

To: Vermont Commissioner of Health

From: Covid-19 Vaccine Implementation Advisory Committee

Date: March 15, 2021

Re: Policy Recommendation on Vaccinations for Incarcerated Individuals

The ethical allocation of vaccines in Vermont necessitates ongoing prioritization of individuals and groups living in high-risk environments. This approach was applied in Phase 1A based on evidence of high risk of contracting the virus, of passing it to others at high risk of severe disease, and of dying of severe Covid-19.<sup>1</sup> The same ethical justification exists for prioritizing incarcerated individuals in Vermont.

Public health leaders have a duty to safeguard vulnerable populations in the community. This public health duty to incarcerated individuals derives from the core ethical principle that all humans have equal intrinsic moral worth. Prioritizing populations at highest risk of developing severe Covid-19 illness or populations at high risk of infection who are unable to protect themselves through physical distancing and other measures is consistent with the state's public health duty to safeguard vulnerable populations.

Taking a responsible population health based approach to equitable and effective vaccine allocation includes prioritizing those who work and live in these high-risk environments. Vermont must offer Covid-19 vaccines to all incarcerated and detained individuals as soon as possible.

Incarcerated individuals are a group at high-risk in more than one way, and prioritizing them for vaccination is Vermont's ethical obligation and public health responsibility.

- Incarcerated individuals are highly vulnerable to Covid-19 with little or no ability to protect themselves or demand safer conditions. This is not only due to age or comorbidities, but also to overcrowded, poorly ventilated, and unsanitary conditions - which make basic prevention measures impossible. The rate of infection in state and federal prisons is over five times higher than in the general population.<sup>2</sup> Carceral systems, including immigration detention facilities, are associated with poor quality health care and high risk of Covid-19 (Marshall Project, 2020; Chotiner, 2020); 90 of the 100 largest clusters of Covid-19 cases in the U.S. have arisen in jails and prisons (Siva, 2020).<sup>1</sup>

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<sup>1</sup>The Hastings Center, *Ethical Challenges in the Middle Tier of Covid-19 Vaccine Allocation*, January 15, 2021, <https://www.thehastingscenter.org/ethical-challenges-in-the-middle-tier-of-covid-19-vaccine-allocation/>

<sup>2</sup>JAMA, *Covid-19 Cases and Deaths in Federal and State Prisons*, July 8, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

- The CDC recommends vaccinating all staff and incarcerated individuals at the same time because of their shared increased risk of disease.<sup>4</sup>
- Stigma and disempowerment associated with being in custody increases incarcerated and detained populations' vulnerability to being overlooked or demoted in vaccine prioritization despite high risks.<sup>3</sup>
- Covid-19 outbreaks in correctional facilities impede the state's ability to manage Covid-19 in the community and puts stress on community resources. Facility staff regularly interact with the surrounding community and incarcerated individuals on average serve for less than a month at a time.<sup>3</sup> People held in jail for brief periods may be vectors of viral transmission to or from households.<sup>4</sup>
- In Vermont, our BIPOC population is at a heightened risk of both contracting and dying from COVID-19. For example, while Black Vermonters constitute only 1.4% of the state's population, they are 9.5% of the Vermont prison population. Black Vermonters also constitute 20% of positive COVID-19 cases in corrections (as of the latest data on the DOC website).

Public health officials have special legal and ethical duties to ensure that people in custody receive appropriate health care, including preventative health care such as vaccinations, because they are prevented from seeking health care on their own.<sup>5</sup> The U.S. Supreme Court has recognized (*Estelle v Gamble*, 1976) that deliberate indifference to the serious medical needs of incarcerated people violates the Constitution. Overlooking populations known to be at high risk of infection represents a failure of these basic public health duties.<sup>6</sup>

**Recommendation: We call on the administration to immediately amend its vaccination policies to provide access to Covid-19 vaccines to all incarcerated individuals in its care.**

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<sup>3</sup> U.S. Department of Justice, *Jail Inmates in 2016*, February 2018, <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

<sup>4</sup> The Hastings Center, *Ethical Challenges in the Middle Tier of Covid-19 Vaccine Allocation*, January 15, 2021, <https://www.thehastingscenter.org/ethical-challenges-in-the-middle-tier-of-covid-19-vaccine-allocation>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.