

## LIST OF APPENDICES

Appendix A	Circuit Court's June 19 Order, denying Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Appendix B	Circuit Court's June 16 Order, granting Defendants' Motion to Strike
Appendix C	Stipulated Temporary Amendment to the Consent Order
Appendix D	Joint Proposed Inspection Order
Appendix E	WCJ Inspection Report - Redacted
Appendix F	Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction
Appendix G	Defendants' Response to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction
Appendix H	Plaintiffs' Reply in Support of Motion for Temporary Restraining Order and Preliminary Injunction
Appendix I	Defendants' Motion to Strike the Report of Fred Rottnek, M.D., MAHCM
Appendix J	Plaintiffs' Opposition to Defendants' Motion to Strike the Report of Fred Rottnek, M.D., MAHCM
Appendix K	Affidavit of Bridgette Jones, RN (filed in support of Defendants' Response to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction)
Appendix L	Affidavit of Louis Shicker, M.D. (filed in support of Defendants' Response to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction)
Appendix M	Register of Actions for Case No. 71-173217-CZ

## **APPENDIX A**

6/19/20 Circuit Court Order denying Plaintiffs'  
Emergency Motion for Temporary Restraining  
Order and Preliminary Injunction

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**WAYNE COUNTY JAIL INMATES, et al,**

**Plaintiffs,**

**-v-**

**WILLIAM LUCAS, et al,**

**Defendants.**

**Case No. 71-173217-CZ**

**Hon. Timothy M. Kenny**  
**Chief Judge**

---

**OPINION AND ORDER**

At a session of said Court held in the Coleman A.  
Young Municipal Center, Detroit, Wayne County,  
Michigan  
on this: 6/19/2020

**PRESENT:** Timothy M. Kenny  
Chief Judge  
The Third Judicial Circuit Court of Michigan

This civil matter is before the Court on an “Emergency Motion for Temporary Restraining Order and Preliminary Injunction” filed on May 28, 2020 by Plaintiffs, Wayne County Jail Inmates, *et al.* For the reasons stated below, the Court denies the motion.

**I. BACKGROUND**

The instant motion arises from Plaintiffs’ allegation that there are health threatening conditions in the Wayne County Jail (“the Jail”) as a result of the spread of the novel corona virus, COVID-19. Currently, there are approximately 800 detainees in the Jail. According to Plaintiffs, as of May 11, 2020, 25% or 171 of the 689 inmates then housed at the Jail were either

infected with the virus or had tested positive for antibodies, which means that they had previously been infected with the virus. Plaintiffs combine the number of those positive for COVID-19 with those who tested negative for the virus, but positive for the antibodies. The number of inmates testing positive for antibodies was significantly higher than the number of inmates testing positive for the COVID-19 virus. However, there is no way to precisely determine how many inmates with COVID-19 antibodies had been exposed prior to confinement in the Jail. In reality, the number of those who tested positive for the antibodies was significantly greater than the number who tested positive for active COVID-19. Moreover, those who are positive for the antibodies are not required to be quarantined. Plaintiffs also state that 206 Sheriff's Office employees had tested positive for the virus and four employees had died.

Plaintiffs argue that the Defendant, the County of Wayne ("the County") continues to confine detainees in a manner which fails to mitigate the spread of COVID-19. This includes: (1) detainment in cells with open steel grids or bars that allows the spread of aerosolized droplets containing COVID-19; (2) double-bunking; (3) limited access to hygiene products and cleaning supplies; (4) lack of quarantining of sick detainees; (5) insufficient personal protection equipment such as facemask; (6) lack of access to medical care; and (6) failure to confine detainees in areas allowing social distancing.

In response, the Defendants argue that County officials engaged in extensive efforts to reduce the jail population and implemented many measures to mitigate the spread of COVID-19. Between March 13, 2020 and April 29, 2020, County officials met with Plaintiffs' counsel on four occasions to discuss the measures that were being taken and implemented by Defendants to address the pandemic.

On May 4, 2020, Plaintiffs filed a class action in federal court,<sup>1</sup> which was dismissed, and Plaintiffs then filed the instant matter in this Court on May 28, 2020. Defendants assert that Plaintiffs have failed to recognize that, prior to filing this motion, “Defendants and court appointed Inmate Counsel were taking action under the supervision of this Court to address the novel health crisis...”

On March 2, 2020, the Jail housed 1,411 detainees. Significantly, as of June 17, 2020, the Jail population was reduced to 779 inmates, a reduction of 632 inmates in the population, which represents a 44.79% reduction in the Jail population.

On May 15, 2020, the Court entered a “Stipulated Temporary Amendment to the Consent Order, which ordered that all inmates in the Jail subjected to testing for COVID-19 shall submit to testing, and that “[a]ny specimen collected for said testing will only be utilized for purposes of addressing” the health crisis and that the testing would not be used to collect DNA. The duration of this order was for 30 days.

On May 18, 2020, the Court entered another “Stipulated Temporary Amendment to the Consent Order.” This amendment, the purpose of which is to address the current health crisis, amended the parties’ previous consent order dated July 20, 2018. The stipulated temporary amendment included the following relevant provisions:

- Inspection of Jail facilities by a court-appointed inspector limited to the COVID-19 pandemic response;<sup>2</sup>
- Ensure that each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying

---

<sup>1</sup> *Russell, et al v Wayne County, et al*, Case No. 2:20-cv-11094-MAG-EAS.

<sup>2</sup> A “Joint Proposed Inspection Order” was entered by the Court on May 15, 2020 and an inspection was conducted. The report of which was originally sealed, but later unsealed and redacted to protect exposure of private material. The inspector was deemed unqualified by the Court and the Court ordered that the inspection report be stricken from the Court record.

each day, and (b) an adequate supply of disinfectant products effective against the COVID-19 virus;

- Provide access to showers on a daily basis;
- Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves;
- Ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
- Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff;
- Make COVID-19 testing available to all incarcerated persons either displaying symptoms of COVID-19 or to those who have been in known proximity of other persons. within the last 14 days, who have tested positive for COVID-19;
- Provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible;
- Ensure that individuals identified as having COVID- 19, as having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a designated quarantine area, and that they remain in quarantine and are encouraged to wear face masks when interacting with others until they are no longer at risk of infecting others;
- Provide sufficient disinfecting supplies without cost, so incarcerated people can clean high-touch areas;
- Communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices;

- Train staff regarding measures to identify symptoms of COVID-19 in inmates, measures to reduce transmission, and the Jail's policies and procedures;
- Refrain from charging medical co-pays to those experiencing COVID-19- related symptoms, including testing;
- Ensure that retaliatory discipline is not taken in response to incarcerated persons' requests for medical attention and basic, necessary protections, and/or efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

Again, by another Court order entered on June 17, 2020, the stipulated temporary amendment order was extended until September 30, 2020.

On June 2, 2020, the Court entered an "Amended Consolidated Consent Order Regarding COVID-19 Inmate Testing at Time of Booking." This order, the provisions of which commenced on June 8, 2020 until otherwise ordered by the Court, mandates that all new inmates be tested for COVID- 19 by PCR (nasal swab) and Serology (antibody) at the time of the inmates' booking. Under the order, inmates who test negative for both PCR and Serology will be re-tested in 14 days from the time of booking. If an inmate tests negative for PCR, but positive for Serology, the inmate may be housed in general population without need of quarantine. The order further requires the Sheriff provide to Plaintiffs the testing data as follows:

- The number of inmates who tested negative for COVID-19;
- The number of inmates who tested positive for COVID-19; and
- The number of inmates who tested negative for PCR, but positive for Serology.

The data from testing under the order is to be provided on a monthly basis beginning on June 30, 2020. On June 15, 2020, the Court received preliminary data from the testing results. The testing was performed between June 8, 2020 and June 12, 2020. The results are as follows:

**115 Inmates booked in between June 5, 2020 and June 11, 2020**

- 12 inmates tested negative for active COVID-19 and positive for antibodies.
- 1 inmate tested positive for active COVID-19 and negative for antibodies.
- 1 inmate tested positive for both active COVID-19 and for antibodies.
- 18 tested negative for active COVID-19 with no results for antibodies.
- 1 inmate has not received results yet.
- The remainder tested negative for both active COVID-19 and for antibodies.

**Testing Backlog of 47 Inmates booked between June 1, 2020 and June 4, 2020**

- Two inmates both negative for active COVID-19 and both tested positive for antibodies.
- 16 inmates tested negative for active COVID-19 and have no results for antibodies yet.
- The remainder tested negative for active COVID-19 and negative for antibodies.

The parties have submitted various affidavits and declarations from physicians and from inmates. The physicians have opined on what is necessary to contain COVID-19 in a jail environment. The declarations of eleven inmates generally indicate that they do not have adequate disinfectant cleaning supplies and of soap and hand towels for personal hygiene. Some



inmates also indicate that, when they first entered the Jail, no one made them aware of the risks of the spread of the virus.

On May 12, 2020, the Michigan Department of Corrections (“MDOC”) conducted an inspection of the Jail as provided for by Act. No. 232 of the Public Acts of 1953, as amended, being section 791.262 of the Michigan Compiled Laws and the Governor’s Executive Order 2020-62. The Jail was found to be in compliance with the MDOC COVID-19 Protocols.

Beginning on March 13, 2020, Defendants issued various policies and directives for implementation in response to COVID-19 and in an effort to contain the spread of the virus in the Jail. Directives 20-03, 20-04, 20-05, 20-06, 20-07, 20-08, and 20-09. For the Jail staff, directives include social distancing, wearing protective gear when transporting inmates, disinfecting touch areas, and staying home from work when sick. For those entering the Jail, the directives include questioning about whether they have traveled, whether they had been asked to quarantine, or whether they had been diagnosed with COVID-19. Persons coughing, sneezing, experiencing shortness of breath, or exhibiting other signs of illness were to be denied entrance to the Jail. Other directives include more questioning about whether persons had close contact with anyone who had been diagnosed with COVID-19, quarantine of new inmates for 72 hours in a segregation unit while awaiting COVID-19 test results, quarantine of inmates returning from a hospital with virus-related symptoms, and protocols for staff donning personal protective equipment. Directives also include the screening of all inmates, staff, and all persons entering the Jail facilities. Visiting by the public with inmates has been discontinued, except for visits by attorneys representing inmates. Inmates were also directed to wear surgical masks when outside of their cells.

Wellpath, the Jail's contracted medical provider also provided guidance by issuing its policies and procedures for symptomatic inmates and for isolation of those displaying symptoms and those awaiting test results. However, Plaintiffs contend that Defendants' policies and directives are inadequate unless they are actually implemented. As indicated above, the Court issued several orders, which thus far have been followed to the greatest extent possible, including the testing for COVID-19 of all inmates. In addition, as indicated above, the Jail population reduction demonstrates that a substantial number of inmates have been administratively released. Now before the Court is Plaintiffs' motion for injunctive relief.

## **II. STANDARDS FOR DETERMINING MOTIONS FOR INJUNCTIVE RELIEF**

Injunctive relief is governed by MCR 3.310, the provisions of which must be carefully followed. It should be noted that there is a difference between temporary restraining orders (TROs) and preliminary injunctions. TROs may be issued without written or oral notice to the other party, only if circumstances justify it and those circumstances are set forth in a verified complaint or supporting affidavit. "TROs have a limited lifespan, not to exceed 14 days, and are designed to prevent loss or damage only till such time as the matter may be initially heard by the court." §2:23. Jurisdictional allegation—Equitable relief sought, 1 Mich Ct Rules Prac, Forms § 2:23. In the instant case, Defendants have had notice of the instant motion and the principal requests by Plaintiffs are for both a TRO and a preliminary injunction.

The purpose of a preliminary injunction is to preserve the status quo so that, upon final hearing, the rights of the parties may be determined without injury to either party. *Michigan Council 25, AFSCME v County of Wayne*, 136 Mich App 21; 355 NW2d 695 (1984).

Granting injunctive relief is within the sound discretion of the trial court. *Kernen v Homestead Dev Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998). To obtain a preliminary

injunction, the moving party bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction. *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648; 825 NW2d 616 (2012). This four-factor test requires the trial court to consider: (1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted. *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). “The mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008).

### **III. DISCUSSION**

The grounds of Plaintiffs’ motion are alleged violations of the Eighth Amendment’s prohibition against cruel and unusual punishment, violations of the due process clause of the Fourteenth Amendment, and violations of Article I, Sections 16 and 17 of the Michigan Constitution.

In support of its motion, Plaintiffs allege that they are at imminent risk of serious illness or death. They contend that they are likely to succeed on the merits of their claims as they relate to violations of the Eighth Amendment, Fourteenth Amendment, and the Michigan Constitution’s Article I, Sections 16 and 17. *Thermatool Corp, supra*. They argue that the detainees in the Jail can prove a due process violation under the Fourteenth Amendment by demonstrating that they are subject to a substantial risk of serious harm. Finally, they assert that the conditions under which the detainees are confined are unreasonable and that Defendants have been deliberately indifferent to these conditions.

In response, Defendants argue that Plaintiffs are unlikely to succeed on the merits of their constitutional claims. They assert that the main component of a constitutional violation in the context of a request for injunctive relief, “deliberate indifference,” has not been pled in such a manner that it connects policies and practices to particular injuries. In other words, they aver that Plaintiffs cannot demonstrate that Defendants’ policies and practices have caused injury and that Defendants disregarded a known or obvious risk.

Preliminarily, it should be noted that, in the context of a class action by inmates for conditions related to the spread of an illness in a correctional facility, there is little Michigan case law on the subject. The Court will look to U.S. Supreme Court case law and then may look to other federal case law for further guidance.<sup>3</sup> Although the Court must consider the four elements for issuance of injunctive relief, the primary issue before this Court is the likelihood that Plaintiffs will prevail on the merits of their constitutional claims.

The Eighth Amendment of the United States Constitution prohibits the infliction of “cruel and unusual punishments.” USC Const Amend 8. “The [Eighth] Amendment ... imposes duties on ... officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care...” *Farmer v Brennan*, 511 US 825, 832; 114 S Ct 1970; 128 L Ed2d 811 (1994). “[U]nder the Fourteenth Amendment, pretrial detainees are ‘entitled to the same Eighth Amendment rights as other inmates.’ *Thompson v Cty of Medina, Ohio*, 29 F 3d 238, 242 (6th Cir 1994). The analysis set forth in *Farmer*, although rooted in the Eighth Amendment, therefore applies with equal force to

---

<sup>3</sup> See *Hoffman v Bay City Sch Dist*, 137 Mich App 333, 337; 357 NW2d 686 (1984)(“Because there are no Michigan cases dealing with this issue, we look to the federal courts for guidance ...”); *Estate of Nash by Nash v City of Grand Haven*, 321 Mich App 587, 598; 909 NW2d 862 (2017)(“It is also well established that this Court is free to adopt the analysis of a lower federal court ‘if it is persuasive and instructive.’”[Citation omitted]).

a pretrial detainee's Fourteenth Amendment claims.” *Richko v Wayne Co, Mich*, 819 F3d 907, 915 (CA 6, 2016).

In *Estelle v Gamble*, 429 US 97, 105; 97 S Ct 285; 50 L Ed 2d 251 (1976), the court deemed that “deliberate indifference” to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by Eighth Amendment whether the indifference is manifested by prison doctors in response to prison needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed; regardless of how evidenced deliberate indifference to prisoner's serious illness or injuries states cause of action under civil rights statute. USC Const Amend 8; 42 USC 1983.

There are two components to a “deliberate indifference” claim, an objective component and a subjective component. Detainees may satisfy the objective component by showing that ‘absent reasonable precautions, [they are] exposed to a substantial risk of serious harm. To satisfy the subjective component,” Plaintiffs “must show that the officials being sued subjectively perceived facts from which to infer a subjective risk to the prisoner, that the officials did in fact draw the inference, and the official[s] then disregarded that risk.” *Albino-Martinez v Adducci*, \_\_\_ F Supp 3d \_\_\_ at 3 (2020); 2020 WL 1872362 [Internal quotation marks and citations omitted].<sup>4</sup>

---

4

In *Albino-Martinez v Adducci*, \_\_\_ F Supp 3d \_\_\_ at 3 (2020); 2020 WL 1872362, the court analyzed the claims, which were related to health concerns, under the Eighth Amendment, rather than the Fifth Amendment. In *Albino-Martinez*, immigrant detainees who were being detained by the federal government for violating immigration laws filed a petition for a writ of habeas corpus arguing that they were being held in violation of their Fifth Amendment due process rights. Detainees filed an emergency motion for a TRO, arguing that the court should order their immediate release because they were particularly vulnerable to the COVID-19 pandemic because they had certain pre-existing health conditions.

In *Farmer, supra*, the Supreme Court explained what is necessary to show “deliberate indifference:

We hold instead that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. This approach comports best with the text of the Amendment as our cases have interpreted it.

*Id* at 837 [Emphasis added].

Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.

*Id* at 842 [Emphasis added].

An inmate seeking an injunction on the ground that there is “a contemporary violation of a nature likely to continue,” *United States v Oregon State Medical Soc*, 343 US 326, 333; 72 S Ct 690, 695, 96 L Ed 978 (1952), must adequately plead such a violation: to survive summary judgment, he must come forward with evidence from which it can be inferred that the defendant-officials were at the time suit was filed, and are at the time of summary judgment, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so; and finally to establish eligibility for an injunction, the inmate must demonstrate the continuance of that disregard during the remainder of the litigation and into the future.

*Id* at 845-846.

Thus, to establish “deliberate indifference,” a plaintiff must demonstrate that an official knows of and disregards an excessive risk and the official fails to act in spite of the knowledge of the risk.

The *Farmer* test was explained more simply in *Wilson v Williams*, \_\_\_ F3d \_\_\_; No. 20-3447; 2020 WL 3056217 (CA 6, June 9, 2020), which is the most closely related case to the

instant case. In *Wilson*, federal prisoners filed an emergency habeas corpus petition as a putative class action, asserting an Eighth Amendment deliberate indifference claim based on the prison officials' alleged failure during COVID-19 pandemic to create safe conditions for prisoners. The United States District Court for the Northern District of Ohio certified a subclass of prisoners particularly vulnerable to medical complications and granted a preliminary injunction to the subclass, entered an enforcement order, and denied the officials' motion for stay of the preliminary injunction pending appeal. The *Wilson* court explained the “deliberate indifference” standard:

To satisfy the objective prong, an inmate must show “that he is incarcerated under conditions posing a substantial risk of serious harm.” *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970. Under the subjective prong, an official must “know[ ] of and disregard[ ] an excessive risk to inmate health or safety.” *Id.* at 837, 114 S.Ct. 1970. “[I]t is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at 842, 114 S.Ct. 1970. “It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.”

*Id.* at 7.

The *Wilson* court also explained that, if prison officials respond reasonably to the risk, they may not be liable even if the risk is not averted. *Id.* at 7, quoting *Farmer*, *supra* at 844. See also *Helling v McKinney*, 509 US 25, 36; 113 S Ct 2475, 2482; 125 L Ed 2d 22 (1993)(In consideration of smoking policy in a prison, the Supreme Court stated that “the subjective factor, deliberate indifference, should be determined in light of the prison authorities' current attitudes and conduct, which may have changed considerably since the judgment of the Court of Appeals. Indeed, the adoption of the smoking policy mentioned above will bear heavily on the inquiry into deliberate indifference.”).

As the *Wilson* court opined, everyone, the public as well as Jail officials, knows of the risks of exposure to COVID-19, especially medically vulnerable persons. This widespread knowledge easily satisfies the objective prong of “deliberate indifference.” *Id.*

Regarding the subjective element, Defendants herein responded reasonably to the risk of exposure to COVID-19. Although Plaintiffs assert that Defendants have not taken the necessary steps to contain the virus and to prevent a “widespread outbreak” in the Jail, in the Court’s view, Defendants have responded reasonably to address the risks posed in the Jail. Defendants have issued policies and directives and this Court’s has also issued various orders for implementing measures to reduce the Jail population. The Jail population has been reduced by almost 45%. Defendants have made significant efforts to release non-violent offenders and, particularly medically vulnerable ones. Wellpath has identified all inmates having medical vulnerabilities as defined by the CDC and those inmates have been examined for administrative release. Defendants have also ordered mandatory testing, provided necessary supplies and equipment, and mandated staff adherence to the directives. Scientific knowledge of this virus is evolving on a daily basis and all reasonable steps have been taken to avert the risk as much as possible and to adjust to the new scientific knowledge as it has been publicized. Therefore, in the Court’s view, because Defendants’ response to the COVID-19 risks in the Jail has been reasonable, Plaintiffs are unlikely to succeed on the merits of their constitutional claims.

#### **IV. CONCLUSION**

Plaintiffs have not demonstrated that they are likely to succeed on the merits of their constitutional claims because they have not satisfied both components of “deliberate indifference” in order to prevail on Eighth Amendment violations. *Farmer, supra; Wilson, supra; Richko, supra*. Although, Defendants as well as the general public are aware of the risks



of COVID-19, Defendants' response to the risks posed by COVID-19, coupled with proactive measures ordered by this Court, has been reasonable. Defendants have made extensive efforts to administratively release detainees, thereby significantly reducing the Jail population, to implement testing, screening, providing guidance for Jail staff, and quarantining of those infected or exposed to others who have been infected. Therefore, Plaintiffs are unlikely to succeed on the merits of their claims. Accordingly, the Court denies Plaintiffs' motion.

On the basis of the foregoing opinion;

**IT IS ORDERED** that Plaintiffs' "Emergency Motion for Temporary Restraining Order and Preliminary Injunction" is hereby **DENIED**.

**SO ORDERED.**

/s/ Timothy M. Kenny  
Hon. Timothy M. Kenny, Chief Judge

## **APPENDIX B**

6/16/20 Circuit Court Order granting  
Defendants' Motion to Strike the Inspection  
Report of Dr. Fred Rottnek

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**WAYNE COUNTY JAIL INMATES, et al,**

**Plaintiffs,**

**-v-**

**WILLIAM LUCAS, et al,**

**Defendants.**

**Case No. 71-173217-CZ**

**Hon. Timothy M. Kenny**  
**Chief Judge**

---

**OPINION AND ORDER**

At a session of said Court held in the Coleman A.  
Young Municipal Center, Detroit, Wayne County,  
Michigan  
on this: **JUN 16 2020**

**PRESENT:** Hon. Timothy M. Kenny  
Chief Judge  
The Third Judicial Circuit Court of Michigan

This civil matter is before the Court on “Defendants’ Motion to Strike the Report of Fred Rottnek, M.D., or, in the Alternative, to Redact.” For the reasons stated below, the Court grants the motion to strike the report.

**I. BACKGROUND**

On May 28, 2020 Plaintiffs filed a motion for a temporary restraining order against Defendants in connection with the outbreak of the novel coronavirus, COVID-19. The parties agreed to have an inspection of the Wayne County Jail (“the Jail”) conducted by Dr. Fred Rottnek, MD, MAHCM.

Dr. Rottnek's extensive Curriculum Vitae ("CV") indicates that he is board certified in family medicine and in addiction medicine. He is a fellow of the American Academy of Addiction Medicine and of the American Academy of Family Physicians. He currently serves as a professor of family and community medicine at the Saint Louis University School of Medicine. Dr. Rottnek also currently serves on the staff of Saint Louis University Hospital. Prior to his professorship at Saint Louis University, from 2000 to 2009, for his primary employment, Dr. Rottnek served as Director of Community Medicine at the Institute for Family Medicine in St. Louis. At the same time, he served on a contract basis as the Medical Director and Lead Physician at the Saint Louis County Jail for an additional six years. At the Saint Louis County Jail, he was responsible for the general health of detainees and jail staff. In addition to his board certifications, Dr. Rottnek is a certified Correctional Health Care Physician through the National Commission on Correctional Health Care. He is also a member of the Society of Correctional Physicians and has recently been a member of the Academy of Correctional Health Professionals. His CV also indicates that he has given numerous presentations and published numerous articles on correctional health and addiction. According to Plaintiffs, Dr. Rottnek has collaborated with Saint Louis courts on "how to safely reopen" in response to the ongoing COVID-19 pandemic and he has given presentations on "how to mitigate risk in direct patient care."

Defendants dispute that Dr. Rottnek is qualified as an expert because he lacks specialized knowledge of Covid-19. They also contend that his background indicates no specialization in infectious disease and he lacks certifications in immunology or infectious disease.

With respect to the issue before the Court, the Wayne County Jail currently houses approximately 800 detainees. Certain conditions for the conduct of Dr. Rottnek's inspection were

stipulated to and ordered by this Court in a “Joint Proposed Inspection Order.” The order for inspection included the following relevant conditions:

\*\*\*

3. The inspector shall be allowed to speak with and interview any person incarcerated at the Jail. When speaking with inmates, the inspector may provide his name, title, the reason for his visit, and that he does not work for the Jail. Specifically, he may state that he is conducting an inspection of Jail conditions insofar as they directly relate to the health and safety of detainees in the context of COVID-19. The inspector also may inform inmates that they will not be retaliated against for speaking with him and answering his questions.

4. The inspector shall provide a report to the parties and the Court by May 20, 2020 by 5:00 pm. The report shall be sealed until otherwise ordered by the Court. The Court will consider argument on whether to make the report public at a later date.

5. The inspector shall be produced for deposition within 48 hours of producing said report unless another time is agreed to by the parties.

6. The inspection shall be completed within a twelve-hour time frame and shall include the following areas inside Wayne County Jail facilities Division I, II and III:

- All housing units where inmates are housed;
- Housing units where quarantined inmates are being held;
- Common areas where inmates congregate to watch TV, eat, and utilize telephones and tablets;
- The ingress/egress staff screenings;
- Medical facilities;
- Kitchen;
- Laundry facilities;

- Shower/bathroom facilities; and Areas where cleaning supplies and personal protective equipment are maintained.

7. The inspector's reports shall include any information he was able to ascertain regarding the following:

- Conditions of the housing units during the COVID-19 pandemic;
- Conditions of and access to shower/bathroom facilities during the COVID-19 pandemic;
- Conditions of and access to medical, laundry, dining facilities and shared common areas during the COVID-19 pandemic;
- Availability and stock of cleaning supplies and personal protective equipment for inmates and Jail staff;
- Availability and stock of hygienic and disinfecting supplies for inmates and Jail staff;
- Availability of communications to inmates about COVID-19 including low-literacy and non-English-speaking people; and
- Social distancing measures.

8. During the course of the inspection, the inspector shall be permitted, without intrusion of jail staff, to ask inmates questions about the following topics outlined in the agreed upon stipulation order:

- Availability and access to medical staff;
- Availability and access to medical kites;
- Availability and access to free medical care for COVID-19 testing, COVID-19 tests, grievances, showers, mental health services, reading materials, phone and video calls, and counsel whether in quarantine or not;
- Availability and access to facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one piece coveralls;

- Self-reporting procedures for COVID-19 symptoms;
- Whether detained people have received sufficient cleaning and hygiene supplies and the time it takes to receive them; and
- Incidents of punitive transfers, threats of punitive transfers, and concerns about retaliation for raising concerns formally or informally with Jail staff about the health and safety conditions at the Jail.

\*\*\*

10. An attorney from each side is permitted to attend the inspection.

\*\*\*

11. The inspector may designate to Defendants areas, items, or people detained in the jail which he would like to be photographed. Defendants will take the photograph(s) in the presence of the inspector. Photographs will be shared with each party through their attorneys within twelve hours of the inspection.

12. Any photographs of the Jail shall be kept confidential by all attorneys on this case and shall not be used for any purpose other than this litigation. ...

13. The format of the report shall be as follows:

- Executive summary
- Materials reviewed before finalizing inspection report
- Individuals interviewed during inspection
- Observations for Divisions I, II, and III regarding matters outlined in paragraphs 7 and 8 above
- Recommendations.

Dr. Rottnek's report was submitted on May 16, 2020. [County's Exhibit C (completely redacted)]. Plaintiffs have moved that the Court unseal the report, while at the same time, Defendants have moved to strike Dr. Rottnek's report from the record or to redact certain

portions of it. After oral argument on both motions, the Court has issued an order unsealing the report. Now before the Court is Defendants' motion to strike Dr. Rottnek's report or to redact portions of it.

## **II. DISCUSSION**

Defendants' motion requests that the Court either strike Dr. Rottnek's report in its entirety or, in the alternative, strike the portions of the report that "go beyond the scope" of the "Joint Proposed Inspection Order." In support of their motion, Defendants argue (1) that Dr. Rottnek fails to demonstrate an expertise in the subject he purports to render an opinion on the spread of COVID-19; (2) that Dr. Rottnek's opinions are not reliable because they are "based on a paucity of material" and because "he fails to properly investigate the subjects of his recommendations;" (3) that Dr. Rottnek's opinions are also not relevant; and (4) that his opinions will not assist the Court or the trier of fact. Conversely, Plaintiffs' position is that the report was prepared by a qualified expert, is sufficiently reliable, and contains factual information and recommendations relevant to the issues in this case. Plaintiffs also argue that Defendants' argument "ignores Dr. Rottnek's two decades of experience in correctional healthcare and asks this Court to do the same" and that "Dr. Rottnek has substantial experience in correctional healthcare which qualifies to him provide expert testimony on healthcare at the Jail."

Preliminarily, it should be noted that, if the Court deems that the report has been done by a qualified expert, that it is sufficiently reliable, and that it will assist the Court, the trier of fact, the report will be admissible record evidence for the motion for a temporary restraining order. Also of note is the fact that the parties have agreed that the Court will decide the motion for a temporary restraining order based on the parties' briefs. The essential issue now before the Court is whether or not Dr. Rottnek is sufficiently qualified as an expert to opine, either by testimony



or in a report, on whether or not Defendants have adequately responded to the COVID-19 pandemic in the Jail setting.

The admissibility of expert testimony is governed by MRE 702 which provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The inquiry under MRE 702 is a flexible one where the court, in its gatekeeping role, must determine “that each aspect of an expert witness's testimony, including the underlying data and methodology, is reliable.” *Elher v Misra*, 499 Mich 11, 22; 878 NW2d 790 (2016)[Footnote omitted]. “MRE 702 incorporates the standards of reliability that the United States Supreme Court articulated in *Daubert v Merrell Dow Pharm, Inc...*” *Id.*<sup>1</sup> “A lack of supporting literature, while not dispositive, is an important factor in determining the admissibility of expert witness testimony.” *Id.* at 23.

A trial court’s role as a gatekeeper “does not require it to search for the absolute truth, to admit only uncontested evidence, or to resolve genuine scientific disputes.” *Chapin v A & L Parts, Inc.*, 274 Mich App 122, 127; 732 NW2d 578 (2007). Rather, the proper inquiry is whether the expert opinion is “rationally derived from a sound foundation.” *Id.* at 139. The burden is on the party offering the expert’s opinion to satisfy the preconditions established by MRE 702. *Gilbert v Daimler Chrysler Corp.*, 470 Mich 749, 789; 685 NW2d 391 (2004).

---

<sup>1</sup> *Daubert v Merrell Dow Pharm, Inc.*, 509 US 579; 113 S Ct 2786; 125 L Ed2d 469 (1993).

As part of its “gatekeeper” role, a trial court must also consider the factors listed in MCL 600.2955(1), to determine whether the expert's opinion is reliable and will assist the trier of fact:

*Elher, supra*. The statute provides:

In an action for the death of a person or injury to a person or property, a scientific opinion rendered by an otherwise qualified expert is not admissible unless the court determines that the opinion is reliable and will assist the trier of fact. In making that determination, the court shall examine the opinion and the basis for the opinion, which basis includes the facts, technique, methodology and reasoning relied on by the expert, and shall consider all of the following factors:

- (a) Whether the opinion and its basis have been subjected to scientific testing and replication.
- (b) Whether the opinion and its basis have been subjected to peer review publication.
- (c) The existence and maintenance of generally accepted standards governing the application and interpretation of a methodology or technique and whether the opinion and its basis are consistent with those standards.
- (d) The known or potential error rate of the opinion and its basis.
- (e) The degree to which the opinion and its basis are generally accepted within the relevant expert community. As used in this subdivision, “relevant expert community” means individuals who are knowledgeable in the field of study and are gainfully employed applying that knowledge on the free market.
- (f) Whether the basis for the opinion is reliable and whether experts in that field would rely on the same basis to reach the type of opinion being proffered.
- (g) Whether the opinion or methodology is relied upon by experts outside of the context of litigation.

While MCL 600.2955(1) requires the trial court to consider the listed factors, it does not require that each and every factor must favor the proposed expert testimony. *Chapin, supra* at 137. Indeed, it may be that not every factor will necessarily apply in every case in which the

reliability of scientific evidence testimony is challenged. All the factors in MCL 600.2955 may not be relevant in every case. *Ehler, supra* at 27. In some cases, the scientific testing and replication factor may not fit the type of opinion at issue. *Id.* “Ultimately, the gatekeeping inquiry asks whether the expert has reached his or her conclusions in a sound manner, and not whether the expert’s conclusions are correct.” *Chapin, supra*.

The decision whether to conduct a *Daubert* hearing is within the trial court’s discretion. *Lenawee Co v Wagley*, 301 Mich App 134, 162; 836 NW2d 193 (2013). “Careful vetting of all aspects of expert testimony is especially important when an expert provides testimony about causation.” *Gilbert, supra* at 78.

Regarding Dr. Rottnek’s qualifications as an expert under MCR 702, Dr. Rottnek has no specialized knowledge in virology, infectious disease, or immunology. The focus of his credentials is on family and addiction medicine. He has not studied, researched, or published articles on the novel corona virus or any other infectious disease or virus. Under MCR 702, he cannot be said to be qualified as an expert “by knowledge, skill, experience, training, or education” in Covid-19 or any other infectious diseases or viruses.

Under MCL 600.2955(1), while scientific testing and replication may not fit the type of opinion at issue, *Ehler, supra*, given the current conditions, Dr. Rottnek has provided no publications upon which his opinions rely. As indicated above, “supporting literature, while not dispositive, is an important factor in determining the admissibility of expert witness testimony.” *Id.*; MCL 600.2955(1)(b). As Defendants point out, Dr. Rottnek’s recommendations basically mirror the guidance and recommendations of the Center for Disease Control (“the CDC”).

Dr. Rottnek’s opinion cannot be said to be reliable because he has not provided any specific scientific basis from which his opinion derives. Although he has experience in the

correctional facility setting, his opinions on the spread of Covid-19 provide no scientific, medical, or specialized knowledge of the virus and its effect on concentrated populations such as a jail. Moreover, because Dr. Rottnek's credentials demonstrate that his expertise is in family medicine and addiction medicine, his opinion has no connection to infectious disease, virology, and immunology and the manifestations of Covid-19. Dr. Rottnek's lack of specialized knowledge and the failure to provide published literature on Covid-19 or other viruses demonstrate a lack of reliability of his opinions. Hence, the opinion cannot be said to be sufficiently reliable or relevant. Neither knowledge of family medicine nor knowledge of addiction medicine are relevant or reliable for a determination of whether the Court should or should not issue a temporary restraining order.

As the court in *Daubert*, *supra* explained:

"Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." 3 Weinstein & Berger ¶ 702[02], p. 702–18. See also *United States v Downing*, 753 F2d 1224, 1242 (CA3 1985) ("An additional consideration under Rule 702 -- and another aspect of relevance -- is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute"). The consideration has been aptly described by Judge Becker as one of "fit." *Ibid*. "Fit" is not always obvious, and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes.

*Id* at 591.

Because of his lack of specialized knowledge, Dr. Rottnek's opinion cannot be said to be "sufficiently tied to the facts" of the instant case. *Id*. In short, Dr. Rottnek's qualifications do not demonstrate that he has sufficient specialized knowledge based on science in the relevant scientific community, i.e., the community of experts in infectious disease, virology, or immunology. His expertise has no connection to facts of this case. In addition, MCR 702 "further

requires that the evidence or testimony ‘assist the trier of fact to understand the evidence or to determine a fact in issue.’ This condition goes primarily to relevance.” *Id.* Thus, in the Court’s view, Dr. Rottnek’s opinions cannot assist the Court in its determination as to whether or not to issue a temporary restraining order.

### **III. CONCLUSION**

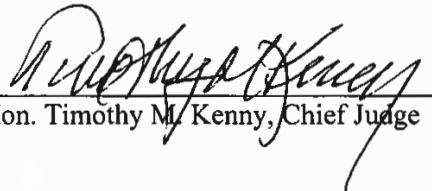
Dr. Rottnek is not sufficiently qualified as an expert to opine on the effects of COVID-19 and as to whether or not the County has appropriately addressed the spread of the virus in the Jail. His opinion is not reliable, relevant, and will not assist this Court in its determination of the issue of whether or not to issue a temporary restraining order. Because Dr. Rottnek is not qualified as an expert, the Court need not address Defendants’ alternative request to redact portions of Dr. Rottnek’s report that go beyond the scope of the “Joint Proposed Inspection Order.” Accordingly, the Court grants Defendants’ motion to strike the report of Fred Rottnek, MD, MAHCM.

On the basis of the foregoing opinion;

**IT IS ORDERED** that Defendants’ motion to strike the report of Fred Rottnek, MD, MAHCM, is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that the report of Fred Rottnek, MD, MAHCM, shall be **STRICKEN** from the Court’s record in this case.

**SO ORDERED.**

  
Hon. Timothy M. Kenny, Chief Judge

## **APPENDIX C**

5/18/20 Circuit Court Stipulated Order  
Temporarily Modifying the Consent Order

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

WAYNE COUNTY JAIL INMATES et al.,

Case No. 71 173 217 CZ

Plaintiffs

Hon. Timothy M. Kenny

v

WILLIAM LUCAS et al.,

Defendants.

---

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

---

**STIPULATED TEMPORARY AMENDMENT TO THE CONSENT ORDER**

At a session of said Court, held in the City of Detroit,  
County of Wayne, State of Michigan

on 5/18/2020

PRESENT: Timothy M. Kenny  
Circuit Court Judge

#### A. Preamble

The parties hereby agree to the following:

1. The parties agree that this Stipulated Temporary Amendment constitutes a Temporary Amendment to the Consolidated Consent Order dated July 20, 2018, to address certain issues faced by the Wayne County Jail in light of the continuing COVID-19 pandemic. The parties will not object on the basis of jurisdiction or venue to any motions filed or relief sought in this matter that would allow the parties to fully litigate and appeal the claims raised and relief requested in Plaintiffs' complaint in the case titled *Russell, et al., v. Wayne County, et al.*, Case No. 2:20-cv-11094 (E.D. Mich. May 4, 2020).
2. This Court retains jurisdiction to enforce this Stipulated Temporary Amendment to the Consent Order for the duration of this litigation and to issue any remedial orders necessary to address a breach of this Stipulated Temporary Amendment. Plaintiffs' counsel agrees to contact defense counsel to give notice of a breach or suspected breach of the Stipulated Temporary Amendment. If the matter cannot be satisfactorily resolved with defense counsel within 48 hours of notice to defense counsel, Plaintiffs' counsel will contact the court, and within 24 hours of notice from Plaintiffs' counsel that there has been a breach or suspected breach of the Stipulated Temporary Amendment, the Court may schedule a conference call with the parties to discuss the matter and how to best remediate the issue.
3. Defendants' position is that Defendants were in full compliance with all subparagraphs of this Stipulated Temporary Amendment prior to the filing of Plaintiffs' lawsuit. Defendants are making no admissions regarding liability and expressly deny any unlawful acts and/or omissions. Likewise, Plaintiffs are making no admissions that their claims lack merits or that Defendants complied with any of the subparagraphs of this Order prior to the filing of Plaintiffs' lawsuit.
4. Entry of this Stipulated Temporary Amendment as a modification to the Consolidated Consent Order does not in itself deem Plaintiffs as prevailing parties for purposes of attorneys fees pursuant to 42 U.S.C. §1988.
5. This Stipulated Temporary Amendment to the Consolidated Consent Order is intended to address the unique issues faced by the Wayne County Jail as a result of the COVID-19 pandemic and shall terminate 30 days after its entry.



This period may be extended by agreement of the parties or by order of the Court upon good cause shown.

#### B. Stipulation

The parties herein, by and through their respective counsel, hereby agree and stipulate that upon entry of this Stipulated Temporary Amendment,<sup>1</sup> Defendants shall immediately undertake or continue to implement the following measures related to the conditions of confinement at the Wayne County Jail (“the Jail”) during the pendency of the COVID-19 pandemic:

1. Plaintiffs seek an inspection of all Jail facilities on or before May 18, 2020 by an inspector, to be selected by Judge Kenny at no cost to Defendants. Both parties may submit two proposed candidates for selection of the inspector. If the inspector selected is upon the recommendation of Defendants and requires the payment of a fee, Defendants will cover the cost. The inspection will be limited to the COVID-19 pandemic response, as enumerated in the conditions agreed upon herein. Defendants will not object to Plaintiffs’ request for an inspection of the Jail facilities.
2. Ensure that each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant products<sup>2</sup> effective against the COVID-19 virus.;
3. Provide access to showers on a daily basis;
4. Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves;

---

<sup>1</sup> Plaintiffs filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on May 4, 2020 (ECF No. 3). Neither party waives any arguments with respect to the issues raised in the Emergency Motion.

<sup>2</sup> Disinfectant products must meet EPA’s criteria for use against SARS-CoV-2, the virus that causes COVID-19. *See List N: Disinfectants for Use Against SARS-CoV-2*, EPA.gov, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2> (last visited May 7, 2020).

5. Ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
6. Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff;
7. Per protocol, continue to make COVID-19 testing available to all incarcerated persons either (a) displaying known symptoms of COVID-19 or (b) who have been in known proximity of other persons, within the last 14 days, who have tested positive for COVID-19;
8. Provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible;
9. Ensure that individuals identified as having COVID- 19, as having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a designated quarantine area, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and be strongly encouraged to wear face masks when interacting with other individuals until they are no longer at risk of infecting other people;
10. Provide sufficient disinfecting supplies,<sup>3</sup> without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones and headphones) between each use;
11. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19,

---

<sup>3</sup> Disinfectants must meet EPA's requirements for use against SARS CoV-2. *See supra* note 2.

measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;

12. Train all staff regarding measures to identify symptoms of COVID-19 in inmates, measures to reduce transmission, and the Jail's policies and procedures during this crisis (including those measures contained in this Order);
13. Refrain from charging medical co-pays to those experiencing COVID-19-related symptoms, including testing; and
14. Ensure that retaliatory discipline is not taken solely in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

IT IS SO ORDERED.

/s/ Timothy M. Kenny  
Circuit Court Judge

Agreed as to form and content:

/s/ Deborah Choly  
DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

/s/ James Heath  
JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

/s/ William Goodman  
WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/ Felicia Johnson  
FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

/s/ David Melton

DAVID MELTON (P63891)

Legal Advisor Wayne County Sheriff

4747 Woodward Ave.

Detroit, MI 48201

(313) 224-6888

# **APPENDIX D**

## **Joint Proposed Inspection Order**

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

WAYNE COUNTY JAIL INMATES et al.,

Case No. 71 173 217 CZ

Plaintiffs

Hon. Timothy M. Kenny

v

WILLIAM LUCAS et al.,

Defendants.

---

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

---

**JOINT PROPOSED INSPECTION ORDER**

At a session of said Court, held in the City of Detroit,  
County of Wayne, State of Michigan

on **MAY 15 2020**

PRESENT: **Hon. Timothy M. Kenny**

Circuit Court Judge

This matter having come before the Court at a Status Conference held on May 14, 2020, the Court being fully advised in the premises;

It is hereby orders as follows:

1. An inspection of the Wayne County Jail (“the Jail”) shall take place on May 16, 2020. The inspection will be conducted by Dr. Fred Rottnek (“the inspector”). The inspector shall be provided by Defendants with personal protective equipment, including an N-95 mask and gloves, to safely enable his inspection. The inspector shall adhere to all current Jail policies related to entry into the Jail. The inspector shall maintain social distancing when interacting with Jail inmates and staff to the extent possible.

2. At least 24 hours prior to the scheduled visit, the inspector shall provide Defendants with a completed security clearance form for the inspector to conduct so that a background security check may be conducted.

3. The inspector shall be allowed to speak with and interview any person incarcerated at the Jail. When speaking with inmates, the inspector may provide his name, title, the reason for his visit, and that he does not work for the Jail. Specifically, he may state that he is conducting an inspection of Jail conditions insofar as they directly relate to the health and safety of detainees in the context of COVID-19. The inspector also may inform inmates that they will not be retaliated against for speaking with him and answering his questions.

4. The inspector shall provide a report to the parties and the Court by May 20, 2020 by 5:00 p.m. The report shall be sealed until otherwise ordered by the Court. The Court will consider argument on whether to make the report public at a later date.

5. The inspector shall be produced for deposition within 48 hours of producing said report unless another time is agreed to by the parties.

6. The inspection shall be completed within a twelve-hour time frame and shall include the following areas inside Wayne County Jail facilities Division I, II and III:

- All housing units where inmates are housed;
- Housing units where quarantined inmates are being held;

- Common areas where inmates congregate to watch TV, eat, and utilize telephones and tablets;
- The ingress/egress staff screenings;
- Medical facilities;
- Kitchen;
- Laundry facilities;
- Shower/bathroom facilities; and Areas where cleaning supplies and personal protective equipment are maintained.

7. The inspector's reports shall include any information he was able to ascertain regarding the following:

- Conditions of the housing units during the COVID-19 pandemic;
- Conditions of and access to shower/bathroom facilities during the COVID-19 pandemic;
- Conditions of and access to medical, laundry, dining facilities and shared common areas during the COVID-19 pandemic;
- Availability and stock of cleaning supplies and personal protective equipment for inmates and Jail staff;
- Availability and stock of hygienic and disinfecting supplies for inmates and Jail staff;
- Availability of communications to inmates about COVID-19 including low-literacy and non-English-speaking people; and
- Social distancing measures.



8. During the course of the inspection, the inspector shall be permitted, without intrusion of jail staff, to ask inmates questions about the following topics outlined in the agreed upon stipulation order:

- Availability and access to medical staff;
- Availability and access to medical kits;
- Availability and access to free medical care for COVID-19 testing, COVID-19 tests, grievances, showers, mental health services, reading materials, phone and video calls, and counsel whether in quarantine or not;
- Availability and access to facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls;
- Self-reporting procedures for COVID-19 symptoms;
- Whether detained people have received sufficient cleaning and hygiene supplies and the time it takes to receive them; and
- Incidents of punitive transfers, threats of punitive transfers, and concerns about retaliation for raising concerns formally or informally with Jail staff about the health and safety conditions at the Jail.

9. The inspector will be given the opportunity to speak with or interview any incarcerated person without the intrusion of jail staff, consistent with Jail security procedures, and in an area where six feet of social distancing is allowable, if he or she so requests.

10. An attorney from each side is permitted to attend the inspection. At least 24 hours prior to the inspection, Plaintiffs' attorney shall provide Defendants with a completed security clearance form so that a background security check may be conducted.

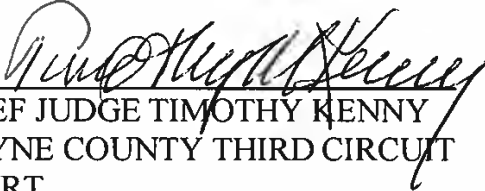
11. The inspector may designate to Defendants areas, items, or people detained in the jail which he would like to be photographed. Defendants will take the photograph(s) in the presence of the inspector. Photographs will be shared with each party through their attorneys within twelve hours of the inspection.

12. Any photographs of the Jail shall be kept confidential by all attorneys on this case and shall not be used for any purpose other than this litigation. No photographs of Jail staff shall be taken. No photographs of inmates shall be taken without their express written consent. All photographs of the Jail shall be filed under seal.

13. The format of the report shall be as follows:

- Executive summary
- Materials reviewed before finalizing inspection report
- Individuals interviewed during inspection
- Observations for Divisions I, II, and III regarding matters outlined in paragraphs 7 and 8 above.
- Recommendations

**IT IS SO ORDERED.**

s/   
CHIEF JUDGE TIMOTHY KENNY  
WAYNE COUNTY THIRD CIRCUIT  
COURT

Agreed as to form:

/s/ Deborah Choly  
DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

/s/ William Goodman  
WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/ Sue Hammoud  
SUE HAMMOUD (P64542)  
JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-6669

# **APPENDIX E**

## **Wayne County Jail Inspection Report**

## Wayne County Jail Inspection Report

May 16, 2020

Fred Rottnek, MD, MAHCM

1. **Executive summary** My recommendations include
  - a. Continue reducing the population in all three facilities as quickly as possible, so that medically vulnerable populations have fewer exposures to potentially deadly coronavirus and social distancing measures can be better followed by those remaining in physical custody.
  - b. Follow the Centers for Disease Control and Prevention (CDC) Interim Guidance on the Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>
  - c. Increase regular and as-needed testing for COVID-19 infection for inmates, staff, and any other visitors.
  - d. Post and distribute to all stakeholders up-to-date education about prevention, spread, and treatment of COVID-19. This information should also include the definitions and importance of social/physical distance, and the use of personal protective equipment (PPE).
  - e. Post schedules for cell and common space cleaning with CDC-approved disinfectants that kill coronavirus.
  - f. Adjust medical services to meet the demand of this population during the pandemic. Stop disincentivizing inmates from sick call and seeking assistance.
  - g. Provide aftercare planning to inmates so that they are aware of practices to safely return to their homes and communities, since many have been exposed to COVID-19.
  - h. Discontinue housing inmates and staffing of workers in the secured areas of Division II as soon as possible. This environment is unsafe for more reasons than COVID-19.
  - i. If these measures are not adopted, this jails will continue to be an ongoing source of infection, morbidity, and mortality to all residents of Wayne County.
2. I would like to thank all the members of the Sheriff Napoleon's office as well as Corporation Counsel for their assistance in the tours, the opportunity to interview inmates in an unhurried manner, and the information they provided me during this inspection. A special thank you to Sergeant Elon who was with us all day to take photos and provide information regarding the system.

**3. Materials reviewed before finalizing inspection reports**

- a. The Joint Proposed Inspection Order, ordered by Chief Judge Timothy M. Kenny
- b. Centers for Disease Control and Prevention (CDC) Interim Guidance on the Management of Coronavirus Disease 2019(COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>  
This is my primary resource.
- c. Additional resources include
  - i. The United States Department of Justice National Institute of Corrections' NIC Coronavirus Information, <https://nicic.gov/coronavirus>
  - ii. National Commission on Correctional Health Care's COVID-19 Coronavirus: What You Need to Know in Corrections, <https://www.ncchc.org/COVID-Resources>

**4. Individuals interviewed during this inspection include**

- a. Individual staff in the Sheriff's office, who also conducted the tours of the facilities
- b. Medical staff in Division I and II
  - i. Division I
    - 1. Psychiatric Nurse Practitioner, Dr. McCauley
    - 2. Nurses/techs passing medications
  - ii. Division II
    - 1. Nurse Coleman
- c. Inmates in all 3 Divisions
  - i. Division 1
    - 1. Psychiatry floor  
[REDACTED]  
[REDACTED]
    - 2. Women's floor  
[REDACTED]  
[REDACTED]
    - 3. Quarantine unit  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
  - ii. Division II
    - 1. General population  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

2. 4<sup>th</sup> floor (COVID positive/suspected floor)

[REDACTED]

iii. Division III

1. General population

[REDACTED]

2. COVID+ unit

[REDACTED]

5. **Observations for Divisions I, II, and III** regarding matters related to below

a. Conditions of the housing units during the COVID-19 pandemic

i. Division I:

1. Building is in some disrepair, with uneven floor and missing tiles
2. All cells outside of medical unit have front facing walls of bars or open steel grids. This allows aerosolized and large droplets containing COVID-19 to be freely spread from cells, where inmates are not wearing masks.
3. Toilets and sinks are located near the front wall of these cells. They have no lids. COVID-19 can be aerosolized from fecal matter—whether from the act of voiding or flushing a toilet.
4. The cells appear to be clean, but many of them are cluttered.

- ii. Division II:
  - 1. Building is in severe disrepair.
  - 2. All cells outside of medical unit have front facing walls of bars. This allows aerosolized and large droplets containing COVID-19 to be freely spread from cells, where inmates are not wearing masks.
  - 3. Toilets and sinks are in each cell. They have no lids. COVID-19 can be aerosolized from fecal matter—whether from the act of voiding or flushing a toilet.
  - 4. There is extensive rusting, paint chipping, and filth on bars, heaters, and other horizontal surfaces.
  - 5. Vents in cells are usually at least partially blocked by dirt and airborne dust.
- iii. Division III
  - 1. House units appear clean.
  - 2. Doors are solid surface, so transmission of the virus is mitigated when an inmate is in his room.
  - 3. Toilets and sinks are located near the front wall of these cells. They have no lids. COVID-19 can be aerosolized from fecal matter—whether from the act of voiding or flushing a toilet. Aerosolized particles can remain in the air for several hours.
  - 4. The cells appear to be clean, but many of them are cluttered.
- b. Conditions of and access to shower/bathroom facilities during the COVID-19 pandemic
  - i. Staff reported that the County provides bleach and Simple Green for cleaning
    - 1. **Simple green does not kill COVID-19,**  
<https://simplegreen.com/news-and-media/coronavirus-faq/>
    - 2. Diluted bleach is effective in killing COVID-19.
  - ii. Division I
    - 1. Medical unit: The shared room which I inspected has a shared bathroom which is usually cleaned once/day by a trustee. It should be cleaned after each use.
  - iii. Division II
    - 1. Individual cells have toilets and sinks. Units share a shower. Inmates demonstrated for me that water pressure is low, and they reported little to no hot water.
    - 2. The showers on the floors have extensive rust and chipping and peeling paint on ceiling and walls. (Photo) It appears the black mold or mildew flows from the buttons controlling water flow.
  - iv. Division III
    - 1. Inmates have access to the shower/bathroom facilities when needed—one unit is a wet unit (with sink/toilet in room); the

- other is a dry unit (without sink/toilet—they are communal, at the far end of the unit).
    - 2. Tiles are missing in shower
    - 3. Rust and mildew are present on bathroom fixtures and walls
  - c. Conditions of and access to medical, laundry, dining facilities and shared common areas during the COVID-19 pandemic
    - i. Division I
      - 1. Medical: Rooms appear clean, but cluttered. Some inmates stated that they are getting their medical needs met. Others stated the that virus has slowed down responsiveness to their sick calls. According to the two officers sitting in an otherwise empty clinic, they were unable to give clinic hours or rough capacity at present. They stated that they have been understaffed with providers recently, but they just got a new physician. (When we walked in, they were sitting at their desk, shoulder-to-shoulder, about a foot apart, and they were not wearing
      - 2. Laundry: Linen exchange area appeared clean
      - 3. Dining facilities: There is currently no shared dining for trustees. In all facilities, inmates are eating in their rooms by themselves.
      - 4. Kitchen: The kitchen area is large and appeared clean, but it had many wet surfaces. The kitchen supervisor stated that “we can’t clean like we’re supposed to” because she used to have 25-28 trustees for cleaning and now only has 2. She reports that they “clean daily”.
      - 5. Shared common areas: Appear clean. Two of the three men’s units I visit were on 23-hour lockdown. In the women’s unit, woman have more time in the common area.
    - ii. Division II
      - 1. Medical: The medical care as reported was almost wholly inadequate. Nurse Coleman stated her biggest concern was the movement of inmates among units. She wondered why “inmates [are] still here?” When I asked her if she thought they were adequately staffed in medical with COVID as well as chronic care and sick calls, she stated “Not really, to be honest, due to the shortage [of staffing].” Patients report delayed or ignored sick calls.
      - 2. Laundry: No laundry is done at this facility, but it is shipped to Division III. Some inmates stated that they are not getting fresh linen every week. One stated he’s had the same uniform for 6 weeks.
      - 3. Dining facilities: Inmates eat in their rooms.



4. Kitchen: Not visited in this building
  5. Shared common rooms: These areas are common areas that each cell releases into. There is extensive rusting, paint chipping, and filth on bars, heaters, and other horizontal surfaces.
- iii. Division III
1. Medical: Appears clean. Three or four nurses and/or tech were present for sick calls and med passes.
  2. Laundry: The laundry was empty on this Saturday tour. It appeared clean.
  3. Dining facilities: All inmates eat in their cells.
  4. Kitchen: Appeared clean, but little activity at the time
  5. Shared common areas: Appeared clean, and only one inmate is allowed out at the time. While I was there, 3 or 4 trustees were present to wipe down surfaces. Inmates report that telephones are not wiped down between use.
- d. Availability and stock of cleaning supplies and personal protective equipment for inmates and jail staff
- i. I did not explicitly ask to see stocks of cleaning supplies, hygienic supplies, or PPE, so I did not see the inventories. I apologize for this oversight.
  - ii. Of concern, none of the staff at all three sites knew how to don the blue plastic protective suits.
  - iii. There was inconsistent use of masks, and the appropriate wearing of masks, among both inmates and staff.
  - iv. Answers varied widely when I asked inmates if they had enough cleaning supplies. Some said they did; others said they frequently were told that the inventory was low or zero.
  - v. Division I
    1. PPE and cleaning supplies were seen in the kitchen, the laundry, the clinic, the medical unit, and at the officers' stations.
    2. I saw one two-man team of trustees emptying the trashcans in one of the quarantine units. Otherwise, I saw no one cleaning any area during my visit.
  - vi. Division II
    1. PPE and cleaning supplies were seen in the clinic and at the officers' stations.
    2. I observed a few buckets with mops in shared areas. I saw several unused buckets and mops in an unused cell in an empty block.
    3. Inmates frequently reported lack of supplies
    4. I saw no inmates cleaning any area during my visit.

- vii. Division III
  - 1. As mentioned, I saw a group of 3-4 trustees cleaning the first unit I visited. The two trustees I interviewed had visibly dirty and frayed masks.
  - 2. No other inmates were cleaning during my visit.
- e. Availability and stock of hygienic and disinfecting supplies for inmates and jail staff
  - i. I did not explicitly ask to see stocks of cleaning supplies, hygienic supplies, or PPE. I apologize for this oversight.
  - ii. Throughout all three facilities, inmates brought up the inadequacy of PPE. They did not start receiving disposable surgical masks until, per their consistent reports, 4/22/2020. The masks are replaced once every two weeks, which is inadequate since these masks were designed for single use—not sustained use. Some inmates have gone as far trying to wash these masks with soap—which would further damage their integrity. Most of the masks I saw were fraying and/or visibly dirty. The most common date on the masks was 5/6.
  - iii. Answers varied widely when I asked inmates if they had enough soap. The soap shown to me were **1 oz.** travel size soaps. They were free of charge.
    - 1. Division I: Supply was adequate overall.
    - 2. Division II: Inmates report that they were given 3 soaps every week or **every 2 weeks**. This is remarkably inadequate for regular hand washing and showering, particularly during a pandemic in which people are encouraged to frequently wash hands.
    - 3. Division III: There were no complaints about soap.
- f. Availability of communications to inmates about COVID-19 including low-literacy and non-English-speaking people
  - i. Posters and written materials: Some materials were posted in most cells and hallways about hygiene and social-distancing. However, the most common materials did not mention COVID-19, and they did not define 6 feet for social distancing. They stated to use tissues (which inmates don't have) and they didn't mention masks. (The only posters that mentioned COVID-19 were in the hallways in Division 3. And these posters were designed for the public with admonitions about staying at home when you're sick). The Wayne County website has some updated materials, but even these are not current.  
<https://www.waynecounty.com/>
  - ii. Cleaning instructions, schedules, and expectations: I did not see any instructions on how to clean a cell. I did not see any schedule for unit or cell cleanings. Staff reported that the County provides bleach and Simple Green for cleaning. Simple green does not kill COVID-19,

<https://simplegreen.com/news-and-media/coronavirus-faq/> Diluted bleach is effective

iii. Inmate interviews:

1. Division I: Some inmates reported that they were told about COVID-19, that it was dangerous, and that they should wear their masks when out of their cells. Others reported they were told nothing. They stated that they received most news via the television.
2. Division II: They stated that they received most information and updates via the television. Most reported they received no information from medical or correctional staff.
3. Division III: Most of these inmates were concerned about what to do when they are released, since they don't want to give COVID-19 to their loved ones. They did not receive this information. Nor did they understand why they were put on 23-hour lockdown because they are sick.

g. Social distancing measures

i. Division I:

1. Cells are generally staggered in occupancy, but there was at least one cell with 2 male inmates. This doesn't allow appropriate distancing.
2. Bars and open grids do not allow for social distancing, since COVID-19 can be transmitted by surface (fomite), where COVID-19 can remain for 2-3, by large droplet, which can be projected at least 6 feet, and by aerosolized particles, which can hang in the air for several hours and can be transmitted through ventilation.
3. In the medical unit, four inmates were on stretchers in one room. All of these men had co-occurring health problems, most were on CPAP or IPAP (breathing machines) due to obstructive sleep apnea. They were positioned in a square, head to foot. They were clearly too close together. While I do not have all their diagnoses, they all likely fit into the category of those at higher risk for severe illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>
4. In the women's unit, women were sitting together at the common area tables. One woman was doing another woman's hair, neither wearing masks, when we arrived on the floor.

ii. Division II

1. While these are single cells, inmates are allowed to move around in common areas. This doesn't allow appropriate distancing. Unless inmates are on lockdown, no one can walk

- in the secured area or the hallway, without being closer than 6 foot to another person.
2. Bars and open grids do not allow for effective social distancing, since COVID-19 can be transmitted by surface (fomite), where COVID-19 can remain for 2-3, by large droplet, which can be projected at least 6 feet, and by aerosolized particles, which can hang in the air for several hours and can be transmitted through ventilation.
- iii. Division III
    1. Inmates are housed in cells with solid doors—steel and glass. This allows for mitigation of large droplet and aerosolized transmission in ways open bars and grids do not.
  - h. Ingress/Egress Staff Screenings: The effectiveness of any measure taken to ensure that persons entering the jail, including jail staff, are not carrying the COVID-19 virus
    1. Due to the low census, the pandemic, and the day being Saturday, we saw very few people entering and exiting building. All visitors had their temperature taken and were asked three screening questions.
    2. Division I; I asked a few officers if they were tested regularly for COVID-19, and they replied that they were tested once. But they get their temperature checked whenever they come into the building. (This is not an effective test, since it has been well-established that asymptomatic people still shed the virus).
    3. Division II: I did not ask this question
    4. Division III : I did not ask this question
  - i. Punitive Transfers and Retaliation: There were three recurrent themes that I found very concerning at all three Divisions: one, new inmates in Division one were quarantined for 3 days upon admission; two, inmates were placed on 23-hour lockdown for being testing positive for the virus; three, inmates reported being disincentivized by both medical and correctional staff to seek medical care for anything other than complaints related to coronavirus (while the information that was posted about the virus was inadequate and out of date).
    1. Division 1: The coronavirus quarantine unit has men on 23-hour lockdown simply because of the are new to the facility. The quarantine unit hold men for 3 days for observation for development of COVID-19 signs and symptom. I was told by the CO's that this 3-day policy was recommended by Wellpath, the contracted health care provider. I have not seen this policy, but I have also not seen any recommendation for a 3-day observation by the CDC.  
<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional->

[detention.html](#) The structure of the unit—with open bars—does not allow for social distancing or cohorting inmates in a single unit, so reinfection is possible within a 3-day period.

2. Division 2: The coronavirus quarantine unit has men on 23-hour lockdown simply because of their testing status. The structure of the unit does not allow for social distancing, so reinfection is possible within a 14-day block. Several inmates reported delayed and ignored requests for medical care.
  3. Division 3: The coronavirus quarantine unit has men on 23-hour lockdown simply because of their testing status. The structure of the unit does allow for social distancing, but when men are on lock-down, they are unable to speak to each other due to the solid surface doors. This isolation has been shown to increase anxiety, depression, and suicidality among incarceration populations. Inmates reported delayed and ignored requests for medical care.
6. To the extent you were unable to observe, or otherwise obtain information about, any of the above-listed issues, provide an explanation.
- a. I did not inspect an inventory of PPE, cleaning supplies, and hygiene supplies. And that is my fault for not asking. Due to the timeframe of the inspection document being released, I did not have a paper copy of it.
  - b. Corporation Counsel seemed to have different interpretations of whom I could and could not interview. I knew I could and should interview inmates. But I also assumed I could speak to officers and medical staff. I was able to speak to all parties at Division I. At Division II, Paul O'Neill took the place of Sue Hammond. He and plaintiff's counsel Allison Kriger argued, in front of us, the appropriateness of me speaking to a nurse in the medical area. While this was off-putting to both the nurse and me, I had the information from the medical staff I needed, and I ended the conversation and apologized to the nurse. I did not attempt to ask questions of the medical staff in Division III.

## **7. Recommendations**

- a. Continue reducing the jail population as quickly as possible to reduce sickness and death among inmates, correctional staff, and medical staff. Reducing the size of the population in jails is crucially important to reducing the level of risk both for who both are housed and work within those facilities and for the community at large. Rationale:
  - i. From a public health perspective, it is my strong opinion that there is no way short of release to protect the medically vulnerable from grave risk of imminent infection and death.
  - ii. Although mitigation and containment strategies are vital, they are merely one piece of the puzzle. The lower the jail or prison population, the more effective these strategies will be. Fewer people in a facility

- means best practices will be more possible, fewer community resources will be needed, and other inmates and correctional staff will be safer.
- iii. Divisions I and II have no physical barrier on the front cell wall, so even with alternate cell usage, aerosolized virus can infect other inmates in the unit.
  - iv. In Division II, social distancing is impossible for inmates as well as for staff doing rounds.
- b. Develop and implement a schedule for routine testing of all inmates and staff. As long as inmates and staff enter and leave the facilities with their status unknown, the facilities become incubators for the virus. The virus can not only be brought into the facilities; it can be brought back out to stakeholders' homes and communities.
- c. Follow CDC guidelines, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>
- i. Provide the necessary tools for inmates and staff to mitigate the risk of COVID-19, including, but not limited to
    - 1. Free soap, on demand, in adequate quantities for hygiene
    - 2. Use of CDC-recommended cleaning agents on a regular and as-needed basis
    - 3. Posted cleaning schedules for the trustees and the individual inmates to promote cleaner cells and common area
  - ii. Update, post, and distribute up-to-date educational materials in all areas of the jail: Use CDC materials <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>. Provide education and guidance to staff, inmates, and other visitors. Review information with all stakeholders on a published, scheduled basis
- d. Adjust medical services to meet the demand of this population during the pandemic. Stop disincentivizing inmates from sick call and seeking assistance. Clarify clinic hours for routine care and urgent care, including other infections and trauma. (There are a few photos from this photo that document adverse outcomes from delay in care). Consider expanding telehealth within the walls and among the facilities.
- e. Provide adequate PPE. Educate staff, inmates, and visitors regarding proper use of PPE. Staff should role model social distance and mask use. Provide fresh surgical mask no less frequently than weekly. Replace soiled and torn masks as needed.

- f. Discontinue double-bunking in Division I. It does not allow for social distancing.
- g. Minimize 23-hour lockdown anywhere, but particularly in Division III. These men are essentially being punished for testing positive. They may or may not be ill. The current isolative practice increases anxiety, depression, and suicidality.
- h. Develop a back-up plan for cleaning that is not dependent on trustees.
- i. Stop housing inmates in Division II as soon as possible. And then stop requiring staff to work there.
  - i. The physical conditions are filthy and cannot be adequately cleaned due to pervasive disrepair, irregular surfaces, rust, paint peeling and chipping, mildew, and mold. Individuals in this facility are at an increased risk of, but not limited to, contracting the following: tetanus, contact and airborne infection, worsening of chronic conditions, and exacerbation of respiratory conditions.
  - ii. It is impossible for inmates to physically distance when they are out of their cells. Likewise, it is impossible for officers and other staff walking the hallways in the units to maintain 6 feet distance.
  - iii. Aerosolized virus cannot be contained in a cell with bars.
  - iv. Inmates report and I observed consequences of a level of care and attention far below the other two facilities. It appears that the inmates are not receiving basic medical care or the hygiene supplies.

*Fred Rottnek, MD*

Fred Rottnek, MD, MAHCM  
Professor and Director of Community Medicine  
Program Director, Addiction Medicine Fellowship  
Professor and Medical Director, Physician Assistant Program, Doisy College of Health Science  
Professor, Center for Health Law Studies, School of Law

## **Appendix A**

### **Wayne County Question Bank**

- How are you?
- What have you been told about COVID-19/Coronavirus?
- What have you been told about physical/social distancing?
- What have you been given to protect yourself? How often are you supplied?
- Have you been told how and why to wear a mask?
- Hygiene supplies (do you have to purchase?)
- Cleaning supplies
- Are people cleaning? How often?
- Do people use their PPE?
- Have you been receiving any needed medical care—including mental health care?
- Have you been able to use Sick Call?
- Are you being locked down differently? More often? How?
- Has staffing patterns changed with officers and/or medical staff?
- Have they changed access to phones and/or other communication?
- What do you want me to know about your experience with COVID-19?



## **Appendix B**

### **Visit notes**

#### **1. Division I**

- a. Lobby
  - i. Limited signage
  - ii. Outdated signage
  - iii. Signage is from health department
    - 1. Doesn't mention COVID
    - 2. Talks about using tissues to cover cough
    - 3. Doesn't mention masks
- b. Kitchen, spoke with supervisor
  - i. "We can't clean like we're supposed to" because they used to have 25-28 trustees, now, only 2.
  - ii. "We clean daily"
- c. Medical clinic
  - i. When we walked in the two CO's sitting there were sitting side by side, two feet apart, without wearing masks
  - ii. When asked about the schedule of providers and if it is currently adequate for inmate needs, the CO's were unsure about the provider schedules. They stated that there is a new doctor being trained.
  - iii. Wellpath provides all the medical professionals; the County just has a custodial function. County cleans clinic--it appeared clean, but cluttered.
  - iv. Medical apparently recommends a three-day protocol for quarantine/isolation of new inmates. (Unclear where this comes from).
  - v. Staff reported that the County provides bleach and Simple Green for cleaning (Simple green does not kill COVID-19, <https://simplegreen.com/news-and-media/coronavirus-faq/>)
  - vi. Staff in the medical unit state that they only get temperature checks on a regular basis, not COVID-19 testing
  - vii. All inmates were tested on 5/8/20
  - viii. Units are provided with mop buckets and cleaning supplies every days. Inmates can use these whenever they ask
  - ix. Inmates are written up if they don't clean their cells
  - x. In the medical unit, 8 inmates are currently housed in 7 rooms
  - xi. One room on the unit had 4 patients in the room. They need regular, daily nursing care, most need CPAP due to sleep apnea. Their beds were not distance 6 or more feet apart. A trustee cleans their shared shower and toilet daily. The recent trustee with this duty was released yesterday.
- d. Housing for inmates with mental health diagnoses
  - i. Census is very low on the floor--35 inmates with capacity for 128
  - ii. There is no double bunking
  - iii. Cell doors/front walls are vertical bars (aerosolized problems)
  - iv. The staff admitted they are short on trustees for cleaning

- v. Staff stated that they have adequate staffing during the week, but weekends have been challenging--both due to regular staffing shortages and increased shortages due to COVID-19.
- vi. We spoke to Dr. McCauley (DNP) who was seeing inmates that day. She has extensive experience working the county and the jails. She feels she has what she needs to take care of inmates. She noted increased anxiety with COVID-19, more isolation, and unease about the future. Dr. McCauley stated she would like increased access to telehealth for the inmates. She finds that an effective way of providing care.
- e. 11th floor--Quarantine unit
  - i. Nine inmates at present
  - ii. Cell doors/front walls are grid-like steel (aerosolized problems)
  - iii. This is the unit where inmates are quarantined for 3 days, and, if they display or develop no signs and/or symptoms of COVID-19, they are sent out to another housing unit.
  - iv. Inmate interviews
    - 1. [REDACTED] (incarcerated for 4 months)
      - a. He states he is waiting for a hearing
      - b. He reports getting cleaning supplies if he asks for it.
      - c. He reports he gets an adequate supply of soap if he asks for it.
      - d. He reports no concerns with responsiveness of medical teams or CO's
    - 2. [REDACTED] (incarcerated for 4 days)
      - a. He states he has received no information on COVID-19
      - b. He states he recently had surgery on his back (Harper Hospital), but he has not seen a doctor here and his meds weren't continued
      - c. He stated cells are not cleaned regularly
- f. 8th floor, Women's floor
  - i. All the women in Wayne County custody are housed in Division 1
  - ii. When we walked in, inmates were using the common space. One woman was doing another woman's hair
    - 1. Inmate interviews
      - a. [REDACTED] (incarcerated for 6 months)
        - i. Overall she states she's doing well
        - ii. She reports having adequate cleaning supplies and soap
        - iii. She states she was told why she needs to wear mask
        - iv. She reported (as did subsequent interviewees) that she gets a new mask once/every two weeks. By then, the mask is dirty and falling apart
      - b. [REDACTED] (incarcerated for 6 months)
        - i. She's waiting on a court date

- ii. She states all the information they get on COVID-19 is from watching the news
  - iii. She's concerned about the officers bringing in the virus from the outside
  - iv. She also reports inadequacy of 2 week mask supply
  - v. She states there is adequate cleaning supplies
- g. 10th floor (general population, male)
  - i. When we arrived on 10 I saw 2 trustees in the unit. They were standing next to each other with their masks off.
  - ii. Inmate interviews
    - a. He was provided no information on COVID-19, on masks or how to use them.
      - b. He states they don't get cleaning supplies.
      - c. The soap supply is fine.
      - d. He also stated the masks were too infrequent
    - 2. [REDACTED] (who didn't wear a mask during the interview through his cell grid)
      - a. He stated that he was told nothing about COVID-19
      - b. He stated that unit is cleaned only once every few weeks
      - c. He stated that 2 nights ago, the CO's took out an inmate on the unit, after telling him in front of everyone that he tested positive
    - 3. [REDACTED] (Incarcerated for 5 months)
      - a. He is concerned about the staff coming and in out of the building regularly and bringing the virus into the jail.
      - b. He stated that all the inmates got tested on Friday, 5/8/2020.
      - c. He stated many of the deputies don't wear masks.
      - d. He stated it's difficult to get cleaning supplies.
      - e. He reported that when he came in February, he had symptoms consistent with COVID-19, but he could get the staff to take him seriously. So, he faked a faint. He was given a CXR, and a five-day course of antibiotics. Since he didn't get better with that, he was given a course of amoxicillin.
    - 4. [REDACTED] (incarcerated since 2/20)
      - a. He states that his court date keeps being pushed 2 weeks at a time
      - b. He has sickle cell, and he's had 2 crises since he's been in Division 1, but he hasn't been treated properly.
      - c. He feels his health and his legal matters have been delayed "due to Corona"
    - a. On my way out, this inmate stopped me to show me his elbow. He asked me if I thought it was an MRSA infection, because

he can't get anyone to look at it. He states he has put in sick call requests.

## **2. Division II**

- a. Signage is old and inaccurate. Similar concerns as above--no mention of COVID-19 or definition of social/physical distancing
- b. Medical unit
  - i. Nurse Coleman
    - 1. I asked her how her work has changed with COVID-19. Her biggest concern is "movement of the inmates." "Why are the inmates still here."
    - 2. I asked her if she felt they were adequately staffed to manage health care with COVID-19. She stated there should be 3 nurses on each shift and that nurses are working lots of overtime.
    - 3. I asked if they were able to keep up with chronic care of the inmates and sick calls. She stated "not really, to be honest, due to the shortage.
    - 4. She offered that 2 of the regular physicians had died from COVID-19.
- c. 6th Floor
  - i. Floor plan offers little protection from COVID-19
    - 1. When inmates are out of the cells (as they were during our visit), they cannot maintain social/physical distancing
    - 2. Only some of the inmates wore masks at any time
    - 3. The front and door of each cell is bars
  - ii. The building is a state of disrepair, which makes effective cleaning difficult to impossible
    - 1. Rust on bars and in showers, including the walls and ceiling of showers
    - 2. Apparently, there is black mold in the shower plumbing
    - 3. Chipping paint and rust on the most cell doors and walls
    - 4. The floor is uneven with chips and holes
    - 5. Vents in inmates are usually at least partially blocked by dirt and airborne dust
  - iii. Inmates report that they receive 3 small travel-size motel soaps each week.
  - iv. Inmates report that they often request cleaning materials, but they are told that they don't have any.
  - v. Inmate interviews
    - 1. [REDACTED] (Incarcerated for 6 months)
      - a. They learn about COVID-19 from the news. The signs up on social distancing aren't possible in their set up.
      - b. He states that he's concerned that he has bronchitis, but he has no meds and can't get an appointment.
    - 2. [REDACTED] (incarcerated 13 months, to be released Monday)
      - a. He states they first received masks on 4/22
      - b. Social distancing is impossible

- c. He is worried about sheriffs bringing virus into the facilities, and they are inconsistent with wearing masks
3. [REDACTED] (incarcerated 10 months, waiting on trial)
- a. He states food quality has deteriorated further.
  - b. He is awaiting test results from 5/8
  - c. He demonstrated that there is poor water pressure with timed water faucet
  - d. He commented on the inadequacy of soap and showed me the ~ 1 oz. travel size bar.
4. [REDACTED] (incarcerated 8 months)
- a. He demonstrated the apparent black mold/contaminant that is part of the plumbing by pressing the communal shower button and showing me the black substance that accumulated on his thumb as a result
  - b. He has developed a conjunctivitis to his right eye. It took him over a week to be seen by the nurse. He was given a bottle of normal saline for treatment. He still has signs of a conjunctivitis.
5. [REDACTED] (incarcerated for one year)
- a. He commented on what he thinks is bird excrement on the bars and heaters throughout the units
- [REDACTED]
- a. He commented on roaches and bird excrement he has commonly seen in the facility
  - b. He is still waiting on his test results from 5/8
  - c. He stated the they have just been provided cleaning supplies on a daily basis in recent weeks. Prior to that, they only had supplies 3x/week.
  - d. He also commented on the inadequacy of soap supplied.
- [REDACTED]
- a. He states he had to submitted multiple sick calls for a swollen right 5<sup>th</sup> finger. After it burst with infection, he was seen and treated (photo taken)
8. [REDACTED] (incarcerated 11 months)
- a. He complained of severe neck pain for 6-7 months. He submitted several sick calls. He was never seen, but the pain resolved on its own.
  - b. He states he has only seen spraying in the unit down during his incarceration.
  - c. He states he has asked for cleaning supplies, but he has been told there are none.
  - d. He commented on the inadequacy of soap

- [REDACTED]
- a. He states he was written up and locked up for sending out a video reporting on the conditions in Division #2
- [REDACTED]
- a. He states he was told “Unless you’re dying, you won’t go to clinic”
- [REDACTED]
- a. He states the hot water doesn’t work
  - b. He stated that medical doesn’t respond to medical complaints and sick call
  - c. He pointed out to me the clogged vents in the cells and the rust on the ceiling of the communal shower
12. [REDACTED] (he acted as a facilitator of a discussion on 613) Inmates on that unit, in that discussion, shared concerns
- a. Masks were first distributed on 4/22, and the one mask allocation every 2 weeks is inadequate
  - b. They are still waiting on their test results—why did they move some inmates and not others if they don’t have all the test results?
  - c. Medical hasn’t answered their sick calls
  - d. Two days ago, a COVID+ inmate was moved out. “We need to be retested.”
13. [REDACTED] (incarcerated for 2 years)
- a. He reports having a valve replacement, hypertension, and asthma
  - b. He states he brought his medication in with him, but he has not received them since he has been incarcerated
14. [REDACTED] (incarcerated for 10 months)
- a. He states he completed his bond reduction papers 3 weeks ago, but he has not heard back from anyone
15. [REDACTED] (incarcerated for 10 months)
- a. He states he has hypertension, diabetes, and psychological problems. “Since the pandemic, everything changed.” He states that all his medications were changed without any visit or evaluation by medical.
16. [REDACTED] (incarcerated 2 months)
- a. He states he’s on the wrong chronic medications, even though he’s told medical that they can find his meds at CVS
  - b. He has a dental abscess on a left upper molar and he has only received Tylenol
  - c. He has not seen a doctor, even though he has put in multiple sick calls

d. 4<sup>th</sup> floor

- i. In these units, we were told by the sheriffs that they may be COVID-19 positive, but they weren't certain. However, we had to gown up in full PPE, including protective suit, face mask, N95, and gloves
- ii. The inmates on these pods all told similar stories that they were tested on 5/8 and then moved down to the 4<sup>th</sup> floor the week of 4/11. Few had masks on when I spoke to them. When I asked those who were not wearing masks why, they replied that they were not given mask. They stated that their care consisted of Tylenol and Gatorade.
- iii. Inmate interviews
  1. [REDACTED] (incarcerated for 9 months)
    - a. He reported loss of taste and smell
    - b. He reported he was told nothing when he was moved to the unit other than he tested positive
  2. [REDACTED] (incarcerated for 5 months)
    - a. He has chronic life-long asthma
    - b. He was given a rescue inhaler, but no control inhaler, although he's been on that in the best
    - c. He has not been able to receive a nebulized breathing treatment, even though he has asked for one.
  3. [REDACTED] (incarcerated for 4 months)
    - a. He was really sick on admission—sick enough to be moved to the infirmary, but he was not tested
    - b. He has had chest pain on and off for 3 days this week—sharp, centralized chest pain, and he has hypertension; he was only given Tylenol
  - [REDACTED]
    - a. He states he has had no PPE since mid-March. He states that there are many times when they have no cleaning supplies
  5. [REDACTED] (incarcerated 10 months)
    - a. He states that he's had chills, HA and fever for a week or two
  - [REDACTED]
    - a. He states he has had "all the symptoms" for 2 weeks
    - b. He asked one of the CO's "Big Girl" when they were going to get tested, and she said, "We'll take care of that later."
  - [REDACTED]
    - a. He states he was concerned when he had "all the symptoms, because he had a history of a gunshot wound to the chest and lung involvement. He noted the lack of masks.
  - [REDACTED]
    - a. Reports feeling light-headed and dizzy.

### 3. Division III

- a. We toured the Intake area, where social distancing was maintained.
- b. We toured the kitchen, where social distancing was maintained. But masks were worn incorrectly by those working.
- c. We toured the laundry, which was not active since it was a Saturday. It was a large room with plenty of room for distancing.
- d. We visited the medical clinical, which was not very active, since it was a Saturday. Three medical staff were present. I did not ask them questions.
- e. There were signs in the hallway and in the units we visited. They were COVID-19 specific; however, they had the old signs and symptoms—not the newer expanded signs and symptoms list by the CDC. They were also oriented to the general public, with workplace and school concerns.
- f. The cells in the units we visited were typical of modern jail design with glass windows and steel doors on each cell.
- g. Inmates in the first unit I visited were part of a domestic violence education program. While we were told by the staff that all programs were suspended, inmates told me that the domestic violence program had not been. They said that other inmates had been released since their programs were suspended. They wondered why their program had been continued. The instructor looked unwell, was obese, and didn't wear his PPE consistently. Inmates were afraid he was bringing the virus into the facility.
- h. While we were visiting the first unit, trustees were cleaning in the common area.
- i. Many inmates stated that they were unclear who was moved back and forth between the two open units and why.
- j. Facilities were newer than the other facilities. However, tiles were missing in many showers, and the fixtures and tiles had rust and mildew present.
- k. The second unit we toured housed inmates who tested positive for COVID-19. All of them reported being on 23-hour lockdown due to the fact that they have COVID-19. Only one inmate is allowed out at a time to take care of their business. This isolation was reported by most of the mean that this heightened the anxiety in general and their fear of increasing illness in particular.
- l. Inmates were tested on 5/9. Some inmates were moved over to the COVID-19 unit as a result. Most of the inmates had not been informed of their testing results yet.
- m. Inmate interviews (First unit)
  - i. [REDACTED] (First day incarcerated) He was sitting in the common area and was sweating profusely. He stated he felt fine otherwise, but there was no ventilation in the room—that's why he was sweating.
    1. He stated he has asthma, but he hasn't talked to a nurse yet for his inhaler.
  - ii. [REDACTED] (incarcerated for 6 months)
    1. He was wearing his mask incorrectly
    2. He stated things were OK, except he was frustrated by all the hearing delays.
    3. He noted that cleaning seems to be happening.



- iii. [REDACTED], trustee (incarcerated for 4 months)
  - 1. He was not wearing his mask correctly
  - 2. He stated he asked to be part of the cleaning crew because he was really anxious about catching the virus. This way he could make sure someone was doing it right—not everyone was.
  - 3. He has diabetes, asthma, and hypertension—he said he was getting his medications.
  - 4. He noted the masks were also first distributed on 4/22, and they don't last the whole 2 weeks.
  - 5. He is observing Ramadan, but he is upset that they put his tray on the floor at night—"why is that necessary?"
  - 6. He stated that he wants to know how hearings are determined? He hasn't had a hearing yet.
- iv. [REDACTED], trustee (incarcerated for 6 months)
  - 1. He was upset that they move people back and forth between pods before people know their test results. He states the moves didn't make sense
  - 2. He states he has schizophrenia. He had stopped his meds because he couldn't participate in the domestic violence program because he couldn't concentrate on the meds. He would like to restart them now. He stated concerns about the health of the instruction.
  - 3. He said many men try washing their masks with soap because they get so dirty over 2 weeks.
  - 4. He states that there have been periods when they were out of soap.
- n. Inmate Interviews (Second unit—COVID+ unit)
  - i. [REDACTED] (incarcerated 3+ months)
    - 1. He was a pod worker since the beginning of March.
    - 2. He soon felt sick—problems with vision and moving. He asked to see medical and was told, "They don't want to see anyone." He told me that at the time, "They were working under the assumption that if you have no temperature, you don't have COVID." Eventually, they sent him to medical. He had no temp, so they sent him back to his unit.
    - 3. He noticed after this that many people were getting sick, and the first seven or eight were pod workers.
    - 4. He was transferred to Division #1 at the end of March/beginning of April because he got into a fight. He states he was transferred on the same day that eight officers tested positive. He was there for over 5 weeks. On 5/5, he was called to the clinic, because he has a history of asthma and an auto-immune disorder. He had a fever of 107, and he was transferred to this unit on Division #3
    - 5. He just received his own inhaler last week. He reports that he refused the albuterol offered before because the inmates have to use the same inhaler.
    - 6. He reports having no contact with his attorney since 2/2020.

- ii. [REDACTED] (incarcerated at #3 for 37 days after 6 months in Division #1)
  - 1. He's frustrated that the rules for 23-hour lockdown don't make sense. He's felt anxious and suicidal.
  - 2. He's not received any response from medical for his asthma.
  - 3. When he was in Division #1, faked passing once in order to get medical attention
- iii. [REDACTED] (incarcerated since 1/31/2020)
  - 1. Felt ill in the end of February and again in the end of April, but his first test was 5/9.
  - 2. He has asthma and sleep apnea and again mentioned the common-use inhaler.
  - 3. "Why won't they just let us go?"

## **APPENDIX F**

Plaintiffs' Emergency Motion for Temporary  
Restraining Order and Preliminary Injunction

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, et. al.,

Case No. 71 173 217 CZ

Hon. Timothy M. Kenny

Plaintiffs,

v

WILLIAM LUCAS, et. al.,  
Defendants.

---

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

---

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman, Hurwitz, & James, PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

---

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs hereby move this Court, pursuant to Michigan Court Rules 3.310

(A) & (B), for a temporary restraining order. The grounds for this Motion are set forth in the Brief in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction, filed herewith, and the accompanying declarations and exhibits, which includes the Complaint and supporting exhibits filed in *Russell et al., v. Wayne County et al.*, No. 2:20-cv-11094-MAG-EAS, ECF No. 1 (E.D. Mich. May 4, 2020) (“Compl.”).<sup>1</sup> Plaintiffs request that this Court issue a temporary restraining order requiring Defendants to immediately undertake the following essential minimum measures to improve the hygiene and safety—to reduce the risk of severe illness and death from COVID-19—at the Wayne County Jail:

- 1) Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
- 2) Provide adequate spacing of six feet or more between people incarcerated so that social distancing can be accomplished;
- 3) Ensure that each incarcerated person receives, free of charge: (1) an individual supply of liquid hand soap and paper towels sufficient to allow frequent hand washing and drying each day, and (2) an adequate supply of disinfectant hand wipes or other products effective against the virus that causes COVID-19 for daily cleanings;
- 4) Ensure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;
- 5) Provide an adequate stock of daily cleaning supplies, such as sponges,

---

<sup>1</sup> This Motion relates back to May 4, 2020, the date an analogous motion for emergency relief was filed in *Russell et al., v. Wayne County et al.* See No. 2:20-cv-11094-MAG-EAS, ECF. 3 (E.D. Mich. May 4, 2020).

brushes, disinfectant hand wipes, and/or disinfectant products effective against the virus that causes COVID-19;

- 6) Provide sufficient disinfecting supplies, free of charge, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones, tablets, tables, bathrooms, seating, and door handles) between each use;
- 7) Provide daily access to clean showers and clean laundry, including clean personal towels and washrags for each shower;
- 8) Require that all Jail staff wear personal protective equipment, including masks and gloves, when interacting with any person or when touching surfaces in cells or common areas;
- 9) Require that all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
- 10) Take each incarcerated person's temperature daily (with a functioning, properly operated, and sanitized thermometer) to identify potential COVID-19 infections;
- 11) Conduct immediate testing for anyone displaying known symptoms of COVID-19 and who has potentially been exposed to infection;
- 12) Ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials, phone and video calls with loved ones, communications with counsel, and personal property;
- 13) Respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
- 14) Waive all medical co-pays for those experiencing COVID-19-related symptoms; and
- 15) Cease and desist retaliatory disciplinary action in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

Plaintiffs further request that this Court appoint an independent monitor to

ensure compliance with any injunctive order that this Court may enter relating to the conditions of confinement at the Wayne County Jail during the pendency of the COVID-19 pandemic.

In addition, Plaintiffs ask this Court for the immediate entry of an order requiring the Jail to reduce its detainee population to a level where detainees and Jail staff can meaningfully practice social distancing and maintain daily living practices that reasonably mitigate the risk of infection and spread of COVID-19. This includes immediately discontinuing the use of Division II to house detainees. Dr. Fred Rottnek, the medical expert appointed by this Court to conduct an inspection of all three Jail divisions on May 16, 2020, concluded that [REDACTED]

[REDACTED]

[REDACTED]. The inability to socially distance in and adequately clean Division II makes it impossible to mitigate the spread of COVID-19 at the facility. Thus, the federal and state constitutions cannot and do not permit the continued incarceration of detainees in Division II during the pandemic.

Lastly, Plaintiffs request that this Court set an evidentiary hearing to examine allegations in Plaintiffs' Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.

Dated: May 28, 2020

Respectfully submitted,

/s/Deborah Choly

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

/s/ William Goodman

WILLIAM H. GOODMAN (P14173)  
Goodman, Hurwitz, & James, PC  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/Desiree M. Ferguson

Desiree M. Ferguson (P34904)  
Erin Keith (P81298)  
DETROIT JUSTICE CENTER  
1420 Washington Blvd., Suite 301  
Detroit, MI 48226  
Tel: (313) 736 -5957  
dferguson@detroitjustice.org  
ekeith@detroitjustice.org

/s/Allison L. Kriger

Allison L. Kriger (P76364)  
LARENE & KRIGER, P.L.C.  
645 Griswold Street, Suite 1717  
Detroit, Michigan 48226  
Tel: (313) 967-0100  
allison.kriger@gmail.com

/s/Miriam R. Nemeth

Miriam R. Nemeth (P76789)  
ADVANCEMENT PROJECT  
NATIONAL OFFICE  
1220 L Street NW, Suite 850  
Washington, DC 20005  
Tel: (202) 728-9557  
mnemeth@advancementproject.org

*Attorneys for Plaintiffs*



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, et. al., Case No. 71 173 217 CZ

Hon. Timothy M. Kenny

Plaintiffs,

v

WILLIAM LUCAS, et. al.,  
Defendants.

---

DEBORAH ANN HOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

---

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman, Hurwitz, & James, PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

---

**BRIEF IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

## **TABLE OF CONTENTS**

INTRODUCTION .....	1
BACKGROUND AND FACTS .....	3
I.    The COVID-19 Crisis is a Health Crisis Unmatched in Living Memory.....	3
II.   A COVID-19 Jail Outbreak is an Extreme Threat to Public Health.....	6
III.  Defendants Are Not Taking Necessary Steps to Prevent A Widespread Outbreak in the Jail. ....	7
A.   The Three Divisions of the Jail House Numerous People Who Are Currently at Risk of Contracting COVID-19.....	7
B.   Defendants maintain dangerous conditions at the Jail by failing to practice critical social distancing and confining detainees in facilities where social distancing is impossible. ....	8
C.   Defendants do not properly sanitize the Jail and do not provide detainees with adequate or effective cleaning supplies. ....	11
D.   Defendants do not provide basic personal hygiene supplies to detainees.....	14
E.   Jail staff do not consistently wear protective gear, putting detainees further at risk. ....	15
F.   Defendants are failing to properly treat and quarantine detainees who test positive.....	16
G.   Defendants are failing to provide adequate and timely medical care.....	18
1.   Defendants’ medical procedures are inadequate. ....	18
2.   Defendants punish detainees who raise concerns about the lack of medical care or unsanitary conditions of confinement. ....	20

H.	Defendants’ testing procedures are insufficient. ....	22
I.	Defendants fail to provide information about COVID-19 and its spread, instead misleading detainees to believe they are <i>safer</i> within the Jail. ....	23
J.	Defendants do not properly screen individuals entering the Jail, exacerbating the potential for viruses to infiltrate the Jail. ....	24
K.	Dr. Rottnek’s inspection report confirms the allegations in the <i>Russell</i> Complaint and shows that Defendants continue to disregard the risk that Plaintiffs will contract COVID-19 at the Jail. ....	26
ARGUMENT .....		29
I.	Plaintiffs are likely to succeed on the merits because Defendants are violating Plaintiffs’ rights under the Eighth and Fourteenth Amendments. ....	31
A.	Plaintiffs are objectively at a substantial risk of harm. ....	33
B.	Defendants have acted and are continuing to act with subjective indifference towards Plaintiffs’ substantial risk of harm. ....	37
II.	Plaintiffs will suffer irreparable harm. ....	43
III.	The public interest and balance of equities weigh heavily in Plaintiffs’ favor. ....	46
CONCLUSION .....		49
CERTIFICATE OF SERVICE .....		2

## TABLE OF AUTHORITIES

### Cases

<i>ACLU of Ky. v. McCreary Cty., Ky.</i> , 354 F.3d 438, 445 (6th Cir. 2003) .....	45
<i>Bell v. Wolfish</i> , 441 U.S. 520, 535 (1979) .....	34
<i>Brown v. Bargery</i> , 207 F.3d 863, 867 (6th Cir. 2000) .....	32
<i>Brown v. Plata</i> , 563 U.S. 493, 531-32 (2011) .....	34
<i>Cameron v. Bouchard</i> , No. 20-cv-10949, 2020 WL 2569868 (E.D. Mich. May 21, 2020) .....	46
<i>Carlton v. Dep't of Corrections</i> , 215 Mich. App. 490, 505, 546 N.W.2d 671 (Mich. 1996) .....	33
<i>Castillo v. Barr</i> , __ F. Supp. 3d __, CV 20-00605 TJH (AFMx), 2020 WL 1502864, at *5 (C.D. Cal. Mar. 27, 2020) .....	46
<i>City of Dearborn v. Comcast of Mich.</i> , 558 F. Supp. 2d 750, 754 (E.D. Mich. 2008) .....	30
<i>City of Revere v. Mass. Gen. Hosp.</i> , 463 U.S. 239, 244 (1983) .....	32, 34
<i>DeShaney v. Winnebago Cty. Dep't of Soc. Servs.</i> , 489 U.S. 189, 200 (1989) .....	33
<i>Detroit Fire Fighters Ass'n, IAFF Local 344 v. Detroit</i> , 482 Mich. 18, 34, 753 N.W.2d 579 (Mich. 2008) .....	30
<i>Dodds v. U.S. Dep't of Educ.</i> , 845 F.3d 217, 222 (6th Cir. 2016) .....	47
<i>Estelle v. Gamble</i> , 429 U.S. 97, 104 (1976) .....	32, 33
<i>Farmer v. Brennan</i> , 511 U.S. 825, 834 (1994) .....	32, 35, 43
<i>Flanory v. Bonn</i> , 604 F.3d 249, 255-56 (6th Cir. 2010) .....	35
<i>G &amp; V Lounge, Inc. v. Mich. Liquor Control Comm'n</i> , 23 F.3d 1071, 1079 (6th Cir. 1994) .....	47
<i>Garner v. Michigan State University</i> , 462 N.W.2d 832, 838 (Mich. App. 1990) .....	45
<i>Helling v. McKinney</i> , 509 U.S. 25, 33 (1993) .....	35, 36, 38, 45
<i>Hope v. Pelzer</i> , 536 U.S. 730, 738 (2002) .....	38
<i>Hopper v. Phil Plummer</i> , 887 F.3d 744, 752 (6th Cir. 2018), <i>reh'g denied</i> (May 1, 2018) .....	32
<i>In re DeLorean Motor Co.</i> , 755 F.2d 1223, 1229 (6th Cir. 1985) .....	30
<i>Johnson v. Operation Get Down, Inc.</i> , No. 11-15487, 2014 WL 3752481, at *5 (E.D. Mich. 2014) .....	35
<i>Jolly v. Coughlin</i> , 76 F.3d 468, 477 (2d Cir. 1996) .....	35
<i>Kingsley v. Hendrickson</i> , 576 U.S. 389, 135 S. Ct. 2466, 2472–2473 (2015) .....	32, 34
<i>Lee v. Birkett</i> , No. 09–cv–10723, 2010 WL 1131485, at *5 (E.D. Mich. Feb. 18, 2010) .....	35
<i>People v. Bullock</i> , 485 N.W.2d 866, 872, 440 Mich. 15, 30 (Mich. 1992) .....	33
<i>Richko v. Wayne Cty., Mich.</i> , 819 F.3d 907, 915 (6th Cir. 2016) .....	32, 34

<i>Richmond v. Huq</i> , 885 F.3d 928, 937 (6th Cir. 2018) .....	38
<i>Thakker v. Doll</i> , __ F. Supp. 3d __, 2020 WL 1671563 at *8 (M.D. Pa. Mar. 31, 2020) .....	40
<i>United States v. Garlock</i> , No. 18-Cr-00418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) .....	46
<i>United States v. Stephens</i> , __ F. Supp. 3d __, No. 15-CR-95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) .....	7
<i>Wilson v. Gordon</i> , 822 F.3d 934, 958 (6th Cir. 2016) .....	45
<i>Wilson v. Seiter</i> , 501 U.S. 294, 300 (1991) .....	34, 38
<i>Youngberg v. Romeo</i> , 457 U.S. 307, 324 (1982) .....	34
<i>Zhang v. Barr</i> , No. ED CV 20-00331-AB, 2020 WL 1502607, at *6 (C.D. Cal. Mar. 27, 2020) .....	46

## INTRODUCTION

An outbreak of the novel coronavirus is occurring in the Wayne County Jail (“Jail”), where Defendants confine approximately 700 human beings in life-threatening conditions. Recently released COVID-19 test results show that Defendants have failed to contain the spread of the virus in the Jail, and detainees, especially the medically vulnerable, remain in grave danger. As of May 11, 2020, 171 of the 689 (25%) detainees tested had either an active COVID-19 infection or COVID-19 antibodies in their blood, meaning that they were previously infected with the virus. These 171 infections are in addition to the 206 Wayne County Sheriff’s Office employees who have already tested positive for COVID-19 and four members of the Jail staff who have already died as a result of being infected with the virus.<sup>2</sup>

Despite the staggering rate of infections, Defendants continue to confine detainees in conditions that fail to mitigate the spread of the virus. Plaintiffs are detained in cells with open steel grids or bars that allow aerosolized and large droplets containing COVID-19 to freely spread between cells; are sometimes double-bunked, sleeping on top of each other; have limited or no access to hygiene

---

<sup>2</sup> See Amber Ainsworth, *206 Wayne County Sheriff’s Office employees, 29 jail inmates test positive for COVID-19*, WDIV ClickOnDetroit (May 8, 2020), <https://www.clickondetroit.com/news/local/2020/05/09/206-wayne-county-sheriffs-office-employees-29-jail-inmates-test-positive-for-covid-19/>.

products and cleaning supplies; are not properly quarantined when sick; and do not have access to medical care or equipment (including facemasks) anywhere near sufficient in quality or volume to respond to the COVID-19 outbreak that is occurring.

Most importantly, Defendants continue to confine detainees in areas of the jail where social distancing—the single most important precaution anyone can take to prevent spreading or contracting COVID-19—is impossible. The most troubling of which is Defendants continued use of Division II to confine detainees during the pandemic. Dr. Rottnek found [REDACTED]

[REDACTED] He also found that [REDACTED]  
[REDACTED] There is thus no way to reasonably mitigate the spread of COVID-19 in Division II, and its continued use during the pandemic will lead to increased COVID-19 infections among detainees and staff. [REDACTED]

[REDACTED] Ex. 6 (Declaration of Dr. Adam Luring (“Luring Decl.”)) ¶¶10, 30-39, 45. Because many people confined at the jail are medically vulnerable, the continued spread of the virus puts their health and lives in grave danger.

As COVID-19 spreads inside and outside the Jail, time is running out to save Plaintiffs’ lives and to prevent the Jail from becoming an epicenter of community

infection. Plaintiffs seek two forms of immediate relief. First, Plaintiffs seek class-wide relief requiring Defendants to take critical steps inside the Jail to safeguard people who, due to the nature of their confinement, are at serious risk of infection, illness, or death from COVID-19. Second, Plaintiffs seek an order requiring the Jail to reduce its detainee population to a level where detainees and Jail staff can adequately practice social distancing and maintain daily living practices that reasonably mitigate the risk of infection and spread of COVID-19.

This extraordinary moment requires the Court’s immediate intervention. The “horizon of risk for COVID-19 in this facility is a matter of days, not weeks.” Lauring Decl. ¶ 45. More persons incarcerated in Michigan prisons have died from COVID-19 than in any other state except Ohio.<sup>3</sup> And immediate relief is in the public interest, as a further outbreak within the Jail could drain the Detroit metropolitan area of limited healthcare resources, including ventilators. For these reasons, and for the reasons explained further below, this Court should grant Plaintiffs’ motion for temporary restraining order.

## **BACKGROUND AND FACTS**

### **I. The COVID-19 Crisis is a Health Crisis Unmatched in Living Memory.**

We are in the midst of an unprecedented public health emergency. *See* Ex. 2,

---

<sup>3</sup> *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project, (May 20, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.



Compl. ¶ 29. The number of people infected by COVID-19 has grown exponentially in this country since the first case was identified in January. *Id.* ¶ 32. By March 11, 2020, the World Health Organization defined the outbreak as a global pandemic. *Id.* ¶ 29. As of May 27, over 1,678,000 people have been diagnosed with COVID-19 in the United States, with over 99,000 deaths confirmed.<sup>4</sup> Without effective public health interventions, the Centers for Disease Control and Prevention (“CDC”) project that as many as 2.2 million Americans will die. *Id.* ¶ 32. This number is sure to rise if conditions in this country’s jails and prisons are not rapidly addressed.<sup>5</sup>

COVID-19 is a highly contagious virus that can severely damage lung tissue, impede cardiac functions (causing heart failure), and permanently harm other organs. *Id.* ¶ 33. Experiencing a severe case of COVID-19 has been compared to “drowning in [one’s] own blood.” *Id.* ¶ 34. Approximately 20% of people infected experience life-threatening complications; between 1% and 3.4% die. *Id.* ¶ 36. The fatality rate is about ten times higher than a severe seasonal influenza, even in countries with

---

<sup>4</sup> See Centers for Disease Control & Prevention, *Coronavirus 2019: Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 27, 2020).

<sup>5</sup> See Lisa Freeland, David Patton, & Jon Sands, *We’ll see many more covid-19 deaths in prisons if Barr and Congress don’t act now*, Wash. Post (Apr. 6, 2020), <https://www.washingtonpost.com/opinions/2020/04/06/covid-19s-threat-prisons-argues-releasing-at-risk-offenders/>; Udi Ofer & Lucia Tian, *New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us*, ACLU (Apr. 22, 2020), <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>.

highly effective health care systems. *Id.* Complications manifest at an alarming pace, and the required levels of medical support—which include highly specialized equipment like ventilators, as well as an entire team of health care providers—have been rapidly overwhelming hospitals nationally and globally. *Id.* ¶ 35.

Although everyone is at risk of contracting COVID-19, some populations are at higher risk for severe health outcomes. Certain underlying medical conditions—including lung disease, asthma, chronic obstructive pulmonary disease, chronic liver or kidney disease, diabetes, epilepsy, hypertension, hepatitis C, compromised immune systems, blood disorders, inherited metabolic disorders, and a history of strokes—increase the risk for individuals of any age. *Id.* ¶ 33. People over the age of fifty and pregnant people also face greater chances of serious illness or death. *Id.* The only known effective measure to mitigate these more extreme risks is to prevent infection in the first instance. *Id.* ¶ 37.

Accordingly, public health experts and officials urge “social distancing”—isolating oneself from other people at a minimum distance of six feet—as well as frequent hand-washing, use of hand sanitizer, and frequent cleaning and disinfecting of high touch surfaces and objects. *Id.* These measures are particularly important in jail, a congregate setting that can rapidly become a “public health disaster unfolding before our eyes.”<sup>6</sup>

---

<sup>6</sup> Jan Ransom & Alan Feuer, *We’re Left for Dead: Fears of Virus Catastrophe at Rikers Jail*, N.Y.

## **II. A COVID-19 Jail Outbreak is an Extreme Threat to Public Health.**

Incarcerated persons are at heightened risk of infection and death from COVID-19. Compl. ¶ 43 (citing the CDC’s guidance for detention facilities). According to public health experts, “the risk posed by COVID-19 in jails and prisons is significantly higher than in the community . . . in terms of risk of transmission, exposure, and harm to individuals who become infected.” *Id.* ¶ 40; *see also* Ex. 4 (Declaration of Dr. Jaimie Meyer (“Meyer Decl.”)) ¶ 7; Luring Decl. ¶ 41. This is due to a number of factors, including forced proximity of detained individuals, their inability to protect themselves through social distancing, lack of medical and hygiene supplies, heavy reliance on outside hospitals for serious medical care, forced labor of incarcerated people in cleaning the facilities with insufficient supplies, constant cycling of people through the jails, and inadequate medical care within the jail itself. Compl. ¶ 41.

The growing devastation in jails around the country (and in Michigan) is a harbinger for what awaits Wayne County. In New York City, less than a month after the detection of the first case at Rikers Island, more than 700 people—including more than 400 jail staff—had tested positive, and two jail officers had died. *Id.* ¶ 47. As of May 20, 2020, Michigan prisons have reported at least 3,262 cases of

---

Times, Mar. 30, 2020, <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>.

coronavirus among detainees and 59 deaths, rates that are more than 1500% and 200% higher, respectively, than Michigan's overall infection and death rates.<sup>7</sup>

An outbreak cannot be contained inside the Jail. What happens to the people trapped inside this “ticking time bomb”<sup>8</sup> affects others who cycle through the Jail, including Jail and medical staff. Compl. ¶ 38; Ex. 3 (Declaration of Dr. Marc Stern (“Stern Decl.”)) ¶11. The outbreak then spreads to staff’s families and the community. Stern Decl. ¶ 11. Jail outbreaks can quickly overwhelm regional hospitals, making resources unavailable to treat others suffering from COVID-19 or unrelated life-threatening conditions like heart attacks. Compl. ¶ 51; Stern Decl. ¶ 11. As courts have noted, “[t]he more people we crowd into [a] facility, the more we’re increasing the risk to the community.” *United States v. Stephens*, \_\_ F. Supp. 3d \_\_, No. 15-CR-95, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020) (internal citation omitted).

### **III. Defendants Are Not Taking Necessary Steps to Prevent A Widespread Outbreak in the Jail.**

#### **A. The Three Divisions of the Jail House Numerous People Who Are Currently at Risk of Contracting COVID-19.**

Many of the persons detained in Division I (the “New Jail”) and Division II

---

<sup>7</sup> *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project, (May 20, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

<sup>8</sup> St. Louis Univ., “*Ticking Time Bomb*,” *Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

(the “Old Jail”) are detained pretrial and regularly travel back and forth between Division I and Division II. Many of the detainees confined in Division III (the “Dickerson Facility”) have been sentenced by the trial court, and some leave the Jail on work release and return each day and night. Ex. 7 (“C. White Decl.”) ¶ 11. The laundry services for all three Divisions and the juvenile detention center occur in Division III.

Aggressive measures are required to stop the spread of germs between and within Divisions, as an outbreak of COVID-19 in one part of one Division would all but guarantee a spread of the virus to other detainees and staff. This risk is not hypothetical given the number of Jail staff and detainees who have already contracted COVID-19 and those Jail employees that have already died. Defendants are thus well aware of COVID-19 and its grave risks, but they have failed to undertake the necessary measures to protect detainees from contracting the virus, instead directly placing detainees in harm’s way.

**B. Defendants maintain dangerous conditions at the Jail by failing to practice critical social distancing and confining detainees in facilities where social distancing is impossible.**

Social distancing is the single most important precaution anyone can take to prevent the spread of COVID-19. Compl. ¶ 8. Governors, mayors, and local city and county officials—including Defendant Sheriff Benny Napoleon, *see infra* note 21—have all urged the public to practice social distancing. *Id.* Gatherings where it

is impossible to maintain social distancing have been cancelled across the country and the world, and in several states, including Michigan, police are arresting or ticketing people who fail to maintain six feet of separation between themselves and others. *Id.* Yet, Defendants continue to confine detainees in areas of the Jail where socially distancing is impossible.

In Divisions I and II, social distancing at the current jail population level simply cannot be done. In both Divisions, the jail cells [REDACTED]

[REDACTED]. The layout of Division II [REDACTED]

[REDACTED]. *Id.*

Additionally, the physical conditions of Division II render the facility completely unsafe for detainees during the pandemic: the [REDACTED]

[REDACTED] *Id.* at 12. Because the virus can survive on inanimate objects and surfaces, the inability to properly and adequately clean high touch objects and surfaces seriously increases the risk of the spread of COVID-19. Loring Decl. ¶¶

21, 30.

Detainees with serious underlying medical conditions and other concurrent illnesses, like pneumonia, are confined in general population units where social distancing is impossible. Ex. 8 (“Mathews Decl.”) ¶ 3; Ex. 9 (“Russell Decl.”) ¶ 8. Charles Russell, who has stage three prostate cancer<sup>9</sup> and diabetes, lived in a general population unit with 25 other detainees; they were all forced to share three working showers and four working toilets. Russell Decl. ¶ 8-9.<sup>10</sup>

[REDACTED] Defendants continue to double-bunk detainees, in beds that are only a few feet apart from each other. [REDACTED] *see also* Ex. 10 (“Nickel Decl.”) ¶ 5. This practice does not allow for the requisite social distancing to occur. Even more troubling, Dr. Rottnek found that, in the medical unit, [REDACTED]

[REDACTED]. The detainees had [REDACTED]  
[REDACTED]  
[REDACTED]

Even where social distancing is possible, Jail staff are failing to practice social distancing. Dr. Rottnek observed Jail staff in a medical clinic [REDACTED]

---

<sup>9</sup> Cancer patients have shown a higher risk of death or severe complications from COVID-19 compared with those without cancer. *See* Laurie McGinley, *Patients with certain kinds of cancers are nearly three times as likely to die of covid-19, study says*, Wash. Post (Apr. 28, 2020), <https://www.washingtonpost.com/health/2020/04/28/coronavirus-cancer-deathrates/>.

<sup>10</sup> Mr. Russell was released after the filing of the *Russell* complaint.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>11</sup>

**C. Defendants do not properly sanitize the Jail and do not provide detainees with adequate or effective cleaning supplies.**

Defendants are not taking basic measures to maintain safe, hygienic conditions at the Jail and are instead creating and perpetuating a dangerous, unsanitary environment that is putting detainees at risk. Some of the cell walls in Division I are covered with urine, feces, and vomit. *See* Ex. 11 (“Kelly Decl.”) ¶ 15. Dr. Rottnek found, and Jail staff reported, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Common surfaces that are touched frequently

---

<sup>11</sup> At the time the *Russell* Complaint was filed, detainees were at times confined in 8 feet by 15 feet cells that were shared with up to four other people, making social distancing impossible. *See* Compl. Ex. 4 (“Mathews Decl.”) ¶ 6; C. White Decl. ¶ 3; Compl. Ex. 5 (“Nickel Decl.”) ¶ 5. Detainees were only allowed to eat in common areas, and deputies often forced detainees to sit together at tables that are less than six feet apart, with four to five men per table. C. White Decl. ¶¶ 3, 5. At mealtimes, detainees were no more than a few feet from one another. Compl. Ex. 8 (“Carline Decl.”) ¶ 7; Mathews Decl. ¶ 8; Ex. 9 (“Smelley Decl.”) ¶ 7; C. White Decl. ¶¶ 3, 5; Nickel Decl. ¶ 6; Compl. Ex. 10 (“Blanks Decl.”) ¶ 7; Compl. Ex. 11 (“Pearson Decl.”) ¶ 6. After the *Russell* Complaint was filed, [REDACTED]



are not cleaned regularly; even when they are cleaned, proper disinfectant is often not used. Ex. 12 (“Smelley Decl.”) ¶ 8-10. Showers are cleaned only on a weekly basis, if at all. *Id.* ¶ 10. Phones and tablets, shared by all detainees on a given unit to communicate with loved ones or attorneys, are cleaned once a day, at most. *Id.* ¶ 10; C. White Decl. ¶ 6; Kelly Decl. ¶ 31. On some units, detainees attempt to clean the phones and tablets themselves using generic cleaning liquids, but detainees on other units have no way of doing so. Russell Decl. ¶ 10; Ex. 13 Carline Decl. ¶ 10. In other instances, detainees attempt to protect themselves by using a sock or a t-shirt to cover the phone during use. Ex. 14 (“McKay Decl.”) ¶ 4. Towels, clothes, and bedding are not laundered frequently, either; detainees sometimes wait weeks to receive clean uniforms or blankets. Carline Decl. ¶ 12. Upon completion of laundering, detainees are not returned the same uniforms or bedding materials. Underclothes are infrequently laundered, if at all, by the jail laundry system. McKay Decl. ¶ 10. Detainees are forced to wash their underclothes in the sinks inside their cells when one is available. They are relegated to using the same sinks to obtain drinking water. *Id.* ¶ 11.

The bathrooms and showers the detainees share are unsanitary or often not even functioning. Some sink water is tainted with fecal matter because the sink water is connected to the toilet water. Ex. 15 (“Blanks Decl.”) ¶ 4, Nickel Decl. ¶ 10. Some sink basins have mold, others are crawling with maggots and bugs, and

others do not function at all. Blanks Decl. ¶ 5; Nickel Decl. ¶ 10. Some showers are unusable, requiring detainees to take “bird baths” instead. Carline Decl. ¶ 6; Russell Decl. ¶ 9. The showers that do work are “filthy.” Nickel Decl. ¶ 10. Detainees must share showers, which are not large enough for detainees to have at least six feet of space between each other. *Id.* ¶ 11. Plaintiffs are prevented from adequately cleaning any of these surfaces and spaces more frequently themselves because the Jail controls access to basic cleaning supplies, like mops and buckets, and provides them to detainees, at most, only once every morning. Carline Decl. ¶ 9; Kelly Decl. ¶ 30; Blanks Decl. ¶ 11. Detainees also do not have any bleach to clean these shared surfaces, even though the Jail staff has such chemicals available for this purpose. Russell Decl. ¶ 14. Deputies keep bleach in a secluded area that only deputies can access. *Id.* Deputies use Lysol, PineSol, and other name-brand cleaning supplies to clean their own areas, but the detainees are forced to use a different cleaner, called “Simple Green,” which does not protect against coronavirus. [REDACTED] Ex. 16 (“Hubbard Decl.”) ¶ 6, 8; Ex. 17 (“Pearson Decl.”) ¶ 15, 18, 19. Indeed, Simple Green’s own website states: “Simple Green All-Purpose Cleaner is not a disinfectant and will not kill bacteria or viruses.”<sup>12</sup>

---

<sup>12</sup> See Simple Green, *Coronavirus Frequently Asked Questions* (Mar. 11, 2020), <https://simplegreen.com/news-and-media/coronavirus-faq/>. The CDC has not identified Simple Green as one of the EPA-registered disinfectants effective against the virus in its Interim Guidance on Management of Coronavirus in Correctional and Detention Facilities. See Ex. 5 at 7, 9, 18.

**D. Defendants do not provide basic personal hygiene supplies to detainees.**

In addition to the deplorable conditions they maintain inside the Jail, Defendants do not provide detainees with enough of the basic hygiene supplies that are critical to preventing the spread of COVID-19. Although the CDC advises that handwashing is one of the best ways to protect against COVID-19,<sup>13</sup> the Jail does not supply enough soap for detainees to regularly wash their hands. With the exception of Division I, Defendants provide detainees with only two or three hotel-sized bars of soap per week, which Plaintiffs must use to wash their clothes, hands, and bodies. Carline Decl. ¶ 11; Smelley Decl. ¶ 11; [REDACTED]. Defendants do not provide additional soap when a detainee runs out; the detainee's only option is to ask another detainee for soap or purchase it from commissary if they have funds in their account. Carline Decl. ¶ 11; Smelley Decl. ¶ 11. Defendants do not otherwise provide Plaintiffs with supplies for hand sanitization. Carline Decl. ¶ 11. Defendants' distribution of hygiene supplies [REDACTED]  
[REDACTED]  
[REDACTED] (emphasis added).

---

<sup>13</sup> See Centers for Disease Control & Prevention, "When and How to Wash Your Hands," <https://www.cdc.gov/handwashing/when-how-handwashing.html> (last visited Apr. 27, 2020).

**E. Jail staff do not consistently wear protective gear, putting detainees further at risk.**

Jail staff fail to consistently wear appropriate protective gear while inside the Jail—a stunning fact given that two deputies and two physicians working in the Jail have already died from COVID-19, and over 200 employees from the Wayne County Sheriff’s Office have already tested positive. C. White Decl. ¶ 9; Kelly Decl. ¶ 32; Carline Decl. ¶ 11; Pearson Decl. ¶ 13; [REDACTED]. Commander Donafay Collins, an employee of the Sheriff’s Office and one of the staff fatalities, was present on units with detainees right before he died of COVID-19.<sup>14</sup> Smelley Decl. ¶ 14. Even the deputies who have been diagnosed with COVID-19 still do not consistently wear masks or gloves. *Id.*

Compounding these egregious practices by the guards, Defendants have also denied detainees access to sufficient personal protective equipment. Though some detainees have been provided blue cloth masks, those masks are now weeks old. Mathews Decl. ¶ 11; C. White Decl. ¶ 9; Pearson Decl. ¶ 11; Ex. 18 (“Malec Decl.”) ¶ 7 (explaining that these masks are “like those you see at the dentist’s office.”). Other detainees were given paper masks that they were expected to wear for two weeks, even though the masks were so cheap that they tore once they were worn.

---

<sup>14</sup> *Wayne County Sheriff’s Commander Donafay Collins dies of COVID-19*, WXYZ Detroit (Mar. 25, 2020), <https://www.wxyz.com/news/coronavirus/wayne-county-sheriffs-commander-donafay-collins-dies-of-covid-19>.

Ex. 19 (“H. White Decl.”) ¶ 4. Most of the detainees do not have gloves. Mathews Decl. ¶ 11; Hubbard Decl. ¶ 9.

Dr. Rottnek confirmed that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Thus, [REDACTED]  
[REDACTED] *id.*, or they are [REDACTED] *id.* at 15. And detainees have even gone as far as [REDACTED]  
[REDACTED] *Id.* Dr. Rottnek also found that [REDACTED]  
[REDACTED]  
[REDACTED].

**F. Defendants are failing to properly treat and quarantine detainees who test positive.**

Even though COVID-19 has already infiltrated the Jail, Defendants are not taking adequate measures to prevent the virus from spreading by quarantining and caring for detainees who may be or are positive for COVID-19. Instead, Jail staff place these detainees in a makeshift medical ward on another cell block without access to meaningful medical care.

Detainee Mark Malec was confined in the same unit as Michael Meshinski, a former detainee who exhibited symptoms of COVID-19 in the Jail and died of the

virus just two days after his release in early April.<sup>15</sup> Mr. Malec became seriously sick shortly after Mr. Meshinski's release. Malec Decl. ¶ 9. He had a headache and a cold, was coughing up black phlegm, and was unable to taste anything for two weeks. *Id.* Despite his known proximity to Mr. Meshinski, serious symptoms, and numerous requests for medical attention, Mr. Malec was not tested for COVID-19 until April 20, 2020—almost three weeks after Mr. Meshinski's death. *Id.* ¶ 9. Mr. Malec tested positive for COVID-19, and he was placed into an 11-man makeshift infirmary after receiving his test results. *Id.* Mr. Malec explained that, in the unit:

[N]o one can come out of their cell, except for once a day. The Jail keeps bringing more sick people into the unit, so we keep getting exposed to the virus again, and I feel like I won't ever get healthy. We are not in any kind of pressurized rooms. The air just passes freely from one cell to the other. The deputies hand out meals, which we eat in our cells. Some of them wear gloves and masks and some of them don't. All of the detainees wear masks but not gloves, and we all share tablets, phones, and showers. They are cleaned with Simple Green after each use, but with disinfectant only once weekly.

*Id.* ¶ 9-10. Since being forced onto this “medical ward,” Mr. Malec has not seen a doctor, and the Jail has provided him only Tylenol, Gatorade, and cough syrup. Malec Decl. ¶ 11. Defendants' conduct in this instance not only unreasonably endangered Mr. Malec's health, but it also put other detainees in direct danger of

---

<sup>15</sup> See Charlie Leduff, *Wayne County Jail Gave an Infected Inmate a Bus Pass Home. Now He's Dead*, Deadline Detroit (Apr. 7, 2020), [https://www.deadlinedetroit.com/articles/24915/leduff\\_the\\_wayne\\_county\\_jail\\_gave\\_an\\_infected\\_inmate\\_a\\_bus\\_pass\\_home\\_now\\_he\\_s\\_dead](https://www.deadlinedetroit.com/articles/24915/leduff_the_wayne_county_jail_gave_an_infected_inmate_a_bus_pass_home_now_he_s_dead).

exposure to the virus.

Davonte Velez began feeling ill on April 2, 2020. Ex. 20 (“Velez Decl.”) ¶ 3. For five days, he consistently asked for medical treatment, all while experiencing common symptoms of COVID-19, including coughing and shaking. *Id.* ¶ 4. After five days, the Jail staff finally took Mr. Velez’s temperature, which was 103 degrees Fahrenheit. *Id.* Mr. Velez, too, was taken to the Jail’s inadequate “infirmary.” Mr. Velez describes his horrifying experience while recovering from COVID-19:

Being locked in a room for 23 hours per day without being able to talk to anyone is causing me and some of the other guys to have psychological problems. For 23 hours a day, I think about how I’m stuck in here with all of these sick people and I’m not getting better. When I try to ask the Jail staff about what’s going on, they don’t give me any answers.

*Id.* ¶ 12. The Jail did not even inform Mr. Velez that he had tested positive for COVID-19 until two weeks later. *Id.* ¶ 10. Mr. Velez is still sick and has been sick for almost a month—since April 2, 2020, he has tested positive for the virus twice. *Id.* ¶¶ 10-11.

**G. Defendants are failing to provide adequate and timely medical care.**

**1. Defendants’ medical procedures are inadequate.**

In general, the process for obtaining medical attention—for COVID-19 symptoms or otherwise—is shockingly deficient. To request medical attention,

detainees are required to fill out medical “kites”<sup>16</sup> but may do so only once in the morning or once at night. Carline Decl. ¶ 17. The Jail takes anywhere from weeks to months to respond to a detainee’s kite, and sometimes, Jail staff never respond at all, or dismiss detainees’ request for medical care. Carline Decl. ¶ 17; Smelley Decl. ¶ 3; C. White Decl. ¶ 12-13; Nickel Decl. ¶ 3; H. White Decl. ¶ 9; McKay Decl. ¶ 8.

Nurses distribute medication to detainees only twice a day, but they often bring detainees the wrong medication or fail to even bring any at all. Carline Decl. ¶ 18. Nurses use and re-use the same cups to hand out medication to multiple detainees without any regard for which detainees may be exhibiting symptoms of COVID-19. Carline Decl. ¶ 18. And nurses admonish detainees for seeking medical care, sometimes even withholding kites from detainees so they cannot put in the request. Pearson Decl. ¶ 14. Individuals showing symptoms of COVID-19 are frequently given little more than Tylenol and sent back to their units. Pearson Decl. ¶ 17; Malec Decl. ¶ 7.

The medical facilities are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>16</sup> A “kite” is a signed written request for medical attention that can be submitted once in the morning or once at night. Carline Decl. ¶ 17.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2. Defendants punish detainees who raise concerns about the lack of medical care or unsanitary conditions of confinement.**

Detainees who raise concerns about the lack of medical care or unsanitary conditions are punished. As a result, detainees are hesitant to inform Jail staff that they may be feeling sick for fear that they will be disciplined. Smelley Decl. ¶ 4; Mathews Decl. ¶ 3.

Plaintiff Christopher Hubbard is diabetic and asthmatic, and he has had pneumonia at least four times. Hubbard Decl. ¶ 2. He did not receive proper insulin or the right inhaler to treat his asthma, further exacerbating his already heightened risk for more serious complications from COVID-19—a risk that was even more

concerning because Mr. Hubbard had been confined with Mr. Meshinski, who died from COVID-19 after his release. *Id.* ¶ 3. But after raising his concerns regarding his medical needs to an officer, Jail staff placed Mr. Hubbard in “the hole”—a solitary confinement wing of the Jail packed with detainees, many of whom are showing signs of COVID-19—for seven days. *Id.* ¶ 10-12. “The hole” is musty and damp, like a basement, and crawling with mice and roaches. *Id.* ¶ 13. Mr. Hubbard could hear other detainees coughing and was forced to share an infrequently cleaned shower with these coughing detainees. *Id.* ¶ 12.

Like Mr. Hubbard, Mr. Velez has severe asthma and requires an albuterol inhaler. Velez Decl. ¶ 2. Even though Mr. Velez remains sick one month after first showing symptoms, and even though he has tested positive for COVID-19 *twice*, the Jail still refuses to provide him an inhaler. *Id.* Marlon Blanks also has severe asthma, and despite a prescription for an inhaler, the Jail has refused to provide him one either. Blanks Decl. ¶ 2. One deputy told Mr. Blanks to “fuck off” when he asked for an inhaler, while a nurse told him he didn’t know what he was talking about. *Id.*

Similarly, after CalDerone Pearson discovered that his cell was filled with bugs and unsuccessfully sought supplies to clean it, he asked to be moved to a different cell. Pearson Decl. ¶ 19. The sergeant on duty told him he was “disobeying an order” and moved him to solitary confinement, where Mr. Pearson was locked in

his cell for 23 hours a day, unable to access commissary or the phone, and denied hot water for a shower. *Id.* ¶ 20.

**H. Defendants' testing procedures are insufficient.**

Although widespread testing of both symptomatic and asymptomatic individuals is widely accepted as *essential* in combatting the spread of COVID-19,<sup>17</sup> Defendants did not begin to conduct such testing until after the *Russell* lawsuit was filed. Defendants tested all detainees at the Jail between May 8-11, 2020. This one-time, Jail-wide testing is insufficient because the possibility of infection still remains high: [REDACTED]

[REDACTED]

[REDACTED].

Prior to the one-time, Jail-wide testing, Defendants routinely failed to identify and test detainees that were obviously symptomatic or who have been in close proximity to those who are. For example, it took Defendants weeks to test Mr. Malec, who had shared a unit with Mr. Meshinski, the former detainee who is now deceased. Courtney White is a trustee who worked closely alongside Mr. Meshinski in the laundry room. C. White Decl. ¶ 10; Compl. ¶ 93. When Mr. White and Mr. Meshinski worked together, none of the detainees had masks, and even though Mr.

---

<sup>17</sup> Umair Irfan, *The case for ending the Covid-19 pandemic with mass testing*, Vox (Apr. 13, 2020), <https://www.vox.com/2020/4/13/21215133/coronavirus-testing-covid-19-tests-screening>.

Meshinski exhibited visible symptoms of COVID-19, Jail staff kept him in the laundry room without personal protective equipment. C. White Decl. ¶ 10. Mr. White was not tested for COVID-19 even after Mr. Meshinski's highly reported death—an obvious, proactive measure Defendants clearly should have taken. *Id.*

[REDACTED]

[REDACTED]

[REDACTED]. Failure to regularly test Jail staff who enter and exit the jail multiple times daily, and who already have a high infection rate among their population, compounds the risk of infection and spread of the virus in the Jail.

**I. Defendants fail to provide information about COVID-19 and its spread, instead misleading detainees to believe they are *safer* within the Jail.**

Although Defendants are clearly aware of the COVID-19 crisis, they have done little to educate the detainees in their care about the pandemic; detainees are instead forced to rely on the news or information from loved ones—when they can access it—for details about the virus and how to best protect themselves. Mathews Decl. ¶ 10; Smelley Decl. ¶ 13; Nickel Decl. ¶ 4; Pearson Decl. ¶ 16; [REDACTED]

[REDACTED]

[REDACTED]. Some Jail staff have unplugged the television to restrict detainees' access to news about COVID-19. H. White Decl. ¶ 12. Defendants have not even explained to detainees' basic preventative measures such as proper hand washing.

C. White Decl. ¶ 14. Female detainees who express concerns over COVID-19 are dismissed by Jail staff as “being dramatic.” Nickel Decl. ¶ 2. Other detainees report that the deputies treat them as “less than human” and dismiss their coronavirus-related concerns. Blanks Decl. ¶ 16.

Defendants have also engaged in active misinformation. On at least one occasion in Division I, Jail staff turned up the heat and told detainees that the heat would kill the virus.<sup>18</sup> Nickel Decl. ¶ 4. Other Jail staff have improperly suggested that the Jail is the “best place possible” to be during the pandemic.<sup>19</sup> Nickel Decl. ¶ 4; C. White Decl. ¶ 14. Mr. Carline explains:

The Jail isn’t telling us anything about COVID. When I ask about COVID, they dismiss what we have to say. When detainees are scared or in fear of getting sick or dying, the deputies tell us we are in the best place possible. One deputy told us that he had been exposed to people with the virus but hadn’t caught it.

Carline Decl. ¶ 15.

**J. Defendants do not properly screen individuals entering the Jail, exacerbating the potential for viruses to infiltrate the Jail.**

---

<sup>18</sup> Turning up the heat in the Jail will not kill the virus, at least not before it seriously harms the detainees and staff inside the Jail. A research team had to heat the virus up to 197 degrees Fahrenheit for 15 minutes to kill it. See Hannah Osborne, *Coronavirus can Survive High Temperatures for Long Periods, Study Finds*, Newsweek (Apr. 15, 2020), <https://www.newsweek.com/coronavirus-heat-kill-virus-1498074>.

<sup>19</sup> Dr. Homer Venters, former chief medical officer of the New York City jail system, cautions that persons held in jails are at a higher risk in the jail and are likely to face serious, even grave, harm due to the outbreak of COVID-19. See Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

Finally, Defendants do not effectively screen detainees entering the Jail or transferring between the various Divisions—a common-sense, proactive measure that would prevent the spread of COVID-19 from outside the Jail or from one Division to another. *See, e.g.*, Smelley Decl. ¶ 15; C. White Decl. ¶ 11.

For example, Dominick Kelly was transferred back into the Jail on March 31, 2020 from a program at the Detroit Reentry Center where individuals were sick. Kelly Decl. ¶ 1. Upon reentering the Jail, Mr. Kelly was placed in “quarantine,” which consisted of ten five-by-five cages lined up in a row in Division I, separated only by bars, not walls. *Id.* ¶ 3. [REDACTED]

[REDACTED]

[REDACTED]

Before placing him in this communal area, Jail staff never questioned Mr. Kelly about how he was feeling, never gave him gloves or a mask, and did not wear appropriate protective gear themselves. *Id.* ¶ 5-7. Mr. Kelly was forced to share a shower with five other detainees who were also in “quarantine,” but he never saw the shower being cleaned. *Id.* ¶ 10. The Jail staff gave him one hotel-sized bar of soap and refused his requests for more soap. *Id.* ¶ 11. After three days, Mr. Kelly was transferred to the mental health ward for a second phase of this “quarantine,” where he had a cellmate and shared a shower with thirty other detainees. *Id.* ¶ 17-18. He was transferred again to a different floor in Division I, then to Division II. *Id.* ¶

24, 28. At no point was Mr. Kelly ever tested for COVID-19.

Similarly, Mr. McKay was in Division I for approximately seven days before being transferred to Division II. McKay Decl. ¶ 2. In Division I, Mr. McKay was detained in an open setting with eleven other people. *Id.* ¶ 2. After being in this area for about 4 days, he began to feel ill. *Id.* ¶ 4. He was transferred to Division II three days later. *Id.* ¶ 6. Although he experienced “shortness of breath and a very serious mucus build-up,” he was not tested for COVID-19. *Id.* ¶ 8. For at least two weeks he suffered serious coughing, continued mucus build-up, and loss of taste and smell. *Id.* ¶ 8. After initially experiencing difficulty accessing a medical kite from nursing staff, *id.* at 7, he was eventually given one, which he completed and submitted. But he was never treated for his ailments.

After the COVID-19 epidemic began, Plaintiff Shane Carline required unrelated medical attention in a local hospital. Carline Decl. ¶ 14. When Mr. Carline was transferred back into the Jail, he was sent to the mental health ward in Division I, where he was locked down for 24 hours a day. *Id.* He was then transferred back to general population in Division III without being tested or screened, even though he had been in a hospital, where he likely encountered patients and hospital workers infected by COVID-19. *Id.*

**K. Dr. Rottnek’s inspection report confirms the allegations in the *Russell* Complaint and shows that Defendants continue to disregard the risk that Plaintiffs will contract COVID-19 at the Jail.**

As noted above, Dr. Rottnek's inspection report confirms many of the dire facts alleged in the *Russell* Complaint and accompanying motion for emergency relief. Those pleadings were filed in federal court on May 4, 2020. Dr. Rottnek conducted his inspection 12 days after that filing, and his report shows that in those intervening 12 days, Defendants did little, if anything, to remedy the constitutional harms alleged in the *Russell* pleadings. Dr. Rottnek's report, therefore, not only shows that the constitutional violations are ongoing, but provides further evidence of Defendants' disregard for the safety, welfare, and lives those detained.

Dr. Rottnek's report clearly demonstrates that Defendants *still* are not taking the minimally necessary measures to improve the hygiene and safety at the Jail, which would mitigate the risk of infection and spread of COVID-19:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



\_\_\_\_\_

[REDACTED]

- [REDACTED]

Despite the filing of a lawsuit alleging serious constitutional violations, Defendants' continued failure to institute minimum measures to improve the hygiene and safety of the Jail and to ensure that social distancing is practicable and being practiced demonstrates the urgent need for this Court to provide the relief Plaintiffs seek.

### **ARGUMENT**

Plaintiffs are at imminent risk of death or serious injury. If this litigation is decided in the ordinary course, many class members will become seriously ill and some may die before final judgment. Numerous others will suffer severe pain or organ damage. To avoid that dire result, Plaintiffs seek two forms of immediate relief.

First, Plaintiffs seek an order requiring Defendants to undertake and follow the basic preventative measures and procedures recommended by medical professionals for the management of COVID-19 in jails and correctional settings. These procedures ensure that those detained at the Jail: 1) have access to adequate and timely medical treatment to screen, test, and treat symptoms; 2) can practice

social distancing; 3) can maintain necessary hygiene; and 4) are educated about COVID-19.

Second, Plaintiffs seek an order requiring the Jail to reduce its detainee population to a level where incarcerated persons and jail staff can adequately practice social distancing and maintain daily living practices that reasonably mitigate the risk of infection and spread of COVID-19.

Plaintiffs meet the legal requirements for a temporary restraining order and preliminary injunction that would require Defendants to reduce the Jail population and conform their practices to medically accepted means of preventing and mitigating the spread of COVID-19. As explained below: (1) Plaintiffs are likely to succeed on the merits of their claims; (2) Plaintiffs are likely to suffer irreparable harm in the absence of relief; (3) the balance of equities weighs in Plaintiffs' favor; and (4) an injunction is in the public interest. *Detroit Fire Fighters Ass'n, IAFF Local 344 v. Detroit*, 482 Mich. 18, 34, 753 N.W.2d 579 (Mich. 2008). This Court must balance each of the four factors and "no single factor is dispositive." *City of Dearborn v. Comcast of Mich.*, 558 F. Supp. 2d 750, 754 (E.D. Mich. 2008). Where, as here, plaintiffs demonstrate "irreparable harm which decidedly outweighs any potential harm to the defendant," the "degree of likelihood of success required" is less, and a plaintiff need only show "serious questions going to the merits." *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985).

**I. Plaintiffs are likely to succeed on the merits because Defendants are violating Plaintiffs’ rights under the Eighth and Fourteenth Amendments.**

Plaintiffs are highly likely to succeed on their claims because Defendants are deliberately disregarding the risk that Plaintiffs will contract COVID-19 within the current conditions at the Jail, in violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Sections 16 and 17, of the Michigan Constitution. Defendants’ failure to implement the basic steps recommended by health experts, the CDC, and Governor Gretchen Whitmer<sup>20</sup>—including access to basic medical screening and treatment protocols for infectious disease, providing soap and water so that those detained can wash their hands after touching objects or other people, the ability to clean and disinfect all surfaces touched by multiple people at least once daily, access to information about COVID-19, and, above all, giving people sufficient space to stay at least six feet away from others at all times—when they are well aware of the extreme risks posed by this virus constitutes deliberate indifference.

Under the United States Constitution, the government has a duty to protect persons it detains from “a substantial risk of serious harm.” *Farmer v. Brennan*, 511

---

<sup>20</sup> See Compl. Ex. 12, Executive Order 2020-29 (Mar. 29, 2020); Compl. Ex. 7, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC.gov (March 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

U.S. 825, 834 (1994). This right arises under the Eighth Amendment for individuals that are post-conviction, *see id.*; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), and under the Fourteenth Amendment’s Due Process Clause for individuals that are pre-conviction, *see City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Richko v. Wayne Cty., Mich.*, 819 F.3d 907, 915 (6th Cir. 2016).

To demonstrate a violation of the Eighth Amendment, convicted persons must show both an objectively substantial risk of serious harm and that prison officials subjectively “acted with deliberate indifference” towards the hazardous condition in question. *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000). Pursuant to the Supreme Court’s decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466, 2472–2473 (2015), pre-trial detainees need only satisfy the objective prong of the inquiry. *Hopper v. Phil Plummer*, 887 F.3d 744, 752 (6th Cir.), *reh’g denied* (May 1, 2018). Accordingly, pre-trial detainees can prove a Fourteenth Amendment claim by demonstrating solely that class members face a substantial risk of serious harm. *Kingsley*, 135 S. Ct. at 2472–73.

The Michigan Constitution affords Plaintiffs even more protection than the Eighth Amendment. The Michigan Supreme Court has held that “the Michigan Constitution’s prohibition against ‘cruel *or* unusual’ punishment may be interpreted more broadly than the Eighth Amendment’s prohibition against ‘cruel and unusual’ punishment.” *Carlton v. Dep’t of Corrections*, 215 Mich. App. 490, 505, 546 N.W.2d

671 (Mich. 1996) (emphasis added); *People v. Bullock*, 485 N.W.2d 866, 872, 440 Mich. 15, 30 (Mich. 1992) (“[T]he Michigan provision prohibits ‘cruel or unusual’ punishments, while the Eighth Amendment bars only punishments that are both ‘cruel and unusual.’”)

The Eighth and Fourteenth Amendment standards, as well as any requirements under the Michigan Constitution, are satisfied here because Defendants are violating Plaintiffs’ constitutional rights by incarcerating them in conditions that fail to mitigate the spread of a potentially fatal virus amid a growing pandemic despite Defendants’ knowledge and ability to do so.

**A. Plaintiffs are objectively at a substantial risk of harm.**

All people confined in the Jail, whether detained pretrial or incarcerated post-conviction, are entitled to be protected from conditions of confinement that create a substantial risk of serious harm. *See Farmer*, 511 U.S. at 834 (correctional officer violated Eighth Amendment by failing to prevent “a substantial risk of serious harm”); *Estelle*, 429 U.S. at 104 (“deliberate indifference” to serious medical needs violates the Eighth Amendment).

Jail officials have a constitutional obligation to provide for detainees’ reasonable safety and to address their serious medical needs. *See DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989) (“[W]hen the State by the affirmative exercise of its power so restrains an individual’s liberty that it

renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”); *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (the state has an “unquestioned duty” to provide adequate medical care for detained persons); *Wilson v. Seiter*, 501 U.S. 294, 300 (1991); *Estelle*, 429 U.S. at 104; *Brown v. Plata*, 563 U.S. 493, 531-32 (2011).

It is well established that, under the Fourteenth Amendment, pretrial detainees are entitled to at least the same level of protection as convicted detainees. *See Richko*, 819 F.3d at 915; *see also City of Revere*, 463 U.S. at 244 (“[T]he due process rights of a [pretrial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner”); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (holding that the Fourteenth Amendment requires that pretrial detainees be protected from any form of “punishment”). Thus, pretrial detainees need show only that the conditions of their confinement are unreasonable. *Kingsley*, 135 S. Ct. at 2473-74 (pretrial detainees need not show that prison officials subjectively “acted with ‘deliberate indifference’ towards the hazardous condition in question).

Exposure to an infectious disease like COVID-19 without adequate preventive measures is objectively unreasonable under the Fourteenth Amendment and constitutes deliberate indifference to a serious risk to health and safety, in direct

violation of the Eighth Amendment. A “condition of confinement that is sure or very likely to cause serious illness and needless suffering” to someone detained, which includes “exposure of inmates to a serious, communicable disease,” is precisely the type of serious harm that the Constitution protects against. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease . . . .”); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease.”); *Johnson v. Operation Get Down, Inc.*, No. 11-15487, 2014 WL 3752481, at \*5 (E.D. Mich. 2014) (finding that even a “short period” of exposures to an infectious antibiotic resistant staph infection could constitute deliberate indifference); *see also Farmer*, 511 U.S. at 833 (“[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”); *Flanory v. Bonn*, 604 F.3d 249, 255-56 (6th Cir. 2010) (recognizing that a complete denial of dental hygiene products can constitute deliberate indifference); *Lee v. Birkett*, No. 09-cv-10723, 2010 WL 1131485, at \*5 (E.D. Mich. Feb. 18, 2010) (holding that allegations that prisoners were forced to use common razors and be exposed to other unsanitary conditions for two months could constitute deliberate indifference).



COVID-19 is the quintessential “serious” and “communicable disease” from which the Constitution requires incarcerated people be protected. *Helling*, 509 U.S. 25 at 33-34. This disease has no vaccine, effective treatment, or cure. Even mild and moderate cases, it can feel like “having glass in your lungs” or “drowning in [one’s] own blood,” leaving patients choking and struggling to breathe. Compl. ¶ 34. It can cause permanent lung damage. *Id.* ¶ 33. In critical cases, patients may need to spend weeks attached to a ventilator and blood oxygenation machine. *Id.* ¶ 35. And, in the most serious cases, patients do not recover: COVID-19 has a fatality rate ten times higher than influenza. *Id.* ¶ 36.

Plaintiffs have an extreme and unreasonable risk of contracting COVID-19 because of their confinement. Laring Decl. ¶¶ 28-29 (the “Jail’s intake, screening, and quarantine procedure is wholly inadequate and staggeringly ineffective against preventing the risk of infection”). Across the country, governments have issued “shelter in place” orders closing public schools and non-essential businesses, banning people from eating in restaurants or even congregating in small groups, and requiring individuals to stay in their homes unless it is absolutely necessary to leave. When people leave their homes, they are advised to stay at least six feet from others, wear masks, avoid touching their faces, and wash their hands immediately upon returning home. The message is clear: individuals must take every possible step to avoid contracting and spreading COVID-19 because the risk of infection is so high.

But Plaintiffs, whose risk of contracting the virus is even higher, are being denied the ability to take the same basic precautions the government has deemed so essential for everyone else. Lauring Decl. ¶ 41.

Medically vulnerable detainees are “at significantly higher risk, probably double or triple the risk of having a severe outcome from their infection,” including “hospitalization, potentially winding up in an ICU, or even death,” if exposed to COVID-19. Testimony of Dr. Lauring, Trx. 5/4/2020 Evidentiary Hearing, p. 78, *Cameron v. Bouchard*, No. 20-cv-10949 (E.D. Mich.) (Parker, J.). As a result, the only practicable way to protect these persons from contracting COVID-19 is to reduce the Jail population to a number where incarcerated persons and Jail staff can adequately practice social distancing, the single most important precaution anyone can take to prevent spreading or contracting COVID-19. Compl. ¶¶ 8, 12. Otherwise, older detainees and those with underlying medical conditions, such as asthma, lung disease, heart disease, or diabetes, are more substantially likely to be infected and to develop serious illnesses. Lauring Decl. ¶ 15. Therefore, continued detention of medically vulnerable persons is a grave risk to their lives and violates the Constitution.

**B. Defendants have acted and are continuing to act with subjective indifference towards Plaintiffs’ substantial risk of harm.**

This Court need not consider the subjective prong of the deliberate indifference standard with respect to Plaintiffs that are incarcerated pretrial. Yet, even under the

Eighth Amendment’s more exacting standard, immediate injunctive relief is clearly appropriate for all Plaintiffs. That is because Defendants have certainly known of and disregarded an excessive risk to detainee health or safety. *Wilson*, 501 U.S. at 303; *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018).

With respect to an impending infectious disease like COVID-19, deliberate indifference is satisfied when corrections officials “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S. at 33 (holding that a prisoner “states a cause of action . . . by alleging that [corrections officials] have, with deliberate indifference, exposed him to conditions that pose an unreasonable risk of serious damage to future health”); *see also Hope v. Pelzer*, 536 U.S. 730, 738 (2002) (court “may infer the existence of [deliberate indifference] from the fact that the risk of harm is obvious” (citing *Farmer*, 511 U.S. at 842)).

This Court need not “await a tragic event” to find that Defendants are maintaining unconstitutional conditions of confinement amid a global pandemic. *See Helling*, 509 U.S. at 33. So long as the risk of serious harm is “likely,” as it is here, the Eighth Amendment is violated, even if “the complaining inmate shows no serious current symptoms,” it is “not alleged that the likely harm would occur immediately,” and “the possible infection might not affect all of those exposed.” *Id.*

Defendants are aware of the imminent severe risks posed by the coronavirus.<sup>21</sup> Through government orders,<sup>22</sup> CDC guidance aimed at jails,<sup>23</sup> and nationwide publications,<sup>24</sup> Defendants have been made well aware of the risks to incarcerated people. The Sheriff's own communications and announcements emphasize this awareness.<sup>25</sup> Similarly, the widespread public discussion regarding the heightened risk to medically vulnerable people make clear that Defendants are aware of the mortal peril that Jail conditions pose to such individuals. *See, e.g.*, H. White Decl. ¶ 12 ("I

---

<sup>21</sup> This is particularly true for Defendant Sheriff Benny Napoleon, who lost an employee, Donanfay Collins, to COVID-19 and whose brother, Hilton Napoleon, was hospitalized for several weeks due to this virus. *See, e.g., We will remember: Tribute to a few of the metro Detroiters who died of coronavirus*, Detroit Free Press (May 2, 2020), <https://www.freep.com/in-depth/news/local/michigan/detroit/2020/04/12/coronavirus-covid-19-metro-detroit-tributes/2966714001/> ("It was like someone put an anvil around my neck and just dropped it," Napoleon said, when learning of [Collins's] passing. "And I've been feeling very heavy since all of this transpired because I know this is not the last of it."); Marlowe Alter, *Highland Park Police Chief Hilton Napoleon hospitalized for 2 weeks with coronavirus*, Detroit Free Press (Mar. 26, 2020), <https://www.freep.com/story/news/local/michigan/wayne/2020/03/26/hilton-napoleon-coronavirus-michigan/2916825001/> (noting that Defendant Napoleon has been practicing social distancing from his family members due to the virus and believes in the importance of these practices).

<sup>22</sup> *See* Michigan Executive Order 2020-42, Michigan.gov (Apr. 9, 2020), [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90640-525173--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-525173--,00.html).

<sup>23</sup> Compl. Ex. 7.

<sup>24</sup> *See* David Mills & Emily Galvin-Almanza, *As many as 100,000 incarcerated people in our prisons will die from the coronavirus, unless the US acts now*, Bus. Insider (Apr. 2, 2020), <https://www.businessinsider.com/failure-to-release-prisoners-is-condemning-thousands-to-death-2020-4>; Anna Flagg & Joseph Neff, *Why Jails Are So Important in the Fight Against Coronavirus*, N.Y. Times (Mar. 31, 2020), <https://nyti.ms/3aIBHjv>; Timothy Williams et al., *'Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), <https://nyti.ms/2Jmnf4z>.

<sup>25</sup> *WCSO COVID-19 [sic] Response*, Wayne County Sherriff Connect (Apr. 11, 2020), <http://www.sheriffconnect.com/home/item/280-wcso-covoid-19-response.html>.

see Coronavirus on TV . . . When the guards hear something bad coming from the TV, they unplug it.”).

The list of reasonable measures to prevent the spread of COVID-19 is well delineated and publicized: “[s]ocial distancing and proper hygiene are the only effective means by which we can stop the spread of COVID-19.” *Thakker v. Doll*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 1671563 at \*8 (M.D. Pa. Mar. 31, 2020). Yet, Defendants have failed to ensure that either is being done at the Jail. As noted above, the CDC has pushed detention facilities to implement social distancing and “[p]rovide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing,” and advised that facilities must, “[s]everal times a day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas.” Compl. ¶ 43.

Despite these clear directives, Defendants have not provided Plaintiffs with protective measures—the space, soap, sanitizer, and cleaning supplies—necessary to allow staff and detainees to remain safe. Nor have Defendants provided timely and adequate medical care to identify, medically isolate (not punitively detain), and treat infected people. As a result, Plaintiffs have a substantial risk of contracting COVID-19, and medically vulnerable detainees face a very realistic threat of death and/or permanent organ damage. Laring Decl. ¶¶ 38, 43. Defendants’ failure to act constitutes deliberate indifference.

Even more importantly, however, the overwhelming medical and scientific consensus is that social distancing of at least six feet is required to reasonably reduce the risk of transmission of the novel coronavirus. The CDC,<sup>26</sup> the American Medical Association,<sup>27</sup> the American Red Cross,<sup>28</sup> and the Michigan Department of Health and Human Services<sup>29</sup> have all concluded that social distancing is essential to preventing transmission of the deadly infection. The CDC itself describes social distancing as “a cornerstone of reducing transmission of respiratory diseases such as COVID-19,” as “[t]he best way to prevent illness,” and as “extra important” for vulnerable individuals.<sup>30</sup> Defendant Napoleon concedes this point: “If you really love [your family and the people around you], you will adhere to the governor’s

---

<sup>26</sup> *Social Distancing, Quarantine, and Isolation*, CDC.gov (Apr. 4, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; *How to Protect Yourself & Others*, CDC.gov (Apr. 13, 2020) (explaining the paramount importance of social distancing, even if one is already taking other precautions such as a mask).

<sup>27</sup> *AMA, AHA, ANA: #StayHome to confront COVID-19*, Am. Medical Ass’n (Mar. 24, 2020), <https://www.ama-assn.org/press-center/press-releases/ama-aha-ana-stayhome-confront-covid-19>.

<sup>28</sup> *Coronavirus – What Social Distancing Means*, Am. Red Cross (Apr. 14, 2020), <https://www.redcross.org/about-us/news-and-events/news/2020/coronavirus-what-social-distancing-means.html>.

<sup>29</sup> *MDHHS issues Emergency Order requiring compliance with Executive Orders under penalty of civil fines up to \$1,000 and referral to licensing agencies for enforcement*, Mich. Dep’t of Health & Human Servs. (Apr. 2, 2020), <https://www.michigan.gov/coronavirus/0,9753,7-406-98163-524105--,00.html>.

<sup>30</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC.gov (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

directive” to stay at home and practice social distancing.<sup>31</sup>

Nevertheless, in the face of this awareness, Defendants continue to confine Plaintiffs in areas of the Jail where social distancing cannot be practiced. This is most evident in Division II. [REDACTED]

[REDACTED]

[REDACTED]

Further, the [REDACTED]

[REDACTED]

[REDACTED].

Although courts give some latitude to jail and prison officials to decide what actions are “reasonable” to deal with safety within facilities, COVID-19 is a threat to detainees’ health and safety of a magnitude unseen in recent history. At this moment, in the absence of a vaccine, there is only one way to minimize the risk of COVID-19: prevent its spread by social distancing.<sup>32</sup> By failing to take the necessary steps to do so in the Jail, Defendants are knowingly exposing Plaintiffs, guards and staff, and the public at large to the serious risk of a painful and lethal

---

<sup>31</sup> Marlowe Alter, *Highland Park Police Chief Hilton Napoleon hospitalized for 2 weeks with coronavirus*, Detroit Free Press (Mar. 26, 2020), <https://www.freep.com/story/news/local/michigan/wayne/2020/03/26/hilton-napoleon-coronavirus-michigan/2916825001/>.

<sup>32</sup> Compl. ¶ 8; Loring Decl. ¶ 13; Dr. Francis Collins, *To Beat COVID-19, Social Distancing is a Must*, NIH Director’s Blog (March 19, 2020), <https://directorsblog.nih.gov/2020/03/19/to-beat-covid-19-social-distancing-is-a-must/>.

disease. Defendants’ ongoing confinement of Plaintiffs in conditions where they cannot adequately practice social distancing constitutes further deliberative indifference to the risks caused by this virus. The risk is unacceptable and unconstitutional. *See Farmer*, 511 U.S. at 847 (“Failing to take reasonable measures to abate [risk]” demonstrates disregard of such risk.)

Officials’ indifference to the significant risk of permanent damage and death to medically vulnerable detainees is even more unacceptable. It is well-documented that these individuals face a risk of death or permanent organ damage far in excess of the rest of the population. Stern Decl. ¶ 11; Luring Decl. ¶¶ 38, 43. This risk is evident in the COVID-19 death toll to date—for instance, in New York state, almost 90% of reported COVID-19 deaths involved at least one comorbidity, according to the state’s department of health.<sup>33</sup> Defendants’ refusal or inability to provide circumstances that would limit the exposure of medically vulnerable detainees to the virus is unconscionable and constitutes deliberate indifference. Plaintiffs have shown that they are likely to succeed on the merits of their claims.

## **II. Plaintiffs will suffer irreparable harm.**

Plaintiffs allege injuries that are irreparable and, therefore, are not suitable for resolution in the ordinary course of litigation. There is no injury that is more

---

<sup>33</sup> *NYSDOH COVID-19 Tracker*, N.Y. State Dep’t of Health, <https://covid19tracker.health.ny.gov/> (last visited May 22, 2020).



irreparable than death, and Plaintiffs face a heightened risk of contracting a deadly virus due to Defendants' actions. Nor can these injuries be redressed through monetary damages. This risk is not speculative: in one Louisiana prison where COVID-19 was been allowed to spread, five people died in less than a week.<sup>34</sup>

According to Dr. Luring, a virologist, specialist in infectious diseases, and an Associate Professor at the University of Michigan, absent immediate intervention from this Court, people will die because of Defendants' deliberate indifference:

[I]t is my professional judgment that individuals placed in any division of the Jail are at a significantly higher risk of infection with COVID-19 as compared to the population in the community, given the housing conditions in the facility, and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis) and even death.

Without a vaccine, reducing the Jail's population to the point where social distancing can always be achieved is the only way to protect the health and safety of people detained in the facility and the public at large.

For the medically vulnerable . . . immediate release is the only option. The detainees' inability to practice physical distancing at all times, coupled with the Jail's failure to properly screen, identify, and quarantine infection, and their widespread neglect of medical needs creates a meaningfully higher risk of death for these individuals.

Luring Decl. ¶¶41-43.

---

<sup>34</sup> *ACLU Sues Louisiana Prison After 5 COVID-19 Deaths Reported*, Democracy Now (Apr. 7, 2020), [https://www.democracynow.org/2020/4/7/headlines/aclu\\_sues\\_louisiana\\_prison\\_after\\_5\\_covid\\_19\\_deaths\\_reported](https://www.democracynow.org/2020/4/7/headlines/aclu_sues_louisiana_prison_after_5_covid_19_deaths_reported).

Moreover, Plaintiffs seek relief from violations of their constitutional rights. When reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated. *See Garner v. Michigan State University*, 462 N.W.2d 832, 838 (Mich. App. 1990) (citing *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986)); *see also ACLU of Ky. v. McCreary Cty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). An injunction is appropriate to prevent a substantial risk of deprivation of constitutional rights, as well as death or permanent, debilitating injury. Being compelled to endure a substantially increased risk of serious illness and death will always constitute irreparable injury. *See, e.g., Helling*, 509 U.S. at 33 (“It would be odd to deny an injunction to detainees who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”).

The risk of permanent harm to Plaintiffs applies with greater force to the medically vulnerable detainees, for whom continued detention is even more likely to cause injury and death. *See Wilson v. Gordon*, 822 F.3d 934, 958 (6th Cir. 2016) (upholding preliminary injunction “where the alleged irreparable harm involves delay in or inability to obtain medical services”). With 60 active cases of COVID-19 among detainees in the Jail (as well as 111 detainees who tested positive for COVID-19 antibodies) and 206 confirmed cases among Sheriff’s Office employees,

the risk of death and physical devastation to subclass members is an absolute certainty that cannot be ignored. Courts across the country have recognized that risk of exposure to COVID-19 constitutes an irreparable harm; in turn, they have granted immediate release to people exposed to COVID-19 and have otherwise required jails and prisons to take immediate measures to reduce the risk of exposure.<sup>35</sup> This groundswell reflects an emerging judicial consensus that people cannot be safely detained when they are exposed to a serious risk of contracting COVID-19.

COVID-19 is already in the Jail. Every possible step must be taken to ameliorate the risk to those detained. Plaintiffs have shown irreparable harm.

### **III. The public interest and balance of equities weigh heavily in Plaintiffs' favor.**

The substantial risk to Plaintiffs of contracting a deadly disease considerably outweighs any potential harm to Defendants. As discussed above, Plaintiffs will suffer significant harm if forced to endure the current conditions in the Jail.

The only potential harm Defendants face if ordered to bring their Jail into

---

<sup>35</sup> The federal district court for the Eastern District of Michigan recently ordered Oakland County jail officials to submit a list of detainees for release consideration. *See Cameron v. Bouchard*, No. 20-cv-10949, 2020 WL 2569868 (E.D. Mich. May 21, 2020). *See also Zhang v. Barr*, No. ED CV 20-00331-AB, 2020 WL 1502607, at \*6 (C.D. Cal. Mar. 27, 2020) (granting an immediate bond hearing in light of the “global pandemic by which delay in determining Petitioner’s release exposes him to unnecessary risk”); *United States v. Garlock*, No. 18-Cr-00418, 2020 WL 1439980, at \*1 (N.D. Cal. Mar. 25, 2020) (ordering, *sua sponte*, extension of convicted defendant’s surrender date and noting “[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided”); *Castillo v. Barr*, \_\_\_ F. Supp. 3d \_\_\_, CV 20-00605 TJH (AFMx), 2020 WL 1502864, at \*5 (C.D. Cal. Mar. 27, 2020) (noting “the risk of infection in immigration detention facilities – and jails – is particularly high”).

compliance with CDC guidelines is economic: Jail staff may have to expend additional time, and the County may have to expend additional money, to provide the social distance, information, hygiene products, cleaning agents, and medical treatment necessary to kill and/or treat the virus. But the possibility that Defendants will have to spend money to reduce the substantial risk that Plaintiffs will be exposed to a deadly disease does not tip the balance in their favor because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 222 (6th Cir. 2016) (protection of constitutional rights is “always in the public interest”).

Immediately implementing the requested hygiene, social distancing, screening, and testing measures for the whole Class is the only way to reduce the imminent and grave risk of serious illness or death. These measures will also promote Defendants’ interests in ensuring the safety of the staff at the Jail and the community at large. Accordingly, the public interest would be served by issuing a preliminary injunction that requires Defendants to implement constitutionally adequate measures to prevent the spread of COVID-19 in the Jail.

The balance of equities and the public interest also favor reduction of the jail population to a level where socially distancing is practicable. Reduction of the jail population will save the Jail money and reduce the demands on Jail staff, including

guards and nurses. Further, reducing the jail population is the only way to eliminate the unacceptable risk of death or serious bodily harm that would occur if any medically vulnerable detainee contracted the virus, and the concomitant demand on public health resources that will result when they become infected in jail.

A worsened outbreak at the Jail has the potential to create a “tinderbox” scenario that drains the Detroit metropolitan area of limited medical resources, including intensive care unit beds and ventilators.<sup>36</sup> In Michigan, the COVID-19 outbreak has already resulted in unprecedented public health demands that have strained the local health care system.<sup>37</sup>

COVID-19 is, at this very moment, devastating Michigan’s carceral system. As of May 20, 2020, at least 59 persons incarcerated in Michigan prisons have died from COVID-19, the second most of any state.<sup>38</sup> Releasing vulnerable individuals is the only way to save lives and reduce the burden on the community and health infrastructure, and it is clearly in the public interest.

---

<sup>36</sup> *New Model Shows COVID-19 Death Toll is 100,000 Higher Than Current Projections*, ACLU.org (Apr. 22, 2020), <https://www.aclu.org/press-releases/new-model-shows-covid-19-death-toll-100000-higher-current-projections>.

<sup>37</sup> See Paul P. Murphy, *Detroit hospital workers say people are dying in the ER hallways before help can arrive*, CNN (April 9, 2020), <https://www.cnn.com/2020/04/09/us/detroit-hospital-workers-sinai-grace-coronavirus/index.html>.

<sup>38</sup> *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project, (May 20, 2020), <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

## CONCLUSION

For these reasons, Plaintiffs ask this Court to issue a temporary restraining order and preliminary injunction ordering the relief requested in their motion.

DATED: May 28, 2020

Respectfully submitted,

/s/Deborah Choly

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
2727 Second Ave., Suite 333, Box 37  
Detroit, MI 48201  
(313) 573-0073

/s/ William Goodman

WILLIAM H. GOODMAN (P14173)  
Goodman, Hurwitz, & James, PC  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/Desiree M. Ferguson

Desiree M. Ferguson (MI Bar No.  
P34904)  
Erin Keith (P81298)  
DETROIT JUSTICE CENTER  
1420 Washington Blvd., Suite 301  
Detroit, MI 48226  
Tel: (313) 736 -5957  
dferguson@detroitjustice.org  
ekeith@detroitjustice.org

/s/Allison L. Kriger

Allison L. Kriger (P76364)  
LARENE & KRIGER, P.L.C.  
645 Griswold Street, Suite 1717  
Detroit, Michigan 48226  
Tel: (313) 967-0100  
[allison.kriger@gmail.com](mailto:allison.kriger@gmail.com)

/s/Miriam R. Nemeth

Miriam R. Nemeth (P76789)  
ADVANCEMENT PROJECT  
NATIONAL OFFICE  
1220 L Street NW, Suite 850  
Washington, DC 20005  
Tel: (202) 728-9557  
mnemeth@advancementproject.org

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on May 28, 2020, the foregoing document was filed with the Clerk of Court and all parties using this Court's electronic filing system.

/s/ Allison L. Kriger

## **APPENDIX G**

Defendants' Response to Plaintiffs' Motion for  
a Temporary Restraining Order



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

WAYNE COUNTY JAIL INMATES, *et al.*

Plaintiffs,

Case No. 71-173217-CZ

v.

Hon. Timothy M. Kenny

WILLIAM LUCAS, *et al.*

Defendants.

---

**DEFENDANTS' REPSONSE TO PLAINTIFFS' MOTION  
FOR A TEMPORARY RESTRAINING ORDER**

NOME COME Defendants who hereby requests the Court deny Plaintiff's Motion for Temporary Restraining order for the reasons set forth in the brief.

**Introduction:**

On May 28, 2020 Plaintiffs filed the instant Motion for Temporary Restraining Order against Defendants. In order to grant a TRO, the Court must consider (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay. *Ohio Republic Party v Brunner*, 543 F.3d 357, 361 (6th Cir. 2008). A party seeking injunctive relief must meet all four requirements. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016) (quoting *Bluefield Water Ass'n v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009)).

While its clear COVID-19 presents a risk of harm, the question for this Court is whether the constitution requires the Defendants to do more than what they had already done to mitigate

the risk of harm.<sup>1</sup> Plaintiffs fail to present convincing evidence that the Defendants response is not enough and that Defendants subjectively believed their actions were inadequate.<sup>2</sup> Nothing could be further from the truth. Wayne County has taken several specific successful actions to reduce the spread of COVID-19.

No solution is perfect. The law only requires that the Sheriff and all its partners do a reasonable job in trying to maintain security for the residents of the county and appropriate constitutional health care for the inmates. The issue is not whether the health care is perfect. The issue before this court is whether the delivery of health care (within the jail) and the security of inmates is so bad that it amounts to a violation of the 8<sup>th</sup> Amendment as cruel and unusual punishment. As always, this Court must apply a balancing test: the constitutional rights of the inmate's versus a secure society and the upholding of the rule law. Underlying all of this is the fact that an inmate was adjudicated by a court as a pre-trial detainee or convicted and a duly elected judge set bail or an appropriate sentence. Plaintiffs' counsel is trying to apply a one answer fits all solution and their solution is release all inmates. There is no evidence the released inmate is any safer outside the jail or that the released inmate will engage in social distancing and wear a mask. The narrative established by Plaintiffs is not a proper balancing of the community interests, the rule of law and the safety of the inmate. There is no evidence the County or its partners were deliberately indifferent to any of the needs of the inmates. There is no likelihood that Plaintiff's will be successful.

---

<sup>1</sup> *Sanchez v. Brown*, No. 3:20-cv-00832-E, 2020 U.S. Dist. LEXIS 90667 (N.D. Tex. May 22, 2020) at \*51.

<sup>2</sup> *Id.* at \*51-\*52; referring to [\*Marlowe v. LeBlanc\*, No. 20-30276, 2020 U.S. App. LEXIS 14063, 2020 WL 2043425, at \\*2 \(5th Cir. April 27, 2020\).](#)

For the reasons set forth herein, Plaintiffs are unable to show a likelihood of success on their constitutional claims against Defendants, as there is simply no evidence that Wayne County has demonstrated any deliberate indifference in its response to the novel coronavirus pandemic.

#### **I. Factual Statement**

Since the coronavirus reached Michigan in early March much has changed at the Wayne County Jail and the surrounding region. As of June 1, 2020, the population of the Wayne County Jail was reduced by 40% as one measure to combat the spread of the COVID-19. The inmates that remain incarcerated were refused release based a number of judicial factors that this Court, in collaboration with the Wayne County Prosecutor and Inmate Counsel reviewed and applied. The number of hospitalizations in the region are down 83 percent from their peak in early April and continue to fall. Makeshift hospitals were built to accept the anticipated onslaught of patients, yet the are now closed after only treating 40 patients. Unfortunately, many of Plaintiff's complaints and declarations address issues pre-pandemic and prior to the decisions made by the County. Most of the items addressed are moot.

Since early March, under the auspice the Consent Order as overseen by this Court, Wayne County officials engaged in extensive efforts to reduce the jail population and implemented many measures to mitigate the spread of COVID-19. Plaintiffs, through their court appointed Counsel, attended no less than four (4) meetings with County officials and the Court between March 13, 2020 and April 29, 2020 to discuss the measures that were being taken and implemented by Defendants to address the pandemic. At no time did Plaintiffs raise any concerns that rise to the level for which they proclaim in their TRO request.

It wasn't until May 4, 2020, that Plaintiffs, seemingly unaware that they were already part of a class subject to a Consent Order regarding conditions of confinement, through new and

mostly out-of-state counsel, brought a purported class action in the United States District Court seeking injunctive relief regarding the Wayne County Jail's response to the coronavirus pandemic.<sup>3</sup> Plaintiffs filed this Motion on May 28<sup>th</sup> requesting this Court to enter a temporary restraining order against the Defendants, requiring the Defendants to: immediately undertake certain measures to improve the hygiene and safety and reduce the risk of severe illness and death from COVID-19 at the Jail, reduce the jail detainee population to an level where detainees and Jail staff can practice social distancing, immediately stop housing inmates at Division II, and for this Court to appoint an independent monitor to ensure compliance with any injunctive order that this Court may enter relating to the conditions of confinement at the Wayne County Jail during the pendency of the COVID-19 pandemic.

Plaintiffs, however, fail to recognize that prior to this TRO motion, Defendants and court appointed Inmate Counsel were taking action under the supervision of this Court to address the novel health crisis currently facing the world without the intervention or the additional burden of a TRO Petition and the ensuing trial. The current petition is more about attorney fees than it is the health of the inmates.

After the Plaintiffs filed their action in *Russell*, despite the measures already undertaken, the parties negotiated and agreed to a Stipulated Temporary Amendment of the existing Consent Order, **(Exhibit 1)**, which encompasses many of the measures currently being requested by Plaintiffs. The measures agreed upon by the parties to prevent the spread of COVID-19 are as follows:

1. Plaintiffs seek an inspection of all Jail facilities on or before May 18, 2020 by an inspector, to be selected by Judge Kenny at no cost to Defendants. Both parties may submit two proposed candidates for selection of the inspector. If the

---

<sup>3</sup> *Russell, et. al v Wayne County, et. al.* Case No. 2:20-cv-11094 (E.D. Mich. May 4, 2020)

inspector selected is upon the recommendation of Defendants and requires the payment of a fee, Defendants will cover the cost. The inspection will be limited to the COVID-19 pandemic response, as enumerated in the conditions agreed upon herein. Defendants will not object to Plaintiffs' request for an inspection of the Jail facilities. This inspection was carried out by Dr. Rottnek on May 16, 2020.

2. Ensure that each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant products<sup>4</sup> effective against the COVID-19 virus.
3. Provide access to showers on a daily basis.
4. Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves.
5. Ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas.
6. Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff.
7. Per protocol, continue to make COVID-19 testing available to all incarcerated persons either (a) displaying known symptoms of COVID-19 or (b) who have been in known proximity of other persons, within the last 14 days, who have tested positive for COVID-19;

---

<sup>4</sup> Disinfectant products must meet EPA's criteria for use against SARS-CoV-2, the virus that causes COVID-19. *See List N: Disinfectants for Use Against SARS-CoV-2*, EPA.gov, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2> (last visited May 7, 2020). The jail uses product called Simple Green d Pro 3 Plus

8. Provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible.
9. Ensure that individuals identified as having COVID- 19, as having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a designated quarantine area, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and be strongly encouraged to wear face masks when interacting with other individuals until they are no longer at risk of infecting other people.
10. Provide sufficient disinfecting supplies,<sup>5</sup> without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones and headphones) between each use.
11. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
12. Train all staff regarding measures to identify symptoms of COVID-19 in inmates, measures to reduce transmission, and the Jail's policies and procedures during this crisis (including those measures contained in this Order).
13. Refrain from charging medical co-pays to those experiencing COVID-19-related symptoms, including testing; and
14. Ensure that retaliatory discipline is not taken solely in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b)

---

<sup>5</sup> Disinfectants must meet EPA's requirements for use against SARS CoV-2. *See supra* note 2.

efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

Thus, if Plaintiffs' feels that the Defendants are not abiding by the Stipulation to the Consent Order, then a TRO would not be the proper forum for these disputes, a Show Cause Hearing would be the proper venue to enforce these agreed upon actions.

**A. What Wayne County officials have done to mitigate the spread of COVID-19 at the jail**

The WCJ began its efforts to prevent and fight against the spread of COVID-19 in compliance with CDC recommendations and as a part of its own independent policies long before this current litigation. These discussions quickly turned into action.

**i. Policies and Directives**

At the onset, WCJ began issuing policies and directives to address the pandemic. Below are the various **policies and directives** implemented by the WCJ in response to the COVID-19 pandemic: (*Exhibit 2*)

- Directive COJAC 20-04 signed **March 13, 2020**, outlines officer guidelines per CDC for identification and handling COVID19. The directive included measures regarding transportation inmates, isolating new inmates, social distancing, and prevention.
- Directive COJAC 20-05 signed **March 20, 2020**. Requires all persons entering the building Temperature screening & health assessment. The screening and assessment process consisted of forehead temperature scans along with visual observation and a brief questionnaire. Any person coughing, sneezing, experiencing shortness of breath, or other obvious signs of illness shall also be denied entry.
- Directive COJAC 20-06 signed **March 21, 2020**, revised the prior directive requiring temperature screening. and health screening per CDC recommendations.
- **March 24, 2020** Biweekly distribution of N95 masks to all members of the staff.

- Directive COJAC 20-07 signed **March 27, 2020**. All new book inmates entering the Jail facilities will be screened and assessed for signs and symptoms and quarantined for a minimum of 72.
- Directive COJAC 20-08 signed **March 31, 2020**. Requires PPE for Officers assigned Hospital Detail Security. Along with proper donning and doffing of respirator diagram.
- Directive COJAC-20-09, **Signed April 1, 2020**, Risk reductions protocols and procedures to eliminate the exposure and spread of COVID-19 regarding; Screening, Visits, Inmate transports, Quarantine, Protective equipment, Cleaning-sanitation, Hygiene, Laundry, Signage educating all importance of (social distancing, handwashing and personal hygiene) and Social Distancing.
- Reusable face shields given to officers, **April 1, 2020**.
- Directive COJAC 20-03 Requirement that inmates wear surgical masks when they are outside of their cells. Dated **April 10, 2020**. Inmates are issued a new surgical mask every two weeks.
- **April 10, 2020**, Inmate Face Mask officer signature sheets.
- **April 12, 2020**, all inmate activity restricted to the assigned housing unit. Inmates not allowed of their unit for any non-critical function.
- General Memo U/S 20-07 WCSO duty to get tested and report COVID 19 **April 20, 2020**.
- General Order U/S 20-08 was signed on April 23, 2020. **Requires all personnel to wear masks.**

In addition, Wellpath, Defendants' contracted medical provider enacted several measures to address the pandemic: *(Exhibit 3)*

- Procedure for suspected coronavirus was issued on **March 2, 2020**;
- Isolation and Cohort Guidance for COVID protocols were issued on March 17, 2020
- A patient testing strategy was implemented and updated;
- Off-site Guidance During COVID-19 procedures were issued;
- Guidance for CPR procedures during COVID were issued;
- COVID-19 Provider's Order and treatment plan were instituted;



**ii. Administrative releases**

Along with releasing the nonviolent and traffic inmates, administrative releases began at the direction of this Court in early March. Since March 19, at least 235 have been administratively released. *(Exhibit 4)* The process included representatives from the prosecutor's office, the sheriff's office, the jail's medical staff and court appointed inmate counsel in the class-action suit. The medical staff identified the inmates at greater risk for the coronavirus pursuant to the CDC guidelines, the sheriff's office pared down that list excluding those accused of assaultive crimes, felonies and some high misdemeanors, and making recommendations on which inmates should be released on tether rather than held in jail.

Additionally, other measures have been taken for the overall reduction of the inmate population in the WCJ. On March 13, 2020, the total inmate population of the Jail was 1,390 inmates. Currently, that population is around 800 inmates, with the lowest inmate population occurring on May 14, 2020 of 783 inmates. *(Exhibit 4)*

**iii. MDOC Inspection**

On Tuesday, May 12, 2020, the MDOC conducted an inspection of the Wayne County Jail as provided for by Act. No. 232 of the Public Acts of 1953, as amended, being section 791.262 of the Michigan Compiled Laws and the Governor's Executive Order 20020-62. *(Exhibit 5)* On the date of inspection, the Wayne County Jail was found to be in compliance with the MDOC COVID-19 Protocols.

**iv. Testing has been conducted**

The entire inmate population has been provided access to COVID-19 testing. As of today, 85 inmates have tested positive for COVID-19 at the jail with a total population averaging 800. There have been zero inmates on ventilators, zero inmates admitted to an ICU, and

importantly, zero deaths. **(Exhibit 6)** Currently, only 14 inmates who have tested positive that remain in the jail. The rest of the inmates who tested positive have been cleared as no longer being COVID positive.

When compared to the many other Jails, there is no indication that WCJ numbers are anything out of the norm.

Jail Name & Location	Total Population	Total Infections	Infection Rate (infected/total population)
Wayne County - Detroit, MI	March 10 - 1,381, As of April 10, 917	29 on May 8, 171 alleged in the Complaint	3.16% for May 8 numbers, Approx. 24.43% according to numbers alleged in Complaint
Cook County - Chicago, IL	4,567 total male and female as of 4/6/2020	700 inmates at it's worst	15.33% "at it's worst", now a positive test rate of below 10% after significant testing and measures taken
Los Angeles County - LA, CA	12,064 as of 5/28/2020	1,209 since start of pandemic	Approximately 10%
Rikers - New York, NY	3992 amid the pandemic, 5600 before COVID	348 currently infected as of 5/26/2020	Approximately 8.71% currently, 15.06% presumed "likely exposed but asymptomatic"
Harris County - Houston, TX	Hovers around 7,600 1,331, lowest	593 as of May 6, 2020	7.80% as of May 6th
Cuyahoga County - Cleveland, OH	population in facility history due to COVID	145 positive results	10.89%
Johnson County - Franklin Indiana (Indianapolis metro)	292 inmates	127 as of 5/14	43.49%
Milwaukee County - Milwaukee, WI	Approximately 600 as of 5/1	94 as of 5/1	15.67%
Dane County - Madison, WI	746 on 3/10, low 400s as of 5/15	37 since beginning of pandemic	9.25%
Philadelphia County - PA	3,725 at the end of April 2020	200 to date as of 5/19	5.37%
D.C. County Jail - Washington D.C.	1300 as of 5/23	185 positive from 3/14 to 5/14	14.23%

**v. Testing all new inmates**

On June 1, 2020, an Order was entered requiring all new inmates entering the Wayne County Jail on or after June 8<sup>th</sup>, 2020 to be tested for COVID-19. All inmates who test negative shall be re-tested in 14 days from their booking. The Order further indicates that all inmates who test negative for PCR, but positive for Serology at the time of booking may be housed in general population. Lastly the Order requires that the data from the testing be supplied to the attorneys representing the inmates in the class-action suit. (*Exhibit 7*)

**II. CDC Recommendations**

On March 23, 2020, the Center for Disease Control (“CDC”) issued “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correction and Detention Centers.” (*Exhibit 8*) CDC “Prevention” guidelines are intended to assist facilities in preventing the spread of the virus from outside the facility to inside the facility. CDC “Management” guidelines are intended to assist facilities in clinically managing confirmed and suspected COVID-19 cases inside the facility. The WCJ had already implemented all feasible CDC recommendations relating to inmate safety long before the subject suit.

The CDC interim guidance was based on what was known about the transmission and severity of COVID-19 as of the date of posting, March 23, 2020. The CDC guidelines are merely guidelines. They, like all guidelines, are a platform and or framework from which one may choose to review and or utilize, and most importantly to adapt as suited to one’s own clinical areas in corrections. FBOP also issued guidelines for correctional settings in wake of the Swine

Flu pandemic of 2012 which remain relevant today, thus the CDC are 8 years behind the first correctional pandemic guidelines.

Second, these are brand new guidelines, only becoming posted on March 23, 2020. Pandemic response to COVID in a correctional setting (or a planetary one) is not a fixed science. There is no one-way method of handling a pandemic of this type in any and all unique jail settings. While Plaintiffs experts have offered opinions on how the WCJ should react to the present pandemic, this pandemic presents unique circumstances which this Court should take into account despite the Plaintiff's expert's opinions.

Third, the CDC guidelines themselves gift wrap a disclaimer from the very beginning, that they are intended to be used and adapted as suited to one's own setting. In fact, WCJ was adapting to the situation long before the CDC gave out guidelines, and then when they did, WCJ went and adapted the recommendations to fit the setting.

While, plaintiff's experts quote CDC guidelines early and often, they have cherry picked the sections that suit their argument without context or completeness. Lastly, it must be noted that nowhere in the CDC guidelines does the CDC list "release the prisoners" as a recommendation.

### **III. Plaintiffs Are Not Entitled to a Temporary Restraining Order because Plaintiffs Cannot Show Likelihood of Success on their *Monell* Claims**

In order to grant a TRO, the Court must consider (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent a stay, (3) whether granting the stay would cause substantial harm to others, and (4) whether the public interest would be served by granting the stay. *Ohio Republic Party v Brunner*, 543 F3d 357, 361 (6th Cir. 2008). The party seeking injunctive relief must meet all four

requirements. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016) (quoting *Bluefield Water Ass'n v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009)).

In order to obtain their TRO, Plaintiffs must first show a strong likelihood of success with regard to their *Monell* claim against Wayne County. Here, Plaintiffs cannot show any deliberate indifference by Wayne County in its response to the coronavirus pandemic. Furthermore, Plaintiffs cannot establish that they have exhausted their administrative remedies, as required by the Prisoner Litigation Rights Act and MCL 600.5501.

#### **A. Plaintiffs cannot Establish a Deliberate Indifference Claim**

To state a claim of deliberate indifference against Wayne County, a plaintiffs must plead a claim of a policy, practice, or custom by Wayne County that is allegedly unconstitutional, and that explanation must be specific, *i.e.*, "to satisfy the *Monell* requirements a plaintiff must 'identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy.'" *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993) (quoting *Coogan v. City of Wixom*, 820 F.2d 170, 176 (6th Cir. 1987)), cert. denied, U.S., 114 S. Ct. 1219, 127 L.Ed.2d 565 (1994) (Emphasis added). *See also*, *Searcy v. City of Dayton*, 38 F.3d 282, 287 (6th Cir. 1994). Wayne County cannot be held liable under the theory of *respondeat superior*. *Monell v. Department of Social Servs.*, 436 U.S. 658, 663 (1978); *Dunn v. State of Tenn.*, 697 F.2d 121, 128 (1983); *Street v. Corrections Corporation of America*, 102 F.3d 810, 817-818 (6th Cir. 1996). Plaintiff is required to identify and connect the allegedly unconstitutional policy to Wayne County and demonstrate a pattern. *Connick v. Thompson*, 131 S. Ct. 1350 (2011); *Thomas v. City of Chattanooga*, 398 F.3d 426, 432-433 (6th Cir. 2005).

Where a plaintiff proceeds on a theory that factually lawful government policy lead an employee to violate plaintiff's constitutional rights, a plaintiff must plead and prove that the agency

was not just negligent but acted with deliberate indifference to known or obvious consequences. *City of Canton v. Harris*, *supra*. Deliberate indifference is shown only where the municipal policy is constitutionally arbitrary such that it is egregious to the point of “shocking the conscience”. *County of Sacramento v. Lewis*, 523 U.S. 833; 118 S.Ct. 1708; 140 L.Ed.2d 1043 (1998) quoting *Collins v. Harker Heights*, *supra*. To be deliberately indifferent, the cited policy must be so “patently egregious” as to “shock the conscience”. Whether written policy, or de facto practice, the standard of what is deliberately indifferent is very high. “Deliberate indifference” sufficient to support a §1983 action against a municipality is a stringent standard requiring proof that the government entity disregarded a “known or obvious risk.” *Hullett v Smiedendorf*, 52 F Supp 2d 817 (WD Mich 1999); *Patterson v City of Cleveland*, 173 F3d 429 (6<sup>th</sup> Cir 1999).

Here, Plaintiff’s Complaint lacks any *Monell* allegations that would succeed as a matter of law. Plaintiffs’ deliberate indifference claim against Wayne County fails because Plaintiffs have failed to support those allegations with any specific facts whatsoever regarding exactly what the alleged unconstitutional policy, practice, procedure, or protocol was, let alone facts sufficient connect the policy to Wayne County or demonstrate a pattern. *Connick v. Thompson* at 1350 (2011); *Thomas v. City of Chattanooga*, at 432-433.

The situation Wayne County is presently faced with is by all accounts “novel.” It is a situation that has never confronted municipalities such as Wayne County and is truly uncharted territory. There is no prior case law or other authority other than recently enacted CDC recommendations which provide guidance to municipalities with respect to the operation of their jails during such a crisis. Because neither Oakland County, nor any other municipality, has ever faced an epidemic such as the current COVID-19 pandemic, Plaintiffs cannot show that Wayne County maintains an unconstitutional policy or practice with respect to same.

Plaintiffs seek to impose liability on Wayne County simply through anecdotal “evidence” in the form of declarations submitted by Plaintiffs regarding the conditions of the jail and Experts declarations based on the inmates’ declarations signed back in March and April. Plaintiffs’ reliance on the past conditions of the jail and disregard of the reduced jail population and the many measures to mitigate the spread of COVID-19 at the jail are fatal with respect to any *Monell* claim asserted and thus there is no likelihood of success on the merits.

The United States Supreme Court has held, “the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.” *Helling v McKinney*, 509 US 25, 31; 113 S Ct 2475 (1993). In regard to an inmate’s conditions of confinement, the Supreme Court noted that jail conditions may be “restrictive and even harsh.” *Rhodes v Chapman*, 452 US 337, 347; 101 S Ct 2392 (1981). “The Constitution does not mandate comfortable prisons.” *Id.* at 349. It is well settled that pursuant to the Eighth Amendment of the United States Constitution, a prison official must “take reasonable measures to guarantee the safety of the inmates.” *Hudson v Palmer*, 468 US 517, 526-527; 104 S Ct 3194 (1984).

In a deliberate indifference claim challenging the conditions of a prisoner’s confinement, the plaintiff must satisfy both the objective and subjective components of the Eighth Amendment inquiry. *See Farmer v. Brennan*, 511 U.S. at 846. The same requirements apply to a pre-trial detainee’s due process rights under the Fourteenth Amendment. *See Richko v. Wayne Cty., Mich.*, 819 F.3d 907, 915 (6th Cir. 2016) (citation omitted) (“Supreme Court precedents governing prisoners’ Eighth Amendment rights also govern the Fourteenth Amendment rights of pretrial detainees.”). “To satisfy the objective component, the plaintiff must allege that the medical need at issue is ‘sufficiently serious.’” *Comstock*, 273 F.3d at 702 (citing *Farmer*, 511

U.S. at 834). “To satisfy the subjective component, the plaintiff must . . . show that the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and then disregarded that risk.” *Id.* at 703 (citing *Farmer*, 511 U.S. at 837). The defendant must have a subjective “state of mind more blameworthy than negligence,” akin to criminal recklessness. *Farmer*, 511 U.S. at 835, 839–40.

With respect to the inmates, the Plaintiffs cannot show that Defendants have been constitutionally arbitrary such that it is egregious to the point of “shocking the conscience” and thus are unable to show a strong likelihood of success on the merits of their Eighth and Fourteenth Amendment claims because the overwhelming evidence establishes Defendants previously put into place nearly all of Plaintiffs’ requests at the jail.

Specifically, 235 inmates have been released by this Court, via the administrative policy. Moreover, jail inmate population has been reduced by 600 inmates (1400 - 800) from March 17 through May 27. As of May 27, WCJ was at 60% of its total capacity. No inmates have been admitted to a hospital due to COVID-19 related symptoms and no inmates have died as a result of COVID-19. Most importantly, the measures taken by WCJ long before the first confirmed COVID-19 case in the jail and long before Plaintiffs’ filed the instant action, establish they have not “turned the kind of blind eye and deaf ear to a known problem that would indicate total unconcern for the inmates’ welfare.” *Id.*

Again, Defendants emphasize the parties have agreed to a stipulation to modify the consent order governing the Jail that addresses the vast majority of Plaintiffs’ requests in the TRO. The TRO should not be granted be in light of this stipulation and the efforts made by the Defendants addressed below and the unlikelihood of them winning on their *Monell* Claims.



## **1. Communication Regarding COVID-19**

This component of the requested TRO was previously addressed and resolved by the stipulation to the Court Order, wherein Defendants agreed to effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection. Communication including written postings consistent with CDC recommendations have been posted and/or distributed throughout the Jail. (*Exhibit 9*). Plaintiffs cannot demonstrate criminal recklessness or an intent to punish. *Miller, Farmer, supra*.

## **2. Adequate Spacing**

This component of the requested TRO was also previously addressed and resolved by the stipulation to the Court Order, wherein Defendants agreed to provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible. It should be noted that the CDC guidelines expressly recognize the impracticality of providing six (6) feet of spacing for social distancing in jails. (Exhibit ) And, recognizing the guidelines provide that the six (6) foot spacing strategy has to “...be tailored to the individual space in the facility...” (*Exhibit 8*) The WCJ has implemented several CDC strategies to reduce COVID-19 transmission by both reducing overall jail occupancy as well as reducing the number of inmates in group cells.

Plaintiffs further request that Defendants immediately stop housing inmates in Division II based on Dr. Rottnek’s recommendation. First and foremost, as this Court is aware, discussions to cease the use of Division II have been on-going among County officials for several months, well before the current health crisis. Dr. Rottnek’s recommendation in this regard far exceeds

the scope of the Inspection Order. Furthermore, and most importantly, ceasing to house inmates at Division II amidst this pandemic would only create for greater difficult in spacing of inmates.

### 3. Liquid Hand Soap

Per the stipulation to the consent order each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant products<sup>6</sup> effective against the COVID-19 virus. Plaintiffs have not and cannot provide any authority to that agreed upon policies referenced above amount to deliberate indifference or are likely to amount to deliberate indifference. Courts have previously held inmates are not entitled to a specific type of soap. *Burke v Dep't of Correction*, 2016 WL 4120063 at \*4 (M.D. Tenn August 3, 2016) report and recommendation adopted, 2016 WL 4527274 (M.D. Tenn. August 30, 2016) (holding allegations related to hygienic products including chosen type of soap do not satisfy objective prong of Eighth Amendment claim).

Further considering CDC recommendations which state that correction facilities should “provide a no-cost supply of soap to incarcerated/detained person, sufficient to allow frequent hand washing.” (*Exhibit 8*). This was done by WCJ. While the recommendations state liquid soap should be provided “where possible,” the guidelines also allow for bar soap to be used. (*Exhibit 8*). Therefore, any request for a TRO in regard to liquid soap should be denied, as it does not rise to a constitutional requirement.

---

<sup>6</sup> Disinfectant products must meet EPA’s criteria for use against SARS-CoV-2, the virus that causes COVID-19. See *List N: Disinfectants for Use Against SARS-CoV-2*, EPA.gov, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.

**4. Hand Sanitizer**

This issue was previously addressed by the Parties and was removed from the stipulation. Defendants do not allow for inmates to possess hand sanitizer for safety and well being considerations as hand sanitizer contains alcohol and vehemently object to same.

**5. Cleaning Supplies**

See subparagraph (3) above.

**6. Disinfecting Supplies**

This component of the requested TRO was also previously addressed and resolved by the stipulation to the Consent Order, wherein Defendants agreed to provide sufficient disinfecting supplies,<sup>7</sup> without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones and headphones) between each use.

**7. Access to Showers/Clean Laundry**

Per the stipulation to the Consent Order, Inmates are provided access to showers on a daily basis. Clean linens are further provided on a weekly basis.

**8. PPE for Jail Staff**

All jail personnel have been issued masks and gloves. (*Exhibit 1*). Additionally, N95 masks and face shields have been issued to correctional staff who have contact with inmates who have testified positive for COVID-19. Further, pursuant to the stipulation of the Consent Order, the Defendants have agreed to ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves.

---

<sup>7</sup> Disinfectants must meet EPA's requirements for use against SARS CoV-2. *See supra* note 2. Contrary to the Plaintiff's allegations and Dr. Rottnek's report, Defendants are using Simple Green Pro d 3 Plus, which is identified by the EPA as effective against the virus. EPA registration number 10324-154.

**9. Jail Staff Hygiene Efforts**

Defendants have taken steps to ensure jail personnel wash their hands with soap and water both before and after touching any person or surface in cells or common areas. (*Exhibit 1*). This includes signs posted throughout the Jail for all personnel to observe. (*Exhibit 9*). Further pursuant to the stipulation of the Consent Order, Defendants have agreed to ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas

**10. Take Inmates Temperature daily**

Daily temperature checks are being conducted on 3 populations of inmates, inmates who are symptomatic, those who have been exposed and trustees when they go to work

**11. Testing of COVID-19**

As of May 26, 2020, 815 tests had been performed with only 85 inmates having tested positive for COVID-19. (Exhibit 6 ). Currently there are 14 patients that remain Covid positive in the jail. The rest have been cleared as no longer being Covid positive. Also starting June 8, 2020 all new inmates entering the Wayne County Jail on or after June 8<sup>th</sup>, 2020 to be tested for COVID-19. (*Exhibit 7*)

**12. Quarantine of Positive Cases**

There is simply no evidence to suggest that Wayne County has not been engaged in a process of quarantining positive case. Regardless, this component of the requested TRO was also addressed and resolved by the stipulation to the Consent Order, where in Defendants agreed that individuals identified as having COVID- 19, having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a

designated quarantine area, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and be strongly encouraged to wear face masks when interacting with other individuals until they are no longer at risk of infecting other people. All COVID positive inmates are housed on the 4<sup>th</sup> floor of Division II or H3 of Division III.

**13. Response To Emergencies within an Hour**

All medical emergencies receive immediate response from jail personnel. This component of the requested TRO was also previously addressed and resolved by the stipulation to the Court Order, wherein the Defendants have agreed to Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff. Plaintiffs cannot demonstrate criminal recklessness or an intent to punish

**14. Medical Co-Pays**

Defendants have waived all charges related to medical co-pays related to COVID-19 related symptoms and/or treatment which includes testing of same since the onset of the pandemic.

**15. Punitive Transfers/Retaliation**

Defendants have never engaged in punitive transfers or threats of transfers to areas of the jail that have higher infection rates for any infraction. Any reading of the Declarations attached to Plaintiffs TRO establishes that Plaintiffs clearly view quarantining as a punitive transfer. The Declarations expressly refer to inmates not wanting to complain of being sick for fear of being quarantined. (*See TRO Ex. 12*)

Notwithstanding, this component of the requested TRO was also previously addressed and resolved by the stipulation to the Court Order, where in Defendants agreed to m Ensure that no retaliatory discipline is not taken solely in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail

**16. Appointment of independent monitor to ensure Compliance.**

Under the terms and perimeters of the Consolidated Consent Order, this Court serves as the monitor of the WCJ and the conditions of confinement therein. Since the inception of the pandemic in Michigan, as soon as March 13, swift action has been taken to schedule meetings with all parties and confer with everyone involved regarding the measures being taken regarding the care of the inmates, specifically in response to the pandemic. Furthermore, medically vulnerable inmates have been reviewed and released in a collaborative process, which include inmate Counsel. Plaintiffs simply cannot demonstrate a need for an independent Monitor at this time.

**B. Plaintiffs Failure To Exhaust Administrative Remedies Precludes their Claims**

Plaintiffs cannot demonstrate a likelihood of success on the merits because their constitutional claims are barred because they did not pursue administrative remedies as required by the PLRA<sup>8</sup>.

---

<sup>8</sup> Civil actions concerning prison conditions are governed by MCL 600.5501 *et seq*, the Michigan Prisoner Litigation Reform Act ("PRLA"). The statute states in relevant part:

**A prisoner shall not file an action concerning prison conditions until the prisoner has exhausted *all* available administrative remedies.** MCL 600.5503 (emphasis added)

An action concerning prison conditions is defined as "any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or

The *Prison Litigation Reform Act of 1995* ( PLRA) provides: “No action shall be brought with respect to prison conditions under section 1983 ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). This exhaustion requirement is mandatory and applies to all suits regarding prison conditions, regardless of the nature of the wrong or the type of relief sought. *Porter v. Nussle*, 534 U.S. 516, 524 (2002); *Booth v. Churner*, 532 U.S. 731, 741 (2001). “Exhaustion” under the PLRA means “proper exhaustion.” *Woodford v. Ngo*, 548 U.S. 81, 93 (2006). “Proper exhaustion” means “compliance with an agency's deadlines and other critical procedural rules ....” *Id.* at 90. The United States Supreme Court has held that “failure to exhaust is an affirmative defense under the PLRA, and ... inmates are not required to specially plead or demonstrate exhaustion in their complaints.” *Jones v. Bock*, 549 U.S. 199, 216 (2007). Since the *Jones v. Bock* decision, the Sixth Circuit has stated that courts should not impose severe technical requirements on prisoners who comply with the spirit and purpose of the administrative exhaustion rules.

[I]t is sufficient for a court to find that a prisoner's [grievance] gave prison officials fair notice of the alleged mistreatment or misconduct that forms the basis of the constitutional or statutory claim made against a defendant in a prisoner's complaint. *Bell v. Konteh*, 450 F.3d 651, 654 (6th Cir.2006)

“Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.” *Ngo*, 126 S.Ct. at 2386. As observed in *Jones*, the primary purpose of a grievance is to alert prison officials of a particular problem. *Jones*, 127

---

admission of government officials, employees, or agents in the performance of their duties MCL 600.5531(a). Actions in which alleged intentional tortuous behavior and actions that are considered to be in the performance of duties are at issue are subject to the PRLA. *Anderson v Myers*, 268 Mich.App. 713; 709 N.W.2d 171, at 173 (2005).

S.Ct. at 923; see also *Bell v. Konteh*, 450 F.3d 651, 651 (6th Cir.2006) (“[I]t is sufficient for a court to find that a prisoner's [grievance] gave prison officials fair notice of the alleged mistreatment or misconduct that forms the basis of the constitutional or statutory claim made against a defendant in a prisoner's complaint.”).

In this matter, in order to maintain the current lawsuit, Plaintiffs must show that the exhausted all available administrative remedies. All inmates of Wayne County Jail receive a copy of the handbook “Inmate Rules & Regulations,” which contains the policy regarding inmate grievances. (**Exhibit 10**).

Here Plaintiffs failure to file grievances concerning conditions of confinement defeats the primary purpose of the PLRA, which is to alert prison or jail officials of a particular problem so that they may have an opportunity to remedy the situation. Because this was not done, Plaintiffs cannot prevail on the constitutional claims for failing to exhaust administrative remedies. *PLRA*, 42 U.S.C. § 1997e(a).

#### **IV. Conclusion**

Plaintiffs have not made a showing they are likely to succeed on the merits of their *Monell* claim and consequently there is no basis for a TRO. *Thomas, supra*. None of the above evidence tends to show that Defendants subjectively believed the measures they were taking were inadequate. Plaintiffs have failed to present any evidence from which to establish that Defendants have been deliberately indifferent to the care of the inmates in response to the current health care crisis.

While the proof supports a finding that the measures may have been ineffective in completely eradicating the risk of Covid-19 in the jail, there are no measures currently available that will do that for *any* facility, prison or otherwise. This reality is not sufficient to find that



Plaintiffs are likely to succeed on their deliberate indifference claims, because the evidence does not show that Defendants acted with the level of indifference akin to criminal recklessness.

There is no evidence of Defendants' culpable mental state, and this lack of evidence renders it unlikely that Plaintiffs will prevail on their deliberate indifference claim. *See Rhinehart v. Scutt*, 894 F.3d 721, 738 (6th Cir. 2018) (citing *Farmer*, 511 U.S. at 844) ("A[n] [official] is not liable under the Eighth Amendment if he or she provides reasonable treatment, even if the outcome of the treatment is insufficient or even harmful."); *Swain*, No. 20-11622-C, 2020 WL 2161317, at \*3 (reversing a finding of deliberate indifference because "the district court cited no evidence to establish that the defendants subjectively believed the measures they were taking were inadequate"); *Valentine*, 956 F.3d at 802 ("[T]reating inadequate measures as dispositive of the Defendants' mental state . . . resembles the standard for civil negligence, which *Farmer* explicitly rejected.").

The plaintiffs cannot present convincing evidence that Defendant's response was not adequate enough. Defendant's lengthy list of actions taken to protect the and furthermore the subjective evidence required by a deliberate indifference claims that show that Defendants subjectively believed their actions are inadequate.<sup>9</sup>

In contrast to the absence of evidence showing subjective deliberate indifference, there is substantial evidence that the WCJ has implemented several important measures to combat COVID-19. This evidence belies the notion that Defendants acted in a criminally reckless manner. *See Rhinehart*, 894 F.3d at 738.

---

<sup>9</sup> *Id.* at \*51-\*52; referring to [Marlowe v. LeBlanc](#), No. 20-30276, 2020 U.S. App. LEXIS 14063, 2020 WL 2043425, at \*2 (5th Cir. April 27, 2020).

**V. Relief Requested**

WHEREFORE, Defendants respectfully request that this Honorable Court Deny Plaintiffs Motion for Temporary Restraining Order and Plaintiffs' request for an evidentiary hearing as they fail to make any showing of success of the merits, as more specifically set forth above.

Respectfully submitted,

WAYNE COUNTY CORPORATION COUNSEL

/s/ Sue Hammoud  
Sue Hammoud (P64542)  
Paul T. O'Neill (P57293)  
Assistant Wayne County Corporation Counsel  
James Heath  
Wayne County Corporation Counsel  
Attorneys for Defendants  
500 Griswold St., Floor 30  
Detroit MI 48226  
(313) 224-6669  
[shammoud@waynecounty.com](mailto:shammoud@waynecounty.com)

CHAPMAN LAW GROUP

/s/Jonathan C. Lanesky  
Ronald W. Chapman Sr., M.P.A., LL.M. (P37603)  
Jonathan C. Lanesky (P59740)  
Attorneys for Defendants  
1441 West Long Lake Rd., Suite 310  
Troy, MI 48098  
(248) 644-6326  
[rchapman@chapmanlawgroup.com](mailto:rchapman@chapmanlawgroup.com)  
[jlanesky@chapmanlawgroup.com](mailto:jlanesky@chapmanlawgroup.com)

Dated: June 5, 2020

**PROOF OF SERVICE**

I certify that on June 5, 2020, I filed a copy of *DEFENDANTS' REPSONSE TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER* with the Clerk of the Court using the electronic filing system which will send electronic notification of this filing to all parties.

/s/Susan Sweetman  
Susan Sweetman, PP, CLP  
Paralegal

# ***Exhibit 1***

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

WAYNE COUNTY JAIL INMATES et al.,

Case No. 71 173 217 CZ

Plaintiffs

Hon. Timothy M. Kenny

v

WILLIAM LUCAS et al.,

Defendants.

---

DEBORAH ANN HOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

---

**STIPULATED TEMPORARY AMENDMENT TO THE CONSENT ORDER**

At a session of said Court, held in the City of Detroit,  
County of Wayne, State of Michigan

on 5/18/2020

PRESENT: Timothy M. Kenny  
Circuit Court Judge

#### A. Preamble

The parties hereby agree to the following:

1. The parties agree that this Stipulated Temporary Amendment constitutes a Temporary Amendment to the Consolidated Consent Order dated July 20, 2018, to address certain issues faced by the Wayne County Jail in light of the continuing COVID-19 pandemic. The parties will not object on the basis of jurisdiction or venue to any motions filed or relief sought in this matter that would allow the parties to fully litigate and appeal the claims raised and relief requested in Plaintiffs' complaint in the case titled *Russell, et al., v. Wayne County, et al.*, Case No. 2:20-cv-11094 (E.D. Mich. May 4, 2020).
2. This Court retains jurisdiction to enforce this Stipulated Temporary Amendment to the Consent Order for the duration of this litigation and to issue any remedial orders necessary to address a breach of this Stipulated Temporary Amendment. Plaintiffs' counsel agrees to contact defense counsel to give notice of a breach or suspected breach of the Stipulated Temporary Amendment. If the matter cannot be satisfactorily resolved with defense counsel within 48 hours of notice to defense counsel, Plaintiffs' counsel will contact the court, and within 24 hours of notice from Plaintiffs' counsel that there has been a breach or suspected breach of the Stipulated Temporary Amendment, the Court may schedule a conference call with the parties to discuss the matter and how to best remediate the issue.
3. Defendants' position is that Defendants were in full compliance with all subparagraphs of this Stipulated Temporary Amendment prior to the filing of Plaintiffs' lawsuit. Defendants are making no admissions regarding liability and expressly deny any unlawful acts and/or omissions. Likewise, Plaintiffs are making no admissions that their claims lack merits or that Defendants complied with any of the subparagraphs of this Order prior to the filing of Plaintiffs' lawsuit.
4. Entry of this Stipulated Temporary Amendment as a modification to the Consolidated Consent Order does not in itself deem Plaintiffs as prevailing parties for purposes of attorneys fees pursuant to 42 U.S.C. §1988.
5. This Stipulated Temporary Amendment to the Consolidated Consent Order is intended to address the unique issues faced by the Wayne County Jail as a result of the COVID-19 pandemic and shall terminate 30 days after its entry.

This period may be extended by agreement of the parties or by order of the Court upon good cause shown.

#### B. Stipulation

The parties herein, by and through their respective counsel, hereby agree and stipulate that upon entry of this Stipulated Temporary Amendment,<sup>1</sup> Defendants shall immediately undertake or continue to implement the following measures related to the conditions of confinement at the Wayne County Jail (“the Jail”) during the pendency of the COVID-19 pandemic:

1. Plaintiffs seek an inspection of all Jail facilities on or before May 18, 2020 by an inspector, to be selected by Judge Kenny at no cost to Defendants. Both parties may submit two proposed candidates for selection of the inspector. If the inspector selected is upon the recommendation of Defendants and requires the payment of a fee, Defendants will cover the cost. The inspection will be limited to the COVID-19 pandemic response, as enumerated in the conditions agreed upon herein. Defendants will not object to Plaintiffs’ request for an inspection of the Jail facilities.
2. Ensure that each incarcerated person receives, free of charge and upon request: (a) a supply of soap and hand towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant products<sup>2</sup> effective against the COVID-19 virus.;
3. Provide access to showers on a daily basis;
4. Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks and gloves;

---

<sup>1</sup> Plaintiffs filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on May 4, 2020 (ECF No. 3). Neither party waives any arguments with respect to the issues raised in the Emergency Motion.

<sup>2</sup> Disinfectant products must meet EPA’s criteria for use against SARS-CoV-2, the virus that causes COVID-19. See *List N: Disinfectants for Use Against SARS-CoV-2*, EPA.gov, <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2> (last visited May 7, 2020).

5. Ensure that, to the fullest extent possible, all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas;
6. Continue to implement protocols through which medical attention is provided, on a timely basis, to any incarcerated person that reports a need for medical attention for any COVID-19 related symptoms to any member of the Jail staff;
7. Per protocol, continue to make COVID-19 testing available to all incarcerated persons either (a) displaying known symptoms of COVID-19 or (b) who have been in known proximity of other persons, within the last 14 days, who have tested positive for COVID-19;
8. Provide adequate spacing between people incarcerated so that social distancing, as defined by the CDC, can be accomplished to the extent possible;
9. Ensure that individuals identified as having COVID- 19, as having symptoms of COVID-19, or as having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a designated quarantine area, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and be strongly encouraged to wear face masks when interacting with other individuals until they are no longer at risk of infecting other people;
10. Provide sufficient disinfecting supplies,<sup>3</sup> without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, telephones and headphones) between each use;
11. Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people, sufficient information about COVID-19,

---

<sup>3</sup> Disinfectants must meet EPA's requirements for use against SARS CoV-2. *See supra* note 2.



measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;

12. Train all staff regarding measures to identify symptoms of COVID-19 in inmates, measures to reduce transmission, and the Jail's policies and procedures during this crisis (including those measures contained in this Order);
13. Refrain from charging medical co-pays to those experiencing COVID-19-related symptoms, including testing; and
14. Ensure that retaliatory discipline is not taken solely in response to (a) incarcerated persons' requests for medical attention and basic, necessary protections, and/or (b) efforts by incarcerated persons to publicize unsafe and life-threatening conditions inside the Jail.

IT IS SO ORDERED.

/s/ Timothy M. Kenny  
Circuit Court Judge

Agreed as to form and content:

/s/ Deborah Choly  
DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

/s/ James Heath  
JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

/s/ William Goodman  
WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/ Felicia Johnson  
FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

*/s/ David Melton*

DAVID MELTON (P63891)

Legal Advisor Wayne County Sheriff

4747 Woodward Ave.

Detroit, MI 48201

(313) 224-6888

# ***Exhibit 2***



Wayne County Sheriff's Office  
JAILS & COURTS

**DIRECTIVE**

To: All Wayne County Sheriff's Office Staff  
From: Robert B. Dunlap, Chief of Jails and Courts

Date: March 13, 2020

RE: **DIRECTIVE REGARDING CORONAVIRUS (COVID-19) IDENTIFICATION AND RESPONSE COJAC 20-04**

Effective immediately, all staff members of the Wayne County Sheriff's Office Jails and Courts Division shall take every precaution to protect themselves and others when encountering individuals suspected of being infected with the **Coronavirus (COVID-19)**.

Symptoms of **Coronavirus (COVID-19)** include a cough, high temperature, and shortness of breath. These symptoms may appear 2-14 days after exposure.

Staff encountering individuals exhibiting these symptoms should take the following steps to eliminate and reduce the potential spread of the virus:

**TRANSPORTATION UNIT:**

- Officers transporting inmates that exhibit symptoms of the virus shall provide the inmate with a surgical mask, isolate the inmate, and transport the inmate separately from all other inmates.
- The transport officers shall notify the on-duty transportation sergeant and jail health services of the situation prior to arriving at the jail.
- Upon arrival, an on-duty nurse will meet the officers and the concerned inmate in the vehicle sally port area. The inmate will be evaluated prior to disembarking the transport vehicle. **Please be advised the inmate shall not be allowed to enter the jail facility unless cleared by the nurse conducting the evaluation.**
- If further medical attention is required, the transporting officers and supervisor will be directed by jail health services.
- Officers shall don protective clothing and equipment (Tyvek Suits, N-95 Respirator Mask, goggles, and gloves) prior to transporting an inmate from the jail to a designated medical treatment facility.

## BOOKING/HOUSING:

- Inmates booked or housed in the Wayne County Jail shall be provided a surgical mask, and **immediately** isolated in the designate registry holding cells (*Division I Cell #12 and Division III Cell #1*) upon observation or notice of the referenced symptoms.
- The booking or housing officer(s) shall immediately notify an on-duty jail security supervisor, and request an on-duty nurse report to registry for further evaluation of the inmate.
- The officer and the supervisor will then be further directed on processing and/or convey the inmate to a designated medical facility by Jail Health Service.

## JAIL/COURT LOBBY & PUBLIC SPACES

- **Avoid close contact** with people who are sick.
- Put **distance between yourself and other people** if (COVID-19) is spreading in your community.

## PREVENTION

All officers and staff shall further take the following steps to avoid the spread of this infectious virus:

- **Wash your hands often** with soap and water for at least 20 seconds. Especially after you have been in a public place, had contact with a frequently touched surface/object, after blowing your nose, coughing, or sneezing.
- If soap and water are not readily available, **use a hand sanitizer that contains at least 60% alcohol**. Cover all surfaces of your hands and rub them together until they feel dry.
- **Avoid touching your eyes, nose, and mouth** with unwashed hands
- **Cover your cough or sneeze with a tissue**. Immediately throw tissue in the trash.
- **Clean AND disinfect frequently touched surfaces daily**. This includes chairs, tables, doorknobs, handles, elevator buttons, light switches, countertops, desks, computers, copiers, phones, keyboards, toilets, faucets, and sinks etc.
- **Stay home** if you are sick and seek medical attention if necessary. Please ensure that you notify a supervisor via telephone.

Finally, all members shall continuously monitor their email for updated information, policies and directives. Members shall also confirm that this information is communicated throughout the Wayne County Sheriff's Office via roll call, email, and other methods of communication. All supervisors shall confirm that upward executive notification is immediately implemented above notice of any such incidents of potential exposure.

Robert B. Dunlap

ROBERT B. DUNLAP  
Chief of Jails and Courts  
Wayne County Sheriff's Office



Wayne County Sheriff's Office  
JAILS & COURTS

**DIRECTIVE**

To: ALL STAFF

From Robert B. Dunlap, Chief of Jails and Courts

Date: March 20, 2020

RE: **DIRECTIVE REGARDING TEMPERATURE SCREENING AND ASSESSMENTS OF  
ALL PERSONS ENTERING THE WAYNE COUNTY JAILS COJAC 20-05**

Effective immediately, **ALL persons** entering the Wayne County Jail facilities will be screened and assessed for signs and symptoms of the Coronavirus Covid-19. The screening and assessment process will consist of forehead temperature scans conducted by a jail health employee, along with visual observations and a brief questionnaire. Anyone that has a temperature of 100.4 F or greater (per CDC recommendations) will not be allowed to enter the building. Additionally, anyone answering affirmatively to the any of the following questions will also be denied:

1. Have you resided with or had close contact with anyone who has visited any of the following countries (China, Italy, South Korea, or Iran) within the last 14 days?
2. Have you traveled domestically within the United States where COVID-19 has sustained widespread community transmission?
3. Have you been asked to self-quarantine by any doctor, hospital, or health agency?
4. Have you been diagnosed with, or had contact with, anyone who has been diagnosed with COVID-19?

Further, any person coughing, sneezing, experiencing shortness of breath, or exhibiting other obvious signs of illness shall also be denied entry.

The assessment findings will be documented and logged. The logs will be given to the CQI RN on a daily basis. The CQI RN will maintain all COVID-19 logs and records. The on duty ranking lieutenant or sergeant, and the Director of Nursing shall be notified of all persons denied entry.

Finally, the jail deputy chiefs and commanders shall ensure that signs are posted at all entry points advising all visitors, employees, and other persons of this process.

*Robert B. Dunlap*

**ROBERT B. DUNLAP**  
Chief of Jails and Courts  
Wayne County Sheriff's Office



Wayne County Sheriff's Office  
JAILS & COURTS

**DIRECTIVE**

To: ALL STAFF

From Robert B. Dunlap, Chief of Jails and Courts

Date: March 21, 2020

RE: **DIRECTIVE REGARDING TEMPERATURE SCREENING AND HEALTH ASSESSMENTS OF ALL PERSONS ENTERING THE WAYNE COUNTY JAILS** COJAC 20-06 (RVD 03/21/20)

Effective immediately, **ALL persons** entering the Wayne County Jail facilities will be screened and assessed for signs and symptoms of the Coronavirus Covid-19. The screening and assessment process will consist of forehead temperature scans conducted by a jail employee, along with visual observations and a brief questionnaire. Anyone that has a temperature of 100.4 F or greater (per CDC recommendations) will not be allowed to enter the building. Anyone answering affirmatively to the following questions Will Not necessarily be denied entry if they have not been diagnosed with COVID-19 or exhibiting positive symptoms.

1. Have you resided with or had close contact with someone who has been in one of the countries listed above within the last 14 days?
2. Have you traveled domestically within the United States where COVID-19 has sustained widespread community transmission?
3. Have you been asked to self-quarantine by any doctor, hospital or health agency?

Additionally, anyone coughing, sneezing, experiencing shortness of breath, or exhibiting other obvious signs of illness shall also be denied entry. **The on duty captain or weekend duty lieutenant shall first be notified before an employee is refused entry to work. Additionally, staff shall not deny anyone opportunity to post a bond.**

The assessment findings will be documented and logged. The logs will be given to the shift lieutenant daily. The shift lieutenant will maintain all COVID-19 logs and records of all Wayne County staff denied entry to the facility and implement the executive notification process.

As first responders we recognize that it may be possible to be in the vicinity or contact with individuals who have tested positive for COVID-19, however, this possibility does not automatically disqualify entry where there are no symptoms or positive diagnosis. We do encourage you to take advantage of the testing that is being offered. Be safe.

*Robert B. Dunlap*

**ROBERT B. DUNLAP**

Chief of Jails and Courts

Wayne County Sheriff's Office

## **Alan Bulifant**

---

**From:** Dennis Ramel  
**Sent:** Thursday, March 26, 2020 2:53 PM  
**To:** Robert Dunlap  
**Cc:** David Melton; Raphael Washington; Scott Gatti; Lynnette O. Cain; Alan Bulifant; Stephany Powell-Bedell; Cierra Crawford; Brandy C Phillips  
**Subject:** Quarantine Housing for Inmates

Chief,

For your review.....

### **NEW BOOK INMATES**

- All newly booked inmates into the WCJ shall be in quarantine housing for a minimum of four (4) days. The inmates shall be housed alone in single cells on the designated housing units as stated below:
  - **Division 1 Males** – 11<sup>th</sup> floor
  - **Division 1 Females** – 5 NW with 8 South to be utilized as overflow
  - **Division 3 Males** – Housing Unit G-1
- Inmates shall be housed in every other cell on the quarantine unit if the count allows for it.
- During the quarantine period, the inmates shall be placed on "lock down" status and shall remain in their cells with the exception of a daily allowance to shower, make phone calls, and watch TV.
- Once the 4 day quarantine period has expired, inmates must be cleared by medical staff prior to being moved to General Population.

### **INMATES RETURNING FROM HOSPITAL**

- Upon return from the hospital due to a confirmed or potential case of COVID-19, all inmates shall be housed in the Behavioral Management Unit (BMU) at Division 3. If overflow space is needed, Segregation at Division 3 shall be utilized. If the number of cases increase and more housing is needed, Unit H-3 shall be utilized.
- If an inmate returns from the hospital for reasons and symptoms that are not COVID-19 related, the minimum four (4) day quarantine process shall be adhered to as stated in the New Book section above.

### **Dennis Ramel**

Director of Classification  
Wayne County Sheriff's Office  
Jail Divisions  
Desk: 313-875-7009  
Cell: 313-213-5120





Wayne County Sheriff's Office  
JAILS & COURTS

**JAIL DIRECTIVE**

To: All Staff

From Robert B. Dunlap, Chief of Jails and Courts

Date: March 27, 2020

RE: **DIRECTIVE COJAC 20-07 WAYNE COUNTY JAIL INMATE  
CORONAVIRUS QUARANTINE OPERATING PROCEDURES**

Effective immediately, ALL new book inmates entering the Wayne County Jail facilities will be screened and assessed for signs and symptoms of the Coronavirus Covid-19, and quarantine the first 72 hours of their stay. At the conclusion of the 72-hour quarantine period, the inmate will be assessed and cleared by Jail Health prior to being housed in general population. The quarantine process shall be implemented as follows:

**I. NEW BOOK INMATES**

All newly booked inmates into the WCJ shall be in quarantine housing for a minimum of 72 hours. The inmates shall be housed alone in single cells on the designated housing units as stated below:

- Ø **Division 1 Males** – 11<sup>th</sup> floor
- Ø **Division 1 Females** – 5 NW with 8 South to be utilized as overflow
- Ø **Division 3 Males** – Housing Unit G-1

Jail Division I Inmates shall be housed in every other cell on the quarantine unit if the count allows for it. During the quarantine period, the inmates shall be placed on "lock down" status and shall remain in their cells with the exception of a daily allowance to shower, make phone calls, and watch TV not to exceed 90 minutes. Once the 72-hour quarantine period has expired, inmates must be cleared by medical staff prior to being moved to General Population.

**II. INMATES RETURNING FROM HOSPITAL**

If an inmate is transported to the hospital for assessment/treatment for symptoms related to COVID-19, and inmate is released from the hospital and returned to the custody of the WCSO, irrespective of whether or not the inmate tested positive for COVID-19, the inmate shall be housed and quarantined in the Jail Division III Behavioral Management Unit (BMU) until cleared for an alternative housing assignment by Jail Medical.

If overflow space is needed, the Jail Division III Segregation Unit shall be utilized. If the number of cases increase and more housing is needed, Unit H-3 shall be utilized.

Inmates returning from the hospital for illness or reasons unrelated to COVID-19 shall not be housed on the Coronavirus housing units at Jail Division III. These inmates will be process as stated in the New Book section above and housed accordingly.

*Robert B. Dunlap*

**ROBERT B. DUNLAP**  
Chief of Jails and Courts  
Wayne County Sheriff's Office



Wayne County Sheriff's Office  
JAILS & COURTS

**JAIL DIRECTIVE**

To: All Staff

From Robert B. Dunlap, Chief of Jails and Courts

Date: March 31, 2020

RE: **DIRECTIVE COJAC 20-08 REQUIRED PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR OFFICER ASSIGNED TO HOSPITAL DETAIL SECURITY CORONAVIRUS-COVID19 POSITIVE INMATE.**

Effective immediately, Supervisors deploying Wayne County Sheriff's Deputies to a hospital detail to guard or take custody of inmates with a confirmed or suspected Coronavirus-COVID19 diagnosis shall confirm that the members are equipped with proper personal protection equipment (PPE). The PPE shall consist of a vinyl Tyvek coverall suit, N-95 mask, face shield or goggles, and plastic latex gloves. A minimum of two officers shall be assigned to the detail, and both officers shall be properly outfitted.

Prior to donning the equipment and assuming their posted in the compromised hospital zone, the assigned officers shall properly identify themselves (uniform, badge, and identification card) to hospital officials, and obtain an update on the situation, location and status of the inmate. After identifying themselves and debriefing with hospital officials, the officers shall proceed to a safe area and take turns donning their equipment as they assist and inspect one another.

**DONNING AND DOFFING PERSONAL PROTECTIVE EQUIPMENT (PPE)**

**DONNING PPE**

- Remove all jewelry/valuable and stow secure location. Do not take the unnecessary item into the compromised zone.
- Put on tyvek coveralls and zip up to waist.
- Put on shoe covers and tape coveralls to shoe covers, making sure to tab the tape for easy removal later.
- Put on one pair of nitrile gloves and finish zipping up tyvek coveralls
- Tape coveralls to gloves, making sure to tab the tape for easy removal later.
- Put on N-95 mask and goggles. Tape around face shield to hood of coveralls, making sure to tab the tape for easy removal later.
- Put on additional pair(s) of nitrile gloves, as needed.

## DOFFING PPE

- Proceed to a safe area and remember to work from top down as you began disrobing.
- Remove all tape and outer gloves placing them into trash canister.
- Remove mask and hood.
- Remove tyvek coveralls working from top down and being careful to roll so outside of tyvek does not contaminate clothing.
- Continue to roll down tyvek coveralls and take one shoe cover off (you may need assistance in steadying yourself, but be mindful of contamination control).
- Allow foot to be monitored and step onto clean side.
- Remove other shoe cover, leaving tyvek on dirty site. Allow remaining foot to be monitored before placing on clean side.
- Remove final pair of gloves and dispose of in trash canister. o Proceed through final monitoring and/or decontamination shower

The above donning and doffing procedures are recommended guidelines only as the actual donning/doffing of PPE may differ from one individual to another.

Finally, all supervisors are hereby directed that under no circumstances shall a member of this agency be deployed to a positive COVID19 detail or zone without the prescribed PPE. If the equipment is unavailable, upward notifications shall be made for assistance and direction on how and where the equipment can be acquired.

*Robert B. Dunlap*

**ROBERT B. DUNLAP**

Chief of Jails and Courts  
Wayne County Sheriff's Office



Wayne County Sheriff's Office  
JAILS & COURTS DIVISION

**Memorandum**

To: All Staff

From Robert B. Dunlap, Chief of Jails and Courts

Date: March April 1, 2020

Re: **WCSO EMERGENCY OPERATIONS PROCEDURES TO  
ELIMINATE THE EXPOSURE AND SPREAD OF COVID19  
CORONAVIRUS COJAC 20-09**

Effective immediately, all members of the Wayne County Sheriff's Office are hereby direct to ensure proper action is taken by all staff, and inmates, to ensure compliance with the risk reduction protocols that have been implemented to eliminate the exposure and spread of COVID-19. The risk reductions protocols previously established includes the following:

**SCREENING:** All persons arriving at the Wayne County Jail facilities shall be screened. This includes staff, incarcerated persons, vendors, and any other person entering the facility, in accordance with Directive COJAC 20-06 which is consistent with guidelines issued by the Centers for Disease Control and Prevention ("CDC"). Per the directive, all persons will submit to a body temperature screening, and respond to the designated questions about travel and any contact with persons under investigation for COVID-19 infection.

**VISITS:** The discontinuation of all personal and professional visits shall continue for all persons, except for attorney-related visits. Attorney visits will be conducted via video conferencing, and if necessary, on site attorney visits will be non-contact to the extent feasible.

**INMATE TRANSPORTS:** The movement and transportation of inmates to off-site shall be limited to transports for urgent or emergency medical treatment.

**QUARANTINE:** All new book inmates shall be screened for signs and symptoms of COVID19 or other flu like symptoms, and quarantine for a period of 72hours upon entry to the jails. Jail Health staff shall be notified daily of all inmates under quarantine and shall evaluate and monitor such inmates as consistent with department policy. Inmates shall be assessed and cleared by Jail Health staff prior to being housed in general population at the conclusion of the 72-quarantine period.

**PROTECTIVE EQUIPMENT:** To the fullest extent possible, appropriate personal protective equipment shall be provided to all staff on an as need basis as recommended by the CDC. This includes the N95 Mask, fac shields, latex gloves and other equipment as deemed appropriate.

**CLEANING-SANITATION:** Jail maintenance staff shall ensure that all areas and surfaces are stringently cleaned on a regular and continuous basis. This includes frequently touched surfaces (such as doorknobs, handles, light switches, keyboards, etc.).

**HYGIENE:** All staff shall confirm that personal hygiene products are being provided to all incarcerated persons and correctional staff as consistent with department policy. This includes sufficient soap and water for regular handwashing.

**LAUNDRY:** The Jail Laundry staff shall ensure and confirm that all divisions are always adhering to Protective laundry protocols.

**SIGNAGE:** All jail commands shall ensure that signs are posted through the jails with information educating all persons on the importance of social distancing, handwashing, and personal hygiene.

**SOCIAL DISTANCING:** All staff shall continuously practice and encourage social distancing where possible, meaning a distance of at least six feet between people (staff and inmates) on the housing units, classroom, lunchroom, or other group. Staff is further directed to minimize crowding of inmates and staff, which may include scheduling more times for meal and recreation to reduce person-to-person contact.

Any member with questions or concerns regarding the enforcement of this directive shall seek the assistance and or directions from their respective jail commander or deputy chief.

*Robert B. Dunlap*

**ROBERT B. DUNLAP**  
Chief of Jails and Courts  
Wayne County Sheriff's Office



Benny N. Napoleon  
*Wayne County Sheriff*

Date: April 6, 2020

To: All Wayne County Sheriff's Office Personnel

From: Undersheriff Daniel Pfannes

Re: Rapid-Testing for COVID-19

General Memo U/S 20-06

**Policy:**

It is the policy of the Wayne County Sheriff's Office to engage in efforts to maximize the number of healthy officers that are available to work at each of its work sites. This is especially important during the COVID-19 Pandemic. As such, the WCSO has informed its members of various free testing sites, those sponsored by Wayne State University and ACCESS. It has also partnered with the City of Detroit to make free testing available to our officers at the State Fair Grounds, and it has now consummated an agreement to enable our first responder personnel to be tested, by the newly introduced rapid-test devices, at the City of Detroit's Health Department at 400 Mack, Detroit.

While the WCSO will continue to reach out and schedule its homebound personnel for testing, beginning this week, it will also begin scheduling on-duty, and some off-duty, personnel for testing at the Detroit Health Department's rapid-test site. Currently, the WCSO will be allotted twenty-one (21) rapid-test appointments per day, with the ability to attain extra appointment if/when they become available.

**Procedure:**

1. Corrina Portillo will be the scheduler for rapid-test appointments. Her email address is [Cportillo@waynecounty.com](mailto:Cportillo@waynecounty.com). Her telephone number is 313.820.6580.
2. Beginning at 0700 hours this Wednesday, the command staff from each jail shall email the scheduler the following:
  - a. The name and cell phone number for seven (7) officers scheduled to work the Day Shift the next day.
  - b. The name and cell phone number for six (6) officers scheduled to work the Afternoon Shift the next day.
3. In regards to the Day Shift, the scheduler will attempt to schedule appointments with the Health Department so that one officer from each division is scheduled for an appointment on or near the hourly time slots of 8 am, 9 am, 10 am, 11 am, 12pm, 1pm, and 2 pm.
4. In regards to the Afternoon Shift, the scheduler will attempt to schedule appointments with the Health Department so that two officers from each division are scheduled on or near the hourly time slots of 4pm, 5pm, and 6pm.
5. Note: The scheduling process will change as we complete officers assigned to the Day Shift and the Afternoon Shift. The procedure will be updated at that time.



6. As a part of the registration process, the scheduler will input the employees' name and cell phone number in the Health Department's database.
7. The scheduler will receive an email from the Health Department confirming the appointment.
8. The scheduler will forward the appointment confirmations to each respective officer. The email will also include a map of the parking/staging area and of the building in which the test will be given.
9. The officer shall drive their own vehicle and bring their cell phone to the test site. The officer needs to arrive in the parking lot fifteen (15) minutes prior their appointed time. Arrivals earlier than that are discouraged because of the limited parking. Upon arrival, the officer will be directed to park by a representative of the Health Department. The officer will wait in their car until they are instructed to enter the Health Department for their test.
10. Once inside, the employee will be tested.
  - a. The test for an employee that tests positive for the virus will take 5 minutes.
  - b. If the employee tests negative for the virus, a second confirmatory test is conducted. This two-test process will take approximately 15 minutes.
  - c. The officer will be given a copy of their test result. If the officer is not allowed to take the copy, the officer shall take a picture of the result with their phone.
11. An officer that has tested negative for the presence of the virus shall return to work and turn their test result in at the Shift Command Office.
  - a. Copies of all test results shall be scanned and emailed to Corrina Portillo at the email listed above. The hard copies shall be forwarded to Corrina Portillo via interoffice mail.
12. An officer that has tested positive for the presence of the virus shall not be allowed to return to work.
  - a. The officer shall immediately notify their respective Shift Command of their result.
  - b. The officer shall arrange for an electronic copy of their results to be sent to Corrina Portillo. The officer may scan and email the copy or take a picture and email the result to her.
  - c. The officer shall contact the Sheriff's Personnel Unit by phone: 313.224.1951 or 313.224.2707 or via email: [ESauceda@waynecounty.com](mailto:ESauceda@waynecounty.com) or [LWilson@waynecounty.com](mailto:LWilson@waynecounty.com) to request an FMLA Packet.
  - d. The officer is encouraged to report the matter to their personal health care provider.
  - e. It is anticipated that the following is the minimum time frame that is associated with recovery, for most people, from COVID-19. Recovery usually occurs, approximately, no less than seven (7) days after the first symptoms of the virus appears and three (3) days after their last fever – without taking fever reducing medication. This is not to be deemed as medical advice. Every officer is directed to seek medical advice from a health care provider.
  - f. Employees that are no longer symptomatic and seeking a return to work, can contact Corrina Portillo to arrange for an appointment for another rapid-test. This test will provide proof of whether or not the virus is still present.
13. Any question should be directed to me in writing and via their respective chain of command.

Respectfully,



Daniel Pfannes, Undersheriff





**Wayne County Sheriff's Office  
DEPARTMENTAL COMMUNICATION**

**Divisional Directive**

To: All Jail Division I Personnel  
From: Commander Alan Bulifant  
Date: April 10, 2020  
Re: Inmates wearing surgical masks – Jail 1 COJO 20-03

**Please obtain signature sheets from all staff**

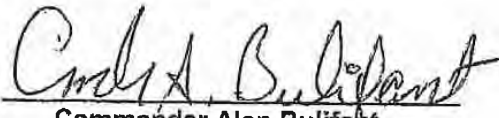
Effective immediately and until further notice, all inmates are required to wear a surgical mask when they are outside of their cell. Each inmate will be issued one (1) new surgical mask every two weeks. The inmate is responsible for its use and care of the mask. We are limited in supply, so the inmates must take care of their masks if they want to be able to leave their cells. This is being done for the safety of everyone in the Jail system, due to the Coronavirus.

The security staff will issue each inmate a mask using exam gloves and taking care not to contaminate the mask, under the supervision of a Command Sgt. The floor officer will be responsible for logging into the JMS computer system that each inmate was issued a mask. The Command Sgt. will have the Daily Shift Summary updated upon completion of supervising the surgical mask distribution that every inmate received a new surgical mask.

Registry will be issued a supply of surgical masks for new book inmates; the Registry Sgt. will be responsible for the accounting of the masks.

Inmates are not allowed to go anywhere outside of their cells without a mask. If an inmate refuses to wear a mask, they will be locked in their cells, a JMS Disciplinary Incident Report will be written, and a Command Sgt. notified. If an inmate refuses a lockdown the order, a Command Sgt. must be notified immediately to respond to the floor and lock the inmate in their cell.

This order applies to all inmates and all activities, including but not limited to: inmate work details, visits, recreation, medical appointments, court appointments, etc.

  
Commander Alan Bulifant  
Jail Division I

## Alan Bulifant

---

**From:** Robert Dunlap  
**Sent:** Monday, April 13, 2020 6:26 PM  
**To:** Raphael Washington; Scott Gatti; Dennis Ramel; Cierra Crawford; Brandy C Phillips; Lynnette O. Cain; Zenola Seegars; Alan Bulifant; Charles Lennox; Stephany Powell-Bedell; Rose Prater; Robert Dunlap  
**Subject:** RESTRICTED INMATE MOVEMENT  
**Importance:** High

**Subject:** RESTRICTED INMATE MOVEMENT  
**Importance:** High

Team,  
Effective immediately, all inmate activity will be restricted to the assigned housing unit. Inmates shall not be allowed off their unit for recreation activities or any other non critical function.

Additionally, from this point forward Director Ramel shall be the only person authorized to change inmate housing assignments. After an inmate is classified and housed, the inmate shall not be moved for any non-medical emergency reason without being approved by Director Ramel. This movement restriction and authorization also applies to behavioral and disciplinary issues. If a member believes that an inmate should be moved from one housing assignment to other location, the member shall first contact their supervisor who shall then contact the commander or deputy chief and advise of the situation. The commander, deputy chief will then contact Director Ramel and request that the inmate be moved. .

---

**From:** Robert Dunlap  
**Sent:** Monday, April 13, 2020 6:25 PM  
**To:** Raphael Washington; Scott Gatti; Dennis Ramel; Cierra Crawford; Brandy C Phillips; Lynnette O. Cain; Zenola Seegars; Alan Bulifant; Charles Lennox; Stephany Powell-Bedell; Rose Prater; Robert Dunlap  
**Subject:** RESTRICTED INMATE MOVEMENT  
**Importance:** High

Team,  
Effective immediately, all inmate activity will be restricted to the assigned housing unit. Inmates shall not be allowed off their unit for recreation activities or any other non critical function.

Additionally, from this point forward Director Ramel shall be the only person authorized to change inmate housing assignments. After an inmate is classified and housed, the inmate shall not be moved for any non-medical emergency reason without being approved by Director Ramel. This movement restriction and authorization also applies to behavioral and disciplinary issues. If a member believes that an inmate should be moved from one housing assignment to other location, the member shall first contact their supervisor who shall then contact the commander or deputy chief and advise of the situation. The commander, deputy chief will then contact Director Ramel and request that the inmate be moved. .



Benny N. Napoleon  
*Wayne County Sheriff*

**Date:** April 14, 2020

**To:** All Members of the Wayne County Sheriff's Office

**From:** Undersheriff Daniel Pfannes

**Re:** COVID-19 TESTING \_ Duty to Test and Report

General Memo U/S 20-07

**Policy:**

It is the policy of the Wayne County Sheriff's Office to engage in efforts to maximize the number of healthy officers and civilian staff that are available to work at each of its work sites. This is especially important during the COVID-19 Pandemic. As such, the WCSO has informed its members of various free testing sites, including those sponsored by Wayne State University and ACCESS, in Dearborn, Detroit, and Hamtramck. It has also partnered with the City of Detroit to make free testing available to our staff at the State Fair Grounds, and it has also scheduled staff for rapid-test appointments at the Detroit Health Department at 100 Mack Ave.

The WCSO has been reaching out to its homebound personnel and both its on-duty and off-duty personnel to schedule testing at the various test sites identified above. It is important for management to have as much information as possible about the outcome of each and every test that is taken. This knowledge will better position the WCSO to protect its staff, the jail inmates, and other stakeholders in the criminal justice system.

**Order:**

Effective immediately, all staff members of the WCSO are required to comply with the following:

- 1 If you have been tested, you must provide a copy of your test results to the Sheriff's Personnel Unit via email submission and/or any other format as is required in a follow-up communication from a member of the personnel unit's staff. In addition, the test result must be individually and specifically related to the staff member submitting the information. For example, see the attachment that I received from the City of Detroit Health Department.
- 2 If you are contacted by a command officer or member of the executive staff and given a directive to report for COVID-19 testing at a specific date, time, and location, whether you are on or off-duty at the time the directive is received and/or at the time of the testing, you shall report for the scheduled appointment and submit to the testing process as instructed.
- 3 All staff that has been off of work, due to: testing positive for COVID-19, claimed symptoms of COVID-19, and/or for any other reason, are subject to submitting to a return to work COVID-19 test at a place and time as directed.

General Memo U/S 20-07

Page 2 of 2

A staff member is defined as any member of the Wayne County Sheriff's Office holding a security clearance to enter its facilities. Any staff member found to be in non-compliance with any component of this order shall be subject to disciplinary action and/or the revocation of their security clearance.

If you have any questions or are in need of further clarification, please feel free to contact me, by submitting a written communication to me via your chain of command. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel Pfannes". The signature is fluid and cursive, with the first name "Daniel" and last name "Pfannes" clearly distinguishable.

Daniel Pfannes, Undersheriff

Attachment

Document received by the MI Wayne 3rd Circuit Court.

## Alan Bulifant

---

**From:** James Davis  
**Sent:** Wednesday, April 15, 2020 10:11 AM  
**To:** Alan Bulifant  
**Subject:** Fw: General Order U/S 20-07 \_ COVID-19 TESTING \_ Duty to Test and Report  
**Attachments:** General Memo US 20-07 \_ COVID-19 TESTING \_ Duty to Test and Report.pdf

---

**From:** Daniel Pfannes <[dpfannes@waynecounty.com](mailto:dpfannes@waynecounty.com)>  
**Sent:** Tuesday, April 14, 2020 4:55 PM  
**To:** Robert Dunlap <[Rdunlap@waynecounty.com](mailto:Rdunlap@waynecounty.com)>; Mike Jaafar <[miaafar@waynecounty.com](mailto:miaafar@waynecounty.com)>; Scott Gatti <[sgatti@waynecounty.com](mailto:sgatti@waynecounty.com)>; Tonya Guy <[tguy@waynecounty.com](mailto:tguy@waynecounty.com)>; Raphael Washington <[rwashing@waynecounty.com](mailto:rwashing@waynecounty.com)>; Alan Bulifant <[abulifan@waynecounty.com](mailto:abulifan@waynecounty.com)>; Brandon Barber <[bbarber@waynecounty.com](mailto:bbarber@waynecounty.com)>; Lynnette O. Cain <[Lcain1@waynecounty.com](mailto:Lcain1@waynecounty.com)>; Zenola Seegars <[Zseegars@waynecounty.com](mailto:Zseegars@waynecounty.com)>; Dennis Ramel <[Dramel@waynecounty.com](mailto:Dramel@waynecounty.com)>; Soumaya Harb <[sharb@waynecounty.com](mailto:sharb@waynecounty.com)>; Cierra Crawford <[ccrawfor1@waynecounty.com](mailto:ccrawfor1@waynecounty.com)>; Brandy C Phillips <[bpillips@waynecounty.com](mailto:bpillips@waynecounty.com)>; Charles Lennox <[CLennox@waynecounty.com](mailto:CLennox@waynecounty.com)>; Craig Schwartz <[CSchwartz@waynecounty.com](mailto:CSchwartz@waynecounty.com)>; Charles Pappas <[cpappas@waynecounty.com](mailto:cpappas@waynecounty.com)>; Keith D. Williams <[kdwilliams@waynecounty.com](mailto:kdwiliams@waynecounty.com)>; Lakeisha Solomon <[lsolomon@waynecounty.com](mailto:lsolomon@waynecounty.com)>; James Davis <[jdavis1@waynecounty.com](mailto:jdavis1@waynecounty.com)>; Jeriel Heard <[jheard@waynecounty.com](mailto:jheard@waynecounty.com)>; Jerome Pokorney <[jpokorne@waynecounty.com](mailto:jpokorne@waynecounty.com)>; Theodis Sims <[tsims2@waynecounty.com](mailto:tsims2@waynecounty.com)>; Matthew Gloster <[Mgloster@waynecounty.com](mailto:Mgloster@waynecounty.com)>; Derek Lynch <[Dlynch@waynecounty.com](mailto:Dlynch@waynecounty.com)>; Reginald Crawford <[rcrawfordwcdsa@gmail.com](mailto:rcrawfordwcdsa@gmail.com)>; WCDSA POAM Union Board 2020 WCDSA POAM Union Board 2020 <[acoxwcdsa@gmail.com](mailto:acoxwcdsa@gmail.com)>; Robin Hornbuckle <[Rhornbuckle@waynecounty.com](mailto:Rhornbuckle@waynecounty.com)>; Robin Hornbuckle <[rhornbucklewcdsa@gmail.com](mailto:rhornbucklewcdsa@gmail.com)>; Kevin Gardner <[Kgardner1@waynecounty.com](mailto:Kgardner1@waynecounty.com)>  
**Cc:** Benny N. Napoleon <[bnapoleo@waynecounty.com](mailto:bnapoleo@waynecounty.com)>; Michael T. Turner <[mtturner6@waynecounty.com](mailto:mtturner6@waynecounty.com)>; Corrina Portillo <[cportillo@waynecounty.com](mailto:cportillo@waynecounty.com)>; Olivia Townsend <[otownsen@waynecounty.com](mailto:otownsen@waynecounty.com)>; Rashaun Whitehead <[rwhitehead@waynecounty.com](mailto:rwhitehead@waynecounty.com)>; Daniel Pfannes <[dpfannes@waynecounty.com](mailto:dpfannes@waynecounty.com)>  
**Subject:** General Order U/S 20-07 \_ COVID-19 TESTING \_ Duty to Test and Report

Team: Attached, you will find General Order U/S 20-07 \_ COVID-19 TESTING \_ Duty to Test and Report. Please cause this order to be distributed to your respective subordinate commands and read at toll call for the next five days. Distribution is to be accompanied by the completion of signature sheets. Please contact me, via written communication, if you have any questions or if you should require clarification. Thank you.

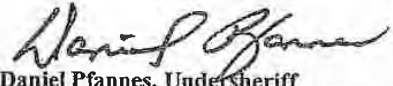
*Undersheriff Daniel Pfannes - FBINA #247 - FBI NEI #39 - FBI LEEDS #75 - PERF SMIP #59*  
*Wayne County Sheriff's Office*  
*4747 Woodward Ave*  
*Detroit, MI 48201*  
*313.475.6733 Cell*  
*313.224.2232 Office*  
*313.224.8535 Fax*  
[DPfannes@waynecounty.com](mailto:DPfannes@waynecounty.com)

CONFIDENTIALITY NOTICE: This email message and any accompanying data are confidential and intended only for the named recipient(s). If you are not one of the intended recipient(s), you are hereby notified that the dissemination, distribution, and/or copying of this message is strictly prohibited. If you receive this message in error, or are not the



named recipient(s), please notify the sender at the address above, delete the email from your computer, and destroy any copies immediately.

# WAYNE COUNTY SHERIFF

<b>Effective Date:</b> April 21, 2020	<b>Review Date:</b> Annually	<b>Policy and Procedure:</b> Injury or Illness While On-Duty and Off-Duty
<b>Special Instructions:</b> This policy supersedes and replaces all previous policies inclusive of P&P, DUTY and NON-DUTY INJURY / ILLNESS issued 10/01/1992.		<b>Policy Number:</b> 9113
<p style="text-align: center;"><b><u>PURPOSE</u></b></p> <p>To prescribe a policy concerning on-duty (and off-duty where applicable) employees being sent, or ordered to report to, a medical facility for an on-duty related injury or illness.</p> <p style="text-align: center;"><b><u>POLICY</u></b></p> <p>It is the policy of the Wayne County Sheriff's Office (WCSO) that any accident, injury, or illness that occurs while an employee is on duty, even if it does not involve lost time from work, must be reported. The following procedures shall be adhered to by all employees of the WCSO.</p> <p style="text-align: center;"><b><u>DEFINITIONS</u></b></p> <p><b>Injury:</b> any instance resulting in pain, suffering, or being wounded that occurred as a result of an accident and/or an intentional act committed by another individual.</p> <p><b>Illness:</b> an incident resulting in a period of sickness</p> <p><b>Full Duty:</b> Means an employee is able to perform the essential duties of the job with or without a reasonable accommodation.</p> <p style="text-align: center;"><b><u>PROCEDURE</u></b></p> <ol style="list-style-type: none"><li>1. Duty connected injury or illness: If an employee is injured or becomes ill while working, due to a work related occurrence, they shall inform the Shift Commander of their injury/illness before leaving their duty location. The Shift Commander shall require the employee to complete an Incident Report, a (PJ83), for law enforcement personnel or a memorandum to their supervisor for civilians, in order to document their injury/illness and inability to perform their duties. The employee shall be sent to a County authorized medical facility. In the event the employee is physically unable to complete the incident report/memo at the time the matter is reported to their Shift Commander/Civilian Supervisor, a supervisor will complete the report/memo and the employee shall complete a supplemental report, upon physically being able to do so.</li><li>2. If an employee becomes ill while working, due to a non-duty related condition, the Shift Commander or the individual's Civilian Supervisor may allow the employee to leave work and use time from their Sick Bank. Depending on the nature of the illness, the employee may be required to produce medical documentation establishing that they are clear to return to work. This documentation must be provided to the Sheriff's Office Personnel Unit.</li></ol>		
<b>Signature of Issuing Authority:</b>  Daniel Pfannes, Undersheriff		<b>Reference(s):</b>

### Injury or Illness While On-Duty and Off-Duty

3. Additional Responsibilities of a Supervisor Receiving the Information:
  - A. If a civilian employee's Supervisor is working at the time of the injury, s/he shall complete the Employee Sick Leave Information Sheet and the Wayne County Authorization for Medical Treatment forms.
  - B. If the civilian employee's Supervisor is not working at the time of the injury, the Shift Commander shall complete the Employee Sick Leave Information Sheet and the Wayne County Authorization for Medical Treatment forms.
  - C. The Supervisor shall be responsible for obtaining supplemental reports or memos from any witnesses to the event that caused the employee to become injured or ill while on-duty.
  - D. The Shift Commander/Supervisor/Civilian Supervisor shall be responsible for ensuring the completion and submission of the following to the Sheriff's Personnel Unit:
    1. A copy of the Incident Report Form, PJ83 and copies of any supplemental reports or memorandum. The originals, of these documents, shall be maintained at the Divisional level.
    2. The Employee Sick Leave Information Sheet. See the attachment. Note: The form does not have a dedicated space for a case number. Therefore, a case number must be booked with Regional Dispatch, and this case number must be handwritten by the Shift Commander/Civilian Supervisor in the upper right hand corner of the sheet.
    3. The Wayne County Employee Injury Report. See the attachment. Note: This report consists of four pages. Each of the pages is directed to a specific entity. The first page goes to Wayne County Disability Manager/Benefits Administration. The second page goes to the treating medical facility. The third page is given to the injured/ill employee, and the fourth page is retained by the Employer. This form does not have a dedicated space for a case number. Therefore, the case number that was booked with Regional Dispatch must be handwritten by the Shift Commander/Civilian Supervisor in the upper right hand corner of the Report Form.



## Injury or Illness While On-Duty and Off-Duty

- a. The top half of this form is to be completed by the injured/sick employee's supervisor. The WCSO case number must be written on the upper right hand corner of the form.
  - b. The employee shall bring this form with them to the medical facility to which they have been directed.
  - c. The attending medical personnel shall complete the lower portion of the form, which the employee must ultimately provide to the on-duty Shift Commander/Civilian Supervisor as soon as possible.
4. Any other medical documentation that has been provided to the employee must be copied and forwarded to the Sheriff's Personnel Unit. The associated WCSO case number must be written on each piece of paperwork in the upper right hand corner.
- E. The completed forms, or copies thereof, must be forwarded to the Sheriff's Personnel Unit within (24) hours, excluding weekends and holidays, to enable the Personnel Unit to properly process any Worker's Compensation Claims, LTD and/or Sick Leaves, as applicable.
4. The Sheriff's Personnel Unit shall forward the package of injury/illness reports, memos, documents, etc. to the County's Departmental Worker's Compensation Representative within 24 hours of receipt, (excluding weekends and holidays).
5. The County will not initiate any action on the claim without all of the appropriate paperwork being submitted for review and consideration.
6. In regards to an employee returning to work from any period of time in which the employee was sick or injured as a result of an on-duty incident:
- A. **The employee shall not return directly to his/her former duty assignment without receiving clearance to do so from the Sheriff's Personnel Unit. .**
  - B. Per Article 8.20 of the Standards of Conduct, "All officers shall be mentally and physically fit to perform the duties required of a police officer."

## Injury or Illness While On-Duty and Off-Duty

1. Therefore, only officers that are cleared for full-duty will be allowed to return to work immediately.
  2. If the attending physician places any restrictions on the employee's ability to return to work, the employee will not be allowed to immediately return to work. The County Disability Manager, the Sheriff's Office and/or the third party claims administrator shall work in concert to determine if a Worker's Compensation claim is going to be processed and/or if the employee is eligible to participate in the Transitional Return to Work Program (TRTWP) and/or if there is a position to which the employee may be assigned in the TRTWP.
  3. An officer that is not cleared for full duty shall be on leave pending a decision on Worker's Compensation and/or the TRWP.
- C. If the employee was on leave for an illness/injury for a period of ten (10) consecutive days; the employee shall contact the Sheriff's Personnel Unit four (4) working days prior to his/her intention to return to full duty and provide written clearance from their attending physician, along with a diagnosis of the illness/injury, and a return to work clearance date.
- D. An employee who is on extended Sick or Injury leave, for thirty (30) consecutive days or more, shall not be returned to work unless and until:
1. The employee gives the Sheriff's Personnel Unit four (4) working days prior written notice of their intention to return to full duty.
  2. They receive a medical clearance from their attending physician to return to full duty. The clearance must specify a diagnosis as to the nature of the illness/injury.
  3. If applicable, the County approved physician also provides a clearance for the employee to return to work.
  4. The employee successfully passes a drug test administered at the direction of the County and/or the Sheriff's Personnel Unit.
- E. The employee must present a Clearance Form that has been signed by a member of the Sheriff's Personnel Unit in order to return to work.
1. If the employee does not have a signed Clearance Form, he/she will be directed to return to the Sheriff's Personnel Unit to await clearance to return to work.

## Injury or Illness While On-Duty and Off-Duty

### 7. Return to Work from any Period of Time in Which the Employee was Sick or Injured as a Result of an Off-duty Incident.

A. An employee that has been off work, due to sickness or injury, for a period of three (3) days or less shall be allowed to return to work, provided he/she is cleared for full duty; whereby, he/she is able to perform the essential duties of their job with or without a reasonable accommodation. If an employee, and/or their health care provider, indicates he/she is only cleared for restricted duty or needs an accommodation to perform their duties, they must contact the County's Benefits Administration Disability Manager to request an American's with Disabilities Act package. During the pendency of the Disability Manager's review, the employee will not be allowed to return to work.

B. An employee that has been off work for more than three (3) days and that desires to return to work must provide clearance from their attending physician indicating that they are clear to return to work in a full duty, capacity. **NOTE: An exception to this requirement will be allowed during the COVID-19 Pandemic of 2020; specifically, any employee that has tested Positive for COVID-19 shall not be required to obtain a return to work clearance note from their health care provider. However, prior to being allowed to return to work, the employee shall be required to be tested again for the presence of the COVID-19 virus. A test result of "negative" shall be sufficient to allow the employee to return to work. All of the following procedures shall still be adhered to. In the event the employee is unable to make contact with the staff from the Sheriff's Personnel Unit, the employee shall be allowed to present evidence of the "negative" test result, a result that is definitively linked to the employee, to a shift supervisor at their home command and the employee shall be allowed to return to work. The test result shall be immediately forwarded to the Personnel Unit – hard copy via inter-office mail and an electronic copy via email. The employee will be required to comply with any other instructions he/she receives from the Personnel Unit reference their return to work. The exception will sunset when the pandemic has been declared to have ended.**

1. The employee must present this clearance to the Sheriff's Personnel Unit. Upon receipt, a decision will be made as to whether or not the employee will be allowed to return to work or if

## Injury or Illness While On-Duty and Off-Duty

they must be subject to an examination and clearance by the County's physician.

- a. If an employee, and/or their health care provider, indicates he/she is only cleared for restricted duty or needs an accommodation to perform their duties, they must contact the County's Benefits Administration Disability Manager to request an American's with Disabilities Act package. During the pendency of the Disability Manager's review, the employee will not be allowed to return to work.
2. If an employee is cleared by the Sheriff's Personnel Unit to return to work, they will be given a Clearance Form that has been signed by a member of that unit.
  - a. The employee will present that signed Clearance Form to their Shift Commander and be allowed to return to their work assignment.
  - b. An employee that arrives at their assigned Division without that signed Clearance Form shall be instructed to return to the Sheriff's Personnel Unit.**
- C. If the employee anticipates an extended sick leave, for three (3) or more consecutive work days, that is not duty related, the employee shall contact the Sheriff's Personnel Unit to complete the Leave of Absence Forms and submit medical documentation of the need for such a sick leave.

### 8. Jail Medical Services

- A. The County employs the services of a private contractor (Jail Medical Services) for the provision of medical services to Jail Inmates.
- B. Jail Medical Services are not contracted to provide medical treatment to the employees of the Sheriff's Office.
- C. Jail Medical Services is permitted to provide medical services to an employee of the Sheriff's Office only when the employee is suffering from a life-threatening condition and only when their medical staff determines that it is appropriate to do so.

### 9. Medical Services to Employees of the Sheriff's Office:

### Injury or Illness While On-Duty and Off-Duty

- A. Employees suffering from an on-duty non-life threatening illness and/or injury are to be treated at the County designated medical facility.
- B. Employees suffering from an on-duty life threatening illness and/or injury shall be conveyed, by the local EMS provider if necessary, to an area hospital emergency room.
- C. Employees suffering from a non-duty related illness or injury shall seek treatment from their personal physician.
- D. Employees suffering a life threatening illness or injury, that is related to a non-duty related condition but while they are at work, shall be conveyed, by the local EMS provider if necessary, to an area hospital emergency room.



Benny N. Napoleon  
*Wayne County Sheriff*

Date: April 23, 2020

To: All Staff Members of the Wayne County Sheriff's Office

From: Undersheriff Daniel Pfannes

Re: Facial Masks

General Order U/S 20-08

**Policy:**

It is the policy of the Wayne County Sheriff's Office (WCSO) to engage in efforts to maximize the number of healthy officers and civilian staff that are available to work at each of its work sites. This is especially important during the COVID-19 Pandemic.

The WCSO has distributed PPE gear and sanitizing products to its staff in order to decrease the likelihood of the COVID-19 virus being spread. Facial masks, whether they be the N95, KN95 or surgical masks help to limit the amount of contaminants that can be spread by the wearer to the surrounding area, and they also protect the nasal passages and mouth of the wearer to help prevent the introduction of contaminants into their system.

**Order:**

1. Effective immediately, WCSO personnel shall wear their issued face masks any time they have or should reasonably expect to have contact with another person, whether that other person is a co-worker, inmate, and/or member of the public.
2. WCSO personnel that occupy a single person office or are in a contained environment with no one else present are exempt from the requirement of wearing a mask. An example of this would be a sole officer occupying a center station or corner station at Jail Division 1 or a sole person assigned to an office performing their duties with the door closed.
3. If an issued mask becomes damaged and unusable, the bearer of the mask shall immediately report the damage to their supervisor and request the issuance of a new mask.
4. A new mask shall be issued to the bearer of a damaged mask as soon as is practicable.
5. This order shall remain in effect throughout the pandemic and until it is rescinded.

Respectfully,

A handwritten signature in cursive script, appearing to read "Daniel Pfannes".

Daniel Pfannes, Undersheriff

# ***Exhibit 3***





## **Procedure for suspected coronavirus**

### **Intake Procedure**

1. All newly incoming patients are to be screened with the Wellpath Coronavirus Supplemental Screening form.
2. If the patient is symptomatic:
  - a. Put a mask on the patient
  - b. Place the patient in the infirmary (if available) or single cell on isolation x14 days
  - c. Contact the local health department for testing and further direction on the suspected case
  - d. Anyone going into the patient's cell should have a N95 mask on when providing care/treatment.

### **Housing Unit Procedure**

1. If patient has been in the housing unit for 14 days or less utilize the above Intake Procedure.
2. If patient has been in the housing unit for over 14 days then follow the site's influenza protocol.

Any suspected cases of the Coronavirus qualifies as a CCE.





## Isolation and Cohort Guidance for COVID 3/17/2020

As the number of people being testing increases, our facilities will experience additional housing decisions. Specifically, many facilities will not be able to provide patients with a single room/cell if required to be isolated. For this reason we are providing guidance around placement of patients in cohort situations.

### What is a Cohort Area?

A cohort area is a bay/ward/housing unit in which a group of patients (cohort) with the same infection are placed together. Cohorts are created based on clinical diagnosis, microbiological confirmation when available, epidemiology, and mode of transmission of the infectious agent.

### How should patient placement decisions be made?

Patient placement decisions should be based on risk assessment which should consider the route of transmission alongside patient factors and symptoms that increase the risk of cross transmission.

### Under what circumstances should a patient be placed in an **ISOLATION ROOM** (negative pressure room)?

An isolation room should be used, if available, to accommodate a patient known or suspected to be infected with a microorganism spread by the airborne (aerosol) route whilst the patient is considered infectious.

### Under what circumstances should a patient be placed in a **SINGLE ROOM**?

Patients who are known or suspected to be infected with a microorganism spread by the contact or droplet route should be cared for in a single rooms **WHEN AVAILABLE**.

### Under what circumstances should a patient be placed in a **COHORT AREA**?

Patient cohorting may be appropriate when single rooms are not available and there is more than one patient with the same confirmed infection.

### General Principles for COVID-19 Cohorting:

1. Patients will need to be isolated from general population while awaiting test results.
2. Patients who are otherwise healthy (does not have underlying DM, Heart Dz, immunosuppression, CA, etc.) and test positive for COVID-19 may be cohorted together in the same room/cell/clock.
3. Patients who are positive for influenza but negative for COVID-19 may be cohorted together.
4. Patients who are **≥ 65 AND** have signs/symptoms consistent with COVID-19 should be cohorted in specific area (preferably an infirmary) as they tend to handle the disease worse. Full vital signs including pulse oximetry should be obtained at least twice daily.
5. Cohort Nursing should be instituted. This means whenever possible, the same health care workers should be taking care of cohorted COVID-19 positive patients. This limits exposure.

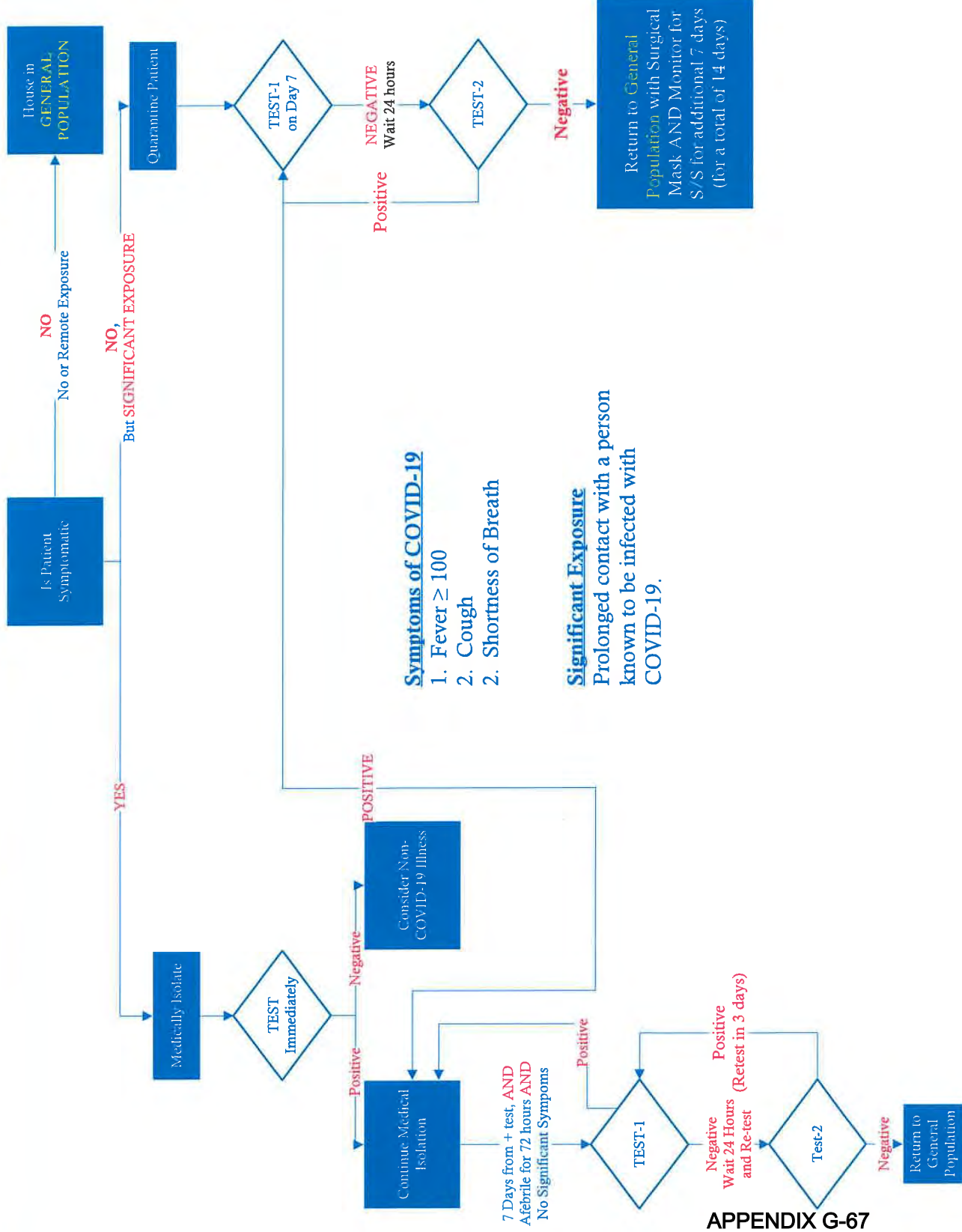
Discontinuation of Mandatory Isolation for Persons with Confirmed COVID-19

- It has been at least seven (7) days since the initial positive test for COVID-19.
- Resolution of fever without the use of antipyretic medication.
- Improvement in the signs and symptoms of the illness.

As always, information regarding these topics as well as others are constantly changing. Please check on these updates on a daily basis.

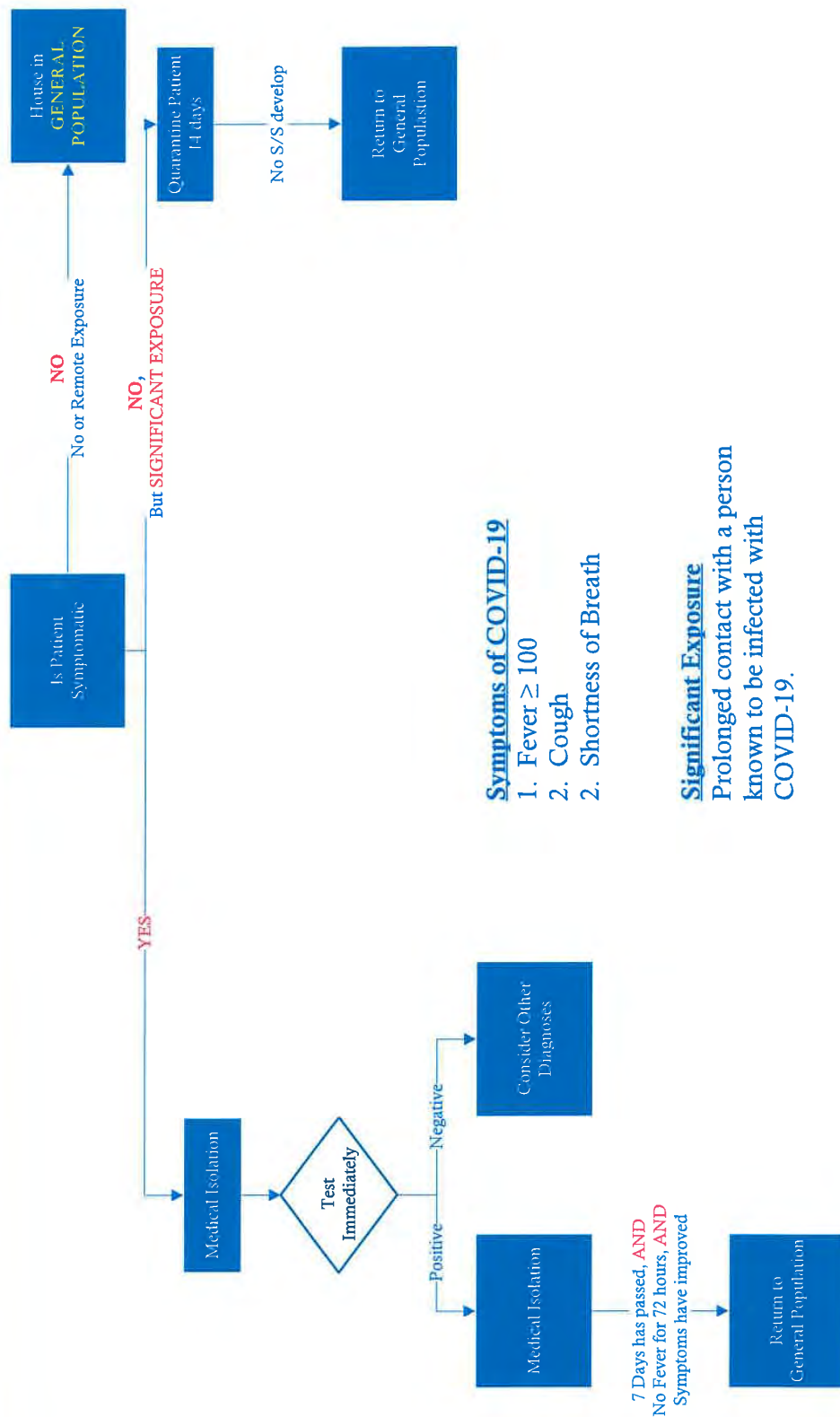
# Patients: Testing Strategy

April 23, 2020



# Patients: Non-Testing Strategy

April 23, 2020



APPENDIX G-68

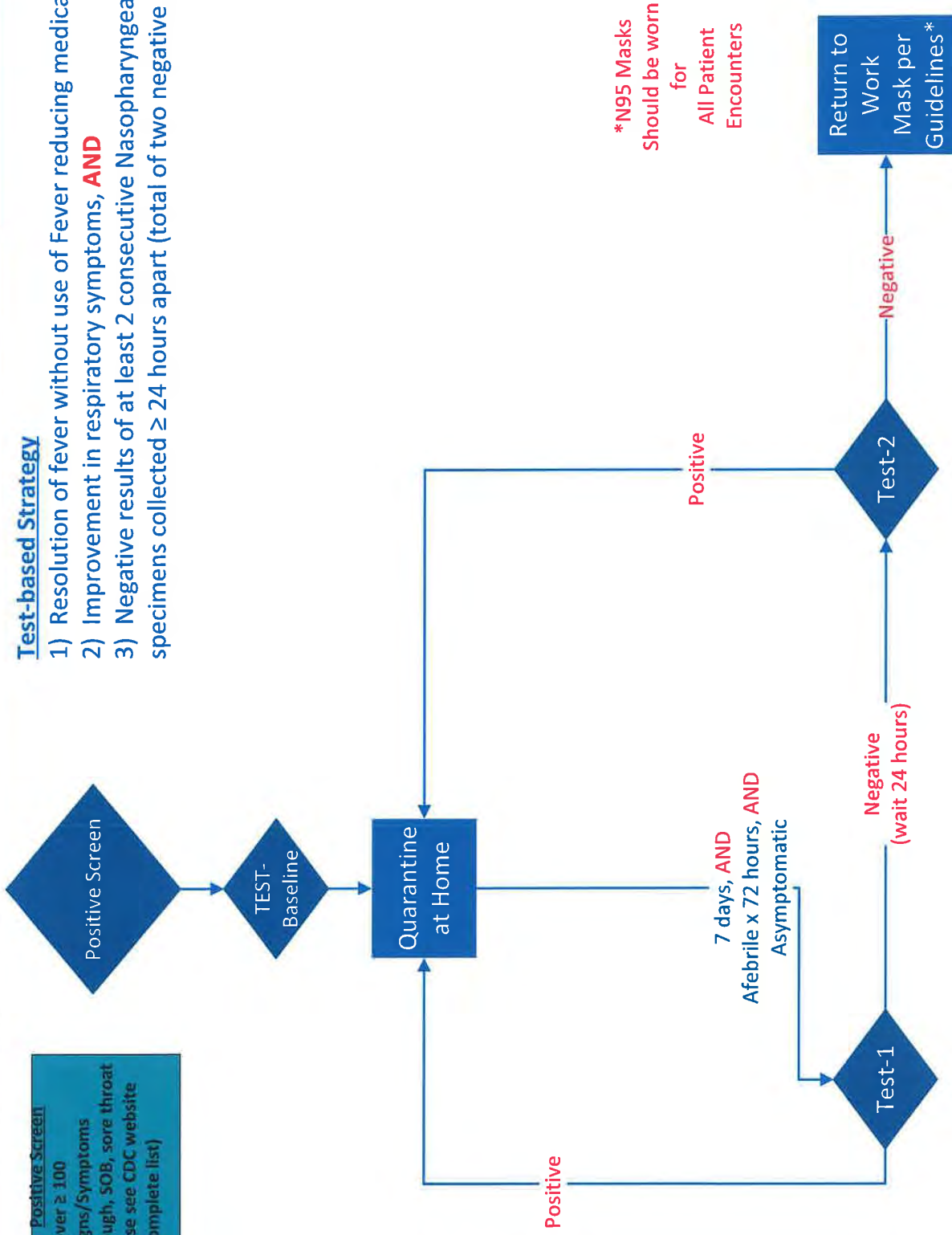
# Staff: Test-based Strategy

April 23, 2020

**Positive Screen**  
1. Fever  $\geq 100$   
2. Signs/Symptoms  
- cough, SOB, sore throat  
(Please see CDC website  
for complete list)

## Test-based Strategy

- 1) Resolution of fever without use of Fever reducing medication **AND**
- 2) Improvement in respiratory symptoms, **AND**
- 3) Negative results of at least 2 consecutive Nasopharyngeal swab specimens collected  $\geq 24$  hours apart (total of two negative specimens)



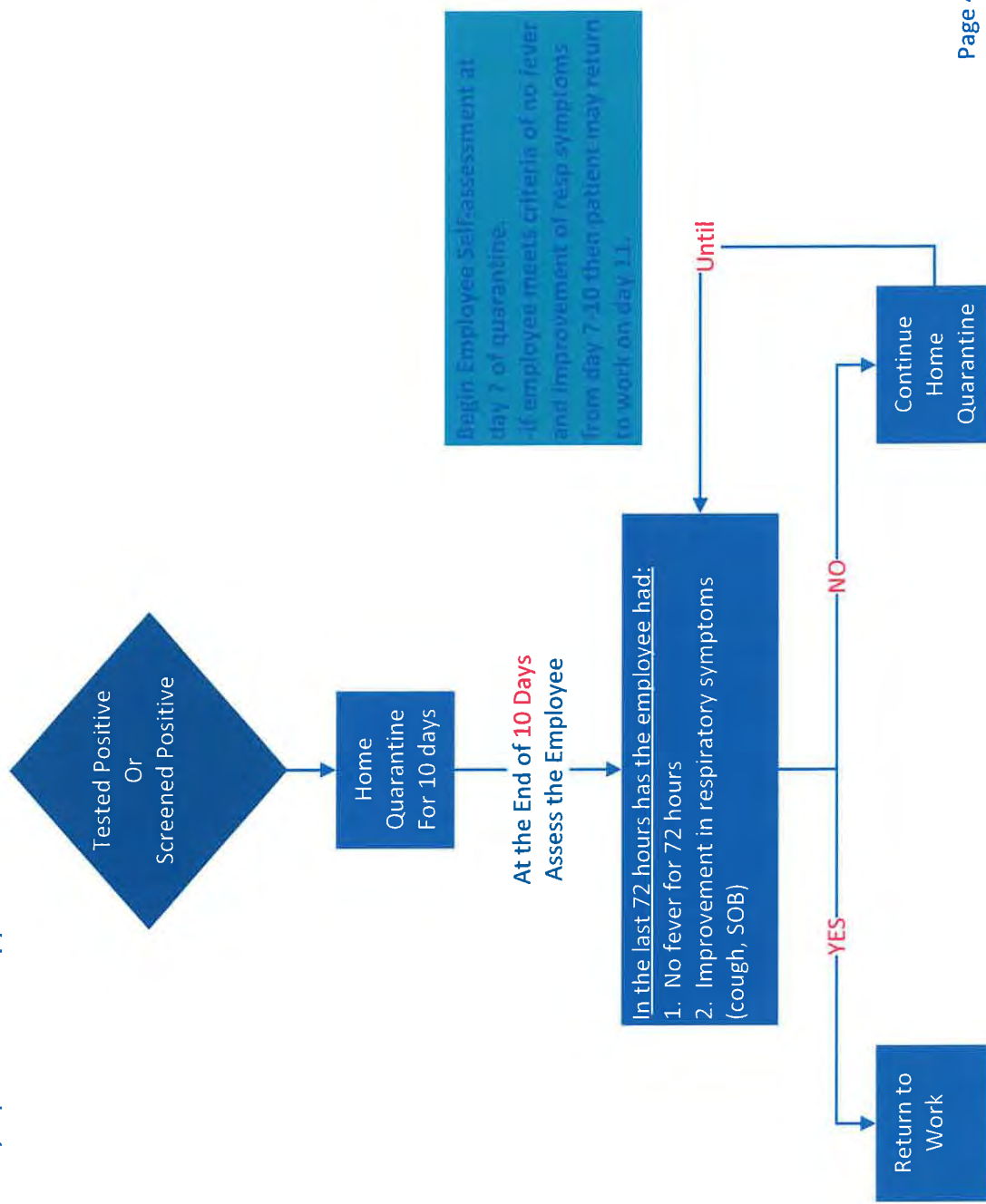
APPENDIX G-69

## Staff: Non-test-based strategy

April 23, 2020

### Exclude from work until:

1. at least 3 days (72 hours) have passed since recovery, **AND**
2. improvement in respiratory symptoms, **AND**
3. at least 7 days have passed since symptoms first appeared

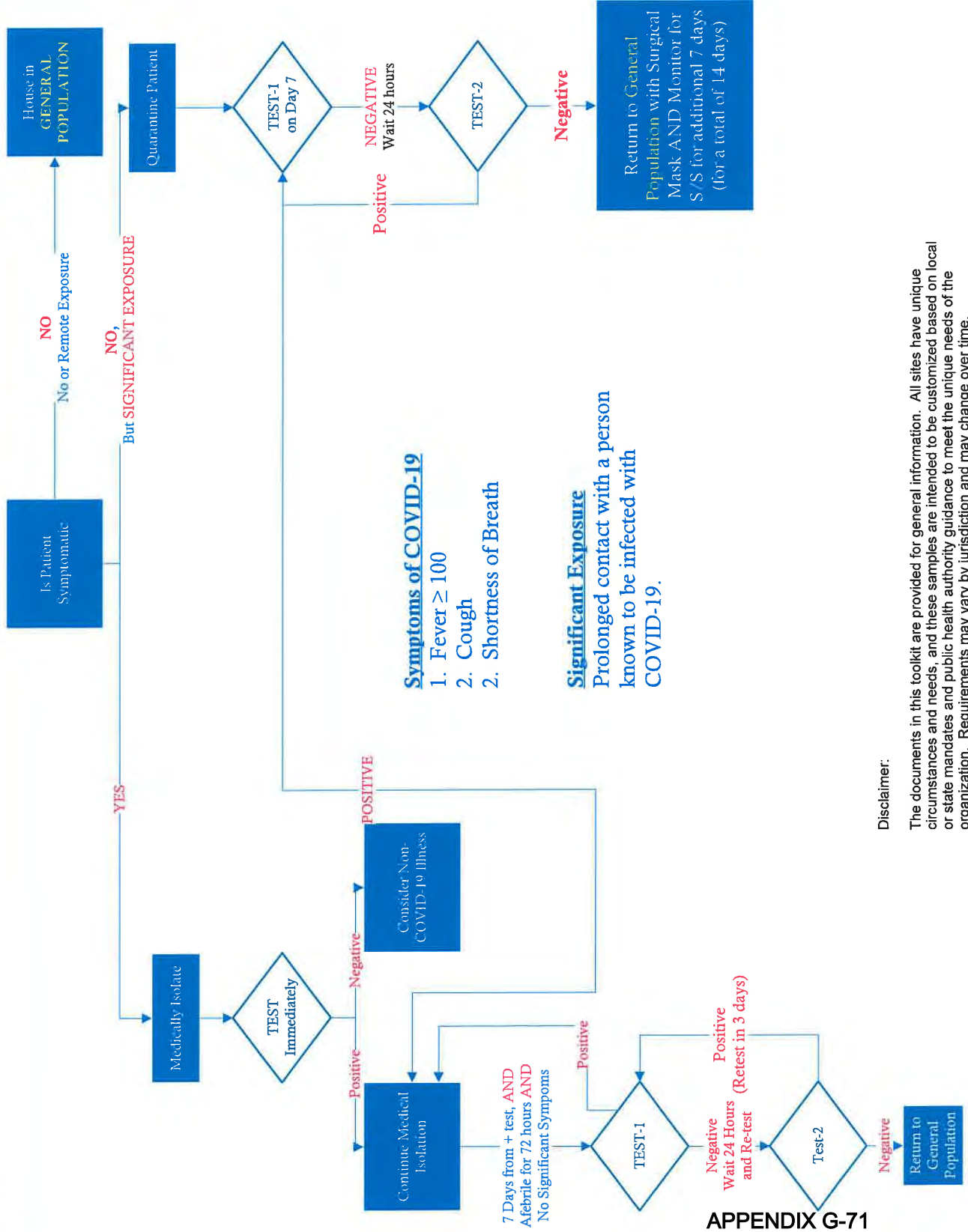


APPENDIX G-70



# Patient Testing Workflow: Further Testing Available to Determine Housing

May 5, 2020

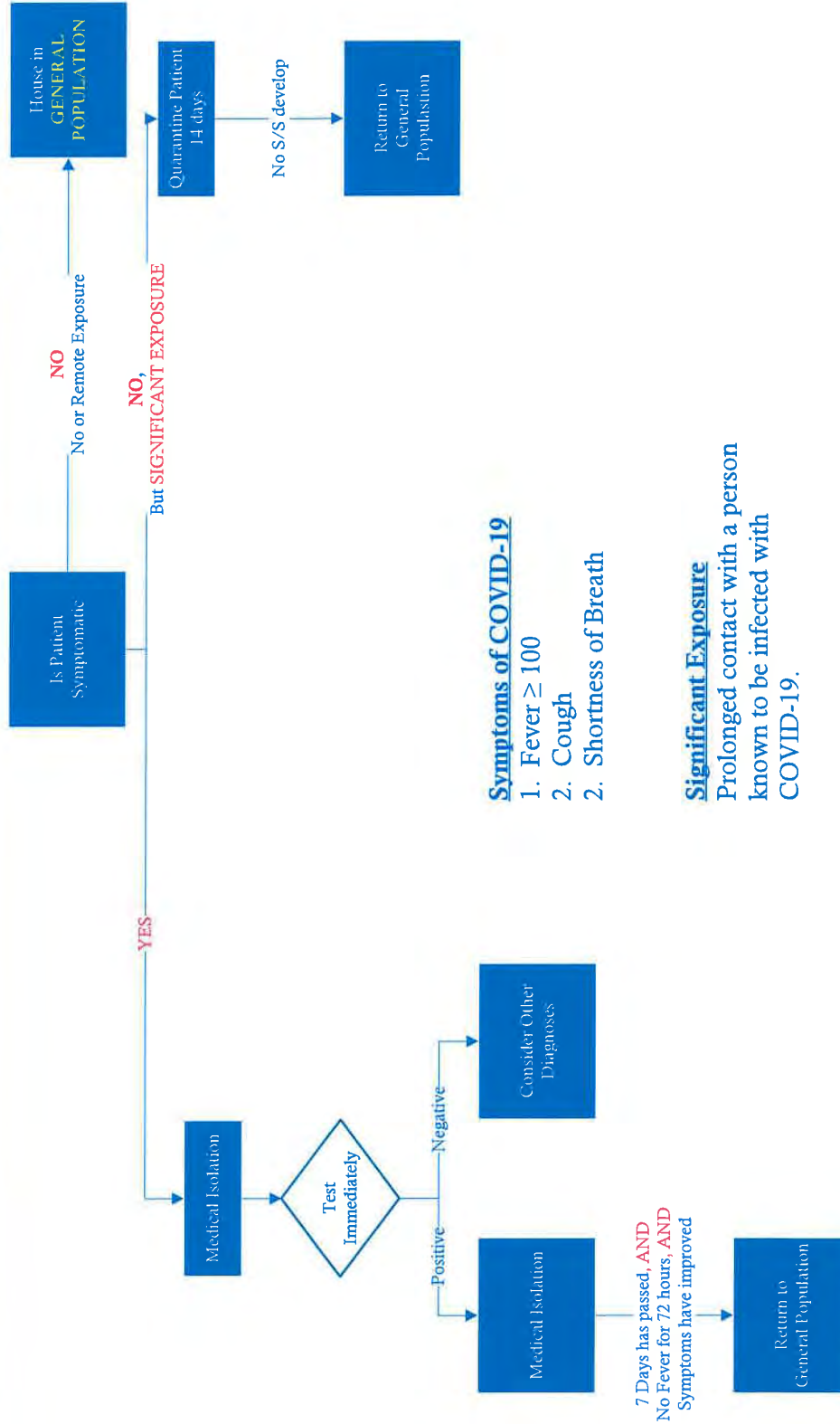


## Disclaimer:

The documents in this toolkit are provided for general information. All sites have unique circumstances and needs, and these samples are intended to be customized based on local or state mandates and public health authority guidance to meet the unique needs of the organization. Requirements may vary by jurisdiction and may change over time.

# Patient Testing Workflow: Further Testing Unavailable to Determine Housing

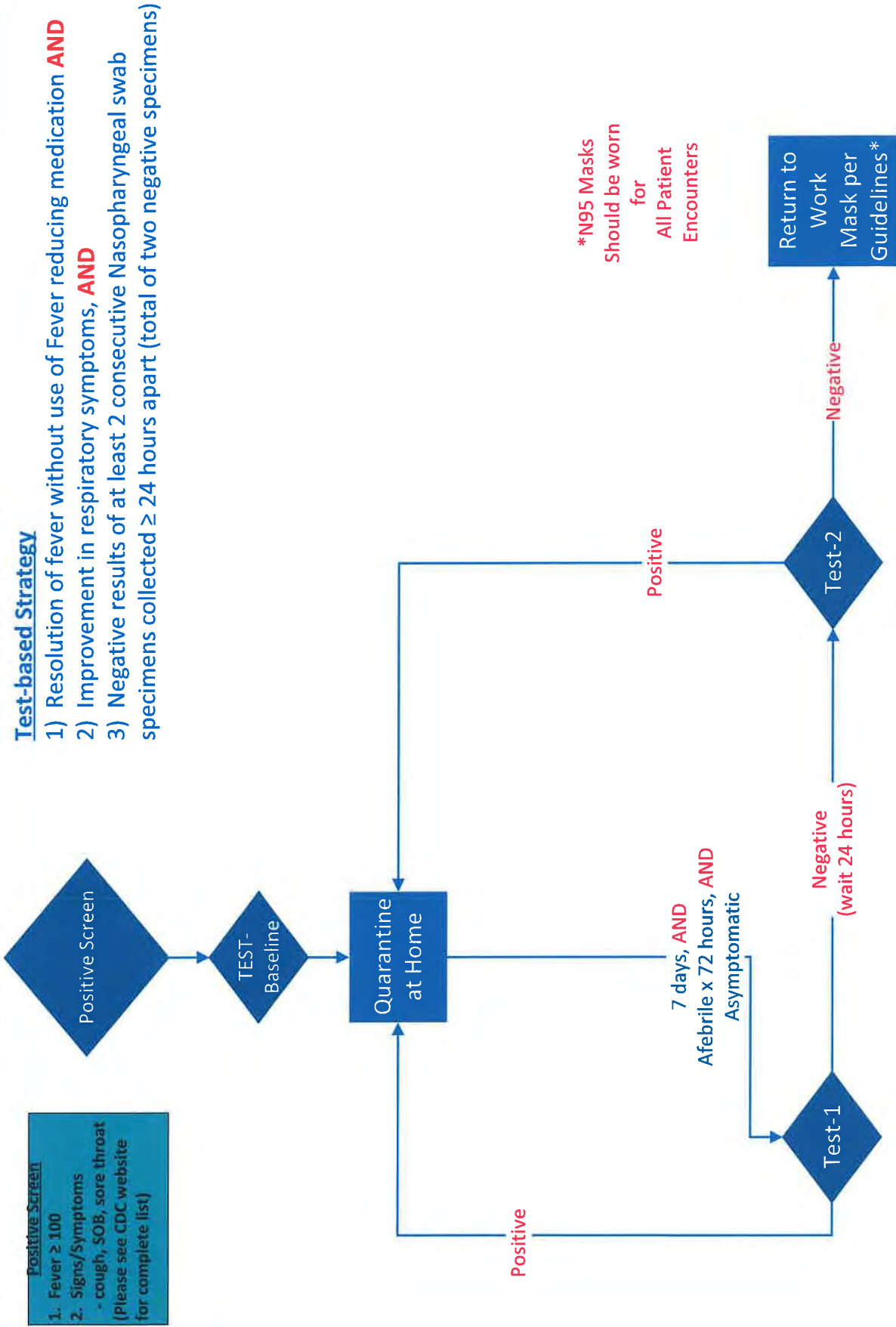
May 5, 2020



Disclaimer:

The documents in this toolkit are provided for general information. All sites have unique circumstances and needs, and these samples are intended to be customized based on local or state mandates and public health authority guidance to meet the unique needs of the organization. Requirements may vary by jurisdiction and may change over time.



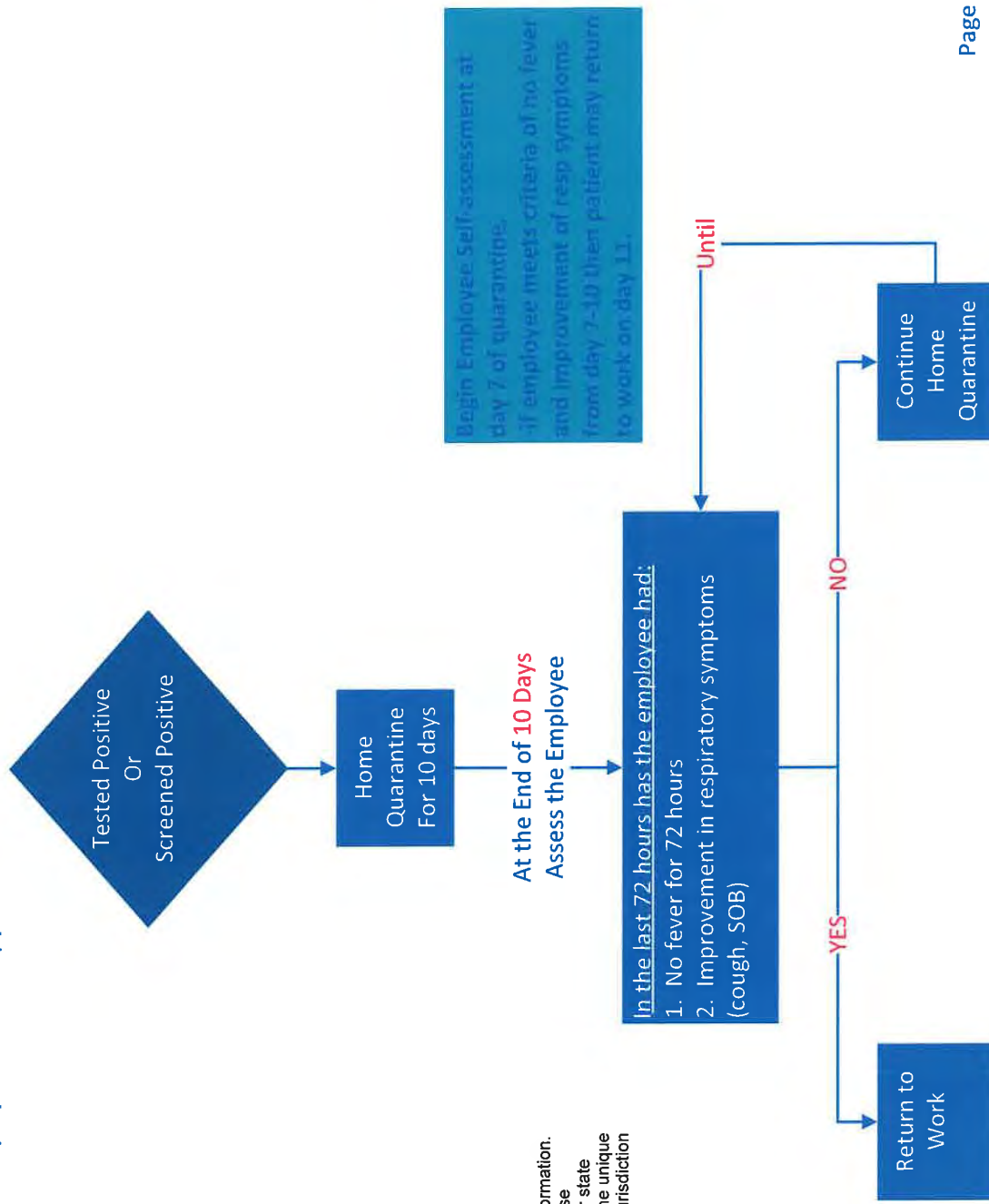


## Disclaimer:

The documents in this toolkit are provided for general information. All sites have unique circumstances and needs, and these samples are intended to be customized based on local or state mandates and public health authority guidance to meet the unique needs of the organization. Requirements may vary by

**Exclude from work until:**

1. at least 3 days (72 hours) have passed since recovery, **AND**
2. improvement in respiratory symptoms, **AND**
3. at least 7 days have passed since symptoms first appeared

**Disclaimer:**

The documents in this toolkit are provided for general information. All sites have unique circumstances and needs, and these samples are intended to be customized based on local or state mandates and public health authority guidance to meet the unique needs of the organization. Requirements may vary by jurisdiction and may change over time.

**APPENDIX G-74**

## Off-site Guidance During COVID-19

### I. **SUBJECT:** Temporary Off-site guidance during COVID-19 pandemic

**PURPOSE:** As the COVID-19 pandemic continues and rapidly evolves, we must temporarily adjust our usual and customary procedures to take it into consideration. One such procedure needing adjustment is offsite appointment scheduling. During the mitigation stage of the COVID-19 pandemic, the United States is trying to decrease avenues of transmission. Some of the methods employed consist of decreasing travel and movement, shelter in place tactics, and social distancing. When our patients and officers travel offsite, they have increased movement and come in contact with other people. This causes an increased risk of exposure and the possibility of transporting the virus back to our facilities. To decrease the spread of COVID-19 and ensure our patient's safety and at the same time, guidelines have been formulated to decrease unnecessary offsite trips.

### II. **PROCEDURE**

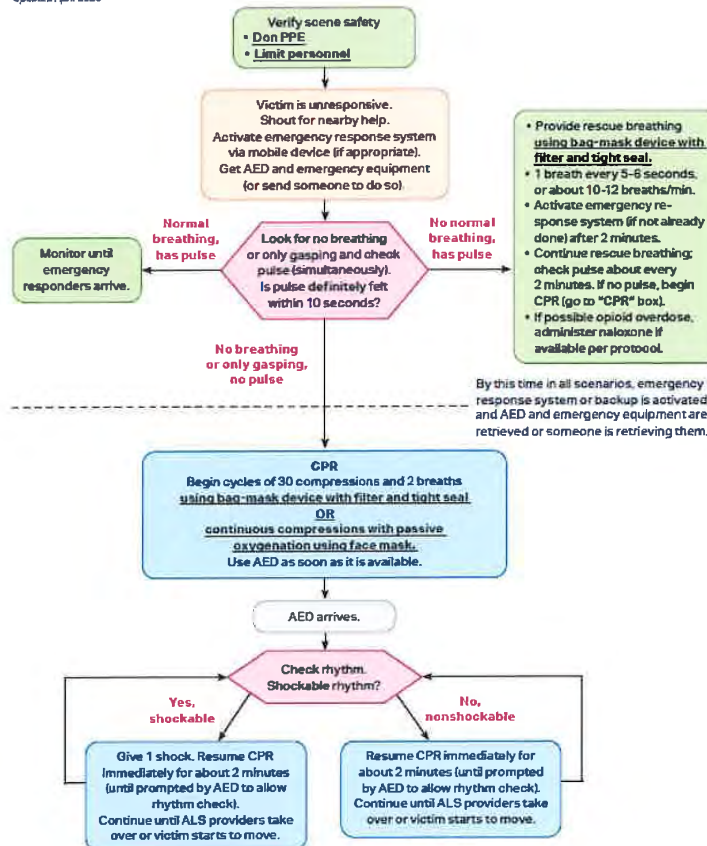
1. Site provider or medical director should review patient off-site appointments scheduled for the following week.
  - a. This can be done daily or every other day.
2. Those appointments will need to be triaged by the Site Medical Director or provider designee to determine if the visit is essential vs. non-essential.
  - a. Appointments determined to be **non-essential**
    - i. Site should contact the offsite provider's office and alert that provider the patient will need to be rescheduled.
    - ii. SMD or provider shall write a progress note in the patient's chart stating the visit has been postponed due to COVID-19 pandemic and will be rescheduled.
    - iii. All rescheduled patients should be evaluated monthly to ensure the patient's medical condition is stable and the patient is safe to continue waiting.
    - iv. The provider should communicate with all rescheduled patients to insure they are aware of process and they will be evaluated periodically.
    - v. Patients should have the sick call request process reviewed so they understand how to alert medical for any condition changes if needed.
  - b. Appointments determined to be **essential**
    - i. Site should call the provider's office and ensure the provider will see the patient at the scheduled time.
    - ii. Patient should be transported to offsite appointment according to site's current protocol
3. Essential offsite appointments should be determined on a case by case basis. In general, essential shall include but are not limited to:
  - a. Dialysis
  - b. Pregnant females  $\geq$  36 weeks and/or high risk pregnant females
  - c. Chemotherapy/Radiation therapy
  - d. Oncology/ Radiation Oncology
  - e. Methadone Clinic
    - i. See if Methadone clinic will allow medications to be brought back to the site to limit offsite travel.
  - f. Any Serious Medical condition-one that may cause immediate loss of life or limb needing ongoing evaluation/treatment.

# Guidance for CPR & COVID-19

1. **Compressions only until HEPA filters for the BVM (ambu-bag) are available**
  - Continue to use rebreather mask and oxygen as available to provide extra ambient oxygen. A surgical mask can be placed over the patient's face during compressions to prevent aerosolization of secretions. Ensure monitoring that airway is open during surgical masking.
2. **Amount of staff to respond**
  - Have the staff necessary for the situation but not more
  - At least two people should be present during compression only
  - Three people may be required when using BVM with HEPA filter so that one person can focus only on managing the mask of the BVM to create an optimal seal for ventilation and prevention of aerosolization.
3. **Three N95 masks with jump bag (for clinical and CO staff)**
  - Clinical staff should have N95/KN95 on whenever working with patients, but if they happen to run to emergency, or security staff arrive not wearing N95/KN95 have extra in the ER bag for staff due to high risk nature of CPR aerosolizing COVID from staff to patient due to exertion required for CPR, or patient to staff due to forced exhalation from chest compressions.
4. **Two surgical masks with jump bag to place on patient to minimize shedding of secretions/vomit**
  - Place mask on patient on arrival, even if unconscious/not breathing. CPR will potentially aerosolize any virus in secretions.
5. **Please see the American Heart Association's Adult Cardiac Arrest Algorithm for Suspected or Confirmed COVID-Patients below.**

## BLS Healthcare Provider Adult Cardiac Arrest Algorithm for Suspected or Confirmed COVID-19 Patients

Updated April 2020



© 2020 American Heart Association

Confidential

APPENDIX G-76

## COVID-19 Provider's Orders

Name:	ID#:	DOB:
Date/Time:	Allergies:	Gender:

Provider's Order	Transcriber
<b>Housing:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> House in medical isolation until afebrile for 72 hours, is asymptomatic, and 2 negative tests 24 hours apart or 7(seven) days from time of initial symptoms</li> <li><input type="checkbox"/> Provide patient with a facemask to be worn anytime they leave their cell, or someone is at or in their cell</li> <li><input type="checkbox"/> If released from custody while in quarantine or isolation provide "Discharge for Suspected or Confirmed COVID-19 Patients"</li> </ul>	
<b>Monitoring:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Monitor Pulse, Temperature, Oxygen, and symptoms twice a day until afebrile without use of antipyretic for 72 hours. If pulse is greater than 120 check Blood Pressure and contact medical provider.</li> </ul>	<b>Title</b>
<b>Oxygen:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> If pulse ox is &lt; 95% on room air- apply Oxygen 4L/M via nasal cannula and contact on-call medical provider</li> <li><input type="checkbox"/> If pulse ox is &lt; 95% while on Oxygen 4L/M- contact medical provider</li> </ul>	
<b>Medications:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tylenol 325mg two (2) tabs by mouth every 8 hours for temperature &gt; 100.6 °F or malaise or myalgias.</li> <li><input type="checkbox"/> Guaifenesin/ Dextromethorphan 1200mg/60mg (Mucinex DM tablets): Take 1-2 tablets by mouth every 12 hours. Do not exceed 4 tablets in 24 hours</li> <li><input type="checkbox"/> Tylenol #3 two (2) tablets by mouth every 8 hours for significant cough (do not duplicate Tylenol if ordered for temperature / myalgia above)</li> <li><input type="checkbox"/> Zofran (ondansetron) 4 mg one (1) tablet by mouth for multiple episodes of vomiting. May repeat at 8-hour intervals times 2. If vomiting persists after three doses or if vomiting is severe and associated with abdominal pain notify medical provider</li> <li><input type="checkbox"/> ProAir two (2) puffs four times a day and as needed for minor bronchospasm, if severe contact medical provider</li> </ul>	<b>Date</b>
<b>Fluids:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Electrolyte Replacement (Gatorade/Squincer) 48 oz each day, instruct patient to drink 8 oz every 4 hours for 10 days or until released from isolation</li> </ul>	
<b>Laboratory Test:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> If patient symptomatic- COVID-19 test</li> <li><input type="checkbox"/> If patient is asymptomatic and had a significant contact- COVID-19 test on day 7 of quarantine</li> </ul>	<b>Time</b>
<b>Additional Orders:</b>     	
<b>Provider:</b>	

Form Folder and Number Communicable Disease CD 15.0	Form Owner Tom Pennington	Accreditation All	Active / Last Revision Date April 16, 2020
--	------------------------------	----------------------	---

# ***Exhibit 4***



### **DECLARATION OF DENNIS RAMEL**

I, Dennis Ramel, being of lawful age and duly sworn under oath, depose and say as follows:

1. I have personal knowledge of the facts stated in this affidavit, and I am competent to testify as to the truth of these facts, and I will so testify should I be called as a witness in a legal proceeding;
  2. I am the current Director of Classification of the Wayne County Jail, inclusive of all Divisions and have served in this capacity since 2015;
  3. In my capacity, I am charged with overseeing the inmate population in the Wayne County Jail;
  4. On March 13, 2020, the total Wayne County Jail population was 1,390 inmates;
  5. Administratively Judicial Releases due to the coronavirus pandemic began on March 19, 2020;
  6. As of the date of this declaration, 235 inmates have been administratively released from the custody of the Wayne County Jail;
  7. The total inmate population on May 5, 2020 in the Wayne County Jail was 820 inmates, with 205 inmates having been administratively released;
  8. The lowest inmate population in the Wayne County Jail since the onset of the coronavirus pandemic was 783 inmates on May 14, 2020;
  9. The current inmate population as of the date of this declaration is 794;
- I declare under penalty of perjury that the foregoing is true and accurate.

FURTHER AFFIANT SAYETH NOT.

DocuSigned by:  
*Dennis Ramel* 6/5/2020  
9CA4767D29D64F8...  
Dennis Ramel Date  
Director of Classification  
Wayne County Sheriff's Office

Document received by the MI Wayne 3rd Circuit Court.



# ***Exhibit 5***



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF CORRECTIONS  
LANSING

HEIDI E. WASHINGTON  
DIRECTOR

May 20, 2020

Sheriff B. Napoleon  
Wayne County Sheriff's Office  
3501 Hamtramck Drive  
Hamtramck, MI 48211

RE: MDOC EO 2020-62 COVID Protocol Inspection

Dear Sheriff Napoleon,

On Tuesday, May 12, 2020 MDOC conducted an inspection of the Wayne County Jail as provided for by Act No. 232 of the Public Acts of 1953, as amended, being section 791.262 of the Michigan Compiled Laws and the Governor's Executive Order 2020-62.

The inspection was conducted by Larry Abraham, Regulation Agent with the County Jail Services Unit.

### Inspection Findings

On the date of inspection, the Wayne County Jail was in COMPLIANCE with the MDOC Covid-19 Protocols.

### Transfer of Inmates to MDOC

You are NOT approved to transfer inmates unless the inmate had previously tested COVID positive and has had two subsequent negative swab tests. Please provide me weekly with the following information: the new COVID positive cases and number of recovered (30 days with two negative tests). The department will reevaluate weekly when inmates are able to be transferred to the MDOC.

For inmates that meet this criterion you can contact Charles E Egeler Reception and Guidance Center (RGC) to schedule transfer of the MDOC prisoners. Any subsequent transfers will need to follow this same process. Please contact Rachel Johnson at 517-780-6463 to schedule.

RGC will need the following information from your county.

- Exit screening information for all transfers.
- Number of MDOC prisoners you have for transfer that were COVID positive.
- Proof of two negative tests.

Sincerely,

Trever LeBarre  
**Manager, County Jail Services Unit**  
Michigan Department of Corrections  
(517) 643-6518  
[Lebarret@Michigan.gov](mailto:Lebarret@Michigan.gov)

# ***Exhibit 6***

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES, *et al.*

Plaintiffs,

Case No. 71-173217-CZ

v.

Hon. Timothy M. Kenny

WILLIAM LUCAS, *et al.*

Defendants.

---

AFFIDAVIT OF MARK MORRISSEY, MSN, RN

STATE OF MICHIGAN    )  
                                  )  
COUNTY OF WAYNE    )

Affiant being duly sworn states as follows:

1. My name is Mark Morrissey, MSN, RN and I am over the age of eighteen (18) years.
2. I am the regional director of operations for Wellpath, the medical provider for the Wayne County Jail.
3. Prior to enacting testing for the entire pullulation, Wellpath, conducted 124 COVID-19 tests on suspected inmates. Then on or around May 9, 2020, the entire inmate population was tested with the assistance of Wayne State University, minus the ones who refused for various reasons. 815 tests were conducted through Wayne State. With a total of 939 tests conducted in all.


4. The results of the tests were released within 72 hours. When all the tests results were added up, there were a total of 85 inmates who tested positive for COVID -19.

5. Further, since this pandemic started only two (2) inmates required a brief hospitalization, zero (0) inmates have required an ICU admission and there have been zero (0) inmate deaths.

6. Currently there are 14 patients that remain positive in the jail. The rest have been cleared as no longer being COVID positive.

7. Based on this statistic it would appear that around 10% of the tested population at the Wayne County Jail was positive. According to the MI.Gov website as of 6-1-20 the cumulative percent of positive tests in the state since 3-10-20 is 11.80% . Thus, the percent of positive tests in the Wayne County jail would appear to be lower than what is in the general public.

Affiant further sayeth not.

  
Mark Morrissey, MSN, RN

Subscribed and sworn to before me  
This \_\_\_\_ day of June 2020.

\_\_\_\_\_  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Document received by the MI Wayne 3rd Circuit Court.

# ***Exhibit 7***

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

WAYNE COUNTY JAIL INMATES et al.,

Case No. 71 173 217 CZ

Plaintiffs

Hon. Timothy M. Kenny

v

WILLIAM LUCAS et al.,

Defendants.

DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

**AMENDED CONSOLIDATED CONSENT ORDER**  
**REGARDING COVID-19 INMATE TESTING AT TIME OF BOOKING**

At a session of said Court, held in the City of Detroit,  
County of Wayne, State of Michigan

on 6/2/2020

PRESENT: Timothy M. Kenny  
Circuit Court Judge



This matter having come before the Court at a Conference on June 1, 2020, and all parties being advised in the premises;

IT IS HEREBY ORDERED that all new inmates into the Wayne County Jail shall be tested for COVID- 19 by PCR (nasal swab) and Serology (antibody) at the time of the inmate's booking;

IT IS FURTHER ORDERED that inmates who test negative for both PCR and Serology at time of booking shall be re-tested in 14 days from the date of the inmate's booking;

Inmates who test negative for PCR, but positive for Serology at the time of booking may be housed in general population without the need for quarantine;

IT IS FURTHER ORDERED that the Sheriff shall provide to Plaintiffs data regarding the number of inmates who are booked under the following categories:

- (a) Number of inmates that tested negative for COVID-19;
- (b) Number of inmates that tested positive for COVID-19; and
- (c) Number of inmates that tested negative for PCR, but positive for Serology

This data shall be provided monthly commencing on June 30, 2020 and shall continue every month thereafter until otherwise ordered;

The provisions of this Order shall commence on June 8, 2020 and shall remain in effect until otherwise ordered by this Court.

IT IS SO ORDERED.

/s/ Timothy M. Kenny  
Circuit Court Judge

Agreed as to form and content:

/s/ Deborah Choly  
DEBORAH ANN CHOLY (P34766)  
Michigan Legal Services  
Attorney for Plaintiffs  
220 Bagley, Suite 900  
Detroit, MI 48226  
(313) 573-0073

/s/ James Heath  
JAMES HEATH (P65419)  
Wayne County Corporation Counsel  
Attorney for Wayne County/CEO  
500 Griswold Street, 30<sup>th</sup> Floor  
Detroit, MI 48226  
(313) 224-0055

/s/ William Goodman

WILLIAM H. GOODMAN (P14173)  
Goodman & Hurwitz PC  
Attorney for Plaintiffs  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
(313) 517-6170

/s/ Felicia Johnson

FELICIA O. JOHNSON (P66430)  
Commission Counsel  
Attorney for Wayne County  
500 Griswold Street, Suite 810  
Detroit, MI 48226  
(313) 224-6459

/s/ David Melton

DAVID MELTON (P63891)  
Legal Advisor Wayne County Sheriff  
4747 Woodward Ave.  
Detroit, MI 48201  
(313) 224-6888

# ***Exhibit 8***

# Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

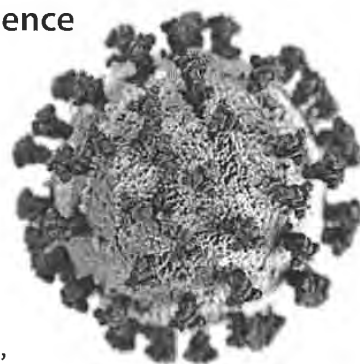
## In this guidance

- Who is the intended audience for this guidance?
- Why is this guidance being issued?
- What topics does this guidance include?
- Definitions of Commonly Used Terms
- Facilities with Limited Onsite Healthcare Services
- COVID-19 Guidance for Correctional Facilities
- Operational Preparedness
- Prevention
- Management
- Infection Control
- Clinical Care of COVID-19 Cases
- Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons
- Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

## Who is the intended audience for this guidance?

This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.



## Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

## What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- ✓ Operational and communications preparations for COVID-19
- ✓ Enhanced cleaning/disinfecting and hygiene practices
- ✓ Social distancing strategies to increase space between individuals in the facility
- ✓ How to limit transmission from visitors
- ✓ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- ✓ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- ✓ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- ✓ Healthcare evaluation for suspected cases, including testing for COVID-19
- ✓ Clinical care for confirmed and suspected cases
- ✓ Considerations for persons at higher risk of severe disease from COVID-19

## Definitions of Commonly Used Terms

**Close contact of a COVID-19 case**—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

**Cohorting**—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See [Quarantine](#) and [Medical Isolation](#) sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

**Community transmission of COVID-19**—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define “local community” in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.



**Confirmed vs. Suspected COVID-19 case**—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

**Incarcerated/detained persons**—For the purpose of this document, “incarcerated/detained persons” refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e., detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

**Medical Isolation**—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance [below](#)). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term “medical isolation” to avoid confusion.

**Quarantine**—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under [medical isolation](#) and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

**Social Distancing**—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this [CDC publication](#).

**Staff**—In this document, “staff” refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, “staff” does not distinguish between healthcare, custody, and other types of staff including private facility operators.

**Symptoms**—[Symptoms of COVID-19](#) include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the [CDC website](#) for updates on these topics.

## Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

## COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness.** This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

## Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

## Communication & Coordination

- ✓ **Develop information-sharing systems with partners.**
  - Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
  - Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.



- o Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- o Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- o Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- o Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- o Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- o Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- o Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- o Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- o Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- o **For all:** symptoms of COVID-19 and hand hygiene instructions
- o **For incarcerated/detained persons:** report symptoms to staff
- o **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- o Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

## Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- o Review policies to ensure that they actively encourage staff to stay home when sick.
- o If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- o Determine which officials will have the authority to send symptomatic staff home.

- √ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- √ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - Allow staff to work from home when possible, within the scope of their duties.
  - Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- √ **Consider offering revised duties to staff who are at higher risk of severe illness with COVID-19.** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
  - Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- √ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- √ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**
- √ **Review [CDC's guidance for businesses and employers](#) to identify any additional strategies the facility can use within its role as an employer.**

## Operations & Supplies

- √ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - Standard medical supplies for daily clinic needs
  - Tissues
  - Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - Hand drying supplies
  - Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - Cleaning supplies, including [EPA-registered disinfectants effective against the virus that causes COVID-19](#)

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See [PPE section](#) and [Table 1](#) for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated
- ✓ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**
  - See CDC guidance [optimizing PPE supplies](#).
- ✓ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, [CDC recommends](#) cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.
- ✓ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See [Hygiene](#) section below for additional detail regarding recommended frequency and protocol for hand washing.)
  - Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
- ✓ **If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**
- ✓ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See [Table 1](#) for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

## Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

## Operations

- ✓ **Stay in communication with partners about your facility's current situation.**
  - State, local, territorial, and/or tribal health departments
  - Other correctional facilities
- ✓ **Communicate with the public about any changes to facility operations, including visitation programs.**

- √ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - Strongly consider postponing non-urgent outside medical visits.
  - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- √ **Implement lawful alternatives to in-person court appearances where permissible.**
- √ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- √ **Limit the number of operational entrances and exits to the facility.**

#### Cleaning and Disinfecting Practices

- √ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- √ **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.
  - Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- √ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- √ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**



## Hygiene

- ✓ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**
- ✓ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis. Sample signage and other communications materials are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
  - **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
  - **Practice good hand hygiene:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
  - **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
  - **Avoid sharing eating utensils, dishes, and cups.**
  - **Avoid non-essential physical contact.**
- ✓ **Provide incarcerated/detained persons and staff no-cost access to:**
  - **Soap**—Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
  - **Running water, and hand drying machines or disposable paper towels for hand washing**
  - **Tissues** and no-touch trash receptacles for disposal
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.
- ✓ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

## Prevention Practices for Incarcerated/Detained Persons

- ✓ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).
  - **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
    - Require the individual to wear a face mask.
    - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
    - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
    - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a close contact of a known COVID-19 case (but has no COVID-19 symptoms):**

- Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
- Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

- ✓ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**

- Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)

- **Recreation:**

- Choose recreation spaces where individuals can spread out
- Stagger time in recreation spaces
- Restrict recreation space usage to a single housing unit per space (where feasible)

- **Meals:**

- Stagger meals
- Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
- Provide meals inside housing units or cells

- **Group activities:**

- Limit the size of group activities
- Increase space between individuals during group activities
- Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
- Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out

- **Housing:**

- If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
- Arrange bunks so that individuals sleep head to foot to increase the distance between them
- Rearrange scheduled movements to minimize mixing of individuals from different housing areas

- **Medical:**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
- Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- ✓ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- ✓ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- ✓ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- ✓ **Provide up-to-date information about COVID-19 to incarcerated/detained persons on a regular basis, including:**
  - Symptoms of COVID-19 and its health risks
  - Reminders to report COVID-19 symptoms to staff at the first sign of illness
- ✓ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

#### Prevention Practices for Staff

- ✓ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- ✓ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**
  - Symptoms of COVID-19 and its health risks
  - Employers' sick leave policy
  - **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
  - **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
  - **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- ✓ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

- ✓ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- ✓ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

#### Prevention Practices for Visitors

- ✓ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See [Screening](#) section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - Staff performing temperature checks should wear [recommended PPE](#).
  - Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- ✓ **Provide visitors and volunteers with information to prepare them for screening.**
  - Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
  - If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
  - Display [signage](#) outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- ✓ **Promote non-contact visits:**
  - Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
  - Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
  - Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- ✓ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
  - If moving to virtual visitation, clean electronic surfaces regularly. (See [Cleaning](#) guidance below for instructions on cleaning electronic surfaces.)
  - Inform potential visitors of changes to, or suspension of, visitation programs.
  - Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
  - If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.



If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

- ✓ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

## Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

## Operations

- ✓ **Implement alternate work arrangements deemed feasible in the Operational Preparedness section.**
- ✓ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**
  - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- ✓ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.
- ✓ **When possible, arrange lawful alternatives to in-person court appearances.**
- ✓ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**
  - Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
    - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
    - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
    - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

✓ **Coordinate with state, local, tribal, and/or territorial health departments.**

- o When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
- o When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
- o Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

## Hygiene

- ✓ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)
- ✓ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

## Cleaning and Disinfecting Practices

- ✓ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)
- ✓ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

## Medical Isolation of Confirmed or Suspected COVID-19 Cases

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.**

- ✓ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**
- ✓ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
  - o Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
  - o Serve meals to cases inside the medical isolation space.
  - o Exclude the individual from all group activities.
  - o Assign the isolated individual a dedicated bathroom when possible.
- ✓ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.
- ✓ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- o If cohorting is necessary:

- **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
- Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
- Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- o Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- o Separately, in single cells with solid walls but without solid doors
- o As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- o As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- o As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- o As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- o Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements  
(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- o Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- o Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

- ✓ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:
  - **Cover** their mouth and nose with a tissue when they cough or sneeze
  - **Dispose** of used tissues immediately in the lined trash receptacle
  - **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.
- ✓ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- The individual has had no subsequent illness

- ✓ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**
  - If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

## Cleaning Spaces where COVID-19 Cases Spent Time

**Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.**

- Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).



✓ **Hard (non-porous) surface cleaning and disinfection**

- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

✓ **Soft (porous) surface cleaning and disinfection**

- For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.

✓ **Electronics cleaning and disinfection**

- For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - Follow the manufacturer's instructions for all cleaning and disinfection products.
  - Consider use of wipeable covers for electronics.
  - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

✓ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)

✓ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

✓ **Laundry from a COVID-19 cases can be washed with other individuals' laundry.**

- Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.
- √ **Consult cleaning recommendations above to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

#### Quarantining Close Contacts of COVID-19 Cases

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.**

- √ **Incarcerated/detained persons who are close contacts of a confirmed or suspected COVID-19 case (whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**
  - o If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.
- √ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**
  - o Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
  - o Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

- √ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**
  - o Provide medical evaluation and care inside or near the quarantine space when possible.
  - o Serve meals inside the quarantine space.
  - o Exclude the quarantined individual from all group activities.
  - o Assign the quarantined individual a dedicated bathroom when possible.
- √ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually. Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.**
  - o If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
  - o If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
  - o Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- o If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

✓ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

✓ **In order of preference, multiple quarantined individuals should be housed:**

- o Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- o Separately, in single cells with solid walls but without solid doors
- o As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- o As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- o As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- o As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- o As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- o Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

✓ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- o If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- o If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- o All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- o Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

✓ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- o Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

- √ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
  - If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
  - See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- √ **If an individual who is part of a quarantined cohort becomes symptomatic:**
  - **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
  - **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
  - **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- √ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- √ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- √ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- √ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
  - Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
  - Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

## Management of Incarcerated/Detained Persons with COVID-19 Symptoms

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.**

- √ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- √ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See Medical Isolation section above.**



- ✓ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.
- ✓ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
  - o If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
  - o If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

#### Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- ✓ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
  - o Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- ✓ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.
- ✓ **Consider additional options to intensify social distancing within the facility.**

#### Management Strategies for Staff

- ✓ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
  - o Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- ✓ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
  - o See above for definition of a close contact.
  - o Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

#### Infection Control

**Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.**

- ✓ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).
- ✓ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).
- ✓ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

## Clinical Care of COVID-19 Cases

- ✓ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**
  - If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
  - The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- ✓ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**
- ✓ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.
- ✓ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**
- ✓ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**
- ✓ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

## Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

- ✓ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
  - For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.
- ✓ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**
- ✓ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (see Table 1). Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**
- ✓ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**
- ✓ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.****
- **N95 respirator**
- See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.
- **Face mask**
  - **Eye protection**—goggles or disposable face shield that fully covers the front and sides of the face
  - **A single pair of disposable patient examination gloves**
- Gloves should be changed if they become torn or heavily contaminated.
- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
    - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
    - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.
- ✓ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**
- **Guidance in the event of a shortage of N95 respirators**
    - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand**. During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
  - **Guidance in the event of a shortage of face masks**
  - **Guidance in the event of a shortage of eye protection**
  - **Guidance in the event of a shortage of gowns/coveralls**

**Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response**

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See <a href="#">CDC guidelines</a> for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see <a href="#">CDC infection control guidelines</a> )	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see <a href="#">CDC infection control guidelines</a> )	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See <a href="#">CDC guidelines</a> for more details.			✓	✓

\* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

\*\* A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

## Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

✓ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

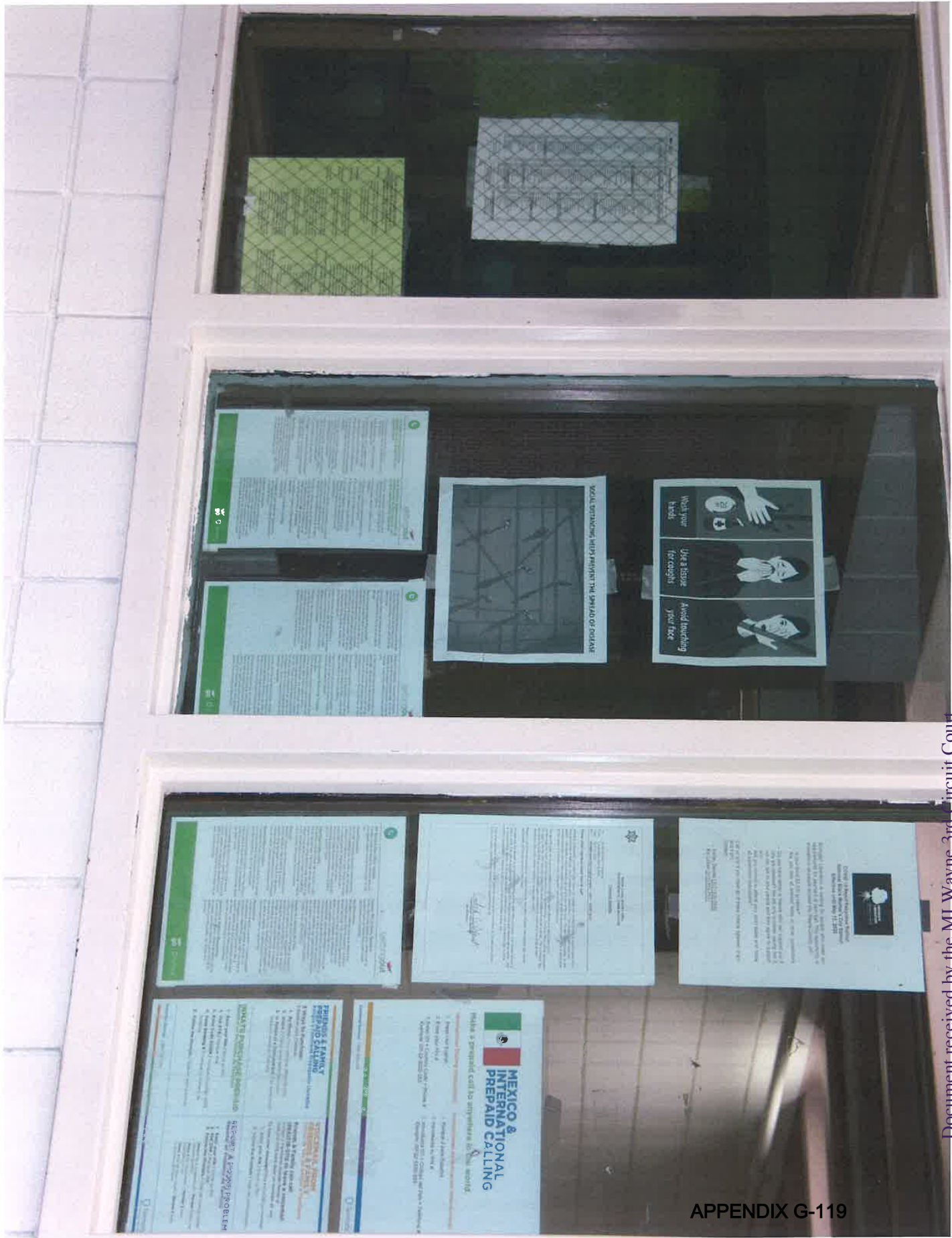
- *Today or in the past 24 hours, have you had any of the following symptoms?*
  - *Fever, felt feverish, or had chills?*
  - *Cough?*
  - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

✓ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
- Remove and discard PPE
- Perform hand hygiene

# ***Exhibit 9***









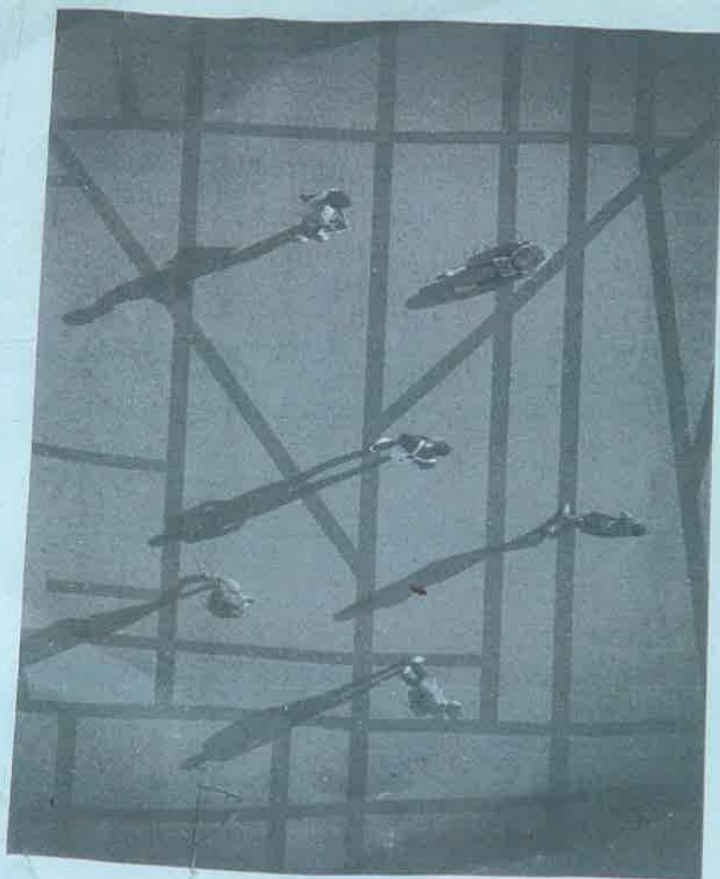
atics

for cougins

your face

Document received by the MI Wayne 3rd Circuit Court

# SOCIAL DISTANCING HELPS PREVENT THE SPREAD OF DISEASE



gettingout

WARNING: STEALING ANOTHER  
IMMIGRANT'S FINANCIAL CLASS C FELONY  
IDENTITY THEFT

AVISO: ROBO DEL NOMBRE PERSONAL DE  
IDENTIFICACION DE FINANCIAL CLASS C FELONY



If the cell recipient confirms the block you've received

gettingout





# ***Exhibit 10***



SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE

REFERENCE:  
AUTHORIZING  
SIGNATURE:

 03/11/20

**POLICY:**

It is the policy of the Wayne County Jail to provide inmates with an internal grievance process as a means for resolving complaints allegedly arising from jail operations and/or staff actions or inactions, without fear of reprisal. The grievance procedure as described in this policy applies to all inmates incarcerated in the Wayne County Jail.

**GRIEVABLE ISSUES:**

Inmates may only grieve issues that directly affect him/her. An inmate may file a grievance for the following:

- A violation of Wayne County Jail policy of procedure
- A violation of civil, constitutional, or statutory rights
- Unsafe or Unsatisfactory conditions of confinement
- Appeals of disciplinary hearings
- Personal mistreatment or misidentification by the arresting law enforcement agency
- Grievance Categories: Account, Buildings, Classification, Clothing, Commissary, Discipline, Food Services, Hygiene, Inmate Conflict, Law Library, Linen, Mail, Medical Services, Medication, Mental Health, Phone, Program, Property, Recreation, Sanitation, Staff Complaint, Transportation, and Visitation.

**ASSISTANCE:**

If an inmate is unable to complete a grievance because of a documented disability, illiteracy, or unfamiliarity with the English language, he/she may request assistance from the Grievance Coordinator or any Wayne County Jail staff.

**NON-GRIEVABLE ISSUES:**

Inmates may not grieve the following:

- Content of Wayne County Jail administrative rules, policies, policies directives, or operating procedures.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

**REJECTIONS:**

- A grievance may be rejected if it is illegible, vague, or contains multiple unrelated issues.
- A grievance which contains profanity, threats, language that demeans or impugns the character of the staff, etc. unless it is descriptive of issue being grieved.
- A grievance may be rejected if the inmate is submitting a request opposed to an alleged complaint.
- A grievance may be rejected if it is not filed within ten (10) days from the date when the alleged issue or incident occurred.
- A grievance may be rejected if it is hand delivered from individuals outside the jail.
- A grievance may be rejected if it is determined it was not filed by the inmate and was submitted by another person on behalf of the inmate.
- A grievance may be rejected if the inmate did not comply with the requirements of the grievance procedure outlined in this policy.
- A grievance may be rejected if it was not submitted on the official Wayne County Jail Inmate Grievance Form.

**GRIEVANCE PROCEDURE:**

1. During the classification process, the classification staff shall confirm and document that the inmate was provided with an Inmate Rules and Regulations handbook that includes the grievance procedure. Each inmate shall sign to acknowledge receipt of the Inmate Rules and Regulations.
2. Any staff member of the Wayne County Jail shall provide grievance forms to an inmate upon request. Inmate Grievance Forms shall be readily available to all inmates.
  - a. Compliance Staff shall have Inmate Grievance Forms readily available during ward rounds.
  - b. Officers shall maintain a supply of Inmate Grievance Forms at their duty station at all times.
  - c. Command staff shall ensure that Inmate Grievance Forms are at the deputy's duty station when making ward rounds.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

- d. Inmate Grievance Forms are available electronically via the inmate tablet.
- 3. Wayne County Jail staff members shall not intentionally impede or interfere with the inmate's utilization of the inmate grievance process. Any such action by a staff member constitutes a direct violation of policy and Wayne County Jail Consent Orders. This may result in the issuance of discipline, up to and including discharge. Examples of impeding or interfering include, but are not limited to the following:
  - a. The use of intimidation or persuasion to discourage an inmate from filing a grievance.
  - b. Refusal to accept or forward a grievance.
  - c. Refusal to follow-up or take action on a grievance or its response.
- 4. If an inmate is unable to resolve his/her complaint through informal contact with staff, he/she may obtain a Wayne County Jail Inmate Grievance Form and initiate the grievance process.
- 5. An inmate is required to completely fill out the official Wayne County Jail Inmate Grievance Form included in this policy. The grievance must be filed ten (10) days from the date of the alleged incident/issue being grieved. The grievance must contain the following:
  - a. Inmate's first and last names
  - b. Inmate's current booking number
  - c. Inmate's housing location
  - d. The current submission date
  - e. The name(s) of the staff member(s) involved, if known and/or applicable.
  - f. The date, time, and location of the incident, if applicable.
  - g. Nature of the grievance
  - h. The inmate's signature and date
- 6. An inmate may submit grievances using the following methods:
  - a. Submit a grievance form to any Wayne County Jail staff.
  - b. Submit a grievance form in a sealed envelope labeled Wayne County Jail Compliance Department to any Wayne County Jail staff.
  - c. Submit electronically via the inmate tablet system.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

- d. Submit grievance form in a sealed envelope through the United States Postal Service addressed to the Wayne County Jail Compliance Department 570 Clinton Street, Detroit, MI 48226. The grievance must be postmarked within ten (10) days of the alleged incident/issue being grieved.

Any grievance received by a staff member can be placed in the intra-departmental mail to the attention of the Wayne County Jail Compliance Department. There is a designated mail slot for the Compliance Department at all three jail divisions.

7. Upon retrieval of grievance, an employee receiving the grievance will attempt to resolve the issue by talking with the inmate. If the staff was able to resolve the issue with the inmate. This shall be documented and the grievance forwarded to the Grievance Coordinator to log and file as resolved. If unable to resolve the grievance with the inmate, staff shall forward the Inmate Grievance Form to the Grievance Coordinator assigned to the division or placed in the designated mail slot for the Compliance Department in the jail division.
8. All completed Inmate Grievance Forms shall be retrieved and reviewed by the Grievance Coordinator. The Grievance Coordinator shall review and determine whether it is a grievable issue and also determine whether the inmate complied with the grievance procedure. If not, the Grievance Coordinator shall sign and return a copy of the form to the inmate within ten (10) business days from receipt of the grievance stating the reasons why it was not accepted. The Grievance Coordinator will also upload in JMS a copy of the form containing response to Documents in the inmate's electronic folder. The Grievance Coordinator maintains the discretion to waive any procedural defects in a grievance and to address the grievance on the merits.
9. Grievances describing a situation or circumstance that presents an immediate threat to the inmate's health or safety will be immediately forwarded by the Grievance Coordinator to the attention of the on duty lieutenant or sergeant in charge of the shift for the jail(s) in which the threats are alleged to exist and emailed to the Divisional Commander and Captain(s) assigned to that/those jails.



---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

10. Once received and after it has been reviewed for procedural compliance each grievance form will be signed, dated, and uploaded to the appropriate category in JMS by the Grievance Coordinator initiating the grievance process.
  - a. The Grievance Coordinator will use the Wayne County Jail Grievance Category Guide included in this policy to determine the appropriate department and supervisor to forward a grievance form for investigation and response.
  - b. If an inmate files a grievance in a jail division where he/she is currently housed but not where the incident occurred, the Grievance Coordinator who received the grievance is responsible for assigning the grievance to the Grievance Coordinator in the jail division where the incident occurred. The response will be forwarded to the Grievance Coordinator where the inmate is housed, and the response will be provided to the inmate by that Grievance Coordinator. Inmates will have the option to pursue the grievance appeal process if they are not satisfied with the response.
  - c. Any duplicate grievance received while a current grievance of similar nature is being investigated, shall be uploaded under the current open grievance in JMS. If the grievance has been investigated and closed, the grievance shall be processed as a new grievance.
11. All grievances shall be assigned to the Divisional Commander, who shall review and confirm whether the grievance was uploaded and properly assigned for investigation and response.
12. The grievance shall be assigned by the Grievance Coordinator to the appropriate police or civilian supervisory staff for response, or may be answered by the Grievance Coordinator with the approval of the Director of Compliance. Supervisory staff members have up to fifteen (15) business days from the receipt of the grievance, to act on the matter and provide a written response to the Grievance Coordinator.
13. The review, investigation, and response to a grievance shall not be performed by any staff member involved in the alleged incident that prompted the grievance. However, a designated staff member not involved in the incident may interview or otherwise obtain information about the incident from involved staff members in preparing a response to a grievance or grievance appeal.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

14. Within fifteen (15) business days of the receipt of a grievance, the supervisory staff member to whom the grievance was assigned for investigation will produce a response in JMS. Any responses written on the grievance form and any additional sheets attached shall be uploaded in JMS. The grievance form must be signed and dated by the supervisory staff member who conducted the investigation. Narrative responses should include date and time that the inmate was interviewed. All grievance responses will be saved in JMS by the supervisory staff member to whom the grievance was originally assigned for review and approval.
  - a. If an inmate is released during the investigation and response period. The supervisory staff shall enter a sufficient response to the grievance and continue steps in grievance process.
  - b. The supervisory staff member may be granted an extension of seven (7) business days to provide a written response of final disposition to the Grievance Coordinator. If the supervisory staff member is not able to provide a written response within ten (10) business days, he/she shall inform the Grievance Coordinator and request an extension for the purpose of completing their investigation and response. If an extension is granted, the Grievance Coordinator will document the extension date in JMS, notify the inmate, Divisional Commander, and Director of Compliance as to the amended final date for provision of the response.
  - c. Once the response has been reviewed and approved, the supervisor shall assign grievance to Divisional Commander for review and Director of Compliance to forward back to Grievance Coordinator to complete final stages of grievance process.
15. Upon receipt of the grievance response, the Grievance Coordinator will update the status in JMS. The original Inmate Grievance Form will be forwarded to and maintained by the Classification Department.
16. The Grievance Coordinator shall have five (5) days from receipt of the response and findings from the investigatory supervisor to supply the inmate grievant with a response to their grievance. If the timeline cannot be met, the Grievance Coordinator shall provide written notice to the Director of Compliance, Divisional Commander, and inmate that additional time has been granted for response, and the Grievance Coordinator shall supply a date for which they would anticipate receiving a response to their grievance.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

- a. If the inmate did not receive a response to a grievance within the timeframe provided, the inmate is required to file an additional grievance stating that he/she filed a grievance and did not receive a response. The inmate must use an official Wayne County Jail Grievance Form. The grievance must state a previous grievance was filed and the specified time frame and/or the extension deadline have passed and no response was received.
17. If unsatisfied with the response to a grievance, the inmate may file an appeal of the grievance response, provided it is filed within ten (10) days of receiving the grievance response. The inmate is required to use the grievance form that includes the grievance response he/she is appealing. The inmate may appeal the response to the Chief of Jails/designee by checking the appeal box located on the grievance form and forward to Wayne County Jail Compliance Department.
18. Upon receipt of grievance appeal, the Grievance Coordinator shall conduct the procedural review. Once this has been completed, the Grievance Coordinator shall upload the appeal and record it in JMS, under the same grievance number of the original grievance. The appeal shall be forwarded to the Chief of Jails/designee for purposes of review and response to the appeal. At his/her discretion, the Chief of Jails/designee may designate a Deputy Chief or Director to conduct the review of the appeal and provide a response before making a decision on a grievance appeal.
19. The Chief of Jails/designee shall provide a written response to the appeal within fifteen (15) business days of receiving the appeal. If the appeal was assigned by the Chief of Jails to a Deputy Chief or Director and he/she is not able to provide a written response to the appeal within fifteen (15) business days. The Deputy Chief or Director shall inform the Chief of Jails/designee and request an extension for additional (7) business days to respond. If an extension is granted by the Chief of Jails/designee, the Grievance Coordinator will be advised to notify the inmate of the amended date for which they would anticipate receiving a response to their appeal.
20. Upon completion, the Chief of Jails/designee will provide the appeal response to the Grievance Coordinator to be returned to the inmate.
21. Upon release from the Wayne County Jail and/or transfer to another correctional facility, the inmate shall contact the Wayne County Jail Compliance Department

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

in writing and mail to 570 Clinton Street, Detroit, MI 48226 within 30 days to receive a copy of their grievance response, if they have not otherwise completed the grievance process as set forth.

22. Inmate grievances shall be tracked by the Grievance Coordinator daily to ensure that the response deadlines are met. The Grievances Coordinator will advise the Director of Compliance weekly on the status of grievance response deadlines.
23. The Director of Compliance will review grievance data and provide a monthly status update. This report will be forwarded to the Chief of Jails, Deputy Chiefs, Commanders, and Directors within the first week of each month. This status report will reflect data of the previous month.

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

**Wayne County Jails  
Grievance Category Guide**

**GRIEVANCE CATEGORIES:**

1. **Account:** *issues related to inmate accounts.*  
**Assign to: Finance Manager**
2. **Buildings:** *issues related to building maintenance.*  
**Assign to: Director of Building Maintenance**
3. **Classification:** *issues related to classification level, housing, outdate, sentence calculation, bond conditions, inmate worker positions, work release, sentenced inmate programs, tether release, etc.*  
**Assign to: Director of Classification**
4. **Clothing:** *issues related to inmate uniforms (shirts, pants, and shoes.).*  
**Assign to: Division Captain**
5. **Commissary:** *issues related to commissary services.*  
**Assign to: Director of Commissary**
6. **Discipline:** *issues related to inmate disciplinary hearings.*  
**Assign to: Chief of Jails**
7. **Food Services:** *issues related to food services or food services staff.*  
**Assign to: Director of Commissary**
8. **Hygiene:** *issues related to inmate hygiene.*  
**Assign to: Division Captain**
9. **Inmate Conflict:** *issues related to conflicts with other inmates housed in Wayne County Jail.*  
**Assign to: Division Captain**
10. **Law Library:** *issues related to law library or law library staff.*  
**Assign to: Director of Compliance**
11. **Linen:** *issues related to inmate line.*

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

**Assign to: Division Captain**

12. **Mail:** *issues related to inmate mail.*  
**Assign to: Department Supervisor (Division I and II) Division Captain (Division III)**
13. **Medical Services:** *issues related to medical services or health services staff.*  
**Assign to: Health Service Administrator**
14. **Medication:** *issues related to inmate medication.*  
**Assign to: Health Service Administrator**
15. **Mental Health:** *issues related to mental service.*  
**Assign to: Health Service Administrator**
16. **Phone:** *issues related to the inmate phone and tablet system.*  
**Assign to: Director of Commissary**
17. **Program:** *issues related to inmate programs AA/NA meetings, no religious services, barber and/or cosmetologist etc.*  
**Assign to: Director of Commissary**
18. **Property:** *issues related to inmate's property in Inmate Property Department or an inmate's property on housing units.*  
**Assign to: Division Captain**
19. **Recreation:** *issues related to inmate recreation.*  
**Assign to: Division Captain**
20. **Sanitation:** *issues related to sanitation in inmate areas/housing units.*  
**Assign to: Division Captain and Director of Compliance**
21. **Staff Complaints:** *issues related to conflicts with Wayne County Jail staff officer or civilian (excluding commissary, food services, and health services staff.)*  
**Assign to: Division Captain**
22. **Transportation:** *issues related to transportation to and /or from Wayne County Jails.*  
**Assign to: Division Captain**

---

SECTION: GRIEVANCE PROCEDURE  
TITLE: INMATE GRIEVANCE  
REFERENCE:  
AUTHORIZING  
SIGNATURE:

---

**23. Visitation:** *issues related to inmate visitation.*  
**Assign to: Division Captain**





WAYNE COUNTY SHERIFF'S OFFICE

INMATE GRIEVANCE FORM

Grievance # \_\_\_\_\_

Inmate Name: \_\_\_\_\_ WCJ ID# \_\_\_\_\_

Received by: \_\_\_\_\_ Ward: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
(Staff Print your Name)

Nature of Grievance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inmate Effort(s) to Resolve with Staff (Explain):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach additional sheet if necessary)

Inmate Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Grievance Coordinator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Grievance Response**

Referral To: \_\_\_\_\_ Date: \_\_\_\_\_

Due Date: \_\_\_\_\_ Extension Date: \_\_\_\_\_

Answer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Investigated By: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

( ) Appeal to Director or Designee Date: \_\_\_\_\_

Response to Appeal: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Due Date: \_\_\_\_\_ Extension Date: \_\_\_\_\_

(Attach Additional Sheets if Necessary)

APPENDIX G-136 (Rev. 07/16/19)

Document received by the MI Wayne 3rd Circuit Court.