBOT Clinics, 24 hour Diversionary and Residential Behavioral Health Providers, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Rest Homes, Assisted Living Residences, Nursing Care Facilities, Organ Pharmacies, Procurement

Organizations, Psychiatric Residential, Residential Treatment Schools, Rural Health Clinics and Federally Qualified Health Centers, State Hospitals, licensed medical marijuana retailers, and retail facilities specializing in medical good and supplies).

- Manufacturer workers for health manufacturing (including biotechnology companies), materials and parts suppliers, logistics and warehouse operators, distributors of medical equipment (including those who test and repair), personal protective equipment (PPE), isolation barriers, medical gases, pharmaceuticals (including companies and institutions involved in the research and development, manufacture, distribution, warehousing, and supplying of pharmaceuticals, biotechnology therapies, and medical devices, diagnostics, equipment and services) (including materials used in radioactive drugs), dietary supplements, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.
- Public health / community health workers, including those who compile, model, analyze and communicate public health information.
- Blood and plasma donors and the employees of the organizations that operate and manage related activities.
- Workers who manage health plans, billing, and health information, who cannot practically work remotely.
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely.
- Workers performing information technology and cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Pharmacy employees necessary to maintain uninterrupted prescription filling.
- Workers performing mortuary funeral, cremation, burial, cemetery, and related services, including at funeral homes, crematoriums, cemeteries, and coffin makers.

- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident.

Law Enforcement, Public Safety, First Responders

- Public, private, and voluntary personnel (front line and management) in emergency management, law enforcement, fire and rescue services, emergency medical services, and private security, to include public and private hazardous material responders, air medical service providers (pilots and supporting technicians), corrections, and search and rescue personnel. ()
- 911 call center employees (including telecommunicators, dispatchers and managers) and Public Safety Answering Points and other police communication facilities who can't perform their duties remotely.
- Fusion Center employees.
- Workers – including contracted vendors -- who maintain, manufacture, or supply equipment and services supporting law enforcement emergency service and response operations (to include electronic security and life safety security personnel).
- Workers supporting the manufacturing of safety equipment and uniforms for law enforcement, public safety personnel, and first responders.
- Workers supporting the operation of firearm or ammunition product manufacturers, importers, and distributors.
- Public agency workers responding to abuse and neglect of children, elders, and dependent adults.
- Workers who support weather disaster / natural hazard mitigation and prevention activities.
- Security staff to maintain building access control and physical security measures.