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Mar 10, 2020

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MICHIGAN AGREES TO PAY \$80 MILLION IN PRISON SEX ABUSE LAWSUIT

A complaint filed in 2013 on behalf of 500 currently and formerly incarcerated youth alleged that they were assaulted and harassed by incarcerated adults and corrections staff in adult prisons and jails across the state.

Michigan has agreed to pay \$80 million to settle a lawsuit on behalf of currently and formerly incarcerated teens who say they experienced sexual assault or harassment while held in adult jails and prisons, despite state officials' claims that the allegations could not be corroborated.

The lawsuit, representing more than 500 currently and formerly incarcerated youth who claim they were victimized by incarcerated adults and corrections staff, was filed in 2013 during former Attorney General Bill Schuette's term. During a teleconference announcing the settlement on Feb. 27, the Michigan Department of Corrections (MDOC) director and a spokesperson for the current attorney general cited the costs of litigation as their reason for settling.

"We've got to look at the length of time that we've been dealing with this and the amount of resources that frankly will be spent continuing to draw this out," Heidi Washington, the MDOC director, said during the call. Through a statement read by her spokesperson, Attorney General Dana Nessel said that although her

office had “vigorously defended against this lawsuit and has exhausted every single legal argument over the years, in the end, it was clear that continuing to engage in protracted litigation was not in the best interest of the people of this state.”

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But Deborah LaBelle, lead attorney for the plaintiffs in the case, said the settlement’s size is an indication that the state, and the Department of Corrections, “obviously did a number of things wrong.”

Although the department was required to incarcerate children convicted of certain crimes under Michigan law, “what they didn’t have to do” is subject children to sexual assaults by both staff and incarcerated adults, LaBelle said. “What they didn’t have to do is put children in solitary confinement for months on end. So I think that also the fact that they paid \$80 million in damages ... means that they have to recognize the kind of harm they did.”

In addition to monetary relief, the settlement requires the Department of Corrections to take steps to improve safety for children in adult facilities. According to a packet explaining the settlement to plaintiffs provided to The Appeal by LaBelle, those steps include the creation of a Youthful Offender Policy directive “to improve conditions for any youthful offender in the custody of the MDOC, enhance a culture of humane treatment, eliminate the risk that a youth will be subject to sexual abuse by staff or adult prisoners, and work toward eliminating the use of segregation or isolation of youth.” Other requirements will include a review of the use of force against incarcerated children; reporting and tracking of complaints of sexual abuse, harassment, and retaliation; and elimination of the previous requirement that incarcerated children file a grievance or exhaust administrative remedies before being able to file complaints under the Prison Rape Elimination Act.

LaBelle acknowledged that the lawsuit was one of several large legal problems inherited by Nessel and Governor Gretchen Whitmer from previous administrations, including ongoing litigation in the Flint water crisis. Both Whitmer and Nessel were elected in 2018. However, LaBelle said, “I don’t think we’ve seen enough turnaround with this new administration” in terms of criminal justice reform, including the treatment of incarcerated children.



Despite her demonstrated willingness to reverse her predecessor’s position on several high-profile cases, Nessel was as dogged as Schuette in attempting to fend off the incarcerated youths’ lawsuit, at one point going so far as to ask the judge in the case to forbid the use of the word “children” in describing the plaintiffs, all of whom were legally considered children at the time of their incarceration and alleged assaults. At one point, Nessel’s team filed three appeals in a six-week period alone.

“I’ve heard better language from them, but ... I’m not sure that we have the kind of commitment yet to address issues of criminal justice and youth justice with this administration,” LaBelle said.

In response to questions about the attorney general’s reasoning for defending the suit so vigorously, Ryan Jarvi, her press secretary, told The Appeal that the “MDOC was not able to corroborate plaintiffs’ allegations of widespread sexual abuse in Michigan prisons.”

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In reply, LaBelle said the “state took dozens of depositions of youth who under oath told consistent and compelling reports of sexual assaults in addition to many many more, who asked for help they never received and most of whose reports of rape were never even investigated. The only way to assert the [defendants] could not corroborate is to take the unsupported position that scores of young people were lying about the sexual assaults that happened to them in Michigan’s prisons when they were placed, without supervision, in cells and units with adults when they were 15, 16, and 17 years old. To simply deny the credible and consistent reports of these young sexual abuse survivors is to retraumatize them.”

Treatment of children housed in the state’s adult prisons is just one arena where Michigan is behind the curve on trends in juvenile justice. In November, it joined the overwhelming majority of states—46—that do not automatically charge 17-year-olds as adults. However, the law doesn’t take effect until 2021, and prosecutors will still be allowed to charge children accused of crimes in adult courts. The state has also been slow to implement *Miller v. Alabama* and *Montgomery v. Louisiana*, the two U.S. Supreme Court decisions that banned automatic life without parole terms for children and mandated that states review the sentences of people who were sentenced under mandatory-life laws when they were children. As recently as July, more than half of Michigan’s “juvenile lifers” were still awaiting review of their cases—and the state’s prosecutors had requested continued life without parole sentences for 66 percent of them.

In addition to being behind in juvenile justice, Michigan also has a long history of aggressively defending against allegations of sexual assault in the state’s criminal justice facilities. In 2009, after fighting for more than 13 years and going so far as attempting to pass a law retroactively exempting incarcerated people from protection under the state’s civil rights laws, Michigan paid \$100 million to formerly incarcerated women who had been raped or subjected to sexual harassment by male guards. LaBelle was also the lead attorney on that case.

Referring to the women’s case and now to the latest settlement, LaBelle said: “Michigan is exceptional in the way that they address the treatment of people under their care and custody in jails and prisons. And I don’t mean ‘exceptional’ in a good way. The problem I have with Michigan is they only seem to respond to litigation and they’re never out in front of the game.”

The executive director of the Michigan Center for Youth Justice, an advocacy organization for the state’s justice-involved children and youth, said that her organization supports the “equitable relief” portion of the settlement, as well as the new safety requirements being imposed on the state’s adult facilities. At the same time, the executive director, Mary King, called the settlement “a half-measure solution.”

“Adult prisons are not, and never will be, designed to safely house and rehabilitate kids,” King said in an email to The Appeal.

Plaintiffs in the youth lawsuit, Does v. Michigan Department of Corrections, must file a claim, opt out, or object to the settlement before March 30. On April 9, Washtenaw County Judge Carol Kuhnke will hold a fairness hearing to give plaintiffs who wish to contest the settlement a chance to do so. She will also issue a ruling on the settlement itself. If the settlement is approved, payments will be distributed to the plaintiffs according to the harm they suffered while in the state’s custody. ■