

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE CITY OF PHILADELPHIA,

Petitioner,

v.

**DEPARTMENT of HUMAN SERVICES
of the COMMONWEALTH OF
PENNSYLVANIA, and ACTING
SECRETARY OF HUMAN
SERVICES,**

Respondents.

No. 516 MD 2022

**PETITIONER'S
APPLICATION FOR
SPECIAL RELIEF IN THE
FORM OF A PRELIMINARY
INJUNCTION**

**PETITIONER’S APPLICATION TO MODIFY INJUNCTION PURSUANT
TO PA. R.A.P. 1532**

1. The youth population at the Philadelphia Juvenile Justice Services Center (PJJSC) has reached unprecedented levels, consistently exceeding its licensed capacity of 184 beds by fifty or more young people, with an all-time high of 242 on June 5, 2023.

2. As a result, the PJJSC is in crisis. As of June 9, 2023, there are 230 youth at the PJJSC, sixty-seven of whom have been stranded for months at PJJSC awaiting placement at a Commonwealth treatment facility, taking up more than a third of the 184 beds that the PJJSC is licensed to provide.

3. As a result, presently thirty young people must be housed in the PJJSC’s admissions area and gymnasium where they must sleep on mattresses on the floor and where fights now regularly break out.

4. Fifteen young people currently at the PJJSC have been waiting for Commonwealth placement for more than ninety days.

5. Despite the substantial efforts of the City to work with relevant stakeholders to find alternative locations for youth housed at the PJJSC, the PJJSC is now *far* more overcrowded than it was when the Court issued its Injunction Order in November.

6. Without further relief from this Court, the children and staff at the PJJSC will continue to suffer serious harm and face the risk of even greater harm.

7. As a result, Petitioner City of Philadelphia, by and through its counsel, hereby moves this Court pursuant to Pennsylvania Rule of Appellate Procedure 1532 for special relief in the form of an order modifying the Preliminary Injunction Order that the Court issued on November 10, 2022.

8. The Injunction Order, which was issued after a full evidentiary hearing before this Court on November 9, 2022, directed Respondent Pennsylvania Department of Human Services (“PA-DHS”) “to take physical custody of 15 juveniles currently housed at the [PJJSC] . . . within 10 working days[.]”

9. The Injunction Order denied the City’s Application “to the extent it seeks injunctive relief directing Respondents to take physical custody of juveniles who may, in the future, be housed at the PJJSC in excess of its licensed capacity.”

10. While PA-DHS complied with the Injunction Order, it continues to employ an unlawful months-long waitlist for placement, continues to refuse to prioritize youth who are waiting for Commonwealth placement in overcapacity detention facilities, and continues to rely on its admittedly arbitrary and self-serving staffing ratio requirements (one staff to three youth) to justify its abdication of its statutory responsibility.

11. The City respectfully requests the Court modify its previous Injunction Order to require PA-DHS to: (1) give priority on its waitlist to youth from over-capacity detention facilities; (2) use the staffing ratios (one staff to six youth) that PA-DHS has determined to be safe and promulgated in its 3800 regulations for other secure facilities, including both public and private facilities that provide treatment and pre-adjudication detention, to determine “capacity” at Commonwealth secure treatment facilities; and (3) direct PA-DHS to take custody of two youth committed to PA-DHS custody each working day, as PA-DHS did when it was complying with the Court’s previous injunction order, while the PJJSC is above its licensed capacity.

BACKGROUND¹

12. The PJJSC provides temporary housing for youth awaiting adjudication for delinquent offenses, those charged as adults and awaiting criminal trial, and those awaiting placement after adjudication.

13. While the Court’s Injunction Order provided some relief, it was temporary.

¹ A fulsome recitation of the facts underlying this matter is contained in the City’s Petition for Review and in the Court’s November 18, 2022, Memorandum Opinion. Only the facts relevant to this Application are provided here.

14. Meanwhile, the census at the PJJSC has risen substantially, reaching its highest level ever—higher than when the Court ordered relief in November—despite the City’s other efforts to reduce its population.

15. Nonetheless, PA-DHS steadfastly refuses to prioritize youth from over-crowded counties for placement while clinging to an arbitrary and self-serving definition of capacity that leaves approximately seventy youth at the PJJSC for months awaiting placement.

The Categories of Young People Housed at the PJJSC

16. The population of youth at the PJJSC fluctuates daily and is dependent on a variety of factors over which the City has little to no control.

17. Youth at the PJJSC fall into three categories: those charged with juvenile offenses but not yet adjudicated; those charged as adults but not yet tried; and those adjudicated delinquent.

18. Youth in all three groups have been judicially ordered detained pending adjudication, trial, or treatment.

19. PJJSC is licensed and designed to be a temporary detention facility. However, for the past year, the post-adjudication population—young people who should be in Commonwealth custody but are instead waiting for months in detention for placement—has grown and now takes up an untenable percentage of available beds at PJJSC.

Young People Charged with Delinquent Offenses and Awaiting Adjudication in Family Court

20. Many of the young people at the PJJSC are awaiting adjudication in Family Court for delinquent offenses but have been court-ordered to remain in secure detention pending adjudication.

21. This population fluctuates depending on arrests and charging of young people with juvenile offenses on a daily basis.

22. Some of these youth who are waiting for adjudication may be eligible for one or more alternatives to detention, such as GPS tracking, the Intensive Supervision Program, or a Pre-Adjudication Evening Reporting Center. Tr. of Prelim. Inj. Hearing, November 9, 2022 (“T.”) 87:4–89:15.

23. However, the decision to move a young person from the PJJSC to one of these alternatives to detention resides with Family Court judges, not with the City, and is based on an evaluation of whether each young person meets the applicable criteria. T. 87:15–23.

24. Young people charged with violent crimes will generally not be eligible for alternative to detention programs. T. 89:4–15.

Young People Charged as Adults and Awaiting Trial

25. The PJJSC also houses youth who are charged with adult crimes and are awaiting trial in the adult criminal justice system. T. 23:17-24:21.

26. City DHS cannot, on its own volition, move these youth from the PJJSC to adult prison to alleviate overcrowding.

27. Some youth have been charged as adults, but by order of the Family Court with the consent of the District Attorney's Office under "Act 96," they must be detained in a juvenile facility. T. 24:4-21.

28. Other youth are charged with adult crimes but held at the PJJSC in the 12-bed "sight and sound" unit pursuant to the Juvenile Justice Reform Act, which went into effect in December 2021. T. 24:22-25:2.

29. To be moved to adult prison, these young people must have an "interest of justice" (IOJ) hearing, after which a judge will determine whether it is in the interest of justice for the young person to move to adult prison. T. 29:17-30:18.

30. Only the District Attorney's office can request IOJ hearings; City DHS continues to urge the District Attorney's office to request these hearings on a more frequent and regular basis, and currently only five youth are awaiting IOJ hearings. T. 30:19-31:8; Second Declaration of Kimberly Ali ("2d Ali Decl.") ¶ 33.

Post-Adjudication Youth

31. The PJJSC also holds youth who have already been adjudicated delinquent by a Family Court judge and are awaiting placement.

32. The vast majority of post-adjudication youth at the PJJSC have already been court-ordered to secure treatment at a Commonwealth facility and are stranded at PJJSC while they wait—often for several months—to be transferred to a treatment facility so that they may begin their court-ordered period of rehabilitation and treatment.

33. As detailed in the City’s previous Application for Special Relief in this case, the wait times for youth committed to Commonwealth custody have grown significantly in recent years and, with it, the number of youth held at the PJJSC who are awaiting Commonwealth placement.

34. Since January of 2020, the City has been warning PA-DHS of the problems that its unlawful waitlist is causing at the PJJSC and asking PA-DHS to take urgent action to provide adequate services for youth who are court-committed to secure treatment. Pet. for Review ¶¶ 36-66.

35. Incredibly, youth who have already been adjudicated and are awaiting placement at a Commonwealth facility occupy more than a third of the PJJSC’s 184-beds licensed capacity. Second Declaration of Gary Williams (“2d Williams Decl.”) ¶ 14; *id.*, Ex. A.

36. At this time, fifteen young people at PJJSC have been waiting for Commonwealth placement for more than ninety days. *Id.*, ¶ 7.

**After a Modest Decrease in Population Immediately Following PA-DHS's
Compliance With the Injunction Order, the PJJSC Population Has Increased
Rapidly and Is Again at Crisis Levels**

37. On November 9, 2022, the day of the Injunction Hearing, the PJJSC's total population was 198 youth, sixty of whom had been committed to Commonwealth treatment by court order.

38. When the Court issued its Order the following day, the PJJSC's population had already increased to 205 youth, sixty-two of whom had been committed to Commonwealth treatment by court order.

39. The Court's Injunction Order, and PA-DHS's compliance with it, provided some temporary and partial relief to over-crowding at PJJSC.

40. As ordered by this Court, PA-DHS took custody of fifteen Commonwealth-committed young people from the PJJSC within ten working days of the date of the Injunction Order.

41. As a result, the number of young people at PJJSC awaiting a Commonwealth placement reached a low of fifty on November 23, 2022 and stayed at fifty through November 27. 2d Williams Decl., Ex. A.

42. The modest decrease in the number of young people awaiting Commonwealth placement allowed the PJJSC to operate closer to its licensed capacity for a short period of time.

43. Between November 22 and December 13, 2022, the PJJSC's total population stayed below 200 but was still over its licensed capacity of 184, except on December 3, when the PJJSC population was 183. *Id.*

44. Beginning on November 27, 2022, the number of youth at the PJJSC waiting for Commonwealth placement increased, from fifty on November 27, 2022 to a high of eighty in April 2023, and stands at sixty-seven today. *See id.*

45. The total population of youth at PJJSC has also increased since the end of November, and has stayed over 200 since December 30, reaching a high of 242 on June 5, 2023—the highest in the history of the PJJSC. *Id.* ¶¶ 2, 15.

46. As the Court heard at the Injunction Hearing, overcrowding is a problem in itself, but it also leads to increased tension among the young people who are living in such close quarters, as well as other problems.

47. Most obviously, when the PJJSC is so far over its licensed capacity, as it is now, there are not enough beds for all of the young people at the PJJSC.

48. As a result, young people are again sleeping on mattresses on the floor and in the admissions area of PJJSC. *See* 2d Williams Decl., ¶ 15; *see also* Nov. 9, 2022 Hearing Ex. P-39 (showing sleeping conditions in admissions area at PJJSC on November 3, 2022).

49. The largest space in the admissions area is only 13' by 14', or 182 square feet. 2d Williams Decl., ¶ 15.

50. PJJSC also had to limit its recreation space by curtaining off half of its gymnasium for additional temporary housing to upgrade locks that, as a result of the overcrowding and staffing challenges, youth have been able to compromise. *See* 2d Williams Decl., ¶ 17.

51. The lack of physical space available in the admissions area disrupts the intake process, a critical part of which is assessing when a new resident must be kept separated from another resident or group of residents. 2d Williams Decl. ¶ 16.

52. For example, young people may be members of rival groups or co-defendants, or one young person may have been the target of a violent crime by another. *Id.*

53. Because there are young people living in the admissions area, new residents have immediately spotted a person they recognize upon arrival and started fighting. *Id.*

54. In addition, City DHS personnel have observed increases in makeshift weapons and increases in fights between young people as the population has climbed. 2d Williams Decl. ¶ 19.

55. PJJSC has successfully increased its rate of onboarding new personnel, hiring fifty new employees since the hearing of November 9, 2022. 2d Williams Decl. ¶ 21.

56. However, in that same period, twenty-six employees—including ten of the new hires—have left City DHS employment. *Id.*

57. PJJSC has increased its training, shadowing, and mentorship programs to improve the retention rate but, given the working conditions, the facility continues to be understaffed. *Id.*

58. As a result, there are not sufficient staff to take youth out of the facility for non-emergent medical appointments. 2d Williams Decl. ¶ 20.

59. The high rate of turnover makes residents and staff less safe. 2d Williams Decl. ¶ 21.

The City Has Done All It Can to Reduce the PJJSC’s Population

60. The Injunction Order directed the City to “work diligently with the City’s relevant stakeholders (First Judicial District and Juvenile Probation) to recommend and secure referrals to the placement options discussed at the November 9, 2022 evidentiary hearing, which include the new Department of Human Services operated youth development center set to open in Pittston, Pennsylvania, and the private, out-of-state provider, Rite of Passage.” Injunction Order ¶ 2.

61. The City has worked diligently to secure placements to Pittston and Rite of Passage.

62. The City coordinated with the First Judicial District and PA-DHS regarding the transfer of the fifteen court-ordered youth to Pittston.

63. The City (both through counsel in this case and representatives of City DHS) requested that PA-DHS allow Philadelphia young people to take the additional nine openings available at Pittston. 2d Ali Decl. ¶ 9. PA-DHS rejected that request. *Id.*

64. In addition, the City coordinated with the First Judicial District Family Court and Probation to ensure that PA-DHS had referrals for youth who were eligible to be placed at Rite of Passage. 2d Ali Decl. ¶¶ 20-21.

65. Out of approximately thirty-two referrals provided by Probation, only ten young people at PJJSC have been accepted by Rite of Passage, and only three of those placements have been approved by the Family Court.² *Id.* ¶¶ 22-23.

66. Since the November 9 hearing, the City has also pursued other potential means of reducing PJJSC's overall population.

67. Since the hearing, the City issued a new request for proposals for Detention, Community Based Detention Shelter, mid-level institutional, and private secure residential placements. 2d Ali Decl. ¶ 34.

² One youth is waiting a hearing in Family Court, and PA-DHS also placed three of the Rite-of-Passage-approved youth in its own facilities before the Family Court acted on their transfer applications. 2d Ali Decl. ¶ 23.

68. The City sought placement options not only from existing providers, but also any private provider willing to come to the Philadelphia region. *Id.*

69. But any resulting program(s) are unlikely to provide relief in the next few months given the time required to contract and for new providers—who do not currently provide these services—to set up their operations. *Id.*

70. The City has also expanded its contract with private provider Adelphoi to include a mid-level placement for girls.

71. This placement has eight beds available for girls adjudicated delinquent, although there are none currently at the PJJSC who fit this criteria. 2d Ali Decl. ¶ 26.

72. At the request of City DHS, other private providers have indicated that they are working to expand the number of beds available to the City. 2d Williams Decl. ¶ 29.

73. With respect to the young people in the PJJSC’s “sight and sound” unit, the City continues to communicate with the District Attorney’s Office regarding the need to increase the frequency and regularity of IOJ hearings so that young people can be moved to the youthful offender unit at State Road if doing so is in the interest of justice. 2d Ali Decl. ¶ 33.

74. At present, of the approximately twelve youth in the unit, only five have not been evaluated by the District Attorney or court. *Id.*

75. But because the court has already denied IOJ petitions for several youth in the sight-and-sound unit, and because those in the unit must be kept separate from the rest of the PJJSC population, reducing the sight-and-sound unit population below the unit's capacity through additional IOJ hearings will not result in more available bed space at PJJSC. *See id.*

76. Following the Injunction Hearing, the City continued its efforts to establish a detention site at the Modular Unit 3 ("MOD-3") of the Riverside Correctional Facility, a Philadelphia adult prison on State Road.³

77. While MOD-3 is a carceral setting and is far from ideal for young people, the City wanted to explore all options for alleviating over-crowding, including a co-locating a juvenile detention facility at this adult site.

78. City DHS representatives met with the Commissioner of the Philadelphia Department of Prisons to discuss next steps on December 12, 2022.

79. This meeting revealed that the potential co-location would not be possible at this time.

80. MOD-3 shares a central command center with units of the prison that house adults and that are staffed by corrections officers.

³ The facility's address is 8151 State Road, Philadelphia, Pennsylvania.

81. This design makes it significantly likely that youth placed there, who cannot legally be detained in an adult facility, will encounter adult corrections officers for even routine activities such as meals.

82. Further, this raises the possibility, especially in the event of an emergency, of corrections officers interacting directly with the young people in MOD-3 in violation of federal and state law.

83. The City has explored other options for co-location including the former Philadelphia Women’s Prison, but that facility is now privately owned and is unavailable for use as a juvenile facility. 2d Ali Decl. ¶¶ 27-32.

84. In addition, the City continues to work with existing providers to expand services, including beds available, as an alternative and more appropriate option to co-location.

PA-DHS Continues to Refuse to Prioritize Young People From Overcrowded Detention Facilities on Its Unlawful Waitlist

85. At the Injunction Hearing, PA-DHS representatives admitted that there is no statute or regulation preventing them from prioritizing Philadelphia youth—or youth for any over-crowded facility in the Commonwealth—for placement. T. 276:17-278:7; 313:24-315:9; Court’s Mem. Op. (Nov. 18, 2022) (“Op.”) at 44-45.

86. Mr. Neff also testified that he would seek approval from the Acting PA-DHS Secretary and then-Governor Wolf to give all twenty-four openings at the new Pittston facility to Philadelphia youth. *Id.*

87. Shortly after the Injunction Order was issued, the City inquired—both through City DHS representatives and counsel for the City—as to whether PA-DHS would grant priority to Philadelphia youth for openings at YDCs during the PJJSC’s current overcrowding crisis.

88. PA-DHS’s answer was and continues to be “no.”

89. Despite the City’s request and Mr. Neff’s testimony at the November 9, 2022, hearing, PA-DHS filled the other nine openings at Pittston with young people from other counties. 2d Ali Decl. ¶ 9.

90. And it filled eight out of fifteen other openings at Cove PREP with non-Philadelphia youth. *Id.* ¶ 19.

91. As City DHS and its counsel continued to update PA-DHS and its counsel regarding the growing population at PJJSC (both Commonwealth-committed and overall) and continued to request priority for youth from overcapacity detention facilities, PA-DHS continued to refuse to temporarily adjust its waitlist practices. *Id.* ¶ 14.

PA-DHS Continues to Delay Intake to YDCs Based on its Self-Determined and Self-Imposed Definition of Capacity

92. Pennsylvania law—indeed, regulations promulgated by PA-DHS—establishes that facilities that provide secure care for children in Pennsylvania must maintain a ratio of one child care worker to six children. *See* 55 Pa. Code §§ 3800.2, 3800.274(5)-(6) (“[t]here shall be one child care worker present with the children for every six children during awake hours” and “one child care worker present with the children for every 12 children during sleeping hours”); *see also* 62 P.S. § 1021; 23 Pa. C.S. § 6306.

93. These standards apply to county secure detention facilities and private providers of secure treatment services that contract with the Commonwealth.

94. They form the foundation of the actual staffing ratios at the PJJSC, as described above.

95. In other words, PA-DHS itself believes a one-to-six ratio for care and supervision of the “complex” young people who are at the PJJSC awaiting adjudication and placement is appropriate. *See* T. 265:2-266:5 (Neff Direct) (the “complex” young people who receive treatment and rehabilitation services at YDCs are the same as those awaiting adjudication and placement at the PJJSC).

96. At the Injunction Hearing, Mr. Neff testified regarding the staff-to-youth ratio and capacity of the Commonwealth’s YDCs.

97. As he explained, the “capacity” of YDCs is limited by staff-to-youth ratios, not because of square footage or number of beds or bathrooms. T. 274:11-21 (Neff Direct).

98. Therefore, when PA-DHS claims that its YDCs are “between 115 to 130 to 135 percent of their capacity,” it is referring to its determination of how many young people can be at a particular YDC based on PA-DHS’s staff-to-youth ratio and the number of staff available at that facility. *Id.*; *see also* T. 289:20-24 (Neff Direct).

99. Notwithstanding PA-DHS’ self-imposed staff-to-youth ratio, PA-DHS has sufficient space and actual beds to accommodate more youth at its YDCs than it is currently allowing. T. 230:3-24 (Rubin Cross).

100. Notably, PA-DHS’ staff-to-youth ratio is one-to-three, twice as restrictive as the ratio PA-DHS’ own regulations require for similar facilities.

101. And that staff-to-youth ratio at YDCs of one-to-three is based solely on Mr. Neff’s opinion and experience. T. 292:6-293:18 (Neff Cross).

102. It has no basis in any law or regulation. *Id.*

103. Deputy Secretary Jonathan Rubin deferred to Mr. Neff and accepted his recommendation of staff-to-youth ratio and capacity for YDCs. T. 229:4-230:2 (Rubin Cross).

104. “Direct care staff,” meaning youth development aides, youth development aide supervisors, youth development counselors, and youth development counsel supervisors, are included in PA-DHS’s staff-to-youth ratio. T. 294:1-10 (Neff Cross).

105. Other support staff such as psychiatry, psychological services, medical, and education specialists are not considered “direct care” and do not count toward the one-to-three ratio. T. 293:19-295:9.⁴

106. Accordingly, PA-DHS has implemented a self-determined and self-imposed ratio for YDCs that is significantly different than the ratio set forth in PA-DHS’ regulations for equivalent facilities.

107. For example, PA-DHS contends that Rite of Passage is an “equivalent facility” that provides “equivalent services” to the Commonwealth’s YDCs. T. 291:8-15 (Neff Direct).

108. PA-DHS is seeking referrals to Rite of Passage for secure services, to allow a young person who would otherwise be placed at a YDC be placed at Rite of Passage instead. *See* Nov. 9 Hearing Ex. R-1, (Oct. 31, 2022 Letter).

109. Yet Rite of Passage’s contract with PA-DHS is governed by the one-to-six ratio of the Pennsylvania 3800 regulations and not by the one-to-three ratio

⁴ The majority of staff vacancies are in the youth development aide and youth development aide supervisor positions. *Id.*

that Mr. Neff and Mr. Rubin have selected for Commonwealth YDCs. T. 286:5-13 (Neff Direct).

110. In other words, PA-DHS believes it is fine for an “equivalent facility” to operate at a one-to-six ratio, but mandates that its own facilities only operate at a one-to-three ratio.

111. PA-DHS’s self-determined and self-imposed definition of capacity impacts every child throughout the Commonwealth who is waiting for a secure treatment placement.

112. PA-DHS does not just try to maintain a one-to-three ratio whenever possible—it actually defines capacity based on that ratio and closes intake at its facilities, despite the availability of beds and space, if the facility exceeds its self-imposed definition of capacity.

113. If the population at a YDC exceeds 110% of capacity, Pennsylvania law requires PA-DHS to “notify the courts and the General Assembly that intake to that institution or program is temporarily closed.” 42 Pa. C.S. § 6353(c).

114. PA-DHS relies on this statutory provision to close intake at its YDCs based on its preferred staff-to-youth ratio, which provides for double the number of staff required for other facilities that provide secure care (both treatment and detention) to Pennsylvania youth. *See* Nov. 9, 2022 Hearing Ex. R-1 (Oct. 31, 2022 Letter).

LEGAL STANDARD

115. “An injunction may be modified or dissolved upon a showing of changed circumstances that have occurred since the issuance of the injunction.” *Nether Providence Twp. v. Coletta*, 133 A.3d 86, 91 (Pa. Cmwlth. 2016) (citing *Whibby v. Dep’t of Corrections*, 820 A.2d 829, 831 (Pa. Cmwlth. 2003)).

116. Sufficiently “changed circumstances” include when: “(1) the law, common or statutory, has changed, been modified or extended; (2) there is a change in the controlling facts on which the injunction rested; or, (3) in its judicially exercised discretion, [the Court] believes the ends of justice would be served by a modification.” *Id.* at 93 (citing *Ladner v. Siegel*, 148 A. 699, 702 (Pa. 1930)).

117. Where an application to modify an injunction is seeking further injunctive relief, the party seeking an injunction must establish the six prongs of the well-established preliminary injunction test in Pennsylvania.

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages.

Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings.

Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.

Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity.

Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc. 828 A.2d 995, 1001

(Pa. 2003) (citations omitted).

118. In the mandatory injunction context, an applicant must establish that:

- (1) Irreparable harm will occur that is not compensable by money damages;
- (2) greater injury will result from the denial of the injunction than by granting the injunction;
- (3) the injunction will restore the *status quo* between the parties; and
- (4) the party seeking relief has a clear right to relief in an actionable claim.

Wyland v. W. Shore Sch. Dist., 52 A.3d 572, 582 (Pa. Cmwlth. 2012) (citing

Hatfield Twp. v. Lexon Ins. Co., 15 A.3d 547 (Pa. Cmwlth. 2011)).

ARGUMENT

The City Has a Clear Right to Relief Because PA-DHS Is Required by Law to Provide Facilities for Youth at PJJSC Adjudicated Delinquent.

119. This Court has already found that the City has a clear right to relief in mandamus to compel PA-DHS to comply with its statutory duties under the Pennsylvania Juvenile Act and Human Services Code. Mem. Op. 47-51.

120. As there has been no change in the controlling law or in the facts related to the City's mandamus claim asserted in the Petition for Review, the Court's finding that the City has satisfied the "clear right to relief" prong of the preliminary injunction test should not be revisited or disturbed." *Bienert v. Bienert*, 168 A.3d 248, 254 (Pa. Super. 2017) (a trial court acts appropriately "in deciding to adhere to those prior rulings to maintain the consistency and uniformity of its decisions that law-of-the-case principles favor").

The Proposed Modified Preliminary Injunction Is Necessary to Stop Ongoing Harm and to Prevent Further Immediate and Irreparable Harm to the City and the Children It Is Charged with Caring For.

121. There is no foreseeable end to the PJJSC's overcrowding absent an order from this Court.

122. Discussions with PA-DHS have failed to resolve the issue and money damages are no remedy.

123. The harm to the youth, PJJSC staff, and the City is ongoing, immediate, and irreparable.

124. Based on the similar circumstances that existed at the PJJSC in November 2022, this Court found that the City had demonstrated immediate and irreparable harm. Mem. Op. 51-52.

125. The Court noted that due to overcrowding, young people at the PJJSC were forced to sleep on mattresses on the floor in the admissions area and that the PJJSC was experiencing an increase in contraband, fights, and conflict. *Id.*

126. Sadly, all of these conditions are again present today, *see* 2d Williams Decl. ¶¶ 15, 16, 19, except that the level of overcrowding is significantly worse.

127. At the Injunction Hearing, the PJJSC census was 198; as of the date of this filing the PJJSC census is 230.

128. The PJJSC is so far over its physical capacity that 30 young people are sleeping in the admissions area and in the gymnasium on mattresses on the floor.

129. The sheer number of youth there impacts the staff's ability to use the area for its purpose of screening new admissions, resulting in increased fights.

130. The use of half of the gymnasium for temporary housing reduces the options available for youth to recreate and leads to increased tension at the facility.

131. As a matter of law, where a municipal detention facility faces a crisis of overcrowding, and the Commonwealth is responsible for at least some of those

detained, irreparable harm is established. *See Allegheny Cnty. v. Commw.*, 490 A.2d 402, 414 (Pa. 1985).

Greater Injury Will Result from Denying Than from Granting the Injunction.

132. As explained above, the children and staff at the PJJSC are contending with unhealthy and dangerously crowded conditions that have already resulted in youth and staff injuries.

133. The harm of denying the requested modified injunction is extreme and significant.

134. As the Court noted in its Memorandum Opinion, “[w]ithout this Court’s November 10, 2022 Order, there was a very real possibility that the overcrowding at the PJJSC would continue indefinitely into the future and result in even more injuries to, and possibly even the death of, our most at-risk youths and the staff members who place themselves in harm’s way on a daily basis at these detention centers.” Mem. Op. 53.

135. Unfortunately, because PA-DHS failed to act proactively to accommodate a sufficient number of young people into its YDCs, the relief provided by the Injunction Order was only temporary and PJJSC is again dangerously overcrowded.

136. With the current level of overcrowding, PJJSC is operating with a one-to-twelve or one-to-fourteen staff-to-youth ratio during the daytime, as compared to PA-DHS's one-to-three ratio. 2d Williams Decl. ¶ 22.

137. In contrast, granting the requested modified injunction will cause little harm.

138. The City does not seek to force PA-DHS to take custody of all of the young people committed to its care immediately all at once.

139. Rather, the City requests: (1) that PA-DHS give priority to youth from over-crowded detention facilities (whether Philadelphia or elsewhere) on its waitlist; (2) that PA-DHS be enjoined from using its self-serving definition of capacity rather than the ratio defined in its own regulations to delay intake of young people to its facilities; and (3) that PA-DHS be directed to accept custody of two Commonwealth-committed young people each working day that the PJJSC is over its licensed capacity.

140. The only harm that could be caused by the first part of the City's request is that young people at under-capacity facilities may wait longer for placement.

141. This is the unfortunate result of the Commonwealth's abdication of its statutory duty to provide adequate treatment facilities, but it pales in comparison to

the harm that young people at over-crowded detention facilities face when they must endure months-long waits for placement in unhealthy and unsafe conditions.

142. Further, this requested relief applies equally to youth in all counties of the Commonwealth: if the PJJSC gets under its licensed capacity while this case is pending and another county detention facility goes over capacity, then priority will temporarily go to young people from that facility and youth at the PJJSC may wait longer.

143. The second and third parts of the City's request would enjoin PA-DHS from refusing to place young people in its facilities based on its arbitrary definition of capacity, which in turn is based on one man's opinion of what is an appropriate staff-to-youth ratio for YDCs.

144. This would mean that PA-DHS would have to comply with its statutory duty to promptly place adjudicated youth in its facilities until it reaches a one-to-six staff-to-youth ratio, which is the ratio established by regulation for all facilities that provide secure detention and treatment care for Pennsylvania young people, including Rite of Passage.

145. By its express terms, the requested injunction would *not* cause PA-DHS to exceed the minimum ratios set forth in the 3800 regulations.

146. The requested injunctive relief would not require PA-DHS to operate its YDCs in violation of any law or regulation, as PA-DHS's abdication of its duty has forced the City to do.

147. It would not require PA-DHS to operate its facilities with anything close to the one-to-twelve ratio that the City has been dealing with.

148. In *Allegheny County*, the Pennsylvania Supreme Court held that "it is not the burden of the political subdivision to establish that the state has available facilities" for a transfer of incarcerated persons from county jail to state prison. *Allegheny Cnty.*, 490 A.2d at 411.

149. Here, even though it is not the City's burden, the City actually *has* established that PA-DHS has available facilities to place more adjudicated young people in its facilities.

150. PA-DHS has not only open beds but also sufficient staff to accept more young people without exceeding the one-to-six ratio that applies to providers of secure care for Commonwealth children.

151. It is PA-DHS's sole responsibility to provide court-ordered rehabilitative treatment for youth who are adjudicated delinquent.

152. It cannot avoid that responsibility by claiming that it lacks resources or available facilities, especially where private providers and county detention

centers care for young people in need of secure care with a one-to-six ratio or worse.

153. PA-DHS is not the only entity providing secure care for “complex” delinquent youth in the Commonwealth, yet PA-DHS’s insistence on always maintaining a one-to-three ratio, even in times of extreme crisis, is unlawfully shifting all of the risk and burden to county detention centers by causing overcrowding and exacerbating already-stretched staffing at detention facilities.

154. Seven months after the Injunction Hearing, it is clear that PA-DHS will continue to refuse to even temporarily adjust its typical practices absent a court order.

155. It is also clear that piecemeal relief will only temporarily alleviate overcrowding at the PJJSC. There will be more harm if the requested modified injunction is denied than if it is granted.

The Injunction Will Preserve the Status Quo of the Last Uncontested State of Affairs, When PA-DHS Placed Children Within One Month of a Court Order.

156. The Court has already defined the status quo ante in this case as “before [PA-DHS] closed intake at its facilities and began refusing to accept delinquent youths court-ordered to be placed in appropriate state treatment facilities, i.e., when the PJJSC was operating at or below its 184-youth maximum capacity.” Mem. Op. at 53.

157. The Injunction Order briefly returned the PJJSC to its licensed capacity, but this status did not last, because PA-DHS resumed its “wrongful conduct” of refusing to accept delinquent youth at its facilities, after which the population at the PJJSC exploded again. *See SEIU Healthcare v. Com.*, 104 A.3d 495, 502 (Pa. 2014); *see* Part II.B, *supra*.

158. The requested modified injunction would preserve the status quo for two reasons.

159. First, prioritization of youth waiting at overcrowded detention facilities would return those facilities to their licensed capacity.

160. Second, enjoining PA-DHS from refusing to accept youth at its YDCs based on its definition of capacity, which in turn is based on its preferred one-to-three ratio for staffing, would allow more young people to be placed at YDCs consistent with PA-DHS’s statutory obligations to provide adequate services and facilities for adjudicated youth.

The Injunction Is Reasonably Suited to Abate the Offending Activity.

161. The requested modified injunction is reasonably suited to abate the offending activity—PA-DHS’s refusal to timely accept placements of youth which has caused severe overcrowding at the PJJSC.

162. The requested prioritization will abate overcrowding at the PJJSC.

163. The requested injunction requiring PA-DHS to accept youth into its facilities up to the point where those facilities have reached a one-to-six ratio will put a stop to PA-DHS's ongoing refusal to timely place young people at its facilities.

164. While an injunction order granting relief in the form of a one-time transfer of whatever number of young people would bring the PJJSC to its licensed capacity of 184 as of the date of the order may be somewhat effective in the short term, it will not provide long or even medium-term relief to overcrowding at the PJJSC.

165. The City will be required to repeatedly apply to this Court for injunctive relief as PA-DHS reverts to its default practices and as the PJJSC's pre-adjudication population fluctuates.

166. While the Court reasonably concluded in November of 2022 that ordering the transfer of fifteen young people from PJJSC to PA-DHS custody would "provide a cushion in terms of relieving the overcrowding at the PJJSC," Mem. Op. at 54, the current overcrowding crisis (again caused by excessively long waits for Commonwealth placements) demonstrates that that form of relief will only abate the offending activity for a short period of time.

167. Accordingly, the City respectfully requests a modified injunction that will provide more lasting relief while the Petition for Review in this case is

pending and that will prevent the parties from having to repeatedly relitigate issues of preliminary injunctive relief.

The Injunction Will Serve the Public Interest by Protecting Children and the City's Staff, Placing Them in PA-DHS Facilities That Are Not Over-Capacity.

168. PA-DHS's violation of its statutory mandate has placed children and staff at risk of inhumane conditions and the resultant danger of physical harm.

169. "[I]t is the State's obligation to maintain order and to preserve the safety and welfare of all citizens" in general, *Allegheny Cnty.*, 490 A.2d at 410 (citations omitted), and it is specifically PA-DHS's responsibility to "assure the availability of appropriate facilities" for delinquent youth, 62 P.S. § 724(a), and to accept youth who are ordered to be committed to the Commonwealth delinquent system by the court. 62 P.S. § 343.

170. It is in the public interest to protect these children and PJJSC staff from such conditions and to require the Commonwealth to discharge its duty to these young people.

171. It is also in the public interest for young people who are adjudicated delinquent to receive the rehabilitative treatment that a court has ordered in a timely manner and not be confined for longer than is necessary.

172. This is the purpose of the Juvenile Act and of the juvenile justice system.

CONCLUSION

173. The City respectfully submits that in light of the extensive evidentiary record from the November 9, 2022 hearing, the Court's November 10 Injunction Order and November 18 Memorandum Opinion, and the Declarations and exhibit attached to this Application, it is entitled to the requested modified injunction and no further injunction hearing is needed.

174. If the Court determines that an injunction hearing should be held, the City respectfully requests an expedited hearing and expedited briefing.

175. The Commonwealth has shirked its statutory responsibility, directly resulting in dangerously overcrowded conditions at PJJSC.

176. The City has demonstrated all of the prerequisites for preliminary injunctive relief and for modification of the November 10, 2022 Injunction Order. This Court should issue a modified injunction in the form of the proposed order accompanying this Application and Memorandum of Law in Support thereof.

DATED: June 9, 2023

Respectfully submitted,

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE CITY OF PHILADELPHIA,

Petitioner,

v.

**DEPARTMENT of HUMAN SERVICES of
the COMMONWEALTH OF
PENNSYLVANIA, and ACTING
SECRETARY OF HUMAN SERVICES,**

Respondents.

No. 516 MD 2022

ORDER

ORDER

NOW, upon review of Petitioner's Application to Modify Injunction Pursuant to Pa. R.A.P. 1532 (Application), Petitioner's request for expedited briefing is granted.

Respondents shall file and serve an Answer to the Application no later than 4:00 p.m. on Friday, June 16, 2023.

BY THE COURT:

_____, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE CITY OF PHILADELPHIA,

Petitioner,

v.

**DEPARTMENT of HUMAN SERVICES of
the COMMONWEALTH OF
PENNSYLVANIA, and ACTING
SECRETARY OF HUMAN SERVICES,**

Respondents.

No. 516 MD 2022

ORDER

**ORDER GRANTING PETITIONER'S APPLICATION TO MODIFY
INJUNCTION PURSUANT TO PA. R.A.P. 1532**

Upon consideration of Petitioner's Application to Modify Injunction Pursuant to Pa.R.A.P. 1532, the memorandum of law in support, and any response thereto, it is hereby ORDERED that the Application is GRANTED.

The Pennsylvania Department of Human Services is hereby ORDERED immediately to give priority on its waitlist for Commonwealth secure treatment facility placement to youth from over-capacity detention facilities.

The Pennsylvania Department of Human Services is hereby ENJOINED from delaying placement of youth at Commonwealth secure treatment facilities based on staffing ratios, except to the extent immediate placement of youth at

Commonwealth secure treatment facilities would cause one or more Commonwealth secure treatment facilities to violate the minimum staff-to-youth ratios set forth in the Pennsylvania Code at 55 Pa. Code Ch. 3800.

During the pendency of this litigation, the Pennsylvania Department of Human Services is hereby ORDERED and DIRECTED to take physical custody of two (2) juveniles who are housed at the Philadelphia Juvenile Justice Services Center (PJJSC) and who have been adjudicated delinquent by the Family Court of Philadelphia County and committed to the care and custody of Respondent Department of Human Services each working day on which the population of the PJJSC is above its licensed capacity of 184.

BY THE COURT:

_____, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE CITY OF PHILADELPHIA,

Petitioner,

v.

**DEPARTMENT of HUMAN SERVICES
of the COMMONWEALTH OF
PENNSYLVANIA, and ACTING
SECRETARY OF HUMAN
SERVICES,**

Respondents.

No. 516 MD 2022

**PETITIONER'S
MEMORANDUM OF LAW
IN SUPPORT OF ITS
APPLICATION TO MODIFY
INJUNCTION PURSUANT TO
PA.R.A.P. 1532**

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S
APPLICATION TO MODIFY INJUNCTION**

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I. STATEMENT OF THE CASE

The youth population at the Philadelphia Juvenile Justice Services Center (PJJSC) has reached unprecedented levels, consistently exceeding its licensed capacity of 184 beds by fifty or more young people, with an all-time high of 242 on June 5, 2023. As a result, the PJJSC is in crisis. As of June 9, 2023, there are 230 youth at the PJJSC, sixty-seven of whom have been stranded for months at PJJSC awaiting placement at a Commonwealth treatment facility, taking up more than a third of the 184 beds that the PJJSC is licensed to provide. As a result, presently thirty young people must be housed in the PJJSC's admissions area and gymnasium where they must sleep on mattresses on the floor and where fights now regularly break out. Fifteen young people currently at the PJJSC have been waiting for Commonwealth placement for more than ninety days. Despite the substantial efforts of the City to work with relevant stakeholders to find alternative locations for youth housed at the PJJSC, the PJJSC is now *far* more overcrowded than it was when the Court issued its Injunction Order in November. Without further relief from this Court, the children and staff at the PJJSC will continue to suffer serious harm and face the risk of even greater harm.

As a result, Petitioner City of Philadelphia, by and through its counsel, hereby moves this Court pursuant to Pennsylvania Rule of Appellate Procedure 1532 for special relief in the form of an order modifying the Preliminary Injunction

Order that the Court issued on November 10, 2022. The Injunction Order, which was issued after a full evidentiary hearing before this Court on November 9, 2022, directed Respondent Pennsylvania Department of Human Services (“PA-DHS”) “to take physical custody of 15 juveniles currently housed at the [PJJSC] . . . within 10 working days[.]” The Injunction Order denied the City’s Application “to the extent it seeks injunctive relief directing Respondents to take physical custody of juveniles who may, in the future, be housed at the PJJSC in excess of its licensed capacity.” While PA-DHS complied with the Injunction Order, it continues to employ an unlawful months-long waitlist for placement, continues to refuse to prioritize youth who are waiting for Commonwealth placement in overcapacity detention facilities, and continues to rely on its admittedly arbitrary and self-serving staffing ratio requirements (one staff to three youth) to justify its abdication of its statutory responsibility.

The City respectfully requests the Court modify its previous Injunction Order to require PA-DHS to: (1) give priority on its waitlist to youth from overcapacity detention facilities; (2) use the staffing ratios (one staff to six youth) that PA-DHS has determined to be safe and promulgated in its 3800 regulations for other secure facilities, including both public and private facilities that provide treatment and pre-adjudication detention, to determine “capacity” at Commonwealth secure treatment facilities ; and (3) direct PA-DHS to take custody

of two youth committed to PA-DHS custody each working day, as PA-DHS did when it was complying with the Court’s previous injunction order, while the PJJSC is above its licensed capacity.

II. BACKGROUND¹

The PJJSC provides temporary housing for youth awaiting adjudication for delinquent offenses, those charged as adults and awaiting criminal trial, and those awaiting placement after adjudication. While the Court’s Injunction Order provided some relief, it was temporary. Meanwhile, the census at the PJJSC has risen substantially, reaching its highest level ever—higher than when the Court ordered relief in November—despite the City’s other efforts to reduce its population. Nonetheless, PA-DHS steadfastly refuses to prioritize youth from overcrowded counties for placement while clinging to an arbitrary and self-serving definition of capacity that leaves approximately seventy youth at the PJJSC for months awaiting placement.

A. The Categories of Young People Housed at the PJJSC

The population of youth at the PJJSC fluctuates daily and is dependent on a variety of factors over which the City has little to no control. Youth at the PJJSC fall into three categories: those charged with juvenile offenses but not yet

¹ A fulsome recitation of the facts underlying this matter is contained in the City’s Petition for Review and in the Court’s November 18, 2022, Memorandum Opinion. Only the facts relevant to this Application are provided here.

adjudicated; those charged as adults but not yet tried; and those adjudicated delinquent. Youth in all three groups have been judicially ordered detained pending adjudication, trial, or treatment. PJJSC is licensed and designed to be a temporary detention facility. However, for the past year, the post-adjudication population—young people who should be in Commonwealth custody but are instead waiting for months in detention for placement—has grown and now takes up an untenable percentage of available beds at PJJSC.

1. Young People Charged with Delinquent Offenses and Awaiting Adjudication in Family Court

Many of the young people at the PJJSC are awaiting adjudication in Family Court for delinquent offenses but have been court-ordered to remain in secure detention pending adjudication. This population fluctuates depending on arrests and charging of young people with juvenile offenses on a daily basis. Some of these youth who are waiting for adjudication may be eligible for one or more alternatives to detention, such as GPS tracking, the Intensive Supervision Program, or a Pre-Adjudication Evening Reporting Center. Tr. of Prelim. Inj. Hearing, November 9, 2022 (“T.”) 87:4–89:15. However, the decision to move a young person from the PJJSC to one of these alternatives to detention resides with Family Court judges, not with the City, and is based on an evaluation of whether each young person meets the applicable criteria. T. 87:15–23. Young people charged

with violent crimes will generally not be eligible for alternative to detention programs. T. 89:4–15.

2. Young People Charged as Adults and Awaiting Trial

The PJJSC also houses youth who are charged with adult crimes and are awaiting trial in the adult criminal justice system. T. 23:17-24:21. City DHS cannot, on its own volition, move these youth from the PJJSC to adult prison to alleviate overcrowding. Some youth have been charged as adults, but by order of the Family Court with the consent of the District Attorney’s Office under “Act 96,” they must be detained in a juvenile facility. T. 24:4-21. Other youth are charged with adult crimes but held at the PJJSC in the 12-bed “sight and sound” unit pursuant to the Juvenile Justice Reform Act, which went into effect in December 2021. T. 24:22-25:2. To be moved to adult prison, these young people must have an “interest of justice” (IOJ) hearing, after which a judge will determine whether it is in the interest of justice for the young person to move to adult prison. T. 29:17-30:18. Only the District Attorney’s office can request IOJ hearings; City DHS continues to urge the District Attorney’s office to request these hearings on a more frequent and regular basis, and currently only five youth are awaiting IOJ hearings. T. 30:19–31:8; Second Declaration of Kimberly Ali (“2d Ali Decl.”) ¶ 33.

3. Post-Adjudication Youth

The PJJSC also holds youth who have already been adjudicated delinquent by a Family Court judge and are awaiting placement. The vast majority of post-adjudication youth at the PJJSC have already been court-ordered to secure treatment at a Commonwealth facility and are stranded at PJJSC while they wait—often for several months—to be transferred to a treatment facility so that they may begin their court-ordered period of rehabilitation and treatment. As detailed in the City’s previous Application for Special Relief in this case, the wait times for youth committed to Commonwealth custody have grown significantly in recent years and, with it, the number of youth held at the PJJSC who are awaiting Commonwealth placement. Since January of 2020, the City has been warning PA-DHS of the problems that its unlawful waitlist is causing at the PJJSC and asking PA-DHS to take urgent action to provide adequate services for youth who are court-committed to secure treatment. Pet. for Review ¶¶ 36-66. Incredibly, youth who have already been adjudicated and are awaiting placement at a Commonwealth facility occupy more than a third of the PJJSC’s 184-beds licensed capacity. Second Declaration of Gary Williams (“2d Williams Decl.”) ¶ 14; *id.*, Ex. A. At this time, fifteen young people at PJJSC have been waiting for Commonwealth placement for more than ninety days. *Id.*, ¶ 7.

B. After a Modest Decrease in Population Immediately Following PA-DHS's Compliance With the Injunction Order, the PJJSC Population Has Increased Rapidly and Is Again at Crisis Levels

On November 9, 2022, the day of the Injunction Hearing, the PJJSC's total population was 198 youth, sixty of whom had been committed to Commonwealth treatment by court order. When the Court issued its Order the following day, the PJJSC's population had already increased to 205 youth, sixty-two of whom had been committed to Commonwealth treatment by court order. The Court's Injunction Order, and PA-DHS's compliance with it, provided some temporary and partial relief to over-crowding at PJJSC.

As ordered by this Court, PA-DHS took custody of fifteen Commonwealth-committed young people from the PJJSC within ten working days of the date of the Injunction Order. As a result, the number of young people at PJJSC awaiting a Commonwealth placement reached a low of fifty on November 23, 2022 and stayed at fifty through November 27. 2d Williams Decl., Ex. A. The modest decrease in the number of young people awaiting Commonwealth placement allowed the PJJSC to operate closer to its licensed capacity for a short period of time. Between November 22 and December 13, 2022, the PJJSC's total population stayed below 200 but was still over its licensed capacity of 184, except on December 3, when the PJJSC population was 183. *Id.* Beginning on November 27, 2022, the number of youth at the PJJSC waiting for Commonwealth placement

increased, from fifty on November 27, 2022 to a high of eighty in April 2023, and stands at sixty-seven today. *See id.* The total population of youth at PJJSC has also increased since the end of November, and has stayed over 200 since December 30, reaching a high of 242 on June 5, 2023—the highest in the history of the PJJSC. *Id.* ¶¶ 2, 15.

As the Court heard at the Injunction Hearing, overcrowding is a problem in itself, but it also leads to increased tension among the young people who are living in such close quarters, as well as other problems. Most obviously, when the PJJSC is so far over its licensed capacity, as it is now, there are not enough beds for all of the young people at the PJJSC. As a result, young people are again sleeping on mattresses on the floor and in the admissions area of PJJSC. *See* 2d Williams Decl., ¶ 15; *see also* Nov. 9, 2022 Hearing Ex. P-39 (showing sleeping conditions in admissions area at PJJSC on November 3, 2022). The largest space in the admissions area is only 13’ by 14’, or 182 square feet. 2d Williams Decl., ¶ 15. PJJSC also had to limit its recreation space by curtaining off half of its gymnasium for additional temporary housing to upgrade locks that, as a result of the overcrowding and staffing challenges, youth have been able to compromise. *See* 2d Williams Decl., ¶ 17.

The lack of physical space available in the admissions area disrupts the intake process, a critical part of which is assessing when a new resident must be

kept separated from another resident or group of residents. 2d Williams Decl. ¶ 16. For example, young people may be members of rival groups or co-defendants, or one young person may have been the target of a violent crime by another. *Id.* Because there are young people living in the admissions area, new residents have immediately spotted a person they recognize upon arrival and started fighting. *Id.* In addition, City DHS personnel have observed increases in makeshift weapons and increases in fights between young people as the population has climbed. 2d Williams Decl. ¶ 19.

PJJSC has successfully increased its rate of onboarding new personnel, hiring fifty new employees since the hearing of November 9, 2022. 2d Williams Decl. ¶ 21. However, in that same period, twenty-six employees—including ten of the new hires—have left City DHS employment. *Id.* PJJSC has increased its training, shadowing, and mentorship programs to improve the retention rate but, given the working conditions, the facility continues to be understaffed. *Id.* As a result, there are not sufficient staff to take youth out of the facility for non-emergent medical appointments. 2d Williams Decl. ¶ 20. The high rate of turnover makes residents and staff less safe. 2d Williams Decl. ¶ 21.

C. The City Has Done All It Can to Reduce the PJJSC’s Population

The Injunction Order directed the City to “work diligently with the City’s relevant stakeholders (First Judicial District and Juvenile Probation) to recommend

and secure referrals to the placement options discussed at the November 9, 2022 evidentiary hearing, which include the new Department of Human Services operated youth development center set to open in Pittston, Pennsylvania, and the private, out-of-state provider, Rite of Passage.” Injunction Order ¶ 2. The City has worked diligently to secure placements to Pittston and Rite of Passage. The City coordinated with the First Judicial District and PA-DHS regarding the transfer of the fifteen court-ordered youth to Pittston. The City (both through counsel in this case and representatives of City DHS) requested that PA-DHS allow Philadelphia young people to take the additional nine openings available at Pittston. 2d Ali Decl. ¶ 9. PA-DHS rejected that request. *Id.*

In addition, the City coordinated with the First Judicial District Family Court and Probation to ensure that PA-DHS had referrals for youth who were eligible to be placed at Rite of Passage. 2d Ali Decl. ¶¶ 20-21. Out of approximately thirty-two referrals provided by Probation, only ten young people at PJJSC have been accepted by Rite of Passage, and only three of those placements have been approved by the Family Court.² *Id.* ¶¶ 22-23.

² One youth is waiting a hearing in Family Court, and PA-DHS also placed three of the Rite-of-Passage-approved youth in its own facilities before the Family Court acted on their transfer applications. 2d Ali Decl. ¶ 23.

Since the November 9 hearing, the City has also pursued other potential means of reducing PJJSC's overall population.

Since the hearing, the City issued a new request for proposals for Detention, Community Based Detention Shelter, mid-level institutional, and private secure residential placements. 2d Ali Decl. ¶ 34. The City sought placement options not only from existing providers, but also any private provider willing to come to the Philadelphia region. *Id.* But any resulting program(s) are unlikely to provide relief in the next few months given the time required to contract and for new providers—who do not currently provide these services—to set up their operations. *Id.*

The City has also expanded its contract with private provider Adelphoi to include a mid-level placement for girls. This placement has eight beds available for girls adjudicated delinquent, although there are none currently at the PJJSC who fit this criteria. 2d Ali Decl. ¶ 26. At the request of City DHS, other private providers have indicated that they are working to expand the number of beds available to the City. 2d Williams Decl. ¶ 29.

With respect to the young people in the PJJSC's "sight and sound" unit, the City continues to communicate with the District Attorney's Office regarding the need to increase the frequency and regularity of IOJ hearings so that young people can be moved to the youthful offender unit at State Road if doing so is in the interest of justice. 2d Ali Decl. ¶ 33. At present, of the approximately 12 youth in

the unit, only five have not been evaluated by the District Attorney or court. *Id.* But because the court has already denied IOJ petitions for several youth in the sight-and-sound unit, and because those in the unit must be kept separate from the rest of the PJJSC population, reducing the sight-and-sound unit population below the unit's capacity through additional IOJ hearings will not result in more available bed space at PJJSC. *See id.*

Following the Injunction Hearing, the City continued its efforts to establish a detention site at the Modular Unit 3 ("MOD-3") of the Riverside Correctional Facility, a Philadelphia adult prison on State Road.³ While MOD-3 is a carceral setting and is far from ideal for young people, the City wanted to explore all options for alleviating over-crowding, including a co-locating a juvenile detention facility at this adult site. City DHS representatives met with the Commissioner of the Philadelphia Department of Prisons to discuss next steps on December 12, 2022. This meeting revealed that the potential co-location would not be possible at this time. MOD-3 shares a central command center with units of the prison that house adults and that are staffed by corrections officers. This design makes it significantly likely that youth placed there, who cannot legally be detained in an adult facility, will encounter adult corrections officers for even routine activities such as meals. Further, this raises the possibility, especially in the event of an

³ The facility's address is 8151 State Road, Philadelphia, Pennsylvania.

emergency, of corrections officers interacting directly with the young people in MOD-3 in violation of federal and state law. The City has explored other options for co-location including the former Philadelphia Women’s Prison, but that facility is now privately owned and is unavailable for use as a juvenile facility. 2d Ali Decl. ¶¶ 27-32. In addition, the City continues to work with existing providers to expand services, including beds available, as an alternative and more appropriate option to co-location.

D. PA-DHS Continues to Refuse to Prioritize Young People From Overcrowded Detention Facilities on Its Unlawful Waitlist

At the Injunction Hearing, PA-DHS representatives admitted that there is no statute or regulation preventing them from prioritizing Philadelphia youth—or youth for any over-crowded facility in the Commonwealth—for placement. T. 276:17-278:7; 313:24-315:9; Court’s Mem. Op. (Nov. 18, 2022) (“Op.”) at 44-45. Mr. Neff also testified that he would seek approval from the Acting PA-DHS Secretary and then-Governor Wolf to give all twenty-four openings at the new Pittston facility to Philadelphia youth. *Id.*

Shortly after the Injunction Order was issued, the City inquired—both through City DHS representatives and counsel for the City—as to whether PA-DHS would grant priority to Philadelphia youth for openings at YDCs during the PJJSC’s current overcrowding crisis. PA-DHS’s answer was and continues to be “no.” Despite the City’s request and Mr. Neff’s testimony at the November 9,

2022, hearing, PA-DHS filled the other nine openings at Pittston with young people from other counties. 2d Ali Decl. ¶ 9. And it filled eight out of fifteen other openings at Cove PREP with non-Philadelphia youth. *Id.* ¶ 19. As City DHS and its counsel continued to update PA-DHS and its counsel regarding the growing population at PJJSC (both Commonwealth-committed and overall) and continued to request priority for youth from overcapacity detention facilities, PA-DHS continued to refuse to temporarily adjust its waitlist practices. *Id.* ¶ 14.

E. PA-DHS Continues to Delay Intake to YDCs Based on its Self-Determined and Self-Imposed Definition of Capacity

Pennsylvania law—indeed, regulations promulgated by PA-DHS—establishes that facilities that provide secure care for children in Pennsylvania must maintain a ratio of one child care worker to six children. *See* 55 Pa. Code §§ 3800.2, 3800.274(5)-(6) (“[t]here shall be one child care worker present with the children for every six children during awake hours” and “one child care worker present with the children for every 12 children during sleeping hours”); *see also* 62 P.S. § 1021; 23 Pa. C.S. § 6306. These standards apply to county secure detention facilities and private providers of secure treatment services that contract with the Commonwealth. They form the foundation of the actual staffing ratios at the PJJSC, as described above. In other words, PA-DHS itself believes a one-to-six ratio for care and supervision of the “complex” young people who are at the PJJSC awaiting adjudication and placement is appropriate. *See* T. 265:2-266:5 (Neff

Direct) (the “complex” young people who receive treatment and rehabilitation services at YDCs are the same as those awaiting adjudication and placement at the PJJSC).

At the Injunction Hearing, Mr. Neff testified regarding the staff-to-youth ratio and capacity of the Commonwealth’s YDCs. As he explained, the “capacity” of YDCs is limited by staff-to-youth ratios, not because of square footage or number of beds or bathrooms. T. 274:11-21 (Neff Direct). Therefore, when PA-DHS claims that its YDCs are “between 115 to 130 to 135 percent of their capacity,” it is referring to its determination of how many young people can be at a particular YDC based on PA-DHS’s staff-to-youth ratio and the number of staff available at that facility. *Id.*; *see also* T. 289:20-24 (Neff Direct). Notwithstanding PA-DHS’ self-imposed staff-to-youth ratio, PA-DHS has sufficient space and actual beds to accommodate more youth at its YDCs than it is currently allowing. T. 230:3-24 (Rubin Cross).

Notably, PA-DHS' staff-to-youth ratio is one-to-three, twice as restrictive as the ratio PA-DHS’ own regulations require for similar facilities. And that staff-to-youth ratio at YDCs of one-to-three is based solely on Mr. Neff’s opinion and experience. T. 292:6-293:18 (Neff Cross). It has no basis in any law or regulation. *Id.* Deputy Secretary Jonathan Rubin deferred to Mr. Neff and accepted his recommendation of staff-to-youth ratio and capacity for YDCs. T. 229:4-230:2

(Rubin Cross). “Direct care staff,” meaning youth development aides, youth development aide supervisors, youth development counselors, and youth development counsel supervisors, are included in PA-DHS’s staff-to-youth ratio. T. 294:1-10 (Neff Cross). Other support staff such as psychiatry, psychological services, medical, and education specialists are not considered “direct care” and do not count toward the one-to-three ratio. T. 293:19-295:9.⁴ Accordingly, PA-DHS has implemented a self-determined and self-imposed ratio for YDCs that is significantly different than the ratio set forth in PA-DHS’ regulations for equivalent facilities.

For example, PA-DHS contends that Rite of Passage is an “equivalent facility” that provides “equivalent services” to the Commonwealth’s YDCs. T. 291:8-15 (Neff Direct). PA-DHS is seeking referrals to Rite of Passage for secure services, to allow a young person who would otherwise be placed at a YDC be placed at Rite of Passage instead. *See* Nov. 9 Hearing Ex. R-1, (Oct. 31, 2022 Letter). Yet Rite of Passage’s contract with PA-DHS is governed by the one-to-six ratio of the Pennsylvania 3800 regulations and not by the one-to-three ratio that Mr. Neff and Mr. Rubin have selected for Commonwealth YDCs. T. 286:5-13 (Neff Direct). In other words, PA-DHS believes it is fine for an “equivalent

⁴ The majority of staff vacancies are in the youth development aide and youth development aide supervisor positions. *Id.*

facility” to operate at a one-to-six ratio, but mandates that its own facilities only operate at a one-to-three ratio.

PA-DHS’s self-determined and self-imposed definition of capacity impacts every child throughout the Commonwealth who is waiting for a secure treatment placement. PA-DHS does not just try to maintain a one-to-three ratio whenever possible—it actually defines capacity based on that ratio and closes intake at its facilities, despite the availability of beds and space, if the facility exceeds its self-imposed definition of capacity. If the population at a YDC exceeds 110% of capacity, Pennsylvania law requires PA-DHS to “notify the courts and the General Assembly that intake to that institution or program is temporarily closed.” 42 Pa. C.S. § 6353(c). PA-DHS relies on this statutory provision to close intake at its YDCs based on its preferred staff-to-youth ratio, which provides for double the number of staff required for other facilities that provide secure care (both treatment and detention) to Pennsylvania youth. *See* Nov. 9, 2022 Hearing Ex. R-1 (Oct. 31, 2022 Letter).

III. LEGAL STANDARD

“An injunction may be modified or dissolved upon a showing of changed circumstances that have occurred since the issuance of the injunction.” *Nether Providence Twp. v. Coletta*, 133 A.3d 86, 91 (Pa. Cmwlth. 2016) (citing *Whibby v. Dep’t of Corrections*, 820 A.2d 829, 831 (Pa. Cmwlth. 2003)). Sufficiently

“changed circumstances” include when: “(1) the law, common or statutory, has changed, been modified or extended; (2) there is a change in the controlling facts on which the injunction rested; or, (3) in its judicially exercised discretion, [the Court] believes the ends of justice would be served by a modification.” *Id.* at 93 (citing *Ladner v. Siegel*, 148 A. 699, 702 (Pa. 1930)).

Where an application to modify an injunction is seeking further injunctive relief, the party seeking an injunction must establish the six prongs of the well-established preliminary injunction test in Pennsylvania.

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages.

Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings.

Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.

Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity.

Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc. 828 A.2d 995, 1001 (Pa. 2003) (citations omitted). In the mandatory injunction context, an applicant must establish that:

- (5) Irreparable harm will occur that is not compensable by money damages;
- (6) greater injury will result from the denial of the injunction than by granting the injunction;
- (7) the injunction will restore the *status quo* between the parties; and
- (8) the party seeking relief has a clear right to relief in an actionable claim.

Wyland v. W. Shore Sch. Dist., 52 A.3d 572, 582 (Pa. Cmwlth. 2012) (citing *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547 (Pa. Cmwlth. 2011)).

IV. ARGUMENT

A. The City Has a Clear Right to Relief Because PA-DHS Is Required by Law to Provide Facilities for Youth at PJJSC Adjudicated Delinquent.

This Court has already found that the City has a clear right to relief in mandamus to compel PA-DHS to comply with its statutory duties under the Pennsylvania Juvenile Act and Human Services Code. Mem. Op. 47-51. As there has been no change in the controlling law or in the facts related to the City's mandamus claim asserted in the Petition for Review, the Court's finding that the City has satisfied the "clear right to relief" prong of the preliminary injunction test should not be revisited or disturbed." *Bienert v. Bienert*, 168 A.3d 248, 254 (Pa.

Super. 2017) (a trial court acts appropriately “in deciding to adhere to those prior rulings to maintain the consistency and uniformity of its decisions that law-of-the-case principles favor”).

B. The Proposed Modified Preliminary Injunction Is Necessary to Stop Ongoing Harm and to Prevent Further Immediate and Irreparable Harm to the City and the Children It Is Charged with Caring For.

There is no foreseeable end to the PJJSC’s overcrowding absent an order from this Court. Discussions with PA-DHS have failed to resolve the issue and money damages are no remedy. The harm to the youth, PJJSC staff, and the City is ongoing, immediate, and irreparable.

Based on the similar circumstances that existed at the PJJSC in November 2022, this Court found that the City had demonstrated immediate and irreparable harm. Mem. Op. 51-52. The Court noted that due to overcrowding, young people at the PJJSC were forced to sleep on mattresses on the floor in the admissions area and that the PJJSC was experiencing an increase in contraband, fights, and conflict. *Id.* Sadly, all of these conditions are again present today, *see* 2d Williams Decl. ¶¶ 15, 16, 19, except that the level of overcrowding is significantly worse. At the Injunction Hearing, the PJJSC census was 198; as of the date of this filing the PJJSC census is 230. The PJJSC is so far over its physical capacity that 30 young people are sleeping in the admissions area and in the gymnasium on mattresses on the floor. The sheer number of youth there impacts the staff’s ability to use the area

for its purpose of screening new admissions, resulting in increased fights. The use of half of the gymnasium for temporary housing reduces the options available for youth to recreate and leads to increased tension at the facility. As a matter of law, where a municipal detention facility faces a crisis of overcrowding, and the Commonwealth is responsible for at least some of those detained, irreparable harm is established. *See Allegheny Cnty. v. Commw.*, 490 A.2d 402, 414 (Pa. 1985).

C. Greater Injury Will Result from Denying Than from Granting the Injunction.

As explained above, the children and staff at the PJJSC are contending with unhealthy and dangerously crowded conditions that have already resulted in youth and staff injuries. The harm of denying the requested modified injunction is extreme and significant. As the Court noted in its Memorandum Opinion, “[w]ithout this Court’s November 10, 2022 Order, there was a very real possibility that the overcrowding at the PJJSC would continue indefinitely into the future and result in even more injuries to, and possibly even the death of, our most at-risk youths and the staff members who place themselves in harm’s way on a daily basis at these detention centers.” Mem. Op. 53. Unfortunately, because PA-DHS failed to act proactively to accommodate a sufficient number of young people into its YDCs, the relief provided by the Injunction Order was only temporary and PJJSC is again dangerously overcrowded. With the current level of overcrowding, PJJSC

is operating with a one-to-twelve or one-to-fourteen staff-to-youth ratio during the daytime, as compared to PA-DHS's one-to-three ratio. 2d Williams Decl. ¶ 22.

In contrast, granting the requested modified injunction will cause little harm. The City does not seek to force PA-DHS to take custody of all of the young people committed to its care immediately all at once. Rather, the City requests: (1) that PA-DHS give priority to youth from over-crowded detention facilities (whether Philadelphia or elsewhere) on its waitlist; (2) that PA-DHS be enjoined from using its self-serving definition of capacity rather than the ratio defined in its own regulations to delay intake of young people to its facilities; and (3) that PA-DHS be directed to accept custody of two Commonwealth-committed young people each working day that the PJJSC is over its licensed capacity.

The only harm that could be caused by the first part of the City's request is that young people at under-capacity facilities may wait longer for placement. This is the unfortunate result of the Commonwealth's abdication of its statutory duty to provide adequate treatment facilities, but it pales in comparison to the harm that young people at over-crowded detention facilities face when they must endure months-long waits for placement in unhealthy and unsafe conditions. Further, this requested relief applies equally to youth in all counties of the Commonwealth: if the PJJSC gets under its licensed capacity while this case is pending and another

county detention facility goes over capacity, then priority will temporarily go to young people from that facility and youth at the PJJSC may wait longer.

The second and third parts of the City's request would enjoin PA-DHS from refusing to place young people in its facilities based on its arbitrary definition of capacity, which in turn is based on one man's opinion of what is an appropriate staff-to-youth ratio for YDCs. This would mean that PA-DHS would have to comply with its statutory duty to promptly place adjudicated youth in its facilities until it reaches a one-to-six staff-to-youth ratio, which is the ratio established by regulation for all facilities that provide secure detention and treatment care for Pennsylvania young people, including Rite of Passage. By its express terms, the requested injunction would *not* cause PA-DHS to exceed the minimum ratios set forth in the 3800 regulations. The requested injunctive relief would not require PA-DHS to operate its YDCs in violation of any law or regulation, as PA-DHS's abdication of its duty has forced the City to do. It would not require PA-DHS to operate its facilities with anything close to the one-to-twelve ratio that the City has been dealing with.

In *Allegheny County*, the Pennsylvania Supreme Court held that "it is not the burden of the political subdivision to establish that the state has available facilities" for a transfer of incarcerated persons from county jail to state prison. *Allegheny Cnty.*, 490 A.2d at 411. Here, even though it is not the City's burden, the City

actually *has* established that PA-DHS has available facilities to place more adjudicated young people in its facilities. PA-DHS has not only open beds but also sufficient staff to accept more young people without exceeding the one-to-six ratio that applies to providers of secure care for Commonwealth children. It is PA-DHS's sole responsibility to provide court-ordered rehabilitative treatment for youth who are adjudicated delinquent. It cannot avoid that responsibility by claiming that it lacks resources or available facilities, especially where private providers and county detention centers care for young people in need of secure care with a one-to-six ratio or worse. PA-DHS is not the only entity providing secure care for "complex" delinquent youth in the Commonwealth, yet PA-DHS's insistence on always maintaining a one-to-three ratio, even in times of extreme crisis, is unlawfully shifting all of the risk and burden to county detention centers by causing overcrowding and exacerbating already-stretched staffing at detention facilities.

Seven months after the Injunction Hearing, it is clear that PA-DHS will continue to refuse to even temporarily adjust its typical practices absent a court order. It is also clear that piecemeal relief will only temporarily alleviate overcrowding at the PJJSC. There will be more harm if the requested modified injunction is denied than if it is granted.

D. The Injunction Will Preserve the Status Quo of the Last Uncontested State of Affairs, When PA-DHS Placed Children Within One Month of a Court Order.

The Court has already defined the status quo ante in this case as “before [PA-DHS] closed intake at its facilities and began refusing to accept delinquent youths court-ordered to be placed in appropriate state treatment facilities, i.e., when the PJJSC was operating at or below its 184-youth maximum capacity.” Mem. Op. at 53. The Injunction Order briefly returned the PJJSC to its licensed capacity, but this status did not last, because PA-DHS resumed its “wrongful conduct” of refusing to accept delinquent youth at its facilities, after which the population at the PJJSC exploded again. *See SEIU Healthcare v. Com.*, 104 A.3d 495, 502 (Pa. 2014); *see* Part II.B, *supra*. The requested modified injunction would preserve the status quo for two reasons. First, prioritization of youth waiting at overcrowded detention facilities would return those facilities to their licensed capacity. Second, enjoining PA-DHS from refusing to accept youth at its YDCs based on its definition of capacity, which in turn is based on its preferred one-to-three ratio for staffing, would allow more young people to be placed at YDCs consistent with PA-DHS’s statutory obligations to provide adequate services and facilities for adjudicated youth.

E. The Injunction Is Reasonably Suited to Abate the Offending Activity.

The requested modified injunction is reasonably suited to abate the offending activity—PA-DHS’s refusal to timely accept placements of youth which has caused severe overcrowding at the PJJSC. The requested prioritization will abate overcrowding at the PJJSC. The requested injunction requiring PA-DHS to accept youth into its facilities up to the point where those facilities have reached a one-to-six ratio will put a stop to PA-DHS’s ongoing refusal to timely place young people at its facilities.

While an injunction order granting relief in the form of a one-time transfer of whatever number of young people would bring the PJJSC to its licensed capacity of 184 as of the date of the order may be somewhat effective in the short term, it will not provide long or even medium-term relief to overcrowding at the PJJSC. The City will be required to repeatedly apply to this Court for injunctive relief as PA-DHS reverts to its default practices and as the PJJSC’s pre-adjudication population fluctuates. While the Court reasonably concluded in November of 2022 that ordering the transfer of fifteen young people from PJJSC to PA-DHS custody would “provide a cushion in terms of relieving the overcrowding at the PJJSC,” Mem. Op. at 54, the current overcrowding crisis (again caused by excessively long waits for Commonwealth placements) demonstrates that that form of relief will only abate the offending activity for a short period of time.

Accordingly, the City respectfully requests a modified injunction that will provide more lasting relief while the Petition for Review in this case is pending and that will prevent the parties from having to repeatedly relitigate issues of preliminary injunctive relief.

F. The Injunction Will Serve the Public Interest by Protecting Children and the City's Staff, Placing Them in PA-DHS Facilities That Are Not Over-Capacity.

PA-DHS's violation of its statutory mandate has placed children and staff at risk of inhumane conditions and the resultant danger of physical harm. "[I]t is the State's obligation to maintain order and to preserve the safety and welfare of all citizens" in general, *Allegheny Cnty.*, 490 A.2d at 410 (citations omitted), and it is specifically PA-DHS's responsibility to "assure the availability of appropriate facilities" for delinquent youth, 62 P.S. § 724(a), and to accept youth who are ordered to be committed to the Commonwealth delinquent system by the court. 62 P.S. § 343. It is in the public interest to protect these children and PJJSC staff from such conditions and to require the Commonwealth to discharge its duty to these young people. It is also in the public interest for young people who are adjudicated delinquent to receive the rehabilitative treatment that a court has ordered in a timely manner and not be confined for longer than is necessary. This is the purpose of the Juvenile Act and of the juvenile justice system.

V. CONCLUSION

The Commonwealth continues to shirk its statutory responsibility, directly resulting in dangerously overcrowded conditions at PJJSC. The requested modified injunction will provide immediate and ongoing relief to the young people and staff at the PJJSC now. The City has demonstrated all of the prerequisites for preliminary injunctive relief and for modification of an injunction, and this Court should issue a modified injunction in the form of the proposed order accompanying this Application and Memorandum of Law in Support thereof.

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Respectfully submitted,

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