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December 22, 2020

Via Email (*tholmes@pa.gov*)
Timothy Holmes
Chief Counsel
Office of Chief Counsel
Pennsylvania Department of Corrections
1920 Technology Parkway
Mechanicsburg, PA 17050

Dear Mr. Holmes:

Thank you and to Tab Bickell, Christopher Oppman, Kelly Evans, Heather Fotiou, Amy Schwenk, and Chase Defelice, for meeting with us on December 1, 2020 via Zoom to discuss COVID-19 issues affecting incarcerated people within the Pennsylvania Department of Corrections (DOC). We appreciate your taking the time to hear our concerns and to share information with us about how the DOC is addressing COVID-19 in its institutions.

Since we met, the Pennsylvania Department of Corrections (DOC) is now experiencing an even greater surge, with 5527 active positive cases among incarcerated people, and 609 active positive cases among staff (as of December 22, 2020). Tragically, there have been 65 deaths of incarcerated people, an additional 11 deaths just over this past weekend. We are writing to follow up on several items in particular, as they appear to be the most serious and urgent.

1. Mandatory staff testing

We urge the DOC to implement mandatory staff testing for COVID-19. Staff testing is a critical component of any COVID-19 mitigation plan in congregate living situations such as prisons. Without such testing, all of the other attempts to stop the virus from spreading inside the prison may be virtually meaningless. The DOC's numbers reflect this reality. Ongoing mitigation efforts such as quarantines, enhanced quarantines, and severely restrictive lock-downs of incarcerated people that extend into months have not stopped the virus from spreading and have not prevented the deaths and skyrocketing positive rates among incarcerated people and staff.

Providing the opportunity for staff to be voluntarily tested on-site is one positive step but insufficient. Staff members come and go on a daily basis, and due to the high rates of asymptomatic carriers, staff may be unwittingly transmitting the virus.

Pennsylvania law permits mandatory testing for highly contagious diseases such as COVID-19. The Disease Prevention and Control Law of 1955, Act of April 23, (1956), P.L. 1510 N. 500. This law has been applied to situations involving past communicable diseases, including typhoid, tuberculosis, venereal disease, and HIV/AIDS. On November 3, 2020 an amendment to this law was adopted for COVID-19. The DOC already has a mandatory staff testing system in place for tuberculosis, in order to prevent staff from spreading the disease inside the institution, and the DOC should similarly do so for COVID-19.

Mandatory testing will benefit staff members and their families, as well as incarcerated individuals, by making prisons safer and healthier in which to work and live.

2. Universal and regular testing of all incarcerated people

We understand that DOC is conducting testing which focuses on specific institutions or housing units within institutions which have been identified as possible outbreak locations. We also learned that DOC has done mass testing at SCI Laurel Highlands after monitoring sewage water in that location for viral load.

Although such testing is necessary after COVID-19 positive cases are identified, this model of testing is not effective in preventing the spread of the virus within the institution because it comes after the fact. We urge the DOC to utilize mass testing, using a baseline test and then continuing with periodic surveillance testing. We believe this is the only reasonable testing option for this disease because of the way it functions inside prison walls. Both the Centers for Disease Control and Prevention (CDC) and Johns Hopkins Center for Health Security released studies showing that broad-based testing can provide more accurate assessments of the prevalence of COVID-19 in a prison, and can be a critical tool in controlling transmission.[1]

Any universal testing can also take advantage of the emergence of rapid and less invasive testing procedures, which are now readily available. Two types of testing are currently available: PCR (polymerase chain reaction) and antigen tests. PCR is typically collected using the more invasive nasopharyngeal swab (sticking the swab all the way up the nose until it meets the back of the throat). PCR testing is considered the "gold standard" for accuracy. Generally, PCR tests have slow turnaround times as it can take up to 10 days to process the results.

Antigen testing, on the other hand, is a less accurate, but cheaper, faster, and less invasive alternative. These tests can be administered with a swab that enters only the lower nostrils and

[1] *See* CDC, MASS TESTING FOR SARS-COV-2 IN 16 PRISONS AND JAILS — SIX JURISDICTIONS, UNITED STATES, APRIL–MAY 2020 (August 21, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6933a3.htm?s_cid=mm6933a3_e&deliveryName=USCDC_921-DM35682; Watson C, Warmbrod L, Vahey R, et al., Johns Hopkins Center for Health Security, COVID-19 AND THE US CRIMINAL JUSTICE SYSTEM: EVIDENCE FOR PUBLIC HEALTH MEASURES TO REDUCE RISK, at 11, 18 (2020), https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/20201015-covid-19-criminal-justice-system.pdf

results are returned within minutes – similar to at home pregnancy tests. Though less accurate, health officials have recommended antigen tests as a useful tool in "outbreak settings and for repeated screening of individuals in high-risk congregate settings to quickly identify individuals with SARS-CoV-2 and isolate them."[2] Studies have suggested that if the frequency of testing is high enough, even tests with lower sensitivity could be successfully used to reduce cumulative infection rates.[3]

During our meeting you advised us that DOC has conducted both antigen and PCR testing on a limited basis. This is a good start. However, as the population at each institution continues to change due to ongoing new commitments and transfers, mass testing of incarcerated people and staff could be vital in mitigating COVID-19 spread.

3. Lockdown and solitary confinement conditions, including during "enhanced quarantine"

The DOC is currently imposing "enhanced quarantine" procedures statewide, and Secretary Wetzel issued a memo that no more than 8-person cohorts would be released from their cells at a time until December 23, 2020, with a possible increase to 16-person cohorts on December 24, 2020. We have heard repeated reports that during enhanced quarantine, incarcerated people only have 15 minutes out of their cell a day, which is the only time when they may shower, use the phone, or use the kiosk. We have grave concerns about the impact of severe lock-downs on incarcerated people's mental and physical health. We cannot overstate the importance of out-of-cell time and access to outdoor recreation during the pandemic.

The United States Department of Justice has defined "solitary confinement" as "the state of being confined to one's cell for approximately 22 hours per day or more, alone or with other prisoners, that limits contact with others."[4] There is broad consensus that individuals subjected to solitary confinement, even for relatively short periods of time of 7 to 15 days, risk severe emotional, psychological, and physiological damage.[5] A growing body of research demonstrates

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[2] Angela M. Caliendo, MD, PhD and Kimberly E. Hanson, MD MHS, *Coronavirus Disease 2019: Diagnosis*, December 3, 2020 (available at https://www.uptodate.com/contents/coronavirus-disease-2019-covid-19-diagnosis/print).

[3] *Id. See also* Tara Parker-Poke and Katherine Wu, *What You Need to Know About Getting Tested for Coronavirus*, N.Y. Times (December 9, 2020).

[4] U.S. Dep't of Justice, Letter to the Hon. Tom Corbett, Re: *Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation*, May 31, 2013, at p. 5, available at http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf (last viewed Dec. 18,2017) (citing additionally to *Wilkinson v. Austin*, 545 U.S. 209, 214, 224 (2005), where the United States Supreme Court described solitary confinement as limiting human contact for 23 hours per day, and *Tillery v. Owens*, 907 F.2d 418, 422 (3d Cir. 1990), where the Third Circuit described it as limiting human contact for 21 to 22 hours per day).

[5] *See, e.g.*, Alison Shames et al., *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* 17, Vera Inst. Of Justice (May 2015) (noting that after only seven days in

that severe *physical* harm also results from solitary confinement, as isolation leads to worse outcomes for those with chronic health conditions including diabetes, heart disease, and hypertension.[6] Moreover, a study published last year found that individuals who spent *any* time in restrictive housing were 24% more likely to die in the first year release.[7]

In combatting COVID-19, it is unacceptable to impose restrictions that are so severe as to compromise other constitutional rights, especially those that similarly have a heavy impact on incarcerated people's health. We urge the DOC to immediately provide more out-of-cell time to incarcerated people statewide.

4. Ensuring access to medical care throughout the pandemic

We continue to receive concerning reports about incarcerated people's access to non-COVID-19-related medical care and mental health care. Despite the ongoing pandemic, incarcerated people have clear constitutional rights to adequate medical and mental health care.[8] With the prolonged restrictions stemming from COVID-19, ongoing medical care is vitally important for chronic care conditions, preventive medicine, and for all medical and mental health issues. We request that the DOC make every effort to ensure access to medical and mental health care even during COVID-19 restrictions.

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solitary confinement, prisoners experience a range of symptoms including "hypersensitivity to stimuli, distortions and hallucinations, increased anxiety and nervousness, diminished impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, talking to oneself, problems sleeping, nightmares, [and] self-mutilation"); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. UNIV. J.L. & POL'Y 325, 338 (2006) ("By now the potentially catastrophic effects of restricted environmental stimulation have been the subject of a voluminous medical literature."); Ass'n of State Corr. Adm'rs, The Arthur Liman Pub. Interest Program, Yale L. Sch., *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms* at 22 (Nov. 2016).

[6] *See, e.g.*, Brie Williams *et al.*, The Cardiovascular Health Burdens of Solitary Confinement, 34 J. General Internal Med. 1977 (2019), https://link.springer.com/article/10.1007/s11606-019-05103-6; Expert Report of Brie Williams, *Parsons v. Ryan*, No. 2:12-cv-0061 (NVW) (MEA) (D. Ariz. Nov. 8, 2013), at 3-13, http://prisonlaw.com/wpcontent/uploads/2015/12/13.11.08-Williams-Isolation-Report.pdf.

[7] Lauren Brinkely-Rubenstein, PhD, Josie Sivaraman, MSPH, David Rosen Phd, MD; *et al.* *Association of Restrictive Housing During Incarceration with Mortality After Release*, JAMA (October 4, 2019), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350 (last visited Dec. 15, 2020).

[8] *Estelle v. Gamble*, 429 U.S. 97, 103 (1976) ("[E]lementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration.").

5. Enforcing the requirement that staff wear masks

During the meeting, you informed us that the DOC has deployed outside individuals to monitor mask wearing by prison staff and other COVID-19 mitigation efforts at each institution. We appreciate DOC's efforts to enforce mask wearing, including the instances where discipline has been imposed. We continue to hear repeated reports that prison staff do not wear masks, or do not wear masks properly. This is a key issue, and we request that the DOC continue to make concerted efforts to ensure that prison staff wear masks at all times.

6. Transparency

We appreciate that you have agreed to post the Superintendents' memoranda and bulletins on the DOC website for greater transparency to the public. This additional information will help the family and friends of incarcerated people to better understand the specific situations at a certain prison, which can differ from location to location.

We appreciate the opportunity that we had to discuss all of the above issues along with several other matters with you and the other DOC staff who participated in the meeting.

With the recent surge in deaths and COVID-19 rates, we request the DOC to immediately implement the steps discussed above. We request a written response by close of business on January 6, 2020. If you have any questions, you may contact Su Ming Yeh at smyeh@pailp.org or (267) 457-4790 or Alexandra Morgan-Kurtz at amorgan-kurtz@pailp.org.

Thank you.

Sincerely,

Su Ming Yeh, Esq.
Executive Director

/s/ Alexandra Morgan-Kurtz
Alexandra Morgan-Kurtz
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/s/ Jennifer Tobin
Jennifer Tobin
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Cc: Chase Defelice (*chdefelice@pa.gov*)