



March 16, 2020

Secretary Stephen Sinclair
Washington State Department of Corrections
PO BOX 41100, Mail Stop 41100
Olympia, WA 98504-1100

BY ELECTRONIC MAIL

Dear Secretary Sinclair:

We, a broad coalition of community-based organizations, legal services providers and concerned stakeholders, are calling on you to take immediate action to protect the health of people incarcerated by the Washington's Department of Corrections (DOC). The coronavirus threatens the lives of more than 18,000 people under DOC's care and control. Given the current health crisis, without decisive action, a prison sentence in Washington may quickly turn into a death sentence.

Accordingly, we are writing to ask that you take a number of steps to protect the people in Washington's prisons and slow the spread of COVID-19 within this vulnerable population. These actions include the following:

- Release people most at risk of serious harm or death from COVID-19 from DOC custody;
- Release those who are less than 6 months from release to community supervision;
- Utilize community custody officers to provide assistance to people leaving facilities and refrain from placing anyone in any local jail as a result of an alleged community custody violation;
- Ensure that all people in custody receive the same level of care that people living outside prison walls receive, including appropriate COVID-19 testing;

- Provide all people in custody unfettered access to soap and water, hand sanitizers, and single use towels;
- Implement social distancing measures to the extent possible, without locking people in their cells for extended periods of time;
- Provide telephone and email access to incarcerated people free of cost in those facilities that have limited visitation;
- Disseminate accurate, timely, and thorough information about COVID-19 and its spread within DOC to people in custody and their families.

The Emergency Facing DOC, Its Staff, and the People in Its Custody.

The danger that COVID-19 poses to the people living under DOC's care cannot be overstated. Current projections of the spread of this virus indicate that as many as 50% of people living in the United States could become infected, with roughly 20% of that number requiring intensive hospital care.¹

Prisons and jails are particularly ill-suited to address the current pandemic. People live in close contact with one another, social distancing is difficult, hygiene services and essential medical equipment is in short supply, and medical treatment is not easily accessible. Once COVID-19 breaks out, it will likely spread quickly through our prisons.² Unfortunately, with Friday's announcement that a correctional officer at the Monroe Correctional Complex has tested positive for COVID-19, the danger is here and additional infections will occur, if they haven't already. The burden upon DOC and its resources will be extreme. Given the rate of infection in the community, and the close quarters of the prisons, it is not alarmist to believe that DOC could be facing many thousands of people infected with the virus with hundreds, if not thousands of them, requiring intensive medical interventions. DOC is simply not equipped for providing the level and quality of medical care that will be required in such an outbreak, and unless immediate and serious steps are taken to slow transmission within the prison, people will die needlessly.

DOC has recently suspended visitation and announced that it will not charge people in custody co-pays for COVID-19 related testing and treatment. These steps are essential but not sufficient. More action is needed. In order to rise to the coming crisis, advocates, community members, and families demand that you take the actions detailed below.

Immediately release the most vulnerable people under DOC's care.

As you know, COVID-19 poses the greatest risk of death to the elderly as well as to those who are immunocompromised, or those who suffer from diabetes, chronic obstructive pulmonary disorder and other lung conditions, high blood pressure, and

¹ See https://www.washingtonpost.com/health/coronavirus-forecasts-are-grim-its-going-to-get-worse/2020/03/11/2a177e0a-63b4-11ea-acca-80c22bbee96f_story.html.

² See <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

those with cancer.³ Many people currently living in DOC facilities fall into one or more of these vulnerable groups.

As of June 2018, roughly ten percent of the DOC population, or more than 1,900 people, were at least 56 years old. While people in this age group are at the greatest risk of death from COVID-19, they also pose the lowest public safety risk to our communities.⁴ This vulnerable population should be released immediately.

Not only will release remove this population from the extreme risk of infection they face in prison but reducing the overall population will provide more flexibility to DOC custody and medical staff in relation to housing placements and other exigencies that DOC will undoubtedly have to implement in the coming months.

These releases should be coordinated with local and state public health agencies and social service providers to ensure that medically fragile people leaving DOC's custody receive an appropriate continuum of care. Coordinated care will ensure that the most vulnerable members of our communities are protected and reduce the likelihood of unnecessary spread of the virus.

Importantly, DOC has the authority under existing policy to furlough these medically fragile individuals and to allow for emergency medical releases. See DOC policy 350.270; also, RCW 9.94A.728. DOC should immediately exercise that authority and begin releasing anyone at serious risk of harm from COVID-19 as a result of their age or health condition. To the extent that any existing policy may limit these powers or create obstacles to immediate action, DOC should amend its rules and policies on an emergency basis.

This crisis highlights the need for DOC and policymakers to take further action to permanently reduce the numbers of people living in custody. Mass incarceration has provided the breeding ground for the spread of infection and the lack of necessary resources to combat it in our jails and prisons and keep people safe. This crisis will affect everyone both inside and outside prison. However, people and their communities will always be much safer when they can receive appropriate health care within the existing community-based, health care system rather than rely on the prisons or jails.

Immediately release people who are within 6 months of their release date.

In order to further decrease the overall population and provide more flexibility and resources to meet the coming crisis, DOC should immediately release those people who are within 6 months of their estimated release date to community supervision. These people are overwhelmingly in the lowest level security classifications and removing this large category of people will alleviate stress on the institutions and allow

³ See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> ; <https://www.nytimes.com/2020/03/12/health/coronavirus-midlife-conditions.html?auth=login-email&login=email>

⁴ See Beckett, Katherine, About Time: How Life and Long Sentences Fuel Mass Incarceration in Washington, p. 48 (2020).

resources to be focused where most needed. It will also provide increased flexibility as the virus spreads and DOC faces inevitable staff shortages.

DOC already has the authority to take this action under its graduated reentry policy, and should take immediate steps to release people.⁵

DOC should also work with Governor Inslee's office, the Sentencing Guidelines Commission, and local prosecutors to explore other avenues for decreasing the overall prison population in the face of this public health emergency, including expedited clemency proceedings and discretionary resentencing.

Repurpose community custody officers away from issuing violations to people under supervision and toward providing assistance and supports to keep people safe.

The dangers facing people currently housed in DOC custody are significant. However, many local and county jails are even more unprepared to address the coming health crisis in their facilities. DOC must not add to the burdens of local jails by issuing community custody violations to people under supervision, thereby adding more people to these risky locations. Thus, DOC should immediately place a moratorium on violations and instead provide resources and support to people under its supervision in order to keep them, their families, and their communities safe. More appropriately, all people currently under community custody should be released from that status to allow community custody officers to focus on assisting people being released from DOC custody to stay safe and effectively reintegrate into their communities.

Provide COVID-19 testing and treatment in a manner that meets or exceeds community-based standards of care.

People living in DOC facilities must be provided at least the same level of care that people living outside prison receive. In order to ensure that people are seeking medical care when appropriate, DOC should immediately suspend all medical co-pays, not only those associated with COVID-19. DOC must issue clear standards that meet current best practices regarding testing for the virus and follow-up medical care; it must also train staff to implement these measures effectively. To the extent that DOC will continue to hold people facing serious medical crises in custody, it must be able to meet their needs. Specifically, there must be adequate medical services, supplies, and practitioners available. DOC must ensure that it has enough ventilators, intensive care beds, negative pressure rooms, quarantine areas, and practitioners who are skilled in treating the extremely sick people who may soon be requiring care. In line with recently

⁵ See RCW 9.94A.733

passed SB 6063, DOC should also establish clear criteria for transferring sick people to community hospitals when more intensive care is needed.

Provide all people living in its care unfettered access to soap and water, hand sanitizers, and single use towels.

While we understand that DOC is already taking steps to ensure that it protects its staff and people living under its care, we want to underscore how important these steps are to effectively address this crisis. To this end, DOC should immediately suspend any prohibition on the possession of alcohol-based hand sanitizer and provide all people living in DOC facilities with an adequate supply of essential hygiene products at no cost. It should also ensure that all people, including those in segregation, suicide watch, and infirmaries, have access to hot water and soap.

To the extent that DOC or specific facilities are having difficulty accessing sufficient supplies to meet these basic public health requirements, resources must be expended immediately.

Implement social distancing measures to the extent possible.

Releasing as many people as possible is the most likely strategy to mitigate risks to the most vulnerable people in custody. DOC should also implement social distancing, one of the most effective measures to prevent the spread of COVID-19. To that end, DOC should cease transfer of prisoners between institutions unless medically necessary. Additionally, DOC should immediately assess its programming, dining, yard, movement, and work schedules to assess what measures can be taken to limit large gatherings within its facilities. Additionally, pill lines and infirmary waiting rooms should have limited numbers of people, particularly given that these locations are more likely to have medically compromised individuals present. However, these efforts should not result in prolonged, widespread lockdowns. Any lockdowns or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration. Releasing many people will likely relieve much of the need for long term isolation or lockdowns.

Provide telephone and email access to incarcerated people free of cost in those facilities that have limited visitation.

In all circumstances, the exorbitant phone and email charges that people living in DOC facilities face is unconscionable. However, at this time of great social disruption and widespread fear, when DOC has stopped all in person visitation, denying people access to family and loved ones because they are unable to afford these charges is particularly inappropriate. DOC must accordingly take all necessary steps during this public health crisis to ensure that people can maintain contact with their spouses, children and other family members without being forced to pay for that right.

Ensure that people in custody and their families receive updated, comprehensive, timely and thorough information.

Many people living in DOC facilities lack basic information about how to protect themselves, or what to expect should they become infected. DOC must issue appropriate, thorough, regularly updated, and accessible instructions and directives to all people under its care, as well as their family members. DOC must take steps to ensure that this information is accessible to people for whom English is not their primary language, those who lack literacy skills, and people with cognitive or sensory disabilities who may require assistance in accessing this crucial information. DOC must also ensure that any information that is distributed via kiosk or JPay is made accessible to those who do not have access to that technology, including those in segregation.

Request for a Meeting

We understand that DOC, like all of us, is struggling to keep up with this rapidly changing situation, and we believe that the above steps are needed and we would like to meet with you, remotely, within the next few days to address these requests and share information. Please have your staff contact us [add specific contact info] to set up such a meeting as soon as possible.

Please have your staff contact Nick Straley, Columbia Legal Services, at nick.straley@columbialegal.org to arrange a telephone call.

Sincerely,

s/ Merf Ehman
Executive Director
Columbia Legal Services

s/ Suzanne Cook
Co-Chair
Statewide Family Council

s/ David Carlson
Director of Advocacy
Disability Rights Washington

s/ Prachi Dave
Staff Attorney
Public Defender Association

s/ Jorge L. Baron
Executive Director
Northwest Immigrant Rights Project

s/ Anne Lee
Executive Director
TeamChild

s/ Hillary Behrman
Director of Legal Services
Washington Defender Association

s/ Liz Moore
Director
Peace and Justice Action League of
Spokane

s/ Robert S. Chang
Executive Director
Fred T. Korematsu Center for Law and
Equality

s/ Carmen Pacheco-Jones
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s/ Megan Pirie
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s/ Kurtis Robinson
President
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s/ Tarra Simmons
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s/ Michele Storms
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ACLU of Washington