

**IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 81 M.M. 2008

IN RE J.V.R.; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF
THEMSELVES AND SIMILARLY SITUATED YOUTH

**PETITIONERS' BRIEF IN RESPONSE TO
SPECIAL MASTER'S ORDER OF MAY 28, 2009**

VOLUME TWO
EXHIBITS

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Westlaw Delivery Summary Report for MURPHY, MARK J

Your Search: TI(A.M.) & da(2001)
Date/Time of Request: Monday, June 1, 2009 13:56 Eastern
Client Identifier: LOURDES-LUZERNE SCT
Database: PA-CS
Citation Text: 766 A.2d 1263
Lines: 120
Documents: 1
Images: 0

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Westlaw

766 A.2d 1263
766 A.2d 1263, 2001 PA Super 1
(Cite as: 766 A.2d 1263)

C

Superior Court of Pennsylvania.
In re A.M., Appellant.
Submitted Sept. 27, 2000.
Filed Jan. 3, 2001.

Juvenile was adjudicated delinquent in the Court of Common Pleas, Luzerne County, Criminal Division, No. 99-701, Ciavarella and Toole, JJ., for allegedly engaging in indecent acts with his three-year-old sister. Juvenile appealed. The Superior Court, No. 1662 MDA 1999, Montemuro, J., held that failure to inform juvenile of his right to counsel required vacation of his delinquency adjudication and remand.

Vacated and remanded.

West Headnotes

11 Infants 211 ↪ 254

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(F) Review

211k254 k. Determination and Disposition. Most Cited Cases
Failure of court of common pleas to inform juvenile of both his right to an attorney at both the adjudication and disposition

hearings and his right to have court-appointed counsel if he could not afford representation, required that his delinquency adjudication be vacated and case remanded, where juvenile appeared with only his parents who did not waive his right to counsel. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 6337.

[2] Infants 211 ↩️ 199

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(D) Proceedings

211k199 k. Plea or Admission. Most Cited Cases

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211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(D) Proceedings

211k205 k. Counsel or Guardian Ad Litem. Most Cited Cases

An admission, the juvenile equivalent of a guilty plea, is a critical stage at which a respondent must be afforded the right to counsel. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 6337.

[3] Infants 211 ↩️ 205

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(D) Proceedings

211k205 k. Counsel or Guardian Ad Litem. Most Cited Cases

Counsel must be provided for a child in a delinquency proceeding unless his parent, guardian or custodian is present in court and affirmatively waives his right to representation. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 6337.

[4] Infants 211 ↩️ 205

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(D) Proceedings

211k205 k. Counsel or Guardian Ad Litem. Most Cited Cases

When a respondent appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and a statutory duty to inform the child of his right to counsel, and his right to have court appointed counsel if he cannot afford representation. U.S.C.A. Const.Amend. 6; 42 Pa.C.S.A. § 6337.

*1264 Lourdes M. Rosado, Philadelphia, for appellant.

Frank P. Barletta, Assistant District Attorney, Wilkes-Barre, for Commonwealth, appellee.

Before KELLY, ORIE MELVIN and MONTEMURO ^{FN*}, JJ.

FN* Retired Justice assigned to Superior Court.

MONTEMURO, J.:

¶ 1 Appellant, A.M., a juvenile, appeals from the Order entered August 19, 1999 in the Luzerne County Court of Common Pleas. Appellant was arrested and charged with indecent assault on the basis of allegations that he engaged in indecent acts with his three-year-old sister. When Appellant appeared with his parents at the disposition hearing, his mother reported that Appellant's attorney could not be present and asked for a continuance. This request was never entertained, and at the conclusion of the hearing, the court committed Appellant to Northwestern Intermediate Secured Unit.

[1] ¶ 2 Appellant raises five issues for our review. However, we need only consider whether the lower court erred in holding Appellant's juvenile adjudication and disposition hearings in the absence of counsel and/or a waiver of the right to counsel.

[2][3] ¶ 3 Preliminarily, we note that the right to counsel is applicable to adjudication and disposition hearings. 42 Pa.C.S.A. § 6337; In re Gault, 387 U.S. 1, 36, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). An admission, the juvenile equivalent of a guilty plea, is a critical stage at which a respondent must be afforded the right to counsel. Commonwealth v. Sheehan, 446 Pa. 35, 285 A.2d 465, 469-70 (1971). Moreover, counsel must be provided for a child unless his parent, guardian or custodian is present in court and affirmatively waives his right to representation. Gault. Pennsylvania has codified this principle in the Juvenile Act, 42 Pa.C.S. § 6337, which states in relevant part:

[A] party is entitled to representation by counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. *If a party appears without counsel, the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.*

42 Pa.C.S.A § 6337 (emphasis added).

[4] ¶ 4 Further, when a respondent appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and a statutory duty to inform the child of his right to counsel, and his right to have court appointed counsel if he cannot afford representation. *In re Gault, supra; Sec. 6337*.

¶ 5 As the record demonstrates, the court failed to comply with these mandates at both Appellant's adjudication and disposition hearings. ^{FN1} Because the Commonwealth*1265 concedes that Appellant was unfairly denied counsel at his hearings, we need not address Appellant's remaining claims.

FN1. Based on the following dialogue, which occurred at the conclusion of the hearing, the court concluded that

Appellant had made an admission to the charge and adjudicated Appellant delinquent.

THE COURT: Do I understand the nature of the charges, that there was an alleged indecent contact?

THE RESPONDENT: (Respondent nods head.)

THE COURT: Do you care to say something?

MR. M (RESPONDENT'S STEPFATHER): Do you understand the charges?

THE RESPONDENT: (Respondent nods head.)

THE COURT: How old are you, A., 13?

THE RESPONDENT: Yeah.

THE COURT: How old was the-?

MRS. M (RESPONDENT'S MOTHER): Three. She's three.

THE COURT: Again, I can understand and appreciate the delicacy of all the issues involved. I think it might be more appropriate, considering the nature of the offense, that A. be detained; that he be evaluated as soon as possible, and that some detention plan be-

[ASSISTANT DISTRICT ATTORNEY] RADICK: If I may interrupt you. Your Honor, these are A.'s parents and this is his sister who is the victim. I believe that A. is ready to make an admission to the charges as of our meeting the other day.

MRS. M: It's not that he's not aware of what he's done or he hasn't admitted what he's done. He needs help just as well as she does. I tried repeatedly to get help through Children and Youth and this was their answer. So, here we are.

THE COURT: A., you admit this?

THE RESPONDENT: (Respondent nods head.)

THE COURT: All right. On the basis of the admission, I find you delinquent. I will direct that he is going to be detained then for the purpose of undergoing appropriate evaluations in preparation of an appropriate treatment plan

and disposition.

(N.T., 7/15/99, at 2-4).

¶ 6 Therefore, we vacate the Order of adjudication and remand this case for further proceedings.

¶ 7 Order vacated; case remanded for further proceedings; jurisdiction relinquished.

Pa.Super.,2001.

In re A.M.

766 A.2d 1263, 2001 PA Super 1

END OF DOCUMENT

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Exhibit B

Thursday, June 4, 2009 12:29 P.M.

Times Leader, The (Wilkes Barre,
PA){PUBLICATION2}
SUPERIOR COURT OVERTURNS RULING IN CHILD'S
CASE JUDGE MARK A. **CIAVARELLA** SHOULD NOT
HAVE FOUND A BOY DELINQUENT IN A 1999 CASE, THE
COURT SAYS.

January 6, 2001

MICHAEL McNARNEY mmcnarney@leader.net

WILKES-BARRE - The Pennsylvania Superior Court has overturned a Luzerne County judge's decision that put a juvenile behind bars without the child's attorney present during the ruling.

The Superior Court ruled that Court of Common Pleas Judge Mark A. **Ciavarella** was wrong to find a 13-year-old boy delinquent on Aug. 19, 1999 after the boy admitted he engaged in indecent acts with his 3-year-old sister.

A finding of delinquency in juvenile court is similar to a finding of guilt in adult court. The boy is not identified in court papers.

According to the Superior Court decision filed Jan. 3, the boy's mother told **Ciavarella** that the boy's attorney could not appear at the hearing. She also asked for the hearing to be postponed so the attorney could be present.

Ciavarella did not entertain the mother's request, according to court papers, and committed the boy to the Northwestern Intermediate Secured Unit.

The Superior Court's decision said the boy should have had an attorney present, and **Ciavarella** had a constitutional and statutory duty to inform the boy of his right to have an attorney present.

The Superior Court voided **Ciavarella's** order finding the boy delinquent and sent the case back to the Court of Common Pleas.

In an interview, **Ciavarella** said he thinks the boy's family filed an appeal simply because they were unhappy with his ruling.

"I can't understand why they (the parents) thought they needed a lawyer when they were the ones who brought the charges in the first place," **Ciavarella** said.

"I'll never do it again," **Ciavarella** said of allowing a defendant to proceed without a lawyer. "They obviously have a right to a lawyer, and even if they come in and tell me that don't want a lawyer, they're going to have one."

Exhibit C

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11th JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF:

H.T., a juvenile

:

:

:

Juvenile No. 2007-74

TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE MARK A. CIAVARELLA, JR., P.J.
Penn Place Building
Third Floor
Wilkes-Barre, Pennsylvania

Commencing Tuesday, April 17, 2007

APPEARANCES:

-- ON BEHALF OF THE COMMONWEALTH:

THOMAS KILLINO, Esquire

-- ON BEHALF OF THE JUVENILE:

Unrepresented

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JUVENILE OFFICER: Case No. 6, H...
T..., all parties please step forward.

(Whereupon, all parties were sworn en
masse.)

THE COURT: H..., you've been charged
with harassment, how do you wish to plead?

THE JUVENILE: Guilty.

THE COURT: Based upon her admission, I'll
adjudicate her delinquent.

What makes you think you have the right to
do this kind of crap?

THE JUVENILE: I don't, sir.

THE COURT: Why would you do this?

THE JUVENILE: I have no rationale
explanation for that. I --

THE COURT: Did Miss Gregory ever do
anything to you?

THE JUVENILE: Not personally, no. I
didn't take into consideration that Miss
Gregory is a person as opposed to just a
school administration member at my school.

THE COURT: How long have you been at
Crestwood?

THE JUVENILE: A year and a half.

THE COURT: What grade are you in?

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THE JUVENILE: I'm in my sophomore year,
tenth grade.

THE COURT: Where did you go before?

THE JUVENILE: Pocono Mountain East High
School.

THE COURT: You've been at Crestwood when
I've been at Crestwood?

THE JUVENILE: Yes.

THE COURT: You heard me speak?

THE JUVENILE: Yes.

THE COURT: Told you what type of conduct
I expected from children in that school
relative to the juvenile justice system?

THE JUVENILE: Yes, sir.

THE COURT: Told you what conduct I
expected from the students in that school
relative to their conduct towards teachers?

THE JUVENILE: Yes, sir.

THE COURT: Is this acceptable?

THE JUVENILE: No, sir.

THE COURT: What did I say would happen if
you acted in an unacceptable way towards
teachers and/or administrators?

THE JUVENILE: I don't recall, sir.

THE COURT: You don't recall? You don't

1 remember me saying that if you did any of
2 these things to a teacher, that I would send
3 you away? You don't remember those words?

4 THE JUVENILE: No, sir.

5 THE COURT: Were you sleeping?.

6 THE JUVENILE: No, sir.

7 THE COURT: You can't remember that?

8 THE JUVENILE: No, sir.

9 THE COURT: It's going to come back to you
10 because I didn't go to that school, I didn't

11 walk into that school and I didn't speak to
12 that student body just to scare you, just to
13 blow smoke, just to make you think that I
14 would do that when I wouldn't. I'm a man of
15 my word. You're gone. Send her up to FACT.
16 Let her stay there until she figures it out.
17 Thank you.

18 MOTHER OF JUVENILE: No, that's not fair.
19 That's not what the officer said. That's not
20 what he said.

21 THE COURT: Thank you.

22 (Whereupon, the proceedings were
23 concluded.)
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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately to the best of my ability in the notes taken by me on the juvenile matter in the above cause, and that this is a true and correct transcript.

5-10-07
Date

Lisa L. Tratthen
Lisa L. Tratthen, RPR
Official Court Reporter

The foregoing record of the proceedings upon the juvenile matter in the above cause is hereby approved and directed to be filed.

Date

151
Mark A. Ciavarella, Jr., P.J.

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF:

Hillary Transue, a juvenile

Juvenile No. 2007-74

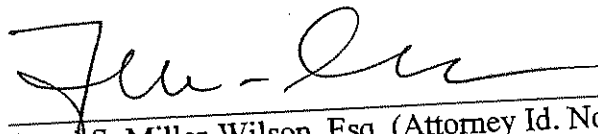
NOTICE OF APPEAL

Notice is hereby given that Hillary Transue, by undersigned counsel, hereby appeals to the Superior Court of Pennsylvania from final order of disposition entered in this matter on the 17th day of April 2007. This order has been entered in the docket as evidenced by the attached copy of the docket entry.

ROBERT F. REILLY
CLERK OF COURTS

2007 MAY -3 PM 3:00

CRIMINAL DIV.
LUZERNE COUNTY



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Attorney for Hillary Transue
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Date: May 3, 2007

**IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION**

IN THE INTEREST OF:

H.T., A Juvenile

:
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:

Juvenile No. 2007-74

APPLICATION FOR SUPERSEDEAS

H.T., through her counsel, Juvenile Law Center, submits this Application for *Supersedeas* (or Stay), and an accompanying Memorandum of Law, of the April 17, 2007 Orders of the Luzerne County Court of Common Pleas, Juvenile Division (Court) adjudicating her delinquent; removing her from the custody of her parents, K. and I. and, committing her to a residential treatment program operated by Youth Services Agency (formerly "Camp Adams"). H.T. files this Application for *Supersedeas* to immediately suspend the effect of this Court's disposition order while the Superior Court considers her appeal to restore the mandates of due process, the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure. In support of this application H.T. states:

This Court has authority to entertain this Application for *Supersedeas* pursuant to Pennsylvania Rule of Appellate Procedure 1732.

ROBERT F. REILLY
CLERK OF COURTS

2007 MAY 15 PM 2:59

JUDICIAL DIV.
LUZERNE COUNTY

FACTUAL BACKGROUND

2. On February 7, 2007, Officer Scott Rozitski entered an Allegation-Complaint charging H.T. with harassment of her school vice-principal, Bonnie Gregory, in violation of 18 Pa.C.S. § 2709(a)(4) (a third degree misdemeanor).
3. The Allegation—Complaint, attached as Exhibit A, alleges that between July 2006 and

¹ Typically the full names of children involved in delinquent matters are kept confidential. Hereinafter, references to the child will be initialized as "H.T."

December 2006, H.T. created and maintained a website on MySpace.com, that contained derogatory and negative comments about Bonnie Gregory.

4. On April 17, 2007 H.T. appeared before the Honorable Mark A. Civarella, Jr. of the Court of Common Pleas of Luzerne County, Juvenile Division (Court) for a delinquency adjudication hearing without counsel.
5. On April 17, 2007, prior to the adjudication hearing, L. [redacted] T. [redacted], mother of H.T., signed a written statement waiving her daughter's right to counsel.
6. H.T. did not sign a statement waiving her right to counsel.
7. During the adjudication hearing the Court did not ascertain whether H.T. knew she had the right to counsel, nor did the Court obtain an affirmative waiver of counsel from H.T.
8. At the conclusion of the hearing, the Court found that H.T. admitted to the charge of harassment and adjudicated her delinquent.
9. During the adjudication hearing the Court did not inquire as to whether H.T.'s admission to the underlying criminal charge, Harassment (18 Pa.C.S. § 2709(a)(4)), was voluntarily and knowingly made.
10. H.T. did not have the advice of counsel during the entering of her admission.
11. Immediately following the adjudicatory hearing, the Court ordered that H.T. be placed outside her parents' home. Specifically, the Court committed H.T. to Youth Services Agency—a residential treatment facility for juveniles—for an indeterminate period of time.
12. H.T. did not have the advice of counsel during the disposition hearing.
13. The Commonwealth does not contest paragraphs 2 through 12 of this application.
14. On May 3, 2007 H.T. filed a Notice of Appeal.

H.T. IS LIKELY TO PREVAIL ON THE MERITS OF HER APPEAL

15. The adjudicatory and disposition orders must be vacated because the Court violated H.T.'s constitutional and statutory rights to counsel at all stages of her delinquency proceeding.

a. H.T. has a constitutional right to counsel guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *In re Gault*, 387 U.S. 1 (1967).

b. In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. C.S. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

16. Additionally, the adjudicatory and disposition orders must be vacated because the Court violated Pennsylvania Rules of Juvenile Court Procedure issued by the Pennsylvania Supreme Court to protect H.T.'s right to counsel at any and all delinquency proceedings.

a. Pennsylvania Rule of Juvenile Court Procedure 152 states, "A juvenile may not waive the right to counsel unless: (1) the waiver is knowingly, intelligently and voluntarily made; and (2) the court conducts a colloquy with the juvenile on the record."

b. The Comment to Rule 152 also specifically provides that "[a] guardian may not waive a juvenile's right to counsel," expressly suspending 42 Pa.C.S. § 6337 that previously allowed parental waiver of counsel.

17. H.T.'s admission is invalid because it was entered in disregard of her constitutional and statutory rights.

- a. The U.S. Constitution requires that an admission be voluntary, knowing and intelligent.
- b. Pennsylvania Rule of Juvenile Court Procedure 407, and the comment thereto, states, "Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly" and ask questions on the record to authenticate the juvenile's understanding.

UNLESS THIS COURT GRANTS THIS APPLICATION FOR SUPERSEDEAS, H.T. WILL SUFFER IRREPARABLE INJURY

18. Unless relief is awarded, H.T. will be irreparably harmed in that she will remain in residential placement for three months away from her family and community as set forth above. H.T. has no adequate remedy at law if she is deprived of her liberty and other constitutionally protected rights.

THE ISSUANCE OF A SUPERSEDEAS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

19. The Commonwealth will not be irreparably harmed if a *supersedeas* is granted. The Commonwealth and Petitioner both support juvenile court proceedings that meet constitutional and statutory requirements.

THE ISSUANCE OF A SUPERSEDEAS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

20. It is in the public's interest that juveniles are tried with the assistance of counsel and that the admissions of juveniles be voluntary, knowingly and intelligently made.

CONCLUSION

21. WHEREFORE, H.T. prays that this Court enter a *supersedeas* of the April 17, 2007 Orders and immediately releases H.T. from the custody of Youth Services Agency.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Marsha Levick, Esq. (Attorney Id. No. 77585)
Riya Shah, Esq. (Attorney Id. No. 200644)
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Date: May 3, 2007

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2007 I served by hand-delivery OR first class mail, this Application for *Supersedeas* and an accompanying Memorandum of Law, upon the persons indicated below, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

The Hon. Mark A. Ciavarella
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Court Reporter's Office
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Robert Riley, Clerk of Courts
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Attorney for Hillary Transue
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VERIFICATION

Laval S. Miller-Wilson, Esq., being duly sworn according to law, verifies that the information contained in the Application for *Supersedeas* is true and correct to the best of his knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
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3
Dated: May 1, 2007

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF:

H.T., A Juvenile

Juvenile No. 2007-74

PETITION FOR WRIT OF HABEAS CORPUS

H.T.,¹ through her counsel, Juvenile Law Center, submits this Petition for Writ of *Habeas Corpus*, and an accompanying Memorandum of Law, challenging the legality of her detention in a Youth Residential Treatment Facility following this Court's April 17, 2007

order adjudicating her delinquent; removing her from the custody of her parents, K. and T. and committing her to placement in a facility operated by Youth Services Agency. H.T. files this petition to request immediate review of her detention and vacate the underlying adjudication of delinquency. In support of this motion H.T. states as follows:

1. This Court has authority to entertain this petition for writ of *habeas corpus* pursuant to Pennsylvania Rule of Juvenile Court Procedure 125.

FACTUAL BACKGROUND

2. On February 7, 2007, Officer Scott Rozitski entered an Allegation-Complaint charging H.T. with harassment of her school vice-principal, Bonnie Gregory, in violation of 18 Pa.C.S. § 2709(a)(4) (a third degree misdemeanor).
3. The Allegation-Complaint, attached as Exhibit A alleges that between July 2006 and December 2006, H.T. created and maintained a website on MySpace.com that contained derogatory and negative comments about Bonnie Gregory.

¹ Typically the full names of children involved in delinquent matters are kept confidential. Hereinafter, references to the child will be initialized as "H.T."

4. On April 17, 2007 H.T. appeared before the Honorable Mark A. Civarella, Jr. of the Court of Common Pleas of Luzerne County, Juvenile Division (Court) for a delinquency adjudication hearing without counsel.
5. On April 17, 2007, prior to the adjudication hearing, L. T. [redacted], mother of H.T., signed a written statement waiving her daughter's right to counsel.
6. H.T. did not sign a statement waiving her right to counsel.
7. During the hearing, the Court did not ascertain whether H.T. knew she had the right to counsel, nor did the Court obtain an affirmative waiver of counsel from H.T.
8. During the hearing the Court did not inquire as to whether H.T.'s admission to the underlying criminal charge, Harassment (18 Pa.C.S. § 2709(a)(4)), was voluntarily and knowingly made.
9. H.T. did not have the advice of counsel during the entering of her admission.
10. At the conclusion of the hearing, the Court found that H.T. admitted to the charge of harassment and adjudicated her delinquent.
11. Immediately following the adjudicatory hearing, the Court ordered that H.T. be placed outside her parents' home. Specifically, the Court committed H.T. to Youth Services Agency—a residential treatment facility for juveniles—for an indeterminate period of time.
12. On April 30, 2007, H.T. filed a Notice of Appeal, which has been docketed in this Court.

H.T. IS LIKELY TO PREVAIL ON THE MERITS OF THIS APPEAL

13. H.T.'s confinement is the collateral result of an improper adjudication of delinquency.
14. The adjudicatory and disposition orders must be vacated because the Court violated H.T.'s constitutional and statutory rights to counsel at all stages of her delinquency

proceeding.

- a. H.T. has a constitutional right to counsel guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- b. In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. C.S. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

15. The adjudicatory and disposition orders must be vacated because the Court violated the Pennsylvania Rules of Juvenile Court Procedure issued by the Pennsylvania Supreme Court to protect H.T.'s right to counsel at any and all delinquency proceedings.

- a. Pennsylvania Rule of Juvenile Court Procedure 152 states, "A juvenile may not waive the right to counsel unless: (1) the waiver is knowingly, intelligently and voluntarily made; and (2) the court conducts a colloquy with the juvenile on the record."

16. H.T.'s admission is invalid because it was entered in disregard of her constitutional and statutory rights.

- a. The U.S. Constitution requires that an admission be voluntary, knowing and intelligent.
- b. Pennsylvania Rule of Juvenile Court Procedure 407, and the comment thereto, states, "Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly" and ask questions on the record to authenticate the juvenile's understanding.

17. Furthermore, H.T.'s detention is inconsistent with the purposes of the Pennsylvania Juvenile Act. The detention of a juvenile is governed under the Pennsylvania Juvenile Act at 42 Pa.C.S. § 6352, stating that the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation of the child. H.T.'s confinement, a result of an improper adjudication of delinquency, is inconsistent with the protection of the public, and will not further her rehabilitation.

UNLESS THIS COURT GRANTS THIS PETITION FOR WRIT OF HABEAS CORPUS, H.T. WILL SUFFER IRREPARABLE INJURY

18. Unless relief is awarded, H.T. will be irreparably harmed in that she will remain in residential placement an indeterminate amount of time away from her family and community as set forth above. H.T. has no adequate remedy at law if she is deprived of her liberty and other constitutionally protected rights.

THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

19. The Commonwealth will not be irreparably harmed if H.T. is released from detention and the underlying delinquency adjudication is vacated. The Commonwealth supports juvenile court proceedings that meet constitutional and statutory requirements.


THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

20. It is in the public's interest to assure that the confinement of juveniles is limited to instances where there is a concern of public safety, or when necessary to promote the rehabilitation of the child. H.T. presents no threat to public safety, and her adjudication was improperly imposed, therefore she requires no rehabilitation through the juvenile justice system.

21. It is in the public's interest that juveniles are only detained when tried with the full panoply of constitutional and statutory rights – including assistance of counsel and admissions made voluntarily, knowingly and intelligently.

CONCLUSION

22. WHEREFORE, H.T. prays that this Court enter a writ of *habeas corpus* to immediately release H.T. from confinement and vacate the underlying adjudication and disposition orders of the Court of Common Pleas of Luzerne County dated April 17, 2007.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Marsha Levick, Esq. (Attorney Id. No. 77585)
Riya Shah, Esq. (Attorney Id. No. 200644)

Attorneys for Hillary Transue
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Date: May 3, 2007

CERTIFICATE OF SERVICE

— or hand-delivered

I hereby certify that on May 3, 2007 I served by first class mail, this petition for a writ of habeas corpus upon the persons indicated below, which service satisfies the requirements of Rule 345 of the Pennsylvania Rules of Juvenile Court Procedure:

District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

The Hon. Mark A. Ciavarella
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Court Reporter's Office
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Clerk of Courts
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Luzerne County Juvenile Probation
280 River Street
Wilkes-Barre, PA 18702



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Attorney for Hillary Transue
JUVENILE LAW CENTER
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Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
JUVENILE DIVISION
COURT ORDER

Docket No. JV 74-2007

RE: H. T.
DOB: 8-23-91

Date of Hearing: 5-16-07

TYPE OF HEARING:

- DELINQUENT CHILD
- DEPENDENT CHILD
- DELINQUENT/DEPENDENT CHILD
- INFORMAL ADJUSTMENT GRANTED
- CONSENT DECREE GRANTED
- CASE DISMISSED
- ADJUDICATION (DISPOSITION LATER DATE)
- ADJUDICATION & DISPOSITION
- DISPOSITION
- DETENTION / DETENTION SERVICE PLAN
- DETENTION REVIEW HEARING
- PLACEMENT / DISPOSITIONAL REVIEW
- VIOLATION OF PROBATION REVIEW
- OTHER _____

ORIGINAL CHARGE: _____
Date: _____

CURRENT CHARGE and/or VIOLATION: Harassment
Date: 7-22-06

Please note parents are responsible for all program costs and any fees associated with Probation of their child.

The following is the Juvenile Probation Department's recommendation for the above named juvenile:

- Committed to YOUTH SERVICES AGENCY - ACT Program.
- Committed to YOUTH SERVICES AGENCY - FACT Program.
- Committed to _____
- Released from _____
- Continued in foster care / placement at _____

IV-E: It is ordered that said foster care is a determination that continuation in his/her residence would be contrary to the welfare of the child; and said foster care is necessary because reasonable efforts were made prior to the foster care to prevent or eliminate the need for removal of this child from his/her home. It is not in the best interest of the child's development to remain in the home. It is also ordered that Luzerne County Juvenile Probation Department and Luzerne County Children & Youth Services share case management responsibility for this child while he/she remains in foster care.

Luzerne County Juvenile Probation Department and Luzerne County Children & Youth Services equally share all foster care / placements costs and case management responsibility while child remains in foster care / placement.

- Remanded to the **LUZERNE COUNTY JUVENILE DETENTION CENTER** for:
- forensic psychological evaluation conducted by the staff psychologist at Detention (See attached Forensic Evaluation Order) - parents/guardians to assume cost
 - drug/alcohol evaluation conducted by Court Advocate Program at the Detention Center - parents/guardians to assume cost
 - further planning and/or placement / foster care
 - other _____
 - Detention Plan: attend school & medical exam

Parent(s)/guardian(s) to contribute financial support toward their child's detention/foster care/placement costs as determined by the Court and/or Juvenile Probation Department. Parent(s)/guardian(s) responsible for child's medical and dental coverage before and during commitment as well as any/all clothing needs while he/she remains in foster care / placement.

Re: H T

Date: 5-16-07

Transfer disposition to _____ County Juvenile Court.

Released into the custody of Parents

Placed on Probation for: _____ indefinite period. _____ period of _____ Consent Decree for 6 mos.

Placed under House Arrest. Special terms: except for school, work, medical, counseling and church.

Courtesy Supervision (received from) _____

Courtesy Supervision (transferred to) _____

Interstate Compact _____

Participate in the Weekender Program at _____ for _____ weekends.
Parent(s)/Guardian(s) responsible for cost of said Weekender Program.

Luzerne County Juvenile Probation Office and Luzerne County Children & Youth Services will share case management responsibility for the child/family while child is in the community.

TRAACS Program (Youth Services Agency of Pennsylvania).

Curfew: Sunday through Thursday 6pm Friday and Saturday 6pm
Special terms: _____

Cooperate with JPO staff psychologist for a forensic psychological evaluation to be conducted at the Juvenile Probation Office. Parent(s)/guardian(s) responsible for cost of said evaluation. (See attached Forensic Evaluation Order)

Placed on an electronic monitor. Permission to be out for work, school, medical, counseling and church. Parent(s)/Guardian(s) responsible for all costs/damages/repairs of said electronic monitoring system.

Cooperate with random blood, breath and urine testing to be conducted by the Juvenile Probation Office.

Attend AA/NA meetings. Special terms: _____

Perform _____ hours of community service at a site to be determined by the Juvenile Probation Office.
Special terms: _____ TRAACS _____ Community Action Program.

Not to apply for an operator's license without permission of the Court OR surrender operator's license to the Court.

Operator's license restricted for work purposes only.

Cooperate with the following agencies and follow any/all recommendations
(PARENT(S)/GUARDIAN(S) RESPONSIBLE FOR COST OF ANY/ALL EVALUATIONS/SERVICES):

Children's Service Center:

psychological evaluation

psychiatric evaluation

outpatient services

Functional Family Therapy

Type 50 support services

All reports, evaluations, etc. are to be submitted by the agency to the Juvenile Probation Office.

Re: H. J. T.

Date: 5-16-07

- Northeast Counseling
 - psychological/psychiatric evaluation
 - outpatient services
 - All reports, evaluations, etc. are to be submitted by the agency to the Juvenile Probation Office.
 - Forensic Program

Wyoming Valley Alcohol and Drug Services for an Evaluation/Treatment and follow all recommendations

Clear Brook Inc. for an Evaluation/Treatment and follow all recommendations

Clear Brook Inc. Aftercare and follow all recommendations

Catholic Social Services The Bridge Youth Services Underage Drinking Program

Court Advocate Program Highway Safety Program

Lower Luzerne County Alcohol and Drug Services (Serento Gardens)

Obtain employment within days

Other: Client is directed to continue with Confidential Counseling Services, monthly reports to be submitted to juvenile Probation.

All agency reports are to be sent on a monthly basis to the Juvenile Probation Office.

Pay restitution/fines; and if he/she secures employment, he/she is directed to pay 75% of his/her earnings until the restitution/fine obligation has been fulfilled in accordance with Section 6352 of the Juvenile Act. Parent(s)/guardian(s) shall be responsible for their child's restitution to the extent that is allowable under the Parental Liability Act. Also, directed to comply with Act 12 of 1995, a Judgement Order for said restitution will be entered in the Prothonotary's Office of Luzerne County. A wage attachment may be ordered to help defray the cost of restitution.

Amount ordered \$. Payment to be received within .

Pay all Court related costs immediately.

PROBATION SUPERVISION FEE: Ordered to pay \$35.00 per month payable at the end of each month.

SEE PARENT COURT ORDER for appropriate participation/directives.

Report for fingerprinting / photograph.

DNA Sample ordered.

Evidence to be destroyed.

Money seized is to be placed in the arresting law enforcement agency's drug fund.

SPECIAL CONDITIONS:

Re: H. T.

Date: 5-16-07

Additional Probation Conditions:

Probation is an opportunity to prove that I can modify and improve my behavior with the help of my parents, the community and my probation officer. I understand that Probation is a privilege granted by the Judge and can be revoked at any time depending upon the seriousness of violation of my probation/parole rules. Also, I realize that compliance with all rules is necessary for my successful adjustment.

I must obey all Laws - Federal, State and Local. I must reside with those individuals to whom the Court has entrusted my custody. I must stay away from all victims/witnesses. I must not associate with accomplices. I must inform the Court of any change in residence, and I must notify my Probation Officer of any change of telephone number. I must obtain permission from the Chief Probation Officer prior to leaving Luzerne County. I must not possess any type of weapon or firearm. Hunting is not permitted without special permission of the Chief Probation Officer. I must refrain from the use of all illegal substances. I must attend school, job training or obtain a job. Also, I realize that failure to comply with the terms of my probation/parole may result in appropriate action to be decided by the Court. Further, I understand that I am not released from Probation/Parole until I have received a letter from the Court notifying me of my release.

You are subject to Search and Seizure Procedures.

Absent effective preventive services the child will be removed from the home, and foster care is the planned arrangement for the child.

Parent(s)/Guardian(s) are hereby ordered to provide the following information to the Luzerne County Juvenile Probation Office within five (5) days of this order:

- * Birth Certificate
- * Social Security Card and/or INS Documentation
- * Financial Information (*Pay Stubs, W-2 forms, Bank Statements, Social Security Verification, Child Support Payment Information; if Self Employed, please furnish Income Tax Return*)
- * Insurance Information

Juvenile Probation Officer:

M. Cousidine

Telephone No.: _____

(W-B: 570-825-1552) (Hazleton: 570-459-6500)

Respectfully submitted,

[Signature]
Official Representative
Luzerne Co. Dept of Probation Services
Juvenile Division

BY THE COURT,

[Signature]
P. J.

**IN THE SUPERIOR COURT OF PENNSYLVANIA
FOR THE MIDDLE DISTRICT**

DOCKET NO. 788 MDA 2007

In the Interest of H.T., A Minor

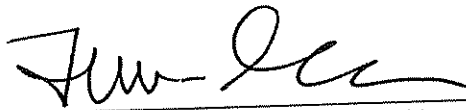
Appeal of H.T., Appellant

PRAECIPE TO DISCONTINUE APPEAL

Appeal from the April 17, 2007 Order of the Luzerne County
Court of Common Pleas, Juvenile Division

TO THE PROTHONOTARY:

Please discontinue the above-captioned appeal.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)

Attorney for H.T.

JUVENILE LAW CENTER

1315 Walnut Street, Suite 400

Philadelphia, PA 19107

(215) 625-0551 (office)

(215) 625-2808 (facsimile)

Dated: May 23, 2007

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2007 I served by first class mail, this Praecipe to Discontinue Appeal upon the persons indicated below, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

Thomas Killino, Esq.
Frank McCabe, Esq,
LUZERNE COUNTY DISTRICT ATTORNEY'S OFFICE
200 North River Street
Wilkes-Barre, PA 18711

Michael Loughney, Chief
LUZERNE COUNTY JUVENILE PROBATION
Penn Place, Suite 329
20 North Penn Avenue
Wilkes-Barre, PA 18701

THE HON. MARK A. CIAVARELLA
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

CLERK OF COURTS
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Attorney for H.T.
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Exhibit D

IN THE COURT OF COMMON PLEAS
LUZERNE COUNTY, PENNSYLVANIA

IN THE INTEREST OF: : JUVENILE ACTION - LAW
:
REDACTED :
A juvenile : NO. 086 of 2008

TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE MARK A. CIAVARELLA, JR., P.J.
Penn Place Building
20 North Pennsylvania Ave.
Wilkes-Barre, Pennsylvania 18711-1001

Commencing, Tuesday, April 29, 2008

APPEARANCES:

-- ON BEHALF OF THE COMMONWEALTH:
Stephanie Pollock, Esq.
Assistant District Attorney

REDACTED

2

1 (Whereupon, the following occurred on
2 Tuesday, April 29, 2008:)
3 (Whereupon, all parties were duly sworn.)
4 THE COURT: you've been charged
5 with a violation of the Controlled Substance,
6 Drug, Device and Cosmetic Act. How do you
7 wish to plead?
8 THE JUVENILE: Guilty.
9 THE COURT: Did you do it or didn't you do
10 it?
11 THE JUVENILE: I did do it.
12 THE COURT: Based upon her admission,
13 we'll adjudicate her delinquent.
14 MS. POLLOCK: Your Honor, I have the lab
15 report and \$113 restitution to the PSP Lab.
16 I have paperwork here.
17 THE COURT: What grade are you in?
18 THE JUVENILE: 11th.
19 THE COURT: How many times have you been
20 involved with the law?
21 THE JUVENILE: This is the first time.
22 THE COURT: Ever been suspended from
23 school?
24 THE JUVENILE: Yeah.
25 THE COURT: How many times?

1 She'll go to FACT. When she's at FACT, she'll
2 have a drug and alcohol eval. If she has a
3 drug and alcohol problem, we'll get her some
4 rehab.
5 THE COURT: Do we understand what we're
6 doing here?
7 JUVENILE'S MOTHER: She went to Sorento
8 Gardens.
9 THE COURT: And I'm not saying that she
10 wasn't, but I'm going to have the people up at
11 the camp do a drug and alcohol evaluation,
12 probably maybe a little more thorough and if
13 she has a problem they may want to send her to
14 Clearbrook. If she doesn't have a problem,
15 that's good and that will be a good thing.
16 Let's hope she doesn't have a problem. She'll
17 be remanded. Thank you.
18 (Whereupon, the proceedings concluded.)

3

1 THE JUVENILE: Two.
2 THE COURT: How come?
3 THE JUVENILE: It was an incident with my
4 cell phone and then this.
5 THE COURT: What do you want to do with
6 your life?
7 THE JUVENILE: Go to college.
8 THE COURT: You can't go to college when
9 you're doing drugs. What do you want to do
10 with your life after college?
11 THE JUVENILE: I want to go -- I'm
12 thinking about some kind of medical school.
13 THE COURT: Medical school. All the
14 medical schools want drug people. They all
15 want people who have addiction problems. This
16 happened at school?
17 THE JUVENILE: Yeah.
18 THE COURT: You're taking drugs to school?
19 THE JUVENILE: No, it was in the car.
20 THE COURT: Well, the recommendation is
21 that I remand her and I send her to FACT.
22 While at FACT she'll have a drug and alcohol
23 eval and that she be involved in speciality
24 court. I'm going to follow the
25 recommendation. You're going to remanded.

C E R T I F I C A T E

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the notes of testimony taken by me in the proceedings of the above cause, and that this is a true and correct transcript thereof.

Kimberly M. Hearity
Official Court Reporter

The foregoing record of the proceedings of the above cause is hereby approved and directed to be filed.

DATE: _____

Mark A. Ciavarella, Jr.,
President Judge

COPY _____

BALLARD SPAHR ANDREWS & INGERSOLL, LLP
By: Kenya S. Mann, Pa. ID No. 61156
Amy Shellhammer, Pa. ID No. 91804
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

Attorneys for M.Y.

IN THE INTEREST OF:

M.Y., a juvenile
DOB 6/3/91

COURT OF COMMON PLEAS
LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

JUVENILE NO. 086-2008

ROBERT F. REILLY
CLERK OF COURTS
2008 MAY -6 PM 3:12
CRIMINAL DIV.
LUZERNE COUNTY

APPLICATION FOR SUPERSEDEAS

M.Y.,¹ through her counsel, submits this Application for *Supersedeas* (or Stay), and accompanying Memorandum of Law, of the April 29, 2008 Orders of the Luzerne County Court of Common Pleas, Juvenile Division (the "Court") adjudicating her delinquent; removing her from the custody of her parents, J. [redacted] and M. [redacted] Y. [redacted]; and committing her to a residential treatment program operated by Youth Services Agency (formerly "Camp Adams"). M.Y. files this Application for *Supersedeas* to immediately suspend the effect of this Court's disposition order while the Superior Court considers her appeal to restore the mandates of due process, the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure. In support of this application M.Y. states:

1. This Court has authority to entertain this Application for *Supersedeas* pursuant to Pennsylvania Rule of Appellate Procedure 1732.

¹ Typically the full names of children involved in delinquent matters are kept confidential.

I. FACTUAL BACKGROUND

2. On January 30, 2008, Pennsylvania State Trooper Kevin Azaravich entered an Allegation-Complaint charging M.Y. with possession of a small amount of marijuana and possession of paraphernalia, in violation of 35 Pa. Cons. Stat. § 780-113(31) and (32) (ungraded misdemeanors).

3. The Allegation-Complaint alleges that at 9:00 a.m. on January 30, 2008, Karen Bonomo, a teacher at Hazleton Area High School, informed the school's Vice Principal, Clarence John, that M.Y.'s behavior was sluggish and her pupils were dilated. As a result, school officials questioned M.Y., who allegedly admitted to smoking marijuana that morning. Marijuana and drug paraphernalia were allegedly found during searches of M.Y.'s possessions and her car.

4. On April 29, 2008 M.Y. appeared before the Honorable Mark A. Ciavarella, Jr. of the Court of Common Pleas of Luzerne County, Juvenile Division (Court) for a delinquency adjudication hearing without counsel.

5. On April 29, 2008, prior to the adjudication hearing, J. T. , father of M.Y., signed a written statement waiving his daughter's right to counsel.

6. M.Y. also signed the statement, which was never read or explained to her.

7. During the adjudication hearing the Court did not ascertain whether M.Y. knew she had the right to counsel, nor did the Court perform a colloquy or obtain an affirmative waiver of counsel from M.Y.

8. At the conclusion of the hearing, the Court found that M.Y. admitted to the charges of possessing marijuana and drug paraphernalia and adjudicated her delinquent.

9. During the adjudication hearing, the Court did not inquire as to whether M.Y.'s admission to the underlying criminal charges was voluntarily and knowingly made.

10. M.Y. did not have the advice of counsel during the entry of her admission.

11. Immediately following the adjudicatory hearing, the Court ordered that M.Y. be placed outside her parents' home. Specifically, the Court committed M.Y. to Youth Services Agency—a residential treatment facility for juveniles—for an indeterminate period of time.

12. M.Y. did not have the advice of counsel during the disposition hearing.

13. On May 6, 2008 M.Y. filed a Notice of Appeal.

II. M.Y. IS LIKELY TO PREVAIL ON THE MERITS OF HER APPEAL

14. The adjudicatory and disposition orders must be vacated because the Court violated M.Y.'s constitutional and statutory rights to counsel at all stages of her delinquency proceeding.

15. M.Y. has a constitutional right to counsel guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *In re Gault*, 387 U.S. 1 (1967).

16. In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. Cons. Stat. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

17. Additionally, the adjudicatory and disposition orders must be vacated because the Court violated Pennsylvania Rules of Juvenile Court Procedure issued by the Pennsylvania Supreme Court to protect M.Y.'s right to counsel at any and all delinquency proceedings.

18. Pennsylvania Rule of Juvenile Court Procedure 152 states, “[a] juvenile may not waive the right to counsel unless: (1) the waiver is knowingly, intelligently and voluntarily made; and (2) the court conducts a colloquy with the juvenile on the record.”

19. The Comment to Rule 152 also specifically provides that “[a] guardian may not waive a juvenile’s right to counsel,” expressly suspending 42 Pa. Cons. Stat. § 6337, which previously allowed parental waiver of counsel.

20. Furthermore, M.Y.’s admission is invalid because it was entered in disregard of her constitutional and statutory rights.

21. The U.S. Constitution requires that an admission be voluntary, knowing and intelligent.

22. Pennsylvania Rule of Juvenile Court Procedure 407, and the comment thereto, states, “Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly” and ask questions on the record to authenticate the juvenile’s understanding.

III. UNLESS THIS COURT GRANTS THIS APPLICATION FOR SUPERSEDEAS, M.Y. WILL SUFFER IRREPARABLE INJURY

23. Unless relief is awarded, M.Y. will be irreparably harmed in that she will remain in residential placement for several months away from her family and community as set forth above. M.Y. has no adequate remedy at law if she is deprived of her liberty and other constitutionally protected rights.

IV. THE ISSUANCE OF A SUPERSEDEAS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

24. The Commonwealth will not be irreparably harmed if a *supersedeas* is granted. The Commonwealth and Petitioner both support juvenile court proceedings that meet constitutional and statutory requirements.

V. THE ISSUANCE OF A SUPERSEDEAS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

25. It is in the public's interest that juveniles are tried with the assistance of counsel and that the admissions of juveniles be voluntary, knowingly and intelligently made.

VI. CONCLUSION

WHEREFORE, M.Y. prays that this Court enter a supersedeas of the April 29, 2008 Orders and immediately release M.Y. from the custody of Youth Services Agency.



Kenya S. Mann, Pa. ID No. 61156
Amy Shellhammer, Pa. ID No. 91804
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 665-8500

Attorneys for M.Y.

Dated: May 5, 2008

BALLARD SPAHR ANDREWS & INGERSOLL, LLP
By: Kenya S. Mann, Pa. ID No. 61156
Amy Shellhammer, Pa. ID No. 91804
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

Attorneys for M.Y.

IN THE INTEREST OF:

M.Y., a juvenile
DOB 6/3/91

COURT OF COMMON PLEAS
LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

JUVENILE NO. 086-2008

**MEMORANDUM OF LAW IN SUPPORT OF M.Y.'S APPLICATION FOR
SUPERSEDEAS**

I. INTRODUCTION

Pursuant to Pennsylvania Rule of Appellate Procedure 1732, M.Y., through her counsel, Juvenile Law Center, submits this Memorandum of Law in support of her Application for *Supersedeas* (or Stay) of the April 29, 2008 Orders of the Luzerne County Court of Common Pleas, Juvenile Division (Court) adjudicating her delinquent; removing her from the custody of her parents, J. and M. Y.; and committing her to a residential treatment program operated by Youth Services Agency. M.Y. files this application for *supersedeas* to immediately suspend the effect of this Court's disposition order while the Superior Court considers her appeal to restore the mandates of due process, the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure.

ROBERT F. REILLY
CLERK OF COURTS
2008 MAY -6 PM 3:12
CRIMINAL DIV.
LUZERNE COUNTY

II. FACTUAL BACKGROUND

On April 29, 2008, the Luzerne County Court of Common Pleas, Juvenile Division, adjudicated sixteen year-year-old M.Y. delinquent after accepting her admission to two violations of the Controlled Substances act -- possessing a small amount of marijuana and possessing drug paraphernalia (35 Pa. Cons. Stat. § 781-113(31) and (32)) -- both of which are ungraded misdemeanors. Disposition immediately followed M.Y.'s adjudicatory hearing, and the Court placed her in a residential treatment facility. At both stages of the April 29th delinquency proceeding, M.Y. appeared before the Court without counsel.

The above proceedings were initiated when Pennsylvania State Trooper Kevin Azaravich filed an Allegation-Complaint alleging that, at 9:00 a.m. on January 30, 2008, Karen Bonomo, a teacher at Hazleton Area High School, informed the school's Vice Principal, Clarence John, that M.Y.'s behavior was sluggish and her pupils were dilated. As a result, school officials questioned M.Y., who allegedly admitted to smoking marijuana that morning. Marijuana and drug paraphernalia were allegedly found during subsequent searches of M.Y.'s possessions and her car. On April 29, 2008, M.Y. appeared before the Honorable Mark A. Ciavarella, Jr. of the Court of Common Pleas of Luzerne County for an adjudication hearing. M.Y. did not have private counsel, nor was she appointed counsel. Prior to the adjudication hearing, J. Y. , M.Y.'s father, signed a written statement waiving his daughter's right to counsel. M.Y. also signed the statement, which was never read or explained to her. The Court did not administer a colloquy with M.Y. on the record to explain the consequences of waiving counsel.

During the adjudication hearing, M.Y. admitted possessing the marijuana and paraphernalia. When she made this admission, she was not represented by counsel. At no time did the Court conduct a colloquy with M.Y. on the record to explain her rights and make a determination as to the appropriateness of her admission. At the conclusion of the hearing, the Court found that M.Y. admitted to the charges involved and adjudicated her delinquent. M.Y.

was committed to a residential treatment facility operated by Youth Services Agency and has been there since April 29, 2008.

III. STANDARD FOR *SUPERSEDEAS*

Pursuant to Pennsylvania Rule of Appellate Procedure 1732, M.Y. seeks a *supersedeas* to suspend the effect of this Court's disposition order while the Pennsylvania Superior Court considers her appeal. The Supreme Court of Pennsylvania, in Commonwealth v. Martorano, 634 A.2d 1063 (Pa. 1993), outlined the criteria for granting a *supersedeas* in criminal matters pending appeal. To obtain a *supersedeas*, M.Y. must establish she is likely to prevail on the merits of her claim and that without such relief she will suffer irreparable harm. Martorano, 634 A.2d at 184-185. The Court must also consider whether the issuance of a *supersedeas* would have a serious adverse effect on other interested parties and whether a *supersedeas* is in the public interest. Id. As set forth below, M.Y. meets all these requirements.

IV. ARGUMENT

A. M.Y. Is Likely To Succeed On The Merits Of Her Claim

This application seeks to restore the mandates of due process. In the landmark decision In re Gault, 387 U.S. 1 (1967), the United States Supreme Court vacated the delinquency adjudication of fifteen-year-old, Gerald Gault. The Court held that accused youth facing the prospect of incarceration have the right to counsel. Gault recognized that a system in which children's interests are not protected is a system that violates due process. Attorneys are needed in the juvenile justice system to assist clients to "cope with problems of law, to make skilled inquiry in the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] . . . has a defense and to prepare and submit." 387 U.S. at 36.

Following Gault, the Pennsylvania General Assembly incorporated these constitutional requirements of due process and the right to counsel for juveniles accused of crimes in its Juvenile Act, which explicitly states that children in Pennsylvania are entitled to

legal representation “at all stages” of delinquency proceedings. 42 Pa. Cons. Stat. § 6337. At a minimum, this means children must have an attorney representing their interests from the detention hearing through the time their delinquency petition is discharged. Moreover, the Pennsylvania Supreme Court recently issued two rules that expressly govern the process by which a juvenile may waive counsel, Pennsylvania Rule of Juvenile Court Procedure 152, and admit to criminal conduct, Pennsylvania Rule of Juvenile Court Procedure 407. Both rules require juvenile courts to ask questions on the record to insure that a juvenile’s waiver of counsel and admission to wrongdoing is knowingly, intelligently and voluntarily made. Id.

Pennsylvania courts adopted the axioms of In re Gault. Six years ago, in a case remarkably similar to the instant matter, a unanimous panel of the Pennsylvania Superior Court, citing In re Gault and Section 6337 of the Juvenile Act, vacated the delinquency adjudication of a juvenile, A.M., because the lower court failed to inform A.M. of his right to counsel. A.M., like M.Y., admitted to criminal conduct without the benefit of counsel. Even though A.M.’s admission was given in the presence of his parents, the Superior Court reversed. The Court held

[a]n admission, the juvenile equivalent of a guilty plea, is a critical stage at which a respondent must be afforded the right to counsel. . . .When a respondent appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and a statutory duty to inform the child of his right to counsel, and his right to have court appointed counsel if he cannot afford representation.

In re A.M., 766 A.2d 1263, 1264 (Pa. Super. 2001) (citations omitted).

Forty years after the Supreme Court’s landmark decision in Gault, and six years after the Superior Court reversed A.M.’s delinquency adjudication in this Court, M.Y. was adjudicated delinquent at a hearing in which she was not afforded the most minimal constitutional protections. Because M.Y.’s adjudicatory and disposition proceedings were constitutionally infirm and violated constitutional law, Pennsylvania statute, and Pennsylvania Rules of Juvenile Court Procedure, the orders of adjudication and disposition must be vacated.

1. M.Y. Has Both a Constitutional and Statutory Right to Counsel At All Stages of Delinquency Proceedings

In failing to afford M.Y. the right to counsel at her adjudicatory and disposition hearings, the Court violated M.Y.'s constitutional and statutory rights to counsel, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Pennsylvania Juvenile Act. U.S. Const. amd. 14; 42 Pa. Cons. Stat. § 6337. Deprivation of the right to counsel can never be harmless error. McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984); Commonwealth v. Payson, 723 A.2d 695, 699-700, 704 (Pa. Super. 1999).

It is well-settled that M.Y. had the right to counsel at both her adjudicatory and disposition hearings. Forty years ago, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment of the United States Constitution guarantees children who are the subject of delinquency proceedings the right to counsel. Gault, 387 U.S. at 36. The Supreme Court wrote:

A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

Id. (footnotes omitted). See also Gideon v. Wainwright, 372 U.S. 335 (1963); In the Interest of A.M., 766 A.2d 1263, 1264 (Pa. Super. 2001) (holding that juveniles have a constitutional right to counsel in delinquency proceedings); In the Interest of A.P., 617 A.2d 764, 767 (Pa. Super. 1992), *aff'd*, 536 Pa. 450, 639 A.2d 1181 (1994) (same); In the Matter of Brandon Smith, 573 A.2d 1077, 1080 (Pa. Super. 1990) (same); In the Matter of Rochelle Bonner, 447 A.2d 1043, 1045 (Pa. Super. 1982) (same).

In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. Cons. Stat. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

Id. (emphasis added).

Thus, when a juvenile appears without counsel at any stage of a delinquency proceeding, the court has both a constitutional and statutory duty to inform the child of her right to counsel and her right to have court-appointed counsel if she cannot afford a lawyer.

2. A Juvenile May Not Waive Her Right to Counsel Unless the Court Conducts a Colloquy on the Record that Makes Her Fully Aware of The Consequences of That Waiver

Waiver of a right guaranteed by the United States Constitution, including the right to counsel, is only valid if made with knowledge and intelligence. Payson, 723 A.2d at 700 (citation omitted). As the Supreme Court recognized more than 50 years ago, when a defendant appears without counsel:

[the Constitutional right to counsel] imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand.... To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances

in mitigation thereof, and all other facts essential to a broad understanding of the whole matter. A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances. . .

Von Moltke v. Gillies, 332 U.S. 708, 723-24 (1948) (holding that defendant's constitutional right to counsel in a criminal prosecution in federal court was violated where trial court failed to obtain a knowing and intelligent waiver from defendant, who appeared without counsel) (citations and internal quotations omitted) (emphasis added).

Pennsylvania courts have consistently held that in order to make a knowing and intelligent waiver, the respondent must be made aware of both the nature of the right and the risks and consequences of forfeiting it. See, e.g., Commonwealth v. Starr, 541 Pa. 564, 581, 664 A.2d 1326, 1335 (1995) (noting that when defendant wishes to proceed pro se, the trial court must conduct a "probing colloquy" into defendant's waiver of counsel, including an inquiry as to whether the defendant understands his right to counsel and is aware of the consequences of waiving that right) (citations omitted); Commonwealth v. Monica, 528 Pa. 266, 273-74, 597 A.2d 600, 603 (1991) (holding that trial court committed reversible error when it allowed defendant to represent himself at trial where court failed to conduct an on-the-record inquiry to determine whether defendant appreciated that he had the right to counsel and the risks of proceeding without counsel) (citations omitted); Commonwealth v. Ritchey, 431 Pa. 269, 272, 245 A.2d 446, 449 (1968) (vacating conviction where petitioner at time of entry of guilty plea was not informed of his right to court-appointed counsel if he was indigent and thus waiver of counsel could not have been knowing and intelligent).

Concern about a juvenile's comprehension of the consequences of waiving the right to counsel led the Supreme Court of Pennsylvania to require an extensive colloquy. Pennsylvania Rule of Juvenile Court Procedure 152 instructs courts not to permit waiver unless "1) the waiver is knowingly, intelligently, and voluntarily made; and 2) the court conducts a

colloquy with the juvenile on the record.” The Comment to Rule 152 recommends that courts, at a minimum, elicit:

1. Whether the juvenile understands the right to be represented by counsel;
2. Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;
3. Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;
4. Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
5. Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;
6. Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;
7. Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and
8. Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

Comment, Pa. R. Juv. Ct. P. 152. The recommended colloquy assures a child’s full awareness of the consequences of waiver.

Moreover, the presumption is always against the waiver of a constitutional right. Monica, 528 Pa. at 273, 597 A.2d at 603; Payson, 723 A.2d at 700 (citation omitted). Waiver cannot be presumed where the record is silent. The record must clearly demonstrate an informed relinquishment of a known right – the accused was offered counsel but intelligently and understandingly rejected the counsel. Monica, 528 Pa. at 273, 597 A.2d at 603; Commonwealth

v. Hill, 492 Pa. 100, 109, 422 A.2d 491, 496 (1980); Payson, 723 A.2d at 700. And where, as in the instant case, the record is silent as to M.Y.'s waiver, the Commonwealth has the burden of proving that the defendant voluntarily and knowingly waived a constitutional right. Monica, 528 Pa. at 273, 597 A.2d at 603; Sheehan, 446 Pa. at 44, 285 A.2d at 470 (citation omitted); Ritchey, 431 Pa. at 275-76, 245 A.2d at 450-51 (1968) (citations omitted). The Court did not conduct any colloquy with M.Y. prior to allowing her to waive her right to counsel. The record shows that rather than giving M.Y. the right to make an informed waiver of counsel, her father waived on her behalf and she was permitted to sign a waiver form that she did not understand.

3. A Parent or Guardian Cannot Waive a Juvenile's Right to Counsel

The waiver of counsel made by M.Y.'s mother is plainly improper. The Pennsylvania Rules of Juvenile Court Procedure specifically instruct that even in the presence of a parent or guardian, the child must still make the waiver of her right to counsel on her own. Pa. R. Juv. Ct. P. 152. "A guardian may never waive the juvenile's right to counsel." Comment, Pa. R. Juv. Ct. P. 152. Although M.Y.'s mother signed a written statement waiving H.T's right to counsel, this practice is explicitly prohibited by the Rules of Juvenile Court Procedure. The Supreme Court suspended Section 6337's provision allowing a parent or guardian to waive counsel for his/her child, stating "waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile." Comment, Pa. R. Juv. Ct. P. 152. M.Y.'s father had no legal knowledge to waive M.Y.'s right to counsel. Furthermore, a parent cannot substitute for an attorney in providing the child with guidance on the legal matters with which she is confronted.

4. A Juvenile Cannot Admit to the Facts of a Delinquency Adjudication Unless the Court Conducts a Colloquy to Determine the Admission Is Made Voluntarily and Knowingly

In addition to violating M.Y.'s right to counsel when accepting her admission in the absence of counsel, the court violated another well-settled principle of constitutional law – admissions from juveniles must be voluntary, knowing, and intelligent.

Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); Boykin v. Alabama, 395 U.S. 238, 242-43 (1969). See also Gault, 387 U.S. at 55 (“If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.”) (emphasis added). The constitutional standard for determining whether an admission is voluntarily and intelligently made is the same as that which governs the waiver of any constitutional right – the respondent’s admission must be an “intentional relinquishment or abandonment of a known right or privilege.” Commonwealth v. Hines, 496 Pa. 555, 559-60, 437 A.2d 1180, 1182 (1981) (citing Boykin, 395 U.S. at 243 n.5 (internal citation omitted)).

For an admission to be voluntary, knowing, and intelligent under the United States Constitution, a child must be informed, at a minimum, of the following: (1) that she has a right to counsel and to have the court appoint counsel if she can’t afford to hire an attorney; (2) that she has the right to remain silent; (3) that she has the right to an evidentiary hearing where she would have, inter alia, (a) the right to counsel, (b) the right to present evidence, (c) the right to cross-examine government witnesses, (d) the right to challenge the government’s evidence, and (e) the right to appeal from a final judgment of the court; (4) that she is presumed innocent until proven guilty by the government; (5) that she would be waiving these constitutional rights if he entered an admission; and (6) the possible dispositions that the court could impose if he enters an admission. Boykin, 395 U.S. at 243; Hill v. Beyer, 62 F.3d 474, 480-81 (3d Cir. 1995) (citing Boykin, supra).

Pennsylvania law is in accord with this standard. See, e.g., Commonwealth v. Hallock, 722 A.2d 180, 182 (Pa. Super. 1998). See also 42 Pa. Cons. Stat. § 6338 (stating that party to juvenile proceeding has, inter alia, the right to introduce evidence and cross examine witnesses, and the right against self-incrimination). Furthermore, the Rules of Juvenile Court Procedure direct juvenile courts to elicit specific information to determine if the child’s admission is voluntarily and knowingly made:

1. Does the juvenile understand the nature of the allegations to which he or she is admitting?
2. Is there a factual basis for the admission?
3. Does the juvenile understand that he or she has the right to hearing before the judge?
4. Does the juvenile understand that he or she is presumed innocent until found delinquent?
5. Is the juvenile aware of the dispositions that could be imposed?
6. Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
7. Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?
8. Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
9. Has the juvenile had the opportunity to speak with a guardian about his or her decision?

Pa. R. Juv. Ct. P. 407(A)(1). The Comment to this Rule permits juvenile courts to use a written admission form, provided the questions are asked "on the record" to authenticate the juvenile's completion and understanding of the form and the juvenile's agreement with the statements made. Comment, Pa. R. Juv. Ct. P. 407. In the instant matter, there is no evidence M.Y. received such a colloquy prior to her admission. She received no paperwork reviewing the consequences of her admission. Even in what little colloquy did take place, the court did not advise M.Y. of her constitutional rights and that she would be giving up these rights if she entered an admission. The court failed to apprise her of the possible dispositions that the court could impose if she pled guilty. Nothing in the record indicated that M.Y. was elsewhere informed of these rights, or that she understood these rights. Moreover, because M.Y. was denied the right to counsel, she certainly did not have counsel to explain her rights and the possible consequences she faced by admitting her involvement.

B. M.Y. Will Suffer Irreparable Injury

Unless this Court grants M.Y.'s Application for *Supersedeas*, she will suffer irreparable injury by remaining in residential placement for an indeterminate amount of time, away from her family and community. It is well-settled that juveniles retain a substantial liberty interest in not being confined unnecessarily. See, e.g., In the Interest of Davis, 377 Pa. Super 46, 52 546 A.2d 1149, 1153 (1988) (stating that a juvenile has the same substantial interest in retaining his liberty as an adult).

Although an appeal has already been filed, an order of *supersedeas* is required because of the delay associated with appellate review. While waiting for an order of appellate review, M.Y. will have already suffered irreparable injury: removal from her parents' home and placement in a juvenile residential treatment facility pursuant to an unlawful adjudication of delinquency. M.Y. has no other adequate remedy at law if she is deprived of her liberty and other constitutionally protected rights

C. The Commonwealth Will Not Be Substantially Harmed by the Issuance of M.Y.'s Application for *Supersedeas*, and the Granting of Such Relief is in the Public's Interest

The Commonwealth will not be irreparably harmed if the delinquency adjudication is vacated. The Commonwealth supports juvenile court proceedings that meet constitutional and statutory requirements. Proceedings should be reviewed to assure that fundamental constitutional rights are not disregarded as they were in the case of M.Y.'s adjudication and disposition. As the United States Supreme Court recognized in Goss v. Lopez, unwarranted violations of constitutional rights promote no interests of the State. 419 U.S. 565, 579 (1975).

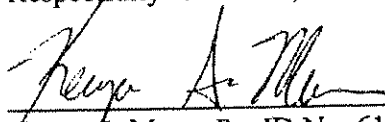
Finally, it is in the public's interest that juveniles are tried in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including the assistance of counsel and admissions of juveniles made voluntarily, knowingly and intelligently. In this case,

M.Y. was adjudicated without these constitutional and statutory rights, and therefore it would not serve the interest of the public to adjudicate her delinquent unlawfully and commit her to a residential treatment facility based upon that unlawful adjudication.

III. CONCLUSION

WHEREFORE, M.Y. prays that this Court enter a *supersedeas* for the April 29, 2008 Orders and immediately releases M.Y. from the custody of Youth Services Agency.

Respectfully submitted,



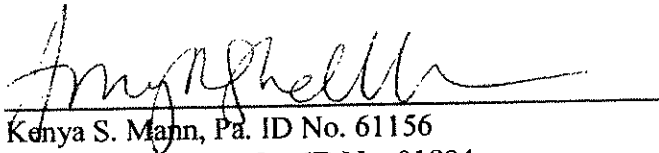
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Philadelphia, PA 19103-7599
(215) 665-8500

Attorneys for M.Y.

Dated: May 5, 2008

VERIFICATION

Amy Shellhammer, Esq., being duly sworn according to law, verifies that the information contained in the foregoing Application for Supersedeas and Memorandum of Law is true and correct to the best of her knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.



Kenya S. Mann, Pa. ID No. 61156
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(215) 665-8500

Attorneys for M.Y.

Dated: May 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing Application for Supersedeas and supporting Memorandum of Law to be served upon the persons indicated below by Federal Express and by first class mail, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

The Honorable Mark A. Ciavarella
Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Court Reporter's Office
Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Clerk of Courts
Court of Common Pleas, Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Luzerne County Juvenile Probation
Luzerne County Courthouse
Penn Place
20 North Pennsylvania Avenue
Wilkes-Barre, PA 18711


Amy Shellhammer

Dated: May 5, 2008

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF:

M.Y., A Juvenile

:
:
:
:
:
:

Juvenile No. 086-2008

PROPOSED ORDER

AND NOW, this ____ day of May 2008, upon consideration of M.Y.'s Petition for Writ of Habeas Corpus, it is hereby ORDERED that M.Y.'s Petition is GRANTED, a Writ of Habeas Corpus is ISSUED, and this Court's April 29, 2008 Orders of adjudication and disposition are VACATED. M.Y. is to be released from the custody of Youth Services Agency and returned to her parents, J _____ and M: _____ Y: _____

BY THE COURT:

The Hon. Mark A. Ciavarella, Jr.

Copies to:

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Attorneys for M.Y.

IN THE INTEREST OF:

M.Y., a juvenile
DOB 6/3/91

COURT OF COMMON PLEAS
LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

JUVENILE NO. 086-2008

PETITION FOR WRIT OF HABEAS CORPUS

M.Y.,¹ through her counsel, submits this Petition for Writ of Habeas Corpus challenging the legality of her detention in a juvenile residential treatment facility following this Court's April 29, 2008 Order adjudicating her delinquent; removing her from the custody of her parents, J. [redacted] and M. [redacted] Y. [redacted] and committing her to placement in a facility operated by Youth Services Agency (formerly "Camp Adams"). M.Y. files this Petition to request immediate review of her detention and vacate the underlying adjudication of delinquency. In support of this petition M.Y. states as follows:

1. This Court has authority to entertain this Petition for Writ of Habeas Corpus pursuant to Pennsylvania Rule of Juvenile Court Procedure 125.

ROBERT F. REILLY
CLERK OF COURTS
MAY -6 PM 3:13
CRIMINAL DIV.
LUZERNE COUNTY

¹ Typically the full names of children involved in delinquent matters are kept confidential.

I. FACTUAL BACKGROUND

2. On January 30, 2008, Pennsylvania State Trooper Kevin Azaravich entered an Allegation-Complaint charging M.Y. with possession of a small amount of marijuana and possession of paraphernalia, in violation of 35 Pa. Cons. Stat. § 780-113(31) and (32) (ungraded misdemeanors).

3. The Allegation-Complaint alleges that at 9:00 a.m. on January 30, 2008, Karen Bonomo, a teacher at Hazleton Area High School, informed the school's Vice Principal, Clarence John, that M.Y.'s behavior was sluggish and her pupils were dilated. As a result, school officials questioned M.Y., who allegedly admitted to smoking marijuana that morning. Marijuana and drug paraphernalia were allegedly found during searches of M.Y.'s possessions and her car.

4. On April 29, 2008 M.Y. appeared before the Honorable Mark A. Ciavarella, Jr. of the Court of Common Pleas of Luzerne County, Juvenile Division (Court) for a delinquency adjudication hearing without counsel.

5. On April 29, 2008, prior to the adjudication hearing, Joseph T. [redacted], father of M.Y., signed a written statement waiving his daughter's right to counsel.

6. M.Y. also signed the statement, which was never read or explained to her.

7. During the adjudication hearing the Court did not ascertain whether M.Y. knew she had the right to counsel, nor did the Court perform a colloquy or obtain an affirmative waiver of counsel from M.Y.

8. During the adjudication hearing, the Court did not inquire as to whether M.Y.'s admission to the underlying criminal charges was voluntarily and knowingly made.

9. M.Y. did not have the advice of counsel during the entry of her admission.

10. At the conclusion of the hearing, the Court found that M.Y. admitted to the charges of possessing marijuana and drug paraphernalia and adjudicated her delinquent.

11. Immediately following the adjudicatory hearing, the Court ordered that M.Y. be placed outside her parents' home. Specifically, the Court committed M.Y. to Youth Services Agency—a residential treatment facility for juveniles—for an indeterminate period of time.

12. M.Y. did not have the advice of counsel during the disposition hearing.

13. On May 6, 2008 M.Y. filed a Notice of Appeal, which has been docketed in this Court.

II. M.Y. IS LIKELY TO PREVAIL ON THE MERITS OF HER APPEAL

14. M.Y.'s confinement is the collateral result of an improper adjudication of delinquency.

15. The adjudicatory and disposition orders must be vacated because the Court violated M.Y.'s constitutional and statutory rights to counsel at all stages of her delinquency proceedings.

16. M.Y. has a constitutional right to counsel guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *In re Gault*, 387 U.S. 1 (1967).

17. In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. Cons. Stat. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

18. The adjudicatory and disposition orders must be vacated because the Court violated Pennsylvania Rules of Juvenile Court Procedure issued by the Pennsylvania Supreme Court to protect M.Y.'s right to counsel at any and all delinquency proceedings.

19. Pennsylvania Rule of Juvenile Court Procedure 152 states, “[a] juvenile may not waive the right to counsel unless: (1) the waiver is knowingly, intelligently and voluntarily made; and (2) the court conducts a colloquy with the juvenile on the record.”

20. The Comment to Rule 152 also specifically provides that “[a] guardian may not waive a juvenile’s right to counsel,” expressly suspending 42 Pa. Cons. Stat. § 6337, which previously allowed parental waiver of counsel.

21. Furthermore, M.Y.’s admission is invalid because it was entered in disregard of her constitutional and statutory rights.

22. The U.S. Constitution requires that an admission be voluntary, knowing and intelligent.

23. Pennsylvania Rule of Juvenile Court Procedure 407, and the comment thereto, states, “Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly” and ask questions on the record to authenticate the juvenile’s understanding.

24. Furthermore, M.Y.’s detention is inconsistent with the purposes of the Pennsylvania Juvenile Act. The detention of a juvenile is governed under the Juvenile Act, 42 Pa. Cons. Stat. § 6352, stating that a court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation of the child. M.Y.’s confinement, a result of an improper adjudication of delinquency, does not protect the public and will not further M.Y.’s rehabilitation.

III. UNLESS THIS COURT GRANTS THIS PETITION FOR WRIT OF HABEAS CORPUS, M.Y. WILL SUFFER IRREPARABLE INJURY

25. Unless relief is awarded, M.Y. will be irreparably harmed in that she will remain in residential placement for several months away from her family and community as set forth above. M.Y. has no adequate remedy at law if she is deprived of her liberty and other constitutionally protected rights.

IV. THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

26. The Commonwealth will not be irreparably harmed if M.Y. is released from detention and the underlying delinquency adjudication is vacated. The Commonwealth and Petitioner both support juvenile court proceedings that meet constitutional and statutory requirements.

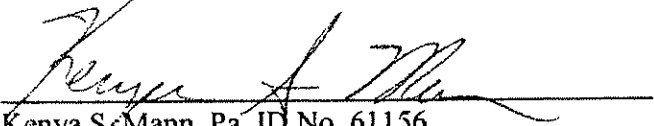
V. THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

27. It is in the public's interest to assure that the confinement of juveniles is limited to instances where there is a concern for public safety, or when confinement is necessary to promote the rehabilitation of the child. M.Y. presents no threat to public safety, and her adjudication was improperly imposed; therefore, she requires no rehabilitation through the juvenile justice system.

28. It is in the public's interest that juveniles are only detained when provided with the full panoply of constitutional and statutory rights -- including the assistance of counsel to assure that admissions, if made, are voluntary, knowing and intelligent.

VI. CONCLUSION

WHEREFORE, M.Y. prays that this Court enter a writ of habeas corpus to immediately release M.Y. from confinement and vacate the underlying adjudication and disposition Orders entered by this Court on April 29, 2008.


Kenya S. Mann, Pa. ID No. 61156
Amy Shellhammer, Pa. ID No. 91804
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 665-8500

Attorneys for M.Y.

Dated: May 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing Petition for Writ of Habeas Corpus to be served upon the persons indicated below by Federal Express and by first class mail, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:


District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

The Honorable Mark A. Ciavarella
Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Court Reporter's Office
Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Clerk of Courts
Court of Common Pleas, Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Luzerne County Juvenile Probation
Luzerne County Courthouse
Penn Place
20 North Pennsylvania Avenue
Wilkes-Barre, PA 18711



Amy Shellhammer

Dated: May 5, 2008

Aug. 25, 2008 3:48PM

DL-119 (1-01)



REPORT OF THE JUVENILE COURT SHOWING THE DISPOSITION OF ANY VIOLATION OF THE VEHICLE CODE OR ORDER OF COURT REQUIRING THE DEPARTMENT TO SUSPEND OR REVOKE A JUVENILE'S OPERATING PRIVILEGE

No. 2658 b/p. 2/8

DEFENDANT REQUESTS ADDRESS CHANGE
 AMENDED REPORT Adjudication

Vacated

DEFENDANT INFORMATION (Please Print or Type)

A

| | | | | | | |
|--|--------|----------|------------------------|---------------|------|-------------|
| NAME | | | SEX | DATE OF BIRTH | | |
| FIRST | MIDDLE | LAST | F | MONTH | DAY | YEAR |
| M | L | Y | | 6 | 3 | 91 |
| ADDRESS (PO Box Number may be used in addition to the actual address, but cannot be used as the only address.) | | | | | | |
| 137 Valley View Drive | | | | | | |
| CITY | STATE | ZIP CODE | SOCIAL SECURITY NUMBER | | | |
| Sugarloaf | PA | 18249 | 1 | 9 | 8 | 7 2 1 4 9 8 |
| DRIVER NUMBER | | STATE | LICENSE PLATE NUMBER | | YEAR | STATE |
| 29 358 401 | | PA | | | | |

VIOLATION INFORMATION

B

Check this block if the offense occurred while driving a Commercial Vehicle. Check this block if the offense occurred while transporting a Hazardous Material required to be Placarded.

DATE OF VIOLATION: MONTH 2, DAY 25, YEAR 08. DATE OF HEARING: MONTH 4, DAY 29, YEAR 08. Check if Consent Decree Adjudication Vacated Check if Adjudication of Delinquency

CHARGE: Possession of a controlled substance

THE VEHICLE CODE: Act of June 17, 1978 P.L. 162 as amended. SECTION: SUBSECTION: CLAUSE:

ANY OTHER LAW: Act of SECTION: SUBSECTION: CLAUSE:

THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT: POSSESSION OR USE DELIVERY OR SALE TYPE OF DRUG OR DEVICE USED: Marijuana SECTION & SUBSECTION: 780-113(A) (16)

SUSPENSION INFORMATION

C

| | | | | | |
|--------------------|------------------------------|--|-------|------|------|
| TERM OF SUSPENSION | EFFECTIVE DATE OF SUSPENSION | DATE LICENSE OR Acknowledgment SURRENDERED | MONTH | DAY | YEAR |
| MONTH | DAYS | MONTH | DAY | YEAR | |
| | | TO COURT OR DISTRICT ATTORNEY | | | |

VIOLATION COMMITTED (check one):
Summary Misdemeanor Felony

Order of Court: PLEASE ATTACH ORDER Adjudication Vacated

Contact Person and Phone Number:
Pamela Jugus (570)408-8203

E COURT INFORMATION

COURT OF Juvenile

COUNTY OF Luzerne

JUVENILE NUMBER 08-89

YEAR 2008

D SIGNATURE AND DATE CERTIFIED

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING IS A CERTIFIED RECORD.

SEAL

Clerk of Courts or Juvenile Court Judge

Date Certified 8/25/08

F ACT 122 TREATMENT REQUIRED (Check One)
 YES NO

G ACT 63 IGNITION INTERLOCK REQUIRE (Check One)
 YES NO

FOR DEPARTMENT USE ONLY

SEE BACK OF THIS FORM FOR INSTRUCTIONS

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
JUVENILE DIVISION
COURT ORDER

Docket No. JV086-2008

RE: M
DOB: 6/3/91

Date of Hearing: 5/13/08
TYPE OF HEARING:

- DELINQUENT CHILD
- DEPENDENT CHILD
- DELINQUENT/DEPENDENT CHILD
- INFORMAL ADJUSTMENT GRANTED
- CONSENT DECREE GRANTED
- CASE DISMISSED

- ADJUDICATION (DISPOSITION LATER DATE)
- ADJUDICATION & DISPOSITION
- DISPOSITION
- DETENTION / DETENTION SERVICE PLAN
- DETENTION REVIEW HEARING
- PLACEMENT / DISPOSITIONAL REVIEW
- VIOLATION OF PROBATION REVIEW
- OTHER Habeas Corpus Hearing

ORIGINAL CHARGE: _____
Date: _____

CURRENT CHARGE and/or VIOLATION: Possession of Drug Paraphernalia ; Possession of Small Amount of Marijuana
Date: 2/25/08

Please note parents are responsible for all program costs and any fees associated with Probation of their child.

The following is the Juvenile Probation Department's recommendation for the above named juvenile:

- Committed to YOUTH SERVICES AGENCY - ACT Program.
- Committed to YOUTH SERVICES AGENCY - FACT Program.
- Committed to _____
- Released from Youth Services Agency FACT Program
- Continued in foster care / placement at _____

It is ordered that said foster care is a determination that continuation in his/her residence would be contrary to the welfare of the child; and said foster care is necessary because reasonable efforts were made prior to the foster care to prevent or eliminate the need for removal of this child from his/her home. It is not in the best interest of the child's development to remain in the home.

It is ordered that said foster care is a determination that continuation in his/her residence would be contrary to the welfare of the child; and said foster care is necessary because reasonable efforts were not made prior to the foster care to prevent or were not required due to the emergency nature of the situation, safety, and circumstances of the family or eliminate the need for removal of this child from his/her home. It is not in the best interest of the child's development to remain in the home.

Luzerne County Juvenile Probation Department and Luzerne County Children & Youth Services equally share all foster care / placements costs and case management responsibility while child remains in foster care / placement.

- Remanded to the LUZERNE COUNTY JUVENILE DETENTION CENTER for:
 - forensic psychological evaluation conducted by the staff psychologist at Detention (See attached Forensic Evaluation Order) - parents/guardians to assume cost
 - drug/alcohol evaluation conducted by Court Advocate Program at the Detention Center - parents/guardians to assume cost
 - further planning and/or placement / foster care
 - other _____
 - Detention Plan: attend school & medical exam

Parent(s)/guardian(s) to contribute financial support toward their child's detention/foster care/placement costs as determined by the Court and/or Juvenile Probation Dept. Parent(s)/guardian(s) responsible for child's medical and dental coverage before and during commitment as well as any/all clothing needs while he/she remains in foster care/placement.

Re: M Y

Date: 5/13/08

Released into the custody of Parents J and M
 NO PROBATION.

Conditions of Probation:

- Transfer disposition to _____ County Juvenile Court.
- Participate in the Weekender Program at _____ for _____ weekends.
Parent(s)/Guardian(s) responsible for cost of said Weekender Program.
- Luzerne County Juvenile Probation Office and Luzerne County Children & Youth Services will share case management responsibility for the child/family while child is in the community.
- TRAACS Program (Youth Services Agency of Pennsylvania).
- Curfew: Sunday through Thursday _____ Friday and Saturday _____
- Special terms: _____
- Cooperate with JPO staff psychologist for a forensic psychological evaluation to be conducted at the Juvenile Probation Office (See attached Forensic Evaluation Order). Parent(s)/guardian(s) responsible for cost of said evaluation.
- Placed on an electronic monitor. Permission to be out for work, school, medical, counseling and church.
Parent(s)/Guardian(s) responsible for all costs/damages/repairs of said electronic monitoring system.
- Cooperate with random blood, breath and urine testing to be conducted by the Juvenile Probation Office.
- Attend AA/NA meetings. Special terms: _____
- Placed on SCRAM monitor. Parent(s)/Guardian(s) responsible for all costs/damages/repairs of said monitoring system.
- Perform _____ hours of community service at a site to be determined by the Juvenile Probation Office.
Special terms: _____ TRAACS _____ Community Action Program.
- Not to apply for an operator's license without permission of the Court OR surrender operator's license to the Court.
- Operator's license restricted for work purposes only.

Cooperate with the following agencies and follow any/all recommendations
(PARENT(S)/GUARDIAN(S) RESPONSIBLE FOR COST OF ANY/ALL EVALUATIONS/SERVICES):

- Children's Service Center:
 - psychological evaluation
 - psychiatric evaluation
 - outpatient services
 - Functional Family Therapy
 - Type 50 support services
 - All reports, evaluations, etc. are to be submitted by the agency to the Juvenile Probation Office.

Re: M. Y.

Date: 5/13/08

Northeast Counseling
 psychological/psychiatric evaluation
 outpatient services
 All reports, evaluations, etc. are to be submitted by the agency to the Juvenile Probation Office.
 Forensic Program

Wyoming Valley Alcohol and Drug Services for an Evaluation/Treatment and follow all recommendations
 Clear Brook Inc. for an Evaluation/Treatment and follow all recommendations
 Clear Brook Inc. Aftercare and follow all recommendations

Catholic Social Services Court Advocate Program The Bridge Youth Services

Luzerne Co. Probation Services Underage Drinking / Highway Safety Program

Lower Luzerne County Alcohol and Drug Services (Serento Gardens)

Participate in the CYC Rise To A New Life Program

Obtain employment within days

Other: _____

All agency reports are to be sent on a monthly basis to the Juvenile Probation Office.

Pay restitution/fines; and if he/she secures employment, he/she is directed to pay 75% of his/her earnings until the restitution/fine obligation has been fulfilled in accordance with Section 6352 of the Juvenile Act. Parent(s)/guardian(s) shall be responsible for their child's restitution to the extent that is allowable under the Parental Liability Act. Also, directed to comply with Act 12 of 1995, a Judgement Order for said restitution will be entered in the Prothonotary's Office of Luzerne County: A wage attachment may be ordered to help defray the cost of restitution.

Amount ordered \$ _____ . Payment to be received within _____ .

Pay all Court related costs immediately.

PROBATION SUPERVISION FEE: Ordered to pay \$35.00 per month payable at the end of each month.

SEE PARENT COURT ORDER for appropriate participation/directives.

Report for fingerprinting / photograph.

DNA Sample ordered.

Evidence to be destroyed.

Money seized is to be placed in the arresting law enforcement agency's drug fund.

SPECIAL CONDITIONS:

M. Y. was released from the Youth Services Agency FBCT Program following a habeas corpus hearing. M. Y. was released into the custody of parents Jess and M. Y.
An adjudication hearing has been scheduled for Wednesday 5/14/08 at 9:30am.

Re: M Yc

Date: 5/13/08

Additional Probation Conditions:

Probation is an opportunity to prove that I can modify and improve my behavior with the help of my parents, the community and my probation officer. I understand that Probation is a privilege granted by the Judge and can be revoked at any time depending upon the seriousness of violation of my probation/parole rules. Also, I realize that compliance with all rules is necessary for my successful adjustment.

I must obey all Laws - Federal, State and Local. I must reside with those individuals to whom the Court has entrusted my custody. I must stay away from all victims/witnesses. I must not associate with accomplices. I must inform the Court of any change in residence, and I must notify my Probation Officer of any change of telephone number. I must obtain permission from the Chief Probation Officer prior to leaving Luzerne County. I must not possess any type of weapon or firearm. Hunting is not permitted without special permission of the Chief Probation Officer. I must refrain from the use of all illegal substances. I must attend school, job training or obtain a job. Also, I realize that failure to comply with the terms of my probation/parole may result in appropriate action to be decided by the Court. Further, I understand that I am not released from Probation/Parole until I have received a letter from the Court notifying me of my release.

You are subject to Search and Seizure Procedures.

Absent effective preventive services the child will be removed from the home, and foster care is the planned arrangement for the child.

Parent(s)/Guardian(s) are hereby ordered to provide the following information to the Luzerne County Juvenile Probation Office within five (5) days of this order:

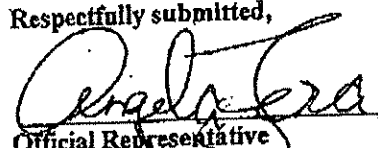
- * Birth Certificate
- * Social Security Card and/or INS Documentation
- * Financial Information (Pay Stubs, W-2 forms, Bank Statements, Social Security Verification, Child Support Payment Information; if Self Employed, please furnish Income Tax Return)
- * Insurance Information

Juvenile Probation Officer

N/A

Telephone No.: _____

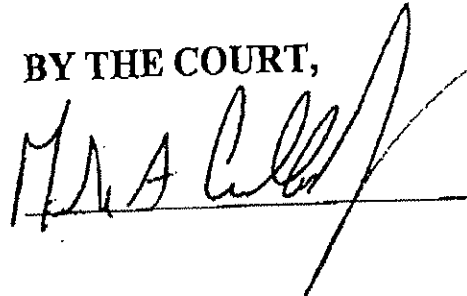
Respectfully submitted,



Official Representative
Luzerne Co. Dept of Probation Services
Juvenile Division

(W-B: 570-825-1552) (Hazleton: 570-459-6500)

BY THE COURT,



P. J.

Exhibit E

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF

S.S, A Juvenile

:
:
:
:
:

Docket No. JV 477-2007

PETITION FOR WRIT OF *HABEAS CORPUS*

S.S., through his counsel, Juvenile Law Center, submits this Petition for a Writ of *Habeas Corpus* challenging the legality of his commitment at Glenn Mills School, a residential program for delinquent youth located in Delaware County Pennsylvania. On November 14, 2007, the Luzerne County Juvenile Court adjudicated S.S. delinquent; removed him from the custody of his mother, R.K.; and committed him to placement. S.S. requests immediate review of his commitment and that the adjudication and disposition orders be vacated. In support of this Petition S.S. states as follows:

1. This Court has authority to entertain this Petition for a Writ of *Habeas Corpus* pursuant to Pennsylvania Rule of Juvenile Court Procedure 125.²

FACTUAL BACKGROUND

2. In October 2007, S.S. was the subject of a delinquency hearing in the Dauphin County Court of Common Pleas, Juvenile Division (Dauphin County Juvenile Court). The delinquency petition alleged that S.S. violated several provisions of the Crimes Code: 18 Pa.C.S. 3921 (Theft by Unlawful Taking or Disposition), 18 Pa.C.S. § 3928

¹ Typically the full names of children involved in delinquent matters are kept confidential. Hereinafter, references to the child will be initialized as "S.S."

² Rule 125 (Habeas Corpus) states: "A. The petition for writ of habeas corpus challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered. B. The clerk of court shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive."

Drive w/o

(Unauthorized Use of an Automobile), 18 Pa.C.S. § 4906 (False Reports to Law Enforcement); and, that S.S. required treatment, supervision and rehabilitation pursuant to Section 6202 of the Juvenile Act.

3. At the October 2007 delinquency hearing in Dauphin County, S.S. was represented by counsel and the Dauphin County Juvenile Court accepted S.S.'s counseled admission to § 3928 (Unauthorized Use of an Automobile) and § 4906 (False Reports to Law Enforcement).
4. The Court transferred the case to the Luzerne County Court of Common Pleas, Juvenile Division (Luzerne County Juvenile Court) because S.S. was a resident of Luzerne County.
5. On November 14, 2007, S.S. appeared, without counsel, before the Honorable Mark A. Ciavarella, Jr. of the Luzerne County Juvenile Court for a combined delinquency adjudication/disposition hearing.
6. During the hearing in Luzerne County S.S. did not have counsel. Further the Luzerne County Juvenile Court did not ascertain whether S.S. knew he had the right to counsel, nor did the Court obtain an affirmative waiver of counsel from S.S. on the record.
7. At the hearing, the Luzerne County Juvenile Court adjudicated S.S. delinquent and ordered him placed outside his mother's home.
8. S.S. was subsequently sent by Luzerne County Juvenile Court to Glenn Mills School—a residential treatment facility for juveniles—for an indeterminate period of time.

S.S. IS LIKELY TO PREVAIL ON THE MERITS OF THIS APPEAL

9. S.S.'s confinement is the result of an improper adjudication and disposition.
10. The adjudicatory and disposition orders must be vacated because the Luzerne County

Juvenile Court violated S.S.' constitutional and statutory rights to counsel at all stages of his delinquency proceeding.

- a. S.S. has a constitutional right to counsel guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- b. In Pennsylvania, a juvenile's constitutional right to counsel has been codified in the Juvenile Act, 42 Pa. C.S. § 6337, which states in relevant part:

[A] party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

11. In this instance the adjudicatory and disposition orders must be vacated because the Luzerne County Juvenile Court violated the Pennsylvania Rules of Juvenile Court Procedure issued by the Pennsylvania Supreme Court to protect S.S.' right to counsel at any and all delinquency proceedings.
12. Pennsylvania Rule of Juvenile Court Procedure 152 states, "A juvenile may not waive the right to counsel unless: (1) the waiver is knowingly, intelligently and voluntarily made; and (2) the court conducts a colloquy with the juvenile on the record."
13. Furthermore, S.S.' commitment is inconsistent with the purposes of the Pennsylvania Juvenile Act. The commitment of a juvenile is governed under the Pennsylvania Juvenile Act at 42 Pa. C.S. § 6352, stating that the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation of the child. S.S.' confinement, a result of an improper adjudication of delinquency, is inconsistent with the protection of the public, and will not further his rehabilitation.

UNLESS THIS COURT GRANTS THIS PETITION FOR WRIT OF HABEAS CORPUS, S.S. WILL SUFFER IRREPARABLE INJURY

14. Unless relief is awarded, S.S. will be irreparably harmed in that he will remain in residential placement an indeterminate amount of time away from his family and community as set forth above. S.S. has no adequate remedy at law if he is deprived of his liberty and other constitutionally protected rights.

THE ISSUANCE OF HABEAS CORPUS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

15. The Commonwealth will not be irreparably harmed if S.S. is released from commitment and the underlying delinquency adjudication is vacated. The Commonwealth supports juvenile court proceedings that meet constitutional and statutory requirements.

THE ISSUANCE OF HABEAS CORPUS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

16. It is in the public's interest to assure that the confinement of juveniles is limited to instances where there is a concern of public safety, or when necessary to promote the rehabilitation of the child. Granting this Petition for *Habeas Corpus* does not threaten public safety.

17. It is in the public's interest that juveniles are only committed when tried with the full panoply of constitutional and statutory rights – including assistance of counsel and admissions made voluntarily, knowingly and intelligently.

CONCLUSION

18. WHEREFORE, S.S. prays that this Court grant S.S.' Petition for Writ of *Habeas Corpus*, vacate the underlying adjudication and disposition orders of the Court of Common Pleas of Luzerne County, and immediately release S.S. from confinement.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Marsha Levick, Esq. (Attorney Id. No. ~~77585~~)

(22535)

Attorneys for Stephan Smith
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Date: July 23, 2008

VERIFICATION

Laval S. Miller-Wilson, Esq., being duly sworn according to law, verifies that the information contained in the Petition of S.S. for a Writ of *Habeas Corpus* is true and correct to the best of his knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Dated: July 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2008 I served by first class mail, this Petition for a Writ of *Habeas Corpus* upon the persons indicated below, which service satisfies the requirements of Rule 345 of the Pennsylvania Rules of Juvenile Court Procedure:


Jeffrey Tokach
District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

The Hon. David W. Lupas
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Clerk of Courts
The Court of Common Pleas of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Luzerne County Juvenile Probation
Penn Place Bldg.
20 North Penn Ave.
Wilkes-Barre, PA 18702

Jon Ursiak, Esq.
Luzerne County's Public Defender Office
20 North Penn Avenue, Suite 235
Wilkes-Barre PA 18701



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Attorney for Kevin Williamson
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF

S.S., A Juvenile

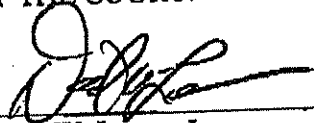
:
:
:
:
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Juvenile No. 2007-⁴⁷⁷~~7~~

PROPOSED ORDER

AND NOW, this 31st day of July 2008, upon consideration of S.S.' Petition for Writ of *Habeas Corpus*, it is hereby ORDERED that the Petition is GRANTED. The delinquency adjudication and disposition of November 14, 2008 is vacated. S.S. shall be released from his commitment at Glenn Mills School immediately. An adjudication hearing is hereby scheduled for August 5, 2008 at 9:30 AM at Penn Place Bldg, 20 North Pennsylvania Ave., Wilkes-Barre, PA

BY THE COURT:



David W. Lupas, J.

ROBERT F. REILLY
CLERK OF COURT

2008 JUL 31 AM 10:02

JUDICIAL DIV.
LUZERNE COUNTY

Exhibit F

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
11TH JUDICIAL DISTRICT
JUVENILE SECTION

IN THE INTEREST OF :
: **Juvenile No. 2007-74**
K.W., A Juvenile :
:

PETITION FOR WRIT OF *HABEAS CORPUS*

K.W. through his counsel, Juvenile Law Center, submits this Petition for a Writ of *Habeas Corpus* challenging the legality of his commitment at Camp Adams following this Court's April 22, 2008 Order adjudicating him delinquent; removing him from the custody of his mother, S.M.; and committing him to placement. K.W. files this petition to request immediate review of his commitment and vacate the underlying adjudication of delinquency. In support of this motion K.W. states as follows:

1. This Court has authority to entertain this petition for writ of *habeas corpus* pursuant to Pennsylvania Rule of Juvenile Court Procedure 125.²

FACTUAL BACKGROUND

2. On April 22, 2008 K.W. appeared before the Honorable Mark A. Ciavarella, Jr. of the Court of Common Pleas of Luzerne County, Juvenile Division (Court) for a delinquency adjudication hearing.
3. K.W. was charged with simple assault, a misdemeanor of the second degree.
4. During the April 22nd hearing, the Court did not determine whether K.W.'s admission

1 Typically the full names of children involved in delinquent matters are kept confidential. Hereinafter, references to the child will be initialized as "K.W."

2 Rule 125 (Habeas Corpus) states: "A. The petition for writ of habeas corpus challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered. B. The clerk of court shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive."

was voluntarily and knowingly. See Transcript of Proceedings, April 22, 2008, In the Interest of K.W. (attached).

5. K.W. was represented by Assistant Public Defender, Cheryl Sobeski-Reedy. Based on information and belief, Attorney Sobeski-Reedy did not explain K.W.'s rights and the possible consequences he faced by admitting his involvement. Attorney Sobeski-Reedy entered an admission to the charge of simple assault and the Court adjudicated K.W. delinquent.
6. Immediately following the adjudicatory hearing, the Court ordered that K.W. be placed outside his mother's home. Specifically, the Court committed K.W. to Camp Adams—a residential treatment facility for juveniles—for an indeterminate period of time.
7. On May 22, 2008, 2008, K.W. filed a Notice of Appeal, which has been docketed in this Court.

K.W. IS LIKELY TO PREVAIL ON THE MERITS OF THIS APPEAL

8. K.W.'s confinement is the collateral result of an improper adjudication of delinquency.
9. K.W.'s admission is invalid because a juvenile cannot admit to the facts of a delinquency adjudication unless the Court conducts a colloquy to determine the admission is made voluntarily and knowingly. Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); Boykin v. Alabama, 395 U.S. 238, 242-43 (1969). See also Gault, 387 U.S. at 55 (“the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.”).

10. The constitutional standard for determining whether an admission is voluntarily and intelligently made is the same as that which governs the waiver of any constitutional right – the respondent’s admission must be an “intentional relinquishment or abandonment of a known right or privilege.” Commonwealth v. Hines, 496 Pa. 555, 559-60, 437 A.2d 1180, 1182 (1981) (citing Boykin, 395 U.S. at 243 n.5 (internal citation omitted)).

11. Pennsylvania Rule of Juvenile Court Procedure 407, and the comment thereto, states, “Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly” and ask questions on the record to authenticate the juvenile’s understanding. Rule 407 directs juvenile courts to elicit specific information, including:

1. Does the juvenile understand the nature of the allegations to which he or he is admitting?
2. Is there a factual basis for the admission?
3. Does the juvenile understand that he or he has the right to hearing before the judge?
4. Does the juvenile understand that he or he is presumed innocent until found delinquent?
5. Is the juvenile aware of the dispositions that could be imposed?
6. Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
7. Has the juvenile spoken with his or his attorney or waived the right to counsel in accordance with Rule 152?
8. Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
9. Has the juvenile had the opportunity to speak with a guardian about his or his decision?

Pa.R.J.C.P. 407(A)(1). The Comment to this Rule permits juvenile courts to use a written admission form, provided the questions are asked “on the record” to authenticate the juvenile’s completion and understanding of the form and the juvenile’s agreement with

the statements made. Comment, Pa.R.:J.C.P. 407.

12. In the instant matter, there is no evidence K.W. received an in-court colloquy prior to his admission. The Court did not advise K.W. of his constitutional rights and that he would be giving up these rights if he entered an admission. The Court failed to apprise K.W. of the possible dispositions that could be imposed if he pled guilty. Nothing in the record indicates that K.W. was elsewhere informed of these rights, or that he understood these rights. K.W.'s counsel did not explain his rights and the possible consequences he faced by admitting his involvement.

13. Furthermore, K.W.'s commitment is inconsistent with the purposes of the Pennsylvania Juvenile Act. The commitment of a juvenile is governed under the Pennsylvania Juvenile Act at 42 Pa.C.S. § 6352, stating that the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation of the child. K.W.'s confinement, a result of an improper adjudication of delinquency, is inconsistent with the protection of the public, and will not further his rehabilitation.

UNLESS THIS COURT GRANTS THIS PETITION FOR WRIT OF HABEAS CORPUS, K.W. WILL SUFFER IRREPARABLE INJURY

14. Unless relief is awarded, K.W. will be irreparably harmed in that he will remain in residential placement an indeterminate amount of time away from his family and community as set forth above. K.W. has no adequate remedy at law if he is deprived of his liberty and other constitutionally protected rights.

THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT SUBSTANTIALLY HARM THE COMMONWEALTH

15. The Commonwealth will not be irreparably harmed if K.W. is released from commitment and the underlying delinquency adjudication is vacated. The Commonwealth supports

juvenile court proceedings that meet constitutional and statutory requirements.

THE ISSUANCE OF A WRIT OF HABEAS CORPUS WILL NOT ADVERSELY AFFECT THE PUBLIC INTEREST

16. It is in the public's interest to assure that the confinement of juveniles is limited to instances where there is a concern of public safety, or when necessary to promote the rehabilitation of the child. Granting this petition for habeas corpus does not threaten public safety.

17. It is in the public's interest that juveniles are only committed when tried with the full panoply of constitutional and statutory rights – including assistance of counsel and admissions made voluntarily, knowingly and intelligently.

CONCLUSION

18. WHEREFORE, K.W. prays that this Court enter a writ of *habeas corpus* to immediately release K.W. from confinement and vacate the underlying adjudication and disposition orders of the Court of Common Pleas of Luzerne County dated April 22, 2008.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
Marsha Levick, Esq. (Attorney Id. No. 77585)

Attorneys for Kevin Williamson
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Date: June 10, 2008

VERIFICATION

Laval S. Miller-Wilson, Esq., being duly sworn according to law, verifies that the information contained in the Petition of K.W. for Writ of Habeas Corpus is true and correct to the best of his knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.



Laval S. Miller-Wilson, Esq. (Attorney Id. No. 77585)
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (office)
(215) 625-2808 (facsimile)

Dated: May 3, 2007

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY
PENNSYLVANIA

IN RE:

JUVENILE DIVISION

IN THE INTEREST OF:

KIMBERLY W. [REDACTED]

NO. JV076 of 2008

TRANSCRIPT OF PROCEEDINGS

BEFORE:

The Honorable Mark A. Ciavarella, P.J.
Luzerne County Courthouse at Penn Place
20 North Pennsylvania Avenue
Wilkes-Barre, Pennsylvania 18711-1001
Commencing Tuesday, April 22, 2008

APPEARANCES:

STEPHANIE POLLOCK, Esq.
Assistant District Attorney
For The Commonwealth

CHERYL SOBESKI-REEDY, Esq.
Assistant Public Defender
For The Defendant

COPY

2

1 [Whereupon, all parties were duly sworn.]
 2 THE COURT: K..., you've been charged
 3 with simple assault. How do you wish to
 4 plead?
 5 MS. REEDY: Your Honor, I believe he's
 6 charged with simple assault as a misdemeanor
 7 of the second degree. I believe this would be
 8 an admission but with an explanation. I
 9 understand there's a long going history
 10 between these two individuals.
 11 THE COURT: I just need to know if he's
 12 making an admission or not.
 13 MS. REEDY: Yes.
 14 THE COURT: Based upon the admission I
 15 will adjudicate him delinquent.
 16 Is there anything you would like to say
 17 before the Court imposes disposition in this
 18 matter?
 19 MS. REEDY: Can you explain to the Judge
 20 your reason behind this?
 21 THE DEFENDANT: Not really. It's a long
 22 story. Just past nonsense that's been going
 23 on.
 24 MS. REEDY: From what I understand, these
 25 two individuals have known each other for

3

1 approximately two years and have had
 2 difficulty getting along and there's been
 3 prior arguments between the two of them. And
 4 from what I understand from K..., you don't
 5 attend school together.
 6 THE DEFENDANT: Yeah, we do.
 7 THE COURT: Anything else?
 8 OFFICER NEALON: If I may, Your Honor,
 9 when I interviewed him he was extremely
 10 cooperative.
 11 THE COURT: As well he should have been.
 12 Anything else?
 13 MS. REEDY: Your Honor, the Defendant is
 14 present with his grandfather, he doesn't know
 15 the particulars surrounding the incident.
 16 Would you be able to say a few words about
 17 K... ?
 18 THE GRANDFATHER: Well, he's good in
 19 school, behaves himself well in any other way.
 20 THE COURT: This was a pretty nasty
 21 incident. This was nothing that, on this
 22 evening, nothing that the victim or victims in
 23 this case caused. They didn't go looking for
 24 trouble. They didn't go looking for a fight.
 25 They just went to a concert and were trying to

4

1 leave. They didn't go over and taunt him. He
 2 was screaming all sorts of vulgarities at
 3 them.
 4 MS. POLLOCK: Your Honor, the victim's
 5 mother would like to address you.
 6 THE COURT: Sure. State your full name
 7 for the record, please.
 8 MRS. HELLER: A... H..., his mother
 9 (indicating). I just want to say that, I
 10 mean, if they had been in a fist fight or
 11 something it would have been different. But
 12 like you just said, they were leaving a
 13 concert, he was with a couple of friends, they
 14 were girls, and he got sucker punched from
 15 behind for no reason.
 16 THE COURT: And had his head smashed off a
 17 car.
 18 THE MOTHER: Exactly. And, I mean, he had
 19 a severe concussion. And there has never been
 20 an apology. Nothing since then. You know
 21 what I mean? His friends still taunt
 22 C... in the halls to this day at
 23 school. If there would have been an apology
 24 and that was the end, but there just never
 25 was.

5

1 THE COURT: How are you going to test for
 2 drugs today?
 3 THE DEFENDANT: Clean.
 4 THE COURT: Anything further?
 5 MRS. HELLER: No, that's all.
 6 THE COURT: I will remand him. He's going
 7 to go to Camp Adams. When he's done at Camp
 8 Adams he will follow the probation plan set
 9 forth in my court order.
 10 This is not how you conduct yourself. The
 11 sad thing is you are a bright kid.
 12 THE DEFENDANT: There was no head smashing
 13 off of a car.
 14 THE COURT: That's what the report
 15 indicates.
 16 THE DEFENDANT: I thought I made that
 17 clear with the two officers that I talked to.
 18 THE COURT: He's remanded.
 19 Thank you.
 20 [Whereupon, the hearing was concluded.]
 21
 22
 23
 24
 25

CERTIFICATION

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the notes of testimony taken by me on the proceedings of the above matter, and that this is a true and correct transcript of the same.

DATE: May 28, 2008

/s/ Daniel J. Coll
Daniel J. Coll,
Official Court Reporter

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

BY THE COURT:

P. J.
Mark A. Ciavarella, President Judge

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
JUVENILE SECTION

IN THE INTEREST OF

K.W., a Juvenile

Juvenile No. 2008-76


ORDER

AND NOW, this 18th day of June, 2008, upon consideration of K.W.'s Petition for Writ of Habeas Corpus, ^{and the attached stipulation} it is hereby ORDERED that the Petition is GRANTED. The

delinquency adjudication of April 22, 2008 is vacated. K.W. shall be released from his commitment at Camp Adams immediately.

An Adjudication Hearing is hereby scheduled for Tuesday, July 8, 2008 at 9:30 a.m. at Four Star Bldg, 20 North Pennsylvania Ave., Wilkes-Barre, PA.

BY THE COURT:



David W. Lupas, J.

ROBERT F. REILLE
CLERK OF COURT

2008 JUN 18 AM 10:26

CRIMINAL DIV.
LUZERNE COUNTY

de:ni on Al. v. TOTAL P. 01

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
JUVENILE SECTION

IN THE INTEREST OF

K.W., a Juvenile

:
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Juvenile No. 2008-76

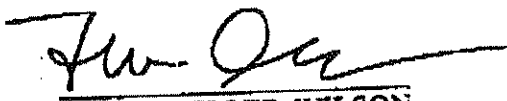
STIPULATION TO GRANT OF HABEAS CORPUS

K.W., a juvenile, and the Commonwealth of Pennsylvania stipulate that K.W.'s Petition for a Writ of *Habeas Corpus* be granted and that the Court enter the proposed form of Order included with K.W.'s Petition, an additional copy of which is attached.

RESPECTFULLY SUBMITTED,

For K.W., a Juvenile:

JUVENILE LAW CENTER



LAVAL MILLER-WILSON
1315 Walnut Street, Suite 400
Philadelphia PA 19107
(215) 625-0551
Attorney for Petitioner

For the Commonwealth of Pennsylvania:

JACQUELINE MUSTO CARROLL
DISTRICT ATTORNEY



JEFFREY TOKACH
First Assistant District Attorney
200 North River Street
Wilkes-Barre PA 18711
(570) 825-1674
Attorneys for the Commonwealth

Dated: June 17, 2008

Exhibit G

PLACEMENT AGREEMENT

This Agreement is made the _____ day of _____, 2002, between the County of Luzerne (the "County") and the Court of Common Pleas of Luzerne County (the "Court") (collectively referred to here appropriate as the "Client") with a principal place of business of 280 North River Street, Wilkes-Barre, Pennsylvania 18702 and Pa. Child Care, LLC whose principal place of business is 1105 Berkshire Boulevard, Suite 320, Wyomissing, Pennsylvania 19610 hereinafter referred to as the "Owner".

Witnesseth

WHEREAS, the Owner, through its designee, has constructed a secure juvenile detention facility in Pittston Township, Luzerne County, Pennsylvania for the care and treatment of youth (the "Facility") and, when required under law, shall be certified and approved by the Pennsylvania Department of Public Welfare to provide child welfare services for children and youth, and is desirous of making such services available to the County;

WHEREAS, the County has the authority and duty to provide child welfare services to children and youth by reason of:

- (a) Section 2168 of the Act of August 9, 1955, P.L. 323, known as the County Code as amended (16 P.S. Section 2169);
- (b) Article VII and Article IX of the Act of July 1967, P.L. 31, known as the Public Welfare Code, as amended; by the Act of July, 1976, P.L. 846, No. 148 (62 P.S. Article IV and VII);
- (c) The Juvenile Act, 42 PA C.S. Sections 6301-6365, as amended (relating to Juvenile Matters);
- (d) Section 405, Act of June 24, 1937, P.L. 2017, as amended (16 P.S. Section 2163 and 62 P.S. Section 2035, respectively), known as the County Institutions District Law;
- (e) Act of November 1976, P.L. 438, No. 124, as amended (11 P.S. Section 2201-2224) known as the Child Protective Service Law;
- (f) Americans with Disabilities Act, 42 U.S.C. Sections 12101, et. seq.;
- (g) Family and Medical Leave Act; and
- (h) And any other relevant laws and regulations.

WHEREAS, the County desires to secure beds reserved for Juvenile Detention and Secure Treatment at the Facility to comply with its duty to provide child and welfare services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be bound hereby, it is mutually understood and agreed as follows:

I. GENERAL PROVISIONS

- A. This Agreement is subject to all applicable provisions of State and Federal law and regulations related to the provision, delivery and funding of child welfare services to children and youth.
- B. The Owner, for and in consideration of the compensation hereinafter set forth, agrees to provide child welfare services to children and youth referred to it by the County and/or the Court and accepted by the Owner.

- C. The County hereby secures the right to utilize available beds for Juvenile Detention and Secure Treatment at the Facility, at the rates set forth in Article X, commencing January 1, 2003. The Owner agrees to provide available beds reserved by the Owner for Juvenile Detention and Secure Treatment at the Facility.
- D. The County shall provide a list of positions and/or individuals shown on Attachment A, which shall have the authority to authorize all services provided for by the Owner. The County shall immediately notify Owner, in writing, of any changes in personnel which affect authorization.
- E. The Client acknowledges that the Owner has the express right to delegate its duties and/or assign its rights hereunder to a first class organization to manage the operation of the facility and to perform the obligations of the Owner under this Agreement (a "Service Provider"). The Owner covenants and agrees that any such Service Provider shall have the appropriate qualifications, licenses and expertise to perform the obligations of the Owner hereunder.

II. PLACEMENT

- A. If the Owner accepts a child or youth into the facility, the County shall provide the Owner with all medical, dental, and any other health reports, records and forms, medical/dental consents, a valid court order, information regarding religious affiliation, and any and all other pertinent information prior to or upon the date of placement, whichever is sooner.
- B. The County must supply, as a minimum, basic identifying information and any information about the child or youth which could impact on the health and welfare of the child or other individuals in the facility at the time of placement. All other required information must be submitted to the Owner within ten (10) calendar days of the date of placement.
- C. In all cases, unless specifically stated in writing, the Owner shall retain responsibility of physical custody for the child during the period of placement. In visiting situations, such as holidays or vacations, the County shall collaborate with the Owner to facilitate for each child a home for vacations, holidays, or other designated situations during the child's placement.

III. SERVICE PLANNING

- A. When required by law, all parties collaboratively shall develop a written plan to determine responsibilities and define services to be provided by the Owner and/or the County for each child or youth accepted by the Owner.

- B. The Owner shall submit a family visitation plan to the County for approval. Such plan shall as a minimum be consistent with DPW regulations concerning the frequency, duration, and location of visitation. Further, the plan must include any requirements set forth by the court.

IV. TERMINATION

If either party fails to fulfill in a timely or proper manner its obligations under this Agreement, or if either party violates any of the covenants or stipulations of this Agreement, (together "the violating party") the party injured thereby shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. The violating party shall have thirty (30) days to cure said default or violation and, if the same is cured, this Agreement shall remain in full force and effect. In the event of termination, all finished or unfinished documents, data, studies, photographs and reports or other materials prepared by the Owner under this Agreement shall, at the option of the County, become its property, and the Owner shall be entitled to receive compensation for work completed on such documents and other materials.

All contractual matters relating to the provision of the service by the Owner shall, upon termination by either party, be settled within thirty (30) days of the date of termination by the rendering of a bill marked "final bill" by the Owner to the County.

V. TERM

The term of this Agreement shall be twelve (12) months commencing January 1, 2003 and expiring December 31, 2003 (the "Term"). Unless either party provides written notice of their intent not to renew this Agreement for an additional term after the initial term at least ninety (90) days prior to the expiration of the initial term, this Agreement shall automatically extend for a term unless either party terminates this Agreement at least ninety (90) days prior to the end of any term hereof.

VI. SERVICES

A. Clothing

(1) The County agrees to provide, at the time of placement, a basic seasonal wardrobe, sufficient to meet the child's needs. A complete written clothing and miscellaneous inventory, taken at the time of placement, will be documented by the Owner and submitted to the County within seven (7) calendar days. If the inventory shows an inadequate wardrobe, an authorization for initial clothing purchases shall be given to the Owner by the County. The Owner shall invoice the County for actual costs of this initial clothing, up to the amount authorized by the County, within sixty (60) days of placement date in an amount not to exceed \$150.00. The Owner's invoice shall be accompanied by a revised clothing inventory, reflecting the purchases. If this invoice is not received within the sixty (60) days, the County may refuse payment beyond this date.

(2) In the case of an unplanned discharge that results in the child's clothing not leaving the Owner with the child at the time of discharge, it shall be the joint responsibility of the County and the Owner to make arrangements for returning the child's clothing and all personal items within ten (10) working days. During that period of time, the Owner is responsible for ensuring the availability of the clothing and personal items to the County. If the County does not make arrangements within ten (10) working days following discharge, the Owner has no obligation to ensure availability of the child's clothing and other possessions.

B. Physical/Mental Health Care

(1) It is the responsibility of the County to provide the necessary means of payment for all physical/mental health care and dental expenses in the absence of a third party payor. The County shall apply for all public benefits on behalf of the child, including but not limited to, Public Assistance, Medical Assistance, Social Security or Supplemental Security Income. The County shall provide the Owner with medical assistance or Access card(s) or the information necessary to obtain third party payments. The County will not reimburse Owner for medical, dental, psychological and psychiatric services for eligible children, if the service is covered under Public Assistance, Medical Assistance, Social Security, Supplemental Security, or other third party coverage. When Medical Assistance vendors are not reasonably available or accessible to the Owner, the Owner shall use its best efforts to secure a written estimate of cost of services to the County for authorization of payment. The Owner shall submit a written estimate for any uninsured physical/mental health care and dental expense to the County.

In emergency situations, the above language requiring prior approval shall not apply, however, the Owner shall notify the Client of the emergency event within twenty-four (24) hours. The Owner shall provide the Client with the necessary information so that the Client may attempt to recoup any expenditures for physical/mental health care costs which are not covered by Medical Assistance or third party coverage. The Owner shall use all reasonable alternatives available which will result in the lowest cost to the County so long as the health and welfare of the child or youth is not compromised.

VII. UNAUTHORIZED ABSENCES

- A. **Definition:** When a child or youth is voluntarily absent from the supervision of the Owner for a period of at least twenty-four (24) hours, the child is to be considered a runaway.
- B. **Notification:** It is the responsibility of the Owner to notify all appropriate parties, including the Client and legal authorities, when a child is classified as a runaway. Such notice shall immediately be given orally to the police and Client, to be followed by written notice to the Client within seventy-two (72) hours of the time the child or youth was classified a runaway. It is also the responsibility of the Owner to give appropriate oral and written notice, as defined above, when the child is found or returned to the Owner's physical custody.

C. **Discharge:** When there is an unauthorized absence, the Owner shall continue to provide services or hold a space for the child for five (5) days from the time of the unauthorized absence, unless either party notifies the other that the child is to be considered discharged. When oral notice is given, during the five (5) day period, that the child is to be considered discharged, the Owner is no longer responsible for the child and need not accept the child back into placement. At the end of the fifth day of the unauthorized absence, the child is to be considered discharged unless the County makes arrangements to continue the child in care. The County shall be responsible for payment to the Owner consistent with this paragraph until the time of discharge.

VIII. ADDITIONAL EXPENSES

The Client is responsible for all additional expenses not specifically described herein, required by the child or youth including, but not limited to, any costs the Client has authorized in writing. Extraordinary costs do not include costs for medical expenses. Authorized individuals are those designated by the Client, as attached to this Agreement.

IX. DISCHARGE

In cases where an unplanned discharge is requested by either party, thirty (30) days notice is required except in cases of an emergency. An emergency is defined as acute behavior which, in the opinion of the Owner, endangers the health or safety of the child or others.

If the unplanned discharge is due to the child experiencing a psychiatric episode, the endangerment of self or others, due to the commission of a crime within the jurisdiction of the Owner (which may include physical facility/equipment or personnel of the agency), the Owner, in consultation with the County, is required to take immediate appropriate action, which may include committing the child to a hospital, obtaining intervention services or utilizing the criminal justice system. Such actions will facilitate appropriate planning for the child.

The Owner shall give a written notice of discharge to the County within thirty (30) calendar days of the discharge. This notice must include:

- (1) reason for discharge, including detailed description of events that precipitated it and the Owner's actions taken in response to events; and
- (2) a discharge summary containing sufficient detail to facilitate future planning for the child, including recommendations for care and treatment.

The County has the right to remove any child from the Owner's programs at the County's discretion, and shall provide written notice to the Owner explaining reasons for removal.

X. PAYMENTS

The County, in consideration of the service provided by the Owner under this Agreement, shall pay the Owner for services rendered on a per diem or unit of service basis for the first and all subsequent days of care. The rate for juvenile detention services shall be \$268.00 per day, per bed reserved for the period January 1, 2003 through December 31, 2003. The rate for Secure Treatment services shall be Three Hundred Dollars (\$300.00) per day, per bed reserved for the period January 1, 2003 through December 31, 2003.

Billing information for each child at the Facility will be rendered to the appropriate County department, by the Owner on or before the fifth (5th) working day of the month immediately following the provision of services. The County shall issue payment no later than thirty (30) calendar days from the date the invoice was received.

XI. AUDIT/FINANCIAL REPORTS

(A) Federal Audit Requirements

The Owner shall comply in all material respects with all federal and state audit requirements and any other applicable law or regulation and any amendments to such other applicable law or regulation which may be enacted or promulgated by the federal government.

(B) Financial Reports

- (1) In conjunction with the financial and compliance audit, the Owner shall submit information concerning its costs in such a manner as to allow the County to maximize its receipt of Federal and State money.
- (2) In reporting information, the Owner shall provide costs by purchase category for each service the County purchases from the Owner.
- (3) The Owner agrees that it will not use in violation of Federal or State law money received from the County pursuant to this Agreement to pay for the cost of unrelated services provided by the Owner.

XII. NON-DISCRIMINATION CLAUSE

In carrying out the terms of this Agreement, both parties agree not to discriminate against any employee or client or other person on account of age, race, color, sex, religious creed, national origin, marital status, or handicap. The Owner and the Client shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all law prohibiting discrimination in hiring or employment opportunities and the provision of child welfare services.

XIII. INSURANCE

The Owner shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this Agreement. In addition to the insurance coverage and limits specified herein, the Owner shall obtain any other insurance coverage as may be required by law.

A. General Liability Insurance

- (1) Limits of Liability \$1,000.00 in the aggregate and per occurrence.
- (2) Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insured, joint liability, and broad form property damage (including completed operations).

B. Workers' Compensation and Employers' Liability Insurance

- (1) Limits of Liability: Workers' Compensation - Statutory Limits. Employers' Liability: Statutory Limits.
- (2) Other States' coverage and Pennsylvania endorsement.

Each policy and Certificate of insurance shall contain: an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) calendar days prior written notice be given to the County in the event coverage is canceled or non-renewed or limits or coverage reduced.

If the Owner desires to self insure any or all of the coverage listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulation, as well as the most recent audited financial statement of the Owner's insurance. Any coverage which is self insured shall provide the same coverage, limits and benefits as the coverage listed in this section.

If the Owner fails to obtain or maintain the required insurance, the County shall have the rights to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.

C. Subcontractors

The Owner shall include all subcontractors, including any Service Provider, as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this agreement.

XIV. HOLD HARMLESS PROVISION - INDEMNIFICATION

It is understood that the Owner is an independent contractor in respect to its performance under this Agreement, and shall assume all risks and responsibilities for losses of every description in connection with the service which can be attributed either directly or indirectly to the Owner under this Agreement. The Owner agrees to indemnify, defend and hold harmless the County, its agents and employees for, or on account of any damage or loss, including the County's cost of litigation and attorneys fees resulting from the actions of the Owner, or a subcontractor of the Owner, in fulfilling the terms of this Agreement.

The Owner hereto shall not be held responsible for delay or failure to perform hereunder when such delay or failure is due to fire, flood, epidemic, strike, acts of God or the public enemy, acts of terrorism, either foreign or domestic, unusually severe weather, legal acts of the public authorities, or delay or default which cannot reasonably be foreseen or provided against.

XV. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE CERTIFICATION

The Owner, in writing, shall notify the County within five working days of any loss of its Pennsylvania Department of Public Welfare certification for any of the services being provided to the County.

XVI. ASSIGNMENT

Except as set forth in paragraph I.E., the Owner shall not assign any part of this Agreement without prior written approval of the County.

XVII. MODIFICATION

This document, and all attachments which have been incorporated by reference, contains all the terms, provisions, and conditions of this Agreement. No term or provision may be unilaterally modified or amended. Any alteration must be reduced to writing and signed by the parties to this Agreement. Any alteration, variation, modification or waiver of a provision of this Agreement shall be valid only when reduced to writing, duly signed by the parties of this Agreement, and attached to the original of the Agreement.

XVIII. DEBARMENT

1. The Owner certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

2. If the Owner enters into subcontracts or employs under the Agreement any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term or this Agreement or any extension or renewal thereof, the County shall have the right to require the Owner to terminate such subcontracts or employment.

Exhibit H

PLACEMENT AGREEMENT

This Agreement is made the ____ day of _____, 2004, between the County of Luzerne (the "County") and the Court of Common Pleas of Luzerne County (the "Court") (collectively referred to where appropriate as the "Client") with a principal place of business of 280 North River Street, Wilkes-Barre, Pennsylvania 18702 and Pa, Child Care, LLC whose principal place of business is 701 Sathers Drive Grimes Industrial Park, Pennsylvania 18640 hereinafter referred to as the "Owner".

Witnesseth

WHEREAS, the Owner, through its designee, has constructed a secure juvenile detention facility in Pittston Township, Luzerne County, Pennsylvania for the care and treatment of youth (the "Facility") and, when required under law, shall be certified and approved by the Pennsylvania Department of Public Welfare to provide child welfare services for children and youth, and is desirous of making such services available to the County;

WHEREAS, the County has the authority and duty to provide child welfare services to children and youth by reason of:

- (a) Section 2168 of the Act of August 9, 1955, P.L. 323, known as the County Code as amended (16 P.S. Section 2169);
- (b) Article VII and Article IX of the Act of July 1967, P.L. 31, known as the Public Welfare Code, as amended; by the Act of July, 1976, P.L. 846, No. 148 (62 P.S. Article IV and VII);
- (c) The Juvenile Act, 42 PA C.S. Sections 6301-6365, as amended (relating to Juvenile Matters);
- (d) Section 405, Act of June 24, 1937, P.L. 2017, as amended (16 P.S. Section 2163 and 62 P.S. Section 2035, respectively), known as the County Institutions District Law;
- (e) Act of November 1976, P.L. 438, No. 124, as amended (11 P.S. Section 2201-2224) known as the Child Protective Service Law;
- (f) Americans with Disabilities Act, 42 U.S.C. Sections 12101, et. seq.;
- (g) Family and Medical Leave Act; and
- (h) And any other relevant laws and regulations.

WHEREAS, the County desires to secure beds reserved for Juvenile Detention and Secure Treatment at the Facility to comply with its duty to provide child and welfare services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be bound hereby, it is mutually understood and agreed as follows:

I. GENERAL PROVISIONS

- A. This Agreement is subject to all applicable provisions of State and Federal law and regulations related to the provision, delivery and funding of child welfare services to children and youth.
- B. The Owner, for and in consideration of the compensation hereinafter set forth, agrees to provide child welfare services to children and youth referred to it by the County and/or the Court and accepted by the Owner.

- C. The County hereby secures the right to utilize available beds for Juvenile Detention and Secure Treatment at the Facility, at the rates set forth in Article X, commencing January 1, 2004. The Owner agrees to provide available beds reserved by the Owner for Juvenile Detention and Secure Treatment at the Facility.
- D. The County shall provide a list of positions and/or individuals shown on Attachment A, which shall have the authority to authorize all services provided for by the Owner. The County shall immediately notify Owner, in writing, of any changes in personnel which affect authorization.
- E. The Client acknowledges that the Owner has the express right to delegate its duties and/or assign its rights hereunder to a first class organization to manage the operation of the facility and to perform the obligations of the Owner under this Agreement (a "Service Provider"). The Owner covenants and agrees that any such Service Provider shall have the appropriate qualifications, licenses and expertise to perform the obligations of the Owner hereunder.

II. PLACEMENT

- A. If the Owner accepts a child or youth into the facility, the County shall provide the Owner with all medical, dental, and any other health reports, records and forms, medical/dental consents, a valid court order, information regarding religious affiliation, and any and all other pertinent information prior to or upon the date of placement, whichever is sooner.
- B. The County must supply, as a minimum, basic identifying information and any information about the child or youth which could impact on the health and welfare of the child or other individuals in the facility at the time of placement.
All other required information must be submitted to the Owner within ten (10) calendar days of the date of placement.
- C. In all cases, unless specifically stated in writing, the Owner shall retain responsibility of physical custody for the child during the period of placement. In visiting situations, such as holidays or vacations, the County shall collaborate with the Owner to facilitate for each child a home for vacations, holidays, or other designated situations during the child's placement.

III. SERVICE PLANNING

- A. When required by law, all parties collaboratively shall develop a written plan to determine responsibilities and define services to be provided by the Owner and/or the County for each child or youth accepted by the Owner.

- B. The Owner shall submit a family visitation plan to the County for approval. Such plan shall as a minimum be consistent with DPW regulations concerning the frequency, duration, and location of visitation. Further, the plan must include any requirements set forth by the court.

IV. TERMINATION

If either party fails to fulfill in a timely or proper manner its obligations under this Agreement, or if either party violates any of the covenants or stipulations of this Agreement, (together "the violating party") the party injured thereby shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. The violating party shall have thirty (30) days to cure said default or violation and, if the same is cured, this Agreement shall remain in full force and effect. In the event of termination, all finished or unfinished documents, data, studies, photographs and reports or other materials prepared by the Owner under this Agreement shall, at the option of the County, become its property, and the Owner shall be entitled to receive compensation for work completed on such documents and other materials.

All contractual matters relating to the provision of the service by the Owner shall, upon termination by either party, be settled within thirty (30) days of the date of termination by the rendering of a bill marked "final bill" by the Owner to the County.

V. TERM

The term of this Agreement shall be six (6) months commencing January 1, 2004 and expiring June 30, 2004 (the "Term"). Unless either party provides written notice of their intent not to renew this Agreement for an additional term after the initial term at least ninety (90) days prior to the expiration of the initial term, this Agreement shall automatically extend for a term unless either party terminates this Agreement at least ninety (90) days prior to the end of any term hereof.

VI. SERVICES

A. Clothing

(1) The County agrees to provide, at the time of placement, a basic seasonal wardrobe, sufficient to meet the child's needs. A complete written clothing and miscellaneous inventory, taken at the time of placement, will be documented by the Owner and submitted to the County within seven (7) calendar days. If the inventory shows an inadequate wardrobe, an authorization for initial clothing purchases shall be given to the Owner by the County. The Owner shall invoice the County for actual costs of this initial clothing, up to the amount authorized by the County, within sixty (60) days of placement date in an amount not to exceed \$150.00. The Owner's invoice shall be accompanied by a revised clothing inventory, reflecting the purchases. If this invoice is not received within the sixty (60) days, the County may refuse payment beyond this date.

(2) In the case of an unplanned discharge that results in the child's clothing not leaving the Owner with the child at the time of discharge, it shall be the joint responsibility of the County and the Owner to make arrangements for returning the child's clothing and all personal items within ten (10) working days. During that period of time, the Owner is responsible for ensuring the availability of the clothing and personal items to the County. If the County does not make arrangements within ten (10) working days following discharge, the Owner has no obligation to ensure availability of the child's clothing and other possessions.

B. Physical/Mental Health Care

(1) It is the responsibility of the County to provide the necessary means of payment for all physical/mental health care and dental expenses in the absence of a third party payor. The County shall apply for all public benefits on behalf of the child, including but not limited to, Public Assistance, Medical Assistance, Social Security or Supplemental Security Income. The County shall provide the Owner with medical assistance or Access card(s) or the information necessary to obtain third party payments. The County will not reimburse Owner for medical, dental, psychological and psychiatric services for eligible children, if the service is covered under Public Assistance, Medical Assistance, Social Security, Supplemental Security, or other third party coverage. When Medical Assistance vendors are not reasonably available or accessible to the Owner, the Owner shall use its best efforts to secure a written estimate of cost of services to the County for authorization of payment. The Owner shall submit, a cost break down of said expenses, with each monthly invoice, for any uninsured physical/mental health care and dental expense to the County. County shall reimburse Owner for said expenses on a monthly basis in accordance with this Agreement.

In emergency situations, the above language requiring prior approval shall not apply, however, the Owner shall notify the Client of the emergency event within twenty-four (24) hours. The Owner shall provide the Client with the necessary information so that the Client may attempt to recoup any expenditures for physical/mental health care costs which are not covered by Medical Assistance or third party coverage. The Owner shall use all reasonable alternatives available which will result in the lowest cost to the County so long as the health and welfare of the child or youth is not compromised.

VII. UNAUTHORIZED ABSENCES

A. **Definition:** When a child or youth is voluntarily absent from the supervision of the Owner for a period of at least twenty-four (24) hours, the child is to be considered a runaway.

- B. **Notification:** It is the responsibility of the Owner to notify all appropriate parties, including the Client and legal authorities, when a child is classified as a runaway. Such notice shall immediately be given orally to the police and Client, to be followed by written notice to the Client within seventy-two (72) hours of the time the child or youth was classified a runaway. It is also the responsibility of the Owner to give appropriate oral and written notice, as defined above, when the child is found or returned to the Owner's physical custody.
- C. **Discharge:** When there is an unauthorized absence, the Owner shall continue to provide services or hold a space for the child for five (5) days from the time of the unauthorized absence, unless either party notifies the other that the child is to be considered discharged. When oral notice is given, during the five (5) day period, that the child is to be considered discharged, the Owner is no longer responsible for the child and need not accept the child back into placement. At the end of the fifth day of the unauthorized absence, the child is to be considered discharged unless the County makes arrangements to continue the child in care. The County shall be responsible for payment to the Owner consistent with this paragraph until the time of discharge.

VIII. ADDITIONAL EXPENSES

The Client is responsible for all additional expenses not specifically described herein, required by the child or youth including, but not limited to, any costs the Client has authorized in writing. Extraordinary costs do not include costs for medical expenses. Authorized individuals are those designated by the Client, as attached to this Agreement.

IX. DISCHARGE

In cases where an unplanned discharge is requested by either party, thirty (30) days notice is required except in cases of an emergency. An emergency is defined as acute behavior which, in the opinion of the Owner, endangers the health or safety of the child or others.

If the unplanned discharge is due to the child experiencing a psychiatric episode, the endangerment of self or others, due to the commission of a crime within the jurisdiction of the Owner (which may include physical facility/equipment or personnel of the agency), the Owner, in consultation with the County, is required to take immediate appropriate action, which may include committing the child to a hospital, obtaining intervention services or utilizing the criminal justice system. Such actions will facilitate appropriate planning for the child.

The Owner shall give a written notice of discharge to the County within thirty (30) calendar days of the discharge. This notice must include:

- (1) reason for discharge, including detailed description of events that precipitated it and the Owner's actions taken in response to events; and
- (2) a discharge summary containing sufficient detail to facilitate future planning for the child, including recommendations for care and treatment.

The County has the right to remove any child from the Owner's programs at the County's discretion, and shall provide written notice to the Owner explaining reasons for removal.

X. PAYMENTS

The County, in consideration of the service provided by the Owner under this Agreement, shall pay the Owner for services rendered on a per diem or unit of service basis for the first and all subsequent days of care. The rate for juvenile detention services shall be \$280.00 per day, per bed reserved for the period January 1, 2004 through June 30, 2004. The rate for Secure Treatment services shall be Three Hundred Twelve Dollars (\$312.00) per day, per bed reserved for the period January 1, 2004 through June 30, 2004.

Billing information for each child at the Facility will be rendered to the appropriate County department, by the Owner on or before the fifth (5th) working day of the month immediately following the provision of services. The County shall issue payment no later than twenty (20) calendar days from the date the invoice was received.

XI. AUDIT/FINANCIAL REPORTS

(A) Federal Audit Requirements

The Owner shall comply in all material respects with all federal and state audit requirements and any other applicable law or regulation and any amendments to such other applicable law or regulation which may be enacted or promulgated by the federal government.

(B) Financial Reports

- (1) In conjunction with the financial and compliance audit, the Owner shall submit information concerning its costs in such a manner as to allow the County to maximize its receipt of Federal and State money.
- (2) In reporting information, the Owner shall provide costs by purchase category for each service the County purchases from the Owner.
- (3) The Owner agrees that it will not use in violation of Federal or State law money received from the County pursuant to this Agreement to pay for the cost of unrelated services provided by the Owner.

XII. NON-DISCRIMINATION CLAUSE

In carrying out the terms of this Agreement, both parties agree not to discriminate against any employee or client or other person on account of age, race, color, sex, religious creed, national origin, marital status, or handicap. The Owner and the Client shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all law prohibiting discrimination in hiring or employment opportunities and the provision of child welfare services.

XIII. INSURANCE

The Owner shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this Agreement. In addition to the insurance coverage and limits specified herein, the Owner shall obtain any other insurance coverage as may be required by law.

A. General Liability Insurance

- (1) Limits of Liability \$1,000,000 in the aggregate and per occurrence.
- (2) Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insured, joint liability, and broad form property damage (including completed operations).

B. Workers' Compensation and Employers' Liability Insurance

- (1) Limits of Liability: Workers' Compensation - Statutory Limits. Employers' Liability: Statutory Limits.
- (2) Other States' coverage and Pennsylvania endorsement.

Each policy and Certificate of insurance shall contain: an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) calendar days prior written notice be given to the County in the event coverage is canceled or non-renewed or limits or coverage reduced.

If the Owner desires to self insure any or all of the coverage listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulation, as well as the most recent audited financial statement of the Owner's insurance. Any coverage which is self insured shall provide the same coverage, limits and benefits as the coverage listed in this section.

If the Owner fails to obtain or maintain the required insurance, the County shall have the rights to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.

C. Subcontractors

The Owner shall include all subcontractors, including any Service Provider, as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this agreement.

XIV. HOLD HARMLESS PROVISION - INDEMNIFICATION

It is understood that the Owner is an independent contractor in respect to its performance under this Agreement, and shall assume all risks and responsibilities for losses of every description in connection with the service which can be attributed either directly or indirectly to the Owner under this Agreement. The Owner agrees to indemnify, defend and hold harmless the County, its agents and employees for, or on account of any damage or loss, including the County's cost of litigation and attorneys fees resulting from the actions of the Owner, or a subcontractor of the Owner, in fulfilling the terms of this Agreement.

The Owner hereto shall not be held responsible for delay or failure to perform hereunder when such delay or failure is due to fire, flood, epidemic, strike, acts of God or the public enemy, acts of terrorism, either foreign or domestic, unusually severe weather, legal acts of the public authorities, or delay or default which cannot reasonably be foreseen or provided against.

XV. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE CERTIFICATION

The Owner, in writing, shall notify the County within five working days of any loss of its Pennsylvania Department of Public Welfare certification for any of the services being provided to the County.

XVI. ASSIGNMENT

Except as set forth in paragraph I.E., the Owner shall not assign any part of this Agreement without prior written approval of the County.

XVII. MODIFICATION

This document, and all attachments which have been incorporated by reference, contains all the terms, provisions, and conditions of this Agreement. No term or provision may be unilaterally modified or amended. Any alteration must be reduced to writing and signed by the parties to this Agreement. Any alteration, variation, modification or waiver of a provision of this Agreement shall be valid only when reduced to writing, duly signed by the parties of this Agreement, and attached to the original of the Agreement.

XVIII. DEBARMENT

1. The Owner certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

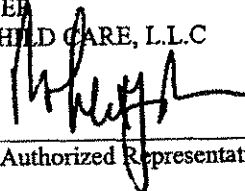
2. If the Owner enters into subcontracts or employs under the Agreement any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term or this Agreement or any extension or renewal thereof, the County shall have the right to require the Owner to terminate such subcontracts or employment.

XIX. NOTICES

Any and all notices, consents, or directives intended for the Owner shall be sent by registered or certified mail, return receipt requested, to PA. Child Care, LLC, 123 Warren Street, West Hazleton, Pennsylvania 18201, with a copy to Suite 300, 20206 Route 19, Cranberry Township, Pennsylvania 16066-6106 and to the Client at 280 North River Street, Wilkes-Barre, Pennsylvania 18702.

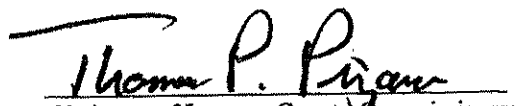
IN WITNESS WHEREOF, the duly authorized officers of the parties hereby set their hands and seals, causing this agreement to be executed and legally binding.


OWNER
Pa. CHILD CARE, L.L.C

By: 
Authorized Representative

COUNTY OF LUZERNE

By: _____
Chief Juvenile Probation Officer
Luzerne County Juvenile Probation Office


Chairman of Luzerne County Commissioners


Luzerne County Commissioner

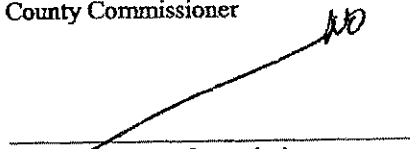

Luzerne County Commissioner

Exhibit I

LEASE AGREEMENT

THIS AGREEMENT, effective this 17 day of November, 2004 is between Pa. Child Care, L.L.C., a Pennsylvania limited liability company with an address of The Can-Do Corporate Center, 10 Fox Run Road, Drums, Pennsylvania ("Landlord") and The County of Luzerne, a Pennsylvania local governmental body with an address of 200 North River Road, Wilkes-Barre, PA 18711 ("Tenant").

BACKGROUND

The Landlord is the owner of a tract of land containing approximately 22.3 acres of land, more or less, and located in Pittston Township, Luzerne County, Pennsylvania, as more fully described in Luzerne County Records, Record Book 3003, Page 261086 (the "Premises"). The Landlord has constructed a forty-eight (48) bed juvenile detention center and long-term juvenile care facility on the Premises, and is in the process of expanding the facility to include an additional twelve (12) beds.

WITNESSETH:

1. PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the terms, covenants and conditions set forth herein, the Premises known as 701 Sathers Drive, Vogelbacher Industrial Park, Pittston Township, PA 18640, which consists of a tract of land containing approximately 22.3 acres and a juvenile detention facility located thereon (the "Building") constructed on the Premises.

2. TERM.

2.01 The term of this Lease shall be twenty (20) years for a total of two hundred forty (240) months, commencing the 1st day of January, 2005, (the "Commencement Date"), and terminating on the 31st day of December, 2024 (the "Expiration Date"). However, should the Commencement Date fall on anything other than the first day of the month, the Expiration Date shall be the last day of the month following the twentieth anniversary of the Commencement Date. Notwithstanding this Commencement Date, the contractual obligations created by this Lease shall come into full force and effect on its effective date.

2.02 Possession of the Premises shall be delivered by Landlord to Tenant on the Commencement Date. If for any reason, including the case of new or to-be-improved premises construction, Landlord is unable to timely deliver possession of the Premises, Landlord shall not be subject to any liability therefor, nor shall such inability affect the validity of this Lease. In such a case, the obligation of Tenant to pay rent and the term of this Lease shall commence upon the date of actual delivery of possession and shall continue for the full term specified in Section 2.01 plus that part of a month, if any, from the actual commencement date to the first day of the first full calendar month of the term, and the term "Commencement Date" shall refer to the actual commencement date instead of the intended commencement date set forth in Section 2.01, above. The reference herein to a "lease year" shall mean each fiscal period during the term of this Lease beginning on the first day of the first full month of the term of this Lease, and each anniversary of this Lease, and ending on the last day of the twelfth full month thereafter. An instrument formally establishing the Commencement Date, lease year and termination date of this Lease shall be executed at the time of Commencement Date establishment.

2.03 Provided the Tenant is not in default under the terms of the Lease, the Tenant is granted a right to renew the Lease for two (2) additional two (2)- year renewal terms, upon the same terms and conditions of this Lease Agreement, including a three percent (3%) increase in base rent for each year of any renewal term. The Tenant must exercise this right of renewal no later than once (1) year prior to the expiration of the initial term here or any subsequent renewal term. In the event the Tenant does not exercise the renewal option hereunder, this Lease shall automatically terminate at the end of the initial term or any subsequent renewal term.

3. SECURITY DEPOSIT.

3.01 No security deposit shall be required under this Lease.

4. USE OF PREMISES The Premises shall be occupied and used as a juvenile detention center and juvenile treatment center and for related purposes and for no other purpose without the express written consent of the Landlord.

5. MINIMUM RENT.

5.01 Subject to adjustments described in Section 5.02, Tenant shall pay the following, in advance, in equal monthly installments on the first day of each calendar month during the term of this Lease for the Premises and the existing building consisting of forty-eight beds: Two Million Nine Hundred Thousand and 00/100 Dollars (\$2,900,000.00) per lease year (Two Hundred Forty-one Thousand Six Hundred Sixty-six and 66/100 Dollars (\$241,666.66) per month); provided, however, that rent for the

first full month on which rent is due and payable shall be paid upon the signing of this Lease by Tenant. Notwithstanding the foregoing, until the completion of the expansion of the facility to include an additional twelve (12) beds, the minimum rent shall be One Hundred Ninety-three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$193,333.33), subject to the adjustments as set forth in Paragraph 5.02 of this Lease. In the event the base rent and additional rent described in 5.04 is not received by Landlord by the 10th of the month (or ten (10) days after the rent is due if this Lease commences on a day other than the first of the month), Tenant shall pay a late charge in the amount of five percent (5%) of the amount due. If the commencement date shall fall on a day other than the first day of a calendar month, the rent shall be apportioned pro rata on a per diem basis for the period between the commencement date and the first day of the following calendar month; such apportioned sum shall be paid on such commencement date. Annually, beginning with the commencement of the second lease year, Tenant shall pay as minimum annual base rent an additional sum equal to the greater of three percent (3%) or the increase on the consumer price index (determined in accordance with Section 5.02 below), based upon the base rent paid in the prior lease year.

Rent shall be paid to:

Pa. Child Care, LLC
The Can-Do Corporate Center
10 Fox Run Rd.
Drums, PA 18222

or to such other party and such other place as Landlord may designate in writing.

5.02 (a) As promptly as practicable after the end of the initial lease year of this lease and each subsequent lease year thereafter, the Landlord shall compute any increase in the cost of living for the preceding one (1) year period based upon the "Revised Consumers Price Index - Cities (1967=100)" (the "Index"), published by the Bureau of Labor Statistics of the United States Department of Labor.

(b) The "base Index number" shall be the index number indicated for Northeastern Pennsylvania, entitled "all items," for the month of January 2005. The "current Index number" shall be the corresponding index number for the month of January 2006. The "base Index number" and the "current Index number" shall be adjusted each year to determine the then current increase in the cost of living.

(c) The current Index number shall be divided by the base index number, and the integer 1 shall be subtracted from such quotient. Any resulting positive number shall be deemed to be the percentage of increase in the cost of living.

(d) Landlord shall give Tenant notice of any such increase within a reasonable time after obtaining the necessary data for computing it. Landlord's

computation shall be conclusive and binding, but shall not preclude any adjustment that may be required by a published amendment of the index figures upon which such computation was based unless Tenant notifies Landlord of any claimed error therein within sixty (60) days after such notice is given. Any dispute between the parties as to any such computation shall be resolved by arbitration.

(e) The base rent, as determined above (calculated in accordance with paragraphs (a) through (d) and Section 5.01), shall be due and payable to Landlord in equal monthly installments, commencing with the first month of each subsequent lease year of this lease. Any retroactive payments then due shall be payable within five (5) days after the above provided notice is given. If there is any subsequent redetermination of such amount, the parties shall promptly make the indicated adjustment.

(f) If publication of the Consumers Price Index is discontinued, the parties shall accept comparable statistics on the cost of living for Northeastern Pennsylvania, as such statistics are computed and published by a federal agency or by a recognized financial periodical selected by the parties or by arbitration. If comparable statistics are used in place of the Consumers Price Index, or if the Index figure is published at non-monthly intervals, the method of computation shall include all revisions required to carry out the intent of this Section. If such adjustment is disputed by the parties, the matter shall be resolved by arbitration.

5.03 The Landlord shall construct an expansion of the Building to include an additional twelve (12) beds at no cost to the Tenant. Landlord shall pay any and all costs to construct the expansion of the Building. Upon completion of the expansion of the Building, the minimum rent shall return to the amount set forth in Section 5.01 of this Lease. Landlord shall use its best efforts to complete the twelve (12) bed expansion by December 1, 2005, subject to matters beyond the Landlord's control, including construction delays, employee strikes, bad weather and governmental approval for the expansion.

5.04 Tenant shall directly pay all of the expense incurred in the cost of operating and maintaining the Building and the Premises during any calendar year. The cost of operating and maintaining the Building shall include, without limitation, all utilities, electric, gas, water and sewer rents, charges against the Building other than real estate taxes or any other taxes assessed against the Premises; the cost of heat, light, power, elevator service, utility taxes, fuel, permits, supplies, tools, equipment, insurance, and service contracts with independent contractors, including janitorial services for the common areas, snow removal, lawn care; and all other items properly constituting operating costs.

5.05 The cost of operating and maintaining the Building shall not include real estate taxes, depreciation on the Building or equipment, interest on encumbrances, ground rents, income taxes, excess profit taxes, franchise taxes, or commissions payable to leasing brokers.

6. COVENANT TO PAY RENT AND ADDITIONAL RENT. Tenant shall, without any demand therefor and without setoff, deduction or counterclaim, pay the said minimum rent, the additional rent and all other sums which may become due by Tenant under this Lease, on the first of each month in advance or at the times, at the place and in the manner herein provided. All sums which may be due by Tenant under this Lease shall be payable as rent for all purposes whether or not they would otherwise be considered rent. Without limiting the generality of the foregoing, if Tenant shall be in default in the performance of any of its obligations hereunder, Landlord may (but shall not be obligated to do so), in addition to any other rights it may have in law or equity or under this Lease, cure such default on behalf of Tenant, and Tenant shall reimburse Landlord for any sums paid or costs incurred by Landlord in curing such default, including interest at the rate of six (6%) percent per annum or the highest rate permitted by law, whichever is lower, on all sums paid and costs incurred by Landlord as aforesaid, which sums and costs together with interest thereon shall be deemed additional rent hereunder.

7. ASSIGNMENT AND SUBLETTING. Other than in the ordinary course of operating a juvenile detention center and long-term juvenile treatment facility, Tenant shall not assign, mortgage, pledge or encumber this Lease, or sublet all or part of the Premises, or permit any other person or entity to occupy all or part of the Premises without on each occasion first obtaining the prior written consent of Landlord. An assignment within the meaning of this Lease is intended to mean not only the voluntary action of Tenant, but also any levy or sale on execution or other legal process against Tenant's goods or other property or the leasehold, and every assignment of assets for the benefit of creditors, and the filing by or against Tenant of any petition or order or any adjudication in bankruptcy or under any insolvency, reorganization or other voluntary or compulsory procedure, and the calling of a meeting of creditors, and the filing by or against Tenant of any petition or notice for a composition with creditors, and any assignment by operation of Law. No assignment or subletting or other occupancy with or without Landlord's consent shall in any way relieve or release Tenant from liability for performance of all the terms, covenants and conditions of this Lease. Furthermore, no assignment will be valid unless the assignee shall first execute and deliver to Landlord an assumption of liability agreement in such form and with such terms, covenants and conditions as may be required by Landlord; and no subletting will be valid unless the subtenant shall first enter into a written agreement with Landlord, in such form and with such terms and conditions as may be required by Landlord. Landlord shall be entitled to, and Tenant shall promptly remit to Landlord, any profit which may inure to the benefit

of Tenant as a result of any subletting of the Premises or assignment of this Lease whether or not consented to by Landlord.

8. ALTERATIONS AND FINISHING.

8.01 No alterations, additions, wiring, security systems, or improvements of any nature shall be made to the Premises by or on behalf of Tenant unless Tenant shall first submit on each occasion a detailed description thereof to Landlord and Landlord shall consent thereto in writing. All alterations, additions, wiring, security systems, or improvements made by or on behalf of Tenant and all fixtures attached to or used in connection with the Premises shall immediately, upon the completion or installation thereof, be and become a part of the Premises and the property of Landlord without payment therefore by Landlord and shall remain at the Premises or, at Landlord's option, any or all of the foregoing which may be designated by Landlord shall be removed at the cost of Tenant before the expiration or sooner termination of this Lease and in such event Tenant shall repair all damage to the Premises caused by the installation and/or removal.

8.02 Notwithstanding the foregoing, Tenant shall have the right to install in the Premises trade fixtures required by Tenant in its business and to remove such trade fixtures upon termination of this Lease; provided, however, that Landlord has first consented to such installation in writing, and that no such installation or removal shall affect the structural portions of the Premises or the Building. Tenant shall repair and restore before the expiration or sooner termination of this Lease any damage or injury to the Premises caused by the installation and/or removal of any such trade fixtures.

9. LIENS.

9.01 Tenant shall have no power to do any act or to make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the Building or the Premises or any estate of Landlord or of any interest of Landlord in the Premises, or in the Building or fixtures and machinery therein contained.

9.02 Tenant shall not suffer or permit any liens to stand against the Premises, the Building or any part thereof by reason of any work, labor, services or materials done for, or supplied, or claimed to have been done for, or supplied to, Tenant or anyone holding the Premises, or the Building or any part thereof through or under Tenant.

9.03 In the event Landlord shall permit Tenant to make any alterations, additions or improvements to the Premises, prior to the making of any such alterations,

additions or improvements, Tenant shall, if allowed by applicable law, cause to be duly filed and recorded in the appropriate offices a Waiver of Mechanic's and Materialmen's Liens in form satisfactory to Landlord, such waivers to be binding on all subcontractors and materialmen.

9.04 Under any circumstance, should any lien be filed for work claimed to be done at the request of Tenant, Tenant must discharge such lien within fifteen (15) days, at Tenant's own expense.

10. NOTICE OF BREAKAGE. Tenant shall give to Landlord prompt written notice of any accident or breakage or defects of which Tenant has knowledge in the wires, plumbing or heating or cooling apparatus, elevators or other apparatus located in the Building or the Premises.

11. REPAIRS AND CONDITIONS OF PREMISES.

11.01 During the term and at the expiration or other termination of this Lease, Tenant shall leave the Premises, and during the term will keep the Premises, in good order and condition, ordinary wear and tear and damage by fire or other casualty alone excepted; and for that purpose and except as stated, Tenant will promptly make all necessary repairs and replacements whether foreseen or unforeseen, ordinary or extraordinary. Without limiting the foregoing, Tenant shall be responsible for, and shall pay to Landlord upon demand for, the cost of repair and restoration of any damage to any ducts, pipes, wires or other building equipment caused by the negligence, omission or misconduct of Tenant or those claiming under Tenant or their respective employees, agents, contractors, customers or invitees. Tenant will use every reasonable precaution against fire and other damage and will give Landlord prompt notice of any damage to or accident upon the Premises. At the expiration or other termination of this Lease, Tenant will have theretofore removed all its property from the Premises so that Landlord may again have and possess the Premises. Upon expiration of the Lease and surrender of the Premises, should Tenant not remove all of its property from the Premises, Landlord can, but is not obligated to, dispose of Tenant's property left in the premises, with no legal ramifications to Landlord. Tenant is then responsible for all costs incurred and damages assessed by Landlord for same and shall remit promptly to Landlord monies for all such charges within ten (10) days after notice by Landlord. In addition, Landlord may pursue all legal remedies available to Landlord regarding same. The provisions of 11.01 survive the expiration or termination of this Lease.

11.02 If at any time during the last three (3) months of the term of this Lease, Tenant and/or Landlord shall have removed all or substantially all of Tenant's property from the Premises, Landlord may enter to alter, renovate and redecorate the Premises, without abatement of rent, or in any other manner modifying the rights and

obligations of either party to this Lease. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when for any reason an entry shall be necessary or permissible, Landlord or Landlord's agents may enter by a master key, or may forcibly enter, without rendering Landlord or its agents liable for any damages therefore and without in any manner affecting the rights or obligations of either party to this Lease, provided Landlord or its agents shall accord reasonable care to Tenant's property.

11.03 Landlord is not responsible for any maintenance of personal property, trade fixtures, office equipment, private heating or air conditioning units, improvements not approved by Landlord and, in any case, Landlord is not responsible for the replacement of any improvements except where and how provided for under the insurance provision, Section 14, of this Lease.

12. HAZARDOUS MATERIALS. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials in violation of law. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Building any such materials or substances except to use in the ordinary course of Tenant's business and then only after prior written notice is given to Landlord of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 8601 et seq., any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord, upon demand as additional charges, if such requirement arises due to Tenant's use of the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on/in the premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the premises, if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

13. FIRE OR OTHER CASUALTY If, during the term of this Lease or any renewal or extension thereof, the Building is so damaged by fire, or any other cause such that (i) either the Building or the Premises is rendered substantially unfit for occupancy (whether or not the Premises are damaged) as reasonably determined by Landlord, or (ii) the Building is damaged to the extent that Landlord shall decide to

demolish or to not rebuild the Building, then, at Landlord's option in either of such events, the term of this Lease, upon sixty (60) days prior written notice from Landlord, shall terminate as of the date of the occurrence of such damage. In such case, Tenant shall pay the rent apportioned to the time of such termination, Landlord shall repay to Tenant all prepaid rents for periods beyond such termination date and Landlord may enter upon and repossess the Premises without further notice. If Landlord does not so elect to terminate the term of this Lease, or if the Building shall be damaged so that such damage renders neither the Building nor the Premises substantially unfit for occupancy (and Landlord elects not to demolish or to not rebuild the Building), Landlord will in either of such events restore the damage to the Building with reasonable promptness (taking into account the time required by Landlord to effect a settlement with and procure insurance proceeds, if any, from the insurer) to substantially the same condition of the Building immediately prior to such damage, and Landlord may enter and possess all or any portion of the Premises for that purpose, and, while Tenant is deprived of the use of the Premises or any part thereof, the minimum fixed monthly rent shall be suspended in the proportion to the number of square feet of the Premises rendered substantially unfit for occupancy. The time for commencement and completion of restoration shall be extended for a period of time lost by Landlord because of causes beyond Landlord's reasonable control. Landlord's obligation or election to restore the Building under this Article shall not include the repair, restoration or replacement of the fixtures, improvements, alterations, furniture or any other property owned, installed or made by Tenant.

14. INSURANCE and WAIVER OF SUBROGATION.

14.01 Landlord shall not be held responsible for, and is hereby expressly relieved from, any and all liability by reason of any injury, loss or damage to any person or property in or about the Premises or the Building due to any cause whatsoever (including, without limitation, damage caused by theft or by water, rain, snow or airborne matter which may leak into, issue or flow from any part of the Building or from the tanks, pipes or plumbing of the Building or from any other place), and whether the loss, injury or damage be to the person or property of Tenant or any other person, and whether or not due to any oversight, omission, neglect or negligence of Landlord or any person or entity acting on behalf of Landlord occurring before or after the execution of this Lease. Tenant's insurance policies relating to the Premises shall contain clauses permitting the foregoing release. Tenant specifically acknowledges that it shall be the Tenant's sole responsibility to operate the Premises as a juvenile detention facility and related uses. The Tenant specifically acknowledges that the Landlord shall have no liability for the operation of the facility, and it shall have no obligation to handle the license or have any other involvement in the operation of the facility. The Tenant specifically agrees to indemnify and hold the Landlord harmless from any and all liability relating to the use of

the Premises by the Tenant, including specifically, any liability with respect to any juvenile located at the facility.

14.02 Tenant shall, at its sole cost and expense, maintain and keep in force throughout the term hereof, insurance for all of Tenant's contents and property in the Premises, business interruptions, and commercial general liability insurance with minimum limits of \$1,000,000 combined single limit/\$2,000,000 aggregate with a \$1,000,000 per occurrence limit for personal injury and \$500,000 for property damage. Tenant shall provide Landlord with certificates evidencing such insurance coverage and naming Landlord as additional insured under such liability policies. Tenant's certificate will also exhibit a thirty (30) day Notice of Cancellation, citing notice to be issued to Landlord prior to any insurance being cancelled.

14.03 Waiver of Subrogation – Each of the parties hereto hereby releases the other and the other's partners, agents, employees and contractors, from any and all liability for any loss or damage, to the extent of the required coverage under the terms of this Lease, which may be inflicted upon the property of such releasing party even if such loss or damage shall be brought about by the fault or negligence of the other party, its partners, agents, contractors or employees. Each party shall obtain an endorsement to its insurance policies permitting such Waiver of Subrogation. Such waiver shall be kept current at all times and shall provide that no cancellation shall be effective until after thirty (30) days' written notice to the benefitting party. Proof of such Waiver shall be noted on Tenant's certificate to Landlord.

15. INSURANCE VIOLATIONS. Tenant will not do or commit, or suffer or permit to be done or committed, any act or thing whereby, or in consequence whereof, the policy or policies of insurance of any kind on or in connection with the Building containing the Premises shall become void or suspended, or whereby or in consequence whereof the insurance risk on such Building according to the insuring companies shall be rendered more hazardous, and Tenant shall pay as additional rent any increase of premiums for the entire Building payable to any insurers, whether the same or substituted insurers, caused by reason of the breach of this covenant.

16. COMPLIANCE WITH LAW. With respect to the Premises and any property appurtenant thereto, Tenant agrees throughout the term of this Lease and all renewals and extensions thereof, at Tenant's own cost and expense, to comply promptly with all laws and ordinances and other notices, requirements and regulations of any and all the federal, state, county or municipal authorities or of the Board of Fire Underwriters or any insurance organizations, associations or companies.

17. SERVICES.

17.01 The Landlord shall be providing no services to the Premises or the Building. It shall be the responsibility of the Tenant to provide all services for the Building, including snow removal and lawn maintenance.

18. LANDLORD'S RIGHT TO ENTER. Tenant will permit Landlord, Landlord's agents or employees or any other person or persons authorized by Landlord, to inspect the Premises at any time during normal business hours, and to enter the Premises, if Landlord shall so elect, at any reasonable times for making alteration, improvements or repairs to the Building or the Premises (including without limitation all ducts, pipes, wires and building equipment) or for any purpose in connection with the operation or maintenance of the Building; and no such entry or work shall be treated as a deprivation of Tenant's use of the Premises. Landlord shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant by reason of making such alterations, improvements or repairs or performing such operation or maintenance; provided, however, that Landlord shall make reasonable efforts to avoid materially interfering with Tenant's use of the Premises, but nothing contained herein shall obligate Landlord to make such alterations, improvements or repairs or perform such operation or maintenance other than during normal business hours. Nothing herein shall imply any duty upon the part of Landlord to do any such work which under any provision of this Lease Tenant may be required to perform and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. During the term of this Lease or any renewal or extension thereof, Landlord, with notice, shall have the right to exhibit the Premises. Landlord is not required to give notice to enter the Premises in case of an emergency and, in any case, shall not be responsible for reasonable interference with Tenant's business.

19. LANDLORD'S REMEDIES. If: (i) Tenant does not pay in full when due any and all installments of minimum rent, additional rent or any other charge or payment whether or not herein included as rent; or (ii) Tenant violates or fails to perform or otherwise breaks any covenant or condition therein contained or any other obligation imposed upon Tenant; or (iii) Tenant abandons the Premises or removes or attempts to remove Tenant's goods or property therefrom other than in the ordinary course of business without having first paid to Landlord in full all minimum rent, additional rent and other charges that may have become due as well as all which will become due thereafter; or (iv) Tenant becomes insolvent in any sense or makes an assignment for the benefit of creditors or offers a composition or settlement to creditors or calls a meeting of creditors for any such purpose, or if a petition in bankruptcy or for reorganization or for an arrangement with creditors under any federal or state act is filed by or against Tenant, or if a bill in equity or other proceeding is filed in any court for the appointment of a receiver, trustee, liquidator, custodian, conservator or similar official

for any of Tenant's assets, or if any of the real or personal property of Tenant shall be levied upon by any sheriff, marshal or constable; (v) any of the events enumerated in (iv) of this Section shall happen to any guarantor of this Lease; then, and in any such event, Landlord shall have the following rights after thirty (30) days prior written notice to Tenant of such default which remains uncured by Tenant after such thirty (30) day period:

19.01 Upon completion of the expansion of twelve (12) additional beds or January 1, 2006, whichever shall last occur, to accelerate twelve (12) successive months of the rent, as well as all other charges, payments, costs and expenses herein agreed to be paid by Tenant, and any rent or other charges, payments, costs and expenses if so accelerated shall, in addition to any and all instalments of rent already due and payable and in arrears, and/or any other charge or payment herein reserved, included or agreed to be treated or collected as rent and/or any other charge, expense or cost herein agreed to be paid by Tenant which may be due and payable and in arrears, shall be deemed due and payable as if, by the terms and provisions of this Lease, such accelerated rent and other charges, payments, costs and expenses were on that date payable in advance.

19.02 To enter the Premises and without further demand or notice proceed to distress and sale of the goods, chattels and personal property there found, to levy the rent and/or other charges herein payable as rent, and Tenant shall pay all costs and officers' commissions, including watchmen's wages and sums chargeable to Landlord and further including the five (5%) percent chargeable by the Act of Assembly as commissions to the constable or other person making the levy, and in such case all costs, officer's commission and other charges shall immediately attach and become part of the claim of Landlord for rent, and any tender of rent without said costs, commissions and charges made, after the issuance of a warrant of distress, shall not be sufficient to satisfy the claim of Landlord.

19.03 To re-enter the Premises and remove all persons and all or any property therefrom either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Premises, together with all additions, alterations and improvements. Upon recovering possession of the Premises by reason of or based upon or arising out of a default on the part of the Tenant, Landlord may, at Landlord's option, either terminate this Lease or make such alterations and repairs as may be necessary in order to relet the Premises or any part or parts thereof, either in Landlord's name or otherwise, for a term or terms which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and at such rent or rents and upon such other terms and conditions as in Landlord's sole discretion may deem advisable and to such person or persons as may in Landlord's discretion deem best; upon each such reletting all rents received by Landlord from such reletting shall be applied: first, to

the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and all costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as it may become due and payable hereunder. If such rentals received from such reletting during any month shall be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises or the making of alterations and/or improvements thereto or the reletting thereof shall be construed as an election on the part of the Landlord to terminate this Lease unless written notice of such intention be given to Tenant. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises or, in the event that the Premises or any part or parts thereof are relet, for failure to collect the rent thereof under such reletting. Tenant, for Tenant and Tenant's successors and assigns, hereby irrevocably constitutes and appoints Landlord as Tenant's agent to collect the rents due and to become due under all subleases of the Premises or any parts thereof without in any way affecting Tenant's obligation to pay any unpaid balance of rent due or to become due hereunder. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

19.04 To terminate this Lease and the term hereby created without any right on the part of Tenant to waive the forfeiture by payment of any sum due or by other performance of any condition, term or covenant broken.

19.05 Any action taken by Landlord under this Section shall not operate as a waiver of any right or remedy which Landlord would otherwise have against Tenant for rent hereby reserved or otherwise, and Tenant shall remain responsible to Landlord for any loss and/or damage suffered by Landlord by reason of Tenant's default or breach.

19.06 Any mention in this Section of the rent or rental herein reserved after the termination of this Lease as in this Section provided, or of termination of Tenant's possession by re-entry, summary dispossess proceedings or any other method as herein provided, shall be deemed to refer to the minimum monthly rental plus additional rental and such additional sums as Tenant shall be obligated to pay to Landlord under any of the terms, covenants and conditions of this Lease, whether or not designated or indicated herein to be payable as additional rent.

19.07 The failure of Landlord to insist in any one or more instances upon the performance of any of the covenants or conditions of this Lease or to exercise any right or privilege herein conferred shall not be construed as thereafter waiving or

relinquishing any such covenants, conditions, rights or privileges and the same shall continue and remain in full force and effect, and waiver of one default or right shall not constitute waiver of any other default; and the receipt of any rent by Landlord from Tenant or any assignee or subtenant of Tenant, whether the same be rent that originally was reserved or that which may become payable under any covenants herein contained, or of any portion thereof, shall not operate as a waiver of the right of Landlord to enforce the payment of the additional rent or of any of the other obligations of this Lease by such remedies as may be appropriate, and shall not waive or void the right of Landlord at any time thereafter to elect to terminate this Lease, on account of any such assignment, subletting, transferring of this Lease or any other breach of any covenant herein, or condition of this Lease, unless evidenced by Landlord's express written waiver.

19.8 In the event of any breach of this Lease by Tenant, Landlord may, without notice, cure such breach for the account and at the expense of Tenant. If, at any time, Landlord so elects to cure such breach or is forced to incur any other expense arising out of such breach by Tenant (including, without limitation, reasonable attorney's fees and disbursements in instituting, prosecuting or defending any suits, actions or proceedings to enforce Landlord's rights under this or any other section of this Lease or otherwise) the sum or sums so paid by Landlord with all interest, as per paragraph 8 of this Lease, costs and damages, shall be paid by Tenant to Landlord on demand.

20. REMEDIES CUMULATIVE. All remedies available to Landlord hereunder and at law and in equity shall be cumulative and concurrent. No termination of this Lease nor taking or recovering possession of the Premises shall deprive Landlord of any remedies or actions against Tenant for minimum rent, additional rent, for charges or for damages for the breach of any covenant or condition herein contained, nor shall the bringing of any such action for minimum rent, additional rent, charges or breach of covenant or condition, nor the resort to any other remedy or right for the recovery of minimum rent, additional rent, charges or damages for such breach, be construed as a waiver or release of the right to insist upon the forfeiture and to obtain possession.

21. LEASE SUBORDINATED. This Lease and Tenant's rights hereunder shall be subject and subordinate at all times to the lien of any mortgages now existing or hereafter created on or against the Premises and/or the Building and all renewals, modifications, consolidations and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of any mortgagee to attorn to any holder of any mortgage to which this Lease is subject and subordinate. Tenant further agrees upon demand to execute, acknowledge and deliver such instruments confirming such subordination and such further instruments of attornment as shall be desired by any existing or proposed mortgagee or by any other person. Tenant hereby appoints Landlord attorney-in-fact of Tenant irrevocably (such

power of attorney being coupled with an interest) to execute, acknowledge and deliver any such instrument or instruments for and in the name of Tenant and to record the same. Notwithstanding the foregoing, the holder of any mortgage may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution and delivery and in that event such mortgagee shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution and delivery of the mortgage and had been assigned to such mortgagee. The word "mortgage" is used herein to include any lien, ground rent or encumbrance on the Premises and/or the Building or any part of or interest in or appurtenance to any of the foregoing including without limitation any ground Lease if Landlord's interest is or becomes a leasehold estate. The word "mortgagee" is used herein to include the holder of any mortgage, ground rent or encumbrance or any ground lessor, if Tenant's interest is or becomes a leasehold estate, including any representative or servicing agent of any such mortgagee.

22. CONDEMNATION. If during the term of this Lease or any renewal or extension thereof the Building or any part of the Building is taken or condemned for a public or quasi-public use, Landlord may, at its option upon notice to Tenant, terminate this Lease as of the date when possession is surrendered to the condemnor, and the rent reserved hereunder shall abate and cease proportionately for the balance of the Term. If Landlord fails to elect to terminate this Lease upon such taking or condemnation, this Lease shall terminate, as to the part of the Premises taken or condemned, as of the date when possession is surrendered to the condemnor, and the rent reserved hereunder shall abate in proportion to the square feet of the Premises taken or condemned. In any such events, Tenant waives all claims for leasehold damages, diminution of the value of Tenant's leasehold interest and all other damages of any kind against Landlord and against the condemnor, except for moving and related expenses.

23. TENANT CERTIFICATE. Tenant agrees at any time and from time to time, within five (5) days after Landlord's written request, to execute, acknowledge and deliver to Landlord a written instrument in recordable form certifying that (i) this Lease is unmodified and in full force and effect; (ii) the date to which minimum rent, additional rent and other charges have been paid in advance, if any; (iii) the amount of any prepaid rents or credits due Tenant, if any; (iv) Tenant has accepted possession of the Premises and the date on which term of the Lease commenced; (v) stating whether or not, to the best knowledge of the signer of such certificate, Landlord is in default in the performance of any covenant, agreement or condition of this Lease; and (vi) stating any other fact or certifying any other condition reasonably requested, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the Building or any mortgagee thereof or any assignee or

Landlord's interest in this Lease or of any mortgage upon the fee of the Premises or the Building, or any part thereof.

24. NOTICES. All notices required or permitted hereunder from either of the parties hereto to the other must be in writing and sent by certified mail, return receipt requested, postage prepaid or by overnight mail service with receipt postage prepaid. Notices shall be addressed to the parties as follows:

If to the Tenant:

The County of Luzerne

If to the Landlord:

Pa. Child Care, LLC
The Can-Do Corporate Center
10 Fox Run Rd.
Drums, PA 18222

with a copy to:

Michael L. Mixell, Esquire
Ellsworth, Carlton, Mixell & Waldman
1105 Berkshire Blvd., Suite 320
Wyomissing, PA 19610

If Landlord requests, Tenant shall send to any mortgagee or fee owner designated by Landlord a copy of notices to Landlord. Either party may at any time, by notice given as aforesaid, change the address to which notices shall be sent.

25. BROKERS. Tenant agrees to indemnify, protect, defend and save harmless Landlord from and against any and all claims, costs or damages of any broker, attorney or agent, claiming to have negotiated or brought about this Lease and from and against all expenses which Landlord may incur in connection therewith (including, without limitation, attorneys' fees) in the absence of any written engagement by Landlord of such person rendering Landlord independently liable therefore.

26. DEFINITION OF "LANDLORD". The word "Landlord" is used herein to include the Landlord named above and any subsequent owner of such Landlord's interest in the Building, as well as their respective heirs, personal representatives, successors and assigns, each of whom shall have the same rights, remedies, powers, authorities and privileges as it would have had it originally signed this Lease as Landlord, but any owner of such interest in the Building, whether or not named herein, shall have no liability hereunder after it ceases to hold such interest except for such obligations which may have theretofore accrued. Neither Landlord nor any principal of

Landlord, whether disclosed or undisclosed, shall be under any personal liability with respect to any of the provisions of this Lease, and if Landlord is in breach of default with respect to Landlord's obligations under this Lease or otherwise, Tenant shall look solely to the equity of Landlord in the Building for the satisfaction of Tenant's remedies. It is expressly understood and agreed that Landlord's liability under the terms, covenants, conditions, warranties and obligations of this Lease shall in no event exceed the loss of Landlord's equity in its interest in the Building. For the purposes of Sections 9 and 13 hereof only, the word "Landlord" is used therein to include Landlord's landlord (if any), or any other fee owner of the Building, their heirs, administrators, executors, successors and assigns, in addition to the parties set forth above in this Article.

27. DEFINITION OF "TENANT". The word "Tenant" is used herein to include each and every of the persons named above as Tenant as well as their heirs, personal representatives, successors and assigns, each of whom shall be under the same obligations, liabilities and disabilities and have only such rights, privileges and powers as it would have possessed had it originally signed this Lease as Tenant. However, no such rights, privileges and powers shall inure to the benefit of any assignee of Tenant, unless such assignment has been approved in writing by Landlord. Each and every of the persons named above as Tenant shall be bound jointly and severally by the terms, covenants and agreements contained herein. Any notice required or permitted by the terms of this Lease may be given by or to any one of the persons named above as Tenant, and shall have the same force and effect as if given by or to all thereof.

28. RULES AND REGULATIONS. The rules and regulations attached to this Lease, and such additions or modifications thereof as may from time to time be made by Landlord upon written notice to Tenant, shall be deemed a part of this Lease, as conditions, with the same effect as though written herein, and Tenant also covenants that said rules and regulations will be faithfully observed by Tenant, Tenant's employees, and all others visiting the Premises or claiming under Tenant.

29. QUIET ENJOYMENT. Tenant, upon paying the minimum rent, additional rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease including, without limitation, the rights of the holder of any mortgage to which this Lease is subordinate.

30. TITLES FOR CONVENIENCE ONLY. The titles appearing in connection with various sections of this Lease are for convenience only. They are not intended to indicate all of the subject matter in the text and they are not to be used in interpreting this Lease nor for any other purpose in the event of any controversy.

31. SEVERABILITY. If all or a portion of any provision of this Lease or the applications thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Lease or the application of those provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

32. WHOLE AGREEMENT. This Lease and the riders, if any, attached hereto and forming part hereof set forth all the promises, agreements and conditions between Landlord and Tenant relative to the Premises and this leasehold. No rights, easements or licenses are acquired in the Building, or any land adjacent to the Building by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. No subsequent alteration, amendment, understanding or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them. The masculine (or neuter) pronoun singular number shall include the masculine, feminine and neuter genders and the singular and plural number.

33. HOLDING OVER.

33.01 If Tenant remains in possession of all or any part of the Premises after the expiration or termination of this Lease without Landlord's written consent, Tenant shall become a tenant-at-sufferance and there shall be no renewal of this Lease Agreement by operation of law. During the period of any such holding over, all provisions of this Lease Agreement shall be and remain in effect except that the monthly minimum rent payable hereunder shall be double the amount of minimum rent (including any adjustments provided herein) payable for the last full calendar month of the term of this Lease, including any renewals or extensions thereof. The inclusion of the preceding sentence in this Lease Agreement shall not be construed as Landlord's consent for Tenant to hold over.

33.02 In the event Tenant remains in possession of all or any part of the Premises after the expiration or termination of the Lease without the written consent of Landlord, Tenant shall, in addition to being liable under all provisions of this Lease, indemnify and hold Landlord harmless from and against any and all liability resulting from such failure of Tenant to surrender possession of the Premises.

34. OPTION TO PURCHASE PREMISES.

Provided that Tenant is not in default of its obligations under this Lease, Tenant shall have the option to purchase the Premises at any time during the initial term of this Lease, or any renewal term. The purchase price shall be determined by calculating the fair market value of the Premises in accordance with Section 2305 of the County Code. In the event the Landlord disagrees with the fair market value of the

property as determined by the Tenant in accordance with 2305 of the County Code, Landlord shall be under no obligation to sell the Premises to Tenant, and Landlord shall be free to sell the Premises to any third party. In addition to the option to purchase the Premises, the Tenant shall also have the right of first refusal to purchase the Premises upon the same terms that any bona fide third party purchaser offers for the Premises. In such event, the Landlord shall provide a copy of any such written offer to the Tenant, and the Tenant shall have a period of thirty (30) days to match any such offer. In the event the Tenant does not match the offer of a bona fide third party purchaser, the Tenant's right of first refusal shall be terminated.

35. TENANT'S OPTION TO TERMINATE.

In the event that the Pennsylvania legislature repeals or amends 42 Pa. C.S. Sections 6325 and 6352 et seq., such that the Court of Common Pleas no longer has the authority to commit juveniles to the Facility, the Tenant shall have the right to terminate this Lease without any further liability to the Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this Lease under seal the day and year first above written.

TENANT: THE COUNTY OF LUZERNE

DATE: November 19, 2004 BY:

[Signature]
County Commissioner

[Signature]
County Commissioner

[Signature]
Chief Clerk

County Commissioner

LANDLORD: RA CHILD CARE, LLC

DATE: 11/22/04 BY:

[Signature]
Member

DATE: 11/22/04 (SEAL) WITNESS:

[Signature]

RULES AND REGULATIONS

1. The parking areas, driveways, sidewalks, lobbies, passages, elevators and stairways shall not be obstructed by Tenant or used by Tenant for any purpose other than parking of motor vehicles and ingress and egress from and to Tenant's offices. Landlord shall in all cases retain the right to control or prevent access thereto of all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, peace, character, or reputation of the Building or of any of the tenants. Tenant shall observe, and use only for their designated purpose, and shall cause its employees, contractors, guests and invitees to observe and use only for their designated purpose, all handicapped parking spaces, loading zones and fire lanes as established by Landlord from time to time.

2. The toilet rooms, water closets, sinks, faucets, plumbing or other service apparatus of any kind shall not be used by Tenant for any purposes other than those for which they were installed, and no sweepings, rubbish, rags, ashes, chemicals or other refuse or injurious substances shall be placed therein or used in connection therewith by Tenant or left by Tenant in the lobbies, passages, elevators or stairways.

3. Nothing shall be placed by Tenant on the outside of the Building or on its window sills or projections. Skylights, windows, doors and transoms shall not be covered or obstructed by Tenant, and no window shades, blinds, curtains, screens, storm windows, awnings or other materials shall be installed or placed on any of the windows or in any of the window spaces, except as approved in writing by Landlord. If Landlord has installed or hereafter installs any shades, blinds or curtains in the Premises, Tenant shall not remove them without the prior written consent of Landlord.

4. No signs, lettering, insignia, advertisement, or notice, shall be inscribed, painted, installed, erected or placed in any portion of the Premises which may be seen from outside the Building, or on any windows or in any window spaces or any other part of the outside or inside of the Building, unless first approved in writing by Landlord. Names on suite entrances shall be provided for Tenant by Landlord and not otherwise, and at Tenant's expense. In all instances, the lettering is to be of design and form consistent with the other lettering in the Building, and must first be approved in writing by Landlord. Tenant shall not erect or place or cause or allow to be erected or placed any stand, booth or showcase or other article of matter in or upon the Premises and/or the Building without the prior written consent of Landlord.

5. Tenant shall not place additional locks upon any doors without first obtaining Landlord's prior written consent and shall surrender all keys for all locks and all security cards and devices at the end of Tenant's tenancy.

6. Tenant shall not do or commit, or suffer to be done or committed, any act or thing whereby, or in consequence whereof, the rights of other tenants will be obstructed or interfered with, or other tenants will in any other way be injured or annoyed, or whereby the Building will be damaged. Tenant shall not use nor keep nor permit to be used or to be kept in the Building any matter having an offensive odor, nor any kerosene, gasoline, benzine, camphene, fuel or other explosive or highly flammable material. No birds, fish or other animals shall be brought into or kept in or about the Premises.

7. No furniture, packages, equipment, supplies or merchandise of Tenant will be received in the Building, or carried up or down in the elevators or stairways, except during such hours as shall be designated by Landlord, and Landlord shall in all cases have the right to exclude from the Building bicycles or similar vehicles, vending machines, furniture, safes and other articles which may be hazardous or to require them to be located at designated places in the Premises. Tenant shall not place weights anywhere beyond the safe carrying capacity of the Building. The cost of repairing any damage to the Building caused by taking in or out furniture, safes or any articles or any damage caused while the same shall be in the Premises, shall be paid by Tenant.

8. Without Landlord's prior written consent, nothing shall be fastened to, nor shall holes be drilled or nails or screws driven into the walls or partitions; nor shall walls or partitions be painted, papered or otherwise covered or moved in any way or marked or broken; nor shall any connection be made to electric wires for running fans or motors or other apparatus, devices or equipment; nor shall machinery of any kind other than customary small office machines be allowed in the Premises; nor shall Tenant use any other method of heating, air conditioning or air cooling than that provided by Landlord. Telephones, switchboards and telephone wiring and equipment shall be placed only where designated by Landlord, which approval will not be unreasonably withheld. No mechanics shall be allowed to work in or about the Building other than those employed by Landlord without the prior written consent of Landlord first having been obtained.

9. Access may be had by Tenant to the Premises twenty-four (24) hours a day, seven (7) days a week. Landlord shall, in no case, be responsible for the admission or exclusion of any person. In case of unusual circumstances such as invasion, hostile attack, insurrection, mob violence, riot, public excitement or other commotion, explosion, fire or any casualty, Landlord reserves the right to bar or limit access of the Building for the safety of occupants or protection of property.

10. Landlord reserves the right to rescind, suspend or modify any rules or regulations and to make such other rules or regulations as, in Landlord's reasonable judgment, may from time to time be needful for the safety, care, maintenance, operation

and cleanliness of the Building, or for the preservation of good order therein. Notice of any action by Landlord referred to in this paragraph, given to Tenant, shall have the same force and effect as if originally made a part of the foregoing lease.

11. Tenant shall keep the windows and doors of the Premises, including those opening on corridors and all doors between rooms or spaces entitled to receive heating or air conditioning service and rooms and spaces not entitled to receive such service, closed during the respective times that the heating or air conditioning system is operating, in order to conserve the service and effectiveness of the heating and air conditioning systems as the case may be. Tenant shall comply with all reasonable rules and regulations from time to time promulgated by Landlord to conserve such services.

12. The rules and regulations are not intended to give Tenant any rights or claims in the event that Landlord does not enforce any of them against other tenants or if Landlord does not have the right to enforce them against any other tenants and such non-enforcement will not constitute a waiver as to Tenant.

13. Cigarette, cigar or pipe smoking shall not be allowed in the restrooms, fire towers, lobbies, hallways, elevators or any common areas of the Building.

Exhibit J

JUVENILE DETENTION FACILITY MANAGEMENT AGREEMENT

This Juvenile Detention Facility Management Agreement ("Agreement") made this 1ST day of May, 2005 between The County of Luzerne, a Pennsylvania local governmental body, with an address of 200 North River Road, Wilkes-Barre, Pennsylvania 18711 ("County") and Mid-Atlantic Youth Services Corp., a Pennsylvania corporation with an address of P.O. Box 62046, Harrisburg, Pennsylvania 17106-2046 ("Manager").

Background

The County is leasing and is operating a juvenile detention facility in Pittston Township, Luzerne County, Pennsylvania for the care and treatment of youth (the "Facility"). The Manager is in the business of managing facilities in, and is familiar with the provisions of Pennsylvania law regarding the temporary placement of dependent and/or delinquent children at the request of various governmental agencies and/or courts. The County desires to contract with the Manager to operate the Facility. The parties acknowledge that it shall be the goal of the Manager to comply with the goal of the County and the Courts to benefit and protect the welfare of, and provide first class treatment for, youth at the Facility and to keep the beds at the Facility, other than those beds contracted for use by Luzerne County, filled at or near capacity at all times during the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

1. Relationship. The County hereby engages Manager, and Manager agrees to be engaged by County, as the exclusive manager for the purpose of managing and operating the Facility, as more fully described in this Agreement. Manager shall have the authority and shall take any and all acts necessary, using reasonable commercial efforts, to manage and operate the Facility, other than those rights and duties specifically reserved by County pursuant to the terms of this Agreement. Manager shall be an independent contractor of County for all purposes relating to this Agreement.

2. Term. Except as terminated earlier pursuant to paragraph 8 of this Agreement, the term of this Agreement shall be for a period of twelve (12) months commencing May 1, 2005 and expiring April 30, 2006 (the "Term"). Unless either party provides written notice of their intent not to renew this Agreement for an additional one (1) year term after the initial one (1)

year term at least ninety (90) days prior to the expiration of the initial term, this Agreement shall automatically extend for an additional one (1) year period and for successive one (1) year periods unless either party terminates this Agreement at least ninety (90) days prior to the end of any term hereof.

3. Representations, Warranties and Covenants of Manager. The Manager represents, warrants, covenants and agrees as follows:

(a) The Manager is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania.

(b) The Manager has the necessary knowledge, experience and ability to fulfill all of its obligations under this Agreement.

(c) The Manager shall at all times during the term of this Agreement comply with all applicable provisions of State and Federal law and regulations relating to the provision, delivery and funding of child welfare services to children and youth; including specifically all record keeping and reporting requirements of Pennsylvania Juvenile Act, 42 Pa. CSA § 6301 et seq. This reporting requirement includes the development of a family service plan and/or an individual service plan where required by the regulations of the Pennsylvania Department of Public Welfare or any Court having jurisdiction over any child at the facility.

(d) The Manager shall apply for, and use its diligent commercial efforts to obtain and maintain in the name and at the expense of the County, all licenses and permits required in connection with the management and operation of the Facility. County agrees to cooperate with Manager in applying for, obtaining and maintaining such licenses and permits. This provision shall include without limitation all licenses related to the Commonwealth of Pennsylvania Department of Public Welfare. Pending the acquisition of all permits and licenses for the Facility by the Manager, the County shall maintain the current license to operate the Facility. The County covenants and agrees not to take any acts which adversely affect the Manager in obtaining or maintaining licensure of the Facility in the County's name. Any such act by the County shall constitute a material breach of this Agreement by the County. In the event any licenses are ever in the Manager's name, the Manager shall assist the County in transferring any such license to the County, upon termination of this Agreement for any reason by either party.

(e) The Manager, with respect to the Facility, shall, as part of the comprehensive compensation paid pursuant to Paragraph 6 below, comply in all respects with all Federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 et. seq.; Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Government, and Non-Profit Organizations, as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the Federal government or the Commonwealth of Pennsylvania.

(f) In carrying out the terms of this Agreement, the Manager agrees not to discriminate against any employee, vendor, client or other person on account of age, race, color, sex, religious creed, national origin, marital status, or handicap. The County and Manager shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all law prohibiting discrimination in hiring or employment opportunities and the provision of child welfare services.

(g) The Manager shall notify the County, in writing, within two (2) working days of any loss of its Pennsylvania Department of Public Welfare certification for any services being provided at the Facility.

(h) The Manager certifies that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state or the Federal government.

4. Manager's Duties. During the period commencing May 1, 2005 and continuing until the termination of this Agreement (the "Operating Period"), the Manager shall use its reasonable commercial efforts in the management and operation of the Facility so that the Facility and its services will be operated and maintained in a first quality and safe manner for all youth at the Facility. In pursuance of the foregoing, the Manager shall perform the following services:

(a) Submit to the County's Office of Budget and Finance at the commencement of this Agreement and at least four months before the renewal term of each year thereafter a detailed line item budget identifying all items of expense and an estimated profit and loss statement for the ensuing operating year (the "Annual Plan"). Within thirty (30) days after receipt of the Annual Plan, the County shall have the right to make any commercially reasonable change thereto or to refuse to expend any money suggested by the Annual Plan. The County

shall inform the Manager of any such change or refusal within thirty (30) days after receipt of the Annual Plan. The comprehensive compensation paid pursuant to Paragraph 6 below shall be based upon the "Annual Plan".

(b) The Manager shall provide Court Liaison services for any treatment beds not reserved specifically for a contracting county. The services shall include: 1) educating Juvenile Court Judges and Probation Officers, throughout the Commonwealth of Pennsylvania, as to the type, availability and appropriateness of services; 2) developing documents, brochures and other materials regarding services provided by the Facility; 3) meeting regularly with Probation Officers to identify youth appropriate for service at the Facility; 4) evaluating and assessing referrals of youth for admission to the Facility; 5) taking diligent commercial steps to facilitate the admission of youth into the Facility; 6) providing information to the youth and his/her family during the admission process; and 7) initiating efforts to secure contracts with counties for services, including reserved bed contracts.

(c) Hire, promote, discharge, and supervise the work of the executive staff, including general manager, assistant managers, and department heads. Through such executive staff, the Manager shall supervise the hiring, promotion, discipline, discharge, and work of all other operating and service employees performing services in or about the Facility. All of such employees shall be on the Manager's payroll, and the Manager shall be liable for the payment of such employees' wages, compensation, taxes and all employee related expenses. The County shall not be liable for any act or omission on the part of such employees. None of Manager's employees shall be deemed to be employees or agents of the County. The Manager shall procure and maintain adequate workmen's compensation insurance, in the name of and at the expense of the Manager, covering all of the Manager's employees.

(d) The Manager shall maintain an accounting department, not necessarily on site, and shall cause such department to prepare, file and submit all necessary reports and claims with respect to reimbursement from any applicable government source for placement of any youth at the Facility, withholding taxes, social security taxes, unemployment insurance, disability insurance, the Fair Labor Standards Act, and all other statements and reports pertaining to reimbursement for placement at the Facility or labor employed in or about the Facility. The Manager shall establish and supervise all bookkeeping, accounting, and clerical services,

including the maintenance of payroll records, incident to the efficient operation and maintenance of the Facility. All personnel engaged in such bookkeeping, accounting, and clerical services shall be the Manager's employees. All records, documents and information shall be owned by Manager. Access to all information and reports shall be administered in accordance with HIPPA, the Mental Health Act, the Juvenile Act and all applicable law and regulations. County acknowledges that Manager's policies and procedures and related managerial materials and/or information relating to the management of the Facility are proprietary to Manager, and County has no right to any such information. Manager acknowledges that County will need all documents relating to operating contracts and juveniles in the event of termination and agrees to provide copies of such documents and records to County upon the termination of this Agreement in accordance with law. The Manager shall give the County notice of any incidents and/or allegations of abuse or wrongdoing by any of Manager's employees or agents at the Facility, including copies of reports of investigations of such incidents or allegations, to the extent permitted by applicable law. County covenants and agrees not to solicit Manager's employees for hire for a period of two (2) years in the event of the termination or after the expiration of this Agreement.

(e) Receive, consider, and handle the complaints of all parties relating to any youth placed at the Facility.

(f) Enter into contracts in the name of the County for the furnishing to the Facility of electricity, gas, water, steam, telephone, cleaning (including window cleaning), pest exterminators, elevator and boiler maintenance, air conditioning maintenance, master television antennas, and other necessary utilities or services, and purchase all materials and supplies for the Facility. Such expenses shall be included as part of the Annual Plan and shall constitute part of the comprehensive compensation paid pursuant to Paragraph 6 of this Agreement.

(g) Manager shall apply for, and use its diligent commercial efforts to obtain and maintain in the name and at the expense of the County, all licenses and permits required in connection with the management and operation of the Facility. County agrees to cooperate with Manager in applying for, obtaining and maintaining such licenses and permits. Manager shall use its reasonable commercial efforts to take such action as appropriate to insure that the Facility and the management thereof by Manager complies with all federal, state and local laws,

regulations and ordinances applicable to the Facility, or the management thereof by Manager, including any laws and regulations applicable to the Facility, including all statutes, ordinances, laws, rules, regulations, orders, and determinations affecting or issued in connection with the Facility by any governmental authority having jurisdiction thereof, including specifically the Court of Common Pleas of Luzerne County and the Pennsylvania Department of Welfare, including specifically all requirements relating to reimbursement for placement of youth at the Facility from any source, as well as with all orders and requirements of any body similar to the New York Board of Fire Underwriters. The Manager shall not, without the County's prior written consent, make any alterations or repairs so ordered or so required, if not included in the Annual Plan, but if any such alterations or repairs are not made because of the County's failure to give its written consent after request therefor, then the County shall hold the Manager harmless from any liability that may arise by reason of the failure to make such alterations or repairs. Notwithstanding the foregoing, in case of an emergency or if failure promptly to comply with any order or to cure any violation shall expose the County or the Manager to the imminent danger of criminal liability other than payment of fines, then in such event the Manager shall cause such order or violation to be complied with or cured without awaiting the County's written consent. Unless otherwise directed by the County and with prior approval of the County Commissioners, the Manager shall, at the County's expense, protest or litigate to final decision in any appropriate court or forum any violation, order, rule, or regulation affecting the Facility. The County shall designate or approve any counsel engaged under this subparagraph.

(h) With the prior approval of the County Commissioners, institute, in its own name or that of the County, at the County's expense, all necessary legal actions or proceedings to collect charges, reimbursements, or other income for the Facility. The Manager shall designate, with the approval of County, any counsel engaged under this subparagraph.

(i) Use commercially reasonable efforts to take any and all actions and provide adequate staffing, to comply with all preplacement and reporting requirements and regulations of any court or other governmental agency placing youth at the Facility.

5. Statements to County. The Manager shall render statements to the County as follows:

(a) On or before the 25th day of the month following each quarter, the

Manager shall render to the County, and to all persons designated by the County, a profit and loss statement of the Facility's operations for the preceding quarter and for such Annual Plan year to date, showing a detailed statement of revenue and costs, and a comparison of the actual results to the budget as set forth in the Annual Plan for such quarter and for the year to date under the Annual Plan. Such statements shall be prepared by the Manager and certified by one of its authorized financial officers.

(b) The Manager shall render to the County and all persons designated by the County, at the County's expense, all other statements reasonably required by the County.

(c) Within 20 days after the end of each calendar month, the Manager shall remit to the County from such bank accounts the amount collected, if any, by the Manager during the preceding calendar month.

(d) Within 5 days after the end of each calendar month, the Manager shall issue to each governmental entity who placed a resident at the Facility during the preceding calendar month a detailed invoice for service(s) rendered during that month. Such invoice shall reflect that payment shall be made directly to the County and shall be due within 25 days after the end of each calendar month. The Manager shall provide to the County, at the time of issuance, copies of all invoices rendered.

6. Manager's Compensation The County has elected to pay a comprehensive fee for all services rendered in connection with the operation of the Facility, including all matters and issues as set forth on the Annual Plan for the first Operating Period, commencing May 1, 2005, which Annual Plan is attached hereto as Appendixes A1, A2 and A3. For the period beginning May 1, 2005 and ending on April 30, 2006, and until the Facility is expanded to a 60 bed facility, the County shall pay to the Manager an annual sum of \$3,017,091, in monthly installments of \$251,424.25. The County shall pay the monthly installment of the comprehensive fee by the 10 day of each month. In the event any monthly installment of the comprehensive fee is not received by the Manager in immediately available funds by the 20th day of any month, the County shall pay a late fee of five percent (5%) of such monthly installment for such month and for each subsequent month that such monthly installment remains unpaid. The Manager shall apply each payment to the earliest unpaid monthly in statement at the time of payment. At the time that the Owner of the Facility completes the expansion of the Facility to a

60 bed facility, the annual monthly cost, based upon a revised Annual Plan showing a total cost to operate a 60 bed facility of \$3,456,630.00, shall be a monthly amount of \$288,052.50. The Annual Plan submitted by the Manager and approved by the County shall be revised each year and agreed to by the parties as set forth in Paragraph 4(b) of this Agreement. Based upon operating costs for the first operating period of \$3,017,091.00, in the event the actual costs to operate the Facility, as set forth on the Annual Plan attached hereto as Appendixes A1, A2 and A3 is less than \$3,017,091.00, the County shall be entitled to 100% of the first \$50,000.00 of decreased costs from the amount shown in the actual Annual Plan. In the event the costs to operate the Facility is less than \$2,967,091.00, any such savings shall be divided equally between the County and the Manager. The Manager will remit any such rebate based upon actual decreased costs to the County within ten (10) days after the completion of the reports by the Manager as required by Paragraph 5 of this Agreement. In the event that the expansion of the Facility is completed during the middle of an Operating Period, the parties agree to execute an Addendum which reflects a revised Annual Plan, based upon the estimated amount of the Annual Plan payment of \$3,456,630.00 for the 60 bed facility as expanded. The comprehensive fee paid pursuant to this Agreement shall not include rent paid by the County to the owner of the Facility. The comprehensive fee paid hereunder shall be the maximum amount due from the County, and such fee shall not exceed the amounts set forth in this Paragraph.

7. Insurance. (a) The Manager shall maintain in companies and through brokers reasonably acceptable to the owner of the Facility insurance of such kinds and amounts as the owner shall be required to carry pursuant to the provisions of any mortgage outstanding affecting the Facility or the plot of land upon which it is erected, as well as any other insurance that the County shall require. A schedule of all insurance coverage, when obtained, shall be attached hereto as Exhibit "B" and made a part hereof.

(b) Concurrently with the submission of the first Annual Plan, the Manager shall furnish the County with a schedule setting forth the kinds and amounts of insurance the Manager intends to procure in connection with the operation of the Facility. Such schedule shall include, in addition to the kinds and amounts of insurance required to be maintained pursuant to any mortgage, such other kinds and amounts of insurance as the Manager shall deem necessary or advisable for the protection of the Manager and the County. Promptly following receipt of

such schedule, the County shall notify the Manager of all changes which the County shall elect to make in such schedule, and the Manager shall thereupon forthwith apply for and obtain, if obtainable, all such insurance from such companies and through such brokers as the County shall direct.

(c) Concurrently with the submission of each subsequent Annual Plan, the Manager shall furnish the County with a schedule setting forth the kinds and amounts of insurance then in force and the names of the insurers, and also setting forth such additional kinds and amounts of insurance which the Manager then intends to procure. Promptly following the submission of each such schedule, the County shall notify the Manager of any change in the kinds and amounts of insurance then in force or intended to be procured by the Manager which the County shall elect to make and the Manager shall forthwith apply for and obtain, if obtainable, endorsements to reflect any such change in the insurance then in force and such additional kinds and amounts of insurance. All such additional insurance shall be obtained from such companies and through such brokers as the Manager shall select and the County shall approve.

(d) All policies of insurance shall name the County, the owner of the Facility, the Manager, and such other parties as may be required by the provisions of any mortgage as the insureds thereunder, as their respective interests may appear. All policies of hazard insurance shall include loss payment clauses in the form required by any mortgage. The cost of any such insurance shall be included as part of the comprehensive fee paid pursuant to Paragraph 6 of this Agreement. The originals of all policies of insurance and duplicates thereof shall be delivered to the owner of the Facility, the County and to the holder of any mortgage as the County shall direct.

(e) The Manager shall procure, at the Manager's own expense, comprehensive general liability insurance, issued on a claims made basis, including blanket contractual personal injury and broad form liability, naming the County as an additional insured with minimum limits of \$2,000,000 for combined single limit for property damage and bodily injury per occurrence and for all claims or injury or damage relating to the Manager's operation of the Facility and arising out of or in connection with the Manager's operation of the Facility, including the Manager's employees, agents, contractors, and invitees. Manager shall also

provide worker's compensation insurance for its employees.

(f) Provided the Manager shall procure and keep in force all of the procurable insurance required to be obtained by the Manager pursuant to the foregoing provisions of this paragraph 7, neither the County or the Manager or their insurance carriers shall assert against the other any claims for any losses, damages, liability, or expenses (including attorneys' fees) incurred or sustained by either of them, to the extent that the same are covered by such insurance, on account of damage or injury to person or property arising out of the ownership, operation, or maintenance of the Facility. To the extent that the same exceed the amount covered by such insurance, such excess shall be paid in equal parts by the County and the Manager. If, however, the Manager shall have failed to procure and keep in force such required insurance, it shall be deemed solely liable for and shall solely pay for any and all losses, damages, liability, and expenses (including attorneys' fees) incurred or sustained by the Manager or the County and not fully reimbursed by insurance proceeds.

(g) The County shall give prompt notice of all claims made against it or against it and the Manager and shall cooperate fully with the Manager and with any insurance carrier to the end that all such claims will be properly investigated and defended.

8. Early Termination of Agreement. This Agreement and the engagement of the Manager shall be terminated, and except as to liabilities or claims which shall have accrued or arisen prior to such termination, all obligations hereunder shall cease if any of the following events shall occur:

(a) If, pursuant to any statute of the United States or of any state, the Manager files in any court a petition in bankruptcy or insolvency, or for a reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of the Manager's property, or if the Manager makes an assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition in bankruptcy is filed against the Manager which is not discharged or stayed within 90 days thereafter.

(b) If the Manager shall cease to be actively engaged in the business of operating juvenile detention facilities, and notice of termination shall have been given by the Manager to the County. In such event, the Manager will attempt to give the County thirty (30) days prior written notice of this event if possible.

(c) The taking of the entire or a substantial portion of the Facility or its services, through lawful condemnation proceedings by any governmental authority.

(d) The loss by the owner of the Facility or of the right to possession or the right to collect the income from the Facility due to any cause whatsoever, including, without limitation, its default on any mortgage or other obligation, or by operation of law.

(e) The owner of the Facility gives notice, within one hundred twenty (120) days, after substantial damage or destruction of the Facility by fire or other casualty, that it has elected not to rebuild or restore the Facility.

(f) The County gives notice if the Manager shall have committed a material breach of this Agreement, and the County shall have served written notice upon the Manager setting forth the details of such alleged breach, and the Manager shall not, within forty-five (45) days after the mailing of such notice, have cured such breach, or if such breach is of a nature that it cannot be cured within such 45-day period, the Manager shall not within such 45-day period have commenced and at all times thereafter have diligently proceeded in the sale and absolute discretion of the County with all acts required to cure such breach. Any such termination shall be without prejudice, however, to any and all rights and remedies of the County.

(g) Except for the County's payment obligations as set forth in Paragraph (6), County fails to keep, observe, or perform any material covenant, agreement, term or provision of this Management Agreement to be kept, observed, or performed by County, and such default continues for a period of forty-five (45) days after written notice thereof by Manager to County and the failure by County to correct any such material breach.

(h) County fails to make any monetary payment or perform any financial obligation, and such default continues for a period of forty-five (45) days after written notice thereof by Manager to County, and the failure by County to correct any such monetary breach.

9. Casualty. In the event of any damage or loss to the Facility by fire or other casualty, the Manager shall give immediate written notice thereof to the County.

10. Indemnity and Hold Harmless. Each party agrees to indemnify and hold the other party and its agents and employees harmless against any and all liability, claims, demands, damages, costs, and expenses, including reasonable attorneys' fees for the defense of such claims and demands, arising from the conduct or management of the Facility or any failure on the part

of either party to observe, perform or comply with any terms, covenants or conditions of this Agreement or from any act or negligence of either party, its agents, contractors, employees, sublessees, concessionaires, invitees, or licensees in or about the Facility. In case of any action or proceeding brought against either party by reason of any such claim referred to in this Paragraph, the other party, on notice from such party, agrees to defend the action or proceeding relating to the failure of such party or their agents or employees to comply with this Agreement.

11. Prohibition of Assignment. The Manager shall not assign this Agreement or any of its rights hereunder, nor shall this Agreement or any of the Manager's rights or obligations hereunder be transferable on the Manager's part by operation of law or otherwise, without the prior written consent of the County.

12. Agreement not an Interest in Real Property. This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature against the Facility or the land upon which it is erected. The rights of the Manager shall at all times be subject and subordinate to all mortgages which may now or hereafter be outstanding, and to all renewals, modifications, consolidations, replacements, and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgage. The Manager shall execute promptly any certificate or other document that the County or any mortgagee may request as to such subordination, and the Manager hereby irrevocably constitutes and appoints the County as the Manager's attorney-in-fact to execute any such certificate or document for and on behalf of the Manager.

13. Notices. Any and all notices, consents, or directives by either party intended for the other shall be sent by registered or certified mail, return receipt requested, to the County at 200 North River Road, Wilkes-Barre, Pennsylvania 18711, Attention: Office of Budget and Finance, and to the Manager at 105 Park Street, Harrisburg, Pennsylvania 17109, with a copy to Mette, Evans & Woodside 3401 North Front Street, Harrisburg, Pennsylvania 17110, Attn: Kathryn L. Simpson, Esquire, unless either party shall have designated different addresses by serving written notice of change of address on the other party by registered or certified mail.

14. Entire Agreement. This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

15. Non-waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

16. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

17. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

19. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of both of the parties and their respective legal representatives, successors, and assigns.

20. Miscellaneous.

(a) Any consent required of the County shall be ineffective unless it is in writing and signed by a duly authorized officer of the County.

(b) The term "mortgage" as used in this Agreement shall be deemed to mean mortgage, deed of trust, or similar document, and the term "mortgagee" shall be deemed the holder of a mortgage.

(c) This Agreement cannot be changed or modified except by another agreement in writing signed by the party sought to be charged therewith or by its duly authorized agent.

(d) The parties agree that any suit, action or proceeding arising under or with respect to this Agreement will be instituted in the Court of Common Pleas of Luzerne County, Pennsylvania, and each party irrevocably and unconditionally submits to the jurisdiction of such Court for all purposes.

21. Cooperation with Manager. Subject to the provisions of this Management Agreement, County shall at all times cooperate with Manager in its effort to perform its duties hereunder, including, without limitation, County shall comply with all covenants set forth in this Management Agreement.

22. Sale, Assignment, or Sublease by the County. Any sale, sublease, or assignment by the County with respect to the Facility, other than to Manager, shall be expressly subject to the terms and provisions of this Management Agreement. County shall cause any purchaser, assignee, or sublease to deliver to Manager written acknowledgment of its agreement to assume and to perform County's obligations hereunder including the payment of the Management Fee described herein and County shall then be relieved of all its obligations under this Management Agreement and except for liabilities of County arising out of event occurring prior to such assignment

23. Authority; No Conflict; Consent. This Management Agreement constitutes the legal, valid and binding obligations of parties enforceable in accordance with its terms. Each party has the absolute and unrestricted right, power, authority and legal capacity to execute and deliver this Management Agreement and to perform its obligations hereunder.

Neither the execution and delivery of this Management Agreement nor the consummation or performance of any of the transactions contemplated by this Agreement by County or Manager will, directly or indirectly (with or without notice or lapse of time):

(a) contravene or conflict with or result in a violation or breach of any of the organizational or operational documents of County or Manager or any contract to which County or Manager or the Facility may be subject;

(b) contravene, conflict with, or result in a violation of any applicable law to which County or Manager or the Facility may be subject or give any authority or person the right to challenge any of the transactions contemplated by this Management Agreement;

(c) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any authority or person the right to revoke, withdraw, suspend, cancel, terminate, or modify, any license, permit or accreditation that is held by County or Manager or that otherwise relates to the Facility;

(d) contravene, conflict with, or result in a violation of any of the terms or requirements of the Mortgage; or

(e) result in the imposition or creation of any lien or encumbrance upon or with respect to the Facility or any portion thereof.

(f) Books and Records. To the best of County's knowledge, the books and

records of County pertaining to the Facility or other assets are complete and correct in all material respects, and have been kept and maintained in accordance with sound business practices.

24. Brokers or Finders. County has not dealt with any broker or agent in connection with the Facility who is entitled to a brokerage or finder's fee or agent's commission or other similar payment in connection with the sale, lease or management of the Facility or the transactions contemplated hereby as a result of County's dealings.

In witness whereof, the parties hereto have caused this instrument to be executed on the day and year first above written.

Attest:

Sam A. Kuester

THE COUNTY OF LUZERNE

By: August A. Sheppard

By: John V. [Signature]

By: _____

Attest:

William P. Burke

MID-ATLANTIC YOUTH SERVICES
CORP.

By: [Signature]
Jeffrey Giovinco, President

APPENDIX A1

Mid-Atlantic Youth Services Corp.

Total Expense Recap

Luzerne County Request For Proposal

4 YEAR 24 BED DETENTION FINANCIAL PROPOSAL

| | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> | <u>Year 4</u> |
|---|------------------|------------------|------------------|------------------|
| Personnel: | | | | |
| Salaries & Wages | 693,267 | 714,086 | 735,509 | 757,574 |
| Payroll Taxes | 61,009 | 62,840 | 64,725 | 66,666 |
| Pension | 17,332 | 17,852 | 18,388 | 18,939 |
| Health & Welfare | 97,080 | 114,254 | 125,036 | 140,909 |
| Conferences | 4,000 | 5,200 | 5,366 | 5,517 |
| Other Personnel (incl W/C) | 22,800 | 24,000 | 24,720 | 25,462 |
| Total Personnel | 895,489 | 938,231 | 968,378 | 995,370 |
| Operating: | | | | |
| Communications | 11,235 | 11,600 | 11,948 | 12,306 |
| Utilities | 5,250 | 5,400 | 5,562 | 5,729 |
| Food & Clothing | 8,000 | 8,240 | 8,487 | 8,742 |
| Supplies | | | | |
| Assets, Leases & Purchases | 18,000 | 18,540 | 19,096 | 19,689 |
| Purchase Providers | 3,000 | 5,000 | 5,150 | 5,305 |
| Travel | 18,000 | 18,000 | 18,000 | 18,000 |
| All other | 63,485 | 68,780 | 68,783 | 70,847 |
| Total Operating | 958,974 | 1,005,011 | 1,035,162 | 1,066,217 |
| Total Operating & Personnel Expenses | 1,857,463 | 1,943,242 | 1,999,540 | 2,061,587 |
| Management Fee | 180,000 | 189,000 | 198,000 | 210,000 |
| Total Expense | 1,138,974 | 1,194,011 | 1,233,162 | 1,276,217 |
| Per Diem - 85% Occupancy Rate | 153 | 160 | 166 | 171 |

Jeffrey Giovino, MS
 President/CEO
 Mid-Atlantic Youth Services Corp.

APPENDIX A2

**Mid-Atlantic Youth Services Corp.
Total Expense Recap
Luzerne County Request For Proposal**

| | 4 YEAR SECURE RESIDENTIAL FINANCIAL PROPOSAL | | | |
|--|---|---------------------------|---------------------------|---------------------------|
| | 24 BEDS Year 1 | 30 BEDS Year 2 | 36 BEDS Year 3 | 36 BEDS Year 4 |
| Personnel: | | | | |
| Salaries & Wages | 872,180 | 1,024,917 | 1,055,865 | 1,087,335 |
| Payroll Taxes | 76,752 | 90,193 | 92,898 | 95,686 |
| Pension | 21,805 | 25,623 | 26,392 | 27,183 |
| Health & Welfare | 122,105 | 168,086 | 173,129 | 178,323 |
| Conferences | 4,500 | 6,000 | 6,180 | 6,365 |
| Other Personnel | 25,200 | 30,000 | 30,900 | 31,827 |
| Total Personnel | 1,122,542 | 1,344,819 | 1,385,164 | 1,426,719 |
| Operating: | | | | |
| Communications | 11,325 | 15,000 | 15,450 | 15,914 |
| Utilities | | | | |
| Food & Clothing | 5,250 | 7,800 | 8,034 | 8,275 |
| Supplies | 8,000 | 14,000 | 14,420 | 14,853 |
| Assets, Leases & Purchases | 21,000 | 22,000 | 22,660 | 23,340 |
| Purchase Providers | 18,000 | 19,000 | 19,570 | 20,157 |
| Travel | 12,000 | 12,000 | 12,360 | 12,731 |
| All other | 18,000 | 18,000 | 18,000 | 18,000 |
| Total Operating | 93,575 | 107,800 | 110,494 | 113,269 |
| Total Operating & Personnel Expenses | 1,216,117 | 1,452,619 | 1,495,658 | 1,539,987 |
| Management Fee | 225,000 | 270,000 | 285,000 | 300,000 |
| Total Expense | 1,441,117 | 1,722,619 | 1,780,658 | 1,839,987 |
| Per Diem - Rate 24 Beds @85% 36 Beds @85% | 194 | 154 | 159 | 165 |

Jeffrey Giovino, MS
President/CEO
Mid-Atlantic Youth Services Corp.

APPENDIX A3
Mid-Atlantic Youth Services Corp.
Total Expense Recap
Luzerne County Request For Proposal

| | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>Total</u> |
|-------------------------------|------------------|------------------|------------------|------------------|-------------------|
| I Operating Costs | | | | | |
| Appendix A1 | 1,138,974 | 1,194,011 | 1,232,622 | 1,275,120 | 4,840,727 |
| Appendix A2 | 1,441,117 | 1,722,619 | 1,780,558 | 1,839,987 | 6,784,381 |
| Total | <u>2,580,091</u> | <u>2,916,630</u> | <u>3,013,280</u> | <u>3,115,107</u> | <u>11,625,108</u> |
| II Additional Costs | | | | | |
| Food Services | 200,000 | 250,000 | 265,000 | 280,000 | 995,000 |
| Medical | 162,000 | 200,000 | 210,000 | 220,000 | 792,000 |
| Utilities | 75,000 | 90,000 | 96,000 | 103,000 | 364,000 |
| | <u>437,000</u> | <u>540,000</u> | <u>571,000</u> | <u>603,000</u> | <u>2,151,000</u> |
| Total Cost Facility Operation | <u>3,017,091</u> | <u>3,456,630</u> | <u>3,584,280</u> | <u>3,718,107</u> | <u>13,776,108</u> |
| Per Diem - 85% Occupancy Rate | 203 | 186 | 193 | 200 | 195 |

Jeffrey Giovino, MS
 President/CEO
 Mid-Atlantic Youth Services Corp.

Exhibit K

Report Selection:

Due to the current security settings,
this report may not reflect all account information

Optional Report Title.....MAYS

INCLUSIONS:
Fund & Account..... thru

Check Date..... thru
Source Codes..... thru
Journal Entry Dates..... thru
Journal Entry Ids..... thru
Check Number..... thru

Project/Grant..... thru
Vendor..... thru
Invoice..... thru
Purchase Order..... thru
Bank..... thru
Totals Only?..... thru
1099 Vendors Only?..... thru
Lower Dollars Limit..... thru

Run Instructions: Copies Form Printer Hold Space LPI Lines CPI CP SP
Jobq Banner 01 Y S 6 066 10
L

Vendor Payments History Report
MAYS

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PC# | 9 F S ACCOUNT NAME | ACCOUNT |
|---|----------------------------|------------|-------------------|-----|------------------------|---------------|
| MID ATLANTIC YOUTH SERV 421678 06/15/05 MONTHLY SERVICES | 011125 MONTHLY SERVICES | 251,424.25 | 106411 1 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 422493 07/07/05 MONTHLY PAYMENT | PAYMENT | 251,424.25 | 109327 2 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 423575 08/01/05 MONTHLY SERVICES | MONTHLY SERVICES | 251,424.25 | 112917 3 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 424641 09/01/05 MONTHLY PMT SERV REN | PMT SERV REN | 251,424.25 | 116882 INV 4 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 425722 10/03/05 MONTHLY PMT SERV REN | PMT SERV REN | 251,424.25 | 119964 5 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 426807 10/31/05 MONTHLY PMT SERV REN | PMT SERV REN | 251,424.25 | 124408 6 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 428260 12/08/05 MONTHLY PAYMENT | MONTHLY PAYMENT | 251,424.25 | 128832 7 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 429091 12/30/05 SERVICES RENDERED | SERVICES RENDERED | 285,688.90 | 131715 8 DEC 2005 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 430372 02/01/06 MONTHLY SERVICES | MONTHLY SERVICES | 288,052.50 | 136084 1-06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 431483 03/02/06 02/06 SERVICES | 02/06 SERVICES | 288,052.50 | 139484 2-06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 432772 03/31/06 SERVICES JUVENILE CN | SERVICES JUVENILE CN | 288,052.50 | 143732 3-06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 433512 04/27/06 MID-ATLANTIC YOUTH S | MID-ATLANTIC YOUTH S | 1,244.00 | 4/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 433597 04/27/06 2 YR SERVICE WARRANTY | 2 YR SERVICE WARRANTY | 288,052.50 | 146577 417PS | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 434659 05/24/06 MONTHLY SERVICES | MONTHLY SERVICES | 288,052.50 | 5/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 435792 06/26/06 MONTHLY SERVICES | MONTHLY SERVICES | 288,052.50 | 6/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 436702 07/25/06 MONTHLY SERVICES | MONTHLY SERVICES | 288,052.50 | 7/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 438055 08/28/06 MONTHLY PMT SERVICES | MONTHLY PMT SERVICES | 288,052.50 | AUG 2006 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 439177 09/26/06 RENT | RENT | 288,052.50 | 10/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 440252 10/24/06 YOUTH SERVICES GROUP | YOUTH SERVICES GROUP | 288,052.50 | 11/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 442670 11/21/06 YOUTH SERVICES GROUP | YOUTH SERVICES GROUP | 288,052.50 | 12/06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 443346 12/18/06 YOUTH SERVICES | YOUTH SERVICES | 288,052.50 | 1/07 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 443859 01/03/07 YOUTH SERVICES | YOUTH SERVICES | 288,052.50 | 2/07 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 445934 03/07/07 YOUTH SERVICES CORP | YOUTH SERVICES CORP | 288,052.50 | MARCH 07 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 446635 03/26/07 YOUTH SERVICES GROUP | YOUTH SERVICES GROUP | 288,052.50 | | | N P W ACCOUNTS PAYABLE | 100.00.200120 |

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM | INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|--|--------------------------------|------------|-----------------------|----------|-------|--|---------------|
| MID ATLANTIC YOUTH SERV 447700 04/24/07 | 011125 YOUTH SERVICES GROUP | 288,052.50 | | APRIL 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 448892 05/24/07 | YOUTH SERVICES GROUP | 288,052.50 | | MAY 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 723861 05/24/07 | PTSD TRAINING | 255.00 | 197806 100 | | N P W | ACCOUNTS PAYABLE | 920.00.200120 |
| 724103 06/14/07 | TRAINING | 45.00 | 201368 JUNE 2007 | | N P W | ACCOUNTS PAYABLE | 920.00.200120 |
| 451322 06/25/07 | YOUTH SERVICE GROUP | 288,052.50 | | JUNE 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 452624 07/26/07 | YOUTH SERVICES GROUP | 288,052.50 | | JULY 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 453483 08/21/07 | YOUTH SERVICES GROUP | 288,052.50 | | AUG 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 454601 09/18/07 | YOUTH SERVICES | 288,052.50 | | SEPT 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 455355 10/16/07 | YOUTH SERVICES GROUP | 288,052.50 | | OCT 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 457878 11/28/07 | YOUTH SERVICE GROUP | 288,052.50 | | NOV 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 458324 01/07/08 | YOUTH SERVICES GROUP | 288,052.50 | | DEC 07 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 458333 01/07/08 | YOUTH SERVICES GROUP | 288,052.50 | | JAN 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 458398 01/07/08 | ADDN'L MONTHLY MGMT F | 367,821.96 | 228180 01/07-12/31/07 | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| 458398 01/07/08 | DORM C REPAIRS/REPLACE | 8,689.26 | 228181 100 | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| 458398 01/07/08 | COMPUTER | 4,139.04 | 228182 101 | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| 458398 01/07/08 | FILING CABINET | 593.59 | 228183 102 | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| | | 381,243.85 | *CHECK TOTAL | | | | |
| 458891 01/07/08 | ADD INCREASE | 30,651.83 | | JAN 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 459749 01/28/08 | YOUTH SERVICES GROUP | 318,704.33 | | FEB 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 461640 03/28/08 | YOUTH SERVICES GROUP | 318,704.33 | | APRIL 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 463160 04/25/08 | YOUTH SERVICES | 318,704.33 | | MAY 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 465392 05/27/08 | YOUTH SERVICES GROUP | 318,704.33 | | JUNE 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 467234 07/16/08 | FINAL PAYMENT | 318,704.33 | | MARCH 08 | N | D OTHER CONTRACTUAL SE 100.4238.000.3111 | |
| 468681 08/25/08 | JULY JUVENILE DETENTI | 68,685.00 | 259840 07-08D | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| 468681 08/25/08 | OFFENDERS PRGRM 07/08 | 31,620.00 | 259841 07-08FS/SO | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| 468681 08/25/08 | RESIDENTIAL SECURE TR | 10,075.00 | 259843 07-08T | | N P W | ACCOUNTS PAYABLE | 100.00.200120 |
| | | 110,380.00 | *CHECK TOTAL | | | | |

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|---------------------------------------|------------------------|---------------|-----------------------|-----|------------------------|---------------|
| MID ATLANTIC YOUTH SERV | 011125 | | | | | |
| 469510 09/16/08 | AUG 2008 JUVENILE DET | 78,945.00 | 262823 08-08D | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 469510 09/16/08 | AUG 2008 RESIDENTIAL | 10,075.00 | 262824 08-08T | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 469510 09/16/08 | AUG 2008 OFFENDERS PR | 31,620.00 | 262825 08-08FS/SO | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 120,640.00 | *CHECK TOTAL | | | |
| 470457 10/17/08 | JUVENILE DETENTION SE | 74,670.00 | 267232 09-08D | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 470457 10/17/08 | RESIDENTIAL SERV | 12,350.00 | 267233 09-08T | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 470457 10/17/08 | OFFENDERS PROGRAM | 30,600.00 | 267234 09-08FS-SO | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 117,620.00 | *CHECK TOTAL | | | |
| 472812 12/03/08 | JUV DETENTION SVCS 10 | 84,075.00 | 272431 10-08D | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 472812 12/03/08 | RESIDENTIAL SECURE TR | 20,150.00 | 272432 10-08T | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 472812 12/03/08 | OFFENDERS PRGM OCT 0 | 31,620.00 | 272433 10-08FS/SO | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 135,845.00 | *CHECK TOTAL | | | |
| 473460 01/09/09 | JUVENILE DETENTION SV | 61,845.00 | 275747 11-08D | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 473460 01/09/09 | RESIDENTIAL SECURE TR | 19,500.00 | 275748 11-08T | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 473460 01/09/09 | OFFENDERS PROGRAM | 34,340.00 | 275749 11-08FS-SO | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 115,685.00 | *CHECK TOTAL | | | |
| 474289 01/22/09 | 12-08D/JUVENILE DETEN | 72,960.00 | 279474 DEC 2008 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 474289 01/22/09 | 12-08T/RESIDENTIAL SEC | 20,150.00 | 279474 DEC 2008 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 474289 01/22/09 | 12-08FS/SO OFFENDERS | 42,160.00 | 279474 DEC 2008 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 135,270.00 | *CHECK TOTAL | | | |
| 475613 03/12/09 | 01-09D/JUV DETENTION | 57,570.00 | 283218 01-09D,01-09T, | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 475613 03/12/09 | 01-09T/RESIDENTIAL SE | 19,175.00 | 283218 01-09D,01-09T, | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 475613 03/12/09 | 01-09FS/SO OFFENDERS | 41,140.00 | 283218 01-09D,01-09T, | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 117,885.00 | *CHECK TOTAL | | | |
| 476474 03/26/09 | 02-09D/JUV DETENTION | 27,645.00 | 288184 FEB 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 476474 03/26/09 | 02-09T/RESIDENTIAL SEC | 9,100.00 | 288184 FEB 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 476474 03/26/09 | 02-09FS/SO OFFENDERS | 28,560.00 | 288184 FEB 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 65,305.00 | *CHECK TOTAL | | | |
| 477161 04/17/09 | 03-09D/JUV DETENTION | 38,475.00 | 291139 MARCH 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 477161 04/17/09 | 03-09T/RESIDENTIAL SE | 10,075.00 | 291139 MARCH 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 477161 04/17/09 | 03-09FS-SO/OFFENDERS | 31,620.00 | 291139 MARCH 2009 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 80,170.00 | *CHECK TOTAL | | | |
| VENDOR TOTAL | | 12,216,104.23 | | | | |

ACS FINANCIAL SYSTEM
04/27/2009 10:16:38

Vendor Payments History Report
MAYS

VENDOR NAME AND NUMBER
CHECK# DATE DESCRIPTION

12,216,104.23

AMOUNT

CLAIM INVOICE

PO#

9 F S ACCOUNT NAME

ACCOUNT

REPORT TOTALS:

RECORDS PRINTED - 000073

Vendor Payments History Report

FUND RECAP:

| FUND | DESCRIPTION | DISBURSEMENTS |
|-----------------|-----------------------------|---------------|
| 100 | GENERAL FUND | 12,215,804.23 |
| 920 | CHILDREN AND YOUTH SERVICES | 300.00 |
| TOTAL ALL FUNDS | | 12,216,104.23 |

BANK RECAP:

| BANK NAME | DISBURSEMENTS |
|----------------------|---------------|
| P100 GENERAL FUND | 1,954,912.99 |
| P105 FISCAL AGENCIES | 300.00 |
| W128 GENERAL FUND | 10,260,891.24 |
| TOTAL ALL BANKS | 12,216,104.23 |

Exhibit L

LUZERNE COUNTY, PA
GL050S-V06.80 COVERPAGE
GL540R

ACS FINANCIAL SYSTEM
04/27/2009 10:15:23 Vendor Payments History Report

04/27/2009 10:15:23 Vendor Payments History Report

Report Selection:

Due to the current security settings,
this report may not reflect all account information

Optional Report Title.....PA CHILD CARE

| Fund & Account..... | 01/01/2004 | thru | 04/30/2009 | thru |
|--------------------------|------------|------|------------|------|
| Check Date..... | | thru | | |
| Source Codes..... | | thru | | |
| Journal Entry Dates..... | | thru | | |
| Journal Entry Ids..... | | thru | | |
| Check Number..... | | thru | | |
| Project/Grant..... | 013761 | thru | 013761 | |
| Vendor..... | | thru | | |
| Invoice..... | | thru | | |
| Purchase Order..... | | thru | | |
| Bank..... | | thru | | |
| Totals Only?..... | | | | |
| 1099 Vendors Only?..... | | | | |
| Lower Dollars Limit..... | | | | |

Run Instructions: Jobq Banner Copies Form Printer Hold Space LPI Lines CPI CP SP
L 01 6 6 066 10

Vendor Payments History Report
 PA CHILD CARE

ACS FINANCIAL SYSTEM
 04/27/2009 10:15:23

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM | INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|---------------------------------------|--------------------------------------|-----------------------------|-------|---------|-----|-----------------------|-------------------|
| PA CHILD CARE LLC 463161 04/25/08 | 013761 JUV DETENTION CTR | 256,513.90 | | MAY 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 465393 05/27/08 | JUV DETENTION CENTER VENDOR TOTAL | 256,513.90 10,058,598.71 | | JUNE 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |

Vendor Payments History Report
PA CHILD CARE

ACS FINANCIAL SYSTEM
04/27/2009 10:15:23

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM | INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|---------------------------------------|-------------|---------------|-------|---------|-----|--------------------|---------|
| | | 10,058,598.71 | | | | | |

REPORT TOTALS:

RECORDS PRINTED - 000050

Vendor Payments History Report
 PA CHILD CARE

ACS FINANCIAL SYSTEM
 04/27/2009 10:15:23

| VENDOR NAME AND NUMBER CHECK# DATE DESCRIPTION | AMOUNT | CLAIM | INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|--|------------|--------|----------------|-----|------------------------|-------------------|
| PA CHILD CARE LLC 013761 414850 01/03/05 JAN RENT | 193,333.33 | | JUV CENTER | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 416007 01/26/05 FEB RENT | 193,333.33 | | JUVENILE DETEN | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 417217 02/25/05 MARCH RENT | 193,333.33 | | JUVENILE DETEN | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 418598 03/28/05 APRIL 05 | 193,333.33 | | JUVENILE CENTE | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 419787 04/25/05 MAY 05 | 193,333.33 | | RENT | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 421033 05/27/05 JUNE 05 | 193,333.33 | | JUV DET CENTER | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 422293 06/30/05 JULY RENT | 193,333.33 | | JUV DET CENTER | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 423175 07/26/05 JUVENILE DET CENTER | 193,333.33 | | 8/05 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 424503 08/29/05 JUVENILE DET CTR | 193,333.33 | | 9/05 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 425474 09/28/05 RENT/JD CTR | 193,333.33 | | | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 426674 10/27/05 JD CENTER | 193,333.33 | | NOV 2005 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 427717 11/29/05 JUV DET CENTER | 193,333.33 | | 12/05 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 429137 01/04/06 JUV DET CENTER | 241,666.67 | | JAN RENT | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 430352 01/31/06 JUVENILE DET CTR | 241,666.67 | | 2/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 431459 02/28/06 JUV DET CENTER | 241,666.67 | | 3/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 431850 03/09/06 01/06 SECURE TREATMEN | 25,116.00 | 139714 | 01-06 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 432041 03/15/06 FEB 2006 SECURE TREAT | 90,298.00 | 140968 | 02-06 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 432369 03/27/06 JUV DETENTION CTR | 241,666.67 | | 4/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 433513 04/27/06 JUV DET CENTER | 241,666.67 | | 5/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 434660 05/24/06 JUV DET CENTER | 241,666.67 | | 6/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 435793 06/26/06 JUV DET CENTER | 241,666.67 | | 7/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 436703 07/25/06 JUV DETENTION CENTER | 241,666.67 | | 8/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 437905 08/24/06 AUGUST RENT | 193,333.33 | | | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 438334 09/06/06 SEPT RENT | 48,333.34 | | | | M D RENT OF BUILDINGS | 100.4238.000.3830 |

Vendor Payments History Report
PA CHILD CARE

| VENDOR NAME AND NUMBER CHECK# DATE DESCRIPTION | AMOUNT | CLAIM | INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|---|--------------|--------|---------------|-----|------------------------|-------------------|
| PA CHILD CARE LLC 439178 09/26/06 SEPT RENT 013761 | 241,666.67 | | | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 440253 10/24/06 JUV DET CENTER | 251,297.08 | | 11/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 442671 11/21/06 JUV DET CENTER | 251,297.08 | | 12/06 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 443860 01/03/07 JUV DET CENTER | 251,297.08 | | 1/07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 443860 01/03/07 JUV DET CENTER | 251,297.08CR | | 1/07 | | M M RENT OF BUILDINGS | 100.4238.000.3830 |
| | 0.00 | | *CHECK TOTAL | | | |
| 444229 01/12/07 JUV DET CENTER REISS | 251,297.08 | 180680 | JAN 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 444540 01/22/07 JUV DETENTION CTR | 251,297.08 | | 2/07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 444552 01/23/07 JAN-SEPT 06 | 86,673.69 | | INC ADJ | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 445935 03/07/07 JUV DET CENTER | 251,297.08 | | 3/07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 446636 03/26/07 JUV DETENTION CENTER | 251,297.08 | | APRIL 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 447701 04/24/07 JUV DETENTION CENTER | 251,297.08 | | MAY 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 448893 05/24/07 JUV DETENTION CENTER | 251,297.08 | | JUNE 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 451323 06/25/07 JUV DETENTION CENTER | 251,297.08 | | JULY 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 452625 07/26/07 JUV DETENTION CENTER | 251,297.08 | | AUGUST 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 453484 08/21/07 JUV DETENTION CENTER | 251,297.08 | | SEPT 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 454602 09/18/07 JUV DETENTION CENTER | 251,297.08 | | OCT 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 455749 10/23/07 JUV DETENTION CENTER | 251,297.08 | | NOV 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 457879 11/28/07 JUV DETENTION CENTER | 251,297.08 | | DEC 07 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 458334 01/07/08 JUVENILE DET CENTER | 251,297.08 | | JAN 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 458403 01/07/08 LEASE FACILITY INCREA | 62,601.84 | 228177 | 1/07-12/31/07 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 458892 01/07/08 ADD INCREASE | 5,216.82 | | JAN 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 459750 01/28/08 JUV DET CENTER | 256,513.90 | | FEB 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 460681 02/28/08 JUVENILE DET CENTER | 256,513.90 | | MARCH 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |
| 461641 03/28/08 JUV DET CENTER | 256,513.90 | | APRIL 08 | | M D RENT OF BUILDINGS | 100.4238.000.3830 |

Vendor Payments History Report

ACS FINANCIAL SYSTEM
 04/27/2009 10:15:23

| | |
|------------------------|---------------|
| FUND RECAP: | DISBURSEMENTS |
| FUND DESCRIPTION ----- | |
| 100 GENERAL FUND | 10,058,598.71 |
| TOTAL ALL FUNDS | 10,058,598.71 |

| | |
|-------------------|---------------|
| BANK RECAP: | DISBURSEMENTS |
| BANK NAME ----- | |
| P100 GENERAL FUND | 513,027.80 |
| W128 GENERAL FUND | 9,545,570.91 |
| TOTAL ALL BANKS | 10,058,598.71 |

Exhibit M

PLACEMENT AGREEMENT

This Agreement is made the 1st day of June, 2007, between the County of Luzerne (the "County") and the Court of Common Pleas of Luzerne County (the "Court") (collectively referred to where appropriate as the "Client") with a principal place of business of Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, Pennsylvania 18711 and Western Pa. Child Care, LLC whose principal place of business is 12 Dakota Drive, Allegheny-Clarion Industrial Park, Emlenton, Pennsylvania 16373 hereinafter referred to as the "Owner".

Witnesseth

WHEREAS, the Owner, through its designee, has constructed a secure shelter care and treatment facility in Allegheny Township, Butler County, Pennsylvania for the care and treatment of youth (the "Facility") and, when required under law, shall be certified and approved by the Pennsylvania Department of Public Welfare to provide child welfare services for children and youth, and is desirous of making such services available to the County;

WHEREAS, the County has the authority and duty to provide child welfare services to children and youth by reason of:

- (a) Section 2168 of the Act of August 9, 1955, P.L. 323, known as the County Code as amended (16 P.S. Section 2169);
- (b) Article VII and Article IX of the Act of July 1967, P.L. 31, known as the Public Welfare Code, as amended; by the Act of July, 1976, P.L. 846, No. 148 (62 P.S. Article IV and VII);
- (c) The Juvenile Act, 42 PA C.S. Sections 6301-6365, as amended (relating to Juvenile Matters);
- (d) Section 405, Act of June 24, 1937, P.L. 2017, as amended (16 P.S. Section 2163 and 62 P.S. Section 2035, respectively), known as the County Institutions District Law;
- (e) Act of November 1976, P.L. 438, No. 124, as amended (11 P.S. Section 2201-2224) known as the Child Protective Service Law;
- (f) Americans with Disabilities Act, 42 U.S.C. Sections 12101, et. seq.;
- (g) Family and Medical Leave Act; and
- (h) And any other relevant laws and regulations.

WHEREAS, the County desires to secure and reserve nine (9) beds on a full-time basis for Shelter Care at the Facility to comply with its duty to provide child and welfare services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be bound hereby, it is mutually understood and agreed as follows:

I. GENERAL PROVISIONS

- A. This Agreement is subject to all applicable provisions of State and Federal law and regulations related to the provision, delivery and funding of child welfare services to children and youth.
- B. The Owner, for and in consideration of the compensation hereinafter set forth, agrees to provide child welfare services to children and youth referred to it by the County and/or the Court and accepted by the Owner.

- C. The County hereby secures the right to utilize nine (9) beds for Shelter Care at the Facility, at the rates set forth in Article X, commencing July 1, 2006. The Owner agrees to secure and reserve nine (9) beds on a full-time basis for the County in Shelter Care at the Facility, subject to the provisions of Paragraph V. herein.
- D. The County shall provide a list of positions and/or individuals shown on Attachment A, which shall have the authority to authorize all services provided for by the Owner. The County shall immediately notify Owner, in writing, of any changes in personnel that affect authorization.
- E. The Client acknowledges that the Owner has the express right to delegate its duties and/or assign its rights hereunder to a first class organization to manage the operation of the facility and to perform the obligations of the Owner under this Agreement (a "Service Provider"). The Owner covenants and agrees that any such Service Provider shall have the appropriate qualifications, licenses and expertise to perform the obligations of the Owner hereunder.

II. PLACEMENT

- A. The County shall provide the Owner with all medical, dental, and any other health reports, records and forms, medical/dental consents, a valid court order, information regarding religious affiliation, and any and all other pertinent information prior to or upon the date of placement, whichever is sooner.
- B. The County must supply, as a minimum, basic identifying information and any information about the child or youth which could impact on the health and welfare of the child or other individuals in the facility at the time of placement.
All other required information must be submitted to the Owner within ten (10) calendar days of the date of placement.
- C. In all cases, unless specifically stated in writing, the Owner shall retain responsibility of physical custody for the child during the period of placement. In visiting situations, such as holidays or vacations, the County shall collaborate with the Owner to facilitate for each child a home for vacations, holidays, or other designated situations during the child's placement.

III. SERVICE PLANNING

- A. When required by law, all parties collaboratively shall develop a written plan to determine responsibilities and define services to be provided by the Owner and/or the County for each child or youth accepted by the Owner.

- B. The Owner shall submit a family visitation plan to the County for approval. Such plan shall, as a minimum be consistent with DPW regulations concerning the frequency, duration, and location of visitation. Further, the plan must include any requirements set forth by the court.

IV. TERMINATION

If either party fails to fulfill in a timely or proper manner its obligations under this Agreement, or if either party violates any of the covenants or stipulations of this Agreement, (together "the violating party") the party injured thereby shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. The violating party shall have thirty (30) days to cure said default or violation and, if the same is cured, this Agreement shall remain in full force and effect. In the event of termination, all finished or unfinished documents, data, studies, photographs and reports or other materials prepared by the Owner under this Agreement shall, at the option of the County, become its property, and the Owner shall be entitled to receive compensation for work completed on such documents and other materials.

All contractual matters relating to the provision of the service by the Owner shall, upon termination by either party, be settled within thirty (30) days of the date of termination by the rendering of a bill marked "final bill" by the Owner to the County.

V. TERM

The term of this Agreement shall be thirteen (13) months commencing June 1, 2007 and expiring June 30, 2008 (the "Term"). Unless either party provides written notice of their intent not to renew this Agreement for an additional term after the initial term at least ninety (90) days prior to the expiration of the initial term, this Agreement shall automatically extend for another term unless either party terminates this Agreement at least ninety (90) days prior to the end of any term hereof. Client may terminate this Agreement upon thirty (30) days written notice to Owner.

VI. SERVICES

A. Clothing

(1) The County agrees to provide, at the time of placement, a basic seasonal wardrobe, sufficient to meet the child's needs. A complete written clothing and miscellaneous inventory, taken at the time of placement, will be documented by the Owner and submitted to the County within seven (7) calendar days. If the inventory shows an inadequate wardrobe, an authorization for initial clothing purchases shall be given to the Owner by the County. The Owner shall invoice the County for actual costs of this initial clothing, up to the amount authorized by the County, within sixty (60) days of placement date in an amount not to exceed \$150.00. The Owner's invoice shall be accompanied by a revised clothing inventory, reflecting the purchases. If this invoice is not received within the sixty- (60) days, the County may refuse payment beyond this date.

(2) In the case of an unplanned discharge that results in the child's clothing not leaving the Owner with the child at the time of discharge, it shall be the joint responsibility of the County and the Owner to make arrangements for returning the child's clothing and all personal items within ten (10) working days. During that period of time, the Owner is responsible for ensuring the availability of the clothing and personal items to the County. If the County does not make arrangements within ten (10) working days following discharge, the Owner has no obligation to ensure availability of the child's clothing and other possessions.

B. Physical/Mental Health Care

(1) It is the responsibility of the County to provide the necessary means of payment for all physical/mental health care and dental expenses in the absence of a third party payor. The County shall apply for all public benefits on behalf of the child, including but not limited to, Public Assistance, Medical Assistance, Social Security or Supplemental Security Income. The County shall provide the Owner with medical assistance or Access card(s) or the information necessary to obtain third party payments. The County will not reimburse Owner for medical, dental, psychological and psychiatric services for eligible children, if the service is covered under Public Assistance, Medical Assistance, Social Security, Supplemental Security, or other third party coverage. When Medical Assistance vendors are not reasonably available or accessible to the Owner, the Owner shall use its best efforts to secure a written estimate of cost of services to the County for authorization of payment. The Owner shall submit, a cost break down of said expenses, with each monthly invoice, for any uninsured physical/mental health care and dental expense to the County. County shall reimburse Owner for said expenses on a monthly basis in accordance with this Agreement.

In emergency situations, the above language requiring prior approval shall not apply, however, the Owner shall notify the Client of the emergency event within twenty-four (24) hours. The Owner shall provide the Client with the necessary information so that the Client may attempt to recoup any expenditure for physical/mental health care costs that are not covered by Medical Assistance or third party coverage. The Owner shall use all reasonable alternatives available which will result in the lowest cost to the County so long as the health and welfare of the child or youth is not compromised.

VII. UNAUTHORIZED ABSENCES

A. **Definition:** When a child or youth is voluntarily absent from the supervision of the Owner for a period of at least twenty-four (24) hours, the child is to be considered a runaway.

- B. **Notification:** It is the responsibility of the Owner to notify all appropriate parties, including the Client and legal authorities, when a child is classified as a runaway. Such notice shall immediately be given orally to the police and Client, to be followed by written notice to the Client within seventy-two (72) hours of the time the child or youth was classified a runaway. It is also the responsibility of the Owner to give appropriate oral and written notice, as defined above, when the child is found or returned to the Owner's physical custody.
- C. **Discharge:** When there is an unauthorized absence, the Owner shall continue to provide services or hold a space for the child for five (5) days from the time of the unauthorized absence, unless either party notifies the other that the child is to be considered discharged. When oral notice is given, during the five (5) day period, that the child is to be considered discharged, the Owner is no longer responsible for the child and need not accept the child back into placement. At the end of the fifth day of the unauthorized absence, the child is to be considered discharged unless the County makes arrangements to continue the child in care. The County shall be responsible for payment to the Owner consistent with this paragraph until the time of discharge.

VIII. ADDITIONAL EXPENSES

The Client is responsible for all additional expenses not specifically described herein, required by the child or youth including, but not limited to, costs for transportation to and from the Facility, costs related to adjudication and any other additional costs required by Owner. Extraordinary costs do not include costs for medical expenses.

IX. DISCHARGE

In cases where either party requests an unplanned discharge, thirty- (30) days notice is required except in cases of an emergency. An emergency is defined as acute behavior, which, in the opinion of the Owner, endangers the health or safety of the child or others.

If the unplanned discharge is due to the child experiencing a psychiatric episode, the endangerment of self or others, due to the commission of a crime within the jurisdiction of the Owner (which may include physical facility/equipment or personnel of the agency), the Owner, in consultation with the County, is required to take immediate appropriate action, which may include committing the child to a hospital, obtaining intervention services or utilizing the criminal justice system. Such actions will facilitate appropriate planning for the child.

The Owner shall give a written notice of discharge to the County within thirty (30) calendar days of the discharge. This notice must include:

- (1) reason for discharge, including detailed description of events that precipitated it and the Owner's actions taken in response to events; and
- (2) a discharge summary containing sufficient detail to facilitate future planning for the child, including recommendations for care and treatment.

The County has the right to remove any child from the Owner's programs at the County's discretion, and shall provide written notice to the Owner explaining reasons for removal.

X. PAYMENTS

The County, in consideration of the service provided by the Owner under this Agreement, shall pay the Owner for services rendered on a per diem or unit of service basis for the first and all subsequent days of care including residents that remain at the facility after 12:00 noon on the day of discharge. The rate for Shelter Care Services shall be Two Hundred Dollars (\$200.00) per day, per bed reserved for the period June 1, 2007 through June 30, 2007. The rate for Shelter Care Services shall be Two Hundred Dollars Ten (\$210.00) per day, per bed reserved for the period July 1, 2007 through June 30, 2008. Thereafter, Owner shall notify the County as to per diem rate for each successive year not later than ninety (90) days prior to the expiration of each excessive year.

Billing information for each child at the Facility will be rendered to the appropriate County department, by the Owner on or before the fifth (5th) working day of the month immediately following the provision of services. The County shall issue payment no later than twenty (20) calendar days from the date the invoice was received.

XI.

AUDIT/FINANCIAL REPORTS

(A) Federal Audit Requirements

The Owner shall comply in all material respects with all federal and state audit requirements and any other applicable law or regulation and any amendments to such other applicable law or regulation which may be enacted or promulgated by the federal government.

(B) Financial Reports

- (1) In conjunction with the financial and compliance audit, the Owner shall submit information concerning its costs in such a manner as to allow the County to maximize its receipt of Federal and State money.
- (2) In reporting information, the Owner shall provide costs by purchase category for each service the County purchases from the Owner.
- (3) The Owner agrees that it will not use in violation of Federal or State law money received from the County pursuant to this Agreement to pay for the cost of unrelated services provided by the Owner.

XII. NON-DISCRIMINATION CLAUSE

In carrying out the terms of this Agreement, both parties agree not to discriminate against any employee or client or other person on account of age, race, color, sex, religions creed, national origin, marital status, or handicap. The Owner and the Client shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all law prohibiting discrimination in hiring or employment opportunities and the provision of child welfare services.

XIII. INSURANCE

The Owner shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this Agreement. In addition to the insurance coverage and limits specified herein, the Owner shall obtain any other insurance coverage as may be required by law.

A. General Liability Insurance

- (1) Limits of Liability \$1,000,000.00 in the aggregate and per occurrence.
- (2) Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insured, joint liability, and broad form property damage (including completed operations).

B. Workers' Compensation and Employers' Liability Insurance

- (1) Limits of Liability: Workers' Compensation - Statutory Limits. Employers' Liability: Statutory Limits.
- (2) Other States' coverage and Pennsylvania endorsement.

Each policy and Certificate of insurance shall contain: an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) calendar days prior written notice be given to the County in the event coverage is canceled or non-renewed or limits or coverage reduced.

If the Owner desires to self insure any or all of the coverage listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulation, as well as the most recent audited financial statement of the Owner's insurance. Any coverage which is self insured shall provide the same coverage, limits and benefits as the coverage listed in this section.

If the Owner fails to obtain or maintain the required insurance, the County shall have the rights to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.

C. Subcontractors

The Owner shall include all subcontractors, including any Service Provider, as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this agreement.

XIV. HOLD HARMLESS PROVISION - INDEMNIFICATION

It is understood that the Owner is an independent contractor in respect to its performance under this Agreement, and shall assume all risks and responsibilities for losses of every description in connection with the service that can be attributed either directly or indirectly to the Owner under this Agreement. The Owner agrees to indemnify, defend and hold harmless the County, its agents and employees for, or on account of any damage or loss, including the County's cost of litigation and attorneys fees resulting from the actions of the Owner, or a subcontractor of the Owner, in fulfilling the terms of this Agreement.

The Owner hereto shall not be held responsible for delay or failure to perform hereunder when such delay or failure is due to fire, flood, epidemic, strike, acts of God or the public enemy, acts of terrorism, either foreign or domestic, unusually severe weather, legal acts of the public authorities, or delay or default which cannot reasonably be foreseen or provided against.

XV. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE CERTIFICATION

The Owner, in writing, shall notify the County within five working days of any loss of its Pennsylvania Department of Public Welfare certification for any of the services being provided to the County.

XVI. ASSIGNMENT

Except as set forth in paragraph I.E., the Owner shall not assign any part of this Agreement without prior written approval of the County.

XVII. MODIFICATION

This document, and all attachments which have been incorporated by reference, contains all the terms, provisions, and conditions of this Agreement. No term or provision may be unilaterally modified or amended. Any alteration must be reduced to writing and signed by the parties to this Agreement. Any alteration, variation, modification or waiver of a provision of this Agreement shall be valid only when reduced to writing, duly signed by the parties of this Agreement, and attached to the original of the Agreement.

XVIII. DEBARMENT

1. The Owner certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.
2. If the Owner enters into subcontracts or employs under the Agreement any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this Agreement or any extension or renewal thereof, the County shall have the right to require the Owner to terminate such subcontracts or employment.

XIX. NOTICES

Any and all notices, consents, or directives intended for the Owner shall be sent by registered or certified mail return receipt requested, to Western PA. Child Care, LLC, 10 Fox Run Road, Drums, Pennsylvania 18201, with a copy to Suite 300, 20206 Route 19, Cranberry Township, Pennsylvania 16066-6106 and to President Judge, Court of Common Pleas, Luzerne County, 200 North River Street, Wilkes-Barre, Pennsylvania 18711.

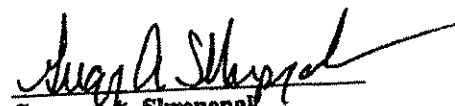
IN WITNESS WHEREOF, the duly authorized officers of the parties hereby set their hands and seals, causing this agreement to be executed and legally binding.

SERVICE PROVIDER




Director/Administrator

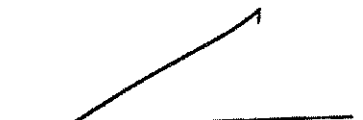
COUNTY



Gregory K. Skrepenak
Chairman
Luzerne County Commissioner

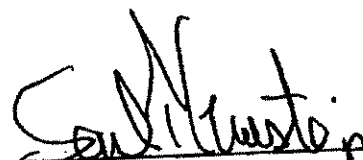


Rose S. Tucker
Luzerne County Commissioner



Stephen A. Urban
Luzerne County Commissioner

WITNESS



Samuel T. Gesto, Jr.
County Manager/Chief Clerk

Exhibit N

PURCHASE OF SERVICE AGREEMENT

This AGREEMENT is made the 1st day of July 2007, between LUZERNE COUNTY DEPARTMENT OF PROBATION SERVICES whose principal place of business is 20 NORTH PENNSYLVANIA BLVD., SUITE 304, WILKES-BARRE, PENNSYLVANIA 18701 hereinafter referred to as the "COUNTY" and WESTERN PA. CHILD CARE whose principle place of business is 12 DAKOTA DRIVE, EMLENTON, PENNSYLVANIA 16373 hereinafter referred to as the "SERVICE PROVIDER" and shall be in force and effect from July 1, 2007 through June 30, 2008 inclusive.

WITNESSETH:

WHEREAS, the Service Provider, when appropriate, is certified and approved by the Pennsylvania Department of Public Welfare to provide child welfare services for children and youth, and is desirous of making such services available to the County;

and

WHEREAS, the County has the authority and duty to provide child welfare services to children and youth by reason of:

- (a) Section 2168 of the Act of August 9, 1955, P. L. 323, known as the County Code as amended (16 P. S. Section 2169);
- (b) Article VII and Article IX of the Act of July 1967, P. L. 31, known as the Public Welfare Code, as amended; by the Act of July 5, 1976, P. L. 846, No. 148 (62 P. S. Article IV and VII);
- (c) The Juvenile Act, 42 PA C. S. Sections 6301-6365, as amended (relating to Juvenile Matters);
- (d) Section 405, Act of June 24, 1937, P. L. 2017, as amended (16 P. S. Section 2163 and 62 P. S. Section 2035, respectively), known as the County Institutions District Law;
- (e) Act of November 1976, P. L. 438, No. 124, as amended (11 P. S. Section 2201-2224) known as the Child Protective Service Law.
- (f) Americans with Disabilities Act, 42 U.S.C. Sections 12101, et. Seq.
- (g) Family and Medical Leave Act.
- (h) And any other relevant laws and regulations.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be bound hereby, it is mutually understood and agreed as follows:

I. GENERAL PROVISIONS

A. This agreement is subject to all applicable provisions of State and Federal law and regulations related to the provision, delivery and funding of child welfare services to children and youth.

B. The Service Provider, for and in consideration of the compensation hereinafter set forth, agrees to provide child welfare services, as set forth in Attachment A - Program Description pursuant to Chapter 3680.41, to children and youth referred to it by the County and accepted by the Service Provider pursuant to a mutually agreed upon individual service plan between the Service Provider and County.

C. When the services being provided are nonplacement services, those aspects of this agreement which are specific to placement services are not applicable. Nonplacement services contracted for by the County are described in an addendum.

D. The County shall provide a list of positions, shown as Attachment B, which have the authority to authorize services such as Individual Service Plans, and visitation arrangements, and payments for clothing, physical/mental health care, and extraordinary transportation. The County must immediately notify the Provider of any procedural changes which affect service authorization.

II. REFERRAL INFORMATION AND PREPLACEMENT

A. Prior to the acceptance of a child, the County shall provide the Service Provider with a family summary, a social summary, and a medical history as a minimum and, where available, related school information, psychological evaluations, as required in provider's program description.

B. When the Service Provider indicates a willingness to consider the child for placement, the County shall cooperate with the Service Provider in arranging a preplacement visit and/or conference. The participants may include but not be limited to the child, parent or guardian, and County caseworker or probation officer.

C. When the County receives official notice of acceptance from the Service Provider, the County shall provide the Service Provider with all medical, dental, and other health reports and forms, medical/dental consents, a valid court order, information regarding religious affiliation, and any other pertinent information prior to or upon the date of placement, or as soon as the information is available.

D. The Service Provider may, at the request of the County, waive the pre-placement visit and those elements of the referral/admission packet that are not immediately available when there is a same day admission to a non-emergency or emergency shelter program.

The Provider Agency will request, in writing, any necessary information about the child and their family that has not been received from the County within fourteen (14) calendar days following placement of the child. A copy of the request

will be kept in the child's record.

The County, at the very least, must supply basic identifying information and any information about the child which would impact on the health and welfare of the child, other children in the home, the foster parent or the emergency placement, at the time of placement.

All other required information must be submitted to the Provider within fourteen (14) calendar days of the date of placement.

E. In all cases, unless specifically stated in writing, the Service Provider shall retain responsibility of physical custody for the child during the period of placement. In visiting situations, such as holidays or vacations, the County shall collaborate with the Service Provider to facilitate for each child a home for vacations, holidays, or other designated situations during the child's placement.

III. SERVICE PLANNING

A. All parties collaboratively shall develop a written plan to determine responsibilities and define services to be provided by the Service Provider and/or the County.

B. The County shall provide a Family Service Plan outlining its goals for each child's placement, anticipated length of stay, treatment objectives and family involvement. The County shall provide a copy of any existing current Family Service Plan to the Service Provider within five (5) working days of the date of placement. Within fourteen (14) working days, the new or revised F. S. P. and Amendment shall be provided by the County to the Provider.

C. An Individual Service Plan, consistent with the requirements of the regulations promulgated by the Pennsylvania Department of Public Welfare shall be developed by the Service Provider within thirty (30) days of the date of placement. The County shall participate in the development of the plan and shall ensure that the objectives set forth in the I.S.P. are consistent with the Family Service Plan which has been previously developed by the County.

D. The Service Provider shall submit a family visitation plan as part of the I.S.P. to the County for approval. Such plan shall as a minimum be consistent with DPW regulations concerning the frequency, duration, and location of visitation. Further, the plan must include any requirements set forth by the court.

E. Court Participation by Service Providers: Service Providers are expected to bring children to Court/Administrative Reviews and to provide a representative able to testify at same. The County will notify Provider if their presence is not required.

IV. SERVICES

A. Clothing

(1) The County agrees to provide, at the time of placement, a basic seasonal wardrobe, sufficient to meet the child's needs. A complete written clothing and miscellaneous inventory, taken at the time of placement, will be documented by the Service Provider and submitted to the County within seven (7) calendar days. If the inventory shows an inadequate wardrobe, an authorization for initial clothing purchases shall be given to the Provider by the County. Provider shall invoice the County for actual costs of this initial clothing, up to the amount authorized by the County, within sixty (60) days of placement date*. The Provider's invoice shall be accompanied by a revised clothing inventory, reflecting the purchases. If this invoice is not received within the sixty (60) days, the County may refuse payment beyond this date.

* Authorized Payment: Not to exceed \$150.00

(2) The Service Provider shall be responsible for maintaining the child's wardrobe, including the purchasing of replacement clothing, for the placement's duration. The Provider shall ensure that the wardrobe upon discharge is equivalent to the initial basic wardrobe purchased for the child at the time of admission.

A written inventory of the wardrobe shall be submitted by the Provider to the County within seven (7) calendar days following discharge.

(3) In the case of an unplanned discharge that results in the child's clothing not leaving the Service Provider with the child at the time of discharge, it shall be the joint responsibility of the County and the Provider to make arrangements for returning the child's clothing and all personal items within ten (10) working days. During that period of time, the Provider is responsible for ensuring the availability of the clothing and personal items to the County. If the County does not make arrangements within the ten (10) working days following discharge, the Provider has no obligation to ensure availability of the child's clothing and other possessions.

B. Physical/Mental Health Care

(1) It is the responsibility of the County to provide the necessary means of payment for all physical/mental health care and dental expenses in the absence of a third party payer. The County shall apply for all public benefits on behalf of the child, including but not limited to, Public Assistance, Medical Assistance, Social Security or Supplemental Security Income. The County shall provide the Service Provider with medical assistance or Access card(s) or the information necessary to obtain third party payments. The County will not reimburse Provider for medical, dental, psychological and psychiatric services for eligible children, if the service is covered under Medical Assistance or other third party coverage. When Medical Assistance vendors are not reasonably available or accessible to the Provider, documentation and written estimate of cost of services must be provided to the County for authorization of payment. The Service Provider shall submit a written estimate for any uninsured physical/mental health care and dental expense to the County.

In an emergency situation, the above language requiring prior approval shall not apply; however, the Service Provider shall bring the information regarding the emergency event to the attention of the County within twenty-four (24)

hours. The Provider shall submit to the County the necessary paper work to insure the County's ability to recoup its expenditures for physical/mental health care costs which are not covered by Medical Assistance or other insurance. The Service Provider shall use the alternatives available which will result in the lowest cost to the County.

V. REPORTS

The Service Provider shall submit to the County Individual Service Plans, quarterly progress reports, discharge summaries and other written reports as shall be required by the County and/or in accordance with Departmental regulations. Such reports shall contain any and all information requested and shall be submitted within two (2) weeks of the due date, date of discharge or date on which request for the same is made by the County.

VI. TRANSPORTATION

The Service Provider shall be responsible for all transportation costs incurred by it in fulfilling the terms of this contract, except those associated with unauthorized absences, which costs are more fully defined in Section VII. In the event that any transportation costs are deemed by the Service Provider to be extraordinary, such costs shall be subject to negotiation on a case by case basis between the Service Provider and the County.

Costs of transportation related to the fulfillment of the regulatory requirements on visitation, as outlined in the Individual Service Plan, may be negotiated on a case by case basis.

VII. UNAUTHORIZED ABSENCES

A. **Definition:** When a child is voluntarily absent from the supervision of the Service Provider for a period of at least twenty-four (24) hours, the child is to be considered a runaway.

B. **Notification:** It is the responsibility of the Service Provider to notify all appropriate parties, including the County and police, when a child runs away. Such notice shall immediately be given orally to the police and County when there is an unauthorized absence, to be followed by written notice to the County within seventy-two hours of when the child becomes a runaway. It is also the responsibility of the Service Provider to give appropriate oral and written notice, as defined above, when the child is found or returned to the Service Provider's physical custody.

C. **Discharge:** When there is an unauthorized absence, the Service Provider shall continue to provide services or hold a space for the child for five days from the time of the unauthorized absence, unless either party notifies the other that the child is to be considered discharged. When oral notice is given, during the five day period, that the child is to be considered discharged, the Service Provider is no longer responsible for the child and need not accept the child back into placement. At the end of the fifth day of the unauthorized absence, the child is to be considered discharged unless the County makes arrangements to continue the child in care. The County shall be responsible for payment to the Service Provider consistent with this paragraph until the time of discharge.

D. **Costs of Transportation:** When a child who is still in the care of the Service Provider is found within the county or contiguous county in which the placement is located, the Service Provider shall be responsible for transportation costs for returning the child. In all other situations, the County shall be responsible for the cost of transportation. If the Service Provider makes arrangements for the use of public transportation in returning the child from an unauthorized absence, the County shall be responsible for transportation costs only when it has given prior authorization. In situations where immediate action must be taken to protect the child, the County shall be responsible for the cost of public transportation if the Service Provider has made a good faith effort to secure approval before the child is returned.

VIII. AUTHORIZED ABSENCES

A. **Definition:** When a child is authorized by the County and Service Provider to be absent from the Provider's supervision for a period of at least twenty-four hours, this is considered an authorized absence.

B. **Payment:** When there is an authorized absence, the County shall continue to pay the Service Provider the established rate for service, until the child returns to the Provider's care. The length of authorized absences shall be mutually agreed upon by the parties to this Agreement.

IX. EXTRAORDINARY EXPENSES

The County is responsible for extraordinary costs, including special services needed by the child and non-routine transportation costs which the County has authorized in writing. Extraordinary costs do not include costs for medical expenses and/or costs associated with the transportation of a child or Provider staff as per the Program Description. Authorized signatures are those designated by the County, as attached to this Agreement.

X. DISCHARGE

In cases where discharge is requested by either party, thirty days notice is required except in cases of an emergency. An emergency is defined as acute behavior which endangers the health or safety of the child or others. Whether a situation is an emergency shall be determined by the Executive Director or designee of the Service Provider.

If the unplanned discharge is due to the child experiencing a psychiatric episode, the endangerment of self or others, or due to the commission of a crime within the jurisdiction of the Service Provider (which may include physical facility/equipment or personnel of the agency), the Provider, in consultation with the County, is required to take immediate appropriate action, which may include committing to a hospital, obtaining intervention services or utilizing the criminal justice system. Such actions will facilitate appropriate planning for the child.

The Provider shall give a written notice of discharge to the County within 30 calendar days of the discharge. This notice must include: (1) reason for discharge, including detailed description of events that precipitated it and the

Provider's actions taken in response to events; and (2) a discharge summary containing sufficient detail to facilitate future planning for the child, including recommendations for care and treatment.

The County has the right to remove children from the Provider's programs at the County's discretion, and shall provide written notice to the Provider explaining reasons for removal.

XI. PAYMENTS

The County, in consideration of the services provided by the Service Provider under this Agreement and other costs as specified, shall pay the costs of the residential placement services rendered on a per diem or unit of service basis for the first and all subsequent days of care except the day of discharge. For non-placement services, payment shall be made for both the first and last days of service. Costs and rates of services agreed upon by the County and Provider are listed in Attachment C.

The provider agrees to participate in any efforts identified that are directed at accessing and maximizing all funding sources that may be available to offset costs normally assumed by the County and State through ACT 148. If J.P.O. is not permitted to access ACT 148 monies for specific costs, the provider cannot be reimbursed. It is expected that each provider will participate in obtaining M.A. approval.

Billing statements will be rendered to the appropriate County department, on a form prescribed by the County, by the Service Provider on or before the fifth working day of the month immediately following the provision of services. The County shall issue payment no later than 60 calendar days from the date the invoice was received. If the Service Provider does not submit the billing statement in a timely manner, the County is not liable for payment until the last day of the succeeding month.

XII. AUDIT/FINANCIAL REPORTS

(A) Federal Audit Requirements

The Provider must comply with all federal and state audit requirements including: the *Single Audit Act*, as amended, 31 U.S.C. 7501 et. seq.; Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Government, and Non-Profit Organizations*, as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the federal government. If the Provider is a local government or non-profit organization and expends total federal awards of \$300,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the Provider is required to have an audit made in accordance with the provisions of OMB Circular A-133.

If the Provider is a for-profit organizations and expends total federal awards of \$300,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the Provider is required to have a program-specific audit made in accordance with the provisions of OMB Circular A-133 and in accordance with

the laws and regulations governing the programs in which it participates.

(B) Department of Public Welfare Audit

(Non-Profit and for-profit service providers must meet the Department of Public Welfare's Audit requirements).

In the absence of a federally required audit, the Provider is responsible for the following annual audit requirements which are based upon the program year specified in this agreement.

If in connection with this agreement the Provider expends \$300,000 or more in combined state and federal funds during the program year specified herein, the Provider is required to have a program-specific audit of those funds made in accordance with generally accepted Government Auditing Standards (The Yellow Book) as published by the Comptroller General of the United States. Where a program specific audit is not required to meet the federal requirements, the costs related to the Department's requirement cannot be charged to federal funding streams.

If in connection with this agreement the provider expends less than \$300,000 in combined state and federal funds during the program year specified herein, the Provider is required to maintain audit able records of those funds and to provide access to such records by county, federal and state agencies or their designees.

Information on the content and format of required financial reports and/or any additional compliance requirements specific to this agreement is contained in the terms and conditions of the agreement.

(C) General Audit Provisions

The Service Provider is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal awards.

The County reserves the right for county, federal, or state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by county, federal, or state agencies. Any such additional audit work will rely on work already performed by the Service Provider's auditor, and the costs for any, additional work performed by the federal, state, or county agencies will be borne by those agencies at no additional cost to the Service Provider.

Audit working papers and audit reports shall be retained by the Service Provider's auditor for a minimum of five years from the date of issuance of the audit report, unless the Provider's auditor is notified in writing by the County, the Commonwealth, or the cognizant Federal agency to extend the retention period. Audit working papers shall be made available upon request to authorized representatives of the County, the Commonwealth, or the cognizant federal agency.

(D) Period Subject to Audit

A federally-required audit made in accordance with OMB Circular A-133 encompasses the fiscal period of the provider. Therefore, the period of the federally-required audit may differ from the official reporting period as specified in this agreement.

(E) Corrective Action Plan

The Provider shall prepare a Corrective Action Plan (CAP) to address all finding of non-compliance or internal control weaknesses disclosed in the audit report. For each finding noted, the CAP should include: a brief description identifying the finding whether the Provider agrees with the finding; the specific steps to be taken to correct the deficiency or specific reasons why corrective action is not necessary; a time table for completion of the corrective action steps; and a description of monitoring to be performed to ensure that the steps are taken.

(F) Remedies for Non-Compliance with Audit Requirements

The Provider's failure to provide an acceptable audit in accordance with the requirements of this clause may result in the Department's not accepting the report and initialing sanctions against the Provider which may include the following:

Disallowing the cost of the audit.

Withholding a percentage of the contract funding pending compliance.

Withholding or disallowing administrative costs.

Suspending subsequent contract funding pending compliance.

(G) Audit Procedures For Non-profit, And For-profit Organizations Expending Less Than \$300,000 in Combined State and Federal Funds

The County reserves the right for County, State, and Federal agencies or their authorized representatives to perform financial and performance audits if deemed necessary. If it is decided that an audit of this contract will be performed, the Service provider will be given advance notice. The Service Provider shall maintain books, records, and documents which support that services provided and fees earned are in accordance with the contract and that the Service Provider has complied with contract terms and conditions. The Service Provider, during normal business hours, for the term of this contract and the retention period set forth in this clause, any of the books, records, and documents for inspection, audit, or reproduction by any state, federal, or county agency or its authorized representative.

The Service Provider shall preserve all books, records, and documents related to this contract for a

period of time which is the greater of five years from the contract expiration date or until all questions costs or activities have been resolved to the satisfaction of the County, or as required by applicable federal laws and regulations, which ever is longer. If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

Records which relate to litigation or the settlement of claims arising out of performance or expenditures under this contract to which exception has been taken by the auditors, shall be retained by the Provider or provided to the County at the County's option until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of this contract, the Service Provider may, in fulfillment of his obligation to retain records as required by this clause, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the County.

(H) Financial Reports

(1) In conjunction with the financial and compliance audit, the Provider shall submit information concerning its costs in such a manner as to allow the County to maximize its receipt of Federal and State money. As part of this process, the Provider shall identify that part of its per diem/unit cost which is an unallowable cost(s) under both PA Cede 55, Chapter 3170 (pertaining to State participation in the funding of child welfare services) and PL. 96-272, Title IV-E (pertaining to Federal participation in the funding of child welfare services).

(2) In reporting information, the Provider shall provide costs by purchase category for each service the County purchases from the Provider.

(3) In calculating unallowable costs under either PA Cede 55, Chapter 3170 or PL. 96-272, Title IV-E, the Provider, if it does not receive the full cost of care, shall use contributed services in off-setting unallowable costs before computing the amount which it will report to the County. (See Children, Youth and Families Bulletin 3 140-02, p. 7).

(4) The Provider agrees that it will not use in violation of Federal or State law money received from the County services provided pursuant to this Agreement to pay for the cost of unrelated services provided by the Provider.

XIV. NON-DISCRIMINATION CLAUSE

In carrying out the terms of this Agreement, both parties agree not to discriminate against any employee or client or other person on account of age, race, color, sex, religious creed, national origin, marital status, or handicap. The Service Provider and the County shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, any pertinent Executive Order of the Governor and with all law prohibiting discrimination in hiring or employment opportunities and the provision of child welfare services.

XV. INSURANCE

The Service Provider shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this agreement, insurance in the types and limits specified below. In addition to the insurance coverage and limits specified herein, the Service Provider shall obtain any other insurance coverage as may be required by law.

A. General Liability Insurance

(1) Limits of Liability \$1,000,000 in the aggregate and per occurrence.

(2) Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insured, joint liability, and broad form property damage (including completed operations).

B. Workers' Compensation and Employers' Liability Insurance

(1) Limits of Liability: Workers' Compensation - Statutory Limits. Employers' Liability: Statutory Limits.

(2) Other States' coverage and Pennsylvania endorsement.

C. Automobile Liability

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owner, non-owned and hired vehicles.

D. Professional Liability Insurance

(1) Limit of Liability: \$1,000,000 by claim and in the aggregate.

(2) Coverage for occurrences happening during the performance of services required under this

agreement shall be maintained in full force and effect under the policy. The policy shall include a "tail coverage" for up to a two year period of exposure.

All insurance provided for in this section shall be obtained under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the Commonwealth of Pennsylvania. The County prefers that Certificates of Insurance evidencing the existence of such insurance shall be submitted to the County at least ten (10) calendar days before work is begun. If the term of this contract coincides with the term of the Service Provider's insurance coverage, a Certificate from the expiring policy will be accepted, but a certificate evidencing renewed coverage or a new policy must be presented to the County no later than thirty (30) days after effective date of the policy.

Each policy and Certificate of insurance shall contain: an endorsement naming the County as additional insured party thereunder; and a provision that at least thirty (30) calendar days prior written notice be given to the County in the event coverage is canceled or non-renewed or limits or coverage reduced.

If the Service Provider desires to self insure any or all of the coverages listed in this section, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulation, as well as the most recent audited financial statement of the Service Provider's insurance. Any coverage which is self insured shall provide the same coverage, limits and benefits as the coverages listed in this section.

If the Service Provider fails to obtain or maintain the required insurance, the County shall have the rights to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.

E. Subcontractors

Provider shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this agreement.

XVI. HOLD HARMLESS PROVISION - INDEMNIFICATION

It is understood that the Service Provider is an independent contractor in respect to its performance under this Agreement, and shall assume all risks and responsibilities for losses of every description in connection with the service which can be attributed either directly or indirectly to the Service Provider. The Service Provider agrees to indemnify, defend and hold harmless the County, its agents and employees for, or on account of any damage or loss, including the County's cost of litigation and attorneys fees resulting from the actions of the Service Provider, or a subcontractor of the Service Provider, in fulfilling the terms of this Agreement.

The Service Provider hereto shall not be held responsible for delay or failure to perform hereunder when such delay or failure is due to fire, flood, epidemic, strike, acts of God or the public enemy, unusually severe weather, legal acts of the public authorities, or delay or default which cannot reasonable be foreseen or provided against.

XVII. PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE CERTIFICATION

The Service Provider, in writing, shall notify the County within five working days of any loss of its Pennsylvania Department of Public Welfare certification for any of the services being provided to the County.

ASSIGNMENT

The Service Provider shall not assign any part of this Agreement without prior written approval of the County.

MODIFICATION

This document, and all attachments which have been incorporated by reference, contains all the terms, provisions, and conditions of this Agreement. No term or provision may be unilaterally modified or amended. Any alteration must be reduced to writing and signed by the parties to this Agreement. Any alteration, variation, modification or waiver of a provision of this Agreement shall be valid only when reduced to writing, duly signed by the parties of this Agreement, and attached to the original of the Agreement.

DEBARMENT

1. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the contractor cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.
2. If contractor enters into subcontracts or employs under the contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extension or renewal thereof, the Commonwealth shall have the right the contractor to terminate such subcontracts or employment.
3. The contractor agrees to reimburse the Commonwealth for the reasonable cost of investigation incurred by the Office of Inspector General for investigation of the of the contractors compliance with terms of this or any other agreement between the contractor and the Commonwealth which result in the suspension or debarment of the contractor. Such costs shall include, but are not limited to, salaries of investigators, including overtime; travel and lodging expenses and expert witness and documentary fees. The contractor shall not be responsible for investigative fees for investigations which do not results in the contractor's suspension or debarment .

4. The contractor may obtain the current list of suspended and debarred contractors by contacting the :

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg Pa. 17125

Telephone: (717) 783 6472

Fax: (717) 787-9138

XVIII. TERMINATION

If either party fails to fulfill in a timely or proper manner its obligations under this Agreement, or if either party violates any of the covenants or stipulations of this Agreement, the party injured thereby shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of termination, all finished or unfinished documents, data, studies, photographs and reports or other materials prepared by the Service Provider under this Agreement shall, at the option of the County, become its property, and the Service Provider shall be entitled to receive compensation for work completed on such documents and other materials.

All contractual matters relating to the provision of the service by the Service Provider shall, upon termination by either party, be settled within thirty (30) days of the date of termination by the rendering of a bill marked "final bill" by the Service Provider to the County.


IN WITNESS WHEREOF, the duly authorized officers of the parties hereby set their hands and seals, causing this agreement to be executed and legally binding.

SERVICE PROVIDER




Director/Administrator


COUNTY



Gregory A. Skrepenak
Chairman
Luzerne County Commissioner

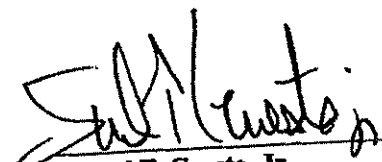


Rose S. Tucker
Luzerne County Commissioner



Stephen A. Urban
Luzerne County Commissioner

WITNESS



Samuel T. Guesto, Jr.
County Manager/Chief Clerk

" ATTACHMENT B "

| | | |
|----------------------------|---------------------------------------|-----------------------|
| Michael F. Loughney | Deputy Chief Probation Officer | (570) 825-1694 |
| John E. Johnson | Supervisor | (570) 825-1850 |
| Thomas J. Lavan | Probation Officer | (570) 830-5191 |
| Walter J. Symons | Probation Officer | (570) 270-4138 |
| Angela M. Zera | Probation Officer | (570) 270-4131 |

Western PA Childcare
Operated by Mid-Atlantic Youth Services
12 Dakota Drive
Emlenton, PA 16373
FY 2007-2008 Fee Schedule

| Service Provided | Per Diem | IV-E Unallowable | IV-E Allowable |
|----------------------------|----------|------------------|----------------|
| Secure Treatment | \$314.00 | \$314.00 | \$0 |
| Shelter Care | \$210.00 | \$0 | \$210.00 |
| Open Residential Treatment | \$255.00 | \$0 | \$255.00 |

Exhibit O

LUZERNE COUNTY, PA
GL050S-V06.80 COVERPAGE
GL540R

ACS FINANCIAL SYSTEM
04/27/2009 10:16:04 Vendor Payments History Report

Report Selection:

Due to the current security settings,
this report may not reflect all account information

Optional Report Title.....WESTERN PA CHILD CARE

INCLUSIONS:
Fund & Account..... thru
Check Date..... 01/01/2004 thru 04/30/2009
Source Codes..... thru
Journal Entry Dates..... thru
Journal Entry Ids..... thru
Check Number..... thru
Project/Grant..... thru 015365 thru 015365
Vendor..... thru
Invoice..... thru
Purchase Order..... thru
Bank..... thru
Totals Only?.....
1099 Vendors Only?.....
Lower Dollars Limit.....

Run Instructions:
Jobq Banner Copies Form Printer Hold Space LPI Lines CPI CP SP
L 01 Y S S 6 066 10

ACS FINANCIAL SYSTEM
 04/27/2009 10:16:04

Vendor Payments History Report
 WESTERN PA CHILD CARE

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|--|---------------------------------|------------|---------------|-----------|------------------------|---------------|
| WESTERN PA CHILD CARE 433197 04/20/06 | 015365 TRIMNT, MED IAN ALEXA | 119,077.65 | 146498 3-06 | | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 434518 05/16/06 | APR 2006 SECURE SHEL | 118,617.00 | 149520 4-06 | T, 4-06 S | N P W ACCOUNTS PAYABLE | 100.00.200120 |
| 435497 06/13/06 | 5-06 S/SHELTER | 9,600.00 | 152731 5-08 | S, 5-06T | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 435497 06/13/06 | 5-06T/SECURE | 115,713.00 | 152731 5-08 | S, 5-06T | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 125,313.00 | *CHECK TOTAL | | | |
| 436432 07/14/06 | INV 6-06 S | 12,000.00 | 156197 JUNE | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 436432 07/14/06 | INV 6-06T | 107,640.00 | 156197 JUNE | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 119,640.00 | *CHECK TOTAL | | | |
| 437735 08/16/06 | SHELTER JULY 2006 | 9,200.00 | 160907 7-06 | S | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 437735 08/16/06 | SHELTER JULY 2006 | 25,800.00 | 160908 7-06S | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 437735 08/16/06 | SECURE JULY 2006 | 107,042.00 | 160909 7-06T | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 142,042.00 | *CHECK TOTAL | | | |
| 439029 09/20/06 | 8-06S/SHELTER | 18,400.00 | 165082 8-06S, | SB, T | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 439029 09/20/06 | 8-06SB/SHELTER BEDS | 12,200.00 | 165082 8-06S, | SB, T | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 439029 09/20/06 | 8-06T/SECURE TREATMEN | 95,979.00 | 165082 8-06S, | SB, T | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 126,579.00 | *CHECK TOTAL | | | |
| 440082 10/17/06 | 9-06S SHELTER | 16,000.00 | 168293 SEPT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 440082 10/17/06 | 9-06 SB SHELTER BEDS | 19,400.00 | 168293 SEPT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 440082 10/17/06 | 9-06 T TREATMENT | 72,956.00 | 168293 SEPT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 108,356.00 | *CHECK TOTAL | | | |
| 442633 11/21/06 | 10-06S/SHELTER | 35,200.00 | 174036 OCT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 442633 11/21/06 | 10-06SB/SHELTER, BEDS | 4,400.00 | 174036 OCT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 442633 11/21/06 | 10-06T/SECURE TREATME | 62,790.00 | 174036 OCT | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 102,390.00 | *CHECK TOTAL | | | |
| 443690 12/22/06 | 11-06S/SHELTER | 40,200.00 | 177770 NOV | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 443690 12/22/06 | 11-06SB/ SHELTER BEDS | 3,600.00 | 177770 NOV | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 443690 12/22/06 | 11-06T/SECURE TREATME | 44,850.00 | 177770 NOV | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 443690 12/22/06 | 11-06T/MEDICAL EXPENSE | 10.00 | 177770 NOV | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 88,660.00 | *CHECK TOTAL | | | |
| 444524 01/19/07 | 12-06S, 12-06SB, 12-06T | 78,771.00 | 181519 DEC | 2006 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 445908 03/07/07 | 01-07 S SHELTER | 37,400.00 | 185248 JAN | 2007 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 445908 03/07/07 | 01-07 SB SHELTER BEDS | 1,400.00 | 185248 JAN | 2007 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 445908 03/07/07 | 01-07 T SECURE TREATM | 34,086.00 | 185248 JAN | 2007 | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 72,886.00 | *CHECK TOTAL | | | |
| 446244 03/14/07 | SHELTER FEB 2007 | 33,800.00 | 187385 02-07 | S | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 446244 03/14/07 | SECURE TRTMTNT FEB 200 | 33,488.00 | 187386 02-07T | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 67,288.00 | *CHECK TOTAL | | | |

Vendor Payments History Report
WESTERN PA CHILD CARE

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| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|--|--|--|--|-----|--|---|
| WESTERN PA CHILD CARE 447528 04/17/07 03-07 S SHELTER 447528 04/17/07 03-07T SECIRE TRTMNT 447528 04/17/07 03-07 SB SHELTER OPEN 447528 04/17/07 03-07 MED | 015365 SHELTER SECURE TRTMNT SB SHELTER OPEN MED | 35,600.00 37,076.00 2,200.00 172.00 75,048.00 | 192653 MARCH 2007 192653 MARCH 2007 192653 MARCH 2007 192653 MARCH 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 448649 05/16/07 SHELTER APRIL 2007 448649 05/16/07 SECURE TRMNT APRIL 20 448649 05/16/07 SHELTER OPEN BEDS APR 448649 05/16/07 SHELTER OPEN BEDS APR | SHELTER APRIL 2007 SECURE TRMNT APRIL 20 SHELTER OPEN BEDS APR SHELTER OPEN BEDS APR | 35,800.00 35,880.00 07,200.00 71,880.00 | 196706 4-07 S 196707 4-07 T 196708 4-07 SB *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 451039 06/19/07 05-07S/SHELTER 05/07 451039 06/19/07 05-07T/SECURE TREATME 451039 06/19/07 05-07 SB/SHELTER OPEN 451039 06/19/07 05-07 SB/SHELTER OPEN | 05-07S/SHELTER 05/07 SECURE TREATME SB/SHELTER OPEN SB/SHELTER OPEN | 36,400.00 37,076.00 1,200.00 74,676.00 | 201876 MAY 2007 201876 MAY 2007 201876 MAY 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 452286 07/16/07 INV 06-07S SHELTER 452286 07/16/07 SECURE TRTMNT 06-07T 452286 07/16/07 SHELTER OPEN BED 06-07 452286 07/16/07 SHELTER OPEN BED 06-07 452286 07/16/07 IORT 07/01/2007 | INV 06-07S SHELTER SECURE TRTMNT 06-07T SHELTER OPEN BED 06-07 SHELTER OPEN BED 06-07 IORT 07/01/2007 | 34,000.00 20,332.00 2,600.00 2,295.00 59,227.00 | 206078 JUNE 2007 206078 JUNE 2007 206078 JUNE 2007 206078 JUNE 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 453327 08/14/07 SHELTER JULY 2007 453327 08/14/07 SECURE TRMNT JULY 200 453327 08/14/07 SHELTER OPEN BEDS 07/0 453327 08/14/07 SHELTER OPEN BEDS 07/0 453327 08/14/07 IORT JULY 2007 | SHELTER JULY 2007 SECURE TRMNT JULY 200 SHELTER OPEN BEDS 07/0 SHELTER OPEN BEDS 07/0 IORT JULY 2007 | 38,640.00 18,212.00 4,200.00 7,905.00 68,957.00 | 209596 07-07S 209597 07-07T 209598 07-07 SB 209599 07-07 IORT *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 454591 09/18/07 08-07S/SHELTER 454591 09/18/07 08-07T/TREATMENT 454591 09/18/07 08-07SB/SHELTER OPEN 454591 09/18/07 08-07LORT/LORT 08/07 | 08-07S/SHELTER 08-07T/TREATMENT 08-07SB/SHELTER OPEN 08-07LORT/LORT 08/07 | 42,840.00 13,816.00 15,750.00 7,905.00 80,311.00 | 214036 AUG 2007 214036 AUG 2007 214036 AUG 2007 214036 AUG 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 455576 10/19/07 09-07S/SHELTER 455576 10/19/07 09-07T/SECURED TREATME 455576 10/19/07 09-07SB/SHELTER OPEN B 455576 10/19/07 09-07 IORT/ IORT 09/07 455576 10/19/07 09-07 IORT/ IORT 09/07 | 09-07S/SHELTER 09-07T/SECURED TREATME 09-07SB/SHELTER OPEN B 09-07 IORT/ IORT 09/07 09-07 IORT/ IORT 09/07 | 51,030.00 9,420.00 6,090.00 7,650.00 74,190.00 | 217984 SEPT 2007 217984 SEPT 2007 217984 SEPT 2007 217984 SEPT 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 458097 11/30/07 10-07S SHELTER 458097 11/30/07 10-07T SECURE TRTMNT 458097 11/30/07 10-07SB SHELTER OPEN 458097 11/30/07 10-07IORT | 10-07S SHELTER 10-07T SECURE TRTMNT 10-07SB SHELTER OPEN 10-07IORT | 39,060.00 9,734.00 21,630.00 7,905.00 78,329.00 | 224029 OCT 2007 224029 OCT 2007 224029 OCT 2007 224029 OCT 2007 *CHECK TOTAL | | M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE M P W ACCOUNTS PAYABLE *CHECK TOTAL | 100.00.200120 100.00.200120 100.00.200120 100.00.200120 100.00.200120 |
| 458234 12/19/07 11-07S/SHELTER | 11-07S/SHELTER | 39,690.00 | 226461 NOV 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |

Vendor Payments History Report
 WESTERN PA CHILD CARE

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| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|--|---------------------------------|--------------|-------------------|-----|------------------------|---------------|
| WESTERN PA CHILD CARE 458234 12/19/07 | 015365 11-07T/SECURE TREATME | 18,840.00 | 226461 NOV 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 458234 12/19/07 | 11-07SB/SHELTER OPEN | 17,010.00 | 226461 NOV 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 458234 12/19/07 | 11-07IORT NOV 2007 | 5,100.00 | 226461 NOV 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 80,640.00 | *CHECK TOTAL | | | |
| 459535 01/24/08 | 12-07S/SHELTER 12/07 | 49,560.00 | 230682 DEC 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 459535 01/24/08 | 12-07T/SECURE TREATME | 19,468.00 | 230682 DEC 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 459535 01/24/08 | 12-07SB/SHELTER OPEN B | 9,240.00 | 230682 DEC 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 78,268.00 | *CHECK TOTAL | | | |
| 460382 02/15/08 | 01-08S/SHELTER | 50,400.00 | 232914 JAN 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 460382 02/15/08 | 01-08T/SECURE TREATME | 12,246.00 | 232914 JAN 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 460382 02/15/08 | 01-08SB/SHELTER OPEN B | 9,030.00 | 232914 JAN 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 71,676.00 | *CHECK TOTAL | | | |
| 461309 03/13/08 | 20-08S/SHELTER | 39,690.00 | 236166 FEB 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 461309 03/13/08 | 02-08T/SECURE TREATMEN | 9,106.00 | 236166 FEB 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 461309 03/13/08 | 02-08SB/SHELTER OPEN | 14,910.00 | 236166 FEB 2007 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 63,706.00 | *CHECK TOTAL | | | |
| 462631 04/11/08 | LU-SH/SHELTER | 28,350.00 | 240636 MARCH 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 462631 04/11/08 | LU-ST/SECURE TREATMENT | 9,734.00 | 240636 MARCH 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 462631 04/11/08 | LU-SHB/SHELTER OPEN B | 28,770.00 | 240636 MARCH 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 66,854.00 | *CHECK TOTAL | | | |
| 465213 05/15/08 | SHELTER INV DATED 5/1 | 17,220.00 | 247332 APR 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 465213 05/15/08 | SECURE TREATMENT INV | 5,8792.00 | 247332 APR 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 26,012.00 | *CHECK TOTAL | | | |
| 466442 06/17/08 | SHELTER | 5,040.00 | 251290 MAY 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| 466442 06/17/08 | SHELTER BEDS | 2,310.00 | 251290 MAY 2008 | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | | 7,350.00 | *CHECK TOTAL | | | |
| 467834 07/29/08 | 06/08 SHELTER BEDS | 5,670.00 | 255971 06-08 S | | M P W ACCOUNTS PAYABLE | 100.00.200120 |
| | VENDOR TOTAL | 2,252,413.65 | | | | |

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Vendor Payments History Report
WESTERN PA CHILD CARE

| VENDOR NAME AND NUMBER CHECK# DATE | DESCRIPTION | AMOUNT | CLAIM INVOICE | PO# | 9 F S ACCOUNT NAME | ACCOUNT |
|---------------------------------------|-------------|--------------|---------------|-----|--------------------|---------|
| | | 2,252,413.65 | | | | |

REPORT TOTALS:

RECORDS PRINTED - 000079

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Vendor Payments History Report

LUZERNE COUNTY, PA
GL060S-V06.80 RECAPPAGE
GL540R

FUND RECAP:

FUND DESCRIPTION -----
100 GENERAL FUND
TOTAL ALL FUNDS

DISBURSEMENTS
2,252,413.65
2,252,413.65

BANK RECAP:

BANK NAME -----
P100 GENERAL FUND
W128 GENERAL FUND
TOTAL ALL BANKS

DISBURSEMENTS
105,886.00
2,146,527.65
2,252,413.65

**IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 81 M.M. 2008

IN RE J.V.R.; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF
THEMSELVES AND SIMILARLY SITUATED YOUTH

**PETITIONERS' BRIEF IN RESPONSE TO
SPECIAL MASTER'S ORDER OF MAY 28, 2009**

VOLUME ONE

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Lourdes M. Rosado, Esq. (ID No. 77109)
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(215) 625-2808 (facsimile)

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3. Retrial is barred in the instant case because Ciavarella's financial dealings with the placement facilities and his failure to disclose the conflict was so egregious that all juveniles who appeared before Ciavarella were denied their rights to a fair trial37

C. **Double Jeopardy bars retrial of Petitioners' cases once Special Master vacates the adjudications and consent decrees due to prosecutorial misconduct; the district attorney failed to raise objections or report the persistent violations of due process in Ciavarella's courtroom**.....39

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- Application for *Supersedeas*
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- Juvenile Division Court Order dated 5/16/2007
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STATEMENT OF THE QUESTIONS INVOLVED

In his order dated May 28, 2009, the Special Master ordered the parties to submit the brief herein on the following questions:

1. Does *In re McFall*, 617 A.2d 707 (Pa. 1992), require this Court to vacate all adjudications of delinquency and all consent decrees entered by Judge Mark A. Ciavarella, Jr. between 2003 and May 2008, regardless of whether or not a juvenile was represented by counsel; or does *McFall* only require vacation of a smaller set of delinquency adjudications and consent decrees?

ANSWER: In the affirmative. *In re McFall* requires this court to vacate all adjudications of delinquency and all consent decrees entered by Judge Mark A. Ciavarella, Jr. between 2003 and May 2008, regardless of whether or not the juvenile was represented by counsel.

2. Does the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, or the Double Jeopardy Clause of the Pennsylvania Constitution (Article I, Section 10), apply to proceedings in juvenile court in Pennsylvania? See *Breed v. Jones*, 421 U.S. 519 (1975); *Benton v. Maryland*, 395 U.S. 784 (1969).

ANSWER: In the affirmative. Both clauses apply to juvenile court proceedings in Pennsylvania.

3. Given the facts of the instant case, and the “judicial overreaching,” or bad faith judicial conduct, component of Double Jeopardy jurisprudence, are juveniles who have their

adjudications of delinquency or consent decrees vacated pursuant to *McFall* entitled to dismissal of the charges against them on the theory that new hearings or re-trials would be barred by the Double Jeopardy Clause of the U.S. Constitution or the Double Jeopardy Clause of the Pennsylvania Constitution? See *United States v. Jorn*, 400 U.S. 470 (1971), and *United States v. Dinitz*, 424 U.S. 600 (1976), modified by *Oregon v. Kennedy*, 456 U.S. 667 (1982); see also *Com. v. Smith*, 615 A.2d 321 (Pa. 1992) (Double Jeopardy Clause of the Pennsylvania Constitution).

ANSWER: In the affirmative. The Double Jeopardy Clause of the Pennsylvania Constitution bars retrial of juveniles who have their adjudications of delinquency or consent decrees vacated.

STATEMENT OF THE CASE

As acknowledged in this Court's Orders of March 26, 2009 and May 4, 2009, Petitioners J.V.R. *et al.*, were the victims of an unprecedented judicial corruption scandal which spanned at least five years, from 2003 through 2008, and involved thousands of children. *In Re: J.V.R.: H.T.*, a Minor through her Mother, LT., No. 81 M.M. 2008, orders dated March 26, 2009 and May 4, 2009, and 1st Interim Report and Recommendations of the Special Master dated March 12, 2009. It is undisputed that former Luzerne County Court of Common Pleas judges Mark A. Ciavarella, Jr., and Michael T. Conahan accepted over \$2.6 million in kickbacks from the developer, owners and operators of two private for-profit juvenile correctional facilities in exchange for their assurance that the beds in these facilities would be filled by Luzerne County children. *United States of America v. Michael T. Conahan and Mark A. Ciavarella, Jr.*, Docket No. 3:09-CR-028, Bill of Information (hereinafter "bill of information"), ¶¶ 5, 11, 22, and 35-36. As part of this quid pro quo scheme, it is also undisputed that Petitioners were routinely and systematically denied their constitutional rights to counsel, to an impartial tribunal, to be free from compelled self incrimination and to enter guilty pleas only upon a voluntary, knowing and intelligent waiver of their right to trial. *In Re: J.V.R.: H.T.*, No. 81 M.M. 2008, 1st Interim Report and Recommendations of the Special Master dated March 12, 2009, ¶ 10.

The record begins in 1999 when undersigned counsel successfully appealed the delinquency adjudication of a thirteen year-old boy from Luzerne County. *In re A.M.*, 766 A.2d 1263 (Pa. Super. 2001), attached at Ex. A. The Pennsylvania Superior Court found that A.M., who appeared without counsel at his at his adjudication and disposition hearings in the Luzerne County juvenile court, was unfairly denied his constitutional and statutory rights to counsel 766 A.2d at 1264-65. The Superior Court held that the judge's failure to inform A.M. of his right to

counsel and his right to have court appointed counsel if he could not afford representation, as well as the court's failure to obtain a valid waiver of counsel, required that A.M.'s delinquency adjudication be vacated and the case be remanded. *Id.* at 1264-65.¹ Mark A. Ciavarella, Jr., who was then juvenile court judge of the Court of Common Pleas of Luzerne County and presided over A.M.'s disposition hearing, was quoted in the local newspaper after the Superior Court overturned A.M.'s adjudication. "I'll never do it again," Ciavarella said of allowing a defendant to proceed without a lawyer. "They obviously have a right to a lawyer, and even if they come in and tell me that they don't want a lawyer, they're going to have one." Michael McNarney, *Superior Court Overturns Ruling in Child's Case: Judge Mark A. Ciavarella Should Not Have Found a Boy Delinquent in a 1999 Case, The Court Says*, January 6, 2001, WILKES-BARRE TIMES LEADER, attached at Ex. B.

But undersigned counsel continued to receive troubling calls from the families of other children who appeared before Ciavarella. Like A.M., these children appeared without counsel and were never informed by Ciavarella that they had a right to counsel and to court-appointed counsel if they could not afford representation, nor did they make appropriate waivers of their right to counsel. Like A.M., their adjudicatory and disposition hearings took place in a matter of minutes; the court did not advise them of their right to trial and the consequences of pleading guilty.

¹ In the brief filed with the Superior Court, undersigned counsel raised a total five issues for the Superior Court's review in arguing that A.M.'s adjudication should be vacated. *A.M.*, 766 A.2d at 1264, including that that his admission to the crime charged was constitutionally invalid because it was not voluntary, knowing and intelligent. *See Id.* at 1264 n.1 (reproducing adjudication hearing transcript). The Superior Court, however, never reached these other issues because the Commonwealth conceded that A.M. was unfairly denied counsel at both hearings. *Id.* at 1264-65.

H.T.'s experience was typical of the cases. On April 17, 2007, H.T., then a fifteen year old, appeared before Ciavarella for an adjudication hearing on a charge of harassment, a third degree misdemeanor. See Ex. C, Tr. of Adjudicatory Hearing, *In the Interest of H.T.*, Juvenile No. 2007-74, In the Court of Common Pleas of Luzerne County, 11th Judicial District, Juvenile Section. H.T. did not have private counsel, nor was she appointed counsel; but at no point during the adjudication hearing did Ciavarella explain the consequences of proceeding without counsel. *Id.* H.T. admitted creating the website in question. *Id.* Ciavarella did not conduct a colloquy with H.T. on the record to explain her rights and the consequences of waiving her right to a trial. *Id.* Although H.T. had no prior contact with the juvenile justice system and was adjudicated for a third degree misdemeanor, the court immediately committed her to a residential treatment facility. *Id.* On May 3, 2007, undersigned counsel entered its appearance as counsel for H.T., filed a timely notice of appeal in the Superior Court, and simultaneously filed applications in Luzerne County juvenile court seeking H.T.'s immediate release. See Ex. C, Entry of Appearance; Notice of Appeal; Application for *Supersedeas*; Petition for Writ of *Habeas Corpus*, *In the Interest of H.T.*, Juvenile No. 2007-74. These filings argued that the juvenile court had violated H.T.'s due process rights by, *inter alia*, allowing her to proceed without counsel in the absence of a valid waiver of counsel and accepting an un-counseled admission which was not voluntary, knowing and intelligent. *Id.* In May 2007, the juvenile court vacated its original April 17th delinquency adjudication and disposition orders, placed H.T. on a consent decree and released her to the custody of her parents. See Ex. C, Juvenile Division Court Order dated 5/16/2007, *In the Interest of H.T.*, Juvenile No. 2007-74. H.T., through undersigned counsel, subsequently withdrew her notice of appeal. See Ex. C, *Praecepto* to Discontinue

Appeal, No. 788 MDA 2007, *In the Interest of H.T.*, In the Superior Court of Pennsylvania for the Middle District.

Despite the Superior Court's reversal of Ciavarella in *A.M.* and Ciavarella's own grant of relief in *H.T.*'s case on the grounds of due process violations, Ciavarella continued in a flagrant and persistent pattern and practice to deny youth their right to counsel and to accept constitutionally invalid guilty pleas as the basis for adjudications. Undersigned counsel and *pro bono* attorneys assisted a number of youth in having their adjudications before Ciavarella vacated on the same due process grounds.² However, it became apparent that traditional means

² For example, in April 2008, M.Y., then sixteen, was adjudicated delinquent for possession of less than five dollars worth of marijuana. M.Y. appeared without counsel before Ciavarella and admitted to the charge. See Ex. D, Tr. of Adjudicatory Hearing, *In the Interest of M.Y.*, Juvenile No. 086-2008, In the Court of Common Pleas of Luzerne County, 11th Judicial District, Juvenile Section. Despite the fact that M.Y. was an honor student and this was her first offense, Ciavarella placed M.Y. outside of her home. *Id.* A pro bono attorney filed an application of *supersedeas* and a writ of *habeas corpus* challenging the constitutionality of her adjudication and detention. See Ex. D, *In the Interest of M.Y.*, Application for *Supersedeas* and Petition for Writ of *Habeas Corpus*, Juvenile No. 086-2008. In response to the filings, the juvenile court released M.Y. to her parents and vacated the adjudication. See Ex. D, *In the Interest of M.Y.*, Report of Juvenile Court Showing Disposition dated 6/12/08 and Juvenile Division Court Order dated 5/13/08, Juvenile No. 086-2008.

In October 2007, when S.S. was sixteen years old, S.S. was charged with driving without a license and presenting false identification to the police in Dauphin County. That month, S.S. appeared, with an attorney, before the Dauphin County Juvenile Court and made a counseled admission to the charges. The Dauphin County court then transferred the case to the Luzerne County Juvenile Court as S.S. was a resident of Luzerne County. See Ex. E, *In the Interest of S.S.*, Petition for Writ of *Habeas Corpus*, Juvenile No. 477-2007, In the Court of Common Pleas of Luzerne County, 11th Judicial District, Juvenile Section. On November 14, 2007, S.S. appeared without counsel before Ciavarella for an adjudication/disposition hearing, but Ciavarella did not ascertain whether S.S. knew he had the right to counsel, nor did the court obtain an affirmative waiver of counsel from S.S. on the record. *Id.* Ciavarella ordered that S.S. be placed at Glen Mills School for an indefinite period. *Id.* In July 2008, undersigned counsel filed a writ of *habeas corpus*, challenging the constitutionality of his adjudication and detention. *Id.* On July 31, 2008, the Hon. David Lupas issued an order releasing S.S. from his commitment at Glen Mills and vacating the delinquency adjudication and disposition of November 14, 2007. See Ex. E, *In the Interest of S.S.*, Order dated 7/31/08, Juvenile No. 477-2007.

On April 22, 2008, K.W. was adjudicated delinquent on a simple assault charge in a hearing before Ciavarella at which he made an admission. See Ex. F, *In the Interest of K.W.*, Petition for Writ of *Habeas Corpus*, Juvenile No. 2007-74, In the Court of Common Pleas of Luzerne County, 11th Judicial District, Juvenile Section. A public defender did appear with K.W. at the hearing, but the public defender did not explain to K.W. his rights or the possible consequences of making an admission. *Id.* Ciavarella ordered that K.W. be placed at Camp Adams for an indeterminate period of time. *Id.* In May 2007, undersigned counsel filed a writ of *habeas corpus* on K.W.'s behalf, challenging the constitutionality of K.W.'s adjudication and detention. *Id.* On June 18, 2008, the court granted the writ; K.W.'s delinquency adjudication was vacated and he was released from Camp Adams. See Ex. F, *In the Interest of K.W.*, Order dated 6/18/09, Juvenile No. 2007-74.

of challenging and reforming a court's errant practices – appeals, applications for supersedes and writs of habeas corpus – were not prompting Ciavarella to change his behavior. For that reason, undersigned counsel finally filed the Application for Exercise of King's Bench Power in the Instant Case on April 28, 2008. *See In Re: J.V.R.: H.T., a Minor through her Mother, LT., No. 81 M.M. 2008, Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction.* This Court denied the Application on January 8, 2009. *Id.*, order dated 1/8/09.

On January 26, 2009, the United States Attorney for the Middle District of Pennsylvania filed a federal information detailing Ciavarella's and Conahan's corruption scheme and charging the judges with violations of provisions of the federal crimes code. Upon the filing of the federal information, Ciavarella and Conahan pled guilty to two of the allegations against them and agreed to serve a sentence of 87 months in a federal prison. As the federal information states, *inter alia*:

The Defendants Michael T. Conahan and Mark A. Ciavarella, Jr., through their actions, facilitated the construction of juvenile detention facilities and an expansion to one of those facilities by PA Child Care and Western PA Child Care and directed that juvenile offenders be lodged at juvenile detention facilities operated by PA Child Care and Western PA Child Care. Through their actions, the defendants assisted PA Child Care and Western PA Child Care to secure agreements with Luzerne County worth tens of millions of dollars for the placement of juvenile offenders, including an agreement in late 2004 worth approximately \$58,000,000. It was further a part of the scheme and artifice to defraud that, on numerous occasions, accused juvenile offenders were ordered detained by the defendant Mark A. Ciavarella, Jr. even when Juvenile Probation Officers did not recommend detention. The defendant Mark A. Ciavarella, Jr., and others operating at his behest, also exerted pressure on staff of the Court of Common Pleas to recommend detention of juvenile offenders. On some occasions, probation officers were pressured to change recommendations of release to recommendations of detention.

It was further a part of the scheme and artifice to defraud that the defendants Michael T. Conahan and Mark A. Ciavarella, Jr. violated their duties of independence, impartiality and integrity in the exercise of their discretionary actions on behalf of the Court of Common Pleas for Luzerne County by failing to recuse themselves from acting in matters in which they had a material conflict of interest and in failing to disclose to parties appearing before the court their conflict of interest and their financial relationship with Participant #1, Participant #2, PA Child Care and Western PA Child Care, which were material matters.

Bill of information, ¶¶ 35-36.

Undersigned counsel subsequently filed a motion for reconsideration and for leave to amend its original application on January 29, 2009. *In Re: J.V.R.: H.T.*, No. 81 M.M. 2008, Motion of J.V.R., H.T. et al, for Reconsideration of Denial of Application and to Amend Application. By order of February 11, 2009, this Court assumed plenary jurisdiction over this matter and appointed the Hon. Arthur E. Grim, Senior Judge of Berks County, as Special Master to act on behalf of the Court. *In Re: J.V.R.: H.T.*, No. 81 M.M. 2008, order dated 2/11/09. The court charged the Special Master with reviewing the Luzerne County juvenile court adjudications and dispositions and making recommendations to the Court concerning appropriate remedial actions. *Id.*

To date, the Special Master has made a number of finding of facts. In the First Interim Report and Recommendations to the Court, dated March 12, 2009, and adopted and approved by the Court by order dated March 26, 2009, the Special Master stated:

My preliminary investigation, including in-chambers discussions on February 17, 2009 with the Chief Public Defender, the First Assistant District Attorney, and the Chief Deputy Juvenile Probation Officer, points to the conclusion that a very substantial number of juveniles who appeared without counsel before Judge Ciavarella for delinquency or related proceedings did not knowingly and intelligently waive their right to counsel. My investigation has also uncovered evidence that there was routine deprivation of children's constitutional rights to appear before an impartial tribunal and to have an opportunity to be heard.

1st Interim Report and Recommendations of the Special Master dated March 12, 2009 at ¶ 10.

The daily juvenile court lists for 2003-2008 maintained by the Luzerne County Juvenile Probation Office, provided to the Special Master and released to undersigned counsel and to the Luzerne County District Attorney's Office, confirm the finding that a significant portion of children appeared without counsel and did not validly waive that right.

Moreover, the evidence shows that the judges were rewarded for ensuring a steady flow of children to these two facilities, which had entered into lucrative contracts with Luzerne County to pay for their confinement at a rate calculated to ensure a profit for the facilities' owners and operators. The agreements entered into by Luzerne County and the Luzerne County Court of Common Pleas, with PA Child Care, Western PA Child Care, and Mid-Atlantic Youth Services³ demonstrate that the amount of monies these entities received was directly tied to the number of children that Luzerne County placed at these facilities. Pursuant to the 2003 placement agreement between the County, the Court and PA Child Care, the County paid a per diem rate of \$268 per day for each detention bed and \$300 per day for each secure treatment bed in which the county placed a child that year. *See* Ex. G, Placement Agreement dated 2002. In 2004, that rate increased to \$280 and \$312, respectively, for each bed that a Luzerne County child filled. *See* Ex. H, Placement Agreement dated 2004.

This per diem, per child placement arrangement at PA Child Care lasted until the county entered into a twenty-year, \$58 million lease with PA Child Care. *See* Ex. I, Lease Agreement dated November 17, 2004. At that time, Luzerne County negotiated a facility management agreement with Mid-Atlantic Youth Services to run the PA Child Care facility. *See* Ex. J, Juvenile Detention Facility Management Agreement, dated May 1, 2005. Under this

³ Undersigned counsel received these documents from Luzerne County in response to our request under Pennsylvania's Right to Know Law.

Management Agreement, the County paid a fixed amount of money -- \$3.5 million annually in monthly installments of \$288,052.50 monthly -- for Mid-Atlantic to operate the facility. *Id.* at ¶ 6. Notably, under the terms of the same agreement, if the facility's actual operating costs were less than the budgeted costs submitted to the county, Mid-Atlantic would have to remit to the county 100% of the first \$50,000 and 50% of any further savings thereafter. *Id.* at ¶ 6 and Appendices. Again, this created an incentive for Mid-Atlantic to keep beds filled so that the entity would not have to return monies to the County. Accounting statements show that from June 15, 2006 through April 17, 2009, the County paid more than \$12 million to Mid-Atlantic for management of the facility. *See* Ex. K., ACS Financial Services Printout dated 4/27/09, Luzerne County Vendor Payments History Report to MAYS. Moreover, from January 1, 2005 through May 27, 2008, the county paid more than \$10 million in rent to PA Child Care. *See* Ex. L, ACS Financial Services Printout dated 4/27/09, Luzerne County Vendor Payments History Report to PA Child Care.

In 2007, the County and Court also entered into separate placement and purchase of service agreements with Western PA Child Care. Under a placement agreement, the County paid a per diem, per child rate of \$200-210 for each shelter care bed at the Butler County facility filled by a Luzerne child. *See* Ex. M, Placement Agreement dated June 1, 2007 at § X. The County also agreed to purchase treatment beds at a per diem, per child rate of \$255-\$314. *See* Ex. N, Purchase of Service Agreement dated July 1, 2007 at § XI and Attachment C. Again, under these agreements, the monies to be collected by Western PA Child Care from Luzerne County increased with each child placed in their facility. Indeed, accounting statements show that from March 2006 through May 2008, Western PA Child Care collected almost \$2.3 million from Luzerne County for shelter and treatment beds filled by Luzerne children. *See* Ex. O, ACS

Financial Services Printout dated 4/27/09, Luzerne County Vendor Payments History Report to Western PA Child Care.

Thus, the record cited above establishes that Ciavarella engaged in a persistent practice of violating youths' right to counsel and other critical due process rights throughout the period in question, despite repeated notice as to the illegality of these practices. At the same time, Ciavarella had a conflict of interest in presiding over juvenile delinquency proceedings as he had undisclosed financial interests in certain juvenile facilities.

SUMMARY OF THE ARGUMENT

Petitioners are entitled to the immediate vacatur and expungement of their juvenile adjudications or consent decrees. It is well settled under both United States Supreme Court case law and Pennsylvania case law that once even the appearance of impropriety is present, the failure of judges to disqualify or recuse themselves is a violation of litigants' due process rights to a fair and impartial tribunal and the judgments against them must be reversed. The standard to be applied is an objective one -- the Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.' In the case at bar, the unprecedented combination of the judges' receipt of more than \$2.6 million in kickbacks from private, for profit juvenile correctional facilities and Ciavarella's persistent and systematic denial of juveniles' due process rights over a five year period creates a constitutionally intolerable conflict of interest that can only be remedied by vacating and expunging their adjudications.

Nor may juveniles be re-tried once their adjudications or consent decrees are reversed. The double jeopardy clause applies to juvenile adjudications. Pursuant to both the United States and Pennsylvania Constitutions, re-trial is barred where there is a finding of either judicial or prosecutorial misconduct. Both are present here. Ciavarella's denial of petitioners' long-established constitutional and statutory rights to counsel, right to be from compelled self incrimination and to a colloquy before entering admissions to delinquency charges constitutes judicial misconduct barring re-trial. Likewise, the district attorney's unbroken silence in the face of Ciavarella's conduct over a five year period constitutes prosecutorial misconduct that bars re-trial. In both instances, Ciavarella and the District Attorney evinced an intent that the juveniles be adjudicated delinquent "by any means necessary." Finally, double jeopardy bars the re-trial

of all youth who were adjudicated delinquent by, or received consent decrees from, Ciavarella during the same time period, because his conduct in accepting the bribes and not disclosing the conflict over a period of five years denied these youth a fair trial.

ARGUMENT

The proceedings before this Court are about nothing less than the wholesale subversion of the Luzerne County juvenile justice system over a period of many years. Ciavarella and Conahan have demonstrated the worst of our judiciary, allowing greed and self-interest to trump their obligations to uphold the law and, in Ciavarella's case as a juvenile court judge, to also rule in the best interests of children. Surely self-dealing at the expense of children is the most egregious violation of the public trust. A large shadow has been cast over the reputation of the Luzerne County Juvenile Court by their actions, severely compromising its integrity and impartiality. As a consequence, the community's trust in the judiciary has been severely shaken, and youths' respect for the rule of law diminished. Only by providing swift and complete redress to the children and families who fell prey to this scandal can this Court assure the citizens of Luzerne County and the Commonwealth that justice will be done; only by providing swift and complete redress to these children and families can this Court demonstrate that it will not ignore our core values of fairness and justice.

- I. **IT IS WELL ESTABLISHED THAT ONCE EVEN THE APPEARANCE OF IMPARTIALITY HAS BEEN CALLED INTO QUESTION, LITIGANTS HAVE BEEN DENIED THEIR RIGHT TO A FAIR TRIAL AND THE JUDGMENTS MUST BE VACATED**

In its Order of February 11, 2009 accepting jurisdiction of Petitioners' application for

Kings Bench jurisdiction, this Court appointed the Honorable Arthur Grim as Special Master to review Petitioners' cases and make recommendations. *In Re: J.V.R.: H.T.*, a Minor through her Mother, LT., No. 81 M.M. 2008, order dated February 11, 2009. Specifically, this Court directed the Special Master to

[recommend] remedial action on an individual basis, a class basis, or both. Relief may include any remedy that may be awarded by a juvenile court or appellate court directly reviewing an adjudication including, but not limited to, expungement, granting new juvenile court proceedings, or finding that the affected juvenile proceedings were void *ab initio*.

Id. at ¶ 4. In its subsequent Order of May 4, this Court identified a first class of Petitioners whose adjudications were to be vacated and expunged, with additional classes of children to be identified as eligible for vacatur and expungement over a period of several months. *In Re: J.V.R.: H.T.*, a Minor through her Mother, LT., No. 81 M.M. 2008, order dated May 4, 2009. Petitioners submit that all children who were adjudicated by Ciavarella during the relevant five year time period have an identical and well-established right to vacatur and expungement of their adjudications under the circumstances herein. Petitioners now ask this Court to proceed forthwith to void their adjudications *ab initio* and order expungement of their records.

A. United States Supreme Court Precedent Requires Disqualification of Judges and Reversal of Judgments Where Litigants' Due Process Rights to an Impartial Tribunal Have Been Violated

"It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" *Caperton v. A.T. Massey Coal Co.*, No. 08-22, 2009 U.S. Lexis 4157 at *15 (June 8, 2009) (citing *In re Murchison*, 349 U.S. 133, 136 (1955)). In *Caperton*, a decision issued on June 8, 2009 by the United States Supreme Court, the Court reiterated its long-standing principle that the

test of whether a litigant's fundamental right to a fair trial has been breached is an objective test: "The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Id.* at *24.

The facts in *Caperton*, exceptional in their own right, only underscore petitioners' rights to reversal of their adjudications here. *Caperton* involved an appeal of a \$50 million jury verdict against the defendant, A.T. Massey Coal Company. The timing of Massey's appeal of the verdict coincided with West Virginia's judicial elections, including a contested election for a seat on the State Supreme Court of Appeals, the Court which would hear the appeal. Massey's chairman and principal officer contributed \$3 million to the election campaign of the candidate seeking to replace the incumbent justice on the Court; this amount exceeded by 300% the amount spent by the candidate's campaign committee and eclipsed the total amount spent by all other supporters of the candidate.

Massey's candidate won; the incumbent justice lost. *Caperton* moved to disqualify the new justice under the Due Process Clause and the West Virginia Code of Judicial Conduct, based on the conflict caused by Massey's chairman's campaign involvement. The newly elected Justice declined to recuse himself and the Court reversed the jury verdict in a 3-2 decision, with the new Justice in the majority. *Caperton* sought rehearing and renewed his request for disqualification of the newly elected Justice; he again refused and a divided Court again reversed the jury verdict. The new justice remained in the majority. *Caperton* sought review in the United States Supreme Court.

The Court reversed the judgment of the West Virginia State Supreme Court of Appeals. The Court reviewed its prior precedents and, while noting it had not previously addressed the

issue of judicial bias in the context of judicial elections, the principles set forth in those cases required reversal in *Caperton*. See *Tumey v Ohio*, 273 U.S. 510, 535 (1927) (Where Mayor of a village also sat as a judge and had the authority to impose fines on those found to have illegally possessed alcoholic beverages, but fines both determined the amount of any additional salary he earned as a judge as well as benefited the general treasury of the village, Court found the Due Process Clause required disqualification because the mayor-judge had both a direct, pecuniary interest in the outcome and an official motive to convict and fine defendants to help the financial needs of the village.); *Ward v. Monroeville*, 409 U.S. 57, 60 (1972) (Mayor also had power to assess fines, but monies went directly to general fisc; in invalidating a conviction by the Mayor, Court held that “[t]he fact that the mayor [in *Tumey*] shared directly in the fees and costs did not define the limits of the principle.” The principle turned on the “possible temptation” the mayor might face in discharging his executive responsibilities to maintain a high level of contribution to the village’s finances); *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973) (an administrative board composed of optometrists had a pecuniary interest of sufficient substance so that it could not preside over a hearing against competing optometrists; Court wrote “the [judge’s] financial stake need not be as direct or as positive as it appeared to be in *Tumey*); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 823-825 (1986) (Court required recusal of Alabama Supreme Court justice who had cast the deciding vote to uphold a punitive damages award against an insurance company for bad faith refusal to pay a claim where justice was also a lead plaintiff in a nearly identical lawsuit pending in Alabama’s lower courts; Court noted the proper constitutional inquiry was “whether sitting on the case then before the Supreme Court of Alabama ‘would offer a possible temptation to the average ...judge to ...lead him not to hold the balance nice, clear and true.’”) (citations omitted), See also *In re Murchison*, 349 U.S. 133 (1955) (Due process Clause required

disqualification and reversal of convictions where judge had also participated in decision to charge defendants); *Mayberry v Pennsylvania*, 400 U.S. 455 (1971) (Due Process clause required that defendant in a criminal contempt proceeding should be given a public trial before a judge other than the one reviled by the contemnor); *Connally v. Georgia*, 429 U.S. 245 (1977) (holding that criminal conviction must be vacated where justice of the peace issuing search warrants received a fee for each warrant he issued; justice of the peace was not neutral and detached magistrate because he had pecuniary interest in issuing warrant in defendant's case); *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986) ("When constitutional error calls into question the objectivity of those charged with bringing a defendant to judgment, a reviewing court can neither indulge a presumption of regularity nor evaluate the resulting harm. Accordingly, when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review, and we must presume that the process was impaired.") (citation omitted).

In reversing the State Supreme Court of Appeals, the Supreme Court noted that "[t]hough not a bribe or criminal influence, [the new justice] would nevertheless feel a debt of gratitude to [Massey's chairman] for his extraordinary efforts to get him elected." 2009 U.S. Lexis at *24. Applying its longstanding objective test, the Court reiterated: "Due Process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances 'would offer a possible temptation to the average... judge to...lead him not to hold the balance nice, clear and true.'" *Id.* at *31 (citation omitted).

As the Supreme Court expressly acknowledged in *Caperton*, it was confronted with an extraordinary situation involving an exceptionally large campaign contribution that required recusal under the Constitution. The facts in the case at bar are stunningly similar -- and worse. While the amount of money involved is nearly identical -- \$2.6 million vs. \$3 million -- the

money in this case went directly into the pockets of Ciavarella and Conahan, not into a political war chest that could not be directly accessed for personal financial gain. The objective, unconstitutional probability of bias is plainly present; indeed, as in *Caperton*, this case presents “a serious, objective risk of actual bias...” *Id.* at *32.

B. Pennsylvania Case Law Requires Disqualification of Ciavarella and Reversal of the Judgments Below

As stated by this Court, “[a] tribunal is either fair or unfair. There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings.” *In the Interest of McFall*, 617 A.2d 707, 714 (Pa. 1992). Pennsylvania case law is in accord with the U.S. Supreme Court rulings in this area.

In *McFall*, this Court held that once even the appearance of impartiality of the court is called into question – as it has been in the Luzerne County Juvenile Court – defendants have been denied their right to a fair and impartial tribunal; their convictions must be set aside, and they must be granted new trials. 617 A. 2d at 711 (holding that defendants must be granted new trials in their criminal cases when judge failed to reveal circumstances that raised questions about her impartiality). In *McFall*, this Court’s ruling that the defendants’ convictions and adjudications be vacated was based on its finding that the judge’s “agreement [to assist law enforcement] ...presents a situation palpably creating a circumstance where she would have an interest in the outcome of the criminal cases tried before her.” *Id.* at 713. Given the trial judge’s desire to cooperate with law enforcement to minimize or avoid her own prosecution in the Philadelphia ‘roofers’ scandal,’⁴ the likelihood that she would favor the prosecution in these criminal cases

⁴ In the Special Master’s briefing order of May 28, 2009, the Special Master asked counsel for the petitioners to inform the Special Master whether any other Philadelphia judge disciplined or removed from the bench as a result of the Roofer’s Union scandal had all, or a substantial number of, his or her rulings, decisions, verdicts or sentences vacated. *In Re: J.V.R.: H.T.*, No. 81 M.M. 2008, order dated May 28, 2009 at ¶ 1.2. Unfortunately, undersigned counsel was not able to ascertain that information.

justified vacatur for all defendants, including defendants who had appeared before her only at the preliminary hearing stage. As this Court stated, “the impartiality of the court, which is a fundamental prerequisite of a fair trial, must be deemed compromised by appearance alone, thus eliminating the need for establishing actual prejudice.” *Id.* at 711.

Similarly, in the instant case, Ciavarella’s alleged financial dealings with PA Child Care and Western PA Child Care gave him an interest in the juvenile delinquency proceedings over which he was presiding. Indeed, his interest is far more direct than Judge Cunningham’s interest in *McFall*. Judge Cunningham hoped for leniency from law enforcement, but the conduct for which she was being investigated had nothing to do with the substance of the criminal cases over which she presided. Here, Ciavarella’s opportunity for personal financial gain was directly connected to his disposition of the cases before him; every child he adjudicated and placed in one of the two private for profit juvenile correctional facilities was yet another opportunity to justify the substantial financial rewards he was reaping at the children’s expense. *See also In re: Schlesinger*, 172 A. 2d 835, 841 (Pa. 1961) (where circumstances suggested an unsympathetic predisposition toward the appellant, order of disbarment reversed; “[A] predilection to favor one side over the other is not required in order to vitiate a judicial proceeding as being violative of due process. Merely, ‘a possible temptation to the average man as a judge...not to hold the balance nice, clear and true’ is sufficient.”)

C. State and Federal Codes of Judicial Conduct Require Disqualification of Ciavarella and Reversal of the Judgments Below

Additional support for vacating the adjudications of children who appeared before Ciavarella may also be found in cases addressing the disqualification of judges, under either state or federal versions of the Code of Judicial Conduct. In *Liljeberg v. Health Services Acquisition*

Corp., 486 U.S. 847 (1988), the United States Supreme Court articulated a three-part test for determining whether a judgment should be vacated for a violation of 28 U.S.C § 455, which sets forth the grounds for judicial disqualification based upon the ABA Code of Judicial Conduct, Canon 3c (1987).⁵ *Liljeberg* involved an action for declaratory judgment to determine the ownership of a corporation; plaintiff filed a motion to vacate the judgment of the trial judge based on the contention that the trial judge should have recused himself because he was a trustee of a university which had an interest in the litigation. The Supreme Court agreed with plaintiff that the trial judge should have recused himself, and that his failure to do so required vacatur of the judgment below.

Notably, scienter has not been held to be a requirement of section 455(a); the Court has recognized that the judge's lack of knowledge does not eliminate the risk that "his impartiality might reasonably be questioned" by other persons. *Liljeberg*, 486 U.S. at 859.⁶ In the case at bar of course, it can hardly be questioned that Ciavarella had full knowledge of his financial interest in the adjudication and placement of petitioners.

⁵ 28 U.S.C § 455 provides in relevant part that

(a) Any justice, judge, or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(4) He knows that he, individually or as a fiduciary... has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

⁶ As the Court of Appeals explained, and the Supreme Court agreed, "The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible (citation omitted)... Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge." 486 U.S. at 862 (quoting the Court of Appeals decision, 796 F.2d at 802).

Additionally, recognizing that section 455 does not, on its own, authorize the vacatur of prior judgments, the Court concluded that in determining whether a judgment should be vacated for a violation of section 455, “it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that denial of relief will produce injustice in other cases, and the risk of undermining the public’s confidence in the judicial process.” *Id.* at 863. The Court went on, “We must continuously bear in mind that to perform its high function in the best way, justice must satisfy the appearance of justice.” *Id.* (internal quotations omitted) (citing *In re Murchison*, 349 U.S. 133, 136 (1955)). Based on the facts before it and applying this three part test, the Court affirmed the opinion of the Court of Appeals vacating the judgment below, finding the violation “neither insubstantial nor excusable,” *Liljeberg*, 486 U.S. at 867, where despite the trial judge’s claimed lack of knowledge of his fiduciary interest in the litigation, “he certainly should have known.” *Id.* at 868.

Powell v. Anderson, 660 N.W. 2d 107 (Minn. 2003) is also instructive. In *Powell*, the Minnesota Supreme Court was asked to vacate an opinion of the Minnesota Court of Appeals on the ground that the author of the opinion was disqualified because the law firm that represented certain respondents was the same firm that represented a trust for which the authoring judge was the trustee. Applying Minnesota’s rules regarding disqualification of judges, which were themselves based on the ABA Standards Relating to Appellate Courts,⁷ the Minnesota Supreme Court specifically held that an appellate judge should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct.⁸ 660 N.W.2d at 114-15.

⁷ The *Powell* court also noted that there were considerable similarities between the federal and state standards for disqualification and thus found it entirely appropriate to look to *Liljeberg* for guidance.

⁸ Canon 3(d)(1) of the Minnesota Code of Judicial Conduct provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned...” The Advisory Committee’s commentary to the Rule explains “Under this rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific rules...apply.” 660 N.W. 2d at 114.

The court then considered whether the judge's failure to disqualify himself required that the Court of Appeals decision be vacated and the case reversed. The court adopted the United State Supreme Court's *Liljeberg* test for vacatur, observing that it properly considers each of the two objectives of disqualification: "to provide the parties a fair trial...and to promote confidence in the judicial system." *Id.* at 121. The court ruled vacatur was proper, concluding specifically that the risk of prejudice to the plaintiff was substantial and that the risk of undermining the public's confidence in the judicial system was also significant. On this last point, the court noted the appearance of impropriety was especially troublesome, where the judge faced possible criminal consequences as a result of his relationship with the law firm. *Id.* at 124. Here, where both Ciavarella and Conahan have not only been charged criminally but have pled guilty and agreed to serve significant prison terms, failure to vacate the petitioners' adjudications poses perhaps the greatest risk of undermining the public's confidence in the judicial system. *See also Blaisdell v. City of Rochester*, 609 A. 2d 388, 391 (N.H. 1992) (Court noted that "[w]hether an appearance of impropriety exists is determined [by] an objective standard, i.e., would a reasonable person, not the judge himself, question the impartiality of the court;" Court then vacated the ruling below, stating "it would be inconsistent with the goals of our [judicial] code to require certain standards of behavior from the judiciary in the interest of avoiding the appearance of impartiality, but then

The Pennsylvania Code of Judicial Conduct in turn states that

- (1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

(c) they know that they, individually or as a fiduciary, or their spouse or minor child residing in their household, have a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding....

Code of Jud. Conduct, Canon 3(c) (2009).

to allow a judge's ruling to stand when those standards have been violated."); *Roberts v. Bailar*, 625 F.2d 125 (6th Cir.1980) (dismissal of plaintiff's suit below reversed where judge should have recused himself because a reasonable person would question his impartiality; court noted shift in 1974 amendments to 28 U.S.C. §455 explicitly towards the appearance standard of impartiality to promote public confidence in the judiciary); *Mejia v. U.S.*, 916 A.2d 900 (D.C. App. 2007) (Where an informed and objective observer could perceive an appearance of bias, the "integrity of the judicial process" is "compromised." Such bias was found and the case reversed and remanded.); *Scott v. U.S.*, 559 A.2d 745 (D.C. App. 1989) (Appearance of bias warrants grant of new trial); *Com. v. Druce*, 848 A.2d 104 (Pa. 2004) (A judge should recuse himself where failure to do so would give the appearance of bias and undermine public confidence in the judiciary.); *Forsmark v. State*, 349 N.W.2d 763 (Iowa 1984) (Where, at the time of trial a wrongful death action was pending against the appellants' chief medical witness by the estate of the judge's brother, the judge should have recused himself because of the appearance of bias.); *Home Paramount Pest Control v. Gibbs*, 953 A.2d 219 (Del. 2008) (Substantial overlap between current claim and hearing officer's similar claim from several years earlier interfered with the objective impartiality under Judicial Canon 3(c)(1) and case was reversed and remanded); *State v. Brown*, 776 P.2d 1182 (Haw. 1989) (Where the appearance of impropriety causes the reasonable person to question the impartiality of the judge, allowing the judge to continue to sit violates due process.)

Again – these facts pale in comparison to the case at bar. Not only did Ciavarella have knowledge of his pecuniary interest in the case before him, application of the United States Supreme Court's three part test likewise compels vacatur of petitioners' adjudications. The risk of injustice to the petitioners in these cases in the absence of vacatur is exceptionally high; the

risk that denial of relief will produce injustice in other cases is also high, both with respect to Petitioners' own ability to proceed with their civil claims against Ciavarella, Conahan and their co-conspirators as well as the negative effects of such a ruling on future litigants whose rights were similarly violated; and the risk of undermining the public's confidence in the judicial process from allowing these adjudications to stand is significant. Indeed here, where both Ciavarella and Conahan have not only been charged criminally but have pled guilty and agreed to serve significant prison terms, failure to vacate the petitioners' adjudications poses perhaps the greatest risk of undermining the public's confidence in the judicial system.

This judicial corruption scandal has received not only state and national attention, the scandal has been covered extensively by the international press. With such widespread knowledge of what happened in Luzerne County, we risk significantly undermining the integrity of our judicial system in the eyes of the world should we do nothing to address the grievous wrongs committed here. As the United States Supreme Court wrote with specific reference to judicial codes of conduct:

Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen's respects for judgments depends in turn upon the issuing court's absolute probity. *Judicial integrity is, in consequence, a state interest of the highest order.*

Republican Party of Minn. v. White, 536 U.S. 765, 793 (2002) (Kennedy, J concurring) (emphasis added).⁹

⁹ While Petitioners' adjudications must be vacated based on the court's denial of their right to an impartial tribunal, juveniles who appeared without counsel or entered guilty pleas that were constitutionally infirm have a separate and equally well-settled right to vacatur of their adjudications. See *Commonwealth v Ingraham*, 316 A. 2d 77 (Pa 1974) (expressly holding that the record must disclose that the elements of the crime or crimes charged were outlined in understandable terms; the inadequacy of the colloquy led to a reversal of defendant's conviction); *Commonwealth v Cousin*, 888 A. 2d 710 (2005) (where counsel is physically absent or completely fails to offer any adversarial representation, "no showing of prejudice is necessary" to establish violation of the right to effective assistance of counsel); *U.S v. Cronin*, 466 U.S. 648 (1984) ("The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his proceeding.")

II. THE DOUBLE JEOPARDY CLAUSE OF THE PENNSYLVANIA CONSTITUTION PROHIBITS RETRIAL ONCE THE ADJUDICATION OR CONSENT DECREE OF A JUVENILE IS VACATED DUE TO CERTAIN JUDICIAL OR PROSECUTORIAL MISCONDUCT

Petitioners submit that under the Pennsylvania Constitution's double jeopardy clause, retrial is prohibited of all youth who were denied their right to counsel and/or were adjudicated delinquent upon constitutionally deficient guilty pleas starting in 2003 and ending in May 2008 once their adjudications are vacated. Ciavarella's actions in denying youth their due process rights especially when he had a pecuniary interest in the facilities in which he placed adjudicated youth rises to the level of judicial misconduct that must invoke the bar to retrial. Moreover, the repeated failure of the Luzerne County District Attorney's Office to either object to or challenge the five-year pattern and practice of due process violations in the juvenile court constituted prosecutorial misconduct such that retrial should be barred. Additionally or in the alternative, undersigned counsel argues that double jeopardy bars the re-trial of all youth who were adjudicated delinquent by, or received consent decrees from, Ciavarella during the same time period, because his conduct in accepting the bribes and not disclosing the conflict over a period of five years denied these youth a fair trial.

A. The Double Jeopardy Clauses of the Federal and Pennsylvania State Constitutions Apply to Juvenile Delinquency Proceedings

The Fifth Amendment to the United States Constitution states "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The double jeopardy clause was held to be applicable to the States through the Fourteenth Amendment in *Benton v. Maryland*, 395 U.S. 784, 787 (1969). The double jeopardy clause of

the Pennsylvania state constitution similarly provides that “no person shall, for the same offense, be twice put in jeopardy of life or limb.” Pa. Const. Art. I, § 10, cl. 1.

In *Breed v. Jones* an unanimous United States Supreme Court held that the double jeopardy clause applies to juvenile court proceedings in holding that the clause barred the prosecution of a juvenile as an adult for conduct that had previously resulted in a delinquency adjudication. 421 U.S. 519, 541 (1975). Pennsylvania courts also recognize that “[i]t is well settled that the constitutional prohibition against double jeopardy is applicable to juvenile proceedings.” In re: *Huff*, 582 A.2d 1093 (Pa. Super. 1990) (citing *In re R.R.*, 464 A.2d 348, 353 (Pa. Super. 1983)).

B. Under Pennsylvania’s Double Jeopardy Clause, the Judicial Misconduct in the Instant Cases Bars Re-prosecution of Juveniles Once This Court Vacates their Adjudications or Consent Decrees

As described in the Statement of the Case, *supra*, Ciavarella engaged in a persistent course of misconduct as a juvenile court judge from 2003 until he ceased hearing juvenile cases in May 2008. Specifically, during that time period Ciavarella: (1) received money payments from facilities in which he placed a number of the youth whom he adjudicated delinquent and failed to disclose that conflict of interest to any juvenile respondents appearing for trial before him; and (2) denied many youth their constitutional right to counsel, by failing to appoint counsel to unrepresented youth and to obtain a valid waiver of their right to counsel, as well as their right to trial, by obtaining constitutionally-infirm guilty pleas.

Petitioners respectfully submit that under the Pennsylvania Constitution’s double jeopardy clause, retrial is prohibited of all youth who were denied their right to counsel and/or were adjudicated delinquent upon constitutional deficient guilty pleas starting in 2003 to May 2008. Ciavarella’s bad faith conduct of continuing to deny youth their due process rights despite

repeated warnings is particularly egregious given his pecuniary interest in the facilities in which he placed adjudicated youth. Additionally or in the alternative, Petitioners argue that double jeopardy bars the re-trial of all youth who were adjudicated delinquent by, or received consent decrees from, Ciavarella during the same time period, because his conduct in accepting the bribes and not disclosing the conflict over a period of five years denied these youth a fair trial.

1. Judicial and/or prosecutorial overreaching and bad faith conduct that denies a youth his/her right to a fair trial bars retrial under Pennsylvania's double jeopardy clause

In *Com. v. Smith*, 615 A.2d 321 (Pa. 1992), the Pennsylvania Supreme Court held that

the double jeopardy clause of the Pennsylvania Constitution prohibits retrial of a defendant not only when prosecutorial misconduct is intended to provoke the defendant into moving for mistrial, but also when the conduct of the prosecutor is intentionally undertaken to prejudice the defendant to the point of the *denial of a fair trial*.

Smith, 615 A.2d at 325 (emphasis added). In a highly publicized trial, defendant Smith was convicted and sentenced to death on three counts of first degree murder for killing a mother and her two young children. *Com. v. Smith*, 568 A.2d 600, 602 (Pa. 1989). Smith's conviction was reversed on appeal by the Pennsylvania Supreme Court upon a finding that the trial court erred in admitting certain hearsay testimony by associates of Smith's alleged co-conspirator. *Smith*, 568 A.2d at 605-10. On remand, Smith filed a motion to dismiss, arguing that retrial would violate double jeopardy. *Smith*, 615 A.2d at 322. On a subsequent appeal, Smith successfully argued that evidence of significant prosecutorial misconduct (namely, the prosecutor's suppression of exculpatory evidence and vigorous efforts to discredit a former police officer who testified to such, as well as the concealment of an agreement between the government and its chief witness

to seek favorable sentencing for the former) – which was discovered after trial and while his appeal was before the Pennsylvania Supreme Court – bars his re-prosecution. *Id.* at 322-23.

Smith departs from the United States Supreme Court’s narrower holding in *Oregon v. Kennedy*, 456 U.S. 667 (1982), interpreting the federal constitution to raise a bar to mistrial only upon a finding that the prosecutorial misconduct was intentionally aimed at provoking a mistrial. *Id.* at 324-25. The *Smith* holding relied on pre-*Kennedy* opinions issued by both the United States and Pennsylvania Supreme Courts that take a more expansive view of the circumstances invoking the double jeopardy bar to re-trial. *Id.*, citing, e.g., *United States v. Dinitz*, 424 U.S. 600 (1976); *Com. v. Starks*, 416 A.2d 498 (1980). Therefore, pre-*Kennedy* decisions inform this Court’s application of the test enunciated in *Smith* to the instant case.

This jurisprudence establishes that a finding that a judge or prosecutor has acted in bad faith to prejudice or harass a defendant invokes the bar to retrial. In *United States v. Dinitz*, the United States Supreme Court held the trial judge’s action in expelling defendant’s trial counsel did not prohibit re-prosecution under double jeopardy, since the judge was not motivated by bad faith. *Dinitz*, 424 U.S. at 611-12. However, the Court specifically noted that bad faith conduct by either a judge or a prosecutor that is intended to prejudice or harass the defendants raises the bar to retrial. *Id.* at 611. *See also Starks*, 416 A.2d at 500 (double jeopardy bars retrial where prosecutorial misconduct undertaken in bad faith to prejudice or harass the defendant as it “signals the breakdown of the integrity of the judicial proceeding.”)

Importantly for purposes of the instant case, *Smith* also expands invocation of the retrial bar beyond the mistrial context to apply to instances in which defendants successfully appeal convictions because of government misconduct. Other states, including Hawaii, *State v. Rogan*, 984 P.2d 1231 (Hawaii 1999), New Mexico, *State v. Breit*, 930 P.2d 792 (N.M. 1996), and

Arizona, *State v. Jorgenson*, 10 P.3d 1177 (Ariz. 2000), have followed Pennsylvania's lead in holding that defendants who successfully appeal convictions because of government misconduct that denied them a fair trial may not be subject to re-prosecution. Pennsylvania and its sister states recognize that it is unfair to distinguish between defendants who unsuccessfully move for mistrial and those who successfully appeal a conviction on misconduct grounds because, as in the instant case, a defendant may not uncover the egregious misconduct until after trial. See, e.g., *Smith*, 615 A.2d at 322-24.¹⁰

Pennsylvania's sister states have similarly focused on the level of egregiousness and persistence of the misconduct (as opposed to isolated instances) to determine whether the threshold that bars retrial has been met. Thus, for example, in *Breit*, 930 P.2d at 795, the New Mexico Supreme Court held that double jeopardy barred the re-trial of defendant on aggravated assault and first degree murder charges after his motion for a new trial was granted based on "extreme prosecutorial misconduct." In that case, the trial court repeatedly warned the prosecuting attorney about his outrageous and highly prejudicial misconduct, to no avail. *Id.* at 805-06 and Appendix. The New Mexico Supreme Court held that double jeopardy prohibits a retrial

when improper official conduct is so unfairly prejudicial to the defendant that it cannot be cured by means short of a mistrial or a motion for a new trial, and if the official knows that the conduct is improper and prejudicial, and if the official either intends to provoke a mistrial or acts in willful disregard of the resulting mistrial, retrial or reversal.

Breit, 930 P.2d at 803 (emphasis added). See also *Rogan*, 984 P.2d at 1239-1241, 1249 (holding that retrial was barred when defendant successfully appealed conviction on the grounds that

¹⁰ It should be noted that had any of the juvenile respondents been made aware of Ciavarella's financial dealings with the placement facilities and his failure to disclose the conflict at the time of their trials, they would have had more than adequate grounds to move for a mistrial. See, e.g., *Office of Disciplinary Counsel v. Anonymous Attorney A.*, 595 A.2d 42, 48 (Pa. 1991).

prosecutor made inflammatory racial references in closing argument; courts had long prohibited racially biased prosecutorial arguments and prosecutor's egregious conduct deprived defendant of a fair trial.)

2. Ciavarella's persistent and bad faith pattern and practice of violating youths' due process rights in willful disregard that these acts could result in reversal of their adjudications raises a bar to re-prosecution; such conduct is particularly egregious in light of his undisclosed pecuniary interest which created an untenable conflict of interest in presiding over these youths' cases

The double jeopardy bars retrial of any youth who were denied their right to counsel, or were adjudicated delinquent upon constitutionally deficient guilty pleas. The Pennsylvania Supreme Court has noted that the type of overreaching to which double jeopardy applies is that which shows an intent to "deprive [individuals] of a fair trial; to ignore the bounds of legitimate advocacy; in short, *to win a conviction by any means necessary.*" *Com. v. Martorano*, 741 A.2d 1221, 1223 (Pa. 1999) (emphasis added). Ciavarella's actions in persistently denying youth their right to counsel and their right to a fair trial by accepting guilty pleas that were not voluntary, knowing and intelligent, even after Ciavarella's rulings were reversed precisely because of these unconstitutional practices, evinced an intent that the juveniles be adjudicated delinquent "by any means necessary." Such tactics are specifically designed to "demean or subvert the truth-seeking process." *Com. v. Chmiel*, 777 A.2d 459, 464 (Pa. Super. 2001) (internal citation omitted). *See also Smith*, 615 A.2d at 322-23 (describing the prosecution's misconduct as an effort to subvert the truth-determining process). These acts were particularly pernicious when viewed against the backdrop of Ciavarella's undisclosed pecuniary interest in facilities in which he placed adjudicated youth.

The jurisprudence barring retrial has developed mainly within the context of prosecutorial misconduct. See discussion in Part II.B.1 *supra*. Nevertheless, the Pennsylvania Supreme Court has specifically held that any number of scenarios of misconduct that deprive a defendant of his constitutional right to a fair trial may bar re-prosecution under the Pennsylvania Constitution. See *Martorano*, 741 A.2d at 1223. See also *Dinitz*, 424 U.S. at 611 (noting that the double jeopardy clause bars retrial where bad faith conduct by judge or prosecutor threatens the harassment of an accused by successive prosecutions or declarations of mistrial) (emphasis added); *United States v. Jorn*, 400 U.S. 470, 485 (1971) (“where circumstances develop not attributable to prosecutorial or judicial overreaching, a motion by the defendant for mistrial is ordinarily assumed to remove any barrier to re-prosecution...”) (emphasis added) The same factors that weigh in favor of raising the bar to retrial in cases of prosecutorial misconduct apply in the context of judicial misconduct.

For example, courts have recognized that the double jeopardy clause acts as one of the few external checks on the state’s power and near unaccountability in the context of criminal prosecutions, and thus curbs potential abuses of that power. See, e.g., *Starks*, 416 A.2d at 500 (noting that double jeopardy was designed to protect against overreaching). Courts have noted the enormous power and resources of the state in the context of criminal prosecutions. *Green v. United States*, 355 U.S. 184, 187-88 (1957). As one commentator has noted

prosecutors wield great discretion and power “in the decision to charge and what to charge; in the control of vast governmental resources in investigation and preparing a case; in the plea bargaining process for the majority of cases that are resolved without trial; and in the deference and authority the prosecution commands before juries in those cases that are tried to conclusion.

Kenneth Rosenthal, *Prosecutor Misconduct, Convictions and Double Jeopardy: Case Studies in an Emerging Jurisprudence*, 71 TEMP. L. REV. 887, 887 (1998). Juvenile court judges similarly

wield enormous power, and there are limited means to check potential abuses of that power. Juvenile court judges are employees and representatives of the Commonwealth of Pennsylvania, and the Court of Common Pleas, in which the juvenile court resides, is part of the Pennsylvania United Judicial System. Pa. Const., Art. V, §§ 1, 10. As this Court has noted, “[t]he property, well-being, and sometimes the freedom of litigants are in the hands of judges... The power of a judge is enormous, and concomitantly, no position in our society demands higher standards.” *Judicial Inquiry and Review Board v. Fink*, 532 A.2d 358, 367, 373 (Pa. 1987). The juvenile court judge in particular exercises great power as he or she acts as both judge and jury in adjudicatory hearings. Notably, as described in the Statement of the Case, *supra*, Ciavarella did not respond to the few mechanisms in place to curb judicial overreaching, as he failed to correct the due process violations in his courtroom after several successful challenges.

In determining whether double jeopardy bars retrial, the court must balance the individuals’ double jeopardy rights against society’s interest in maintaining justice and punishing criminal conduct so as to deter crime and protect the public. *Kennedy*, 456 U.S. at 670-72; *Jorn*, 400 U.S. at 479-481. Effective enforcement of society’s criminal laws requires that those who have committed crimes be held accountable and punished. *Lockhart v. Nelson*, 488 U.S. 33, 38 (1988) (citing *United States v. Tateo*, 377 U.S. 463, 466 (1964)). Application of this balancing test to the instant case leads to the conclusion that retrial of these youth should be barred. Upon information and belief, most juveniles who were adjudicated by Ciavarella from 2003 through May 2008 have completed their court-ordered dispositions, including performing community service, paying restitution to their victims, and participating in other restorative justice activities, as well as participating in other rehabilitative and treatment services arranged by the juvenile court. Thus, society’s interest in ensuring that these youth are provided “programs of

supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community,” Pennsylvania’s Juvenile Act, 42 Pa.C.S.A. § 6301, have been served. A bar to retrial after these youths’ adjudications have been vacated would in no way undercut society’s interest in these goals given that their dispositions have been completed. *See Tateo*, 377 U.S. at 466 (noting that a defendant’s right to a fair trial is balanced against the societal interest in *punishing* those who have committed crimes) (emphasis added).¹¹ Barring retrial, however, would send a clear message that the egregious conduct of the former juvenile court judge can never be tolerated.¹²

Other key policy concerns underlying the double jeopardy clause include protecting a defendant from the hardship of multiple trials for the same offense. *See Jorn*, 400 U.S. at 479, quoting *Green v. United States*, 355 U.S. 184, 187-88 (1957) (“[T]he State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity... .”); *Arizona v. Washington*, 434 U.S. 497, 503-04 (1978) (noting that a second prosecution “increases the financial and emotional burden on the accused, and prolongs the period” of stigmatization.) Another is preserving the

¹¹ Double jeopardy also protects defendants and juvenile respondents from being punished twice for the same offense. *United States v. Wilson*, 420 U.S. 332, 342-43 (1975); *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 176 (1873). In most instances, the juveniles who went before Ciavarella have completed their court-ordered dispositions and very few are still under juvenile court jurisdiction. Thus, even if the youth whose adjudications or consent decrees are vacated by order of the Special Master are re-tried for the same offenses, the double jeopardy clause prohibits those youth from being subjected to a second juvenile court disposition.

¹² Notably, the cases cited in Part II.b.1 *supra* never factored the severity of the offense into the calculus of determining whether there is a bar to retrial. Indeed, the cases in which retrial barred involve the most serious crimes. Juvenile respondents who appeared from 2003-2008 were, for the most part, adjudicated of offenses far less serious.

finality of judgments such that defendants can resume their lives without fear of re-adjudication. *Jorn*, 400 U.S. at 486 (noting “the importance to the defendant of being able, once and for all, to conclude his confrontation with society...”). These policy concerns, emerging from cases involving adult defendants, have even greater force in the instant case as it involves juvenile respondents who are transitioning into adulthood.

For several years, Ciavarella engaged in a pattern and practice of violating well-settled law with regard to youths’ due process rights. That youth have a constitutional right to counsel in delinquency proceedings is long established in our jurisprudence. More than forty years ago the United States Supreme Court held in *In re Gault*, 387 U.S.1, 41 (1987), that the Due Process Clause of the Fourteenth Amendment guarantees youth charged with delinquency a constitutionally protected right to counsel. *Gault* recognized that attorneys are needed in the juvenile justice system to assist clients to “cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client]... has a defense and to prepare and submit it.” 387 U.S. at 36. Consistent with *Gault*, Pennsylvania’s General Assembly established that the right to counsel extends to juveniles through all stages of the juvenile delinquency process (*e.g.*, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal). 42 Pa.C.S.A. § 6337 (“a party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act].”) An admission – which is the juvenile equivalent of a guilty plea – is a critical stage at which a respondent must be afforded the right to counsel. See *Von Moltke v. Gillies*, 332 U.S. 708, 721 (1948) (citing *Williams v. Kaiser*, 323 U.S. 471, 475 (1945)); *Com. v. Sheehan*, 285 A.2d 465, 469-70 (Pa. 1971) (citations omitted); *Com. v. Ritchey*, 245 A.2d 446, 448-49 (Pa. 1968) (citations omitted); *Com. v. Cavell*, 222 A.2d 722, 723-24 (Pa. 1966) (citations omitted);

Com. v. Barrows, 534, 242 A.2d 925, 926 (Pa. Super. 1968) (citations omitted). An accused entering an admission to an offense *must* first be counseled by an attorney, absent a voluntary, knowing and intelligent waiver of counsel. *Santobello v. New York*, 404 U.S. 257, 261 (1971) (citing *Moore v. Michigan*, 355 U.S. 155 (1957)) (emphasis added).

Concern about delinquency hearings proceeding without counsel for the child led this Court to require, effective October 1, 2005, that juvenile courts conduct an extensive colloquy to determine a juvenile's comprehension of the consequences of waiver. Pa.R.J.C.P. No. 152. But long before the adoption of the juvenile court rules, this Court recognized that

While an accused may waive his constitutional right, such a waiver must be the free and unconstrained choice of its maker and also must be made knowingly and intelligently. To be a knowing and intelligent waiver defendant must be aware of both the right and of the risks of forfeiting that right. Furthermore, the presumption must always be against the waiver of a constitutional right. Nor can waiver be presumed where the record is silent. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer.

Com. v. Monica, 597 A.2d 600, 603 (Pa. 1991) (citations and internal quotations omitted).

It is also another well-settled principle of constitutional law that admissions from juveniles must be voluntary, knowing, and intelligent. *Henderson v. Morgan*, 426 U.S. 637, 644-45 (1976); *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969). For an admission to be valid, the child must be informed, at a minimum, of all of his rights and the rights he is forgoing by pleading guilty and the possible dispositions that the court could impose if he enters an admission. *Boykin*, 395 U.S. at 243; *Com. v. Hallock*, 722 A.2d 180, 182 (Pa. Super. 1998) (citing *Com. v. Young*, 695 A.2d 414, 417 (Pa. Super. 1997)). Due process also requires that the court give the child adequate notice of the nature and elements of the offense to which the child

is making an admission. *Henderson*, 426 U.S. at 646-47. An admission cannot be considered voluntary unless the defendant received "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." *Id.* at 645 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)). See also *Com. v. Hines*, 437 A.2d 1180, 1181-84 (Pa. 1981) (holding that 15-year-old's guilty plea was constitutionally invalid where court's colloquy failed to establish that youth understood the nature and elements of the offenses with which he was charged, including an explanation of the law in terms of the facts of the case, and did not establish a factual predicate for the plea). Moreover, the Constitution requires the court to determine if there is, in fact, a factual basis for the admission before accepting it. *Com. v. Martinez*, 453 A.2d 940, 942-44 (Pa. 1982); *Hines*, 437 A.2d at 1182-84 (citations omitted); *Hallock*, 722 A.2d at 182 (citing *Young*, 695 A.2d at 417). "[M]anifest injustice" occurs if an admission is entered by a respondent who lacks full knowledge and understanding of the charge against him. *Com. v. Schultz*, 477 A.2d 1328, 1330 (1984) (citation omitted). And the waiver of constitutional rights can never be presumed from a silent record. *Boykin*, 395 U.S. at 242 (citation omitted). See also *Hines*, 437 A.2d at 1182 (citing *Boykin*, 395 U.S. at 243 n.5) (noting that for a plea to be constitutionally valid, the respondent's admission must be an "intentional relinquishment or abandonment of a known right or privilege.") The Pennsylvania Rules of Juvenile Court Procedure also require the court to administer a colloquy prior to accepting an admission, to ensure that the admission is made voluntarily and knowingly. Pa.R.J.C.P. No. 407.

As described *supra*, Ciavarella was repeatedly reminded that his practices in allowing youth to proceed without counsel and without a valid waiver of counsel, and of taking admissions that were neither voluntary nor knowing and intelligent as the bases of adjudications, violated the United States Constitution, the Pennsylvania state constitution, Pennsylvania's

Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure. Indeed, after the Superior Court's ruling in A.M., Ciavarella vowed never to do it again. But he did. The cases described in the Statement of the Case *supra*, the findings of the Special Master, as well as the allegations in the four lawsuits currently pending in the U.S. District Court for the Middle District of Pennsylvania¹³, demonstrate that Ciavarella systematically violated youths' most fundamental rights. That he committed these violations when he had an undisclosed conflict of interest due to financial pay-offs from juvenile facilities makes the conduct even more egregious.

Ciavarella's unprecedented misconduct evinced an intent that the juveniles be adjudicated delinquent "by any means necessary," *Martorano*, 741 A.2d at 1223, and was undertaken in "willful disregard of the resulting mistrial, retrial or reversal." *Breit*, 930 P.2d at 803. Consequently, these youth were denied a fair trial and double jeopardy bars their retrial once their adjudications or consent decrees are vacated.

3. Retrial is barred in the instant case because Ciavarella's financial dealings with the placement facilities and his failure to disclose the conflict was so egregious that all juveniles who appeared before Ciavarella were denied their rights to a fair trial

Additionally or in the alternative, Petitioners contend that double jeopardy bars the retrial of all youth who were adjudicated delinquent by, or received consent decrees from, Ciavarella during the same time period, because his conduct in accepting the bribes and not disclosing the conflict over a period of five years denied these youth a fair trial.

The Pennsylvania Constitution clearly mandates that

¹³ See *H.T. et al. v. Ciavarella et al.*, No. 09-cv-357 (M.D. Pa.); *B.W. et al. v. Powell et al.*, No. 09-cv-286 (M.D. Pa.); *Conway v. Conahan*, No. 09-cv-291 (M.D. Pa.); and *Humanik v. Ciavarella et al.*, No. 09-cv-630 (M.D. Pa.) (now consolidated for discovery purposes under No. 09-cv-286). The complaints filed in these federal lawsuits describe hundreds of cases in which Ciavarella violated youths' due process rights.

(b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.

(c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary and expenses provided by law.

Pa. Const. Art. V, § 17. The Pennsylvania Code of Judicial Conduct in turn states that

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

(c) they know that they, individually or as a fiduciary, or their spouse or minor child residing in their household, have a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding...

Code of Jud. Conduct, Canon 3(c) (2009). This Court has held that recusal is required wherever there is a substantial doubt as to the jurist's ability to preside impartially. *McFall*, 617 A.2d at 713 (citations omitted).

In the instant case, Ciavarella knew that his failure to recuse himself from the trials of these juveniles when he had accepted payments from some of the same facilities to which he placed them was an untenable conflict of interest. Ciavarella also knew that as a matter of law, such egregious conflict was certain grounds for reversal of the youth's adjudications, see *McFall*, *supra*, and continued to preside over these cases in willful disregard of that fact. For that reason, these youth should not be re-prosecuted.¹⁴

¹⁴ In *McFall*, this Court remanded all the cases for new trials after vacating the delinquency adjudications and criminal convictions. 617 A.2d at 714. It should be noted that appellants in *McFall* sought new trials, 617 A.2d at 710, and there is nothing in the record that suggests that once remanded, the parties filed motions with the trial court to dismiss on double jeopardy grounds.

C. Double Jeopardy bars retrial of Petitioners' cases once Special Master vacates the adjudications and consent decrees due to prosecutorial misconduct; the district attorney failed to raise objections or report the persistent violations of due process in Ciavarella's courtroom

Additionally or in the alternative, the repeated failure of the Luzerne County District Attorney's Office to either object to or challenge the five-year pattern and practice of due process violations in the juvenile court constituted prosecutorial misconduct such that retrial should be barred.¹⁵

"In advocating the cause for [the] Commonwealth, prosecutors are to seek justice, not only convictions." *Com. v. Cherry*, 378 A.2d 800, 803 (Pa. 1977) (citations omitted). A prosecutor

is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a particular and very definite sense the servant of the law...

Berger v. United States, 295 U.S. 78, 88 (1935). See also *ABA Standards For Criminal Justice, The Prosecution Function*. Standard 3-1.2(c) (3d ed. 1993) ("ABA Prosecution Function Standard) (stating that "[t]he duty of the prosecutor is to seek justice, not merely to convict").

Moreover,

the prosecutor must assume the role of guardian against injustice and corruption. It is unacceptable to turn a deaf ear to suspicions of misconduct. [There is] a duty on the prosecutor to follow through when there is reasonable suspicion of misconduct by a member of the judiciary. When judicial scandals are uncovered, they become an indictment of the entire criminal justice system, creating a public perception that all those involved in the system are corrupt. Because of

¹⁵ Undersigned counsel are in no way stating or implying that the district attorney's office had knowledge or suspicion of the former judges' financial conflicts.

the prosecutor's close contact with the judiciary, he has the best opportunity to observe suspicious patterns of behavior. Because of the prosecutor's role in the criminal justice system, he has the obligation to investigate and address the misconduct with at least the vigor and resources of any other allegations of corruption within the jurisdiction.

National District Attorneys Ass'n, NATIONAL PROSECUTION STANDARDS 85 (2nd ed. 1991). *See also* ABA Prosecution Function Standard 3-1.2(d) ("When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.")

As described in Part II.B.2, *supra*, the law with regard to youths' due process rights is well established. The district attorney had a duty to object to, or at least report to outside authorities, Ciavarella's consistent denial of their rights. In standing silent as the court allowed youth to proceed without counsel and adjudicated them on the basis of constitutionally deficient admissions, the prosecutors evinced a an intent that the juveniles be adjudicated delinquent "by any means necessary," *Martorano*, 741 A.2d at 1223, and acted in "willful disregard of the resulting mistrial, retrial or reversal." *Breit*, 930 P.2d at 803. As the Pennsylvania Supreme Court has noted, "a fair trial is not simply a lofty goal, it is a constitutional mandate... and where that constitutional mandate is ignored and subverted by the Commonwealth, we cannot simply turn a blind eye and give the Commonwealth another opportunity." *Martorano*, 741 A.2d at 1223 (internal quotations and citations omitted). For at least five years, the Luzerne County District Attorney's Office turned a blind eye to the improprieties in Ciavarella's courtroom and, therefore, it should be denied an opportunity to re-prosecute those youth whose rights were violated.

CONCLUSION

WHEREFORE, for the foregoing reasons and any other reasons that may appear to this Court, Petitioners respectfully request that the Court order that the adjudications and consent decrees of all juveniles who appeared before Ciavarella between 2003 and May 2008 be vacated and expunged, and that the Court further order that the re-trial of all such juveniles is barred.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2009 I served by U.S. Postal Service (first class) this Brief on the following parties, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

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