STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

Emergency Order Under MCL 333.2253
Mandatory Testing for
Michigan Department of Health and Human Services'
Juvenile Justice Facility Staff

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. On March 10, 2020, the Michigan Department of Health and Human Services ("MDHHS") identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Gretchen Whitmer issued Executive Order 2020-4 declaring a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33. More recently, on September 3, 2020, the Governor issued Executive Order 2020-177, again finding that the COVID-19 pandemic continues to constitute a disaster and emergency under the Emergency Powers of the Governor Act, and to the extent permissible, under the Emergency Management Act of 1976.

COVID-19 can spread quickly in crowded settings, especially congregate living settings and indoor settings without social distancing, such as the MDHHS juvenile justice facilities. COVID-19 outbreaks in facilities not only create severe risks for youths and staff, but also create a significant risk of COVID-19 spread among the broader community.

Response measures, including identification and isolation of juvenile justice center staff affected by COVID-19, are essential to control the pandemic. Juvenile justice center staff may be a significant vector for COVID-19 to enter a juvenile justice facility. It is therefore imperative that staff in MDHHS juvenile justice facilities with positive cases be tested for COVID-19 and that suspected and confirmed cases are reported quickly to public health officials. The timely reporting of this information enables MDHHS and local health departments to take appropriate public health action to ameliorate the effect of an outbreak, take any other necessary action to prevent the spread of the virus and to protect the health and safety of staff, youths, and the community.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

1. **Definitions.** The following terms have the following meaning in this Emergency Order:

    a. "MDHHS juvenile justice facilities" means these specific facilities operated by the MDHHS: the Bay Pines Center in Escanaba and the Shawono Center in Grayling.

b. "Staff" means anyone who works within the physical boundaries of a MDHHS juvenile justice facility (including contractual employees of the MDHHS) or comes into contact with youths while on the job.

c. "Testing" does not include tests that are considered non-diagnostic, including serology, antibody, or other blood tests. All references to "testing" in this order refer to one of the following:

i. Diagnostic tests that seek to identify viral RNA, have received Emergency Use Authorization from the Food and Drug Administration, and are completed by a laboratory of moderate or high complexity under the Clinical Laboratory Improvement Amendments ("CLIA").

ii. Antigen diagnostic tests that have received Emergency Use Authorization from the Food and Drug Administration and are used consistently with CDC guidance in outbreak settings on symptomatic or asymptomatic individuals.

2. **Testing of MDHHS juvenile justice facility staff.** Subject to the availability of testing supply as determined by the Director of the MDHHS, the MDHHS juvenile justice facilities must adopt testing protocols for staff as follows:

a. Test each staff member as soon as practical after the effective date of this order.

b. Test all newly hired staff on their start date or in the 72 hours prior to start date.

c. Ensure that any staff who are close contacts of someone with COVID-19 and/or who exhibit symptoms of COVID-19 receive a COVID-19 test. Follow MDHHS guidance on quarantine and transmission risk reduction for staff who are close contacts of someone with COVID-19 and/or who exhibit symptoms of COVID-19.

d. In a MDHHS juvenile justice facility with any positive case among youths or staff identified within the last 14 days, test on a weekly basis all staff scheduled to work that week until no positive cases among youths or staff have been identified within the last 14 days.

e. Exclude from work any employees who do not receive a test when required to get tested.

f. Previously confirmed COVID-19 positive cases need not be re-tested for 90 days after the initial positive test.

3. **Transmission prevention protocols.** The MDHHS juvenile justice facilities must take the following steps when a staff member or youth tests positive for COVID-19 or is exposed to the virus:

a. The MDHHS juvenile justice facility must take all necessary precautions in accordance with relevant guidance from the Centers for Disease Control and Prevention ("CDC") to prevent transmission of the COVID-19 virus. These steps may include requiring any staff who are suspected of exposure to COVID-19 to obtain testing outside the facility.

b. The MDHHS juvenile justice facility must exclude from work staff with COVID-19 until they have met all return to work criteria established by the CDC.

4. **Effective Date.** This order is effective immediately. This order remains in effect until lifted.

5. **Severability.** If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.

Date: September 18, 2020

Robert Gordon

Robert Gordon, Director
Michigan Department of Health and Human Services