



PROTECTION & ADVOCACY
SERVICE, INC.

Michelle Roberts, Executive Director

March 31, 2020

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The Honorable Gretchen Whitmer
Governor of Michigan
P.O. Box 15282
Lansing, MI 48901

RE: COVID -19: The Immediate Need to Reduce MDOC Prison Population

Dear Governor Whitmer:

We write to urge your immediate action to save the lives of persons with disabilities currently incarcerated in Michigan Department of Corrections (MDOC). In congregate prison settings, they face far too high a risk of COVID-19 infection and death. Even before the crisis infects more of Michigan's prisoners, addressing it is subjecting prisoners with disabilities to dangerous medical neglect. We urge temporary emergency releases of prisoners who are in harm's way. You—and only you—have the power to make this happen.

Michigan Protection and Advocacy Service, Inc. (MPAS) is a non-profit corporation, designated and charged by federal law with the responsibility to implement and enforce the federal protection and advocacy acts, by advocating for civil rights, investigating abuse and neglect, and providing information and legal representation for persons with disabilities in Michigan. See. 42 U.S.C. §§ 10807-10827, the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI); 42 U.S.C. §§ 15041-15045, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD); and 29 U.S.C. § 794e, the Protection and Advocacy of Individual Rights (PAIR), Program of the Rehabilitation Act of 1973, as amended.

Our mandate extends to persons with disabilities housed in all of Michigan's jails and prisons, and we have substantial contacts with such persons. Ordinarily, we have the statutory right to monitor MDOC facilities which includes meeting directly with prisoners and staff through the facility. Because of the current pandemic, and in agreement with MDOC, we have substituted monitoring with substantial contacts by phone and letter with many Michigan prisoners with disabilities. What our constituents

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tell us is consistent and urgent. They report that the CDC social distancing recommendations are not being carried out—indeed, that it would be impossible to carry them out—in Michigan’s correctional facilities. Prisoners, including the most medically fragile prisoners, are living in many-person dorms, in close proximity—they are breathing each other’s air; sharing bathrooms, tables, and day spaces. When one of them is infected, the spread rate will inevitably be astronomically high.

Persons with disabilities and older persons housed in MDOC facilities are particularly at risk of severe illness and death due to COVID-19. And such persons are disproportionately prevalent in jails and prisons. With current population levels, in these congregate settings, containment of the virus is nearly impossible. And jail and prison medical facilities lack the capacity or the resources to manage serious respiratory illness.¹ If something is not done quickly, the results will be catastrophic.

The Constitution and basic humanity compel the State to provide for the safety of the persons in its custody, as well as for staff, and to meet the standard of care provided to all the State’s residents.

While MDOC has put a response plan into action², and we recognize and appreciate the Department’s efforts, the plan does not meet the standard of care needed to protect the health and safety of prisoners, MDOC staff, or the community. The standard of care requires social distancing--increasing the space between individuals by maintaining at least six feet in all directions between all individuals and decreasing the frequency of contact, as recommended by the CDC. The only means by which this could possibly be achieved in correctional facilities is by reducing the population in those facilities. MDOC by itself lacks the authority to do this. Only you, by use of your emergency powers, can reduce the prison population quickly and sufficiently to prevent a devastating number of deaths of prisoners, MDOC staff, and the community residents where these facilities are located.

Therefore, MPAS asks that you take immediate action by ordering the following:

A reduction in the density of the MDOC prisoner population by as many people as necessary to achieve safe social distancing and sufficient space for quarantine and medical isolation through release to parole, commutation or other post-release community supervision of persons:

- (a) age 55 and over who are at low risk for violence or are serving a term for a non-violent offense and are set for parole within the year;

¹ AMEND: COVID-19 in Correctional Settings: Immediate Population Reduction Recommendations, https://amend.us/wp-content/uploads/2020/03/Amend-3.30.20-Population-Reduction-Guidance-for-DOCs_COVID-19.pdf (accessed 3/31/20)

² MDOC Response to Coronavirus (COVID-19) and Preventative Measures <https://medium.com/@MichiganDOC/mdoc-takes-steps-to-prevent-spread-of-coronavirus-covid-19-250f43144337> (accessed 3/31/20)

- (b) who are at high risk of severe complications and death, due to COVID-19, according to the standards set forth by the CDC, this includes,
 - (1) people with chronic lung disease or moderate to severe asthma;
 - (2) people who have severe heart conditions;
 - (3) people who are immunocompromised (for example, due to cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, or prolonged use of immune-weakening medications);
 - (4) people with severe obesity;
 - (5) people with uncontrolled diabetes;
 - (6) people with renal failure;
 - (7) people with liver disease; and
 - (8) people who are pregnant.

- (c) expedite all commutation and pardon requests based on medical condition made pursuant to MCL 791.244a.

The immediate reduction in the prison population would benefit all involved and is critical to halting the spread of the virus in our State. The reduction is imperative for preventing numerous deaths from occurring among prisoners, MDOC staff, and in the communities where these facilities are located.

Finally, it is important for those prisoners that remain in MDOC facilities continue to receive the medical care they need. We have had reported incidents where individuals with diabetes on at least one occasion did not receive insulin and another where the facility skipped serving the prisoners their lunch. As staffing becomes an issue due to illness and mental stress, the occurrence and seriousness of these medical and service issues will only increase. This further increases the urgency that you need to act now.

Thank you in advance for your consideration. Should your staff have any questions, please contact me at 1 (800) 288-5923.

Sincerely,



Michelle Roberts
Executive Director
Michigan Protection & Advocacy Service, Inc.