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Millicent Warren, Warden
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VIA FIRST CLASS MAIL AND EMAIL

Re: Addressing Concerns Regarding Conditions of Confinement for Mentally Ill and Developmentally Disabled Inmates and Retaliation Against POAs

Dear Director Heyns and Warden Warren:

Thank you for allowing us to tour the segregation and mental health units at Huron Valley last month. We were pleased to see that MDOC has created spaces for prisoners with serious mental illness that facilitate the delivery of therapeutic programming. Nonetheless, based on our visit and information from various prisoners we remain concerned about the conditions of confinement for vulnerable prisoners—particularly prisoners with serious mental illness, physical disabilities, and/or developmental disabilities—and possible retaliation against Prisoner Observation Aides (POAs) for speaking up about these conditions.

The tragic death of Sabrie Alexander (#929754) at Huron Valley earlier this week underscores the urgent need for more robust systems of supervision and care. Indeed, from what we can tell, Ms. Alexander's situation appears all-too-similar to Ms. Martin's. Like Ms. Martin, Ms. Alexander had a history of mental illness. We have been told that like Ms. Martin, Ms. Alexander faced significant discipline for behavior related to an underlying medical condition (here, seizures). And as with Ms. Martin, it seems that pleas for help from Ms. Alexander's POA went unheeded by correctional staff. Of course we don't know precisely what happened to Ms. Alexander—and we therefore urge you to review video and prisoner eye-witness evidence, as well as medical records, to assess the incident. In fact, we would like to participate in that review, as described below.

We remain interested in collaborating with you to further our shared goals of improving conditions of confinement both at Huron Valley and elsewhere. We hope you agree that steps

can and should be taken to achieve these goals. This letter explains our concerns and proposes a path forward.

1. *Adequate Screening and Monitoring.* Before a prisoner is placed in Huron Valley’s segregation unit for any reason, that prisoner should be screened for mental illness and developmental disability to ensure that people with serious mental illness or developmental disabilities do not inadvertently end up in segregation. Furthermore, it is crucial that all inmates in segregation, regardless of mental health status upon entry into segregation, be closely monitored for mental deterioration. Anyone who shows signs of deterioration should be moved from segregation to a more therapeutic setting to avoid crisis and/or cruel and unusual punishment. It seems to us likely that the screening and monitoring that are occurring have gaps—situations in which prisoners with serious mental illness and/or developmental disabilities are ending up in the segregation unit, and in which prisoners are suffering mental deterioration without being taken out of that unit.

2. *Avoiding and Ameliorating Segregation-Like Settings.* We were pleased to see that there are units available for the secure housing of prisoners with serious mental illness and developmental disabilities at Huron Valley—cells in the Residential Treatment Program area and the “acute” unit, and those used for observation of inmates expressing suicidal ideation. We must underscore, however, that those housing assignments themselves can and do constitute segregated housing for many inmates when certain restrictions are in place. We remain concerned that in these units some prisoners are placed on lock-down, put in restraints for excessive periods, denied regular showers, placed on water restriction, and placed on a restriction that prohibits POAs and corrections staff from speaking to them. Prisoners subject to lock-down are confined to their cells nearly all day, and deprived of nearly all privileges and activity. This is segregation, regardless of the name of the unit in which it occurs. And as segregation, it is simply inappropriate for prisoners with serious mental illness or developmental disabilities, and, as was discussed in our first letter, is clearly unconstitutional and in violation of the Americans with Disabilities Act. (This is explained in depth by the Department of Justice findings letter dated Feb. 24, 2014, Attachment I.) Isolation without activity is also contra-indicated for prisoners with suicidal ideation. The standard of care for these difficult populations requires that they be housed in less anti-therapeutic environments. We have previously provided some sample policies that address this issue, as well as other concerns. We are reattaching those policies to this letter, along with a recent settlement in Arizona that implements a similar approach, as Attachments B-I. We have highlighted various key provisions in the attachments, and Attachment A quotes those passages. To summarize the guiding principles:
 - Prisoners with serious mental illness or developmental disabilities should not be housed in isolation/segregation-like settings—whatever the name given to the unit or area. If no other option immediately exists for ensuring the safety of staff and prisoners, vulnerable population should be housed in such settings as rarely as possible and for as brief a time as possible. Immediate central office review, including review by mental health professionals, should take place any time a

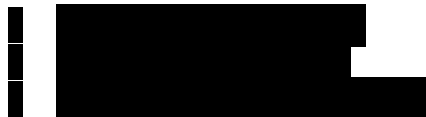
prisoner with mental illness or development disability is placed in segregation or put on restrictions that resemble segregation.

- When such housing occurs, ameliorative measures are essential. These could include:
 - Sufficient clinical contacts;
 - Supervised out-of-cell time, both for mental health treatment, therapeutic programming, phone calls, visits, and other activity. Recent consent decrees and policies have provided for 15-20 hours weekly out-of-cell time (in addition to showers) for prisoners with serious mental illness and developmental disabilities who must be removed from the general population for security reasons;
 - In-cell access to activities (e.g., television programming, books, puzzles and games, and personal property such as notebooks and writing material);
 - Conversation with POAs and corrections staff.

- Use of restraints and other force requires close scrutiny and supervision. Use of restraints is properly measured in minutes, not hours. And when restraints are used, it is especially important to make sure that the prisoner remains both safe and clean. We have received numerous reports that prisoners defecate on themselves while restrained. Declining a restrained prisoner's request to use the toilet is appropriate only in the rarest of circumstances; leaving a prisoner to lie in her own waste is flatly inhumane.

3. *Heeding Warning Signs.* We have learned a good deal about how segregation and medical and mental health treatment are supposed to work at Huron Valley, but remain somewhat in the dark about operations in practice, particularly during times of stress. We are concerned that insufficient attention is being paid to various warning signs that something may be going wrong. This may be a function of inadequate mental health or de-escalation training for corrections staff in segregation and units housing vulnerable populations, and/or it could have other causes that we are unaware of. For example, we have received numerous reports that when POAs attempt to alert authorities to problems, whether by charting or otherwise, the POAs are punished, chastised, or ignored. We have also heard complaints by prisoners about dangerously substandard care given to other prisoners with serious physical disabilities. We have not yet been given the opportunity to review charts filled out by POAs, incident reports, video, or other specific documentation relating to the tragic events involving Darlene Martin or Sabrie Alexander. Likewise, we have not seen documentation relating to other significant incidents such as reported use of four-point restraints for hours on end and without adequate toilet breaks, and failure to reposition or clean bed-ridden prisoners. It seems likely that a careful review of this kind of documentation both by the MDOC and us would reveal breakdowns in communication and response. If such breakdowns occurred, that would point to policy/implementation improvements, to avoid similar events in the future.

4. *Prisoner Observation Aides and Retaliation.* We continue to hear reports of retaliation against POAs who are sharing information about abuses they observe. We now have three names of POAs who have authorized us to share them with you. The three names are:



These prisoners and others have informed us that they tried without success to obtain humane treatment for the prisoners they were assigned to observe, either by alerting staff, by charting, or by communicating with outside advocates. They were subsequently fired from their POA jobs.

If this in fact occurred, it is, in our view, illegal retaliation, and unfairly prejudicial to the affected prisoners. We note that retaliation can occur in several ways. Of course, retaliation sometimes occurs by fabricating a rule violation on which punishment is then premised. It is also retaliatory if a prisoner is fired for conduct that ordinarily would earn a milder sanction, even if the punishment is linked to an actual rule violation. Finally, it is retaliatory to punish a prisoner for violation of a rule that is itself problematic or unconstitutional—for example, a rule forbidding disclosure of misconduct by staff to other staff or outside authorities. If any of these three types of retaliation have taken place, that is both unfair to the POA subjected to retaliation, and counterproductive as far as the care provided, since it discourages other POAs to squelch any such warnings they might offer of a situation heading in a dangerous direction.

In fact, even if there was no retaliation, if POAs who try to report or chart problems are ignored, that inevitably undermines the care provided. Mental health professionals should regularly review and respond to POAs' observations and concerns. And when an urgent situation is developing, both correctional and medical staff should be alert to POA warnings as vital indicators, rather than dismiss them as annoyances.

5. *Therapeutic Mental Health Housing.* We are concerned that even for prisoners in mental health housing who are not in a lock-down or subjected to other segregation-like restrictions, there may be insufficient activity to provide an appropriately therapeutic environment. Merely attending group therapy a few times a week is inadequate for people suffering from serious mental illness, particularly if there is little else for them to do. Expansion of the therapeutic and non-therapeutic programing for prisoners in RTP, acute, and observation settings may be needed.

With these concerns in mind, we propose the following next steps:

1. **We request to review documents** related to the incidents that have been reported to us. Documents include incident reports, POA charts, and video. In fact, while we are looking to proceed collaboratively, on July 1, we submitted the attached Freedom of Information Act request (Attachment J), but we have received none of the requested

information or any explanation of the delay despite follow-up calls and emails by the ACLU.

2. We take you at your word that you want to ensure the well-being of mentally ill, physically disabled, and developmentally disabled inmates and want to work to improve the operation of the current system in a cooperative way. In light of that, we propose that simultaneously with our review of the requested documentation, you and **we jointly engage an expert** to address specific concerns. There are several experts who have worked with both prisoners' rights advocates and correctional systems to address issues of appropriate treatment and security for prisoners with mental illness and developmental disabilities. The Michigan Department of Corrections and the ACLU of Michigan could jointly retain such an expert to review current policies and procedures, documents relating to certain incidents, interview prisoners, and tour the facility. Using this information the expert could provide the MDOC and the ACLU with a report that diagnoses problems and proposes solutions. In proposing this course of action, we wish to bring to your attention a collaborative process regarding this issue that has taken place between the ACLU of Colorado and the Colorado Department of Corrections over the past several years, which has involved expert consultants, information sharing, and a level of cooperation and transparency that we think should be reproduced here. We encourage you to contact Kellie Wasko, Deputy Director of the Colorado Department of Corrections, to learn more about Colorado's collaborative experience. She can be reached at (719) 226-4507 and kellie.wasko@state.co.us.
3. To ensure all steps taken to improve conditions in MDOC facilities are sustainable, we renew our proposal for a **standing advisory committee** with representatives from the ACLU and other groups. Such a committee could review policies and procedures, particular incidents, and work with the MDOC to ensure the rights and safety of all inmates and staff are protected going forward.
4. Finally, we ask for a **thorough review at MDOC headquarters of the circumstances surrounding termination of POAs at Huron Valley in recent months, with a report back** to us of your findings. If it is determined that the rules governing POAs and their confidentiality obligations prevent POAs from reporting misconduct and mistreatment to appropriate outside groups, then those rules should be revised so as to respect the First Amendment rights of prisoners and facilitate humane treatment of prisoners in your custody.

Again, we appreciate that the MDOC is taking our concerns seriously. We look forward to hearing from you, and ask that you respond by December 8, 2014.

Sincerely,



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