

Meeting Minutes
SBM Prisons and Corrections Section Council
April 3, 2020
2pm-4pm (via Zoom)

Present

Keith Barber
Hon. Clinton Canady
John Cooper
Marilena David-Martin
Lisa Geminick
Nicole George
Natalie Holbrook
Kyle Kaminski
Barb Levine
Dan Manville
Michael Marutiak
Hon. Michelle Rick
Katherine Root
Kathleen Schaeffer
Carol Siemon
Pat Streeter

Unexcused absence

John Brusstar
David Gilbert

1. Approval of March 6, 2020 meeting minutes; announcements

- Mari has submitted the P&C response to the SBM request for MCR revisions in response to COVID-19. All sections submitted responses. Mari will keep the Council updated.
- The Appellate Practice Section, SADO, and the Board of Commissioners have submitted statements in favor of the proposal re prosecutor parole appeals.
- Mari and Mike have met and will continue to meet about the possibility of a joint program in September.

2. COVID-19 (C19) and corrections

Jails

Ingham Co. Jail is down to 240 people from 376 three weeks ago.

Other jail populations are going down, but we do not have current numbers.

SADO is filling individual motions for people in Macomb Co., where they are evaluating on a case by case basis rather than implementing a global solution. About 20 people had been released as of 4/3/2020.

SADO is not tracking every county; people are encouraged to share information.

MDOC (Kyle Kaminski)

Numbers as of 4/3/2020

- The MDOC has administered 329 tests. 182 prisoners have tested positive. They are concentrated at Parnell, Macomb, WHV, DRC, and Lakeland. There is also one at Newberry, one at KCF, and a few at RGC.
- At least 30 staff are C19 positive.
- There has been one staff death and one prisoner death confirmed to be due to C19.

C19 Operations

Those hardest hit are under modified operations, and are using quarantine and isolation throughout the facilities. There are three distinct groups of isolated prisoners:

- Those who have tested positive;
- Persons under investigation (PUI) (prisoners who are symptomatic and awaiting test results); and
- Close contacts (prisoners who are asymptomatic, but have had close contact with someone who has tested positive).

When PUIs test negative, they can be released to GP. When PUIs test positive, they are moved to the positive area.

Due to the short supply of testing kits, if a close contact prisoner is asymptomatic on their 14th day of isolation, they are released to GP without testing. If a close contact prisoner does become symptomatic, they are escalated to PUI housing.

Other facilities are maintaining most of their normal operations. Chow lines are more spaced out. Programs are running with fewer people.

Placement of positive prisoners

The K unit at Cotton (the satellite Level I outside the main fence) is being utilized as a positive unit. Positive prisoners from Lakeland and Parnell have been moved there.

There are designated quarantine areas at WHV.

RGC is utilizing DWH as its quarantine area.

Now that there are prisoners who are recovering, the emerging questions surround placement of recovered prisoners, and how to ensure not to designate as “recovered” too quickly/release prematurely.

Personal Protective Equipment (PPE)

Masks: as the national direction toward masks has evolved, MSI has begun making cotton masks (not designated PPE) for all staff and prisoners. They are being distributed as made, and

the MDOC expects that they will have reached the entire Department by the end of the week of 4/6. Staff and prisoners must wear these masks at all times.

Gloves: gloves are utilized by staff who need PPE for their position. They are not being issued to prisoners due to short supply.

The level of PPE provided is related to a staff member's level of exposure. Staff who are in PUI or positive units may have glasses, N95 masks, gowns/suits, face shields, and gloves.

Intake

Intake is temporarily closed. The Executive Order (EO) suspended intake from county jails for at least seven days. There was no intake for most of this week. The MDOC pushed for that EO, especially due to uncertainty regarding jail protocols. Before the EO, staff and prisoners were entering facilities presenting as symptomatic. There is no definite timeframe for that: as jails put protocols in place, the MDOC will reassess, and will restart intake from individual counties.

Exit

The parole board and release unit are working seven days/week, and processing paroles five days/week. They are looking at any cases that can parole legally and safely, including (1) positive paroles who are beyond their ERDs; (2) deferrals; (3) individuals who are not parole-eligible, but are 60+ and/or have health conditions. The Ombudsman's update also indicated that the MDOC is looking at individuals with positive parole actions pending programming requirements. The position of the MDOC is to keep the process going as aggressively and safely as possible.

Public hearings have been cancelled. There is discussion re how to resume them, but no firm plan in place.

Reentry

The MDOC is tracking every prisoner with an upcoming parole who is close contact, PUI, or positive. When a prisoner of any of those statuses is moving toward parole, the MDOC is talking with the placement or public housing authority to determine if the parole can move forward. They do not have the ability to run confirming tests for prisoners leaving. Close contact prisoners have been paroled to family placements, when their family prefers they come home and complete quarantine there. The Department allows that when it can be safely done.

Community placements are slowing down, particularly in harder hit areas of the state. They are not removing existing populations, but generally are not taking new ones. Placements on the west side of the state are still operational. Most landlords are still taking people, but we don't want to put C19+ people into public housing placements. There is a lot of concern about what will happen if/when the west side gets hit harder.

Greatest concern is with housing and food, and that is the primary focus with contractors.

So far, no paroles have been lost due to lack of placement.

Medicaid can be turned on via phone.

Kyle would be glad to talk about a plan for using stimulus money or philanthropic contributions to get cash assistance to returning people and their placements.

Call/email Kyle with concerns.

Other

AFSC (Natalie Holbrook)

Advocacy to Governor's office:

- Efforts to organize with other advocacy organizations (e.g., SADO, ACLU) to send recommendations to the governor and the DOC. Concerns include:
 - Staff at infected facilities are continuing to shake down persons/property without PPE.
 - People are being held in full isolation without property for 14 days.
 - Prisoners in isolation are not getting access to fresh air, contrary to CDC recommendations – no out of cell time, ventilation in prisons is poor.
- AFSC has sent two letters to the governor, and collected 1500+ signatures asking for the release of elderly, medically frail, and long-term prisoners. They are also working on ways to shift the nine month timeline on the commutation process. They are compiling a list of names of people who are good candidates for commutation.

Direct advocacy:

- Taking JPAYs and phone calls from prisoners. These include a large number of prisoners contacting AFSC on behalf of others, such as younger guys looking out for the conditions of older or otherwise frail persons.
- Working with impacted families, fielding individual concerns, and working with SJM to arrange group family support calls, in order to get good information to people.

Safe and Just Michigan (John Cooper)

SJM is collaborating with other organizations, like AFSC, with reaching out to decision-makers (e.g., signing onto letters to sheriffs, Governor's office, the MDOC, and the AFSC's letter regarding releases).

Following up with counties on jail numbers.

Communicating information to the public, via direct contact and through the media.

State and local law enforcement have been pretty proactive. SJM has heard rumors about an EO on prisons next week, but does not have any further info.

SJM is hearing similar concerns to the AFSC. Overcrowding is the most pressing concern. Many facilities are double-bunked, and preclude social distancing.

The prospect of changing criminal justice policy as a response to a pandemic has the potential to alarm the public, so we want people to understand that there is a process in place, and the people being released aren't a threat to public safety.

Ombudsman (Keith Barber)

The Ombudsman's office is hearing a lot of the same things as the AFSC and other advocacy groups. They are working remotely. The MDOC has been generally responsive. Kyle has been responsive to concerns. Keith and Kyle are working to have Keith's staff get confidential calls with the Chair of the Warden's Forum at each facility. A lot of people aren't reporting when they become symptomatic, because the move to isolation presents as punishment, so they have to weigh the consequences of going forward, rather than waiting to be identified.

Even though there are universal rules, facilities interpret rules how they want to, and they may not be followed in a universal way. There have been multiple central office and warden conferences per week, and the MDOC is doing what they can to rein in individual facilities, but there are still issues.

SADO

SADO has been involved in training lawyers on motions that could be filed for clients at all stages of the process, from pretrial to post-incarceration. It has been actively involved in communicating with the Governor, sheriffs, and advocacy organizations, as well as helping formerly incarcerated individuals and trying to help them with placement.

Carol Siemon

There was a recent op-ed re JLWOP, stating that Michigan is an outlier with prosecutors continuing to ask for life sentences, and urging the withdrawal of LWOP requests and going straight to the parole board. Regardless of agreement with the philosophical underpinnings of the proposal, Carol has reservations about signing due to defects in the process. Even where prosecutors stipulate to withdraw the request, unless there is a stipulation to a new sentence, there still needs to be a Guidelines resentencing.

There was a recent phone call with Fair and Just Prosecution. They are continuing to follow up and track what's happening in different jurisdictions. Carol can pass that on.

MSU clinical programs (Dan Manville)

The Clinic is looking at bringing a lawsuit on behalf of prisoners at Macomb and Lakeland who are double-bunked and those who are housed in cubes. The Central Office is giving direction to facilities, but the facilities have broad discretion and limited oversight in deciding how to implement them. Because the conditions they are grieving are life-threatening, prisoners do not have to exhaust the grievance process before filing the lawsuit, but they must continue the process of exhausting grievances while the lawsuit goes forward. Dan is expecting to line up experts in the next couple of weeks.

A similar lawsuit was filed in Texas, and they are hoping for an injunctive hearing. A TRO was granted in a case involving immigration detention, giving the government 14 days to come up

with a process to keep social distancing. This lawsuit would be asking for social distancing and supplies.

The Clinic is also looking at the possibility of a lawsuit on behalf of prisoners at WHV. Kathleen Shaeffer noted that she has heard from female prisoners who are afraid to report that they are experiencing symptoms because they do not want to be isolated.

Interested persons can reach out to: manvilld@law.msu.edu; danmanville@gmail.com

Judge Rick - Court proceedings

Judge Rick raised concerns regarding the processing of incarcerated litigants (primarily but not exclusively on the criminal dockets). Adherence to the mandate that no more than 10 persons can congregate in a space, may preclude public proceedings. There will be a webinar on utilizing both Zoom and YouTube for simulcast, and SCAO is working to get courts up to speed. SADO put together instructions on statutory authorities courts may utilize to enable releases of medically or otherwise frail individuals. This has been helpful to judges, and to jail administrators who want to be mindful of C19 issues.

3. Newsletter

We will be doing a C19-related newsletter (only available electronically). Anyone may submit a short blurb (couple of paragraphs) about what their organization is doing. Mari will send a follow-up email.

The deadline for submission to Pat is 4/30.

4. Legislation

Judge Canady reported that the Representative Assembly approved our rule proposal requiring the appointment of counsel for prosecutor parole appeals, noting that the question of whether counsel should be appointed for victims in appeals of parole decisions where the prosecutor does not wish to pursue it, came up in discussions of the proposal adopted in committee.

Mike Marutiak noted that the same thing came up in discussion in our section when we submitted the rule proposal. Carol Siemon shared her opinion that when victims do choose to appeal, they should have representation, and prosecutors must continue to advocate for victims throughout the entire process and history of a case.

5. Other

SBM and C19

SBM plans to continuously hold roundtable discussions on C19 issues.

Mari will be available 24/7 from our section to address emergency issues re C19.

SBM is setting up a four-hour rapid response team. Detail is on the SBM main page.

The Litigation Section is providing tutorials to people who don't have lawyers and have to file things electronically.

Access to courts

Usually *pro per* pleadings are done by mail, and mail is not being monitored every day, so we need to keep them on the radar. There is discussion of a process that would allow prisoners to eFile. The biggest apparent obstacle is how to get into the MDOC to make copies and turn documents into PDFs.

P&C role in C19 discussion

The question was posed whether P&C have an independent role or presence in the COVID-19 discussion. The group did not feel strongly one way or the other given the roles others on the Council already have. We can revisit if needed.

6. Next meeting: Friday May 1, 2-4pm (via Zoom)

7. Adjourn