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May 5, 2021

Via Electronic Mail

Jessie Rossman
Staff Attorney
American Civil Liberties Union Foundation of Massachusetts
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RE: CPCS v. Barnstable et al. SJC-2020-757 - DPH Questions

Dear Attorney Rossman:

On April 30, 2021 the Department of Public Health (DPH or the Department) provided responses to questions you posed relating to the above-captioned matter. This letter responds to your further May 3, 2021 request that the Department respond to additional follow up questions by May 5, 2021. The Department incorporates its April 30 responses herein.

While your May 3, 2021 request for follow-up responses was pending, on May 4, 2021, Attorney Bair asked the following:

“One other issue-in DPH’s response to Question #5, it states DPH recommended to Middlesex facility wide testing on three occasions; however, I am being told this never happened. That being said, Essex was never mentioned and I know that facility wide testing was recommended on at least one occasion (I believe it was multiple times). Can you just re-check your information as I believe Middlesex was misidentified instead of Essex.”

The Department does not believe that Essex was misidentified as Middlesex in its April 30 response.¹ With regard to Essex County HOC, the Department notes that following a conference call on October 2, 2020 with staff at the Essex County HOC, facility-wide testing took place when a number of cases were identified in multiple housing areas.

The Department responds to each of your enumerated questions as follows.

¹ In its April 30 response the Department stated, “Regular conference calls have been held throughout the pandemic between the Department, Dr. Wurcel, and Middlesex County HOC staff. At three separate times, facility-wide testing at the Middlesex HOC was recommended due to a rise in identified cases in multiple housing areas.”

Plaintiffs' Follow-Up Question 1:

In response to Question No. 5, the Department listed examples of conference calls in which the Department recommended that Middlesex, Norfolk, Plymouth and Bristol undertake certain types of testing. For each of these instances:

- a. Please define “facility-wide testing,” “broad testing,” and “repeat testing” as used in your response.
- b. Did each facility carry out the recommended testing?
- c. Does this list encompass every COVID-19 testing recommendation that the Department has made to the Houses of Correction?
- d. Does the Department provide testing recommendations only when a House of Correction contacts the Department to alert them to a positive COVID-19 case(s)? If not, when else has the Department provided testing recommendations?

DPH Response:

- a. Facility-wide testing means that every human in the facility is tested. Broad testing is something short of facility-wide testing, such as just incarcerated people and not staff, or just the people in a certain dorm. Repeat testing adds a time component, rather than just referring to merely the scope of the testing.
- b. Responding to this question would require the Department to make representations on behalf of a party in this litigation.
- c. No.
- d. This would be on a case-by-case basis. Some HOCs were in more regular communication with the Department, such as weekly or bi-weekly calls where infection prevention methods and outcomes were routinely discussed. In other instances, an assigned DPH epidemiologist would reach out after reviewing incoming COVID-19 surveillance data without having been contacted by the particular HOC.

Plaintiffs' Follow-Up Question 2:

In response to Questions Nos. 1, 2, 5 and 7, regarding the Department’s rules, guidance or recommendations regarding COVID-19 testing in the Houses of Correction, the Department stated that it utilizes and refers to the appropriate CDC guidance.

- a. Is the Department’s COVID-19 testing recommendation to the Houses of Correction that the Houses of Correction follow the testing recommendations in the CDC guidance?
- b. Does the Department provide the Houses of Correction with any interpretations or recommended applications of the CDC guidance regarding testing of nonsymptomatic incarcerated people or staff where there is no known or suspected COVID-19 exposure? If so, what is it?

DPH Response:

- a. Yes, the Department recommends the HOCs refer to the CDC guidance.
- b. The Department has not issued general recommendations on expanded screening testing to HOCs beyond the information in the CDC’s March 17, 2021 interim guidance. The Department remains available to consult and make recommendations as to how an HOC could best implement such testing.

Plaintiffs' Follow-Up Question 3:

From April 2, 2020 to May 3, 2021, has DPH ever recommended that any HOC (a) test all staff on a regular basis, (b) test all incarcerated people at intake, (c) conduct expanded screening testing of incarcerated people as defined in the March 17, 2021 CDC guidance, and/or (d) conduct serial screening testing of incarcerated people as defined in the March 17, 2021 CDC guidance? If so, for how long did DPH recommend that testing continue? Did the HOC carry out DPH's recommendation to DPH's knowledge?

DPH Response:

- a. No.
- b. No. This was not part of CDC guidance prior to the March 17, 2021 update.
- c. Yes. The examples given in the Department's April 30 response to Question 5 are examples of recommended expanded screening testing.
- d. No. In situations where COVID-19 transmission in the facility was apparent, the Department recommended repeat broad testing of incarcerated people and staff at specific sites to be kept in place until transmission rates decreased. The purpose of such testing would be to serve as a "snapshot" of COVID-19 in the facility at the time to guide the implementation of infection control strategies.

As noted in its April 30 response, the Department is not a party to the above-captioned case. The Department continues to reserve any rights it may have in law and in equity including but not limited to revise, supplement or clarify its responses to the various questions put to it relating to this matter.

Please do not hesitate to contact me with any further questions.

Very truly yours,

/s/ Elizabeth Scurria Morgan

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Acting General Counsel

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