

(*City of Phila. I*). Briefly though, some background and procedural history, as well as the legal framework governing this matter, are worth repeating.

I. BACKGROUND & PROCEDURAL HISTORY

On October 21, 2022, the City of Philadelphia (Petitioner) filed its Petition for Review in the Nature of an Action for Mandamus, Declaratory Injunctive Relief (Petition for Review or Petition) against the Department of Human Services (DHS) of the Commonwealth of Pennsylvania (Commonwealth), and Meg Snead, in her official capacity as Acting Secretary of Human Services¹ (collectively, Respondents), seeking declaratory, mandamus, and injunctive relief. Petitioner specifically alleges that DHS has acted in defiance of its statutory mandate to take custody of youths housed at the PJJSC, who have already been adjudicated delinquent and ordered by the courts to receive rehabilitation and treatment at Commonwealth facilities, by refusing to take custody of such delinquent youths despite the existence of open spots in the Commonwealth's facilities that are designed to provide such rehabilitation and treatment. *City of Phila. I*, slip op. at 1 (citing Petition for Review (Pet. for Rev.) ¶ 1). Petitioner claims that these delinquent youths are instead being detained for extended periods of time at the PJJSC, which is a temporary detention center that is not designed to provide court-ordered rehabilitation and treatment, while they await transfer and placement at appropriate Commonwealth treatment facilities. *Id.*, slip op. at 1-2. According to

¹ As noted in this Court's July 14, 2023 Order, discussed *infra*, Meg Snead is no longer the Acting Secretary of Human Services. Governor Josh Shapiro appointed Valerie A. Arkoosh, M.D., MPH to lead the Pennsylvania Department of Human Services (DHS) on January 17, 2023, and Dr. Arkoosh officially took office as Secretary of Human Services on June 29, 2023. See <https://www.dhs.pa.gov/about/Pages/DHS-Leadership.aspx> (last visited July 24, 2023); see also *City of Phila. v. Dep't of Hum. Servs.* (Pa. Cmwlth., No. 516 M.D. 2022, order filed July 14, 2023) (Ceisler, J.), at 1 n.1.

Petitioner, this has resulted in dangerous overcrowding of the PJJSC, which it claims DHS has refused to alleviate. *Id.*, slip op. at 2 (citing Pet. for Rev. ¶ 2).

Petitioner also filed an Application for Special Relief in the Form of a Preliminary Injunction (Application for Preliminary Injunction), requesting that this Court issue a mandatory preliminary injunction ordering Respondents “to immediately accept custody of the [35] children committed to their care by court order who are currently housed in the over-capacity [PJJSC] to bring that facility’s population to its licensed capacity” within 10 days of notification by Petitioner that the PJJSC has exceeded its licensed capacity. *City of Phila. I*, slip op. at 2 (citation & footnote omitted). Petitioner additionally sought continuing injunctive relief directing Respondents to take physical custody of juveniles housed at the PJJSC who may, in the future, be housed at the PJJSC in excess of its licensed capacity. *Id.* (citation omitted). Respondents filed an Answer and Cross-Application for Special Relief (Cross-Application), generally denying that Petitioner was entitled to injunctive relief and instead arguing that Respondents were entitled to injunctive relief in the form of an order that maintained the status quo and prohibited Petitioner from transferring any juveniles to any DHS facility until DHS’s capacity fell below 110% or until DHS notified Petitioner that DHS had equivalent services available at equivalent facilities. *City of Phila. I*, slip op. at 3 (citations omitted).

Following an evidentiary hearing held on November 9, 2022, this Court issued an Order on November 10, 2022, granting in part and denying in part Petitioner’s Application for Preliminary Injunction, and denying Respondents’ Cross-Application. In so doing, the Court directed Respondents to take physical custody of 15 juveniles then-housed at the PJJSC, who had been adjudicated delinquent by the Family Court of Philadelphia County (Family Court) and committed to the care

and custody of DHS, within 10 working days of the Order. *City of Phila. I*, slip op. at 3-4; Cmwlth. Ct. Order dated Nov. 10, 2022, ¶ 1. The Court denied the Application to the extent it sought continuing injunctive relief. *City of Phila. I*, slip op. at 4; Cmwlth. Ct. Order dated Nov. 10, 2022, ¶ 1. The Court further instructed Petitioner to work diligently with relevant stakeholders, i.e., the First Judicial District and Juvenile Probation, to recommend and secure referrals to the placement options discussed at the November 9, 2022 hearing, which at the time included a new DHS-operated youth development center (YDC) that had been set to open in Pittston, Pennsylvania, and the private, out-of-state provider, Rite of Passage, to meet the various needs of court-committed juvenile delinquents in this Commonwealth. *City of Phila. I*, slip op. at 4; Cmwlth. Ct. Order dated Nov. 10, 2022, ¶ 2.

Legal Framework

In its November 18, 2022 opinion explaining its rationale, the Court set forth the relevant statutory and regulatory framework relating to the structure of the juvenile justice system, which the Court quotes in full as follows:

The treatment of delinquent youths in Pennsylvania and the allocation of responsibility between the Commonwealth and the 67 counties is governed by a patchwork of statutory provisions, which include provisions of the Human Services Code⁶ (formerly the Public Welfare Code) and the Juvenile Act.⁷ Section 701 of the Human Services Code provides that DHS⁸ “shall assure within the Commonwealth the availability and equitable provision of adequate public child welfare services for all children who need them regardless of religion, race, settlement, residence or economic or social status.” 62 P.S. § 701. The purposes of the Juvenile Act include, *inter alia*, providing, “[c]onsistent with the protection of the public interest, . . . for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible

and productive members of the community.” 42 Pa.C.S. § 6301(b)(2). The Juvenile Act further provides that any confinement be imposed “only if necessary and for the minimum amount of time that is consistent with the purposes” of the Juvenile Act.⁹ 42 Pa.C.S. § 6301(b)(3)(ii).

⁶ Act of June 13, 1967, P.L. 31, *as amended*, 62 P.S. §§ 101-1503. The Children and Youth provisions appear in Article VII, Sections 701-765 of the Human Services Code, 62 P.S. §§ 701-765.

⁷ 42 Pa.C.S. §§ 6301-6375.

⁸ DHS was formerly known as the Department of Public Welfare. “A reference to the Department of Public Welfare in a statute or a regulation shall be deemed a reference to the Department of Human Services.” See Section 103(a)-(b) of the Human Services Code, added by the Act of September 24, 2014, P.L. 2458, 62 P.S. § 103(a)-(b).

⁹ In addition to Section 6301(b)(2) of the Juvenile Act, the other purposes of the Act include: “[t]o preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained” and “[t]o provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.” See 42 Pa.C.S. § 6301(b)(1), (1.1).

DHS’s regulations additionally provide that it “and each of the 67 counties are jointly responsible for the achievement of the goal of children and youth services and for assuring the availability of adequate children and youth social services to children who need the services, regardless of race, sex, religion, settlement, residence, economic or social status.” 55 Pa. Code § 3130.12(a). DHS is responsible for, among other things, supervising the county agencies’ administration of children and youth social services, and each county is responsible for actually administering such services, including “[s]ervice and care ordered by the court for children who have been adjudicated dependent or delinquent.” 55 Pa. Code § 3130.12(b)(1)-(4), (c)(5).

A “[d]elinquent child” is defined as “[a] child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.” 42 Pa.C.S. § 6302. A “[d]elinquent act” is defined as a crime under Pennsylvania law or of another state or federal law, except certain violent crimes

(murder and other felonies) committed by a child who was 15 years of age or older. *See* 42 Pa.C.S. § 6302.

If detention is required to protect the person or property of others, a child is a flight risk, or a child has no parent or guardian, then following an arrest, he or she may be detained in a public or private facility licensed by DHS, subject to court supervision pending adjudication. *See* 42 Pa.C.S. §§ 6325, 6327(a)(2)-(3); *see also* 55 Pa. Code § 3800.5 (defining “[s]ecure care”¹⁰ and “[s]ecure detention”¹¹). While these public or private detention facilities provide some services, like education, social services, medical and behavioral health services, and recreational activities, they do not provide treatment, supervision, or rehabilitation services as defined in Section 6352 of the Juvenile Act. *See generally* 42 Pa.C.S. § 6352; *see also* 55 Pa. Code § 3800.282 (providing that 55 Pa. Code §§ 3800.221-3800.228, relating to services, do not apply to secure detention). The PJJSC, which is operated by the Philadelphia Department of Human Services’ (Philadelphia DHS) Juvenile Justice Services Division (JJSD), falls into this category of facilities, as it is a temporary secure detention facility and is licensed as such by DHS under its licensing/approval and child residential and day treatment facilities regulations. *See* 55 Pa. Code §§ 20.1-20.82, 3800.1-3800.312; (Pet. for Rev. ¶ 30-31).

¹⁰ “Secure care” is defined as “[c]are provided in a 24-hour living setting to one or more children who are delinquent or alleged delinquent, from which voluntary egress is prohibited through one of the following mechanisms: (1) [e]gress from the building, or a portion of the building, is prohibited through internal locks within the building or exterior locks[;] (2) [e]gress from the premises is prohibited through secure fencing around the perimeter of the building.” 55 Pa. Code § 3800.5.

¹¹ “Secure detention” is defined as “[a] type of secure care located in a temporary 24-hour living setting, in which one or more delinquent or alleged delinquent children are detained, generally in a preadjudication status.” 55 Pa. Code § 3800.5.

Where a child is adjudicated delinquent, the court may commit “the child to an institution, [YDC], camp, or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by” DHS. 42 Pa.C.S. § 6352(a)(3). Courts must use the least restrictive intervention and shall impose the minimum amount of confinement that is consistent with the

protection of the public and rehabilitation, supervision, and treatment needs of the child. 42 Pa.C.S. §§ 6301(b)(3)(i), 6352(a).

DHS's Office of Children, Youth, and Families, Bureau of Juvenile Justice Services (Bureau [or BJJS]), manages, operates, and oversees the Commonwealth's public facilities for adjudicated delinquent youths, including YDCs and youth forestry camps (YFCs), which are designed to provide supervision, treatment, and rehabilitation for such delinquent youths as ordered by a court. *See* Sections 341, 343(a), 351, and 353 of the Human Services Code, 62 P.S. §§ 341 (purpose of YDCs), 343(a) (commitments, transfers of juveniles), 351 (purpose of YFCs), 353 (selection, acceptance and return of campers; commitment order). YDCs are the most secure public treatment facilities for delinquent youths, whereas YFCs are non-secure open residential treatment facilities for delinquent youths. *See generally* Sections 341-345 and 351-353 of the Human Services Code, 62 P.S. §§ 341-345 (YDCs), 351-353 (YFCs); (Pet. for Rev. ¶¶ 21-22). Unlike secure detention facilities, YDCs and YFCs provide a range of services, including anger management programs, cognitive restructuring and social skills intervention, aggression replacement training, drug and alcohol treatment, and victim awareness programming, the purpose of which is to rehabilitate youths so they do not commit crimes in the future. *See* 55 Pa. Code §§ 3800.221-3800.230 (relating to services); (Pet. for Rev. ¶ 23).

The Bureau's State Court Liaison Unit is responsible for directing the admissions of court-committed residents to an appropriate YDC/YFC system, consistent with any specific orders from a judge. Sections 721, 724, and 725 of the Human Services Code, 62 P.S. §§ 721 (relating to, *inter alia*, consultation to community agencies), 724 (providing for institutional programs, recommendations, additional facilities, charges), 725 (relating to study of delinquents and recommendations to courts); (Pet. for Rev. ¶ 24). The Commonwealth may also contract with private providers to place youth for court-ordered rehabilitation. Section 724(a) of the Human Services Code, 62 P.S. § 724(a).

With respect to the capacity of secure detention facilities, DHS's regulations provide that "[t]he maximum capacity specified on the certificate of compliance shall be based on available bedroom square footage and the number of toilets and sinks" and that "[t]he maximum capacity specified on the certificate of compliance may not be exceeded." 55 Pa. Code § 3800.13(a)-(b). There is no counterpart

provision in either the Human Services Code or its accompanying regulations addressing maximum capacity of DHS's facilities, such as YDCs and YFCs. *See* 55 Pa. Code § 3800.3 (providing that Chapter 3800 of the regulations (3800 regulations) does not apply to “[c]hild residential and child day treatment facilities operated directly by” DHS). However, Section 6353(c) of the Juvenile Act, relating to limitation on and change in place of commitment, provides the following with respect to the capacity of DHS's facilities:

(c) Notice of available facilities and services.— Immediately after the Commonwealth adopts its budget, the Department of Public Welfare shall notify the courts and the General Assembly, for each Department of Public Welfare region, of the available:

- (1) Secure beds for the serious juvenile offenders.
- (2) General residential beds for the adjudicated delinquent child.
- (3) The community-based programs for the adjudicated delinquent child.

If the population at a particular institution or program exceeds 110% of capacity, the department shall notify the courts and the General Assembly that intake to that institution or program is temporarily closed and shall make available equivalent services to children in equivalent facilities.

42 Pa.C.S. § 6353(c) (emphasis added).

With this statutory and regulatory framework in mind, the Court turns to the averments of the Petition for Review.

See City of Phila. I, slip op. at 4-9 & nn. 6-11.

Petition for Review & Prior Application for Preliminary Injunction

Relevantly,² at the time the Petition for Review was filed in this case, there were 223 youths housed at the PJJSC, thus exceeding the PJJSC's licensed capacity by about 39 youths, and of those 223, 74 had already been adjudicated delinquent and committed to DHS's custody but were awaiting placement in DHS's treatment facilities. *City of Phila. I*, slip op. at 10-11 & nn. 12-13 (noting also that 22 youths were housed in the admissions area of the PJJSC at the time the Petition was filed). This overcrowding placed significant strain on both youths and the staff at the PJJSC and resulted in youths being unable to leave their units to eat in the cafeteria, receive education, or receive sufficient recreational time and exercise; youths sleeping on the floor of the PJJSC admissions area, which is not designed for overnight accommodation; at least two large fights resulting in injuries, some serious, to both youths and staff, and damage to furniture and equipment; and the denial of youths' timely access to court-ordered rehabilitative treatment, due to the PJJSC not having been designed for that purpose, but only for temporary detention purposes. *City of Phila. I*, slip op. at 10-11 (citing Pet. for Rev. ¶¶ 1-3, 53-57, 62, 75-82). Compounding the problem further was the need to keep certain youths separated from others because of their statuses as victims and alleged perpetrators, court-ordered separation (i.e., co-defendants), and affiliation with rival groups. *Id.*, slip op. at 11 (citing Pet. for Rev. ¶ 77).

Petitioner additionally pointed out in its Petition that, on December 21, 2021, the federal Juvenile Justice Reform Act of 2018 (JJRA) went into effect,³ which now

² The Court repeats only the below averments of the Petition for Review because they are directly relevant to the instant Application to Modify Injunction.

³ As explained in the Court's November 18, 2022 opinion, previously, under state law, certain older youths charged with violent felonies were detained in adult jails pending trial because they were required to be held separate from other juveniles. *See* 42 Pa.C.S. § 6327(c.1) (providing

requires, by default, that certain older youths charged with violent felonies be detained separate from and have no “sight or sound contact with adult inmates” prior to trial, thus resulting in more youths charged with violent offenses being held at the PJJSC instead of in adult prisons. *City of Phila. I*, slip op. at 12. Thus, the PJJSC set up the “sight and sound” unit for youths charged with violent criminal offenses (typically homicide), who await hearings to determine if they should remain at the PJJSC or be held in the Youth Offender Unit of the Philadelphia prison system. *Id.*, slip op. at 12 (citing Pet. for Rev. ¶ 49). This change in the law and the establishment of the “sight and sound” unit has drastically increased the number of youths at the PJJSC awaiting placement, and Petitioner’s continued efforts in working with DHS as to this issue have proved fruitless. *Id.*, slip op. at 12-13 (citing Pet. for Rev. ¶¶ 50-51, 58-61, 63-66).

Petitioner thus requests the following in the Petition: (1) a declaration that DHS’s failure to accept delinquent youths ordered to placement in Commonwealth facilities and provide sufficient facilities to ensure space is available violates its obligations under Sections 343 and 724 of the Human Services Code, 62 P.S. §§ 343, 724; (2) mandamus relief to compel DHS to comply with its statutory duties to accept all delinquent youths housed at the PJJSC who have been ordered to placement in state facilities within 20 days; and (3) preliminary and permanent injunctive relief compelling Respondents to open additional facilities, immediately contract with other public and private providers, and prioritize the placement of youths in overcrowded detention facilities like the PJJSC. *See City of Phila. I*, slip

for detention of child in county jail under certain circumstances, and exceptions); Pa.R.Crim.P. 598 (relating to place of detention during procedures for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322). *See City of Phila. I*, slip op. at 12 & n.14 (citing Pet. for Rev. ¶ 48).

op. at 13-14 (citations omitted). Petitioner's prior Application for Preliminary Injunction sought narrower relief than that requested in the Petition, and Respondents' Cross-Application sought injunctive relief and averred that DHS's facilities are also over capacity and understaffed.

The Court will dispense with rehashing the parties' respective arguments in relation to their former cross-applications, *see City of Philadelphia I*, slip op. at 14-24, and focus only on the Court's rationale for its November 10, 2022 Order. In doing so, the Court observes that, at the time Petitioner's prior Application was filed on October 25, 2022, the PJJSC's population was 219, thus exceeding its licensed capacity by 35 youths, 68 of whom were awaiting placement in DHS's facilities. *City of Phila. I*, slip op. at 14 (citation omitted); *see also id.*, slip op. at 13 (observing that the PJJSC first exceeded its licensed capacity in August 2022). At the time of the first hearing on November 9, 2022, however, Petitioner informed the Court that the PJJSC exceeded its licensed capacity by only 14 juveniles, resulting in a total population of 198 youths, 60 of whom had already been court-committed to DHS's care and custody for treatment. *See* Cmwth. Ct. Order dated Nov. 10, 2022, at 1 n.1; *City of Phila. I*, slip op. at 4, 51.

Court's November 18, 2022 Opinion

Considering the above numbers, as well as the record testimonial⁴ and documentary⁵ evidence offered in support of the cross-applications, the Court issued its November 10, 2022 Order. In its opinion, the Court explained it found all witnesses credible and concluded “that Petitioner’s evidentiary presentation met the high burden that must be satisfied for this Court to grant the requested mandatory injunctive relief, in part.” *City of Phila. I*, slip op. at 46. The Court further found that Respondents’ evidence was lacking and supported Petitioner’s requested relief, and that granting the Cross-Application would do more harm than granting the relief sought by Petitioner. *Id.*⁶

The Court next determined that Petitioner established a clear right to relief on its mandamus claim, i.e., it demonstrated that substantial legal questions must be resolved to determine the rights of the parties and that its claim is more than merely viable or plausible, as such claim is based entirely on the language of the Juvenile

⁴ Three witnesses testified for Petitioner, including Gary D. Williams, Deputy Commissioner for JJSD within Philadelphia DHS; Nancy Magowan, Deputy Director of the First Judicial District’s Juvenile Probation Department, Residential Services Unit; and Kimberly Ali, Commissioner of Philadelphia DHS. Summaries of their testimony can be found on pages 27-34, 34-36, and 36-38, respectively, of *City of Philadelphia I*.

Three witnesses also testified for Respondents, including Caitlin Robinson, Southeast Regional Director in DHS’s Office of Children, Youth, and Families; Jonathan Rubin, Deputy Director of DHS’s Office of Children, Youth, and Families; and Charles Neff, Director for the Bureau. Summaries of their testimony can be found on pages 39-40, 40-42, and 43-46, respectively, of *City of Philadelphia I*.

⁵ Twenty-eight exhibits were offered and admitted into evidence at and/or following the November 9, 2022 hearing. *See City of Phila. I*, slip op. at 57-58 (Addendum).

⁶ Notably, in so ruling, the Court declined to consider the questions of whether Respondents were actually violating their statutorily mandated duties under the Juvenile Act and the Human Services Code and its accompanying regulations, whether DHS was using all reasonable efforts to make equivalent services available at equivalent facilities, or whether Philadelphia DHS was similarly using all reasonable efforts on its part to facilitate solutions in response to the PJJSC’s overcrowding problem. *City of Phila. I*, slip op. at 46-47.

Act and the Human Services Code, which places the sole responsibility of accepting delinquent youths who are committed to DHS’s care and custody and court-ordered to receive rehabilitative treatment in DHS facilities, and making equivalent services available at equivalent facilities when any DHS facility exceeds 110% of its capacity, “**squarely on DHS.**” *City of Phila. I*, slip op. at 47-49 (emphasis in original) (citing, *inter alia*, 42 Pa.C.S. § 6353(c); 62 P.S. §§ 343(a), 724(a)). Put simply, the Court concluded, DHS must accept and place court-committed youths in its facilities and/or must make equivalent services available at equivalent facilities whenever any of those facilities reaches 110% capacity. *Id.*, slip op. at 49 (citing *Castille v. Dep’t of Pub. Welfare* (Pa. Cmwlth., No. 2533 C.D. 1988, filed Dec. 27, 1989), slip op. at 6, 11-15).⁷ Additionally, DHS’s role with respect to the determination of placement of youths in its facilities is a ministerial one that is the appropriate subject of a mandamus action if DHS refused to perform its statutory duties attendant to such determination when directed to do so. *Id.*, slip op. at 49. The Court thus found the above conclusions to be “amply supported by both the statutory language, the testimony in th[e] case, and the Supreme Court’s decision in *Allegheny County*[*v. Cmwlth.*, 490 A.2d 402, 412 (Pa. 1985)].”⁸ *Id.*, slip op. at 49-50 (citations omitted). The Court further observed that,

[a]lthough delinquent youths may be housed in the PJJSC **temporarily** prior to their placement in an appropriate rehabilitative treatment

⁷ As in *City of Philadelphia I*, the Court cites *Castille*, which dealt with a similar overcrowding situation in the Philadelphia Youth Study Center, now the PJJSC, and nearly the same claims made in this matter, merely for its recognition of the mandatory nature of DHS’s duties under Section 6353(c) of the Juvenile Act, 42 Pa.C.S. § 6353(c), to, *inter alia*, make available equivalent services at equivalent facilities and to accept delinquent youths awaiting placement in Commonwealth treatment facilities. See *Castille*, slip op. at 6, 11-15; *City of Phila. I*, slip op. at 20-21 n.15 (further noting *Castille* is not on point procedurally with the instant matter).

⁸ *Allegheny County* involved the overcrowding of adult inmates in the Allegheny County Jail. See generally *Allegheny Cnty.*, 490 A.2d 402.

facility of the state, where, as here, “a period of crisis such as is presently occurring” overcrowds the PJJSC and threatens the security of the institution and those within it, Petitioner cannot be expected to continue accepting new delinquent or preadjudication youths for temporary housing in excess of its maximum capacity allowed by law as a courtesy to the state where doing so would further exacerbate the dangerous situation.

Id., slip op. at 50-51 (emphasis in original).

Next, the Court determined that Petitioner established that the injunction was necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages, as the evidence showed the PJJSC was operating over its licensed capacity of 184 youths and experiencing unsafe and unsanitary conditions, including, *inter alia*, youths sleeping and eating on mattresses on the floor of the admissions area; that greater injury would result from refusing the injunction rather than from granting it, as without the Court’s 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 and possibly death to youths and staff; that the injunction would restore the parties to their status as it existed immediately prior to the alleged wrongful conduct, i.e., when the PJJSC was operating at or below its 184-youth maximum capacity prior to DHS closing intake at its treatment facilities; and that an injunction directing DHS to accept for placement the number of youths by which the PJJSC was over its licensed capacity was more than reasonably tailored to abate DHS’s offending conduct. *City of Phila. I*, slip op. at 51-54 (citations omitted). Petitioner also established that the injunction would not adversely affect the public interest, because the limited relief granted protected both youths and staff at the PJJSC from the risk of inhumane conditions and any danger of physical harm resulting from the overcrowding situation, and that maintenance of the status quo would protect, rather than harm the public, because it would ensure youths are once

again receiving their court-ordered treatment in appropriate treatment facilities, and ensure that the Human Services Code and its accompanying regulations, and the Juvenile Act's purposes were fulfilled. *Id.*, slip op. at 54-55.

Due to the opening of the then-new Pittston YDC, testimonial evidence that the Pittston facility could theoretically accept youths from the overcrowded PJJSC, and assurances from various witnesses that they would do everything in their power to prioritize the placement of Philadelphia youths, the Court determined that Respondents could not meet their burden on their Cross-Application. *City of Phila. I*, slip op. at 54-55.⁹

Application to Modify Injunction

This Court's previous characterization of this case as both troublesome and tragic is an understatement at this point in the litigation. This Court has now found itself in **an even more difficult position** than in November 2022, having to decide yet again whether emergent, and mandatory, preliminary injunctive relief is necessary to abate the renewed overcrowding at the PJJSC, which has undoubtedly reached **crisis-level proportions**.

On June 9, 2023, Petitioner filed the instant Application to Modify Injunction, repeating many of the same facts established at the November 9, 2022 hearing in this case, and further asserting that the population at the PJJSC "has reached unprecedented levels, consistently exceeding its licensed capacity of 184 beds by [50] or more young people, with an all-time high of 242 on June 5, 2023." (Application to Modify Injunction (Appl. to Modify Inj.) ¶¶ 1, 45.) As of June 9, 2023, there were 230 youths housed at the PJJSC, 67 of whom "have been stranded

⁹ Following the Court's issuance of its opinion on November 18, 2022, Respondents filed an Answer with New Matter to Petitioner's Petition for Review, and Petitioner filed a Reply to New Matter of Respondents.

for months” while awaiting placement in DHS’s treatment facilities; 30 youths were being housed in the PJJSC’s admissions area and gym and sleeping on mattresses on the floor in those areas; and 15 youths have been waiting for placement in DHS’s facilities for more than 90 days. (*Id.* ¶¶ 2-4, 36, 44.) Petitioner averred that despite its substantial efforts in working with relevant stakeholders to find alternative locations for youths housed at the PJJSC and reduce the center’s population, and DHS’s compliance with the Court’s prior Order, “the PJJSC is now *far* more overcrowded than it was when the Court issued its” November 10, 2022 Order. (*Id.* ¶¶ 5, 8-10, 14, 40 (emphasis in original).) Petitioner further asserted that despite DHS’s compliance with the prior Order, “it continues to employ an unlawful months-long waitlist for placement, continues to refuse to prioritize youth[s] 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[s]) to justify its abdication of its statutory responsibility.” (*Id.* ¶¶ 10, 15.) As such, Petitioner requested that the Court modify its previous Order to require and/or direct DHS to: “(1) give priority on its waitlist to youth[s] from over[]capacity detention facilities; (2) use the staffing ratios (one staff to six youth[s]) that [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) . . . take custody of two youth[s] committed to [DHS] custody each working day, as [DHS] did when it was complying with the Court’s previous injunction [O]rder, while the PJJSC is above its licensed capacity.” (*Id.* ¶ 11 & Proposed Order.)

Petitioner also argued that it met every prerequisite for preliminary injunctive relief and modification of the Court’s November 10, 2022 Order. First, Petitioner alleged that this Court has already determined that Petitioner has a clear right to relief, because DHS is statutorily required to provide facilities for adjudicated delinquent youths, and further that there has been no change in the controlling law or facts related to Petitioner’s mandamus claim asserted in its Petition for Review; therefore, according to Petitioner, the Court need not revisit or disturb its conclusion in this regard. (Appl. to Modify Inj. ¶¶ 119-20; Memo. of Law at 19-20 (citing *Bienert v. Bienert*, 168 A.3d 248 (Pa. Super. 2017).) Second, Petitioner asserted that there is no foreseeable end to the PJJSC’s overcrowding absent another order from this Court, and that all of the conditions that the Court found demonstrated immediate and irreparable harm in its November 10, 2022 Order and subsequent opinion are again present today, except that the overcrowding is significantly worse at the PJJSC this time around. (Appl. to Modify Inj. ¶¶ 121-31; Memo. of Law at 20-21.) In this regard, Petitioner again asserted that “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.” (*Id.* (citing *Allegheny Cnty.*, 490 A.2d at 414).)

Third, Petitioner argued that greater injury, and even “extreme and significant” harm, would result from denying than from granting the requested modified injunction, as DHS’s repeated failure to accommodate enough youths has once again resulted in the PJJSC becoming dangerously overcrowded, resulting in youths and staff again having to contend with unhealthy and dangerous conditions that have already resulted in injuries. (Appl. to Modify Inj. ¶¶ 132-35.) Petitioner also highlighted that the PJJSC is operating with a 1 to 12 or 1 to 14 staff-to-youth

ratio during the daytime, compared to DHS’s self-authorized 1 to 3 staff-to-youth ratio. (*Id.* ¶ 136.) Petitioner contended further that any harm in granting the modified injunction is minimal, as it would merely require DHS to comply with its statutory responsibilities in prioritizing placement of youths from overcapacity detention centers in all counties and enjoin DHS from refusing to place youths in its facilities based on its arbitrary definition of capacity. (Appl. to Modify Inj. ¶¶ 137-47.) Although it is DHS’s sole responsibility to establish the state has available facilities, Petitioner claimed it established that DHS does have facilities available in which to place more youths and sufficient staff at those facilities to operate with a 1 to 6 staff-to-youth ratio, as required by the 3800 regulations. (Appl. to Modify Inj. ¶¶ 148-51 (citing *Allegheny Cnty.*); Memo. of Law at 21-24.)

Fourth, Petitioner asserted that the requested modified injunction would preserve the status quo previously identified by the Court in *City of Philadelphia I*, because it would prioritize youths waiting in overcrowded facilities and enjoin DHS from refusing to accept youths based on its self-authorized definition of capacity. *See City of Phila. I*, slip op. at 16, 53; Appl. to Modify Inj. ¶¶ 156-60; Memo. of Law at 25. Fifth, the requested modified injunction is reasonably suited to abate the offending activity, i.e., DHS’s refusal to timely accept youths for placement, which has caused severe overcrowding of the PJJSC, for the same reasons identified for the last two preliminary injunction prongs. (Appl. to Modify Inj. ¶¶ 161-63; Memo. of Law at 26-27.) Petitioner contended that granting relief in the form of a one-time transfer will require that Petitioner repeatedly apply to the Court for injunctive relief whenever DHS “reverts to its default practices and as the PJJSC’s pre[]adjudication population fluctuates”; Petitioner therefore requests more lasting relief that will prevent the parties from having to relitigate these issues. (Appl. to Modify Inj. ¶¶

164-67.) Finally, Petitioner argued that the modified injunction would serve the public interest for the same reasons it asserted in *City of Philadelphia I*. See *City of Phila. I*, slip op. at 18-19, 54-55; Appl. to Modify Inj. ¶¶ 168-72; Memo. of Law at 27.

Respondents' Answer

Respondents opposed Petitioner's requested modified injunction, asserting therein that "[t]his case involves multi-faceted and complex issues with multiple stakeholders (many of whom are not parties to this action) regarding the detention of, and treatment services provided to, youth[s] in the Commonwealth"; that the Commonwealth's YDCs are also under severe strain, resulting in two serious incidents at YDCs requiring Pennsylvania State Police intervention; and that granting Petitioner's request "would create cascading harm that would ultimately negatively impact [Petitioner,] the youth[s] DHS serves, and the Commonwealth's juvenile justice system." (Answer (Ans.) at 1-4.) Respondents pointed out that since the November 9, 2022 hearing, DHS has admitted 107 youths from the PJJSC into DHS's YDCs and 82 youths from other counties, and has worked and continues to work tirelessly to expand capacity and increase staffing at DHS's facilities. (Ans. at 2, 5 n.3, 7.) In addition to explaining DHS's efforts since this Court issued its prior Order, Respondents stressed that the lack of access to secure detention beds is a statewide issue affecting all counties of the Commonwealth, not just Philadelphia, and that a key factor underlying the overcrowding at the PJJSC is the court-ordered detention of hundreds of youths in the PJJSC who historically would have been detained in adult jails. (Ans. at 6-10 (referring to these youths as "direct file juveniles"), 11-12.)

As to the preliminary injunction criteria, Respondents first asserted that the Application to Modify Injunction sought to raise complex policy questions involving many stakeholders that are specifically reserved for the legislature to address, as this Court acknowledged in its prior opinion. (Ans. at 13-15.) Second and third, Respondents argued that the requested injunctive relief would create more harm than it would abate, and would harm the public interest, as it would force DHS to take immediate custody of youths into its already overcapacity and understaffed YDCs, resulting in safety issues, staff quitting, and the potential of having to close additional facilities, thus resulting in youths not receiving the treatment they desperately need and were court-ordered to receive. (Ans. at 15-16.) Last, Respondents contended that the immediate and irreparable harm would not occur if the modified injunction is denied, as “the PJJSC has handled and navigated the strain” caused by the overcrowding since the November 9, 2022 hearing, which belies Petitioner’s claim of immediacy. (Ans. at 16.)¹⁰

Following a status conference held on June 29, 2023, via WebEx, the Court scheduled an evidentiary hearing on the Application to Modify Injunction for July 12, 2023, in Philadelphia, Pennsylvania, and ordered, *inter alia*, expedited briefing. By subsequent Order issued on July 3, 2023, the Court ordered DHS to provide the names and locations of all state owned and operated, and all privately owned and operated, YDCs utilized by DHS and the current legal capacities of those facilities, factoring in 1 to 6 staff-to-youth ratios, and be prepared to inform the Court of the number of empty beds available at those facilities at the hearing. The Court further

¹⁰ The Juvenile Law Center and Disability Rights Pennsylvania filed an amici curiae brief in response to Petitioner’s Application to Modify Injunction, which supports neither party and in which they highlight the purportedly grave dangers and harms associated with removing children from their homes and placing them in secure, custodial settings.

directed Petitioner to ensure that direct eyewitness testimony and photos of current conditions at the PJJSC would be offered into evidence at the hearing.¹¹

Following the evidentiary hearing, which was held as scheduled on July 12, 2023, the Court issued an Order on July 14, 2023, granting in part and denying in part Petitioner's Application to Modify Injunction. Specifically, the Court directed Respondents to take physical custody of 26 juveniles currently housed at the PJJSC, who had been adjudicated delinquent by the Family Court or the First Judicial District's Criminal Division and committed to the care and custody of DHS, within 30 working days of the Order. (*See* Cmwlth. Ct. Order dated July 14, 2023, ¶ 1.) The Court also **strongly urged DHS** to reevaluate its management of its waitlist of youths already adjudicated delinquent and awaiting placement in DHS treatment facilities, and to further evaluate *every possible measure* it could to obtain temporary emergency staffing and/or security personnel to alleviate any safety and security issues that may result from the influx of adjudicated-delinquent youths from the PJJSC into DHS's facilities, as discussed at the hearing. (*Id.*) Going one step further this time, the Court additionally directed that if, following the initial 30 working days mentioned above, the PJJSC remains over its 184-youth capacity such that youths are sleeping on mattresses on the floor in the admissions area, in hallways, in the gym, or in any other area of the PJJSC not designed for residential habitation, DHS is to accept as many youths as possible into its treatment facilities within 30 working days thereafter until the PJJSC reaches its licensed capacity of 184 youths.

¹¹ Respondents complied with the Court's July 3, 2023 Order by filing a Submission on July 10, 2023, noting therein all of the Commonwealth's YDCs, contracted YDCs, and YFCs, and the number of beds and various capacities of each facility. (*See* Resp'ts' Submission, filed July 10, 2023, at 2-3.) Regarding the YDCs operated by the Commonwealth specifically, Respondents provided bed capacity numbers at 1 to 3, 1 to 4 (current), and 1 to 6 staff-to-youth ratios. **Notably, the 1 to 4 ratio under which the YDCs are currently operating reveals there are 122 open beds at the Commonwealth's YDCs.** (*Id.* at 2.)

(*Id.* ¶ 2.) The Court denied the Application to Modify in all other respects, including to the extent it sought injunctive relief as to other counties not specifically named as parties to this litigation and DHS’s purportedly unlawful use of specific staff-to-youth ratios in determining the capacity of its treatment facilities. (*Id.* ¶ 3.) The Court again directed Petitioner to work diligently with relevant stakeholders, this time including, but not limited to, the Governor of Pennsylvania, the Pennsylvania General Assembly, DHS, the Philadelphia District Attorney’s Office (DA’s Office), the First Judicial District and Family Court, Juvenile Probation, and any private providers to meet the various needs of court-committed juvenile delinquents in this Commonwealth. (*Id.* ¶ 4.)¹² This Memorandum Opinion explains the Court’s reasoning for its July 14, 2023 Order. *See id.* at 4 (indicating “[o]pinion to follow”).

II. PRELIMINARY INJUNCTION STANDARDS

Pennsylvania Rule of Appellate Procedure 1532 provides, in relevant part, that “[a]t any time after the filing of a petition for review, the court may, on application, . . . issue a preliminary or special injunction, . . . or grant other interim or special relief required in the interest of justice and consistent with the usages and principles of law.” Pa.R.A.P. 1532(a). The test for obtaining a preliminary injunction under Rule 1532(a) is the same as that for the grant of a preliminary injunction under the Pennsylvania Rules of Civil Procedure. *See Cmwltth. ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Cmwltth. 2004) (citing *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434 (Pa. 1982)); *see also*

¹² The Court also scheduled a status conference for September 8, 2023, via WebEx, for purposes of providing the Court an update on the status of DHS’s acceptance of youths housed at the PJJSC in excess of its licensed capacity; DHS’s efforts regarding its waitlist and temporary emergency staffing; and Petitioner’s efforts at working with relevant stakeholders on solutions to ameliorate further overcrowding at the PJJSC, and to discuss this matter generally. (Cmwltth. Ct. Order dated July 14, 2023, ¶¶ 5, 9 (noting that the failure of Respondents to comply with the terms of the Order may result in the imposition of sanctions upon petition by Petitioner).)

Pa.R.Civ.P. 1531(c) (providing that “[a]ny party may move at any time to dissolve [or modify] an injunction”), (e) (stating that “[a]fter a preliminary hearing, the court shall make an order dissolving, continuing or modifying the injunction”). “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). “The changed circumstances that may warrant [modification or] dissolution are a change in the controlling facts on which the injunction rested or a change in the law.” *Id.* at 91-92. The Pennsylvania Supreme Court has stated that a court may dissolve or modify an injunction if: (1) the common or statutory law 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 (Pa. 1930)).

Because Petitioner’s Application to Modify Injunction also seeks further injunctive relief, Petitioner must additionally establish that it meets the six prongs of the well established preliminary injunction test. The party seeking a preliminary injunction bears a heavy burden of proof and must establish all of the following criteria:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;
- (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;
- (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare, 104 A.3d at 502 (citing, *inter alia*, *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003)). Because the grant of an injunction is such a harsh and extraordinary remedy, each criterion must be satisfied. *Patriot-News Co. v. The Empowerment Team of the Harrisburg Sch. Dist. Members*, 763 A.2d 539, 546 (Pa. Cmwlth. 2000). However, “if the petitioner fails to establish any one of them, there is no need to address the others.” *Lee Publ’ns, Inc. v. Dickinson Sch. of Law*, 848 A.2d 178, 189 (Pa. Cmwlth. 2004) (en banc) (quoting *Cnty. of Allegheny v. Cmwlth.*, 544 A.2d 1305, 1307 (Pa. 1988)).

Where the preliminary injunction is a mandatory one, meaning it directs “the performance of some positive act to preserve the status quo,” rather than a prohibitory one, which seeks to “enjoin the doing of an act that will change the status quo[,]” the petitioner must establish “a clear right to relief[.]” *Mazzie v. Cmwlth.*, 432 A.2d 985, 988 (Pa. 1981) (citing, *inter alia*, *Zebra v. Sch. Dist. of City of Pittsburgh*, 296 A.2d 748 (Pa. 1972)); *Medico v. Makowski*, 793 A.2d 167, 169 (Pa. Cmwlth. 2002) (providing that “courts will grant a mandatory injunction only upon a very strong showing that the plaintiff has a clear right to relief”). This is because mandatory preliminary injunctions are more extraordinary and “should be issued more sparingly than injunctions that are merely prohibitory.” *Mazzie*, 432 A.2d at 988.

Notably, “[a] preliminary injunction [does not] serve as a judgment on the merits since by definition it is a temporary remedy granted until that time when the party’s dispute can be completely resolved.” *Appeal of Little Britain Twp. from Decision of Zoning Hr’g Bd.*, 651 A.2d 606, 611 (Pa. Cmwlth. 1994). Thus, this “proceeding is distinct from a final hearing on the merits.” *Lindeman v. Borough of Meyersdale*, 131 A.3d 145, 151 (Pa. Cmwlth. 2015).

With these principles in mind, the Court turns to the evidence presented by the parties at the July 12, 2023 evidentiary hearing.

III. EVIDENTIARY HEARING

At the July 12, 2023 evidentiary hearing, 2 witnesses for Petitioner and 4 witnesses for Respondents testified, and 11 exhibits were offered and admitted into evidence.¹³

Petitioner first called Gary D. Williams,¹⁴ who has served as Deputy Commissioner for the JJSD within Philadelphia DHS for the past two years, in which capacity he oversees the PJJSC. (Notes of Testimony (N.T.) at 26-27.) Mr. Williams testified as to the current conditions at the PJJSC, noting that the PJJSC had recently reached a high of 246 youths since November 2022, but that at the time of this hearing, the PJJSC had a population of 236 youths, **thus exceeding its licensed capacity of 184 by about 52 youths**, 75 of which have already been adjudicated delinquent and committed to DHS's custody for treatment and rehabilitation. (*Id.* at 28-29.) Mr. Williams later noted that the PJJSC has been over capacity for almost a year at this point, except for December 3, 2022, when the population was only 183; for the most part, however, the population has been 200 or more. (*Id.* at 56-57.) Petitioner introduced the PJJSC's Daily Census Since November 1, 2022 (Exhibit (Ex.) P-3), which revealed daily numbers of youths housed at the PJJSC from November 1, 2022, to July 11, 2022. (*Id.* at 29-31; *see also id.* at 126 (cross-examination regarding Ex. P-3).)

¹³ The Court has provided a chart of the exhibits moved into evidence at the hearing. (*See* Addendum.)

¹⁴ For the sake of brevity, the Court will refer to Deputy Commissioner Williams as "Mr. Williams." Because Mr. Williams' credentials were outlined in this Court's November 18, 2022 opinion, *see City of Phila. I*, slip op. at 27, the Court will not repeat those credentials here. Rather, the Court will get to the heart of Mr. Williams' testimony.

Mr. Williams then explained the four major subgroups of youths housed at the PJJSC, like at the last hearing, which include (1) those youths committed to DHS's care and custody, i.e., post-adjudication youths (75 as of date of hearing); (2) those classified as "Act 96" who have gone through the adult criminal justice system but have been remanded to the PJJSC (38 as of date of hearing);¹⁵ (3) those classified as "sight and sound" who commit violent offenses (such as homicide, who are not classified as "Act 96") and must be kept separate from others in the PJJSC (11 as of date of hearing); and (4) youths who are pretrial/preadjudication and are there due to new arrests, probation violations, etc. (N.T. at 31-33, 40.)

With respect to Act 96 youths specifically, who return to the PJJSC from adult facilities, Mr. Williams explained that they have "a higher level of sophistication in terms of being manipulative" and that they return to the PJJSC to await trial because of their decertification via court order issued with the consent of the DA's Office. (N.T. at 34-35 (noting these are the result of interest of justice (IOJ) hearings).) Petitioner introduced a report regarding the disposition of Act 96 youths in detention (Ex. P-9), which showed nearly 30 youths characterized as Act 96 as of November 10, 2022, only 3 of which have had their cases resolved through IOJ hearings since then and left the PJJSC. (*Id.* at 35-37.) Mr. Williams stated there has been an increase in the number of youths classified as Act 96 at the PJJSC since the JJRA went into effect in December 2021 and the DA's Office changed its policies and practices in response to the JJRA, and that, ordinarily, these youths would have been

¹⁵ "Act 96" is a reference to the Act of October 27, 2010, P.L. 949, No. 96, which added subsection (c.1), regarding place of detention, to Section 6327 of the Juvenile Act. *See* 42 Pa.C.S. § 6327(c.1). A judge issues an "Act 96" designation, with the consent of the Philadelphia District Attorney's Office (DA's Office). (N.T. at 33.)

housed at the adult prison on State Road in Philadelphia.¹⁶ (*Id.* at 40-42 (confirming that that DA’s Office is moving more youths into the PJJSC).) Mr. Williams also explained that the 11 “sight and sound” youths, who must be kept separate from the general PJJSC population, occupy an entire 12-bed unit at the PJJSC while awaiting IOJ hearings to determine whether they stay at the PJJSC or go to adult prison, and that moving those youths to another facility would not necessarily alleviate the overcrowding. (*Id.* at 38-40.) When asked by the Court if there was space for youths to be kept separate from adults and correctional officers in an adult facility, Mr. Williams confirmed his belief that there was in fact space in an adult facility in Philadelphia. (*Id.* at 42-43.)

Petitioner next offered a report on staffing ratios for the month of June and the first week of July 2023 (Ex. P-16), as to which Mr. Williams confirmed that the PJJSC is bound by the 3800 regulations for detention and residential facilities, which require a 2 to 12 staff-to-youth ratio during daytime hours, and a 1 to 12 staff-to-youth ratio during overnight hours. (N.T. at 42-44, 46-47.) Mr. Williams stated the PJJSC is **not** currently achieving those ratios; rather, it has been operating at a 1 to 14 or 1 to 15 staff-to youth ratio on average, which ratios fluctuate. (*Id.* at 45, 58-59.) Moreover, in the admissions space of the PJJSC where some youths are kept, the ratio can range from a 2 to 30 or a 4 to 30-plus staff-to-youth ratio; he stated the entire building in terms of staff ratio is out of compliance. (*Id.* at 45-46, 48.) Although the PJJSC is bound to follow the 3800 regulations, Mr. Williams noted his understanding that DHS is not bound to those required ratios. (*Id.* at 47-48.)

Mr. Williams again explained the layout of the facility as he did at the November 2022 hearing, noting that the standing living unit (pod) has 3 units with

¹⁶ This is the Riverside Correctional Facility located on State Road in Philadelphia. *See City of Phila. I*, slip op. at 28 n.19.

12 bedrooms, with a maximum of 36 youths housed therein at any given time; however, at least 14-15 youths are currently being housed in 12-bed units bringing the PJJSC out of compliance with the regulations. (N.T. at 48-49; *see City of Phila. I*, slip op. at 27-28.) When asked if adults other than licensed/certified counselors count toward the staff-to-youth ratio, Mr. Williams responded they do not due to them receiving only baseline training, but that the PJJSC has recruited these additional, paid volunteers and “credible messengers”¹⁷ to assist at the PJJSC daily in somewhat limited roles. (N.T. at 49-52.) Further, despite continued staffing issues, Mr. Williams confirmed that since the last hearing, the PJJSC has hired nearly 50 new counselors and held and/or participated in at least 5 job fairs, garnering nearly 75 provisional offers of employment. (*Id.* at 51-54 (indicating also that the DHS granted the PJJSC a waiver of the 60 credit hours for counselors mentioned at the last hearing, *see City of Phila. I*, slip op. at 29), 55-59.)

Returning to conditions, Mr. Williams explained the layout of the PJJSC’s admissions area, including the 2 holding rooms, which are only 13 feet by 14 feet or 15 feet by 15 feet, and that there have been 10 to 13, and even up to 15, youths living in those rooms and sleeping on mattresses placed side-by-side on the floor. (N.T. at 61-64 (stating that nearly 35-36 youths have been held in the admissions area recently and that staff are frequently reassigned from the residential side of the PJJSC to assist with youths housed in the admissions area).) He explained that there are two showers in the admissions area, that youths are rotated to wash daily, and that youths eat basically all meals on their mattresses on the floors or perimeter benches. (*Id.* at 64-66.) Petitioner introduced seven photos of youths at the PJJSC from July 10, 2023 (Ex. P-5a-d), which Mr. Williams described for the Court. (*Id.*

¹⁷ Mr. Williams explained that “credible messengers” are those with “lived experience,” or past histories that do not preclude them from working with kids.

at 67-81 (depicting youths on mattresses on the floor along the perimeter of the admissions area near a toilet (Ex. P-5a); youths on mattresses in the hallway/corridor outside the entrance to the admissions area and near an exit door, who can spend nearly 2-3 weeks there before going to a living unit (Ex. P-5b); multiple youths on mattresses on the floor and benches in a large room, where they eat, sleep, and spend most of their time (Ex. P-5c); and multiple youths on mattresses on the floor and on benches in hallway/corridor outside admissions area command center (Ex. P-5d)).) When asked by the Court what would happen if there was a fire or other emergency, Mr. Williams admitted it would be very difficult to evacuate everyone in a timely manner. (*Id.* at 77-79 (noting the other increased risk of altercations between youths in these crowded spaces, that there recently had been nearly 60 fights between residents, and that it is difficult to manage these situations).)

In addition to an increase in fighting, Mr. Williams indicated there was also an increase in contraband, including makeshift weapons and drugs (such as Suboxone, which was recently found by staff). (N.T. at 81-84.) Petitioner presented photos of makeshift weapons from July 7, 2023 (Ex. P-5e-g), which Mr. Williams described for the Court. (*Id.* at 105-10 (depicting makeshift weapons wrapped in tape (Ex. P-5e); the bottom of a silver crutch and small white items wrapped in tape that could be used as makeshift knife (Ex. P-5f); and a closer image of bottom of silver crutch with paper, white items wrapped in tape, and a washcloth in which metal object found (Ex. P-5g)).)

Mr. Williams next testified as to use of the gym area. He stated that new locks were recently installed on every door of the PJJSC due to last year's riot, which locks are now jam-proof, and that the facility had recently been power-cleaned and each room painted, for which youths were housed in the gym. (N.T. at 84-86.) Mr.

Williams admitted however, that as of the date of the hearing, no youths were being housed in the gym area. (*Id.* at 86, 87-92 (explaining the risks inherent in housing youths in the gym versus the admissions area).) He also testified to the limited programming that is available to youths at the PJJSC due to overcrowding; retention efforts for employees and difficulty keeping staff; and an inability to take youths to nonurgent medical appointments outside the facility. (*Id.* at 89-91, 92-95 (noting the only way contraband gets into the building is by staff), 96-98 (further noting there are 30 staff members on leave, 15 of whom may be out due to injuries), 101-05.)

On cross-examination and redirect, Mr. Williams briefly responded to questioning regarding Act 96 youths; Philadelphia DHS's efforts to reduce the population, including consultation with the DA's Office to come and review the conditions and expedite IOJ hearings; the open space at the adult prison; the fact that Philadelphia DHS has no decision-making authority with respect to moving youths to the adult prison; other meetings with various stakeholders; Philadelphia DHS's decision that the adult prison co-location site discussed at the last hearing ended up not being a feasible option to reduce overcrowding; private providers' ability to decline youths that are not a good fit for their facilities; and the failure of the plan to utilize a Chester County facility to materialize. (*See* N.T. at 110-38.) Mr. Williams also noted that there were only 14 youths in the admissions area as of the day before the hearing, and that 5 youths had been discharged to DHS's custody 2 days before the hearing. (*Id.* at 132-34.)

Petitioner next presented the testimony of Kimberly Ali, Commissioner of Philadelphia DHS, who testified primarily as to Philadelphia DHS's efforts since the last hearing to reduce the population of youths at the PJJSC. Commissioner Ali

explained that the private provider, Adelphoi, ended up rejecting every youth that Philadelphia DHS referred there; that Philadelphia secured a contract with another dependent care provider to provide mid-level delinquent care, which will require renovations; and that Petitioner is going to issue another request for proposals to secure additional providers. (N.T. at 146-51.) Further, regarding the adult prison on State Road, Commissioner Ali indicated that Philadelphia DHS's legal department determined the facility was not feasible due to difficulties with separating youths and correctional staff, which she claimed to be unaware of at the last hearing. (*Id.* at 151-55, 157-58 (recognizing Petitioner never applied for the license for this co-location facility mentioned at the last hearing since it was determined not to be feasible), 172-79 (cross-examination regarding State Road facility).) She also acknowledged that the adult prison system in Philadelphia is under federal monitoring due to ongoing federal litigation regarding prison conditions. (*Id.* at 155-56.) She also confirmed Philadelphia DHS has continued to look for other potential detention facilities, both in and out of Pennsylvania. (*Id.* at 156-59.) When asked whether the Philadelphia Mayor has been involved in any of this, Commissioner Ali confirmed he has been informed of everything going on at the PJJSC, and that Philadelphia DHS has had conversations with the former and current governor, but she could not point to anything that has been done besides talks. (*Id.* at 157-59.)

On cross-examination, Commissioner Ali also confirmed that City Council has been made aware of the overcrowding at the PJJSC, but she could not confirm what City Council was doing about it other than that it did a tour of the PJJSC and has had conversations with state representatives. (N.T. at 160-62.) Commissioner Ali also testified to the Philadelphia DHS's maximization of the use of alternatives

to detention, like GPS monitoring, to place nearly 500 youths back into the community. (*Id.* at 162-67.) She also testified that the new provider with which Philadelphia DHS will contract will be able to provide about 20 new detention beds, which could take anywhere from 5 to 6 months. (*Id.* at 168-70.) With respect to the private out-of-state provider Rite of Passage mentioned at the last hearing, Commissioner Ali noted that 10 youths have been approved for placement but only about 3 to 4 have actually been placed there. (*Id.* at 170-72.)

When asked by the Court following redirect whether any legislators have reached out to Philadelphia DHS regarding the Pennsylvania Juvenile Justice Take Force Report recommendations issued in July 2021, Commissioner Ali indicated only that state representatives visited shortly before the hearing, and that some intended to visit the PJJSC in the near future. (N.T. at 181-82.)

Following Commissioner Ali's testimony and a brief recess, Petitioner's Exhibits P-2, P-3, P-4,¹⁸ P-5a-g, P-9, P-15, and P-16 were moved into evidence without objection, and Petitioner rested its case.

Mark Mortimer, Chief Operating Officer of Adelphoi Village, testified first, and briefly, for Respondents regarding the ratios used at Adelphoi in its contracts with Petitioner and the youths Adelphoi rejects, who then return to the Commonwealth. Mr. Mortimer testified that Adelphoi rejects about 30 percent of the referrals it gets for secure care due to a variety of reasons, and that it uses a 1 to 3 staff-to-youth ratio for its secure programs due to the complexity of the youths it treats. He noted that Adelphoi would not operate at a 1 to 6 ratio due to safety and security reasons; further, if it operated at that ratio, it may be forced to close certain programs due to lack of staffing. (N.T. at 189-99, 205-26.) On cross-examination,

¹⁸ Exhibit P-4 was moved into evidence before Mr. Williams' testimony, along with Exhibit P-2. (N.T. at 24.)

Mr. Mortimer acknowledged that he is bound by the 3800 regulations' 1 to 6 staff-to-youth ratio for secure care facilities, but that Adelphoi could absolutely use a lower ratio than that if it so chooses. (*Id.* at 200.)

Kevin Seabrook, Director of the BJJS at DHS,¹⁹ testified next for Respondents regarding the operation and capacity of DHS's four YDCs, the effect the requested modified injunction would have on YDCs' staff and youths, recent incidents at the YDCs, and the efforts DHS has taken to add capacity and make available equivalent services. Like former Director Neff, Director Seabrook oversees the Commonwealth's four YDCs (Loysville YDC, South Mountain Secure Treatment Unit, North Central Secure Treatment Unit, and North East Secure Treatment Unit) and one YFC. (N.T. at 207-08.) Director Seabrook first explained the types of direct care staff at the facilities, as well as the physical layout of the North East Secure Treatment Unit, which is the new Pittston facility discussed extensively during the November 2022 hearing. *See City of Phila. I*, slip op. at 43-44. Director Seabrook testified that the facility is capable of filling 48 beds with a preferred staff-to-youth ratio of 1 to 3, but it is currently operating with a 1 to 4 ratio. (N.T. at 209-10.) He noted the facility currently houses 24 youths, and if it was to operate on a 1 to 6 ratio, it could house 30 youths; however, there is not enough staff to operate the facility safely at that capacity. (*Id.* at 210-11, 245-47.)

He also described the physical layout of the other three YDCs, which revealed that none of the facilities are utilizing their full capacity due to staffing shortages. (*See* N.T. at 211-14 (noting specifically that the new North East facility has a 48-

¹⁹ Director Seabrook replaced former Director Charles Neff, who testified at the last hearing. *See City of Phila. I*, slip op. at 43-46. Director Seabrook has been in his new position for 6 months and has worked for DHS for 17 years in various positions. Prior to becoming Director, he was the Director for the Girls Program at North Central Secure Treatment Unit, one of DHS's four YDCs. (N.T. at 207-08.)

bed capacity, but is only housing 24 youths currently), 221-25.)²⁰ Director Seabrook explained that the North East facility, which is DHS’s newest facility, it is staffed at a 3 to 12 ratio (or 1 to 4, including counselors) per 12-bed unit because of safety concerns, staffing issues, and the treatment services it provides. (*Id.* at 224-25, 231-33 (describing the types of clinical services provided to youths).) When asked by the Court whether there was any kind of emergency declaration that could be ordered by the governor or the legislature to allow temporary staff to assist at the YDCs, Director Seabrook indicated he was not aware of anything that could be done. (*Id.* at 236.)

Respondents’ counsel then identified the cause of the crisis in this case, which he described as a “perfect coalescing of two trends,” namely, (1) placement of youths in congregate detention centers became disfavored, resulting in less referrals to private providers and the ultimate closure of many private facilities, and then (2) the COVID-19 pandemic happened, resulting in an uptick of referrals for treatment but no rebound in private provider bed capacity. This resulted in more youths having to go to DHS’s YDCs instead of private providers for treatment. (N.T. at 20-21, 236-39.) Director Seabrook then confirmed that YDCs are generally the last resort, but they have now become the first option for many counties, which places them in a strenuous position. (*Id.* at 239-40.) He assured that the YDCs are constantly looking for more bed space, including a new 60-bed facility in western Pennsylvania that he hopes will be “online” by November 2023, that 9 more beds will be added by the

²⁰ Respondents’ counsel attempted to move into evidence a video (Ex. R-12) from the North East facility showing “incidents” that occurred there, to which Petitioner objected. The Court did not allow the video to be shown, noting it was irrelevant to the issue of what could be done to alleviate the overcrowding at the PJJSC. (N.T. at 214-19, 229-31.) The Court did, however, see the first image in the video showing residents watching tv and a staff member, and permitted Director Seabrook to describe what was in the picture. (N.T. at 221-24.) The Court also did not allow Respondents to show two other videos (Exs. R-8 & R-9).

end of July 2023, and another 9 by the end of August 2023, and that DHS is doing the best it can. (*Id.* at 239-40.) Director Seabrook stressed, however, that its going to take **all stakeholders** to be a part of the solution here, not just Petitioner and DHS. (*Id.* at 241.)

Respondents then offered DHS's YDC/YFC daily census report dated July 5, 2023 (Ex. R-2), which Director Seabrook described and indicated is kept by the BJJS in the regular course of its business and is updated daily. (N.T. at 243-45 (further indicating that all male YDCs units were over 110% of their capacity).) Regarding the use of restraints on youths, Director Seabrook testified that, since operating the YDCs with a 1 to 4 staff-to-youth ratio, the YDCs have had over 100 more restraints this year compared to last year at this time. (*Id.* at 248-51.)

Petitioner introduced the BJJS Secure Facility Waitlist from July 2023 (redacted) (Ex. R-1 (first three pages)), which Director Seabrook described for the Court lists youths, waiting for placement in DHS's secure facilities, by order of referral date from various counties, and includes different designations for each youth's location, such as "EHM" for "electronic home monitoring," "AWOL" for "absent without leave," and Riverside prison. (N.T. at 252-55.) He also explained other counties not on the list may utilize "forthwith" orders to get youths into treatment facilities more quickly than going through the normal process. (*Id.* at 256-57.)

With respect to the effect of Petitioner's requested injunction modification on the residents and staff of the YDCs, Director Seabrook testified that it would be unsafe for both youths and staff; there is a concern regarding retention of staff; and there are other concerns regarding those youths ordered to YDCs "forthwith" taking precedence over youths that may be ordered by the Court into DHS's custody. (N.T.

at 257-58.) As to DHS's efforts to increase capacity and make available equivalent services, Director Seabrook informed that about 39 beds have been added to the YDCs since November 2022; other contracts are in the works, such as the facility in western Pennsylvania; and that staff salaries were increased and the names of positions were changed in an effort to attract more candidates. (*Id.* at 258-63, 299-301 (further describing, on cross-examination, efforts made to acquire more staff).)

Respondents introduced two December 2022 letters to the General Assembly informing it that the North East YDC had reached 110% capacity and will temporarily close intake, which Director Seabrook testified is required to be done by statute (Ex. R-3). (N.T. at 263-64.) Director Seabrook indicated that safety of his staff and the youths themselves is what keeps him up at night with respect to this case, and that he understands the complexity of the PJJSC situation but also that ordering more youths into the YDCs may potentially break the system and its ability to treat those youths effectively so they can return to the community. (*Id.* at 264-65.)

On cross-examination, Petitioner introduced a November 14, 2022 letter from former Director Neff stating that the YDCs would take the 15 kids as ordered by this Court but will be exactly where they were before that (Ex. P-11). (N.T. at 268-69.) Director Seabrook confirmed there are 75 youths at the PJJSC awaiting placement in DHS's facilities, but he stressed that he also has to serve both Philadelphia and the other 66 counties of the Commonwealth. (*Id.* at 270-71.) Director Seabrook then admitted he had some flexibility in terms of hiring more staff, that he is involved in discussions about YDCs' ratio, which happen weekly, and that capacity of YDCs is based on staffing at the moment. (*Id.* at 281-83.) He further admitted that currently there are 122 open beds in the Commonwealth's YDCs. (*Id.* at 283-88; *see also*

Resp'ts' Submission, filed July 10, 2023 (listing capacity and ratios of each YDC/YFC).) Director Seabrook acknowledged DHS's statutory responsibilities to accept youths and make equivalent services available and that the statute says nothing about use of a waitlist. (*Id.* at 289-90.)

Robert Tomassini, Executive Director of the Juvenile Court Judges' Commission (JCJC),²¹ testified third for Respondents. Mr. Tomassini testified regarding the current status of detention bed needs in the Commonwealth, stating that we are in a statewide detention crisis and that it looks different depending on the county. (N.T. at 310-11.) He explained that while there are about eight counties with their own detention facilities or facilities owned by multiple counties, they typically only accept youths from their respective counties regardless of whether or not there are open beds, which leads to limited availability for other counties that need beds. (*Id.* at 311.) There are also counties that pay for guaranteed beds in certain facilities, and other counties with zero facilities (like Allegheny County). (*Id.* at 312-13.)

Respondents introduced the Pennsylvania Secure Detention Bed Gap Analysis Report, published by the JCJC in May 2023 (Ex. R-4). (N.T. at 314-15.) Mr. Tomassini then described what led to the detention bed crisis in Pennsylvania, noting an "absolute significant remarkable reduction" in the use of secure detention

²¹ For the sake of brevity, the Court refers to Executive Director Tomassini as Mr. Tomassini. Mr. Tomassini explained he has worked for the JCJC for 10 years in various capacities, and prior thereto, he worked at Adams County Juvenile Probation for 26 years. (N.T. at 306-07.) He explained that the JCJC was created by statute in 1959, and consists of 9 juvenile court judges from across the Commonwealth who are appointed by the governor based on recommendations of the Chief Justice of the Supreme Court. Further, the JCJC's powers and duties include, among other things, advising juvenile court judges on proper care and maintenance of delinquent and dependent children, examining judicial practices and administrative methods in juvenile courts and establishing standards and best practices, examining procedures and hiring practices within juvenile probation departments, and collecting and analyzing research. (N.T. at 307-10.)

over the past decade, which is a statewide commitment to reduce secure detention for minor infractions and detain only those youths who are threats to the community. (*Id.* at 315.) He explained that as a result, between 2009 and 2020, there was a 75% reduction in the use of secure detention statewide, but then the pandemic happened, which contributed to the current situation. (*Id.* at 316.) Further, as the need for secure detention decreased, the need for detention facilities also decreased and many of them closed, but the pendulum has swung back and we need more beds that are not available. (*Id.*) Mr. Tomassini clarified that more facilities are not needed, only more staff to adequately staff the facilities we have. (*Id.*) He also noted that juvenile justice reform legislation²² significantly impacted detention in the Commonwealth, as it required IOJ hearings and determinations on where youths may be detained, which requires consideration of a number of factors, only one of which needs to be met to detain a youth in an adult facility. (*Id.* at 317-19.)

Mr. Tomassini further testified that he visited the Riverside facility on State Road in Philadelphia on October 28, 2022, with a group of individuals to determine whether it was a viable co-location facility and was cautiously optimistic about its future use for juveniles, but he has not heard much since the visit nor has he been involved in any conversations regarding the facilities. (N.T. at 322-28 (further noting that the legalities of such use are a sort of gray area and explaining that there are ways to ensure the separation of adult correctional staff and juveniles in an adult facility).) As to what would happen if the injunction was granted, Mr. Tomassini indicated he shared the same concerns of Director Seabrook. (*Id.* at 331-34.) Mr. Tomassini shared his belief that IOJ hearings should be held for all “direct file

²² It was unclear whether Mr. Tomassini was referring to the federal Juvenile Justice and Delinquency Prevention Act, or the JJRA.

juveniles” currently housed in the PJJSC with all the factors²³ addressed regarding whether they should be held in adult prison, which he opined would provide some relief regarding overcrowding. (*Id.* at 334-36.) Mr. Tomassini finally noted that he visited the PJJSC and described what he saw as “unsettling,” and that everyone is trying to come up with solutions. (*Id.* at 336-37 (noting he has worked closely with Philadelphia and other state partners to come up with solutions).) On cross-examination, when asked whether other counties were experiencing overcrowding in detention centers, Mr. Tomassini shared his belief that the overcrowding at the PJJSC is unique to Philadelphia. (*Id.* at 341-42.)

Laval Miller-Wilson, Deputy Secretary of the Office of Children, Youth, and Families at DHS,²⁴ testified last for Respondents. Mr. Miller-Wilson’s testimony largely tracked Director Seabrook’s testimony with respect to what DHS has done to address the issues in this case. (N.T. at 360-61.) In what he repeatedly described throughout his testimony as an “all hands on deck moment,” Mr. Miller-Wilson testified that the Secretary of DHS, DHS, and the Governor’s Office have been very focused on trying to get resources and asking the General Assembly for budgetary authority for those resources. (*Id.* at 361.) He indicated that it is part of the current budget²⁵ and that DHS asked for increased resources for work Director Seabrook described. (*Id.* at 361-62.) When asked what keeps him up at night regarding this

²³ Mr. Tomassini identified some factors to include age, maturity age, prior delinquent history, the specific charges, and the availability or lack of availability of adult or juvenile facilities. (N.T. at 335-36.)

²⁴ The Court refers to Deputy Secretary Miller-Wilson as Mr. Miller-Wilson for the sake of brevity. Mr. Miller-Wilson replaced former Deputy Director Rubin, who testified at the last hearing. *See City of Phila. I*, slip op. at 40-42. Mr. Miller-Wilson explained his background, noting that he has been a licensed attorney in Pennsylvania for about 30 years, that he previously worked at the Juvenile Law Center, and that he also worked for the nonprofit Pennsylvania Health Law Project. (N.T. at 358-59.)

²⁵ The Court notes that there is currently a budget impasse in Pennsylvania.

case, Mr. Miller-Wilson stated that he was heartbroken and very worried about what is happening in Philadelphia, and the ability of youths to get the treatment they need to return to their communities. (*Id.* at 362-63.) When asked about solutions, Mr. Miller-Wilson indicated DHS needs more time to meet with other stakeholders, including the First Judicial District, the Family Court, the defender association, probation, and the DA's Office, to discuss policies and procedures on handling delinquent youths in Philadelphia. (*Id.* at 364-66.) He also indicated that other counties and regional approaches need to be taken into consideration. (*Id.* at 366-67.)

On cross-examination, Mr. Miller-Wilson stated that conversations are being had with stakeholders regarding holding more juveniles in adult prison, for detention purposes, while their cases are being adjudicated, instead of the PJJSC. (N.T. at 379-80 (further noting his belief that some youths who are awaiting disposition of their cases should not be held in the PJJSC, especially during this crisis situation).) He also suggested there is an opportunity for a court order directing the parties and other relevant stakeholders to explore the detention of direct file juveniles and to report back to the Court the outcome of those discussions. (*Id.* at 382-84.) Mr. Miller-Wilson noted his discussions with various stakeholders, but he indicated it is crucial for everyone to get in a room together to discuss the issues in this case, and further, that an order from the Court would likely create some pressure needed to get things moving. (*Id.* at 384-96, 418-19.)

Respondents' Exhibits R-1 (first three pages), R-2, R-3, and R-4²⁶ were then moved into evidence without objection, and Respondents rested their case.

²⁶ In light of Petitioner's hearsay objection to Respondents' Exhibit R-5, a declaration of Chadwick J. Libby, President of the Pennsylvania Council of Chief Juvenile Probation Officers, the Court reserved ruling on the exhibit until after the hearing. Because Mr. Libby was not present

IV. DISCUSSION

The Court has considered the record testimonial and documentary evidence offered by Petitioner in support of its Application to Modify Injunction, and Respondents' in opposition thereto. The Court found the testimony of all witnesses credible. Notwithstanding Petitioner's argument to the contrary, the Court determined that Petitioner has sufficiently shown changed circumstances since the last injunction issued, namely, a change in the facts upon which the prior injunction rested, that would permit this Court to modify the injunction, as the PJJSC is even more crowded now than it was at the time of this Court's prior injunction Order. *See Nether Providence Twp.*, 133 A.3d at 91-93. Further, in its judicially exercised discretion, this Court believed the ends of justice would be served by a modification. *Id.* at 93. Finally, the Court concluded that Petitioner's evidentiary presentation met the high burden for a new mandatory preliminary injunction, in part. As the Court indicated at the hearing, most of the preliminary injunction criteria have already been met in this case. The Court will briefly address those criteria first, followed by a balancing of the harms, which is the focal point of Court's inquiry.

at the hearing and thus was not able to be cross-examined by Petitioner, and because his declaration is duplicative of other testimony received in this matter, the Court sustains Petitioner's objection.

Clear Right to Relief/Likelihood of Success on Merits; Status Quo;
Reasonably Suited to Abate Offending Conduct; Greater Injury from
Refusing Injunction

The Court concluded Petitioner has once again shown that it is likely to succeed on the merits²⁷ of at least its mandamus²⁸ claim because it has demonstrated that substantial legal questions must be resolved to determine the rights of the parties, and that its claim is “more than merely viable or plausible.” *SEIU Healthcare*, 104 A.3d at 506; *Wolk*, 228 A.3d at 611. The Court relies in full on its discussion of this prong set forth in the Court’s November 18, 2022 opinion. *See City of Phila. I*, slip op. at 47-51 (explaining DHS’s mandatory statutory and regulatory duties under the Juvenile Act and the Human Services Code).

The Court also determined, based on its prior opinion, that Petitioner established that “the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct[.]” or “before the event that gave rise to the lawsuit[.]” *See City of Phila. I*, slip op. at 53 (citing

²⁷ “To establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties.” *SEIU Healthcare*, 104 A.3d at 506 (citing *Fischer v. Dep’t of Pub. Welfare*, 439 A.2d 1172 (Pa. 1982)). “For a right to be clear, it must be more than merely viable or plausible” *Wolk v. Sch. Dist. of Lower Merion*, 228 A.3d 595, 611 (Pa. Cmwlth.), *appeal denied*, 240 A.3d 108 (Pa. 2020). If the party has met the other requirements for a preliminary injunction and the underlying cause of action raises important legal questions, the right to relief is clear.” *Lieberman Org. v. City of Phila.*, 595 A.2d 638, 640 (Pa. Cmwlth. 1990).

²⁸ “Mandamus is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate remedy at law.” *Allegheny Cnty.*, 490 A.2d at 408 (citations omitted). “Where the action sought to be compelled is discretionary, mandamus will not lie to control that discretionary act, . . . but courts will review the exercise of the actor’s discretion where it is arbitrary or fraudulently exercised or is based upon a mistaken view of the law.” *Id.* at 409 (citations omitted).

SEIU Healthcare, 104 A.3d at 502, 509) (concluding Petitioner amply satisfied this prong because the granted of the requested injunction would restore the parties to their status as it existed before DHS closed intake at its facilities and began refusing to accept delinquent youths court-ordered to receive treatment in DHS's facilities, i.e., when the PJJSC was operating at or below its 184-youth maximum capacity).

Next, the Court concluded that the injunction was reasonably suited to abate the offending activity. The Court acknowledges that the relief granted, in part, in its July 14, 2023 Order is not the exact relief requested by Petitioner in its Application to Modify. However, at the hearing in this matter, Petitioner informed the Court that, as of the date of the hearing, the PJJSC had a census of approximately 236 youths, **thus exceeding its licensed capacity by about 52 youths**, and that 75 youths out of the total population have already been adjudicated delinquent and committed to DHS's custody but are awaiting placement in DHS's treatment facilities. (*See* N.T. at 28-29 (Mr. Williams' testimony regarding these numbers).) Petitioner further informed that, as of July 11, 2023, 14 youths were sleeping on mattresses on the floor in the PJJSC admissions area and that, on average, there were 14-15 youths being housed in residential units designed for a maximum of 12 youths in each unit. (N.T. at 132-34 (Mr. Williams' testimony); Ex. P-3 (PJJSC Daily Census Since November 1, 2022).)²⁹ Based on these numbers, the Court decided that ordering DHS to accept half (i.e., 26) of the 52 youths court-committed to its custody by which the PJJSC is over its licensed capacity, and as many youths thereafter to bring the PJJSC back down to its licensed capacity of 184, was reasonably suited to abate the current and likely to be ongoing overcrowding situation.

²⁹ However, according to Mr. Williams' testimony, there were no longer any youths being housed in hallways or the gym. (N.T. at 86-89.)

The Court further determined that “greater injury would result from refusing the injunction than from granting it, and that issuance of an injunction will not substantially harm other interested parties in the proceedings.” *SEIU Healthcare*, 104 A.3d at 502. The Court relies in full on its prior discussion of this prong. *See City of Phila. I*, slip op. at 52-53 (observing, *inter alia*, that without the Court’s Order, there was a very real possibility that the overcrowding at the PJJSC would continue indefinitely into the future and result in injuries or even death to staff and our most at-risk youths, and that Court could discern no harm in maintaining the status quo that existed prior to August 2022).

Irreparable & Immediate Harm; Harm to Public Interest

Finally, the Court determined that a balancing of the harms in relation to the emergent overcrowding situation at the PJJSC once again necessitated this Court’s intervention. *SEIU Healthcare*, 104 A.3d at 502 (requiring Petitioner to prove “the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages” and that the injunction will not adversely affect the public interest). While Respondents **again** purported to oppose Petitioner’s requested relief, or offer any substantial solutions to remediate the problems underlying this case other than that conversations with stakeholders need to be had, the Court notes that the parties agreed at the hearing that the situation is dire, and in fact, **a crisis scenario, not just at the PJJSC but also across the Commonwealth**. In addition, the testimony and documentary evidence in this case established that as of the date of the hearing, the PJJSC was operating at 52 youths **over** its licensed capacity of 184, **with nearly 75 youths already adjudicated delinquent and court ordered to treatment in DHS’s facilities** who have no other choice but to sit around in the crowded admissions area and hallways/corridors and

await their next court-ordered move. Considering DHS's **mandatory** statutory responsibilities to accept adjudicated-delinquent youths court-ordered to its facilities and to make equivalent services available at equivalent facilities once those facilities reach 110% of their capacity, these numbers quite simply are unacceptable.

Just like at the last hearing, Mr. Williams testified that as a result of the overcrowded conditions and severe staffing issues, the PJJSC is again experiencing youths sleeping and eating on mattresses on the floor throughout the facility; an increase in contraband, including makeshift weapons, among the youths, as well as an increase in drug-related contraband; difficulty keeping certain groups who may have conflicts apart; an increase in fights breaking out; youths spending inordinate amounts of time in their rooms; an inability to adequately provide the limited services available in the facility, such as proper education classes, recreational activities, and other programming; and general tension throughout the facility. (*See* N.T. at 61-84, 89-98, 101-10 (Mr. Williams' testimony as to conditions of PJJSC); Ex. P-5a-g (photos of PJJSC from July 7 and 10, 2023).)

Petitioner also satisfied the final requisite for injunctive relief because the injunctive relief granted, in part, protects youths at the PJJSC and Petitioner's staff from the risk of inhumane conditions and any danger of physical harm resulting from the overcrowding situation. Further, the maintenance of the status quo will protect, rather than harm the public, because it will ensure that delinquent youths are once again receiving the services to which they are entitled pursuant to court orders, and doing so in appropriate state facilities recommended for their specific needs. Moreover, it will further ensure that the purposes of both the Human Services Code and its accompanying regulations, and the Juvenile Act, are fulfilled.

Additionally, although the Court appreciates and understands Respondents' concerns that the Commonwealth's YDCs are also facing capacity and staffing issues despite the many efforts made to address those issues since the last hearing, about which Respondents' witnesses testified extensively at the hearing, this Court previously stated that Petitioner cannot be expected to continue accepting new delinquent or preadjudication youths for temporary housing **in excess of its maximum capacity allowed by law** as a courtesy to the state where doing so would further exacerbate the dangerous situation. *City of Phila. I*, slip op. at 50-51. Stated otherwise, Petitioner simply cannot be expected to violate the law while Respondents sit on their hands in lieu of finding real solutions to the complex and systemic juvenile detention and treatment issues we are facing in this Commonwealth. That this Court's Order directing DHS to take custody of 26 youths housed in the PJJSC, and more thereafter, may have some negative effect on the YDCs in terms of their self-imposed 1-3 or 1-4 staff-to-youth ratio is not lost on the Court. However, the concerns expressed at the hearing in this regard are speculative.

Moreover, as the Court directed in its July 14, 2023 Order, DHS is strongly urged to reevaluate its management and use of its waitlist of youths already adjudicated delinquent and court ordered to receive treatment, which may include prioritizing youths on the waitlist who have been waiting for treatment the longest and/or those who have been charged with more egregious offenses than others on the waitlist, as well as considering whether to prioritize youths who may not be near the top of list but are being housed in an overcrowded detention facility like those at the PJJSC.³⁰ Of course, this list is non-exhaustive, and Respondents may take other measures into consideration as they see fit pursuant to this Court's recommendation.

³⁰ The Court also understands the concerns expressed by the witnesses that doing this may result in some youths who have been waiting the longest having to wait even longer for treatment.

Respondents are also reminded that this task should be carried out **in addition to** the Court's recommendation that DHS further evaluate *every possible measure* it can to obtain temporary emergency staffing and/or security personnel to alleviate any safety and security issues that may result from the influx of adjudicated-delinquent youths from the PJJSC into DHS's treatment facilities ordered by this Court, as well as the Court's directive to involve **all relevant stakeholders** in discussions regarding solutions, including, but not limited to, the Governor, the General Assembly, DHS, the Philadelphia DA's Office, the First Judicial District and Family Court, Juvenile Probation, and any private providers to meet the needs of this Commonwealth's most at-risk youths.

As for DHS's self-authorized determination of capacity of its YDCs and attendant staff-to-youth ratios, which the Court declined to consider following the last hearing and again declines to fully consider in this opinion at any real length, a few issues must be noted. First, the Court acknowledges that there is no statute or regulation governing the maximum capacity or legislatively-preferred staff-to-youth ratio of DHS's treatment facilities. However, DHS's current, self-imposed use of a 1 to 4 staff-to-youth ratio in its YDCs reveals **there are nearly 122 secure beds open in DHS's YDCs across the Commonwealth.** (*See* Resp'ts' Submission, filed July 10, 2023, at 2; N.T. at 209-10, 283-88 (Mr. Seabrook's testimony that YDCs currently operating with 1 to 4 ratio and that there were 122 open beds in the YDCs).) That number of open beds is staggering when considered alongside of DHS's "waitlist" of youths court-ordered to treatment in those facilities, which youths are no doubt being denied the timely receipt of treatment and rehabilitative services they most desperately need.

Finally, as this Court stated in its prior opinion:

The Court observes **the open policy questions** attendant to this matter concerning what must be done when dangerous and potentially inhumane conditions, such as the instant overcrowding of the PJJSC, arise in the Commonwealth's juvenile detention centers; who bears ultimate responsibility for moving things forward to remedy such overcrowding and what constitutes reasonable efforts in doing so; DHS's "definition" of "capacity" with respect to its treatment and rehabilitation facilities; and the propriety of DHS's practice of keeping a waitlist of youths court-ordered to treatment without any mechanisms in place for prioritizing placements for youths in emergency situations. **Unfortunately, these questions are reserved for the legislature to address,³⁰ not this Court.**

As then Judge, now Senior Judge Colins aptly observed in *Castille* nearly 30 years ago, which case involved, as Petitioner noted, strikingly similar circumstances to the instant matter, this case too is both troublesome and tragic. That our delinquent youths are living in such deplorable and dangerous conditions while they await the rehabilitative treatment they most desperately need and in fact were court-ordered to receive is not lost on the Court. **Granting the narrow mandatory preliminary injunctive relief sought by Petitioner, the Court believes, was necessary to abate this crisis, at least for now.**

³⁰ The Court strongly urges the General Assembly to address these issues.

City of Phila. I, slip op. at 55-56 & n.30 (emphasis added).

The Court is cognizant of the fact that neither the General Assembly or the Governor nor any other relevant stakeholders are parties in this litigation. However, the overcrowding of this Commonwealth's juvenile detention centers and adjudicated-delinquent youths' untimely receipt of treatment and rehabilitation are both matters of extreme public importance and concern that must be remedied at all costs, sooner rather than later. **The Court once again strongly urges the General Assembly to address the above-quoted open policy questions attendant to this matter, which questions are reserved for it to address, not this Court.**

V. **CONCLUSION**

Accordingly, for the foregoing reasons, the Court issued its July 14, 2023 Order, granting in part and denying in part Petitioner's Application to Modify Injunction.



ELLEN CEISLER, Judge

ADDENDUM

Exhibits Admitted into Evidence at Evidentiary Hearing

Petitioner (7 total)	
Exhibit No.	Description
P-2	Second Williams Declaration
P-3	Daily Census Since November 1, 2022
P-4	Second Ali Declaration
P-5a-g	Photos of PJJSC from July 7 and July 10, 2023 (any identifying features blurred)
P-9	Disposition of Act 96 Youth in Detention
P-15	Incidents Resulting in Injury at PJJSC from April 10 to July 10, 2023
P-16	PJJSC Staff-Census Ratio (June 1-July 6)

Respondents (4 total)	
Exhibit No.	Description
R-1	BJJS Secure Facility Waitlist (Redacted) (July 2023) (first three pages only)
R-2	DHS Youth Development Center/Youth Forestry Camp Census (July 5, 2023)
R-3	Letters from J. Rubin regarding North East Secure Treatment Unit exceeding 110% capacity and temporarily closing intake (Dec. 15, 2022 & Dec. 16, 2022)
R-4	Pennsylvania Secure Detention Bed Gap Analysis Report, published by the JCJC (May 2023)