

Hearsay

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Now or never

The new law providing for the compassionate release of terminally ill inmates who no longer pose a threat to public safety may get what appears to be its first appellate test on behalf of one of the state's most controversial criminals.

Benjamin LaGuer was convicted and sentenced to life in prison in 1984 for raping a neighbor, a crime for which he has steadfastly maintained his innocence.

In June 2017, LaGuer, 55, was diagnosed with liver cancer. Because it had metastasized, he was ineligible for a liver transplant.

As a result of his diagnosis, LaGuer asked that the state accelerate his next parole hearing rather than make him wait until 2020, but that request has been denied twice. LaGuer's doctors now say he will lose his battle with Stage IV cancer within months.

Gov. Charlie Baker signed into law G.L.c. 127, §119A, on April 13, after which LaGuer wasted little time seeking relief, petitioning for compassionate release



HARRIS

two weeks later to the superintendent of the North Central Correctional Institution in Gardner, where he is being held. The request was denied.

LaGuer and his court-appointed counsel, **Jeffrey G. Harris of Good, Schneider, Cormier & Fried**, are now asking a single justice of the Supreme Judicial Court to examine whether the Department of Correction correctly followed the procedure under the new law and whether it premised its denial on improper considerations.

LaGuer thinks he has satisfied the requirements of the law, documenting that he suffers from both a "terminal illness" and "permanent incapacitation."

For example, back in



AP PHOTO/ADAM HUNGER

Doctors say inmate Benjamin LaGuer will die in a matter of months.

November, a Boston Medical Center doctor who has seen LaGuer repeatedly over the last few years wrote that he was "quite weak and is not a candidate any more for any curative therapy due to progression of the cancer outside the liver."

LaGuer's survival "can now be measured in months rather than years," he wrote. The doctor confirmed that diagnosis in email correspondence with Harris in April.

If released, LaGuer plans to live in Danvers with a private citizen with experience in hospice care, according to his petition.

But in a letter to DOC Commissioner Thomas A. Turco III on June 18, Worcester County Assistant District Attorney **Sandra L. Hautanen** said she thought LaGuer still posed a threat to public safety.

LaGuer "appears to be walking around, taking care of himself and engaged in normal activity," she wrote.

Hautanen also criticized LaGuer for failing to "address security concerns" or propose a "medical parole plan," the latter of which is actually the NCCI superintendent's responsibility under the new law, according to Harris.

On June 25, NCCI Superintendent Colette Goguen recommended that LaGuer's petition for medical parole be denied, opining that LaGuer's health status is not "so debilitating that the prisoner does not pose a public safety risk."

Goguen also wrote that LaGuer consistently refused to participate in recommended programming, though Harris counters that LaGuer was accepted to NCCI Gardner's sex offender treatment program in April.

When Turco ultimately denied LaGuer's petition for medical parole, he premised his decision on factors that are irrelevant under the statute and pretextual, according to Harris' petition. Among those factors are LaGuer's disciplinary history in prison, his insistence on his innocence, and the "powerful written statements" from the Worcester DA's Office and victim's family opposing LaGuer's release.

Harris' petition alleges "critical violations" of LaGuer's rights under the state constitution and the 14th Amendment.

The appeal also raises the failure of Executive Office of Public Safety and Security Secretary **Daniel J. Bennett** to promulgate rules and regulations necessary for the enforcement and administration of the new law, as the Legislature had commanded.

Harris declines to comment beyond his petition, which LaGuer emailed to Lawyers Weekly from NCCI Gardner.

Though not familiar with the nuances of LaGuer's case, everything in his petition looks to be in order, and LaGuer "seems like a person who should be considered" for medical parole, says **Elizabeth**

D. Matos, executive director of Prisoners' Legal Services of Massachusetts.

Under the new law, the nature of the underlying crime — and the defendant's willingness to accept responsibility for it — are not really relevant considerations in determining whether to grant medical parole, she says.

Though the process contemplates giving a victim or the victim's family a voice, the program was designed to allow ready access to medical parole to people who no longer pose a public safety risk, thereby sparing taxpayers the expense of caring for the state's most expensive inmates.

"Otherwise, the program is meaningless," she says.

The issue LaGuer raises about the lack of a regulatory scheme governing medical parole has been common to many of the early challenges to DOC denials, Matos adds. The DOC only published its medical parole policy in early August, she notes.

At one time, LaGuer counted former Gov. **Deval L. Patrick** among his supporters. Patrick famously wrote a letter to the Parole Board on LaGuer's behalf and helped pay for DNA tests that supporters believed would exonerate him.

But LaGuer lost much of his support when those DNA tests instead linked him to the crime, and LaGuer has subsequently been unsuccessful in casting doubt on the integrity of that evidence.

— KRIS OLSON

Legislative nullity?

In a bill signed by Gov. Charlie Baker last month, legislators took a stab at addressing the thorny problem of providing doctors with the means to notify and engage family members when a patient is diagnosed with Alzheimer's.

But elder law attorneys question whether the new family notice statute gives doctors any real options beyond what they already have under existing state and federal patient privacy laws.

A doctor's right to release information under the new statute is no greater than under current law, according to **Karen B. Johnson**, president of the Massachusetts chapter of

"Autonomous vehicles are on the brink of changing our lives in dramatic ways."

