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April 1, 2020

Supreme Court of Pennsylvania
Chief Justice Saylor and Esteemed Colleagues
601 Commonwealth Avenue, Suite 4500
Harrisburg PA 17106

RE: In re: Petition of the Pennsylvania Prison Society, et al. -- 70 MM 2020

Dear Chief Justice Saylor:

The Center for Children's Justice (C4CJ) has reviewed the above-referenced "King's Bench" petition. C4CJ recognizes the necessity and importance of addressing the health and well-being of the approximately 37,000 persons incarcerated in county correctional facilities with a goal of saving lives and limiting the spread of COVID-19.

Still, it is also not unreasonable to fault the presented petition for offering no prevention or mitigation strategies other than stipulating that broad categories of incarcerated individuals should be released (none of whom have been identified as currently affected by COVID-19) including individuals:

- Over the age of 45;
- Diagnosed with an "underlying medical condition: blood disorders, chronic kidney or liver disease, compromised immune system, endocrine disorders (including diabetes), metabolic disorders, heart and lung disease, neurological and neurologic and neurodevelopmental conditions, and current or recent pregnancy";
- Within three months of reaching or has exceeded their minimum sentence;
- Being held "under a probation detainer (or serving a sentence) for a violation of probation or county parole while the violation does not arise out of the commission of a new felony offense";
- Detained pretrial "solely due to an order imposing cash bail"; and
- Eligible for work release or serving intermittent sentences.

The petition assures that release of individuals within these categories "poses little risk to public safety." The petition fails to support that assertion.

Of concern to C4CJ is that the petition broadly details the “categories of people” that should “immediately” be eligible for release without any distinction between an individual criminally convicted or those awaiting trial. These distinctions are significant to victimized children. C4CJ is most concerned by petitioners’ lack of acknowledgement of the need to balance release with the types of crimes committed particularly crimes against a child, including physical or sexual violence.

C4CJ would also note that the identification of a category of those most at risk from COVID-19, as persons over the age of 45, does not appear to be based on scientific evidence acknowledged by the World Health Organization (WHO) or the Centers for Disease Control (CDC).

Additionally, C4CJ urges the Court to think through the important issues (and implications) potentially lurking beneath probation detainees. In many cases, victims of domestic violence turn to the probation agency to alert the agency about a continuing pattern of abuse, while the alleged offender is on the streets. Children frequently witness, by sight or sound, domestic violence. It is a crime that creates trauma for the child forever altering the child’s life book. Probation violations must be addressed through an individualized lens. Addressing probation violations with some blanket waiver and as some simple administrative act would be negligent and put children and others in danger.

The petition seems to suggest C4CJ’s concerns would be remedied by providing a local district attorney with 24 hours to file an objection to a prisoner’s release. Let’s be clear, at any point in time, this 24-hour time period would be unreasonable and in no way provide for an appropriate sorting through the facts and balancing the rights of child victims with the incarcerated individual. Facing COVID-19 disruptions in judicial and county operations this 24-hour turn most assuredly ensures that “public safety”, particularly related to safeguarding children, will be diminished.

If the Court does grant an order permitting the release of persons from county correctional facilities, C4CJ strongly urges the Court to ensure that such an order be accompanied by a directive that promotes child safety. To that end, each prisoner’s release must be determined individually informed with an understanding of whether the incarceration resulted from a crime against a child(ren) or whether the person has a prior conviction of a crime against a child or domestic violence. Also prior to release, the Court should require that the following issues, at a minimum, be addressed when the released individual is expected to live with a child(ren):

- The nature of the relationship between the released individual and child(ren) with whom they will reside (or might have contact with including whether a childcare is operated at the residence).
- When the person being released is the parent of the child(ren), identification of specific services that will be in place and monitored to support a successful transition, strengthen the parent-child bond and promote child safety, well-being and permanency.
- Whether the person has a substance use disorder (SUD) and if treatment was recommended and/or provided during the period of incarceration. Also, whether the person is being prescribed medications for a SUD (complete with a lock box) and how the individual will remain connected to comprehensive treatment and recovery supports being put into place and monitored.

- Whether the person is presently participating in any treatment for sexual offenders or subject to supervision as a result of a sexual offense.

C4CJ recognizes that COVID-19 has created unprecedented challenges, for all systems and could potentially create a serious health challenge for individuals incarcerated at a county correctional system. Still, we would hope that the Court will ensure that any decisions made appropriately balance the potential impact from COVID-19 with society's fundamental obligation to protect Pennsylvania's children.

Sincerely



Mary Achilles, LPC
Board Chair



Cathleen Palm
Founder and Executive Director

cc: Jennifer Storm, Pennsylvania's Victim Advocate
Lindsay Vaughn, Pennsylvania District Attorney's Association
Nicole Yancy, Pennsylvania's Child Advocate