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Recommendations of State Appellate Defender Office on Michigan Department of Corrections and COVID-19

As of January 11, 2021, 23,233 people incarcerated in the Michigan Department of Corrections (MDOC) have tested positive for COVID-19, approximately 58 percent of all people in Michigan prisons. One hundred and twenty-three have died.¹ Almost half of all individuals who have tested positive are Black, and Black people account for more than half of the deaths within the MDOC.²

This is a humanitarian crisis. Every day at the State Appellate Defender Office (SADO), we hear horrific news of clients who have tested positive and even died. William Garrison died weeks before his parole³ and Richard Palombo died after he presented evidence exonerating an innocent man.⁴

Our clients are isolated from their friends and family. They have not been permitted to see loved ones in person since March and only those participating in a limited pilot program may see loved ones via video. The MDOC has chosen the timing of this crisis to supply only photocopies of personal mail, including children's art.⁵

Many people have reported problems with social distancing, adequate quarantines, access to sanitizing supplies, denial of medical attention, and unsafe movement and transport.⁶ In a December 15, 2020 JPay e-mail, one client, who is eligible for parole in November, wrote:

¹<https://medium.com/@MichiganDOC/mdoc-takes-steps-to-prevent-spread-of-coronavirus-covid-19-250f43144337>

²State of Michigan Demographic data, accessed at https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html

³<https://www.freep.com/story/news/local/michigan/2020/04/18/michigan-prisons-coronavirus-infections-deaths-william-garrison/5156073002/>

⁴<https://www.freep.com/story/news/obituary/2020/04/22/richard-palombo-coronavirus-michigan-prisoner/3004703001/>

⁵<https://www.freep.com/story/news/local/michigan/2020/10/23/michigan-prison-photocopies-mail-policy/3712961001/>

⁶ SADO Survey of COVID-19 Concerns in the Michigan Department of Corrections, May 2020, http://www.sado.org/content/pub/11310_MDOCCOVID19.pdf; client JPay communication to attorneys.

“I have contracted the corona virus because they (corrections officer) put several people with the virus around me when I didn't even have it, and now that I have it I'm not getting treated properly, I'm locked in this cell coughing up blood, I can't clean my cell on a daily, I'm not able to take a shower daily, I can't breath, I can't eat, I can't smell, I'm losing massive weight, I'm really scared and I don't know what to do any more please don't let me die in this place please I'm begging you help me, their not letting me call my family, I don't know what else to do please help me I just want to see my family at least one more time before its over for me....”⁷

Feasible and concrete action is needed now. SADO suggests the following immediate steps: (1) fair distribution of the COVID-19 vaccine; (2) an independent and public audit of the MDOC response; (3) facilitation of communication with loved ones; and (4) implementation of policies to maximize parole releases upon eligibility:

1. Vaccine access for incarcerated people: The obstacles to social distancing and best hygiene practices together with poor health of people inside make the MDOC a uniquely dangerous setting for the spread of COVID-19. This danger has been borne out by the distressing numbers of positive COVID-19 cases and deaths. Accordingly, the American Medical Association⁸ and the National Academies of Sciences, Engineering and Medicine⁹ has called for vaccine prioritization for people in incarcerated settings. The National Association for Criminal Defense Lawyers and the Association of Prosecuting Attorneys issued a Joint Statement calling for priority vaccine distribution for people in detention and detention staff.¹⁰ Some states, like Massachusetts and California, have followed this recommendation by making incarcerated people among the first to receive vaccines.¹¹

In Michigan, corrections officers and other prison staff have appropriately been identified as a priority for vaccines.¹² However, incarcerated individuals will only receive the same consideration as the rest of the general public: prioritization if they are older than 65 or have

⁷ JPay from SADO client, December 15, 2020

⁸ <https://www.ama-assn.org/press-center/press-releases/ama-policy-calls-more-covid-19-prevention-congregate-settings>

⁹ <https://www.cdc.gov/vaccines/acip/meetings/downloads/slides-2020-12/slides-12-20/02-COVID-Dooling.pdf>

¹⁰ <https://www.nacdl.org/content/Joint-Statement-COVID-19-Vaccine-Distribution>

¹¹ <https://www.nytimes.com/2020/12/18/health/coronavirus-vaccine-prisons-massachusetts.html>; <https://www.latimes.com/california/story/2020-12-22/californias-high-risk-inmates-to-get-covid-19-vaccines>

¹² https://www.michigan.gov/documents/coronavirus/MI_COVID-19_Vaccination_Prioritization_Guidance_710349_7.pdf

certain medical conditions and health risks.¹³ Failure to prioritize the vaccination of incarcerated people endangers not only their health and that of corrections staff, but by extension the communities around them, and the communities to and through which they are transported.

2. Retain an independent expert to examine the MDOC response to COVID-19 and provide public recommendations. This model operates in Connecticut, where an independent panel reviews the ongoing corrections responses to the pandemic.¹⁴ The MDOC's response needs scrutiny from an independent authority.
3. Facilitate communication with loved ones during this crisis:
 - a. Free and comprehensive video conferences with loved ones: The MDOC must establish a meaningful video meeting opportunity for people inside to see loved ones beyond the limited pilot project that ten months into the pandemic serves less than one-third of prisons. Illinois and Connecticut are among the states that provide free video visits each week.¹⁵ People should also receive free phone calls during the crisis, especially in cases where there is a COVID-19 diagnosis. A positive test means quarantine and even more limited contact with friends and family.
 - b. Outdoor in-person visits, as weather permits: The MDOC should follow the lead of certain states and implement an outdoor visiting system.¹⁶ Some facilities have existing infrastructure from years past when outdoor visits were the norm.
 - c. Eliminate new mail restrictions: Restricting contraband is a legitimate goal, but when incarcerated people already cannot see loved ones in person, it is inhumane to implement a new policy that prevents original copies of mail. The MDOC must rescind this policy and implement alternative measures. Based on the

¹³ <https://www.freep.com/story/news/local/michigan/2020/12/16/michigan-prisoner-prison-staff-covid-vaccine/6544144002/>

¹⁴ <https://ctmirror.org/2020/12/10/panel-monitoring-response-to-covid-pandemic-finds-most-people-in-prisons-and-jails-are-wearing-masks/>

¹⁵ https://www2.illinois.gov/idoc/facilities/Documents/COVID-19/CommunicationCustody/SOE-Coronavirus-GTL-Inmate_Pod_Flyer-r2-ILDOC-11.3.2020.pdf;
<https://www.fox61.com/article/news/local/ct-department-of-correction-video-visitation-program/520-d4c11692-d432-46d4-bc63-9fd0fffea54b>

¹⁶ <https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus>

MDOC's own records, for a population of over 40,000 people there were 116 cases of mail contraband from April through October 2020.¹⁷ These numbers do not justify this policy.

4. Implement policies to maximize releases on parole: Michigan's "truth in sentencing" laws and complex commutation system have prohibited sensible release policies implemented in other states that balance public health with public safety. New Jersey released more than 2,000 people.¹⁸ Oregon¹⁹ and Kentucky²⁰ each released people in prison. Unlike the situation in the MDOC, Michigan judges and sheriffs have had the authority to successfully reduce jail populations in response to COVID-19.²¹ Nevertheless, there are immediate actions that can still be taken to maximize paroles during the pandemic without compromising public safety:
 - a. Expand the parole board: In 2009, to safely lower the prison population and save money, Governor Granholm expanded the parole board to fifteen people, allowing a record 13,300 paroles and 160 sentence commutations. Especially during the pandemic, the parole board should have fifteen instead of ten members.
 - b. Adjust parole board decisions for the pandemic: In 2020, parole denials only increased, in spite of the public health crisis and the acute danger to people in prison. In November 2020, just as COVID numbers surged for the prison population, the parole board issued 295 denials, compared to 189 denials in November 2019.²² From March to May 2020, 25% of high probability paroles and 27% of medium probability of paroles were deferred by the board.²³ Parole board policy and practice must adjust for the pandemic.

¹⁷ MDOC e-mail response to information request, December 10, 2020.

¹⁸ <https://www.nbcnews.com/news/us-news/more-2-000-new-jersey-inmates-released-slow-spread-coronavirus-n1246388>

¹⁹ <https://www.statesmanjournal.com/story/news/crime/2020/08/26/covid-cases-prisons-oregon-gov-brown-inmate-release/3444432001/>

²⁰ https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html?eType=EmailBlastContent&eId=14e33471-26cd-4585-b9b6-e1e52182b91c

²¹ <https://www.bridgemi.com/michigan-government/coronavirus-emptied-michigans-jails-without-crime-surge-time-reform>

²² MDOC Response to FOIA request, 20-3846.

²³ MDOC Quarter Three Parole Decisions Report, 2020.

- c. Allow for parole with community programming: Parole deferrals primarily occur due to backlogs in required programming and evaluations. This issue is particularly pronounced when quarantine and other procedures result in cancelled or otherwise limited programming within the MDOC. The parole board can immediately increase parole by requiring programming in the community upon parole rather than prior to parole. This policy would also make the MDOC safer by limiting movement and group gatherings that programming requires.
- d. Increase the pace of parole for those serving parolable life sentences: At least 500 people are eligible for parole because they have served the fifteen year minimum required with a parolable life sentence. MDOC has scheduled 72 public hearings in 2020, not nearly enough.
- e. Restore good time and disciplinary credits to all eligible individuals in prison, unless doing so would present an objectively credible threat to public safety. Persons sentenced prior to Michigan's "truth in sentencing" reforms are eligible for both "regular" and "special" disciplinary credits off their minimum sentences. Regular disciplinary credits (RDCs) are five days per month automatically earned in any month where the incarcerated person has not been found guilty of a major or Class I misconduct. Special disciplinary credits (SDCs) are two days per month awarded at the warden's discretion. The current Director's Office Memorandum addressing MDOC's COVID-19 operations gives wardens discretion to reevaluate and restore previously denied SDCs. SADO recommends that the language be strengthened to require that wardens restore all possible disciplinary credits, absent a credible showing that to do so would be a threat to public safety.
- f. Increase commutations and release on medically frail parole: To our knowledge, there have only been four commutations and no medically frail parole grants in 2020, during the first pandemic in a century. Governor Granholm commuted one hundred sentences from 2008 to 2009, and Governor Snyder issued 61 pardons or commutations in his final year in office.

These four steps are specific, modest, and easy to implement. Their adoption will go a long way to reversing an inadequate response to the crisis that impacts some of our most vulnerable citizens and the communities around them.

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