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Office of the Connecticut Attorney General
110 Sherman Street, Hartford, CT 06105
Via e-mail

October 23, 2020

Dear Counsel:

We are writing to you to report systemic patterns of non-compliance by the Department of Correction (“DOC”) with multiple provisions of the settlement agreement in *McPherson v. Lamont*, 20-cv-00534 (JBA) (the “Agreement”). **These systemic patterns of non-compliance are particularly alarming given rapidly rising positivity rates across Connecticut—and within DOC, as evidenced by the recent outbreak at Hartford Correctional Center.**

Below, we detail reported violations by provision, in keeping with Section K(4) of the Agreement.

SANITATION

- **D(17). Distribution of soap.**

17. DOC will distribute soap to each person housed in a DOC facility (“Facility”) once a week without asking, and upon request, within 24 hours, provided that the person does not already have 2 bars of soap in their possession.

- We have received consistent, repeated reports that people in DOC custody are not receiving soap with the frequency the Agreement requires.
- When this Agreement initially took effect, many people in custody were receiving “care packages” that included Irish Spring soap, among other hygiene items. Those are no longer being provided. We have received consistent reports that, nevertheless, some people in custody—including at Carl Robinson—are being required to “sign” for these packages as though they have been received.
- Soap is now being provided inconsistently. Some people are receiving soap only every few weeks, and are being denied soap when requested and told it is only for the indigent.
- We have been told that some facilities, such as New Haven, are breaking bars of soap in half before distributing them.

- **D(18). Cleaning common areas.**

18. All common areas of Facilities, including but not limited to bathrooms, dayrooms, and showers, shall be cleaned no less frequently than twice per shift on first and second shift for bathrooms, dayrooms, and showers. This is intended to ensure a uniform minimum level of cleaning systemwide. This may be suspended for reasons consistent with Paragraph 47 below.

- We are not aware of any facility that is currently cleaning the referenced common areas “no less frequently than twice per shift on first and second shift,” as required by the Agreement. Instead, multiple, consistent reports from people housed in some facilities detail cleaning at far less frequent intervals, if at all.
- Some facilities are being cleaned once per shift. Others are being cleaned at random intervals.
- We have received multiple, consistent reports of little to no cleaning of showers across facilities and shifts.

- **D(19). Cleaning cells/cubicles/sleeping areas.**

19. Prisoners will be provided (1) sufficient disinfectant cleaning agents not diluted in excess of manufacturers’ specifications, and (2) equipment, for the purpose of cleaning their cells, cubicles, or sleeping areas, no less frequently than twice per week. This may be suspended for reasons consistent with Paragraph 47 below.

- We are not aware of any facility providing people with cleaning agents to clean cells at least **twice** per week.
- Some facilities are allowing people to clean their areas only **once** per week. For example, at Corrigan, people may clean their cells on Mondays—but they are locked down for the entire day to do so.
- Some facilities are not providing people with cleaning agents at all. For example, some people at New Haven have been intermittently cleaning their cells with shampoo, as they were prior to the Agreement. Some people at MacDougall-Walker have not been provided with cleaning supplies at all. Of particular concern, despite the recent outbreak at Hartford Correctional Center, many people report they still are not receiving any cleaning supplies to clean their cells or dorm areas.

- **D(20). Provision of showers.**

20. All people in DOC custody shall be allowed to shower—in running water—no less than once every other day, regardless of COVID-19 symptoms, test results, or housing. This may be suspended for reasons consistent with Paragraph 47 below, or for maintenance issues.

- We have received multiple, consistent reports that people in Restricted Housing Units—across multiple facilities—are not being allowed to shower at the frequency the Agreement requires.
- We have also received multiple, consistent reports that people in “quarantine” conditions, including at Osborn and Corrigan, are not being allowed to shower at all.

- We have also received multiple, consistent reports that people have been prevented from showering during lockdowns or while “quarantined” in their cells. For example, as was reported prior to the signing of the Agreement, we have been told that people with suspected COVID-19 symptoms at Corrigan are simply being locked in their cells for weeks.

- **D(21). Wiping down phones.**

21. DOC will provide cleaning supplies to allow all prisoners in its custody in correctional facilities to wipe down phones before they use them.

- With the exception of York, we have received multiple, consistent reports across every facility that people are not being given cleaning supplies to wipe down phones before using them. At Robinson, for example, no supplies are provided for cleaning the phones, despite posted signs directing people to wipe down the phones.
- Phone cleaning at most facilities happens only between shifts, if at all, notwithstanding that people use the phones back to back during recreation or free time.

- **D(22). Mask distribution to people in custody.**

This provision reads, in relevant part:

DOC will provide a minimum of two cloth or other barrier masks per person, and allow for one mask to be exchanged each week for a new mask (or upon request, if a mask becomes torn or otherwise damaged). . . .

- We have received repeated, consistent reports that people in custody are not receiving masks regularly. For example, we have received reports from multiple people who have been wearing the same single mask for weeks (in some cases, months).
 - o For example, people at Hartford have reported that they have been wearing the same masks since August. Some people at MacDougall have reported that they have received only four masks, total, since March. Some people at New Haven and Cheshire routinely wear masks that are several weeks old.
- We also have received reports that people in custody are being denied masks when requested.

Mask distribution appears to vary enormously by facility. We consistently are hearing reports that people are not receiving new masks for weeks at a time, especially upon transfer. You have not informed us that DOC has any shortage of masks or impaired ability to make or obtain them.

Again, mask usage is critical to stop transmission of the virus. DOC is obligated to abide by this provision of the Agreement.

- **D(23). Mask-wearing by staff.**

Chief among the reports of violations that we have received is the violation of provision D(23), which reads as follows:

Staff in correctional facilities will be required to wear masks when social distancing is not possible. They may be exempted from this only if medically necessary.

- We have received consistent, repeated reports from multiple facilities, units, and shifts that DOC staff are not wearing masks regularly or consistently as required by the Agreement.
- Reports from people who have been incarcerated have been corroborated by reports from lawyers visiting clients at DOC facilities. Again, these reports span multiple facilities, units, and shifts.
- Some reporters have estimated that anywhere from one-tenth to one-half of staff at each facility do not wear masks on a regular basis.
- We have been told that some staff will put on masks only when a supervising officer (such as a captain or warden) walks by.
- Reports that staff are not wearing masks have included medical staff, correctional staff who distribute meals, and administrative staff.
- Additionally, we have seen communications from DOC officials indicating that staff failure to wear masks is ongoing and pervasive across the system.

Staff failure to wear masks appears to be taking place at each of the 14 facilities across the DOC system. Nearly every person to provide information to us about the state of affairs within DOC has corroborated this.

The mandate to wear masks is an explicit provision of the Agreement. Short of releasing people from custody, it also is one of the most critical factors—if not *the* most critical factor—in halting transmission of COVID-19 within DOC facilities.

TESTING/QUARANTINE

The following three provisions in Section C of the Agreement relate to DOC quarantining procedures:

12. Unless otherwise recommended by the AMP, DOC will quarantine people newly admitted to a correctional facility for 14 days. In this context, “quarantine” shall refer to keeping these individuals separate from the general population in a unit where they are monitored for COVID-19 symptoms and tested if they develop any such symptoms.

13. Those who test positive for COVID-19 infection will be isolated as medically appropriate. Those who test positive for COVID-19 infection and are symptomatic will be isolated as medically appropriate and shall be checked twice per day for temperature, respiratory rate, heart rate, and blood oxygen saturation levels; and have blood pressure taken once per day. The parties acknowledge that this exceeds the community standard of medical care.

14. In accordance with CDC Guidelines, placement in medical monitoring, medical isolation and medical quarantine units shall not be considered punitive isolation. Regarding prisoners who have been medically isolated and subsequently cleared of COVID-19 according to CDC Guidelines and thus released from medical isolation, DOC will continue to make best efforts to return such prisoners to their pre-medical isolation facility unless there are safety and security concerns, or health concerns with this return. [. . .]

- We have received multiple, consistent reports that these procedures are not being followed.
- In particular, we have received multiple, consistent reports that people whose COVID-19 test results have not yet been returned to them have been placed in “suspected COVID” quarantine areas along with people who already have tested positive.
- We also have received multiple, consistent reports of asymptomatic people being placed in cells with people who have complained of COVID-like symptoms—particularly at New Haven, Bridgeport, and Hartford.
- We continue to receive reports that people who have tested positive are being placed in conditions that constitute “punitive isolation.” For example, we have heard that people at Corrigan with suspected COVID-19 symptoms are being kept in their cells without any ability to leave.

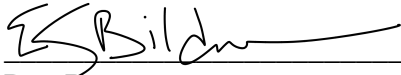
Given the very dire consequences of non-compliance for those in custody, as well as the extraordinary time and effort that all parties put into the Agreement, we expect that its procedures will be followed.

Of particular concern are rampant violations of provisions regarding mask-wearing by staff—D(23)—and distribution of masks to people who are incarcerated—D(22). There simply is no excuse for staff failure to wear masks.

Finally, it is notable that our monitoring efforts point to a troubling trend: more violations of more of the Agreement’s provisions. In other words, compliance is getting worse, not better, and just as COVID-19 positivity rates spike, again, in Connecticut. We are particularly troubled to hear reports reflecting conditions similar to those in the spring, including people “quarantined” by being locked in their cells; little to no cleaning; and placement of those who test positive or report symptoms with those who are asymptomatic and have not tested positive.

We expect that these deficiencies will be remedied, and promptly. Needless to say, it is in the Department of Correction’s interest to fulfill its obligations under the Agreement fully and completely, and to do everything possible to stem transmission of this virus.

Sincerely,

A handwritten signature in black ink, appearing to read "Elana Bildner", written over a horizontal line.

Darr Barrett

Elana Bildner

ACLU Foundation of Connecticut

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