

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

JEROME DUVALL, *et al.*

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Plaintiffs

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v.

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Civil Action No. ELH-94-2541

LAWRENCE HOGAN, *et al.*

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Defendants

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**DEFENDANTS' THIRD STATUS REPORT**

The defendants, Lawrence J. Hogan, Governor (“Governor”) of the State of Maryland, Robert L. Green, Secretary (“Secretary”) of the Department of Public Safety and Correctional Services (“the Department”), and Michael Resnick, Commissioner (“Commissioner”) of the Division of Pretrial Detention and Services (“DPDS”), through their attorneys, Brian E. Frosh, Attorney General of Maryland, and Laura Mullally, Assistant Attorney General, file this third status report in response to the Court’s order of July 21, 2020, ECF No. 684, and state:

**I. STATUS REPORT**

**A.** Consistent with this Court’s Order of July 21, 2020, ECF No. 684, the defendants have tested custody officers who have contact with members of the plaintiff class on a weekly basis, beginning on August 3, 2020. *See* Declaration of Assistant Secretary Carolyn J. Scruggs, attached hereto as

Exhibit A. A written weekly testing schedule has been developed for September, 2020, and shared with plaintiffs.

- B.** Also consistent with this Court’s Order of July 21, 2020, ECF No. 684, all detainees who are quarantined at intake at the Baltimore City Booking and Intake Center (“BCBIC”) have been issued two masks. Exhibit A. A policy directing the distribution of two masks has been implemented and shared with the plaintiffs.
- C.** The defendants continue to provide a Monday – Friday report to the plaintiffs’ counsel, giving the population counts at BCBIC. The plaintiffs were not provided a report by the defendants on August 24, 2020. Today’s population census is 689. Males are at 98% capacity, and females at 44% capacity.
- D.** The cumulative numbers of individuals who have tested positive for COVID-19 at BCBIC as of August 28, 2020 is 91 staff members; 19 contractual staff; and 139 detainees. There have been no detainee deaths.
- E.** The rate of covid-19 infection amongst the plaintiff class, 2.67%, is substantially lower than the rate of infection within the Baltimore City community, which has been calculated by the Baltimore City Department of Health as 6.8% for April – August, 2020. *See* Exhibit A; *see also* <https://coronavirus.baltimorecity.gov/> These statistics were developed by the Department’s partners at the Maryland Department of Health.

- F.** The Health Monitoring Facility (“HMF”), established in July 2020 for covid-19 convalescent care, held 24 detainees cumulatively in the month of August, 2020. Twenty-one of those detainees were members of the plaintiff class, and 3 were from other institutions in the Baltimore region. The HMF has the capacity for 30 males. Females who need convalescent care for COVID-19 infections are transported to Maryland Correctional Institution for Women.
- G.** On August 26, 2020, arrests in Baltimore City were 43, and releases from BCBIC were 46. There are 2316 detainees that have been placed by the courts on the Pretrial Release Supervision Program (“PRSP”). The previous status report of July 20 reported 2132 on PRSP.

## **II. CONCLUSION**

The defendants respectfully request that the Court take no further action at this time.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/

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**DECLARATION OF CAROLYN J. SCRUGGS**

I, Carolyn J. Scruggs, am the Assistant Secretary for Programs, Treatment and Re-entry for the Department of Public Safety and Correctional Services (“the Department”). My business address is 300 East Joppa Road, Suite 1000, Towson, MD 21286. I make this declaration to the best of my knowledge, information, and belief, and under the penalties of perjury.

1. Secretary (“Secretary”) Robert Green of the Department designated me as the COVID-19 Coordinator on April 8, 2020. In that capacity I work with the Maryland Department of Health (“MDH”) in conjunction with the Centers for Disease Control (“CDC”) guidance as it relates to the testing protocols and best practices for COVID-19. These tests are administered to State employees, contractual staff, and members of the *Duvall v. Hogan* plaintiff class. In this capacity, I additionally work closely with members of the MDH (Clifford Mitchell M.D.), and Sharon Baucom M.D., Director of the Department’s Office of Inmate Health and Clinical Services.
2. In accordance with MDH guidance, the Department enforces contact tracing and recommendations for management of contact tracing between corrections officials and local health departments. The Department strongly encourages a close working relationship between MDH, the Department, and local health departments to

facilitate effective contact tracing within and outside of the Department's facilities, particularly as movement into and out of correctional facilities increases.

3. Deep cleaning efforts were implemented department-wide with Baltimore City Booking and Intake Center ("BCBIC") scheduled for cleaning on the 11 p.m. to 7 a.m. shift two days per week.
4. The Department took action early on to protect its employees, inmates and detainees. On March 14, 2020, we began checking temperatures of those essential staff still reporting to correctional facilities and began conducting screenings as recommended by the MDH. In addition to the regular communications between the Department and the MDH, we established a regular work group that has continued to meet and evaluate preventive strategies, personal protective equipment ("PPE"), testing, surge planning, and contact tracing.
5. A universal test schedule was implemented on March 27, 2020. Today, the Department is completing phase II of its staff testing with phase III beginning August 31, 2020. Departmental staff testing occurs weekly by region. Consistent with this Court's order of July 21, 2020, ECF No. 684, custody staff in close contact with members of the *Duvall* plaintiff class continue to be tested weekly for COVID-19. The dates below reflect past and current staff test sessions at BCBIC, and percentages of positives during each session:

a. August 3-4, 2020	.02% positive
b. August 11-12, 2020	.02% positive
c. August 17-18, 2020	.0064% positive
d. August 24-25, 2020	testing is ongoing.
6. Based upon a comparison of the Baltimore City Department of Health coronavirus dashboard (<https://coronavirus.baltimorecity.gov/>) and the Department's active cases from April to August, 2020, our MDH partners have completed a comparative analysis of the overall positivity rate in the Baltimore City community, where most of the plaintiff class lives. That rate is calculated at 6.8% for April – August, 2020, notably above the national standard. When calculating the infection rate amongst BCBIC detainees by dividing a given population of 605 detainees by 135, the cumulative number of infections, the rate amongst the plaintiff class is 2.67%, which is substantially lower than the rate of infection in the community and the nation.

7. Additionally, all detainees who enter the BCBIC facility are quarantined at intake. PPE protocol, via the issuance of an August 6, 2020 Departmental policy, requires the issuance of two masks per detainee. This is consistent with the Court's order of July 21, 2020. ECF No. 684.
8. On August 21, 2020, the Secretary issued written instructions to its medical, mental health, pharmacy and dental contractors to conduct monthly COVID-19 tests on their employees who have contact with members of the plaintiff class. Independent of this order, on August 20, 2020, the contractors tested their employees who work with the plaintiff class, and the results have been shared with the plaintiffs. A cumulative total of 19 contractual staff who interact with the plaintiff class have tested positive for COVID-19. Seventeen of those individuals work for the medical contractor, and two work for Centurion, the mental health contractor.
9. All detainees who enter the BCBIC facility, and are quarantined at intake, are provided with two masks consistent with the Court's order of July 21, 2020. ECF No. 684. A policy requiring the distribution of two masks for new detainees, dated August 6, 2020, has been developed and shared with the plaintiffs.
10. On August 21, 2020, the Secretary issued written instructions to its medical, mental health, pharmacy and dental contractors to conduct monthly COVID-19 tests on their employees who have contact with members of the plaintiff class. Independent of this order, on August 20, 2020, the contractors tested their employees who work with the plaintiff class, and the results have been shared with the plaintiffs. A cumulative total of 19 contractual staff who interact with the plaintiff class have tested positive for COVID-19. Seventeen of those individuals work for the medical contractor, and two work for Centurion, the mental health contractor.
11. The Department continues to independently audit its facilities for adherence to policies adopted to reduce the spread of COVID-19 infections.

August 28, 2020

Date



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Carolyn J. Scruggs  
Assistant Secretary