



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 3, 2020

John W. Person, Jr., Esquire
Deputy Prothonotary
468 City Hall
Philadelphia, PA 19107

**Re: *In re: Petition of C.Z., A.O., and Z.S.-W., on behalf of
all similarly situated individuals***
Docket No. 24 EM 2020

Dear Mr. Person:

Pursuant to Pa. R.A.P. 123, Governor Wolf, by and through counsel, respectfully advises this Court that the Office of the Governor will not file a formal answer to the application for extraordinary relief recently filed by the Petitioners. This letter should not, however, be construed as concurrence with any factual assertion or legal argument presented in the Petitioners' application, and Governor Wolf reserves the right to present all arguments, as appropriate, in this or future proceedings. For the benefit of this Court, the following applicable information regarding the administration's public health response is provided.

COVID-19 is a novel virus that has rapidly spread from person to person across the world and is currently stretching the limits of health care systems in other states and in other countries. Certain elements of the population are particularly vulnerable to succumbing to the virus. The CDC has categorized the following individuals as high risk for serious illness: persons aged 65 or older; persons with chronic lung disease or moderate to severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, liver disease; and persons who are immunocompromised.

The Governor and the Secretary of Health are applying lessons learned from across the country and the world to protect Pennsylvania residents. Their mitigation efforts have focused on minimizing the opportunities for the virus to be transmitted and have included the issuance of Orders closing schools, prohibiting non-life-sustaining businesses from physically operating, and requiring persons to stay at home across the Commonwealth. Before COVID-19 overtakes the Commonwealth's health care systems, everyone must take responsible action. Every person in the Commonwealth must work together to ensure that the resources of the Commonwealth are preserved for the needs that will arise throughout the undoubtedly long and difficult response to the crisis, and that all actions that are possible are taken to help mitigate the spread of disease, and not contribute to its acceleration.

As the lead agency in the fight against COVID-19, the Department of Health (PADOH) has been advising its sister agencies on a wide variety of public health issues. Correctional and detention facilities, like any congregate setting where persons live in close proximity, present serious infection control challenges. Infectious disease can spread easily through any such setting, particularly where persons are unable to move about freely or take their own precautions to protect themselves from disease. Mitigation is made more complicated under circumstances involving a novel virus whose attributes, including whether there is asymptomatic spread and for what length of time the virus is viable outside the host, are not fully understood. The Commonwealth is currently experiencing outbreaks in several long-term care facilities and in at least one county prison.

The complexities associated with mitigating the spread of COVID-19 in general are even more heightened in the corrections/detention environment. The World Health Organization has advised that prisons around the world can expect "huge mortality rates" from COVID-19 unless they take immediate action. The federal Centers for Disease Control and Prevention (CDC) has issued guidance for disease prevention and control in these and other congregate settings. Some examples of these measures include:

- The option to place persons at high risk for COVID-19 together, or to "cohort" them, within their current facilities as much as possible, as well as cohorting the staff that work with them. Cohorting is defined by the CDC as the practice of grouping together patients who are infected with the same organism to confine their care to one area and prevent contact with others. This is a recognized containment method to reduce the likelihood that a sick individual (detainee or staff) or a small group of sick individuals would be able to transmit a communicable disease throughout the entire population.

- Staff who work with positive or probable positive individuals should be advised to take extra precautions not to import the disease into that high-risk population, and the facility should emphasize other control measures (enhanced cleaning, etc.) around that high-risk population. Enhanced screening (temperature and symptom checks) among individuals who live in congregate settings, with the earliest possible removal, isolation, and testing of symptomatic individuals (either staff or detainees) should also be emphasized.
- Social distancing (a distance of 6 feet if possible, according to the CDC) for the entire detained population.
- Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages.

Not all these measures can be successfully instituted in every congregate setting. Lack of space, health care providers, medical equipment, and other resources contributes to the challenges that correctional facilities face in their attempts to control the spread of the virus to individuals living and working in the facilities. Due to lack of resources, practices such as handwashing and disinfecting may be limited in some correctional/detention facilities. Segregation or solitary confinement of individuals may not always be an effective strategy for containing infectious diseases like COVID-19. Isolation without specialized negative pressure rooms does not contain the transmission of the virus because droplets continue to flow through the air from isolation rooms to the rest of the building or areas served by the same ventilation system. Additionally, utilizing solitary confinement could decrease medical attention given to the individual, causing an increase in risk of death.

PADOH understands that circumstances vary from detention center to detention center and correctional facility to correctional facility. One facility may be able to meet such mitigation standards, and another not. Under circumstances where such measures cannot be successfully implemented, it may be more appropriate to consider other control and mitigation measures, including diversion or release of individuals who are at high risk of serious illness from COVID-19 into the community. This action could provide protection for those individuals and provide ability for the correctional facilities to implement some of the simpler mitigation measures, like social distancing.

It is also true, however, that without a clearly articulated plan regarding housing, food, health care, and other "wrap around" services, release may create public health problems other than those specifically related to COVID-19, in the communities into which such persons are released. There are challenges in

connecting released individuals with necessary resources and services, such as housing, employment, mental and behavioral health services, health care, substance use treatment, and public benefits. This population faces many barriers to receiving the services and resources necessary to adjust to community life, and the COVID-19 pandemic has the potential to increase barriers to receiving those services and resources.

There may also be a concern that a released individual might have an increased risk of exposure in the community. Conversely, there could potentially be a threat of more devastating impact with the release of a person who may appear to be well, but actually has the virus, into a community-based facility with a population of only at-risk individuals. The potential of releasing individuals with suspected or confirmed COVID-19 into the community raises the same concerns.

On balance, as a general public health policy matter, considering all of the information available regarding the virus, its spread, and concerns relating to congregate facilities, particularly detention centers and correctional facilities, and the ability to respond to the pandemic, minimizing the number of individuals in correctional/detention facilities reduces the risk of rapid transmission of COVID-19 between residents and staff in these facilities. This letter is not intended to recommend the best means to achieve a reduction in population, including by specifying which detained youth would be appropriate for diversion or release from a public safety perspective, or by what mechanism release would best be achieved. There may be countervailing legal or public safety concerns that prevent the diversion or release of certain individuals from detention facilities.¹ This letter is merely intended to convey that policies and practices aimed at reducing the number of individuals in a facility are recommended to better protect the health of individuals who cannot be released and the staff who serve in these settings.

Respectfully submitted,

GENERAL COUNSEL

By: /s/ Gregory G. Schwab

Gregory G. Schwab

Attorney ID No. 93310

cc: Per Proof of Service

¹ In the attached email from Richard Steele, the Executive Director of the Juvenile Court Judges' Commission (Commission), to the Commonwealth's Juvenile Judges and Chief Juvenile Probation Officers, for example, the Commission provides several strong recommendations relating to the review of juveniles for purposes of out-of-home placement.

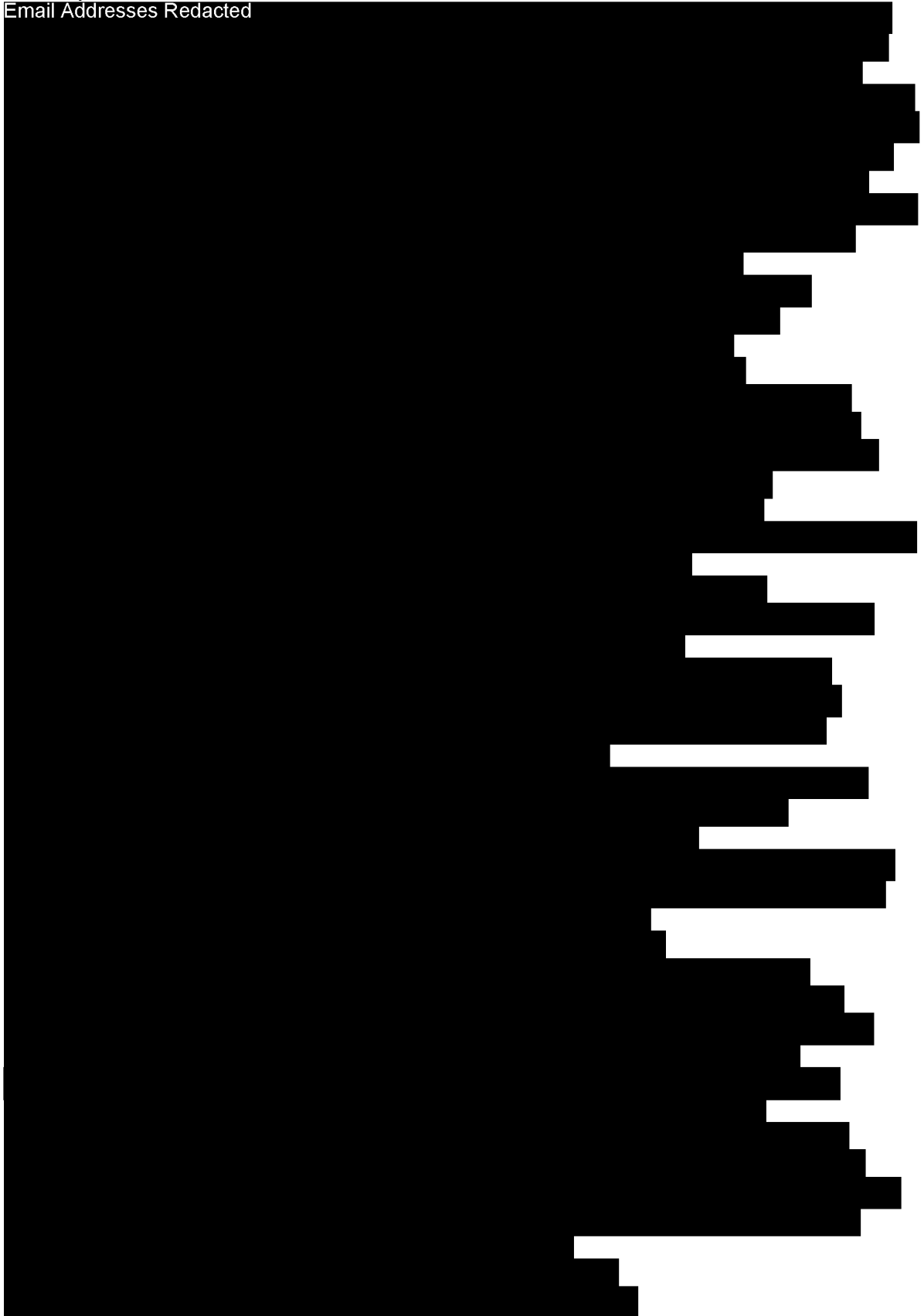
CERTIFICATE OF COMPLIANCE

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/ Gregory G. Schwab
Gregory G. Schwab
Attorney ID No. 93310

Attachment

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



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
Juvenile Court Judges' Commission
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