

March 9, 2021

To: Washington State Governor Jay Inslee
Office of the Governor
PO Box 4002
Olympia, WA 98504

Secretary Umair A. Shah
Washington State Department of Health
111 Israel Road SE
Tumwater, WA 98501

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

SENT BY ELECTRONIC MAIL

RE: Immediate action needed to protect individuals in Department of Corrections custody from ongoing COVID-19 pandemic.

Dear Governor Inslee, Secretary Shah, and Secretary Sinclair:

Since March 2020, nearly 6,200 individuals in DOC custody have tested positive for COVID-19, and 14 residents have died as a result of their infections.¹ Another 1,125 DOC staff members have also become ill, and two have passed away.² We are still in the midst of this global pandemic, which means that each person in DOC custody remains at grave risk of serious illness or death from this virus. The State of Washington has a constitutional obligation to protect the health and safety of the people in its custody against the ongoing threat posed by COVID-19.

For months, the only effective means of controlling the spread of this disease was through social distancing and use of personal protective equipment. As we have seen, the nature of congregate settings (and correctional facilities in particular) makes the effective implementation of these measures exceedingly difficult. As a result, thousands of individuals in

¹ The precise number is a total of 6,184 positive cases amongst DOC residents as of March 8, 2021. See <https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed>.

² <https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed>.



DOC custody falling ill over the past year. However, with the introduction of several effective COVID-19 vaccines, there is now an opportunity to effectively mitigate the risk of grave illness and death from this deadly virus. In order for Washington State to curb the risk of another massive and deadly outbreak in DOC facilities, it is imperative to give every person in DOC custody the opportunity to receive the COVID-19 vaccination immediately and to protect residents from having contact with DOC staff members who refuse to be vaccinated.

The health and safety of the people in custody in DOC facilities is the responsibility of the State, and their lives should not be placed in further jeopardy by failing to make them immediately eligible for the vaccine. We are urging you to take the following steps to protect the more than 15,000 individuals in DOC custody:³

1. All individuals in DOC custody must immediately be offered the COVID-19 vaccine.

Delaying the availability of the vaccine to all people residing in DOC correctional facilities is simply unacceptable. Governor Inslee, the Department of Health, and the Department of Corrections must immediately cooperate in adjusting the current phase designation of individuals in correctional custody so that all DOC residents who desire it can be vaccinated immediately.

While we recognize that vaccine production has been insufficient to supply the number of doses needed to vaccinate everyone in Washington State at this time, people in DOC custody must be immediately prioritized due to the exponentially higher risk of infection, severe illness, and death from COVID-19. As of March 4, 2021, 39% of the residents in DOC custody had tested positive for COVID-19.⁴ This is nearly ten times the rate of infection compared to the rest of Washington State, where there have been a total of 323,123 cases, equaling just over 4% of the total state population.⁵ Furthermore, according to the Department of Health, as of March 1, 2021, the average number of COVID-19 doses administered each day (over the past 7 days) in Washington State is 43,765.⁶ This is nearly three times the total population of DOC. That means that the Governor and the Department of Health could allocate enough doses to vaccinate every single person in DOC custody in a single day and there would still be nearly 30,000 doses remaining for distribution to other community sites.

As of the date of this letter, Washington is currently in Phase 1B Tier 1 of the existing phases for vaccine eligibility established by the Washington State Department of Health. Under the current phase structure, individuals residing in correctional facilities do not become eligible for vaccination until Phase 1B Tier 4, though we understand that DOC may offer the vaccine sooner to incarcerated individuals who would otherwise be

³ As of December 2020, the population of all DOC facilities was reported at 15,644. See <https://www.doc.wa.gov/docs/publications/reports/400-RE002.pdf>.

⁴ <https://www.doc.wa.gov/corrections/covid-19/data-comparative-jurisdictions.htm>

⁵ Office of Financial Management published the population of Washington State at 7,656,200 as of April 1, 2020. <https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/total-population-and-percent-change>

⁶ DOH Dashboard as of March 4, 2021; <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>

eligible in an earlier phase.⁷ As of March 2, 2021, DOC had administered 5,448 doses of the vaccine (including 2,001 second doses).⁸ However, this data does not distinguish between correctional staff and incarcerated individuals or how vaccine recipients' eligibility was established under the DOH phases. In addition, there is no data available on DOC's website that outlines their plan or timeline for how and when the vaccine will be made available to all individuals in its custody.

Given the availability of doses and the exponentially higher risk of infection for people incarcerated in DOC facilities, the Governor, the Department of Health, and the Department of Corrections must determine how to reallocate doses to protect these individuals immediately. Other important constituencies, such as teachers and childcare providers, and other critical workers have been recently reprioritized for vaccines, which moves more people ahead of people residing in correctional facilities, who are now not expected to have access to any doses until late April. The State must also immediately prioritize people who are living in Washington's prisons, who are at an even greater risk from COVID-19.⁹

- 2. The Department of Health and Department of Corrections must immediately create a vaccine education and distribution plan that provides accurate information about the vaccine and is responsive to the environment of distrust and historical abuse of people who are incarcerated by both medical and carceral authorities.**

In addition to the need to make the vaccine available to all individuals in DOC custody immediately, it is also essential to ensure that information about the vaccine – and the vaccine itself – are provided to DOC residents in a way that is both factually accurate and is designed to assuage the historic and ongoing distrust of DOC and the medical community at large.

Immediate access to the vaccine is critical to protecting the people in DOC custody, but simply allocating the required number of doses will not be sufficient. Achieving herd immunity against the COVID-19 virus requires that a large enough percentage of the DOC population must accept the vaccine. In order to achieve this, it is essential to utilize culturally responsive resources to provide ongoing outreach, education, and medical services in conjunction with immediate allocation of the vaccine doses for DOC residents.

Throughout our nation's history, BIPOC (Black/Indigenous/People of Color) communities have been the targets of unwanted, nonconsensual research, testing, and treatment by the medical community. This legacy has led to a deeply seated wariness by many BIPOC individuals of systems of medical research and care. Furthermore, for many individuals in DOC custody, there is a pervasive distrust of the medical care provided to them

⁷ <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf>

⁸ <https://www.doc.wa.gov/corrections/covid-19/data-vaccines.htm>.

⁹ <https://www.seattletimes.com/seattle-news/washington-state-teachers-childcare-workers-can-now-get-vaccinated-gov-inslee-says/>.

through the department. Thus, for BIPOC residents of correctional facilities, these intersecting fears are often compounded.

CLS has received feedback from numerous individuals in a variety of DOC facilities, as well as concerned family members and loved ones, that many people are reluctant to accept the vaccine when it is offered because of fears that DOC is not providing accurate information about the vaccine, and concerns about whether they will be administering an approved vaccine to residents. The fact that the State is prioritizing correctional staff members over residents has in many cases exacerbated this distrust. It is imperative that the Governor, the Department of Health, and the Department of Corrections partner not only with each other, but also engage with authentic, respected voices in the community to help spread accurate information and build trust around the vaccine and DOC's ability to properly administer it. The State has made efforts to address distrust and misinformation in our communities outside of prisons, and it must also make similar efforts to engage and build trust with the individuals living in correctional facilities.

3. DOC must create a plan to protect individuals in their custody from correctional staff who refuse to be vaccinated.

As of the date of this letter, it is our understanding that the Department of Corrections does not currently have any plans in place to protect residents in its custody from correctional staff who refuse the COVID-19 vaccine – particularly those residents who are unable to be vaccinated due to contraindications. This is not acceptable, and DOC must immediately put together a response plan that ensures that all correctional staff who come into contact with DOC residents have been vaccinated to protect against another outbreak in one or more of its facilities.

Given the rapid rate of transmission of COVID-19 between individuals in DOC custody, DOC must limit the risk of COVID-19 being introduced to people who are incarcerated in its facilities. The most prevalent and highest risk of this exposure is through corrections staff who come and go each day and return to their families and communities outside of the prison, putting themselves at risk of exposure to COVID-19 via community transmission. These staff then return to work at DOC facilities and potentially expose the residents, who do not have the ability to socially distance or refuse contact with DOC staff members. CLS understands that a large number of DOC staff have refused to be vaccinated or have indicated they will refuse when it is available. The danger posed by unvaccinated staff is particularly critical for individuals in DOC custody who may be unable to take the COVID-19 vaccine due to individual circumstances or risk factors. Because DOC has a duty to protect the individuals who are incarcerated in its facilities, it should ensure that every staff member (regular or contract) who has direct contact with residents has been immunized against the COVID-19 virus.

Time is of the essence and the State must act immediately to protect people living in Department of Corrections' facilities.

Since the outset of the pandemic in early 2020, we have heard from hundreds of individuals residing in DOC custody with concerns about how the Department has responded to the virus. In addition to the over 6,100 residents who have contracted the virus, people in DOC custody have been subjected to abhorrent conditions as a result of the Department's COVID-19 response, ranging from facility-wide lockdowns, to the extensive use of solitary confinement, to limited access to toilets and showers, to restricted contact with family and loved ones, to placement of residents in decommissioned buildings without access to drinking water or ventilation.

Now with the introduction and availability of multiple effective vaccines, Governor Inslee, DOH, and DOC must take immediate steps to protect the vulnerable people who are living in our state correctional facilities. The people living in DOC custody are at an exponentially higher risk of contracting COVID-19 if and when another outbreak occurs, and prioritizing access to the vaccine for the over 15,000 people in these facilities should not be politicized – it is a matter of fulfilling the State's duty to protect people in its custody. We ask that the Governor, the Department of Health, and the Department of Corrections provide us with a detailed, comprehensive plan to address the concerns outlined in this letter no later than Friday, March 19, 2021, or we plan to file a lawsuit to effectuate these requests. We believe that these issues can be fully addressed with rapid action by your offices and hope that you are willing to take these immediate actions to protect every individual in DOC correctional facilities against the ongoing threat of this pandemic. Please contact us by email (addresses in signature, below) to provide us with details of the steps your offices intend to take.

Sincerely,

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