

Need for Immediate Action to Protect Philadelphia's Youth in Confinement From COVID-19

April 2, 2020

Dear Honorable Judges Fox, Dugan, Murphy and Olszewski, Mayor Kenney and Philadelphia City Council,

The undersigned organizations and individuals, all of whom have direct and mission-related interests in the health and safety of Philadelphia's youth, call on the City of Philadelphia to ensure that incarcerated youth are protected during the current COVID-19 pandemic. Yesterday, two organizations represented in this letter (Juvenile Law Center and the Youth Sentencing & Reentry Project, with support from the Defender Association) filed a King's Bench Petition, asking the Pennsylvania Supreme Court to exercise its extraordinary jurisdiction and instruct the President Judge of each Judicial District to take measures that both expeditiously reduce the population in all youth detention and correctional facilities, including youth under jurisdiction of the juvenile and criminal courts. The undersigned write now with special attention to Philadelphia, imploring you as our city's leaders and judicial officers to take these steps voluntarily in order to protect youth in custody and forestall grave public health ramifications for the entire city.

We are encouraged by a recent increase in the number of juvenile cases listed for review, but the current process is not set up to review cases with the urgency that this moment necessitates. In just the past week, people incarcerated at George Hill W. Correctional Facility, SCI Phoenix, and the Philadelphia Department of Prisons, as well as staff at the Philadelphia Juvenile Justice Services Center, have tested positive for COVID-19. Without immediate action, even more youth in custody will be exposed and the public health ramifications for the entire city will be grave.

As of Wednesday, April 1, there were 17 children incarcerated at Riverside Correctional Facility and 127 children incarcerated at Philadelphia's Juvenile Justice Services Center, where there also was a medical professional who tested positive for COVID-19. At least 40 of those youth are considered medically fragile. Even more Philadelphia youth are held in juvenile justice placements, adult jails, residential treatment facilities, or other group care settings throughout the Commonwealth. At least 80 emergency motions for release are currently pending in the First Judicial District, with no clear process for how and when these will be heard.

Research by health care experts shows that incarcerated populations are most at risk during a public health crisis. Contagious viruses such as COVID-19 spread much faster in detention centers, prisons, and group residential settings because youth are in close quarters and sometimes in unsanitary conditions. These youth are unable to participate in proactive measures to keep themselves safe, such as social distancing, frequently washing hands, or staying in sanitized spaces. Even if youth are in individual cells, ventilation is often inadequate to prevent spread of infection. Moreover, measures to contain COVID-19 in carceral settings through isolation or cancellation of education or other programming is devastating for youth, especially while they are separated from their families and other comforts and supports.

Recognizing the extraordinary public health risk posed by the transmission of COVID-19 in custodial settings, and the additional barriers imposed on confined youth in particular, the undersigned request that the FJD Family Division and Common Pleas Court act immediately to minimize the number of new youth entering or currently detained in the Philadelphia Juvenile Justice Services Center (JJSC), Riverside Correctional Facility (RCF) or other jails, or held in juvenile placements or other carceral placements across the Commonwealth.

Specifically, we call on the FJD Family Division and Common Pleas Court to:

1. Before ordering any youth newly detained at the JJSC, RCF, or any other facility, consider on the record the serious health risks posed by detention to the youth, other detained individuals, staff, and the community, and order a youth detained only if their release would otherwise pose an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.
2. Prohibit detention of any youth for failure to appear, pay fines, fees, or cash bail, for technical probation violations, or for any other reason other than that the youth poses an immediate, specific articulable and substantiated risk of physical harm to another.
3. Order the immediate release of youth currently held at the JJSC, RCF, or congregate care settings where:
 - a. the release does not pose an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged or adjudicated offense cannot be a surrogate for such a risk.
 - b. the youth was confined due to failure to appear, pay fines, fees, or cash bail (for Direct File Juvenile youth), for technical probation violations, or for any other reason other than that the youth poses an immediate, specific articulable and substantiated risk of physical harm to another;
 - c. the youth has any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a

higher risk for severe illness from COVID-19, or displays symptoms of or tests positive for COVID-19.

- d. (for adjudicated youth in placement), the youth is within 3 months of completing their program or disposition or whose release from a juvenile justice facility is conditioned upon completion of an educational, treatment, or other program that is suspended or delayed due to the current COVID-19 crisis.
4. Suspend all conditions of probation for youth in the juvenile justice or adult criminal system that violate WHO, CDC, and Pennsylvania physical isolation guidance or require monetary payments.

Additionally, city leadership should take the following additional steps to ensure the safety and wellbeing of all youth:

1. Designate the Office of Children and Youth, or other city agency, responsible for funding, monitoring, and reporting Direct each facility housing youth to ensure that each youth has free and regular access to phones and video visitation with family and to appropriately-supported online or other educational, physical or mental health services and opportunities; and
2. Require all facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;
3. Designate the Office of Children and Youth, or other city agency, to ensure that there is a comprehensive individualized plan for every youth released from any custodial setting as they transition to the community. Transition plans should confirm that for each youth:
 - a. They have a safe place to live;
 - b. Their food and other basic needs are met;
 - c. They receive immediate and adequate medical care;
 - d. They have immediate access to Medicaid;
 - e. They are connected to appropriate community-based programming, including education.

We call on you, as judicial and city leaders, to ensure that these steps are taken in order to ensure the health, safety and wellbeing of our city's most vulnerable youth. We cannot delay; Philadelphia must take these critical steps now to protect these youth as well as the larger community during this unprecedented crisis.

We eagerly await an update from city leadership detailing the action-oriented steps you will be taking to protect youth in custody during this crisis. Updates can be directed to Sarah Morris of the Youth Art & Self-empowerment Project at Sarah@yasproject.com.

Sincerely,

Youth Art & Self-empowerment Project (YASP)
Youth Sentencing & Reentry Project (YSRP)
Juvenile Law Center
Defender Association of Philadelphia
Donna Cooper, Public Citizens for Children and Youth
Nancy Dung Nguyen, VietLead
Movement Alliance Project
Erin Kramer, One Pennsylvania
Raphael Randall, Youth United for Change
Asian Americans United
YouthBuild Philadelphia
Hopeworks Camden
Support Center for Child Advocates
Community Legal Services of Philadelphia, Youth Justice Project
Education Law Center
Rick for West Philly
Nikil Saval
The Village of Arts and Humanities
LILAC
Ordinarie Heroes
People's Paper Co-op
Philadelphia Reentry Think Tank
Performing Statistics
Tamir Harper, UrbEd Inc.
Nuala Cabral
Disability Rights Pennsylvania
SpeakUp!
University Community Collaborative
Pennsylvania Institutional Law Project
Judge Accountability Table
American Civil Liberties Union of Pennsylvania
Philadelphia Bail Fund
Reclaim Philadelphia
Girls Rock Philly

CC: Cynthia Figueroa, Deputy Mayor for the Office of Children and Families
Brian Abernathy, Managing Director
Vanessa Garrett Harley, Deputy Managing Director of Criminal Justice
& Public Safety
Kimberly Ali, Commissioner for the Department of Human Services