FILED
SUPREME COURT
STATE OF WASHINGTON
7/1/2020 12:51 PM
BY SUSAN L. CARLSON
CLERK

NO. 98317-8

SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, et al.,

Petitioners,

v.

JAY INSLEE, et al.,

Respondents.

RESPONSE TO PETITIONERS' MOTION TO SUBMIT ADDITIONAL EVIDENCE, TO EXPEDITE REVIEW AND TO APPOINT AN ER 706 EXPERT

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I. INTRODUCTION

In March 2020, Petitioners filed a petition for writ of mandamus, asking this Court to grant extraordinary relief in light of the risks posed by the COVID-19 pandemic. Petitioners subsequently moved to amend the matter into a personal restraint petition. On April 23, 2020, the Court entered an Order denying both the mandamus petition and the motion to amend. Although the Order indicated that opinions would follow, the Order effectively resolved the entire matter, concluding that Petitioners had not shown that Respondents are currently failing to perform a mandatory duty necessary to obtain mandamus relief, and that Petitioners had not shown they are under an unlawful restraint necessary to obtain relief in a personal restraint petition.

Despite the Court's resolution of the matter over two months ago, and the fact that Petitioners have not shown any adverse change in their own conditions of confinement, Petitioners now move under RAP 9.11 to submit additional evidence regarding the conditions of confinement of other inmates in another prison. Petitioners also ask the Court to appoint an expert to develop evidence regarding the conditions in that other prison. However, the Court has already denied the petition, the newly submitted evidence and the proposed expert opinion are not relevant to Petitioners, and the evidence and opinion will not alter the Court's decision.

The Court has already denied both the petition and the motion to amend, and a party normally cannot admit evidence after this Court has ruled on a case. However, even if a party could submit new evidence at this stage, Petitioners fail to satisfy the requirements of RAP 9.11(a). The proposed new evidence consists of three declarations regarding the general conditions of confinement at the Coyote Ridge Corrections Center (CRCC), but Petitioners are not in that institution. Petitioner Duncan is at the Washington Corrections Center, Petitioner Kill is at the Monroe Correctional Complex, Petitioners Berry and Rhone are at the Stafford Creek Corrections Center, and Petitioner Colvin was released but then returned to the Washington Corrections Center for Women on a violation for use of methamphetamine. Petitioners fail to show how evidence about conditions of confinement at CRCC is relevant to them, and Petitioners lack standing to challenge the conditions at CRCC. If inmates at CRCC wish to challenge their conditions, those prisoners must file and serve a civil action.

Petitioners also fail to show the appointment of an ER 706 expert is proper in a mandamus action that Petitioners initiated under RAP 16.2, especially where the Court has already decided the matter. The request is essentially a reformation of Petitioner's prior request, denied by this Court, to appoint a special master. Petitioners fail to show the appointment of an ER 706 expert is necessary or proper at this stage of this case.

II. FACTS

The Department of Corrections has continued to prioritize its response to the COVID-19 pandemic, which has consumed and diverted agency staff and resources for the last five months. The Department has devoted in excess of 458,348 staff hours and $20,720,314.47 to mitigating the risk the virus presents to the incarcerated population. Ex. 1, Second Decl. of Julie Martin (2d Martin Decl.), at 2-3. Respondents outlined many of these efforts in their filings prior to the Court's Order denying relief. The Department's response efforts are consistent with the Centers for Disease Control and Prevention's (CDC) Guidelines. Ex. 1, at 18-23.

The Department has proven its commitment to transparency throughout its response. This includes updating its public website with current COVID-19 information at least every weekday. The Department also regularly communicates with the Office of the Correctional Ombuds (OCO), the Statewide Family Council, and the incarcerated population. Each facility has weekly or biweekly calls with its local Family Council. The OCO hosts weekly (previously daily) phone calls with the public and the Department. And the OCO has conducted approximately one dozen monitoring visits at Department prisons since April. Ex. 1, at 11-12.

A. The Department's Early and Comprehensive Response to the COVID-19 Pandemic

The Department's Emergency Operations Center has been open since early February to direct the emergency response, with Incident Command Posts running at each Department facility since early March.

Visitation and volunteer programs have been suspended since mid-March. Enhanced staff and contractor screening has been in place since that time, as well, with a comprehensive screening, contact mapping, and return-to-work process for suspected COVID-19 cases. Ex. 1, at 3-4. Individuals entering the system are subject to a 14-day quarantine. Ex. 1, at 22. The Department has greatly limited transfers between prisons. Ex. 1, at 9.

In its prisons, the Department has implemented social distancing policies; reduced the population density by expanding housing into other areas of its prisons; utilized an intensive cleaning protocol in its prisons since early to mid-March; and provided incarcerated individuals with soap, hand drying machines or paper towels, alcohol-based hand sanitizer in supervised areas, and cleaning supplies. The Department has special guidelines for units housing vulnerable individuals. Ex. 1, at 4-8.

Since early April, all staff and incarcerated individuals have been required to wear face coverings. Cloth mask kits and surgical masks have been provided to the incarcerated population. The Department has a comprehensive Personal Protective Equipment (PPE) matrix that guides staff on the types of face coverings and other PPE required in a particular situation. The Department also imposed a specific process for ordering PPE to more efficiently manage the purchase of PPE and effectively source it in light of increased nationwide demand. And the Department's Correctional Industries Division has been manufacturing PPE and related items, including gowns, face shields, masks, hand sanitizer, hand sanitizer

dispensers, and physical screening barriers. And all staff members are required to view an online PPE training. Exhibit 1, at 8-9.

B. The Department Has a Comprehensive Clinical Approach to COVID-19 and Updates This Protocol As Needed

Since early March, the Department's Chief Medical Officer, Infectious Disease Doctor, and other Health Services staff have had in place guidelines specific to COVID-19 screening, testing, and infection control. This document is entitled "WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline." It details the screening, testing, and infection control procedures the Department has in place. Health Services staff update the guideline as needed to reflect the rapidly evolving nature of the COVID-19 pandemic. The guideline currently is in its 18th edition.[1]

The Department has tested for COVID-19 in accordance with Department of Health (DOH) guidelines. Following DOH's recent recommendation, the Department has begun testing all inmates placed on quarantine status as well as those who have been contact mapped to a symptomatic individual. As of June 30, 2020, the Department has 2070 test kits in the prisons, an additional 7,300 test kits at Headquarters, and 25,000 tests kits on the way from the State EOC. Ex. 1, at 13-14.

The Screening, Testing, and Infection Control Guideline also outlines the plan for care of individuals with suspected and confirmed COVID-19. The practitioner will determine the level of care that is

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[1] *See* Dep't of Corrs., *WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline, Version 18,* https://www.doc.wa.gov/news/2020/docs/wa-state-doc-covid-19-screening-testing-infection-control-guideline.pdf

appropriate based on the patient's condition. Patients with confirmed COVID-19 will receive nursing assessments and vital sign examinations at least every eight-hour shift, and those in higher risk categories will be closely monitored regardless of their care setting. Patients will be transferred to outside hospitals and emergency departments when appropriate. Triage to the appropriate care setting and subsequent monitoring are important aspects of clinical care for patients with COVID-19 and are a key component of DOC's clinical care of patients with suspected or confirmed COVID-19. There is also a DOC COVID medical duty officer who is available by phone for questions and consultation. The Department also has strict medical isolation and quarantine protocols and a comprehensive contact mapping and tracking system. Ex. 1, at 14-15.

C. The Department Worked with State and Federal Partners to Establish Regional Care Facilities

To ensure the Department was prepared for a significant increase of in the number of COVID-19 cases within its facilities, it requested an external agency assessment of its operational ability to support an overflow of incarcerated individuals diagnosed with COVID-19. The agencies developing these assessments included 10 representatives from DOH, the DOH Statewide Isolation Task Force, and the United States Army Corps of Engineers. Suitable locations, called Regional Care Facilities,[2] were identified at Airway Heights Corrections Center, Washington Corrections

[2] Dep't of Corrs., *COVID-19 Information*, https://www.doc.wa.gov/news/covid-19.htm#regional-care

Center, and the Washington Corrections Center for Women. These locations had the ability to use preexisting spaces to provide overcapacity support to agency operations on both the east and west sides of Washington State. The Regional Care Facilities will safely and comfortably house incarcerated individuals who have tested positive for COVID-19 and may require more comprehensive medical attention and physical isolation, but do not require hospitalization. If an individual's medical condition or needs become severe, the Department works with hospital partners to provide the necessary care. Ex. 1, at 16-17.

Operationalizing the Regional Care Facilities has required construction and procurement of necessary equipment, such as medical beds. The Regional Care Facility at Airway Heights Corrections Center is open, and the Regional Care Facility at the Washington Corrections Center is expected to be available soon. As of June 29, 2020, there are 10 incarcerated individuals housed in the Regional Care Facility at the Airway Heights Corrections Center. Ex. 1, at 17-18.

D. Discretionary Prison Population Reductions

The Governor and the Department coordinated for weeks to determine whether and how to reduce the prison population to allow increased physical distancing in prisons without jeopardizing public safety or adversely impacting released individuals' chances for success in the community. On April 15, 2020, Governor Inslee issued Emergency

Proclamation No. 20-50—Reducing Prison Population.[3] Using his emergency powers under RCW 43.06.220, Governor Inslee suspended in full or in part 16 different statutes to facilitate immediate prison population reductions. The Emergency Proclamation also directed the Department to continue to explore actions to identify other incarcerated individuals for potential release through Rapid Reentry, furlough, commutation, or emergency medical release. Ex. 1, at 23-24.

Also on April 15, 2020, Governor Inslee signed an Emergency Commutation[4] in Response to COVID-19. This Emergency Commutation was made possible by the actions taken and statutes suspended in Emergency Proclamation No. 20-50. The Emergency Commutation commuted the remaining confinement portion of the sentences of incarcerated individuals who were in DOC confinement and: 1) did not have any violent, serious violent, or sex offense convictions as defined in RCW 9.94A.030 during their current period of DOC jurisdiction; and 2) had an earned release date from prison on or before June 29, 2020. In total, 422 individuals were released through this commutation. Ex. 1, at 24-25.

The Department created a Rapid Reentry program through modifications to the Graduated Reentry Program, *see* RCW 9.94A.733. This change was made by possible by the suspension of several statutes in the Governor's Emergency Proclamation No. 20-50. The Rapid Reentry

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[3] *See* Wash. Governor Jay Inslee, Proclamations, https://www.governor.wa.gov/office-governor/official-actions/proclamations

[4] *See* Wash. Governor Jay Inslee, News*, Inslee issues new orders to reduce prison populations during the COVID-19 outbreak,* https://www.governor.wa.gov/news-media/inslee-issues-new-orders-reduce-prison-populations-during-covid-19-outbreak

program allowed incarcerated individuals an opportunity to serve up to six months of their sentence of confinement in the community on electronic monitoring. In total, 528 individuals were released through the Rapid Reentry Program, which concluded on May 15, 2020. Secretary Sinclair also used his statutory authority to grant furloughs to 66 individuals in work release. The Department evaluated all pregnant individuals and mothers in the Residential Parenting Program for early release, with approximately two-thirds being released from prison. Ex. 1, at 25-28.

As a result, the Department's current prison population, as of June 28, 2020, was 15,107. This includes 14,161 individuals in the Department's male facilities and 946 individuals in the Department's female facilities. As of April 1, 2020, those populations were 15,213 and 1,147, respectively. From April 1 through June 28, 2020, the population of the Coyote Ridge Corrections Center decreased from 2,445 to 2,155; the population of the Monroe Correctional Complex decreased from 2,422 to 2,186; the population of the Stafford Creek Corrections Center decreased from 1,964 to 1,889; the population of the Washington Corrections Center decreased from 1,734 to 1,715; and the population of the Washington Corrections Center for Women decreased from 886 to 755. Ex. 1, at 28.

E. The Department's Ongoing Prioritization of its COVID-19 Response

To date, there have been 207 positive COVID-19 tests of incarcerated individuals in DOC facilities. A total of 2,607 incarcerated individuals have been tested as of June 30, 2020. Seven cases were in a

Seattle work release facility, one in a Tri-Cities area work release facility, one at the Washington Corrections Center, two at the Washington State Penitentiary, 19 at the MCC, one at a community medical center, and the remaining cases occurred at the Coyote Ridge Corrections Center. Of the CRCC COVID-19-positive patients, 57 are in a COVID-positive unit, 11 are housed at CRCC in isolation, 28 have returned to general population (post-COVID care), 10 are at the AHCC Regional Care Facility, six are at the AHCC Infirmary, three are at community hospitals assigned to AHCC, 5 are in transit to MCC, 55 are housed in isolation at MCC, and one was released to community supervision and is at the DSHS Special Commitment Center. The facilities are following the process for isolation, quarantine, and contact mapping to limit transmissions as much as possible. Sadly, two incarcerated individuals from CRCC who were receiving care at a community hospital passed away from virus complications. Ex. 1, at 28-29.

The largest outbreak has been at the Coyote Ridge Corrections Center. On June 11, 2020, the Department placed the Medium Security Complex at the Coyote Ridge Corrections Center on restricted movement to help contain the spread. The Department also deployed additional custody and Health Services staff to assist Coyote Ridge staff in caring for those incarcerated at the facility. All CRCC staff are required to be N95 fit tested, and wear N95 as identified in the current version of protocols, with limited exceptions. Ex. 1, at 29-30. On June 17, 2020, the Department decided to test all Coyote Ridge employees and all incarcerated individuals in the Medium Security Complex. A goal of testing is to allow for the

separation of individuals who test positive for the virus and those who are confirmed not to have the virus through two negative test results. Planning for this significant undertaking has been ongoing for approximately two weeks. Testing began on Wednesday, June 24, 2020, with assistance from the DOH, Washington National Guard, and the Franklin-Benton County Department of Health. The DOH and the Franklin-Benton County Department of Health provided supplies for the testing. In total, COVID-19 testing was provided to 1,846 incarcerated individuals and 660 staff members at Coyote Ridge Corrections Center. Of the 660 Coyote Ridge staff, only four have tested positive as of June 29, 2020. Of the 1,864 incarcerated individuals tested, so far 60 have tested positive (included in the numbers above) and 1,547 have tested negative.[5] To facilitate separation of COVID-positive and negative individuals, the Department has established additional tent housing on CRCC grounds, with temporary shower, bathroom, and handwashing facilities. Ex. 1, at 30-31.

The Department will continue to prioritize its response based on its understanding of current best practices and in consultation with its Infectious Disease Doctor, Chief Medical Officer, state and federal authorities, and its local community partners. The Department has devoted an unprecedented number of staff hours and resources to this crisis and will continue to do all it can to mitigate the risk of COVID-19. Ex. 1, at 31-32.

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[5] *See* Dep't of Corrs., *CRCC Memo*, dated June 30, 2020, https://doc.wa.gov/corrections/covid-19/docs/2020-0630-crcc-employees-memo-staff-covid-19-testing-operation-update.pdf

III. ARGUMENT

A. The New Evidence is Improper Because the Court has Already Denied the Petition, the Evidence about Conditions at Other Prisons Will Not Alter the Decision, and Petitioners Lack Standing to Pursue Relief for Other Prisoners

Petitioners seek to admit new evidence regarding the conditions of confinement at CRCC. The Court should deny the motion because Petitioners do not satisfy all of the requirements of RAP 9.11(a) where the Court has already denied the petition and motion to amend, the evidence is not relevant to Petitioners, and Petitioners lack standing to challenge the conditions of confinement of other prisoners in other institutions.

First, even assuming that RAP 9.11 applies to original actions initiated under RAP 16.2, and not just to appeals from lower court proceedings, Petitioners do not satisfy the threshold requirement of the rule. RAP 9.11(a) expressly allows for the receipt of new evidence only "before the decision of a case on review. . . ." Here, the Court has already denied the petition and the motion to amend, concluding that Petitioners did not show a mandatory duty necessary for mandamus relief, or an unlawful restraint necessary for a personal restraint petition. Although the Court has not yet issued the opinions as indicated in the Order, the Court fully resolved the matter by denying the petition and the motion to amend. The proposed submission therefore does not satisfy the first requirement that evidence be taken "before the decision" in the case. RAP 9.11(a).

Second, Petitioners do not satisfy the remaining requirements of the rule. Although the Court may waive strict compliance with the requirements to serve the ends of justice, RAP 9.11(a) generally permits the taking of additional evidence only if the proponent satisfies all the requirements of the rule. *See, e.g., State v. Fuentes*, 179 Wn.2d 808, 827, 318 P.3d 257 (2014); *State v. Elmore*, 139 Wn.2d 250, 302-03, 985 P.2d 289 (1999); *Wash. Fed'n of State Employees, v. State*, 99 Wn.2d 878, 884, 665 P.2d 1337 (1983). Requirements three, four, and five of the rule—excusal of the failure to present the evidence to the trial court, the lack of a post-judgment remedy in the trial court, and the inadequacy of granting a new trial in the trial court—do not apply because this case was never in the trial court. RAP 9.11(a)(3)-(5).[6] Regardless, the motion fails because Petitioners do not satisfy the other three requirements of the rule. Petitioners fail to show the additional evidence is needed to fairly resolve the issues, they fail to show the additional evidence would probably change the Court's decision, and they fail to show it would be inequitable to decide the case on the existing record. RAP 9.11(a)(1),(2), and (6).

[6] As argued by Respondents' prior briefing, Petitioners cannot obtain the extraordinary remedy of mandamus relief because they have an available remedy at law, namely a civil action initiated in the superior court. The fact that Petitioners now rely on rules designed to further develop a trial court record (RAP 9.11 and ER 706) reaffirms that the case should have been filed as a civil action in the superior court in the first place.

Petitioners simply fail to show how evidence regarding the conditions at CRCC would help fairly resolve Petitioners' claims or alter the Court's conclusion on their claims. Petitioners are not in CRCC. Evidence regarding the conditions of confinement at CRCC is simply not relevant to Petitioners. The evidence would not alter the Court's decision. For this reason, the Court should deny the motion to admit the evidence. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 613, 62 P.3d 470 (2003) (denying motion to supplement the record because, while the evidence was illustrative, it would not alter the decision in the case); *In re Adoption of B.T.*, 150 Wn.2d 409, 415, 78 P.3d 634 (2003) ("DSHS fails to meet the requirements of RAP 9.11(a) because the facts it seeks to bring to our attention do not help us resolve the issues before us.").

Rather than using the evidence to challenge their own conditions of confinement, Petitioners actually seek to use the evidence to challenge the conditions of confinement of other prisoners. However, Petitioners lack standing to bring such claims and to seek such relief. *Whitmore v. Arkansas*, 495 U.S. 149, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990); *Improvement Ass'n. v. Pierce Cty.*, 106 Wn.2d 797, 710, 724 P.2d 1009 (1986). If prisoners at CRCC wish to challenge their conditions of confinement, then those prisoners must file their own action raising their own claims. Petitioners cannot do it for them in this mandamus action.

The Court has already denied the motion to amend the case into a personal restraint petition. However, even if the Court converted the matter into a personal restraint petition, such a petition is just that—a petition filed by one person seeking individual habeas corpus relief for that one person. *See* RAP 16.4. To obtain relief, the petitioner must show an unlawful restraint imposed on the particular petitioner, not the existence of an unlawful restraint imposed on someone else in another prison. RAP 16.4(a). The RAPs simply do not contain any provision for a petitioner or even a group of petitioners to seek relief on behalf of other prisoners.

On the contrary, the RAPs require that the individual petitioner seek personal restraint petition relief on behalf of that petitioner. RAP 16.6(a) (requiring that the petition be brought on behalf of the person under restraint, and in that person's name or the name of the person's guardian, conservator, parent, or attorney); RAP 16.7(a)(6) (petitioner must sign or verify the petition). Even a petition brought as a "next friend" petition must pursue relief for that particular petitioner, not for someone other than the petitioner. RAP 16.6(a); *see also Johnson v. Moore*, 80 Wn.2d 531, 496 P.2d 334 (1972) (recognizing that class actions do not fit within petitions for habeas relief). Since Petitioners lack standing to seek relief for other prisoners confined at CRCC, the evidence of conditions at CRCC is not relevant and would not alter the Court's resolution of Petitioners' claims.

Third, even if Petitioners could use the evidence and challenge conditions of confinement at CRCC, the proposed evidence would not alter the Court's resolution of this case. The new evidence consists of three declarations from inmates Ferrer, Streiff, and Noor, who simply complain about the general conditions at CRCC.

Mr. Ferrer, who is only age 45 and does not allege that he has any underlying health conditions that would make him high risk to COVID-19, complains that the conditions at CRCC are "currently horrendous." *See* Declaration of Ferrer. However, Mr. Ferrer specifically complains that he was not transferred to camp, is locked down in his cell for most of the day, and has poor quality food and water. Mr. Ferrer's only complaint about his health is the risk of being confined to his cell for the majority of the day; he presents no evidence specific to COVID-19 other than to say that another inmate four cells away had respiratory issues, but the medics determined the issue was not related to COVID-19. This evidence would not affect the Court's decision in this case. Mr. Streiff, age 54 with no alleged health issues, makes complaints similar to those of Mr. Ferrer. *See* Decl. of Streiff. Although Mr. Streiff complains about the lockdown, the quality of food and water, and the limited access to use of the bathroom, the only complaint related to COVID-19 is a generalized statement that social distancing is not possible in his cell.

Mr. Noor is only 37 years old, and he does not allege any specific health issues that would put him at risk of COVID-19. Similar to Mr. Ferrer and Mr. Streiff, the declaration of Mr. Noor complains about the lock down, the lack of bathroom access, the quality of the food and water, and how the conditions of confinement make it difficult for him to practice his religion. As to COVID-19, Mr. Noor complains about a lack of social distancing in his cell, and he alleges that two cellmates were sick and taken from his cell, but he also admits that he does not know if those inmates had COVID-19. Mr. Noor also admits that medical staff check on him every day. Finally, Mr. Noor admits that he already challenged the conditions at CRCC in a personal restraint petition, asking for immediate release, but the Court of Appeals denied the request. This admission shows that Mr. Noor (as well as Mr. Ferrer and Mr. Streiff) can pursue a claim for relief in a properly filed action, and does not need Petitioners to advocate on his behalf.

None of Petitioners' new evidence shows any adverse change to the conditions of confinement in the prisons housing Petitioners. The new evidence does not show the evidence is needed to fairly resolve the issues in this case and would probably change the Court's decision, and Petitioners do not show that it would be inequitable to decide the case on the existing record. RAP 9.11(a)(1),(2), and (6). Petitioners do not satisfy RAP 9.11(a).

B. Petitioners Do Not Show the Appointment of an ER 706 Expert is Necessary or Proper in this Action

Petitioners ask this Court to appoint an expert under ER 706. However, Petitioners fail to cite a single case authorizing the appointment of such an expert in an original action filed under RAP 16.2, especially where the Court has already denied the petition. Rather, ER 706 properly applies to proceedings in the superior court, which is the proper forum to develop a factual record. But even assuming ER 706 applies here, Petitioners do not show a legitimate basis for appointment of an expert.

Like the new declarations from inmates at CRCC, Petitioners hope to use an ER 706 expert to develop evidence concerning the conditions of confinement at CRCC. However, for the same reason that the new declarations are not proper under RAP 9.11, Petitioners do not show that such expert evidence would be proper under the rule. The evidence of the conditions at CRCC is not relevant to Petitioners' conditions of confinement in another prison, and it would not alter the conclusion that Petitioners' claims fail. While such evidence might be relevant in an action challenging the conditions of confinement at CRCC, Petitioners lack standing to challenge the conditions of confinement at a prison where they are not confined. *See Stewart v. McGinnis*, 5 F.3d 1031, 1038 (7th Cir. 1993) (inmate under no threat of harm from conditions at prison where he was no

longer housed); *Darring v. Kincheloe*, 783 F.2d 874, 876 (9th Cir. 1986) (inmate's challenge to his previous prison's institutional policy was moot after transfer to new prison); *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985) (prisoner lacked standing to obtain injunctive relief for prison conditions at prison where he was no longer housed). Petitioners cannot challenge the conditions of confinement of other individuals, and the conditions at another prison have no bearing on their claims here.

Petitioners also fail to show there is authority for the Court to compensate such an expert in this matter. There is no general right to public funding of an expert in a collateral proceeding challenging confinement. *See, e.g., In re Gentry*, 137 Wn.2d 378, 391-94, 972 P.2d 1250 (1999) (no right to publicly funded experts in a collateral challenge to a judgment and sentence); *Moore v. Snohomish Cty.*, 112 Wn.2d 915, 920-24, 774 P.2d 1218 (1989) (no statutory requirement or authority to pay fees of expert witness appointed by court absent express statutory language).

Finally, Petitioners' request for an ER 706 expert is actually a reformation of their prior request for appointment of a special master; a request this Court has already denied. Petitioners argue that the appointment of a neutral expert to investigate the conditions of CRCC, and to evaluate the steps taken by the Department of Corrections to protect incarcerated individuals, would provide the Court with a report of the conditions to assist

the Court in determining whether the Department's response plan is constitutionally sufficient. Mot. at 26-27. This is the same argument Petitioners made in requesting appointment of a special master. *See, e.g.,* Petitioners' Emergency Motion to Accelerate Review, for Appointment of a Special Master and for Immediate Relief, at 7; Reply in Support of Petitioners' Emergency Motion to Accelerate Review, for Appointment of a Special Master and for Immediate Relief, at 8. The Court has already denied this request, and other than changing the title of the person appointed from a special master to ER 706 expert, the request is the same as before. Petitioners fail to show how an ER 706 expert is necessary or proper.

IV. CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court deny Petitioners' motion.

RESPECTFULLY SUBMITTED this 1st day of July 2020.

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EXHIBIT 1

NO. 98317-8

SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, et al., Petitioners, v. JAY INSLEE, et al., Respondents.	SECOND DECLARATION OF JULIE MARTIN

I, JULIE MARTIN, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this matter.

2. I am currently employed as the Deputy Secretary of the Washington Department of Corrections (Department or DOC). I have held this position since March 2018. I have worked for the Department since August 2014 and have held the positions of Lean Manager and Assistant Secretary of Administrative Operations. As the Deputy Secretary, my role has been to ensure that key strategic divisions are meeting the business needs of the Department. I have oversight of Information Technology, and Health Services. I have led Inmate Records, Administrative Hearings, Results DOC and Process Improvement, Business Services, Human Resources and Budget. I work collaboratively with the Department

EXHIBIT 1

Secretary to achieve our goals and mission by demonstrating our core values, coaching our staff on our core values, and leading with respect, and inclusion, while seeking diverse points of view. I have been involved with direct supervision of DOC Health Services since March of this year, but have worked in supporting key initiatives and process improvements over the last year.

3. From the very beginning of the COVID-19 pandemic, I have worked closely with our Infectious Disease Doctor, Chief Medical Officer, Deputy Chief Medical Officer, Chief of Dentistry, Chief of Nursing, and Health Services Administrative staff. I have moved back to my position of Deputy Secretary and Interim Assistant Secretary of Health Services. I served as the co-Incident Commander for the Unified Prisons/Health Services Incident Command for the first 100 days; we continue to have three calls a week with our facility Incident Command Post (ICP) staff to discuss new protocols and ensure directions are implemented. Working with our doctors on a regular basis, I help to implement their medical guidelines. I work with the Health Services team to also meet the critical health needs of our incarcerated patients that are not COVID-19 related. I am also a member of the Emergency Operation Policy team.

4. The Department's response to the COVID-19 pandemic has consumed agency staff and resources for the last five months. To date, the

Department has devoted in excess of 458,348 staff hours and $20,720,314.47 to mitigating the risk the virus presents to the incarcerated population. Given the scope of the response, it is not possible to describe every step we have taken. I previously provided a declaration for this matter in early April 2020. This second declaration summarizes the major components of the Department's response since that time and the current status of our efforts.

I. SUMMARY OF DOC'S COVID-19 RESPONSE

5. Since February 9, 2020, the Department's Emergency Operations Center (EOC) has been open to support statewide COVID-19 response efforts. On March 2, 2020, Secretary Sinclair officially expanded the Department's previously activated EOC to oversee the Department's own response to COVID-19. The EOC operates within the framework of the Incident Command System, a standardized approach to command, control, and coordination of emergency response efforts. Incident Command Posts (ICPs) have been activated at each prison since March 12, 2020, and operating continually since that day, five to seven days a week.

6. Visitation has been suspended since March 13, 2020. An enhanced screening process has been in place for staff and contractors since March 16, which involves questions and temperature checks. If staff fail the screening process, they are refused entry to the facility and must leave.

EXHIBIT 1

Employees who fail screening are able to return to the facility only after being cleared through a secondary screening process that involves screening by a medical professional. Staff performing the screening wear Personal Protective Equipment (PPE), including gloves, a surgical mask, a disposable gown, and eye protection. Physical screening barriers are also used in many locations. Staff who are able to telework do so. In addition, the Department has formalized a process for contact mapping when a staff member is suspected of having, or tests positive for, COVID-19. This process identifies incarcerated individuals who have had close contact with a staff member who has tested positive for COVID-19, and who therefore require quarantine. Volunteers have not been allowed into the prisons since March 20, 2020.

7. The Department has taken a number of steps to promote social distancing where possible. Its March 20, 2020 social distancing protocols were issued to discourage physical touching or handshakes; limit inmate work crews to no more than 10 individuals unless six-foot distancing can be maintained with a larger crew; limit dining room occupancy to only the number that allows for six-foot social distancing; reduce classroom and programing to facilitate six-foot social distancing; stagger pill lines to allow social distancing; stagger movements within prisons as necessary to maintain social distancing; limit the number of individuals in the outside

yards to no more than 50, unless approved by Headquarters; mandate closure of weight lifting facilities; and adjust religious services to ensure individuals are able to practice their faith while maintaining social distancing of six feet. Since March 17, 2020, most community work crews have also been suspended. And since March 23, 2020, facilities have been able to develop alternative meal processes, including "grab and go" meals and / or in-cell meals when warranted to maintain social distancing.

8. In mid-April 2020, the Department reduced density at stand-alone and co-located MI2 facilities (commonly referred to as "camps") that have dormitory and/or open-bay living quarters. These included the Cedar Creek Corrections Center, Larch Corrections Center, Mission Creek Corrections Center for Women, Olympic Corrections Center, and the co-located units at the Airway Heights Corrections Center and the Coyote Ridge Corrections Center. The camps were able to identify additional sleeping areas to considerably reduce density, with 320 total individuals being moved. As of May 6, 2020 all women in the Washington Corrections Center for Women camp sleeping areas are also six feet apart. The result of these moves has been to allow for six feet of distance between individuals in the new sleeping areas.

9. The Department has undertaken similar efforts for its work release facilities. Effective March 16, 2020, DOC prohibited community

movement of individuals serving partial confinement sentences on electronic home monitoring through the Graduated Reentry or Community Parenting programs. The Department also reduced contact standards for staff working with these individuals, to reduce exposure and mitigate the potential spread of the illness to staff and to individuals in partial confinement. Visits, social outings, and non-essential travel have also been suspended to minimize the risk of virus spread.

10. Since early to mid-March, all DOC locations have an intensive cleaning protocol focusing on sanitizing high touch surfaces such as telephones, kiosks, counters, and doors, as well as medical, vulnerable population, and high traffic areas. Cleaning products used include EPA-registered disinfectants. The Department also has increased the number of trained incarcerated individuals to support the additional cleaning and sanitizing protocol. The Department also provides incarcerated individuals access to cleaning products, including spray disinfectant, and encourages them to clean their cells more frequently, and to help keep common areas clean.

11. Throughout the pandemic, the Department has emphasized personal hygiene. DOC has been providing no-cost bars of soap to every incarcerated individual since early March and will continue providing no-cost soap for the duration of the pandemic. Soap also is available and

continually restocked in the common areas. All incarcerated individuals have access to running water and hand drying machines or paper towels for hand washing. Correctional Industries has been manufacturing alcohol-based hand sanitizer and wall-mounted dispensers since early April 2020. On April 15, 2020, Correctional Industries began distributing hand sanitizer and dispensers to every Department facility, for use by incarcerated individuals and staff. Within the first several days after alcohol-based hand sanitizer was made available to the incarcerated population, one individual required medical care after ingesting the sanitizer. As a result, alcohol-based hand sanitizer is available to incarcerated individuals only in areas such as dayrooms where there is staff supervision. Fliers and other messages promoting personal hygiene have been widely posted and distributed.

12. Since mid-March, the Department has used special restrictions to mitigate the risk to the special housing units within DOC facilities where elderly and/or infirm individuals reside.[1] The restrictions applicable to the special housing units limit staff who may enter the units; require that all staff entering the units first wash their hands and don appropriate PPE; limit the movement of incarcerated individuals in and out of the units; and provide for special dining accommodations. In addition,

[1] https://doc.wa.gov/news/2020/docs/2020-0318-special-population-unit-guidelines.pdf

these procedures encourage frequent hand washing and allow individuals to self-quarantine in their cells, if they choose.

13. Since early April 2020, all staff and incarcerated individuals have been required to wear face coverings within the facilities. The Department also maintains a PPE matrix that provides guidance to staff about the type of face covering and other PPE that is required for different situations. For staff, approved face coverings include DOC-provided expired N95 respirators (approved for use by CDC), a self-provided surgical mask, or a cloth face covering such as those that can be made following CDC online instructions. For the incarcerated population, the Department provides bandana face covering packs that include all materials necessary to make two face coverings using the included CDC instructions. On the east side of the state, we also have provided surgical masks to incarcerated individuals and staff, due to the warm temperatures, and have begun doing so on the west side of the state, as well. On April 14, 2020, the Department also implemented a specific process for ordering new PPE, which allows the Department to more efficiently manage the purchase of PPE and effectively source PPE in light of the increased nationwide demand. DOC Correctional Industries has been manufacturing PPE and related items, including gowns, face shields, masks, hand sanitizer, hand sanitizer

dispensers, and physical screening barriers. And all staff members are required to view our online PPE training.

14. The Department has endeavored to limit movements of incarcerated individuals between facilities as much as possible. Staff are to minimize classification overrides for promotions or demotions in order to reduce movements, and Health Services must approve those that would result in a facility transfer. The Department suspended transfers from the Monroe Correctional Complex and the Stafford Creek Corrections Center from April 6, through May 11, 2020. No transfers to or from those facilities could occur unless individuals needed a higher level of care that could not be met at their current facility. We are currently not allowing transfers into Coyote Ridge Corrections Center, and transfers out of Coyote Ridge are permitted only for COVID-19 or other medical reasons. Scheduled releases have been occurring consistent with normal practice. A checklist has been created for medical staff to ensure appropriate steps are taken before releasing an individual from isolation into the community.

15. The Department also has taken efforts to mitigate the risk to individuals serving terms of community custody, including reducing the number of individuals returned to confinement for violations of conditions of community custody, which in turn reduces prison population and risk to incarcerated individuals. This has included amending arrest protocols, not

sending staff to take custody of individuals arrested by local law enforcement, retroactively reducing confinement sanctions, releasing from jail individuals with certain symptoms verified by a medical professional, and expediting hearings to reduce confinement time. These various measures resulted in violator population decrease from over 1,900 pre-COVID to a current population of 890 as of June 30, 2020. In other situations, community corrections staff use screening questions and Health Services consultations to determine whether an arrest can be avoided and, if not, what PPE and other precautions are necessary. Community corrections staff disinfect transport vehicles before placing an individual in the vehicle, between transports of individuals, and at the end of each day.

16. Additionally, on March 30, 2020, Governor Inslee issued Proclamation 20-35, concerning low-level violations of conditions of community custody. The proclamation waived the requirement in RCW 9.94A.737(2)(b) to treat all sixth and subsequent low level violations of community custody as high-level violations, and the requirement to arrest and detain individuals committing such low-level violations. The waiver essentially expedited the effective date of HB 2417 (Wash. Laws 2020, c. 82). The waiver allowed DOC to impose alternative non-confinement sanctions, rather than sanctions of confinement, for what would otherwise be low-level violations, thereby further reducing the number of individuals

placed in county jails and state correctional facilities during this time. The statutory suspension was not extended by the Legislature and therefore expired after 30 days.

17. The Department has been committed to maintaining transparency with the public and community partners since the beginning of its response. This includes updating its public website with current COVID-19 information at least every weekday with a daily status report (Significant Events Timeline[2]) and the most updated numbers on testing, isolation, and quarantines of incarcerated individuals. The Department's website also has updated information on the number of staff who have self-reported testing positive. The Timeline includes hyperlinks to key operational documents related to the Department's COVID-19 response. During the COVID-19 crisis, the Department has regularly communicated with the OCO, Statewide Family Council, and the incarcerated population (in written messages in English and Spanish). Each facility has weekly or biweekly calls with its local Family Council. The OCO previously hosted phone calls every weekday, during which members of the public and DOC staff participated. Currently the OCO hosts calls each Thursday from 4:30 p.m. to 5:00 p.m. with the same stakeholders participating.

[2] *See* https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf

18. Between May 7 and June 17, 2020, the OCO conducted monitoring visits of the Monroe Correctional Complex, Airway Heights Corrections Center, Cedar Creek Corrections Center, Mission Creek Corrections Center for Women, Stafford Creek Corrections Center, Coyote Ridge Corrections Center, Washington State Penitentiary, Clallam Bay Corrections Center and the Washington Corrections Center for Women. The OCO issued reports of these visits that are also available on the OCO website.[3] The findings from the reports include substantial compliance with mandatory face covering rules among staff and the incarcerated population, clean and orderly facilities, access to cleaning supplies and soap, mostly calm and professional interactions between staff and the incarcerated population, and visible efforts to implement, enforce, and practice social distancing in common areas.

II. THE DEPARTMENT'S CURRENT COVID-19 SCREENING, TESTING, AND INFECTION CONTROL GUIDELINE

19. In early March, the Department's Chief Medical Officer, Infectious Disease Doctor, and other Health Services staff developed guidelines specific to COVID-19 screening, testing, and infection control. The document is entitled "WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline." The guideline details the screening,

[3] https://oco.wa.gov/reports-publications

testing, and infection control procedures the Department has put into place with respect to COVID-19. Health Services staff has updated the guideline as needed to reflect the rapidly evolving nature of the COVID-19 pandemic. The guideline currently is in its 18th edition, with the 19th edition coming soon.[4]

20. The COVID-19 Screening, Testing, and Infection Control Guideline outlines the agency's requirements for screening of staff and inmates; guides clinical evaluation of patients referred through the COVID-19 screening process; details testing procedures; includes precautions for high risk individuals; governs the clinical care of patients with suspected or confirmed COVID-19; defines infection control and prevention through isolation and quarantine protocols; and establishes PPE requirements for clinical and custody staff.

21. As has been widely reported in the news, access to COVID-19 testing has been limited in the United States. In anticipation of having a limited supply of tests, DOC initially ordered hundreds of additional test kits. As the Department has used test kits, it has requested and obtained additional kits to maintain an adequate supply. COVID-19 testing is available at all DOC prison facilities. As of June 30, 2020, the Department

[4] *See* https://www.doc.wa.gov/news/2020/docs/wa-state-doc-covid-19-screening-testing-infection-control-guideline.pdf

has 2070 test kits in the prisons and an additional 7,300 test kits at Headquarters. On June 16, 2020, we requested an additional 20,000 test kits from the State EOC. On June 30, 2020, the Department received confirmation that we will receive 25,000 test kits—the 20,000 from this order and 5,000 from a previous order.

22. The Department has had sufficient test kits to administer tests in accordance with DOH guidelines. DOC has worked with the Washington State DOH public health laboratory, the University of Washington Virology Laboratory, and InterPath Laboratory to process DOC tests. When the tests are administered, the providers are required to notify the DOC facility Infection Prevention Nurse, Facility Medical Director, and Health Services Manager, for tracking purposes. This testing information is updated every weekday and available on the Department's COVID-19 website.[5] Following DOH's recommendation, the Department has begun testing all inmates placed on quarantine status as well as those who have been contact mapped to a symptomatic individual.

23. The Screening, Testing, and Infection Control Guideline also outlines the plan for care of individuals with suspected and confirmed COVID-19. The practitioner will determine the level of care that is appropriate based on the patient's condition. Patients with confirmed

[5] https://www.doc.wa.gov/corrections/covid-19/default.htm

COVID-19 will receive nursing assessments and vital sign examinations at least every eight-hour shift, and those in higher risk categories will be closely monitored regardless of their care setting. Patients will be transferred to outside hospitals and emergency departments when appropriate. Triage to the appropriate care setting and subsequent monitoring are important aspects of clinical care for patients with COVID-19 and are a key component of DOC's clinical care of patients with suspected or confirmed COVID-19. There is also a DOC COVID medical duty officer who is available by phone for questions and consultation.

24. Guided by the WA State DOC COVID-19 Screening, Testing, and Infection Control Guideline, DOC has put in place measures to immediately isolate patients suspected or confirmed to have COVID-19. These measures include requiring the patient to wear a surgical mask until the patient can be isolated, isolating and testing symptomatic patients, and quarantining patients who may have been exposed to COVID-19.

25. While in medical isolation, the individual is required to be assessed at least once every eight-hour shift and will receive all necessary medications at cell-front. Additionally, droplet precaution procedures are put in place, ensuring that staff wears appropriate personal protective equipment when within six feet of the isolation cell. Isolated patients generally are not allowed out of their cell absent a medical or security

emergency, and they will remain in isolation until they are symptom-free for 14 days or have been symptom-free for 72 hours and have tested negative for COVID-19 twice, with at least 48 hours between tests.

26. The Department also has implemented measures to quarantine asymptomatic individuals who have had close contact with suspected or confirmed COVID-19 patients. Quarantined patients are required to be housed alone or cohorted with other quarantined patients from the same exposure. The Department's procedures mandate that if a quarantined patient becomes symptomatic, they immediately will be removed from quarantine and placed into medical isolation. Quarantined patients receive nursing assessments twice daily, and are generally to remain in quarantine for 14 days. Access to commissary is being provided to quarantined and isolated patients.

27. The Department also created a checklist and system for tracking individuals with COVID-19 symptoms to assist in quarantine, isolation, and contact mapping efforts.

III. PARTNERING WITH LOCAL AND FEDERAL AGENCIES TO ESTABLISH REGIONAL CARE FACILITIES

28. To ensure the Department was prepared for a significant increase of in the number of COVID-19 cases within its facilities, DOC requested an external agency assessment of its operational ability to support an overflow of incarcerated individuals diagnosed with COVID-19. The

agencies developing these assessments included 10 representatives from DOH, the DOH Statewide Isolation Task Force, and the United States Army Corps of Engineers.

29. Suitable locations, called Regional Care Facilities,[6] have been identified at the Airway Heights Corrections Center, the Washington Corrections Center, and the Washington Corrections Center for Women. These locations had the ability to use preexisting spaces to provide overcapacity support to agency operations on both the east and west sides of Washington State. The Regional Care Facilities will safely and comfortably house incarcerated individuals who have tested positive for COVID-19 and may require more comprehensive medical attention and physical isolation from healthy populations, but do not require hospitalization. In the event that an individual's medical condition or needs become more severe, the Department and its medical personnel will work collaboratively with community hospital partners to provide the necessary care.

30. Operationalizing the Regional Care Facilities has required the construction and procurement of necessary medical and other equipment, such as medical beds. The Regional Care Facility at the Airway Heights Corrections Center is now open, and the Regional Care Facility at

[6] https://www.doc.wa.gov/news/covid-19.htm#regional-care

the Washington Corrections Center is expected to be available for use soon, as well. As of June 29, 2020, there were a total of ten incarcerated individuals housed in the Regional Care Facility at the Airway Heights Corrections Center.

IV. CONTINUED COMPLIANCE WITH CDC CORRECTIONAL FACILITY GUIDELINES

31. On March 23, 2020, the CDC issued guidance specific to corrections facilities.[7] The CDC Guidance noted that the guidance does not require strict compliance, and "may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions." The CDC Guidance serves as recommendations for correctional facilities and is not deemed to be all inclusive. Therefore, the CDC also advises facilities to work with their state and local health departments to implement and fine-tune the CDC Guidance. The guidance recommends that prison facilities work with state and local health departments to determine what procedures a particular prison should implement. As noted above, DOC had proactively implemented many of the recommendations before the CDC released its correctional facility guidelines. After their issuance, we worked with our Chief Medical Officer and Infectious Disease Physician, as well as other state and local partners,

[7] *See* https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html

to implement procedures to substantially comply with all the CDC's recommendations. We continue to review and update our protocols as the CDC updates their guidance. The Department has implemented the CDC guidelines as follows:

• **Review sick leave policies** – DOC gave Superintendents authority to send staff home if symptomatic, and DOC encouraged staff to remain home if they felt sick.

• **Identify staff who could work from home** – DOC encouraged, and in some cases mandated, telecommuting of all eligible staff.

• **Plan for staff absences** – DOC updated emergency staffing plans and developed plans for shortages, revised the Continuity of Operations Plan to ensure mission-essential functions remain operational, implemented a process for rapid hiring and expedited training, worked with contracting services for the provision of medical and clinical staff.

• **Offer alternative positions to staff at higher risk to COVID-19** – DOC offers telecommuting and reassignment for those at high risk, as well as leave options.

• **Offer seasonal flu vaccines** – DOC offers vaccines to all staff and incarcerated individuals.

• **Ensure sufficient PPE, medical supplies, and cleaning supplies** – DOC complies with CDC recommendations for PPE supplies, is working on a protocol to sterilize and reuse N95 masks, and Correctional Industries now manufactures some PPE.

• C**onsider relaxing prohibition on alcohol-based hand sanitizer, and provide free soap** – Staff and visitors may carry alcohol-based hand sanitizer, incarcerated individuals working in medical and other supervised areas and of prisons may use alcohol-based hand sanitizer (60% alcohol), and DOC has provided free soap and handwashing facilities to all incarcerated individuals.

• **Employers within prisons should establish a respiratory protection program** – Prison and health staff who require it are fit-tested for N95

respirators. DOC is currently working to fit-test respirators for community corrections staff in the field, with 40 community corrections staff medically cleared and fit-tested for N95 masks currently. Given the nationwide shortage, DOC tries to conserve existing supplies of N95 masks and has protocol for an individual's reuse of their N95 mask.

• **Ensure staff and individuals are trained on proper use of PPE** – DOC has provided training materials to staff and incarcerated individuals and has also offered online training.

• **Communicate with state and local partners, and the public** – DOC has worked closely with state and local partners, and updates a public website regarding COVID-19 response nearly every day.

• **Transfers of individuals into and within the prison system** – DOC established protocol for screening of individuals including temperature readings, use of masks and other PPE, disinfecting of transport vehicles and restraints, and changes/reductions of transfers to DOC facilities from courts and jails.

• **Alternatives to in-person hearings** – most courts no longer require in person hearings and have been replaced with telephonic hearings.

• **Suspend medical copays** – DOC has suspended copays for COVID-19 testing and treatment.

• **Limit operations entrances/exits** – DOC has limited entrances and exits, and has implemented enhanced screening at all entrances.

• **Cleaning and disinfecting** – DOC cleans housing units several times a day with special attention to "high touch" areas. Staff use EPA registered cleaning/disinfecting products, and have received instructions on mixing cleaning solutions.

• **Increase number of staff trained to clean/disinfect, and provide sufficient supplies** – DOC has increased the number of trained porters, and has provided special training to individuals on blood and bodily fluids cleanup, and provided PPE to those individuals. DOC provides cleaning supplies for individuals to clean their cells, including spray bottle disinfectant, and DOC encourages frequent cleaning of cells.

• **Reinforce health hygiene practices** – DOC put up instructions on proper hygiene (in English and Spanish), has provided free soap to individuals, and ensures the soap supply is restocked in common areas.

• **Implement social distancing** – DOC has put up signs throughout correctional facilities to instruct and remind individuals of social distancing.

• **Provide alternatives to social gathering** – DOC has provided movies to incarcerated individuals, has worked with mental health staff to develop a plan for individual wellbeing and stress management, and has provided radios, video games, tablets, and phone access to individuals in medical isolation.

• **Provide up to date information to individuals** – DOC provides updated information, including messages to incarcerated individuals via kiosk, posting information in common areas, and providing printed copies to populations that have limited access to common areas (in both English and Spanish).

• **Suspend visitations** – DOC has suspended visitations, and has provided free or reduced cost communication.

• **Provide masks to individuals suspected of being symptomat**ic – DOC provides masks to any symptomatic individual, and follows isolation and quarantine procedures; face coverings have been made available to all staff and incarcerated individuals and use is mandatory within prison facilities.

• **Maintain individuals in isolation until cleared** – DOC keeps an individual in isolation until 14 days after the resolution of all symptoms or until the individual is asymptomatic for at least 72 hours and has tested negative for COVID-19 twice with at least 48 hours between tests. DOC provides medical treatment and meals in the isolation area, and anyone entering the isolation area must wear PPE.

• **Food service items** – DOC requires use of disposable food service containers for those in isolation, and disposes of the items after use. Any non-disposable items are handled using gloves, and washed in hot water or in a dishwasher.

• **Laundry** – DOC requires individuals performing laundry services to use gloves, discard the gloves after use, and wash their hands.

• **Encourage reporting of symptoms** – DOC encourages individuals to report symptoms and to seek medical attention.

• **Dedicated rooms** – DOC has, where possible, designated a room near the housing unit for medical staff to evaluate a symptomatic individual, rather than having the individual walk through the entire facility.

• **Perform pre-intake screening and temperature checks for all new entrants** – All new intakes receive a screening by medical staff which include temperature checks.

• **14-Day Quarantine for New Intak**es – New intakes are placed in a 14-day quarantine upon entry into the DOC prison system.

• **Healthcare Staff to Perform Regular Rounds** – Medical and mental health staff have been available in some housing units to answer questions.

• **Prevention Practices for Staff** – Staff have been briefed to stay home if sick. Staff are required to go through screening protocol each time they enter a facility. If staff fails the screening or refuses to participate, the employee will be denied entrance. Staff are provided with up to date information through memorandums and e-mails. All staff who are suspected or have tested with a confirmed COVID-19 infection are required to stay home and need a signed "return to work" before they may re-enter the facility. Staff have been briefed on social distancing protocols and engaging with individuals displaying symptoms. Contact mapping protocols are also in place.

• **Suspend all transfers of incarcerated persons to and from other jurisdictions and facilities** – Transportation of inmates has been reduced. All inmates are screened before and after transport with a verbal screening and temperature check and inmates who fail screening are not placed on transport vehicle. Inmates with confirmed COVID-19 will only be transported with permission of the Chief Medical Officer. Transport vehicles are cleaned after each transport. Staff doing screening are required to use a gown, gloves, surgical mask, and eye protection. DOC is required by statute to accept new admissions.

• **Release Planning** – For any patient with suspected or confirmed COVID-19 disease in medical isolation who is releasing from a DOC facility, the Health Services Manager, Infection Prevention Nurse and Facility Medical Director will have a conference call with the COVID-19 medical duty

officer prior to release for discussion of release planning. Upon release from DOC custody while on quarantine status, patients will be provided a surgical mask and will be directed to self-quarantine in their place of residence until the remainder of their 14 day quarantine period. Inmates releasing with suspected or confirmed COVID-19, DOC will contact local heath jurisdiction for appropriate placement guidance prior to release. For an isolated patient releasing from custody, the facility Infection Prevention Nurse and Psychiatric Social Worker will contact their local health jurisdiction for appropriate placement guidance prior to the patient's release.

• **Medical Isolation of Confirmed or Suspected COVID-19 Cases** – Any symptomatic patient is to immediately don a face mask and be placed in isolation. All medical care is provided in the isolation area. Meals are provided in the isolation area. If a situation arises in which single isolation cells are not available, it is considered acceptable to house confirmed COVID-19 patients together if they both/all have lab confirmed disease and are not thought to have other communicable diseases currently.

• **Quarantining Close Contacts of COVID-19 Cases** – Individuals are placed in quarantine for 14 days if they are determined to have close contact with suspected or confirmed COVID-19 case. DOC cohorts quarantined patients together if they are quarantined based on the same exposure and new intakes arriving on the same day may be cohorted together. Facemasks are provided to patients and staff with instructions for use. Using disposable items and following a cleaning protocol for non-disposable items.

• **Clinical Care of COVID-19 Cases** – Inmates are encouraged to report symptoms so they can be provided with immediate medical attention. Rooms near housing units have been identified to perform examinations to avoid having individuals walk through the facility. Will transport to local hospitals if necessary, with proper precautions.

V. DISCRETIONARY PRISON POPULATION REDUCTIONS

32. The Governor and the Department coordinated for weeks to determine whether and how to reduce the prison population to allow increased physical distancing in prisons without jeopardizing public safety

or adversely impacting released individuals' chances for success in the community. This coordination resulted in the following measures.

33. On April 15, 2020, Governor Inslee issued Emergency Proclamation No. 20-50 – Reducing Prison Population.[8] Using his emergency powers under RWC 43.06.220, Governor Inslee suspended in full or in part sixteen different statutes to facilitate immediate prison population reductions. The Emergency Proclamation also directed the Department to continue to explore actions to identify other incarcerated individuals for potential release through Rapid Reentry, furlough, commutation, or emergency medical release.

34. The same day, April 15, 2020, Governor Inslee signed an Emergency Commutation[9] in Response to COVID-19. This Emergency Commutation was made possible by the actions taken and statutes suspended in Emergency Proclamation No. 20-50. The Emergency Commutation commuted the remaining confinement portion of the sentences of incarcerated individuals who were in DOC confinement and: 1) did not have any violent, serious violent, or sex offense convictions as defined in RCW 9.94A.030 during their current period of DOC jurisdiction;

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[8] *See* https://www.governor.wa.gov/office-governor/official-actions/proclamations

[9] *See* https://www.governor.wa.gov/news-media/inslee-issues-new-orders-reduce-prison-populations-during-covid-19-outbreak

and 2) had an earned release date from prison on or before June 29, 2020. The Emergency Commutation directed DOC to effectuate these individuals' releases within seven days, or as soon as could reasonably be achieved thereafter, and directed DOC to make reasonable efforts to notify all interested parties, including any victims, at least 48 hours prior to an individual's release. In total, 422 individuals were released through this commutation.

35. On April 16, 2020, DOC issued a press release outlining steps Secretary Sinclair was taking, based on Governor Inslee's Emergency Proclamation 20-50, to provide more physical distancing in prisons.[10] Secretary Sinclair also sent a message to incarcerated individuals about these steps. The Department created a Rapid Reentry program in response to the COVID-19 pandemic by way of modifications to the Graduated Reentry Program, see RCW 9.94A.733. This change was made by possible by the suspension of several statutes in the Governor's Emergency Proclamation No. 20-50. The Rapid Reentry program allowed incarcerated individuals an opportunity to serve an expanded portion of their sentence of confinement in the community on electronic monitoring, for up to six months. Individuals are subject to conditions and, if they violate those

[10] *See* https://doc.wa.gov/news/2020/docs/2020-0416-all-staff-upcoming-transfer-of-individuals-back-to-the-community.pdf

conditions, they could be returned to confinement. The Rapid Reentry program included individuals who meet the CDC guidelines of those at higher risk for health complications from COVID-19. In total, 528 individuals were released through the Rapid Reentry Program, which concluded on May 15, 2020. A rapid reentry guide was provided to those releasing into the community in response to COVID-19.

36. The Department provided individuals released through the Rapid Reentry program with additional material assistance. This included a pre-paid cell phone with 300 minutes that will automatically shut off after 30 days, at a cost of approximately $23, and a pre-loaded Visa card worth $100. The assistance provided may also have included housing assistance, by way of a 30-day hotel voucher, and a 30-day supply of medications. This was in addition to the regular "gate money" provided to releasing inmates by statute, and was intended to assist these individuals with their accelerated transition into the community.

37. Additionally, DOC worked with the Department of Social and Health Services (DSHS) to create an expedited process for those releasing from prison on an accelerated schedule to connect to benefits in the community. The expedited process enabled individuals releasing from prison to complete and submit their application for benefits prior to release. Upon release, individuals were to contact DSHS to complete their interview

in order to determine their eligibility for assistance and gain access to benefits, allowing an EBT food card to arrive to the individual's address within two days or be picked up at an identified DSHS Community Service Office. Timely access to vital reentry resources plays a key role in an individual's transition, and furthers the missions of both agencies: to transform lives by reducing poverty in a way that eliminates disparity, and keeping communities safe.

38. By the statutory furlough authority vested in DOC Secretary Sinclair, he granted emergency furloughs to 66 individuals in work release settings, as established through careful review of legal and safety considerations. A furlough is an authorized leave of absence for an eligible individual, without any requirement that the individual be accompanied by, or be in the custody of, any corrections official while on such leave. Furloughed individuals are subject to their conditions of furlough and, if they violate those conditions, could be returned to confinement.

39. I understand from Department staff who have been coordinating releases pursuant to the Governor's emergency orders, that the Governor has expedited review of commutation petitions that previously received favorable recommendations from the Clemency and Pardons Board. Additionally, the Department's Community Corrections Division expedited release of non-violent individuals incarcerated for low-level

community custody violations and reduced sanction confinement times where appropriate. And the Department also evaluated for rapid release to the Department's Community Parenting Program or CPA (see RCW 9.94A.6551) all pregnant individuals and mothers participating in the Residential Parenting Program at the Washington Corrections Center for Women. Of the 26 individuals in this group, roughly two-thirds were released from DOC total confinement.

40. As a result of these efforts and regularly occurring releases, the Department's current prison population, as of June 28, 2020, was 15,107. This includes 14,161 individuals in the Department's male facilities and 946 individuals in the Department's female facilities. As of April 1, 2020, those populations were 15,213 and 1,147, respectively. During that time, the population of CRCC decreased from 2,445 to 2,155. The population of MCC decreased from 2,422 to 2,186. The population at SCCC decreased from 1,964 to 1,889. The population at WCC decreased from 1,734 to 1,715. And the population at WCCW decreased from 886 to 755.

VI. CURRENT STATUS AND ONGOING PRIORITY COVID-19 RESPONSE

41. In total, there have been 207 positive COVID-19 tests to date of incarcerated individuals in DOC facilities. Seven cases were in a Seattle work release facility, one in a Tri-Cities area work release facility, one at the Washington Corrections Center, two at the Washington State

Penitentiary, 19 at the MCC, one at a community medical center, and the remaining cases occurred at the Coyote Ridge Corrections Center. Of the 176 CRCC current patients, 57 are in a COVID-19 positive housing unit, 11 are housed at CRCC in isolation, 28 have returned to general population (post-COVID care), 10 are at the AHCC Regional Care Facility, 6 are at the AHCC Infirmary, 3 are at community hospitals assigned to AHCC, 5 are in transit to MCC, 55 are housed in isolation at MCC, and 1 was released to community supervision and is currently at the DSHS Special Commitment Center. The facilities are following the process for isolation, quarantine, and contact mapping to limit transmissions as much as possible. Sadly, two incarcerated individuals from CRCC who were receiving care at a community hospital passed away from complications relating to the virus, one on June 17, 2020, and the other on June 22, 2020.

42. As evident from these numbers, the largest outbreak has occurred at the Coyote Ridge Corrections Center. On June 11, 2020, the Department placed the Medium Security Complex at the Coyote Ridge Corrections Center on restricted movement to help contain the spread of COVID-19. The Department also deployed additional custody and Health Services staff to assist Coyote Ridge staff in caring for those incarcerated at the facility. The Minimum Security Unit has not been placed on restricted movement because of its separation from the main facility and lack of

COVID-19 cases, though part of this unit is now on quarantine pending the results of one individual who reported not feeling well. All CRCC staff are required to be N95 fit tested, and wear N95 as identified in the current version of protocols. Exception to this requirement are staff members who are unable to be tested for or wear N95 masks due to medical reasons or pass fit testing due to the shape of their face. The Department also suspended all food and textile production at the Coyote Ridge Correctional Industries facility. The Department shifted food production to the Airway Heights Corrections Center food factory and is purchasing food from external vendors as needed. Coyote Ridge Correctional Industries laundry and food services continue to operate with essential workers screened upon starting their shifts, wearing appropriate PPE, and practicing social distancing. As an additional precaution, we conducted COVID-19 testing on the entire population of the Coyote Ridge Sage Unit, which houses ambulatory individuals in an assisted living / skilled nursing setting. All of the Sage Unit residents tested negative for COVID-19. We have also tested all DOC staff working in the Sage Unit and are still awaiting some results. The results we have received so far have all been negative.

43. On June 17, 2020, given the prevalence of COVID-19 in the communities surrounding Coyote Ridge and the number of positive cases identified within the facility, the Department decided to test all employees

who work at Coyote Ridge and all incarcerated individuals housed within the Medium Security Complex. A goal of testing is to allow for the separation of individuals who test positive for the virus and those who are confirmed not to have the virus through two negative test results. Planning for this significant undertaking has been ongoing for approximately two weeks. Testing began on Wednesday, June 24, 2020, with assistance from the Washington Department of Health, Washington National Guard, and the Franklin-Benton County Department of Health. DOH and the Franklin-Benton County Department of Health supplies were used to conduct the testing. In total, COVID-19 testing was provided to 1,846 incarcerated individuals and 660 staff members at Coyote Ridge Corrections Center. We began receiving results on June 27, 2020. We began receiving test results on June 27, 2020, with 60 incarcerated individuals testing positive (included in the 176 figure above) and 4 staff members testing positive so far. To facilitate separation of COVID-positive and negative individuals, the Department has established additional tent housing on CRCC grounds, along with temporary shower, bathroom, and handwashing facilities.

44. As the situation continues to develop, the Department will continue to prioritize its response to COVID-19 in accordance with our understanding of current best practices and in consultation with our Infectious Disease Doctor, Chief Medical Officer, state and federal

authorities, and our local community partners. The Department has devoted an unprecedented number of staff hours and resources to this crisis and will continue to do all we can to mitigate the risk to our incarcerated population and our staff. With Washington State beginning to open in segments and phases, the Department of Corrections is also taking a step-by-step approach to resuming modified operations and progress to our "new normal." We have a dedicated public website[11] for our plan, which we have called Safe Start. As new details emerge, we will continue to keep information available for the public via our dedicated webpage and will communicate with stakeholders and our community partners. Our mission, as always, will be to work towards keeping staff, incarcerated individuals, and the community as safe as possible.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 1st day of July 2020, at Tumwater, Washington.

JULIE MARTIN
DOC Deputy Secretary

[11] https://www.doc.wa.gov/corrections/covid-19/safe-start.htm

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court, which will send notification of such filing to all parties of record and all others not listed below:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of July 2020, at Olympia, Washington.

s/ John J. Samson
John J. Samson, Assistant Attorney General

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

July 01, 2020 - 12:51 PM

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