



Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

March 19, 2020

VIA EMAIL

Honourable Bill Blair

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Stephanie Macpherson

Provincial Director, BC Corrections - Adult Custody Division
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Dear Sirs and Madams:

Re: Call to Reduce Incarceration During COVID-19 Pandemic

Prisoners' Legal Services ("PLS") is a legal-aid clinic for prisoners that administers all prison legal aid in British Columbia ("BC") other than appeals. We assist prisoners with issues that affect

their liberty, health care and human rights. We write to you with great concern for prisoners currently incarcerated in Canada's and BC's prisons during the COVID-19 pandemic due to the difficulty in maintaining an appropriate level of sanitation, as well as the close quarters, regular physical contact between staff and prisoners, and the underlying chronic health conditions of many prisoners.

On March 15, 2020, Canada's Chief Medical Officer of Health Dr. Theresa Tam stated that there has been a "rapidly increasing" number of COVID-19 cases, particularly in Ontario, BC and Alberta. She urged Canadians to embrace social distancing and stated that the "window to flatten the curve of the epidemic is narrow" and that the "COVID-19 is a serious public health threat."¹

As of March 17, 2020, the BC Centre for Disease Control has confirmed 186 cases of COVID-19 with seven fatalities². On the same day, Mr. Adrian Dix, Minister of Health, and Dr. Bonnie Henry, B.C.'s provincial health officer, declared a public health emergency in a joint statement³. On March 18, 2020, the BC government declared a provincial state of emergency⁴.

We appreciate the ongoing efforts to reduce the number of people entering federal and provincial prisons across the country at this time. However, we call upon all people with care and responsibility for incarcerated people in BC and across Canada to consider any and all creative solutions to reduce the number of people currently in custody on remand or serving sentences.

The introduction of COVID-19 in prisons would be catastrophic and the isolation of prisoners would have severe mental health ramifications for a population that is already at-risk. Infections are especially difficult to control in prisons and at PLS, we have, in the past, heard reporting of viral diseases spreading inside prisons. For example, the College of Family Physicians in Canada noted in an article published in March 2016⁵ that tuberculosis, a highly contagious disease, is "relatively common in persons in federal custody, at 22.4 active cases per 100 000 compared with 4.6 per 100000 in the general population".

The preventative measures recommended by federal and provincial public health officials, such as social distancing and maintenance of proper hygiene using hand sanitizer with a minimum 60% alcohol content when soap and water is not available, are near impossible to properly implement in the prison context. Moreover, we are concerned that correctional authorities, faced with pandemic levels of infection and staffing shortages, may resort to the excessive use of solitary confinement and other liberty-restricting and draconian measures. While potentially

¹ <https://www.cbc.ca/news/health/coronavirus-community-transmission-canada-1.5498804>

² <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/case-counts-press-statements>

³ <https://news.gov.bc.ca/releases/2020HLTH0089-000505>

⁴ <https://news.gov.bc.ca/releases/2020PSSG0017-000511>

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4984599/>

lessening the spread of the disease, these measures may cause permanent mental and physical harm to prisoners.

For these reasons, we call for the release of all prisoners currently on remand and parole suspensions for non-violent offences, prisoners who have 90 days or less remaining prior to release, and immunocompromised and other medically vulnerable prisoners (including people over the age of 60 and pregnant individuals).

We recommend the following measures to be used to support the release of such prisoners:

- **Conditional Pardon**

Section 748 of the *Criminal Code of Canada*⁶ allows the Governor in Council to grant a conditional pardon to any person who has been convicted of an offence and the Royal Prerogative of Mercy Ministerial Guidelines⁷ note that such a pardon may only be made under exceptional circumstances where there has been undue hardship. The guidelines note that undue hardship includes suffering of mental and physical nature and that the suffering being experienced could not have been foreseen at the time the sentence was imposed. We believe these conditions are met.

If imposing conditions until the expiration of the sentence, we strongly discourage placing individuals in community residential facilities due to the overcrowded nature of the facilities (often including shared bedrooms and other amenities). Any unnecessary conditions may limit the ability of those subject to them to avoid infection.

- **Early Release in Exceptional Cases:**

We request that Correctional Service of Canada (“CSC”) and the Parole Board of Canada (“PBC”) expedite the process for applying for parole by exception as per section 121 of the *Corrections and Conditional Release Act (“CCRA”)*⁸. Continued confinement in a prison at this time, with the increased risk of contracting the virus once it enters the institution, along with the mental and emotional hardship of that, would constitute an excessive hardship that was not reasonably foreseeable at the time the prisoner was sentenced.

- **Temporary Absences**

We understand that CSC has made the decision to suspend all Escorted Temporary Absences and Unescorted Temporary Absences (“UTA”) to contain the spread of COVID-19. We believe that rather than suspending UTAs, CSC and BC Corrections should consider extending existing UTA passes, implementing approved UTAs early, and approving new UTA applications for eligible prisoners on an expedited basis. This would help to decrease the population density in prisons and enable prisoners to self-isolate in communities.

⁶ <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-748.html>

⁷ <https://www.canada.ca/content/dam/pbc-clcc/documents/publications/Royal-Prerogative-Of-Mercy-Ministerial-Guidelines.pdf>

⁸ <https://laws-lois.justice.gc.ca/eng/acts/c-44.6/section-121.html>

- ***Prisoners Serving Intermittent Sentences***

On March 13, 2020, the Ministry of the Solicitor General in Ontario announced that intermittent prisoners who serve time on the weekends will be required to attend their reporting facility, where they will be given a temporary absence from custody and permitted to return home in order to reduce the transmission of COVID-19. We request that the recipients of this letter encourage other provinces and territories to engage in a similar process to give prisoners the opportunity to self-isolate at home. This would also ensure less incoming and outgoing traffic in Canadian prisons.

All youth in custody should be released under section 91(1)(a) of the *Youth Criminal Justice Act*⁹ or other mechanism immediately.

We also call on the provincial and federal governments to release all immigrants and refugees from provincial prisons and immigration detention centres.

Finally, we request the following measures be put into place for prisoners who cannot be released:

- Prisoners in custody should have access to hand sanitizer, soap and cleaning supplies at no cost and be given the time to clean their cells every day. Common areas and phones should be regularly cleaned and sanitized by the prison staff.
- Prisoners who are quarantined or isolated due to the virus should be allowed free access to phones as well as regular access to mental health counselling through phone or via glass interview rooms to ensure meaningful and sustained human contact. We call on you to ensure that no prisoners are deprived of contact with the community, including their community supports and legal counsel, due to the pandemic.
- Prisoners should have continued access to activities outside of their cell, including outdoor time. We express our concern for limiting prisoners' time outside of their cells, especially in already heavily restricted prisons like Kent Institution where, even prior to the COVID-19 pandemic, prisoners without jobs, programs or schooling were allowed only three hours out of their cell every weekday.
- Governments should impose strict protocols for staff entering prisons to limit transmission of COVID-19 to vulnerable prisoners, and ensure that any prisoner or staff who were exposed to an infected individual, or are showing symptoms of COVID-19, are promptly quarantined and tested in a safe and clean environment.
- Health Care should be provided on par with community standards for vulnerable populations.

Prisoners are one of the most vulnerable populations in Canada and, if action is not taken immediately, they are the most at risk during this growing pandemic. To wait until the virus is detected in our prisons would have catastrophic consequences. We urge you to take the

⁹ *Youth Criminal Justice Act*, SC 2002, c 1.

necessary actions to dramatically reduce the prison population immediately for the health of this vulnerable population and our collective health.

Thank you,

PRISONERS' LEGAL SERVICES

A handwritten signature in black ink, appearing to read 'Jennifer Metcalfe', written over a light grey grid background.

Jennifer Metcalfe
Executive Director
Barrister and Solicitor

Copy: Dr. Ivan Zinger, Correctional Investigator of Canada
 Jay Chalke, BC Ombudsperson
 Dr. Jennifer Charlesworth, Representative for Children and Youth, BC