

**IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT
No. 24 EM 2020**

**In re: PETITION OF C.Z., A.O., AND Z.S.-W., ON BEHALF OF ALL
SIMILARLY SITUATED INDIVIDUALS**

**BRIEF FOR THE DEPARTMENT OF HUMAN
SERVICES**

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INTRODUCTION

To combat the spread of the 2019 novel coronavirus (COVID-19), Petitioners are asking this Court to mandate that each Juvenile Court of each Judicial District take extraordinary measures to prevent Juvenile Court judges from placing delinquent youth into detention or congregate care settings and to release delinquent youth presently in those settings. Statutorily, the Pennsylvania Department of Human Services (“DHS”) is not responsible for decisions related to the delinquency adjudication or detention of juveniles in the Commonwealth. These responsibilities lie with the Juvenile Courts of each Judicial District. *See generally* 42 Pa. C.S. §§ 6301 – 6365. As such, the relief being requested by Petitioners is not within the purview of DHS’s statutory mandates.

DHS operates Youth Development Centers and Youth Forestry Camps. Delinquent youth are committed to these facilities by order of the Juvenile Courts of each Judicial District.

ARGUMENT

I. Placement of Delinquent Youth During This Public Crisis

It is the understanding of DHS that Juvenile Court judges throughout the Commonwealth are already taking the public health crisis into account in making their decisions about the disposition best suited to the needs of the juvenile and safety of the community. Judicial districts throughout the Commonwealth are being advised by the Juvenile Court Judges' Commission to prioritize timely proceedings related to the review of juveniles in out-of-home placement, and that every consideration be given to the release of youth, or to alternative dispositions, when this can be accomplished in a safe manner. *See* Email from Richard Steele, Executive Director of the Juvenile Court Judges' Commission, attached as "Exhibit A" hereto. This will require individualized decisions being made by Juvenile Court judges in each Judicial District based upon the input of persons most familiar with the juvenile, such as juvenile probation officers, and taking into account the welfare of delinquent youth in view of the present public health crisis. As will be outlined below, in those cases where the judges determine that placement in a DHS facility is the most appropriate option under the circumstances, DHS is equipped and prepared to house those individuals and has implemented all appropriate public health recommendations and safeguards.

II. DHS Facility Operations During This Public Health Crisis

Among the numerous requests for relief by Petitioners, the only aspect that could potentially relate to DHS's policies and operations is their request that this Court "[r]equire facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" and "[r]equire facilities housing youth to provide free and regular access to phones and video visitation with family and to online or other educational, physical or mental health services and opportunities." *See Application for Extraordinary Relief Under the Court's King's Bench Jurisdiction* at 42.

Once this public health crisis arose, DHS began undertaking numerous and significant actions in accordance with Department of Health and Centers for Disease Control direction to protect delinquent youth placed in its facilities and to protect the staff who work there. These actions address the concerns being asserted by Petitioners. Such actions include screening protocols for youth residing in the facilities; screening protocols for staff; return-to-work protocols for staff; and use of personal protective equipment.

To date, there are no known or suspected cases of COVID-19 among resident youth in any of the Youth Development Centers or Youth Forestry Camps

operated by DHS. In connection with screening protocols for youth residing in these DHS-run facilities, the resident youth are asked questions about the presence of respiratory symptoms, and their temperature is regularly taken. The facility staff consult medical personnel or the local and state departments of health as necessary for resident youth with known or suspected COVID-19. Youth will be placed in isolation if they are known or suspected to have COVID-19 to the extent that it is possible without endangering the youth's access to medical treatment. Should there be a resident youth who has been isolated due to known or suspected COVID-19, all other youth will wear facemasks, if available, or use paper or cloth to cover their mouth or nose, be restricted to their rooms to the extent possible, and be even more frequently reminded to wash their hands and perform social distancing.

A temporary "No Visitation" policy, as well as a temporary "No Home Visits/No in person Court appearances" policy is in place for all Youth Development Centers and Youth Forestry Camps. These policies will be reviewed and changed as needed to comply with guidance from the Governor, the Pennsylvania Department of Health, and the Centers for Disease Control. All visitors include but are not limited to probation departments, attorneys, clergy members, family members, and advocates. DHS recognizes that this is a big change for the juveniles in its care, but the change is necessary to protect the

juveniles and staff alike. Exceptions to the “no visitor” policy are made for probation officers, legal counsel, and clergy members who must see their client in person for emergency situations. Those visitors will be screened for health concerns upon their arrival, as all BJJS direct care staff are screened upon arrival to the workplace, and as long as they are asymptomatic, they will be allowed to meet with the youth, but their interaction will be limited only to the emergency situation.

Accommodations for all individuals normally considered visitors are being made and coordinated using telephones, and video conferencing to ensure regular and ongoing contact is occurring. These accommodations include family visitors, and the facilities continue to work with families to maintain contact during this difficult time.

DHS is continually evaluating the everchanging situation around the COVID-19 pandemic and adjusting policy to keep the youth in its care safe and healthy. DHS is currently considering establishing one male and one female intake unit so new arrivals to the Youth Development Centers and Youth Forestry Camps would be brought into the intake unit on the same day and remain in the quarantine unit for 14 days until they are cleared for entry into their designated programs. Youth would continue to receive treatment services within the intake units and be given treatment materials. Youth would also have access to their temporary

counselor, psychological services, medical services, physical activities, as well as other individualized recreational activities.

Like classes all over the Commonwealth and the country, some classes at Youth Development Centers and Youth Forestry Camps were put on hold while distance-learning procedures could be developed. Education is currently being provided at all of these facilities and is being developed and adjusted, much like all current school curriculums, as time goes on.

**III. Petitioners Allegations Specific to Youth Forestry
Resident Z. S.-W.**

Petitioners allege that Z. S.-W., a resident at Youth Forestry Camp #3, has not been able to visit with his family and has limited access to his family via video calls. As explained above, a no visitor policy is currently in place to help protect the safety of all youth and staff at this facility; however, communication with family has continued. Since mid-February, Z. S.-W. has spoken by phone with his mother twelve times and has had two calls with attorneys. He also had a Skype call with his mother and son.

Petitioners further allege that Z. S.-W. is not being provided with the appropriate education opportunities. As explained above, classes at the Youth Forestry Camp were put on hold while distance-learning procedures could be developed. Z. S.-W.'s education has resumed, and all educational services

resumed at Youth Forestry Camp #3 beginning on Monday March 30, 2020. In the prior week, the teachers at Tuscarora Intermediate Unit 11 prepared two-weeks' worth of individual assignments for school residents. Program employees proctor the work in the classrooms and will forward completed assignments to the teachers. It is expected that this process will continue.

IV. Guidance to the Secure Residential Programs DHS Licenses

In addition to operating Youth Development Centers and Youth Forestry Camps, DHS licenses county-owned and privately-owned residential facilities housing delinquent youth in detention or congregate care settings. Decisions regarding placement of these delinquent youth are made by the judges of the Juvenile Courts. These licensed facilities also must make the determination whether to accept the delinquent youth for the placement. DHS is not involved in that process.

On March 26, 2020, DHS issued Visitor, Meeting and Travel Guidance During the Coronavirus Disease 2019 (COVID-19) to these licensed facilities. The guidance recommended limitation of non-employee visitors to the facilities and the use of alternative means of communication (for example, video conferencing, telephone calls). Exceptions are extended for certain individuals, including family members, so long as safety protocols are met. DHS also recommended limiting access to vendors and for deliveries; conducting training by phone or video

conferencing, prohibiting all off-campus training; and limiting all trips by staff and residents from the facility except when critically necessary and approved by the facility director.

V. DHS is not Violating the Fourteenth Amendment Substantive Due Process Rights of Delinquent Youth

In view of the numerous and significant actions being undertaken by DHS during this unprecedented and evolving public health crisis as outlined above, it is apparent that DHS is using all available means at its disposal to protect the health of delinquent youth for which is it responsible. Accordingly, DHS is not violating the substantive due process rights of delinquent youth in its care

CONCLUSION

DHS is implementing every measure at its disposal to limit the spread of COVID-19 in accordance with Department of Health and Centers for Disease Control direction within the Youth Development Centers and Youth Forestry Camps it operates, provides direct guidance to the entities it licenses, and is undertaking every measure to provide for the ongoing care and well-being of the resident youth under its custody.

Respectfully Submitted,

Date: April 3, 2020

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

By: /s/ Matthew J. McLees

Matthew J. McLees

Attorney ID 71592

Exhibit A

From: Steele, Richard (JCJC)
Sent: Thursday, March 26, 2020 9:54 AM
To: Email Addresses Redacted

[Redacted content]

To:

Email Addresses Redacted

Cc:

Email Addresses Redacted

Subject:

Review of Youth in Placement

Juvenile Court Judges:

Good morning!

In light of the Coronavirus pandemic, there has been growing attention to the plight of youth who remain in out-of-home placements (detention and residential) resulting from delinquency proceedings. Youth advocates nationally are calling for juvenile justice system attention to these cases, with an emphasis on developing strategies to release youth back into the community whenever possible. Many are of the opinion that youth who remain in custodial settings have an increased likelihood of contracting the virus. This, coupled with statistics that indicate justice-involved youth are typically less healthy than their peers, may make them more susceptible and vulnerable to the disease.

Considering the extraordinary operational adjustments to both court and probation proceedings over the past several weeks, it is understandable that certain proceedings, including placement review hearings, initially may not have been a priority in some jurisdictions. I am aware, however, that many judicial districts have continued to find ways to review cases and make release decisions on an individual basis in a method that takes all relevant matters into consideration. The means by which these hearings are being held has varied greatly, although a common denominator to most has been the use of advanced communication technology: teleconference, various videoconferencing capabilities, emailed written reports/recommendations, etc. The outcomes of these placement review hearings appears to be similar to those of the pre-Coronavirus past: some youth remain in placement, some youth are released under continuing supervision. Some jurisdictions are reviewing at some level all cases where youth are currently in placement specifically to determine whether an early release may be appropriate.

The Juvenile Court Judges' Commission (JCJC) strongly recommends that timely proceedings related to the review of juveniles in out-of-home placement remain a priority of juvenile court functions during the pandemic crisis, and that every consideration be given to the release of youth, or to alternative dispositions, when this can be accomplished in a safe manner and within the mandates of our Balanced and Restorative Justice mission. While every youth has their own individual characteristics and situations to be considered during these reviews, outcomes that ensure that the least restrictive alternative to disposition be utilized remains a mandate of our Juvenile Act. Consideration of release is particularly important for youth with health issues that may make them particularly vulnerable at this time. When appropriate, the reduction in the number of youth in placement will play a vital role in maintaining the health of the youth, as well as facility staff.

In these unprecedented times, it is critically important that our juvenile justice system remains viable, including, and perhaps especially, the provision of focused attention on our youth in out-of-home placement.

In the next few days, a survey will be distributed to county juvenile probation chiefs in an effort to determine how the various jurisdictions are functioning under our current circumstances. This survey will include inquiry about the

provision of court proceedings, including review hearings and practices around review of youth in placement. We will be sure to share the results of the survey with you as soon as we can create a summary of responses.

In closing, thanks to all for your incredible efforts under these extraordinary circumstances. Your commitment to your work with delinquent youth and their families remains an inspiration to both me and our staff at JCJC.

Please do not hesitate to contact me if you wish to discuss this matter in more detail, or if you feel that I can be of any further assistance.

Be safe, be well, be healthy!

Rick

Richard D. Steele | Executive Director
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