Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# IN THE SUPREME COURT OF PENNSYLVANIA

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| In re: the Petition of C.Z., A.O., and Z.S.-W., on behalf of all similarly situated individuals<br><br>*Petitioners*. | **No. ____** |

## APPLICATION FOR EXTRAORDINARY RELIEF UNDER THE COURT'S KING'S BENCH JURISDICTION

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## I. INTRODUCTION

This petition seeks extraordinary relief for extraordinary circumstances. To mitigate the potentially catastrophic harm that the COVID-19 pandemic will inflict upon incarcerated youth, corrections staff, and on all of our communities, this Petition asks this Court to exercise its King's Bench and plenary authority to reduce the numbers of youth in detention, correctional and other residential facilities across the Commonwealth.

In just over three months, COVID-19, the novel lethal and highly contagious coronavirus, has spread across the world and the Commonwealth exponentially. The United States now has the highest number of reported cases in the world, with 163,539 confirmed cases and 2,860 deaths across the country.[1] In Pennsylvania, there have been 4,843 confirmed cases and 63 deaths as of March 31, 2020.[2] The numbers increase exponentially each day. *Id.* There is no vaccine against COVID-19, and there is no known effective treatment. No one is immune, including teenagers. [Graves Decl.]. While the death rate varies, every day people die from COVID19. As we ask ourselves how many will die today or tomorrow, we must also ask ourselves what public officials can do to decrease that number.

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[1] Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19)* (Mar. 31, 2020) ("*CDC Coronavirus Disease 2019*"), https://bit.ly/2xzjqX9.

[2] Pa. Dep't of Health, *COVID-19 Cases in Pennsylvania* (Mar. 31, 2020) ("*COVID-19 Cases in Pennsylvania*"), https://bit.ly/2ynK3P6.

Leading public health officials have warned that unless courts act immediately, the "epicenter of the pandemic will be jails and prisons."[3] As the Centers for Disease Control and Prevention ("CDC") has explained, correctional facilities "present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, [detention center] staff, and visitors."[4] More specifically, medical professionals have called on state governors, courts, and departments of corrections to "[i]mmediately release youth in detention and correctional facilities who can safely return to the home of their families and/or caretakers, with community-based supports and supervision, in order to alleviate potential exposure to COVID-19."[5] And indeed, jurisdictions around the country and around the world have begun to do so.[6]

Outbreaks in detention and correctional facilities will not only put at risk the lives and health of incarcerated youth, but they will also endanger correctional officers and medical staff, their families, and their communities as staff cycle

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[3] Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 16, 2020), https://nyti.ms/3aycWX4.

[4] Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* ("*CDC Guidance*") (Mar. 23, 2020), https://bit.ly/2ygqU1k.

[5] Letter from Physicians for Criminal Justice Reform, to State Governors, State and Local Juvenile Detention and Correctional Departments, and Juvenile Court Judges and Magistrates at 1 (Mar. 22, 2020), https://bit.ly/3az51sz.

[6] *See infra* Section III.D.

through the facilities. The more people who contract the virus, the more treatment they will need, and the more depleted our precious resources for their treatment will become. These outbreaks imperil us all. For similar reasons, Governor Tom Wolf has required every school across the Commonwealth to close, noting that "we are in desperate times and need to make drastic changes in order to save lives."[7]

The physical distancing necessary to stop the spread of COVID-19 – the only known and effective step individuals alone can take – is impossible in juvenile detention, placement, and correctional settings. In crowded detention and correctional facilities, youth cannot maintain the recommended distance from each other, will not be fully distanced from staff, and cannot properly sanitize the surfaces they touch. [Ambrose Decl.; Farlow Decl.] As the outbreak on the Princess cruise ship showed, confining a large number of people to one enclosed area – even when they are in separate rooms – creates the perfect breeding ground for the virus.[8]

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[7] Gov. Tom Wolf (@GovernorTomWolf), Twitter (Mar. 23, 2020, 2:20 PM), https://bit.ly/2UWq7uq; *see also PA Education Secretary Says School Should Open by April 9 – as long as COVID-19 Spread Doesn't Worsen*, Pittsburgh's Action News (Mar. 25, 2020), https://bit.ly/345D1dx.

[8] Rebecca Ratcliffe & Carmela Fonbuena, *Inside the Cruise Ship That Became A Coronavirus Breeding Ground*, Guardian (Mar. 6, 2020), https://bit.ly/2WXwsrP; K. Oanh Ha, *How A Cruise Ship Turns into A Coronavirus Breeding Ground*, Fortune (Feb. 10, 2020), https://bit.ly/2wHC2nN.

To the extent that correctional facilities attempt to mitigate the physical risks, however, they will most likely exacerbate mental health risks. A common approach to attempt physical distancing is to place youth alone in a cell or room. Such isolation has long been shown to have particularly harmful effects on adolescents, causing anxiety, depression, self-harm, and even suicide. It may be particularly harmful for the many young people in the justice system with histories of trauma and abuse. [Ambrose Decl.; Farlow Decl.; Haney Decl.]

Moreover, the pandemic itself poses a risk of emotional damage to children. Experts advise that youth can best weather the emotional harms of the pandemic by spending time with family and receiving regular and consistent emotional reassurance and support. Youth in juvenile justice settings, and especially those subjected to stringent physical distancing rules, will be deprived of these supports. [Farlow Decl.; Haney Decl.]

This Court has already recognized the spread of COVID-19 as a judicial emergency and recognized the need to "safeguard the health and safety of court personnel, court users, and members of the public" in the face of this virus.[9] This

[9] Order at 1, *In re Gen. Statewide Judicial Emergency*, Nos. 531 & 532, Judicial Admin. Docket (Pa. Mar. 18, 2020), https://bit.ly/39uBVcw; *see also* Gov. Tom Wolf, *Amendment to the Order the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home* (Mar. 30, 2020), https://bit.ly/2JtEwZv.

Court has authorized lower courts to take all "appropriate measures" to safeguard health and has closed all courtrooms to the public. *Id.* This Petition asks the Court to give the same recognition to the serious risk of contagion in our youth detention and correctional facilities by issuing an order to: limit the number of youth entering juvenile or pre-trial detention; reduce the number of youth currently confined in jail as well as in youth detention or post-confinement facilities, by reviewing all cases and directing release in designated situations; and ensure the safety and security of youth returned home and those in placement, as further described below.

If undertaken immediately, these emergency measures will mitigate the spread of COVID-19 into and beyond the Commonwealth's juvenile facilities, saving lives and preventing devastating harm to young people in state custody.

## II. PETITIONERS

C.Z., a 16-year-old female resident of Philadelphia County, PA, has been incarcerated at the Juvenile Justice Services Center ("JJSC") for the past eight months. C.Z. cannot engage in social distancing from other youth or staff and is facing a deprivation in education, programming, and visitation. [C.Z. Decl.]

A.O., a 17-year-old male resident of Delaware County, PA, has been incarcerated in the Juvenile Unit of the George W. Hill Correctional Facility ("George W. Hill"), an adult jail, for the past three months. A.O. is confined to a

cell almost all the time, and is deprived of education and visitation. Nonetheless, he still is not able to safely engage in physical distancing to protect himself from COVID-19, nor has the jail informed youth about the pandemic or how to protect themselves from it. [A.O. Dec.]

Z.S.-W., a 20-year-old male resident of Philadelphia County, PA, has been incarcerated at Youth Forestry Camp #3 for over one month. He is in close contact with youth and staff daily, including overnight, and is unable to engage in social distancing. He has been deprived of the ability to continue his GED studies, which is a condition for his release. He is also being deprived of family visitation and has limited access to connect with family by phone or video. [Z.S.-W. Dec.]

## III. JURISDICTION

The Court has jurisdiction pursuant to its King's Bench authority to decide this application and order the requested relief to "cause right and justice to be done" in a matter involving "an issue of immediate public importance." 42 Pa.C.S. § 726; Pa. Const. art. V, § 10(a).

## IV. FACTUAL BACKGROUND

### A. The COVID-19 global pandemic demands extraordinary measures be taken to protect public health.

COVID-19 has reached pandemic status. According to the World Health Organization ("WHO"), as of March 31, 2020 at 7 AM EST there were 750,890

confirmed cases of COVID-19 worldwide and 36,405 confirmed deaths.[10] The United States has the highest number of confirmed cases in the world with 163,539 confirmed cases and 2,860 confirmed deaths as of March 31, 2020.[11] In Pennsylvania alone, there have been 4,843 confirmed cases and 63 deaths as of March 31, 2020.[12] These numbers are growing exponentially. The CDC's projections show that, without effective public health intervention, more than 200 million people in the United States could be infected with COVID-19, with as many as 1.7 million deaths in the most severe projections.[13]

The need for medical treatment, hospitalization, and possibly intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. Patients in high-risk categories who do not die from COVID-19 should expect a prolonged recovery, including the need for extensive rehabilitation for profound kidney damage, lung damage, heart damage, and damage to the nervous system. [Graves Decl.]

While older individuals face greater chances of serious illness or death from COVID-19, it is now known that the younger population is just as susceptible to

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[10] World Health Org., *Coronavirus Disease (COVID-2019) Situation Reports – 70*, (Mar. 31, 2020), https://bit.ly/2yqMO2h.

[11] *CDC Coronavirus Disease 2019 supra* note 1.

[12] *COVID-19 Cases in Pennsylvania supra* note 2.

[13] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times (Mar. 18, 2020), https://nyti.ms/2JrLgal.

contracting the virus and face the same dangers as the older population,[14] [Graves Decl.], and children constitute a small but tragic percentage of COVID-19 deaths.[15] In a virtual press conference held on March 20, 2020, WHO Director General Tedros Adhanom Ghebreyesus warned that younger people are not spared of contagion, but also worldwide, they make up a "significant proportion" of patients requiring hospitalization, sometimes for weeks and sometimes resulting in their deaths.[16] The largest study of pediatric COVID-19 patients to date shows that approximately 6% of infected children and 11% of infected infants have had severe or critical cases,[17] and U.S. data shows a growing number of pediatric cases requiring intensive care.[18] These cases have included children and infants who

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[14] Stephanie Nebehay, *WHO Message To Youth on Coronavirus: 'You Are Not Invincible'* (Mar. 20, 2020), https://reut.rs/343yLvg.

[15] Taryn Luna et al., *L.A. County Reports First Death of A Possible Coronavirus Patient Under 18 as COVID-19 Cases Top 660* (L.A. Times (Mar. 24, 2020), https://lat.ms/2Jv9Abe; Jennifer Millman, *'It Attacks Everyone:' NYC Loses 1st Child to Virus as State Deaths Eclipse 1,300; NJ Cases Soar*, NBC New York (Mar. 31, 2020), https://bit.ly/2Jx4R9i; Ctrs. for Disease Control & Prevention, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12-March 16, 2020* (Mar. 26, 2020), https://bit.ly/2JsvAUe.

[16] Nebehay, *supra* note 14.

[17] *See* Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China* (2020), Am. Acad. of Pediatrics, https://bit.ly/39hz1Yz (pre-publication in journal of *Pediatrics*).

[18] Virtual Pediatric Sys., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), https://covid19.myvps.org/.

suffered from respiratory failure, shock, encephalopathy, heart failure, coagulation dysfunction, acute kidney injury, and life-threatening organ dysfunction.[19] Even when asymptomatic, these younger individuals still pose a very serious risk of transmission to those with whom they come in contact, including older, more vulnerable adults.[20]

The dire public health threat posed by the COVID-19 pandemic has prompted extraordinary responses at every level of government. On March 29, 2020, President Trump extended national social distancing guidelines advising against all gatherings of more than 10 people until at least the end of April.[21] Three quarters of Americans are currently living under a "stay at home" order.[22] Pennsylvania, like many states and counties across the country, has taken the extraordinary step of closing all schools in the State indefinitely[23] and ordering all non-essential businesses shuttered in 26 counties in an effort to combat the spread

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[19] *See* Dong, *supra* note 17.

[20] *See* Guoqing Qian et al., *A COVID-19 Transmission Within a Family Cluster by Presymptomatic Infectors in China* (2020), Clinical Infectious Diseases, https://bit.ly/2R2tjmY.

[21] Donald J. Trump, President, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing* (Mar. 29, 2020), https://bit.ly/2wUkKUe.

[22] Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times (Mar. 31, 2020), https://nyti.ms/2Uxxk56.

[23] Jan Murphy, *Pa. School Closure Order Extended for an Indefinite Period of Time* (Mar. 30, 2020), https://bit.ly/2UyQCqF.

of the virus and limit the number of its casualties.[24] Extraordinary steps must also be taken to protect the youth and staff in juvenile justice and adult carceral settings across the Commonwealth.

### B. Youth confinement poses dire health risks during the COVID-19 pandemic.

There is no cure or vaccine for this highly contagious virus. [Graves Decl.] The only way to avoid transmission of COVID-19 is for individuals to practice "social distancing" (maintaining a distance of at least six feet from the nearest person) and frequent hand washing, and for those who are ill to be in medical quarantine. [Graves Decl.] For this reason, the CDC deems social distancing a "cornerstone of reducing transmission of respiratory diseases such as COVID-19."[25] To limit the spread of the virus requires physical distancing, quarantining, and vigilant hygiene. [Graves Decl.]

The rapid transmission of COVID-19 in congregate settings is clearly evidenced by the tragic spread of the virus within cruise ships, nursing homes, and correctional facilities worldwide. More than 800 people have tested positive for

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[24] Gov. Tom Wolf, *Amendment to the Order the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home* (Mar. 30, 2020), https://bit.ly/2JtEwZv.

[25] *CDC Guidance, supra* note 4.

COVID-19 on cruise ships in Japan and off the coast of California.[26] At a nursing home facility in Washington, two-thirds of the residents and 47 staff members tested positive for COVID-19, with 35 people dying from the virus.[27] Such outbreaks are tragically continuing as the virus spreads across the country, due to the close proximity of residents, the shared social spaces, the vulnerability to the infection of the residents, and the limited training and low pay of the workers tasked with infection control.[28]

Correctional settings pose these same risks – close proximity and communal spaces, vulnerability of many residents, and poor infection control – often with the added challenge of poor access to quality medical care, poor ventilation, and poor

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[26] Victoria Forster, *What Have Scientists Learned About COVID-19 and Coronavirus By Using Cruise Ship Data?*, Forbes (Mar. 22, 2020), https://bit.ly/2UeSgNS.

[27] Jack Healy & Serge F. Kovaleski, *The Coronavirus's Rampage Through a Suburban Nursing Home*, N.Y. Times (Mar. 21, 2020), https://nyti.ms/2QIcVaS; *see also* Sam Karlin et al., *Louisiana Identifies New Cluster of Coronavirus Cases in Donaldsonville Retirement Home*, Advocate (Mar. 23, 2020), https://bit.ly/39hxQZ9.

[28] *See, e.g.*, Jack Dolan et al., *Coronavirus Outbreaks at Nursing Homes Rise Sharply in L.A. County* , L.A. Times (Mar. 30, 2020), https://lat.ms/341d66P; Halley Freger et al., *As Health Officials Feared, Coronavirus Outbreak Invading Nursing Homes*, ABC News (Mar. 30, 2020), https://abcn.ws/33WWahO; Jack Healy et al., *Nursing Homes Becoming Islands of Isolation Amid 'Shocking' Mortality Rate* N.Y. Times (Mar. 10, 2020), https://nyti.ms/2WYINMI; *see also* Joe Pinsker, *America's Nursing Homes Are Bracing for an Outbreak*, Atlantic (Mar. 4, 2020), https://bit.ly/2QXgNVW.

hygiene.[29] [Farlow Decl.; Ambrose Decl.] Indeed, in China and Iran, major and devastating COVID-19 outbreaks occurred in prisons, and experts predict the same will happen here.[30] Recent experience in New York City's Rikers Island complex bears out that prediction. As of March 30, 2020, more than 160 inmates and 130 staff members had tested positive for COVID-19, more than 800 inmates were being held in isolation, and the facility's 88-bed contagious disease unit was filled to capacity.[31]

COVID-19 outbreaks in youth confinement settings threaten not just the health of residents and staff, but the health of the communities around them as well. As correctional staff enter and leave the facility, they will carry the virus with them.[32] [Graves Decl.] Many such facilities are in less populated areas that

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[29] *See, e.g.*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 1047, 1047 (Oct. 2007), https://bit.ly/2QZA494 (in jails "[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise"); *see also* Claudia Lauer & Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, Associated Press (Mar. 7, 2020), https://bit.ly/2R17fch.

[30] Evelyn Cheng & Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC (Feb. 21, 2020), https://cnb.cx/39qJqkE; *see also* Jan Ransom & Alan Feuer, *'A Storm Is Coming': Fears of An Inmate Epidemic as the Virus Spreads in the Jails* (Mar. 20, 2020), https://nyti.ms/2QZLLg1.

[31] Jan Ransom & Alan Feuer, *'We're Left for Dead': Fear of Virus Catastrophe at Rikers Jail* (Mar. 31, 2020), https://nyti.ms/2WYT37q.

[32] Josiah Rich et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, Wash. Post (Mar. 17, 2020) (The authors – including a professor of

lack the healthcare resources of more urban areas. An outbreak of COVID-19 in a congregate environment could quickly overwhelm local health care services and force individuals to be transported to more distant hospitals and clinics, utilizing more resources and potentially exposing health care workings in communities where the disease is not yet prevalent.[33]

### C. Youth in confinement face an exceptionally high risk of serious harm.

#### *1. Youth in confinement are at a high risk of contracting and spreading the coronavirus.*

Pennsylvania's juvenile detention centers, residential treatment centers, congregate care facilities, adult jails, and other carceral settings risk becoming hotbeds of contagion during this pandemic. Youth and staff in detention, placement, or correctional facilities cannot take the necessary measures to mitigate the risk of exposure, putting them at heightened risk of COVID-19 infection. Youth live, sleep, eat, and spend the full day in close contact with each other as well as with staff members. [Ambrose Decl.; Farlow Decl.;] *see also infra* Section III.D. Some juvenile facilities in Pennsylvania have dormitory-style living with 12

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medicine and epidemiology – warn that unless States act swiftly to release inmates from jails and prisons the virus threatens not only prisoners and corrections workers but the general public.), https://wapo.st/2QZ1A6I.

[33] *See* Brie Williams & Leann Bertsch, *A Public Health Doctor and Head of Corrections Agree: We Must Immediately Release People from Jails & Prisons*, Appeal (Mar. 27, 2020), https://bit.ly/2X0WA5p.

or 15 young people sleeping and living in one room, often in bunk beds, and are at or near full capacity, making it impossible for youth to maintain distance, even when sleeping. [Hardy Decl.] Moreover, while the CDC guidance recommends "medical isolation of confirmed or suspected COVID-19 cases,"[34] few facilities have the proper space, capacity, or medical expertise for such quarantines. [Haney Decl.; Farlow Decl.]

Problems with sanitation in youth facilities and adult jails heighten the risks still further. The CDC instructs that individuals should wash their hands for 20 seconds regularly, and after sneezing, coughing, blowing their nose, eating or preparing food, before taking medication, and after touching garbage.[35] Yet youth in justice facilities often lack soap, or even access to a sink, and do not have regular access to hand sanitizer. [Ambrose Decl.]; *see also infra* Section III.D. The CDC also instructs that staff should clean and disinfect commonly touched surfaces and shared equipment several times a day.[36] In juvenile detention and correctional facilities, youth share toilets, sinks, and showers, without disinfection between each use and staff do not regularly decontaminate surfaces. [Farlow Decl.]; *see also infra* Section III.D. This lack of access to proper sanitation,

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[34] *CDC Guidance supra* note 4 (capitalization altered).

[35] *Id.*

[36] *Id.*

combined with shared bathrooms and sinks, and regular close contact with other youth and staff creates an intolerably high risk of infectious spread.

The concern about an outbreak in Pennsylvania's juvenile facilities is not hypothetical – indeed, it is already occurring. An employee at Philadelphia's Juvenile Justice Services Center recently tested positive for COVID-19.[37] In New York City, at least three staff members working at juvenile correctional facilities have contracted the virus and have been hospitalized,[38] and the New York Legal Aid Society, which represents youth in delinquency proceedings, has been receiving daily reports of symptomatic suspected COVID-19 individuals in the city's juvenile detention centers.[39] Outbreaks have also already begun in Pennsylvania's adult correctional facilities, with one prisoner and three employees testing positive as of March 30, 2020.[40]

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[37] Sean Collins Walsh, *Philly Juvenile Justice Services Center Employee Tests Positive for Coronavirus Amid Growing Call to Release Children*, Phila. Inquirer (Mar. 31, 2020).

[38] Eileen Grench, *Three Juvenile Detention Staff Test Positive for COVID-19, But No Teens Released*, Juvenile Justice (Mar. 20, 2020), https://bit.ly/2UWGGGC.

[39] Verified Pet. for Writ of Habeas Corpus ¶ 46, *New York ex rel. Williams v. Brann*, No. __ (N.Y. Mar. 19, 2020), https://bit.ly/2WZFghc.

[40] Pa. Dep't of Corrs., *PA DOC COVID-19 Dashboard*, https://bit.ly/2JpP4Jg (last visited Mar. 31, 2020).

*2. Attempts to limit the spread of COVID-19 in confinement place youth at substantial risk of serious mental and emotional harm.*

Placement in a juvenile or criminal justice facility creates serious mental and physical health risks for youth under any circumstances; the added pressures of the COVID-19 pandemic will exacerbate these harms, putting young people at serious risk of lasting physical and emotional problems.

Even under normal circumstances, taking youth from their homes and placing them in confinement causes harm, leaving children with higher rates of both medical and psychiatric problems and shorter lifespans. [Haney Decl.][41] These harms will be exacerbated in the harsher conditions caused by the COVID-19 pandemic. To attempt to implement social distancing, many facilities have already begun to resort to isolation, [Farlow Decl.; Hardy Decl.]; this is a common response across the country. [Ambrose Decl.; Farlow Decl.; Haney Decl.] Isolation has been repeatedly shown to lead to devastating consequences for youth, including anxiety, depression, self-harm, psychosis, and suicide. [Farlow Decl.; Haney Decl.][42] Isolation can also exacerbate underlying trauma disorders. *Id.*

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[41] *See also* Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?* 29 Pediatrics 1 (2017), https://bit.ly/2xyL8mJ.

[42] *See also* Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 Ann. Rev. Psychol. 187, 199 (2014), https://bit.ly/2R0My04.

Even young people not placed in isolation will be deprived of education, counseling, and other programming as facilities try to limit personal contact and increase physical distance. [Ambrose Decl.; Farlow Decl.] As staff fall ill or are subject to quarantines, programming will be cut short even more and mandated staffing ratios needed for basic safety will be jeopardized. *Id.* Unlike children outside of these facilities, who are also limited in their opportunities for school and typical social interaction, youth in confinement may be left with no forms of social, educational, or physical activity *at all*, as they are separated from their families and isolated in their cells.

The harms of isolation and programming deprivation are particularly devastating to teenagers; during adolescence, the brain reaches what is referred to as the "second period of heightened malleability."[43] As a result, youth are uniquely responsive to environmental changes – and uniquely susceptible to harm from adverse experiences.[44] If there is "[a] lack of stimulation or aberrant stimulation" for youth during this period, the results can lead to "lasting effects on physical and mental health in adulthood."[45] Youth especially need positive social

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[43] Delia Fuhrmann et al., *Adolescence as a Sensitive Period of Brain Development*, 19 Trends Cognitive Sci. 558, 559 (2015).

[44] Nancy Raitano Lee, Ph.D., Drexel Univ. Dep't of Psychology, *Presentation for the Juvenile Law Center: Neuroplasticity and the Teen Brain: Implications for the Use of Solitary Confinement with Juveniles* (2016).

[45] Fuhrman, *supra* note 43, at 561.

interactions to help them "develop a healthy functioning adult social identity"[46] and build their social skills,[47] so that they can successfully "reintegrate into the broader community upon release" from confinement.[48] [*See also* Haney Decl.]

Young people in detention, placement, and correctional facilities are at even graver risk of psychological harm than usual; WHO has cautioned that children and teens, in particular, are at risk of harm from the stress of the pandemic, and has instructed parents to support and reassure their children, maintain routines, and facilitate connections with friends and family. [Haney Decl.] Youth in facilities are deprived of these supports; in facilities struggling to ensure social distancing, the problems are further intensified. [Farlow Decl.] Returning as many youth safely to their homes as possible is the only way to avoid this devastating scenario. [Ambrose Decl.; Farlow Decl.]

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[46] Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment*, 30 Buff. Pub. Interst L.J. 31, 47 (2012), https://bit.ly/2xzXxqy.

[47] Blakemore, *supra* note 41, at 199.

[48] Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 J.L. & Pol'y 241, 256 (2012), https://bit.ly/2WX7KrH.

*3. Many youth in confinement have underlying physical and mental health issues that exacerbate the substantial risk of serious harm.*

Many of the youth in Pennsylvania's juvenile detention, placement, and adult correctional facilities have underlying health issues that render them especially vulnerable to serious harm in the event of an outbreak.

COVID-19 is especially damaging and even deadly to individuals with underlying medical conditions, including lung diseases (including asthma), heart disease, chronic liver or kidney disease (including patients with hepatitis and those requiring dialysis), diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, and developmental delay. People with these conditions are at an increased risk of developing serious complications or dying from COVID-19, regardless of age. [Graves Decl.] Youth in correctional facilities are particularly likely to be medically vulnerable, with asthma being among the most commonly diagnosed problems.[49] [Hardy Decl. (62% of Defender clients have a documented mental or medical health diagnosis)].[50] Indeed, in Philadelphia's Juvenile Justice Service Center, 41 children have been identified as

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[49] Comm. on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 Pediatrics 799-803 (2001), https://bit.ly/2UxTW5y.

[50] Nicole Wetsman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention* (July 30, 2018), https://bit.ly/2Jq7Os7.

more medically vulnerable, but only around half have been released to date. [Hardy Decl.] Youth in detention and correctional facilities are also highly likely to have underlying mental health issues or have experienced past trauma that renders them especially vulnerable to damage from isolation and family separation. [Haney Decl.]

Finally, the harms of the pandemic in juvenile facilities will disproportionately impact Black, Latinx, and Native American youth. Black youth are nine times more likely to be incarcerated, and Latinx and Native American youth are three times more likely to be incarcerated than white youth in Pennsylvania. [Hardy Decl.][51] Studies have shown that youth are disproportionately affected by racial and ethnic health disparities; Black and Latinx suffer from most major chronic diseases including asthma, diabetes, and obesity and cardiovascular issues, at higher rates than their white peers.[52] Underlying health issues like these, combined with the poor health care access, high poverty rates, and other factors too often experienced by youth of color, all contribute to

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[51] Based on a one-day count of "detained, committed, or otherwise sleeping somewhere other than their homes per orders of the court." W. Hayward Burns Inst., *Unbalanced Youth Justice*, https://bit.ly/2wQSm5z (last visited Mar. 31, 2020).

[52] James H. Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, Biomed Res. Int'l (2013), https://bit.ly/2UP2Ydb.

the substantial risk of serious harm posed by a potential COVID-19 outbreak in a juvenile facility. Indeed, experts point to each of these factors in predicting that Chicago, Detroit, and New Orleans may soon become "hot spots" for the virus.[53]

### D. Each of the individual petitioners is at an intolerable risk of harm from the COVID-19 pandemic due to realities at their respective facilities or their health conditions.

Petitioners are confined in diverse facilities across the state: all have experienced conditions incompatible with safe social distancing and sanitation. They come in close contact with other youth and staff in their rooms or cells, common spaces, and sometimes sleeping spaces. At the same time, they are facing a deprivation of programming, education, rehabilitation, and even contact with their families.

C.Z., a female resident of Philadelphia County, PA, has been incarcerated at the Philadelphia Juvenile Justice Services Center ("PJJSC") for the past eight months. C.Z. is assigned to a 10-room unit with 7 other girls. All 8 girls in C.Z.'s unit share a common room and two showers. Since the COVID-19 pandemic began, C.Z. and the other girls in her unit have not been able to eat in the cafeteria, learn in the designated classrooms, exercise at all, or go outside. C.Z. has not been able to reliably socially distance herself from the other girls and the staff in her unit

[53] Carlie Porterfield, *Why Chicago, Detroit and New Orleans Could Become the Next Coronavirus 'Hot Spots'*, Forbes (Mar. 27, 2020), https://bit.ly/2R0OQfG.

and has not received instruction from the PJJSC to use increased caution in response to the pandemic. [C.Z. Decl.]

A.O., a 17-year-old resident of Delaware County, PA, has been incarcerated in the Juvenile Unit of George W. Hill, an adult jail, for the past three months. A.O. is housed in the "Max" section of the Juvenile Unit, spending all day in a 4-foot x 7-foot cell except for one hour of recreation. A.O. goes to recreation with 4 other boys and 3 staff members in either an 8-foot wide common space or a 20-foot x 20-foot outdoor space. A.O. is responsible for cleaning the Juvenile Unit and does so without a mask and sometimes without gloves. Since the COVID-19 pandemic began, A.O. has not had schooling in nearly a month and has not had family visits. A staff member at George W. Hill to whom three boys in A.O.'s unit were exposed tested positive for COVID-19. A.O. attended recreation in the same space as those three boys during their quarantine, just at a different time. Staff at George W. Hill have not instructed youth on how to stay safe during the pandemic. [A.O. Decl.]

Z.S.-W., a 20-year-old resident of Philadelphia County, PA, has been incarcerated at Youth Forestry Camp #3 for over one month. At Youth Forestry Camp #3, Z.S.-W. is assigned to the "B" Dorm. In the B Dorm, Z.S.-W. sleeps in an open room with 8 other people, all of whom sleep in beds 3 or 4-feet apart. Z.S.-W. shares one bathroom with all of the other males from his wing of the B

Dorm and one common room with everyone else in B Dorm, approximately 16 other people. Z.S.-W. has not been instructed to socially distance, and he continues to eat in the cafeteria with everyone from the B Dorm, walk to the gym with others at an arm's-length distance, and walk to school at an arm's-length distance. Since class times have been reduced to two hours per day, Z.S.-W. has not been able to continue his GED studies, the successful completion of which is a condition for his release. Z.S.-W. has not been able to visit with his family and has limited access to his family via video calls. [Z.S.-W. Decl.]

Five non-petitioner youths, T.C., K.L., L.J., K.Q., and T.S., provided declarations affirming their inability to adhere to CDC Guidelines for COVID-19 while in juvenile detention or placement. These facilities include: St. Gabriel's Hall, Youth Forestry Camp #3, North Central Secure Treatment Center ("Danville"), and the Philadelphia Juvenile Justice Services Center ("JJSC"). All of the non-petitioners relayed that the medical facilities at their juvenile detention centers or placements are tiny, function more or less as nurses' offices, and are inadequately prepared to handle a COVID-19 outbreak. Two of the non-petitioners, T.C. and K.L., have underlying conditions and are considered medically fragile, and one of the non-petitioners, L.J., has asthma. While most of the non-petitioners described interruptions and/or cessations in schooling, exercise, and vocational training, others such as T.S. expressed that the juvenile placement

has not made any changes to its operations, and is not abiding by social distancing or other CDC-issued guidance. Both of these institutional responses increase risk for the safety and wellbeing of the youth, as is detailed throughout this petition. All of the non-petitioners are exposed to their unit mates and staff in their common area and in shared bathrooms, and all stated their difficulty in maintaining six feet of space between individuals.

### E. Immediately and dramatically reducing the number of youths in confinement is the only way to prevent substantial harm to youth, staff, and the community.

The only viable way to protect youth – and the community – from COVID-19 is to release all youth who can be returned safely to their communities. [Ambrose Decl.; Farlow Decl.] Attempts at protective measures within facilities have not proven successful; just two weeks after New York's Department of Correction implemented an "action plan" for sanitizing and maintaining social separation in jail facilities, infection rates at Rikers Island and other facilities skyrocketed.[54] The shared living space, poor ventilation, limited capacity of staff to engage in regular sanitizing and decontamination, and inadequate access to hygiene supplies for youth all contribute to these devastating outcomes. [Ambrose Decl.; Farlow Decl.] Put simply, carceral and other congregate care settings are

[54] Ransom & Feuer, *supra* note 31.

fundamentally incompatible with the hygiene and social distancing measures necessary to prevent spread of COVID-19. [Graves Decl.]

For these reasons, courts across the country have begun to limit populations in juvenile facilities. Hearings are underway in Chicago to release confined young people,[55] California's Governor issued an executive order halting the intake of youth into California's juvenile correctional settings and prisons,[56] the Clayton County, Georgia juvenile court issued an order limiting detention,[57] and Milwaukee, Wisconsin has held emergency hearings to release youth.[58]

Similarly, in the adult system, courts have begun to recognize the importance of immediately reducing jail and prison populations. The Supreme

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[55] Annie Sweeney & Megan Crepeau, *Hearings Start on Releasing Some Youths from Cook County Juvenile Detention Over COVID-19 Fears*, Chi. Tribune (Mar. 24, 2020), https://bit.ly/2yiPC16.

[56] Gov. Gavin Newsom, *Governor Newsom Issues Executive Order on State Prisons and Juvenile Facilities in Response to the COVID-19 Outbreak* (Mar. 24, 2020), https://bit.ly/2UOVK8V.

[57] Judge Steven Teske (@scteskelaw), Twitter (Mar. 28, 2020, 9:32 AM), https://bit.ly/2w2nQ8m.

[58] Liz Robbins, *Coronavirus Prompts Urgent Calls for Minors in Detention to be Released*, Appeal (Mar. 30, 2020), https://bit.ly/2xF9Txs.

Courts of New Jersey,[59] Montana,[60] South Carolina,"[61] and Washington[62] have all issued orders to reduce jail populations. In an effort to prevent new admissions to county jails, the chief judge of Maine's trial courts, with the approval of the chief justice of the state's supreme court, vacated all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.[63] In Maryland[64] and Colorado,[65]

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[59] Consent Order at 4, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. Mar. 22, 2020), https://bit.ly/3aJOim8. The order provided a mechanism for prosecutors, within 24 to 48 hours, objections to the release of specific prisoners who "would pose a significant risk to the safety of the inmate or the public," with such objections to be considered by judges or special masters appointed by the Supreme Court.

[60] Letter from Mike McGrath, Chief Justice, Mont. Supreme Ct., to Montana Cts. of Limited Jurisdiction Judges (Mar. 20, 2020), https://bit.ly/3aAv4iX.

[61] Memorandum from Donald W. Beatty, Chief Justice of S.C. Supreme Ct., to Magistrates, Municipal Judges, & Summary Ct. Staff (Mar. 16, 2020), https://bit.ly/3dJ69LY.

[62] Am. Order, *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-607 (Wash. Mar. 20, 2020), https://bit.ly/39DHyoU.

[63] *See* Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Me. Sup. Ct. Mar. 17, 2020), https://bit.ly/2JqgmiH.

[64] Letter from Marilyn J. Mosby, State's Att'y for Baltimore City, to Gov. Larry Hogan at 2 (Mar. 23, 2020) (calling for wide-ranging releases "to reduce the prison population to enable social distancing and self-isolation, and to facilitate adequate health care resources inside these institutions"), https://bit.ly/39wEURH.

[65] Gov. Jared Polis, *Guidance to Counties Municipalities, Law Enforcement Agencies, and Detention Centers* at 5 (Mar. 24, 2020) (encouraging "the courts and law enforcement, together with prosecutors and defense attorneys, to work to evaluate the detention centers' populations and determine how to reduce the number of individuals in custody"), https://bit.ly/2X9tssP.

executive officers have urged courts to take similar measures. In other jurisdictions, including Cuyahoga County, Ohio, [66] Los Angeles, California, [67] Alameda and Santa Clara, California,[68] Jefferson County, Colorado,[69] and Larimer, Colorado,[70] local authorities have acted to sharply reduce prison populations.

Yet, youth across Pennsylvania remain in juvenile detention and placement, and adult jails. Pennsylvania frequently places youth for non-criminal acts and has particularly high rates of placement for technical probation violations. Four out of five Pennsylvania youth have been placed for offenses not on the violent crime index, and 26% of youth in Pennsylvania placements were committed for technical violations (compared to 15% nationally). [Hardy Decl.][71] Pennsylvania youth will

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[66] Scott Noll & Camryn Justice, *Cuyahoga County Jail releases hundreds of low-level offenders to prepare for coronavirus pandemic*, ABC News (Mar. 20, 2020), https://bit.ly/2xDntS6.

[67] Shelly Isheiwat, *L.A. County Releases 1,700 Inmates to Lessen Jail Population Due to COVID-19 Crisis*, Fox 11 (Mar. 25, 2020), https://bit.ly/39zz1Df.

[68] Robert Salonga, *Bay Area Courts, Authorities Ramp Up Release of Inmates to Stem COVID-19Rrisks in Jails*, Mercury News (Mar. 20, 2020), https://bayareane.ws/2yoQyRM.

[69] Elise Schmelzer, *Uneven Response to Coronavirus in Colorado Courts Leads to Confusion, Differing Outcomes for Defendants*, Denver Post (Mar. 21, 2020), https://dpo.st/2Uv15DA.

[70] Carina Julig, *Larimer County Inmate in Community Corrections Program Tests Positive for Coronavirus*, Denver Post (Mar. 22, 2020), https://dpo.st/2WYzKuU.

[71] Pew Charitable Trs., *Juveniles in Custody for Noncriminal Acts* (Oct. 15, 2018) (Pew's analysis was based on data from the Census of Juveniles Residential Placement and "include[d] residential facilities, such as group homes, boot camps, long-term secure facilities, and other settings, on Oct. 28, 2015, before or after

also suffer more than youth in other states because the Commonwealth has a significantly higher rate of juvenile court placement. [Hardy Decl.][72] It is unconscionable to continue to confine young people who pose little to no risk to the public in dangerous carceral and other settings during this pandemic.

Officials in Pennsylvania have just begun to address the pending crisis, and efforts so far are substantially inadequate to protect youth and staff from the imminent risk of serious harm. There is no statewide guidance requiring that the population of youth in confinement be reduced, or even reviewed. Indeed, it is unclear from the current judicial emergency order[73] whether courts can continue to review existing detention or placement orders, and county practice varies widely. For instance, Allegheny County is regularly conducting detention hearings and reviewing dispositional placements,[74] whereas in other counties courts may have ceased reviewing existing detention and placement orders entirely, leaving youth to sit in confinement potentially for the duration of this crisis. Even in counties

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adjudication, except those in the District of Columbia, who were omitted because of data limitations."), https://bit.ly/3dDOiGt.

[72] Pennsylvania youth are 29% more likely to be incarcerated than youth around the country. Office of Justice Programs, U.S. Dept. of Justice, *Statistical Briefing Book: Juveniles in Corrections* (2017), https://bit.ly/3dLLLd5.

[73] Order, *In re Gen. Statewide Judicial Emergency*, Nos. 531 & 532, Judicial Admin. Docket (Pa. Mar. 18, 2020), https://bit.ly/39uBVcw.

[74] *Declaration of Judicial Emergency: COVID-19 Updated Emergency Operations Order* (Pa. 5th Jud. Dist. Mar. 26, 2020), https://bit.ly/39t3nal.

where some reviews are occurring, courts lack substantive guidance on the operative standard for detention and placement during this crisis, leading to many youth unnecessarily remaining in detention and placement. For example, judges in Philadelphia are responding to petitions for release by the Defender Association, but the Juvenile Justice Services Center is housing significantly more youth than it has in years, including dozens of medically fragile youth and youth with only technical probation violations. [Hardy Decl.] Across the Commonwealth, youth remain in detention, correctional, and other congregate care facilities in significant numbers. Without immediate statewide actions, juvenile facilities, as well as adult jails housing youth throughout Pennsylvania are likely to become "petri dishes" spreading contagion around the Commonwealth.

## V. ARGUMENT

### A. This Court Has the Legal Authority to use its King's Bench Jurisdiction to Order the Requested Relief.

The Court has King's Bench jurisdiction to decide this application in order to "cause right and justice to be done" in a matter involving "an issue of immediate public importance." 42 Pa.C.S. § 726; Pa. Const. art. V, § 10(a). This case raises "an issue of immediate public importance affecting operation of government throughout the Commonwealth." *Silver v. Downs*, 425 A.2d 359, 362 (Pa. 1981).

As a result of its enduring King's Bench authority, this Court possesses "every judicial power that the people of the Commonwealth can bestow under the

Constitution of the United States." *In re Bruno*, 101 A.3d 635, 666 (Pa. 2014) (quoting *Stander v. Kelley*, 250 A.2d 474, 487 (Pa. 1969) (Roberts, J., concurring)). This Court's precedent has long "described the King's Bench power in the broadest of terms" and, as such, has recognized that the Court "would be remiss to interpret the Court's supervisory authority at King's Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power." *Id.* at 679.

The Court's exercise of its King's Bench authority is appropriate here because the COVID-19 public health crisis is an unprecedented matter of public importance, which "requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law." *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015). This Court has already recognized, in its two emergency orders of March 16 and 18, 2020, that the emergency presented by the virus warrants extraordinary steps to protect the public. This Petition calls upon the Court to meet the unprecedented health challenge by directing each judicial district to take reasonable and necessary measures to prevent widespread contagion. Petitioners call upon the Court to take this necessary action to protect not just the youth held within juvenile detention or correctional facilities, but staff, their families, their respective communities and ultimately the public health of all Commonwealth residents.

Time is of the essence. Timely intervention by this Court is necessary to avoid "the deleterious effects arising from delays incident to the ordinary process of law." *Id.* The risk to the general public of delaying further review cannot be understated. To date, local jurisdictions throughout the Commonwealth have relied on a piecemeal strategy without any guidance from this Court. The lack of an immediate, unified, and concerted effort to address the obvious grave public health risk will result in any future measures constituting too little, too late. There will be outbreaks in juvenile facilities, an inevitable community spread, increased suffering and death.

Application of the King's Bench power is also particularly suited to this case, which asks that this Court exercise its "general supervisory and administrative authority over all the courts." Pa. Const. art. V, §10(a). This Court further has power "to prescribe general rules governing practice, procedure and the conduct of all courts." *Id.* § 10(c). "By its 'supreme' nature, the inherent adjudicatory, supervisory, and administrative authority of this Court at King's Bench 'is very high and transcendent.'" *In re Bruno*, 101 A.3d at 669 (quoting *Commonwealth v. Chimenti*, 507 A.2d 79, 81 (Pa. 1986)). This "supervisory power over the Unified Judicial System is beyond question." *Id.* at 678.

Under its King's Bench authority, this Court has the power to exercise general jurisdiction over the Unified Judicial System even "where no matter is

pending in a lower court." *In re Avellino*, 690 A.2d 1138, 1140 (Pa. 1997). When exercising King's Bench authority, this Court's "principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth." *Williams*, 129 A.3d at 1206 (citation omitted).

With the courts closed and judicial processes ground to a halt across the Commonwealth, and thousands of lives at risk, the dignity and integrity of the judicial system is likewise at risk. If this tribunal declares itself "powerless" to save those currently condemned to live and work in juvenile detention and correctional facilities across the Commonwealth, "it would thereby declare itself unwilling to administer the trust imposed on it by the organic law." *Commonwealth ex rel. Smith v. Ashe*, 71 A.2d 107, 119 (Pa. 1950). The issues raised by Petitioners plainly fall within the Court's King's Bench authority.

### B. This Court Should Exercise Its Plenary and Supervisory Jurisdiction to Expeditiously Grant Relief to Release Youth from Detention and Correctional Placements.

This Court's intervention is necessary to protect the health of youth confined in detention and correctional facilities, employees of those facilities, and all Pennsylvanians.

Pursuant to Section 726, "[t]his Court may assume, at its discretion, plenary jurisdiction over a matter of immediate public importance." *Bd. of Revision of*

*Taxes v. City of Phila.*, 4 A.3d 610, 620 (Pa. 2010). If ever there were a case that is of "immediate public importance," it is this one, which necessarily involves a myriad of rights under the Federal and Pennsylvania Constitution.

*1. Subjecting youth to a likely outbreak of COVID-19 raises significant constitutional concerns.*

Keeping anyone in a correctional setting during this pandemic raises serious constitutional concerns; for youth, this Court's obligations are heightened. Over the course of the last half-century, the United States Supreme Court has repeatedly reaffirmed that "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) ("'[O]ur history is replete with laws and judicial recognition' that children cannot be viewed simply as miniature adults.") (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). The basic principle that the "distinctive attributes of youth" require heightened Constitutional protections is widely recognized. *See, e.g., Miller v. Alabama*, 567 U.S. 460, 471 (2012) ("[C]hildren are constitutionally different from adults for purposes of sentencing."); *J.D.B.*, 564 U.S. at 272 (explaining that children "'are more vulnerable or susceptible to . . . outside pressures' than adults," and adopting a "reasonable child" standard for determining the scope of *Miranda* protections) (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)) (ellipses in original); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364,

379 (2009) (relying upon the unique vulnerability of adolescents, and their heightened expectation of privacy, to hold a suspicionless strip search unconstitutional in the school context); *Ginsberg v. New York*, 390 U.S. 629, 638 (1968) (recognizing that exposure to obscenity may be harmful to minors even when it would not harm adults).

For children in state custody, this principle takes on heightened importance. These children, who have been involuntarily removed from the custody of their parents and often have complex histories and needs, are entirely dependent upon the Commonwealth for their care, safety, and well-being. *See, e.g., Youngberg v. Romeo*, 457 U.S. 307, 317 (1982) ("When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist."). For those held under the Juvenile Act, the State has explicitly assumed custody to provide care and treatment. *See* 42 Pa.C.S. § 6301(b) (one purpose of the Juvenile Act is "to provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter").

*2. Failing to Protect Youth from the Pandemic Violates their Right to Due Process.*

Youth held pre-trial and those who have been adjudicated have a right to care and treatment under the Fourteenth Amendment. The State has a heightened duty to any pre-trial detainee, child or adult. In *Bell v. Wolfish*, the Court held that

because they have not been "convicted of any crimes," pre-trial detainees cannot be subjected to conditions that "amount to punishment." 441 U.S. 520, 535, 541 (1979); *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015) (clarifying that the Fourteenth Amendment excessive force standard applicable to pre-trial detainees is indeed more protective than the Eighth Amendment standard); *Youngberg*, 457 U.S. at 321–22 (clarifying that involuntarily committed individuals "are entitled to more considerate treatment and conditions of confinement" than individuals post-conviction whose conditions of confinement are "designed to punish").

Based upon the U.S. Supreme Court's reasoning in *Youngberg* and *Bell*, courts around the country have concluded that the Fourteenth Amendment also provides heightened protections to youth held post-adjudication. Like pre-trial detainees and involuntarily committed patients, youth in state custody due to a delinquency adjudication are not confined for punitive purposes. *See, e.g., Vann v. Scott*, 467 F.2d 1235, 1239 (7th Cir. 1972) (applying the Fourteenth Amendment because the purpose of the "delinquent" classification is "to afford the State an adequate opportunity to rehabilitate and safeguard delinquent minors rather than to punish them"); *see also A.J. ex rel. L.B. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Gary H. v. Hegstrom*, 831 F.2d 1430, 1431–32 (9th Cir. 1987); *H.C. ex rel. Hewett*

*v. Jarrard*, 786 F.2d 1080, 1084–85 (11th Cir. 1986); *Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 795–96 (D. S.C. 1995).

Under the Fourteenth Amendment, youth must be protected from punishment and known risks of harm. *See, e.g., Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) ("the Fourteenth Amendment affords pretrial detainees protections 'at least as great as the Eighth Amendment protections available to a convicted prisoner'") (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (the government violates the Eighth Amendment when it crowds prisoners into cells with others who have "infectious maladies") (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978)). Exposing youth to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

The Fourteenth Amendment also guarantees youth the right to treatment and rehabilitation. *See Youngberg*, 457 U.S. at 321–22; *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (youth have a right to "rehabilitative treatment"; because the State has assumed the role of the parent such treatment must be "what proper parental care would provide"); *see also C.P.X. v. Garcia*, No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that juvenile facility's failure to provide appropriate mental health care violates youth's substantive due process rights

under the Fourteenth Amendment). Depriving youth of programming, education, and social interactions and keeping them isolated in conditions known to cause long-term psychological harm falls far short of this standard.

*3. Failing to Protect Youth from the Pandemic Violates the Eighth Amendment.*

Even under the Eighth Amendment, which applies to youth held in the adult system, the constitutional standard must take into account the unique needs and developmental characteristics of youth. *See Miller*, 567 U.S. at 471 (striking down mandatory imposition of life without parole sentences for youth and noting that children are "constitutionally different" from adults under the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (striking down life without parole sentences for youth convicted of nonhomicide offenses because the Eighth Amendment requires consideration of children's unique characteristics); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (striking down the juvenile death penalty as unconstitutional because key defining characteristics distinguish youth from adults).

For anyone – youth or adult – conditions that pose an unreasonable risk of future harm violate the constitutional protections of the Eighth Amendment. *See Helling*, 509 U.S. at 33 ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition."). The Eighth Amendment requires that "inmates be furnished with . . . reasonable safety," and the Supreme Court has

explicitly recognized that the risk of contracting "serious contagious diseases" may constitute such an "unsafe, life-threatening condition" that it threatens "reasonable safety." *Id.* at 33–34; *see also Hutto*, 437 U.S. at 682–85 (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke,[75] contaminated water,[76] use of chemical toilets,[77] and paint toxins.[78] A potential COVID-19 outbreak poses at least such a substantial risk of serious harm to every incarcerated person in the Commonwealth.

King's Bench jurisdiction is particularly warranted here because of the exigent public health crisis. Experts are urging this Court to act, and to act now to mitigate a swelling public health catastrophe. For the reasons stated above, Petitioners respectfully request that this Court exercise its extraordinary jurisdiction over this matter and instruct the President Judge of each Judicial District to take measures that both expeditiously reduce the population in all youth

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[75] *Helling*, 509 U.S. at 35.

[76] *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001).

[77] *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995).

[78] *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325 (W.D.N.Y. 1999).

detention and correctional facilities, including youth under jurisdiction of the juvenile and criminal courts.

Petitioners therefore urge this Court to:

1. Reduce the number of new youth entering juvenile detention or adult jail by:

   a) Requiring juvenile courts and criminal courts considering pre-trial detention of "Direct File Juveniles" (youth charged as adults pursuant to 42 Pa.C.S. § 6302) to consider on the record the serious health risks posed by detention to the youth, other detained individuals, staff, and the community before ordering a youth detained, and to order a youth detained only if their release would otherwise pose an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.

   b) Prohibiting detention of any youth for:
      i) Failure to appear;
      ii) Failure to pay any outstanding fines or fees;
      iii) Inability to pay cash bail (for Direct File Juveniles);
      iv) Technical probation violations;
      v) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
      vi) Any other reason other than that the youth poses an immediate, specific, articulable and substantiated risk of serious physical harm to another.

   c) Suspending all conditions of probation for youth in the juvenile justice system and for youth in the adult system that:
      i) Require the youth to violate WHO, CDC, and Pennsylvania physical distancing or isolation requirements, including, but not limited to: in-person drug testing; employment or education requirements; and any in-person check-ins or meetings with probation officers or others; or
      ii) Require monetary payments of any sort.

2. Reduce the number of youth currently detained in juvenile detention centers by:

   a) Requiring all juvenile courts to immediately conduct a review of all youth currently held in county detention centers, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense cannot be a surrogate for such a risk.

   b) Directing these courts to vacate all existing detention orders and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
      i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
      ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.
      iii) All youth detained based solely upon a finding of:
         (1) Failure to appear;
         (2) Failure to pay any outstanding fines or fees;
         (3) Technical probation violations;
         (4) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
         (5) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.

3. Reduce the number of youth currently placed in congregate care settings by:

   a) Requiring juvenile courts to immediately conduct a review of all youth currently held in congregate care delinquent placements, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no

condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense alone cannot be a surrogate for such a risk.

b) Directing juvenile courts to order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
   i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
   ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.

c) Ordering the presumptive release, subject to c)iii below, to family or guardian, to a non-congregate care facility, or to medical care, of:
   i) Youth who are within 3 months of completing their program or disposition;
   ii) Youth whose release from a congregate care facility is conditioned upon completion of an educational, treatment, or other program that is suspended or delayed due to the current COVID-19 crisis;
   iii) Ordering that any objection to the presumptive release of a particular youth must be lodged within 24 hours of this Court's order. In the event of a district-attorney-initiated objection, the attorney for the youth must have the opportunity to respond to the objection prior to a judicial ruling.

4. Reduce the number of Direct File Juveniles currently detained in adult jails by:

a) Requiring criminal courts to immediately conduct a review of all youth currently held in adult jails, and to order their release unless such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the alleged offense(s) alone cannot be a surrogate for such a risk.

b) Directing these courts to vacate all existing detention orders (including those in lieu of bail) and order the immediate release to family or guardian, to a non-congregate care facility, or to medical care, of:
   i) All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19; and
   ii) Any youth who displays COVID-19 symptoms or tests positive for COVID-19.
   iii) All youth detained based solely upon a finding of:
      (1) Failure to appear;
      (2) Failure to pay any outstanding fines or fees;
      (3) Inability to pay cash bail;
      (4) Technical probation violations;
      (5) Direct violation of probation where triggering offense is a misdemeanor or summary offense; or
      (6) Any other reason other than that the youth poses an immediate, specific, articulable, and substantiated risk of serious physical harm to another.

5. Take the following additional steps to effectuate and ensure the safety of all youth:

   a) Direct juvenile and criminal courts to ensure that all released youth have a plan in place to meet their basic food, housing, and health needs;

   b) Require facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;

   c) Require facilities housing youth to provide free and regular access to phones and video visitation with family and to online or other educational, physical or mental health services and opportunities; and

   d) Appoint a Special Master to administer and monitor compliance with this order and direct the President Judge of each Commonwealth judicial district, or such official(s) designated by each President Judge, to provide compliance reports to the Special Master and petitioners' counsel in this case, in a manner, and at a time interval, directed by this Court.

## VI. CONCLUSION

For the foregoing reasons, the Court should exercise its King's Bench jurisdiction and grant the relief Petitioners request.

Dated: April 1, 2020

Respectfully submitted,

/s/ Courtney Saleski

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Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of KL**

I, K.L., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided this information in response to a standard set of questions read to me over the telephone by Leola M. Hardy, Esq. on March 30, 2020.

1. My name is K.L. I am a resident of Philadelphia County, PA.
2. I am currently incarcerated at the Juvenile Justice Services Center (hereinafter "JJSC") and have been at the JJSC since March 9, 2020.
3. I am awaiting trial on misdemeanor charges.
4. I have an underlying medical condition. I am considered medically fragile. This means that I am at greater risk if I become infected with COVID-19.
5. I was scheduled to have a detention hearing on March 17, 2020 to check on my health status but that was cancelled due to court closures.
6. I also had a hearing scheduled on March 23, 2020. My court date was cancelled and I do not have a new date.
7. I have been to the hospital once in the three weeks since I arrived at the JJSC due to my underlying medical condition.
8. During my time at JJSC, I have gained firsthand knowledge of the facility.
9. Without a significant population reduction in the JJSC, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
10. My unit houses 11 youth.
11. Each unit shares 1 day room. The day room has a bathroom with toilets, sinks with soap, and showers. Because we all share the bathroom to use the toilet, wash our hands, and

shower, it is very difficult to use the bathroom without coming into close contact with each other.

12. I have heard that another unit at the JJSC is on lockdown due to a quarantine.
13. Since the COVID-19 pandemic, we have not been allowed to leave the unit to go to the school area, cafeteria, or gym. We eat meals in our units.
14. I am only allowed to leave the unit to go to the medical unit.
15. We are no longer allowed to have visits by family, however I am allowed to make phone calls.
16. We have been told to make sure we keep clean. Social distancing was mentioned. However it is difficult for me to stay 6 feet away from the other youth and/or staff in my unit.

I, Leola M. Hardy, Esq., attorney for K.L., hereby state that the facts set forth are a true and accurate representation of the facts as they were relayed to me. Further I understand that the statements herein are subject to penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Leola M. Hardy, Esq., Bar No. 81398
Chief, Children & Youth Justice Unit
Defender Association of Philadelphia

Dated: March 31, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of L.J.**

I, L.J., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Emily Robb, Esq., on March 30, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is L.J. I am a resident of Philadelphia County, PA.
2. I am currently incarcerated at St. Gabriel's Hall in Audubon, PA, where I have been for approximately 6 weeks.
3. I am 18 years old.
4. I suffer from asthma, but am not on any medication at this time.
5. During my time at St. Gabriel's Hall, I have gained firsthand knowledge of the facility.
6. Without a significant population reduction at St. Gabriel's Hall, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
7. The facility is divided into living areas called "fraternities." The fraternity I am assigned to houses up to 16 boys, but right now there are 9 boys. The rooms each have two single beds in them approximately 5 feet apart. I share a room with 1 other boy.
8. There are no bathrooms in the sleeping units. There is 1 shared bathroom for all the boys on the unit consisting of 3 stalls, 3 urinals, 6 sinks, and 4 showers. Because we all share the same bathroom to use the toilet, wash our hands, and shower, it is very difficult to use the bathroom without coming into close contact with each other.
9. The units have hand sanitizer and soap.

10. Each unit shares 1 dayroom. While the area is large, when there is a unit meeting or people are watching tv, everyone sits together next to each other on couches. The dayroom arrangement and usage has not changed since the coronavirus pandemic.
11. Meals are eaten with the people on my unit, as well as two other units, on a different floor in a cafeteria. In total, approximately 45 youth, plus staff, eat together daily. The cafeteria is made up of several sections with tables of 4. The seating arrangements in the cafeteria have not changed since the coronavirus pandemic.
12. Before the coronavirus pandemic, people exercised in the gymnasium and went outside. Now, no one is allowed to go to the gym or outside. We are not exercising as a result.
13. All schooling stopped on March 23, 2020. No teachers are coming to the facility, and no online learning is being offered. I am currently not earning any credits toward my high school graduation. I asked for worksheets to complete, but was told by staff that even if I completed worksheets, I would not earn any credits. I have been told I need to graduate high school before I can be discharged from placement. Prior to the pandemic, I was told that I was on track to graduate in August 2020. Not knowing when I will graduate or be released is causing me significant stress.
14. There is 1 nurse's office at the facility. It has no beds, and if we need medical attention we stand in line outside the door. Only 3 people can fit inside the nurse's office at a time. The nurse's office is staffed by 2 nurses until 3 pm during the week, and 1 nurse on the evenings and weekends. We have access to a doctor who prescribes medication. The ability to properly isolate and quarantine sick children at the facility is lacking.

15. About a week-and-a-half ago, 2 boys on my unit were experiencing cold-like symptoms. They were not quarantined or given masks or any other special accommodations. Their daily routines were not altered.
16. A social worker was told to stop coming into work at the facility because of symptoms consistent with COVID-19. To my knowledge, no one was quarantined in response to any contact with the social worker.
17. The facility, on the whole, is unsanitary. Youth are assigned to clean the different spaces once a day, but the level of cleanliness varies, depending on staff instruction. We do not wear any masks, gloves, or other protective gear while cleaning.
18. Family visits, which are normally all scheduled on a specific day approximately twice a month, are being suspended. So far, two visits (one that should have happened on March 22, 2020, and one that was scheduled to occur on April 13, 2020) have been cancelled. Telephone calls with family members have been limited to one day per week.
19. Other than a lack of school and programming, and a suspension of family visits, the facility is operating as normal, and we are interacting with each other as normal. We have been instructed to practice social distancing but it's impossible to stay six feet away from other people because of the tight quarters.

I, Emily Robb, Esq., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Emily Robb

Emily Robb, Esq. Bar ID 201800
Supervising Attorney
Youth Sentencing & Reentry Project

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# Declaration of Z. S.-W.

I, Z.S-W, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Ellyn C. Sapper, Esq., on March 30 and 31, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is Z.S.-W. I am a resident of Philadelphia County, PA.
2. I am currently incarcerated at Youth Forestry Camp #3 in James Creek, PA, where I have been since February of 2020.
3. I am 20 years old. I was adjudicated on misdemeanors from a 2014 bike theft. That is my only juvenile case. I have no open adult cases or convictions.
4. I do not suffer from any medical conditions.
5. During my time at Youth Forestry Camp #3, I have gained firsthand knowledge of the facility.
6. Without a significant population reduction at Youth Forestry Camp #3, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
7. The facility has two separate living areas called dorms. I am in B Dorm. The dorm has 2 wings, East and West. There are 17 kids total between the 2 wings. The other dorm is A Dorm. I have not been there but I believe it is set up the same way.
8. In each dorm wing we sleep in an open room with approximately 9 people per room. The beds are 3-4 feet apart and there are 2 rows of beds in each room. Based on the set up of the rooms, it would not be possible to be 6 feet apart from the people sleeping near you. The beds are nailed to the ground so cannot be moved.

9. There are no bathrooms or sinks in the sleeping rooms. There is 1 shared bathroom for all the boys on each wing consisting of 2 urinals, 2 toilets and 4 showers. Because we all share the same bathroom to use the toilet, wash our hands, and shower, it is very difficult to use the bathroom without coming into close contact with each other.
10. The bathrooms have soap.
11. We still use gloves when we clean the bathroom but have not been given masks. There are 1-2 residents and 1 staff member monitors when we clean the bathroom. It would be extremely difficult to maintain social distancing while we clean.
12. Each dorm shares 1 common area, which is used by youth from both wings. All 17 of us are in the room together. The room is approximately the size of a living room. There are chairs directly next to each other in rows of 5.
13. Since the COVID-19 outbreak, we spend more time together in the common space. No one has instructed us to stay 6 feet away from each other or staff. There are additional hand sanitizers on the unit and we try to clean more thoroughly.
14. The staff has not asked or instructed us to socially distance or stay 6 feet apart. The staff can practice social distancing if they choose to. I have only seen one staff use gloves or a mask and that is on his own.
15. Meals are eaten with everyone from my dorm, including both the East and the West wings. We sit approximately 3-4 feet away from each other in the cafeteria, which is in another building. There are 4 rectangular lunch tables, which are approximately 4 feet wide. This seating arrangement has not changed since the COVID-19 outbreak. The only change is that we have to wait for the cafeteria to be cleaned between dorms. We are not allowed to have contact with the youth from the other dorm in the cafeteria.

16. The cafeteria staff use gloves but are not using masks to serve food. They are 3-4 feet away from us when they hand us our food.
17. We can go to the gym once a day. It is also in a separate building. It is voluntary to use the gym. 3-6 guys usually go together, and walk together. We walk in a line close to each other about an arm's length away as required and 1 staff walks next to the line about 5 feet away. We are able to spend time outside, playing basketball and running on the track. We are not practicing social distancing while playing sports.
18. There is a separate school area that we still walk to in line arm's length apart. There are about 8 classrooms, with 6 students in each room at a time.
19. From the time the schools were closed until 3/30/20 we just stayed in our dorm without having any schoolwork.
20. On 3/30/20 we started going back to "school" 2 hours per day instead of the full school day we had before COVID-19, which was 8:30 a.m. to 3:10 p.m. with a lunch break. Both dorms had school at the same time. Now we go separately. However, there is no actual school or GED preparation. Teachers are no longer coming to the school. Instead, staff is giving us packets the teachers prepared for each of us. We have to work on them on our own with no instruction.
21. I am working toward obtaining my GED, as the Judge ordered I can be discharged from placement only when I obtain my GED or diploma. I have taken and passed one section, but since the COVID-19 school shutdown, I am on hold. I am concerned that not being able to study for and take the GED will lengthen my incarceration.
22. Since the COVID-19 outbreak, no trade or vocational instruction is happening, as those programs are taught by teachers who are no longer coming to the facility.

23. I saw the medical facility when I went for intake. The medical facility for Youth Forestry Camp #3 consists of a nurse's office, a medical exam room with one bed and an intake space. Only one person at a time is allowed in the nurse's office. There is space for maybe 5 people to go to the building at one time. There is also a dental room with a dental chair.
24. No family visits are being allowed at this time. I was told I would be able to Skype with my family on a more frequent basis than the once-a-month practice before COVID-19.
25. Other than a lack of school and vocational instruction, separation from the other dorm, and a suspension of family visits, the facility is operating as normal, and we are interacting with each other as normal.
26. Upon my release, I will return to my mother's home in Philadelphia. I will quarantine myself and continue working on obtaining my GED. I will have access to food and adequate medical care, and plan to return to my job in food preparation.

I, Ellyn C. Sapper, Esquire, attorney for Z. S-W, hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Ellyn C. Sapper, Esq. [Bar ID 49784]
Dated: March 31, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of A.O.**

I, A.O., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Annie Ruhnke, Youth Sentencing & Reentry Project Mitigation Specialist on March 30, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is A.O. I am a resident of Delaware County, PA.
2. I am currently incarcerated at the George W. Hill Correctional Facility (hereinafter "George W. Hill"), an adult jail in Glen Mills, PA, where I have been since December 2019.
3. I am 17 years old.
4. I am not currently taking any medication at this time.
5. During my time at George W. Hill, I have gained firsthand knowledge of the facility's Juvenile Unit.
6. Without significant population reduction, it would be nearly impossible to practice social distancing, as recommended by the Center for Disease Control, given my below observations of the physical structure of the facility and it's common practices.
7. George W. Hill is a facility designed for adults, but there is a separate unit for youth being charged as adults. Our unit is called SMU-A and it is split into two sections: "max" and "general population." There are 2 floors within the unit and each floor has one type of population. "Max," where I am housed, is on the first floor and "general population" is on the second.

8. There are 8 cells on each floor and there are currently 12 youth on the unit, including me. We each have our own cell right now, but if the population were to rise above 16 we have been told that staff would bring in "boats," which are mattresses placed on the floor, to accommodate additional youth. The population of the unit has been increasing since the beginning of the COVID-19 pandemic, with four new young people arriving during the last few weeks.
9. The cells are approximately 4 feet wide and 7 feet long. Our beds consist of a piece of metal attached to the wall with a mattress on top. In the cell there is one sink and one toilet. The sink has running water, but it does not run by itself, you have to hold down a button to keep it on, making proper handwashing challenging. The jail provides each prisoner with a bar of soap. The jail does not provide us with any hand sanitizer or cleaning products. There has been no discussion of a need to wash hands or otherwise take safety precautions related to COVID-19.
10. We remain in our cells all day, other than when we are allowed out for recreational time in the common space on our unit. The common space is in the hallway, at one end of the unit. While the common space is 8 feet wide, there is a line approximately 1 ½ to 2 feet from the cell doors that we are not allowed to cross once we are out of our cells for recreational time. This shortens the width of usable space to only about 6 feet, making it impossible to be 6 feet apart from others in the common area. Additionally, there is an outdoor area that we are able to access during our recreational time. That area is approximately 20 feet by 20 feet.
11. We are allowed out for recreation for one hour. Prior to the COVID-19 outbreak, the corrections officers would allow us to stay out for longer, but have since limited the time

to an hour. Those classified as "max" must go out for rec separately from those classified as "general population." Currently, 5 boys, including me, go out for recreation together. With 3 staff members also present, it is nearly impossible to practice the social distancing recommended by the CDC in the limited space provided.

12. Our unit has 2 showers, one on each floor. However, everyone uses the downstairs shower as the one upstairs has no space to put clothes so they stay dry. I do not feel the showers are sufficiently clean, so I use my own cleaning products to clean the shower before each time I use it.
13. We typically eat our meals on a tray that is given to us in our cells. This has not changed since COVID-19. On occasion, if our tray happens to arrive while we are at recreation, we are able to eat in the common area. The common area has 4 small, round tables, each with 4 seats. The tables are less than 6 feet apart from one another, as are the seats at each table.
14. I am the one who is responsible for cleaning the juvenile unit. I clean the unit once a day. After the beginning of COVID-19 there was a brief period where the units were being cleaned after each recreation time, but that only lasted for 2 days. I am occasionally given gloves, but only when I ask for them and sometimes not at all. I have asked multiple times for a mask to wear. I was told by the corrections officers that they were not allowed to give them to us, and told by the nurse that they did not have any they could spare.
15. Prior to COVID-19, school consisted of teachers coming to the outside of our cell doors and sliding worksheets for us to complete underneath them. We have not had any teachers come or been given any work for nearly a month. I miss doing my school work. It made me feel like I was doing something productive.

16. Since COVID-19, all visits with our families have been canceled. We are still allowed to make phone calls during recreational time but I do not use the phone very much. I wipe the phone down before I use it but there has been no guidance or instruction from staff to do so. The jail has been going on lockdown often since COVID-19. It is hard to know when you will get a chance to make another phone call. Sometimes we will be locked down for 1 to 2 days at a time. When we are locked down, we cannot come out of our cells at all, including to use the phone.
17. There was a staff member here that tested positive for COVID-19. Three of the youth on our unit were exposed to him. The three of them were quarantined, but just on the unit. Being "quarantined" meant only that they were let out for recreation at a separate time from everyone else. They were still using the same phone and common spaces as we were. They were recently allowed to come out with us again after not showing symptoms. To my knowledge, they were not tested for COVID-19.
18. We have received no guidance or instruction from staff on COVID-19. No one has spoken to us about what it is exactly, or what we should be doing to protect ourselves and others. I get all of the information I have from the news because I have my own television in my cell, which I purchased through the jail's commissary. There was a television on our unit, but it broke a few weeks ago and it has not been replaced. I'm not sure how the other boys on my unit are staying informed.
19. I am focused on not catching COVID-19. I clean my cell every day with cleaning supplies I acquired on my own, and wash my hands frequently for a minute to a minute and a half at a time. I try to keep my distance from staff and other kids but it is difficult with the size of the unit and our close proximity to one another. I do not know what they

are going to do if more kids are arrested and placed in our unit. They cannot go to other units since George W. Hill is an adult facility and this is the only unit designated for juveniles.

I, Annie Ruhnke, hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Annie Ruhnke, Mitigation Specialist
Youth Sentencing & Reentry Project
Dated: March 30, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of T.S.**

I, T.S., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Annie Ruhnke, Mitigation Specialist at the Youth Sentencing & Reentry Project on March 30, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is T.S. I am a resident of Philadelphia County, PA.
2. I am currently incarcerated at Youth Forestry Camp #3 in James Creek, PA, where I have been since August 2019.
3. I am 18 years old.
4. During my time at Youth Forestry Camp #3, I have gained firsthand knowledge of the facility.
5. Without a significant population reduction at Youth Forestry Camp #3, and given my below observations about the physical structure of the facility and its practices, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control.
6. The facility is divided into two units: A Dorm and B Dorm. I reside in B Dorm, where I have been since I arrived in August 2019. There are currently 20 other kids residing in B Dorm. Each dorm is split into 2 wings where we sleep, but we share a common dayroom. There are 10 kids in my wing and 10 in the other. To the best of my knowledge, the population and set up of A Dorm is the same as in B Dorm.
7. Our dorms are an open setting; we do not have individual cells or rooms that we sleep in. We sleep in single beds in one large room. Each bed is a little more than an arm's length

away from each other, so less than 6 feet. I do not currently have someone sleeping directly next to me, but others have someone sleeping on both sides of them. While there are only 10 of us now, my wing is capable of sleeping up to 20 people.

8. Each dorm has 2 bathrooms, 1 in each wing. I share the bathroom with the others on our wing. The bathroom has 2 urinals, 2 stalls, 3 sinks, and 4 showers. There is 1 soap dispenser. Hand sanitizer has also been provided. I have seen it run out, but only 1 or 2 times.
9. All of B Dorm shares 1 dayroom. While it is a large room, there are approximately 20 of us in there at a time, not including staff. The surfaces are all shared, including our video game console and controller. I always wipe it off before and after I use it but that has not been instructed by staff. The remote control for the television is also passed around by the other residents in the dorm. While it is a big space, it is difficult to keep 6 feet away from the residents and staff because of how many of us there are. Due to my level being low, I am able to move on my own and go back to the wing to get some space if I want to. Those who have not yet earned a lower level must remain in the dayroom for most of the day.
10. We have continued to eat in the cafeteria but A Dorm and B Dorm eat separately. Prior to COVID-19, kids from both dorms worked in the cafeteria at once, but there is a rotation now so that only a resident from B Dorm is working while we are eating.
11. In addition to the cafeteria, we are still allowed to exercise in the weight room and the gymnasium. While we are told both are cleaned before and after our workouts, the weight room in particular is very small and it is impossible to keep the recommended 6-foot distance when there are 20 residents present plus staff. When we go to the gymnasium,

we are still playing basketball together. Other than the additional cleaning, our gymnasium and weight room access has remained the same since COVID-19, with the exception that we no longer play basketball with A Dorm.

12. From my observations, the medical facility at Youth Forestry Camp #3 consists of a doctor's office and a dentist's office. To my knowledge there are no beds or places to be separated if someone were to become very sick. The doctor is supposed to come to the facility once a week, but he does not come that often. Staff have told me that if there is no one on the sick call list the doctor does not come at all.
13. Before COVID-19, we had school in a classroom with the whole camp. We moved to different classes throughout the day with different teachers instructing us during each class. Directly following the outbreak of COVID-19 in Pennsylvania, and for about 2 weeks, we did not have school at all. Beginning today, we are being provided with packets of schoolwork. We are going to the school building and sitting in the classrooms to complete this work. There were 6 other students with me in the room today. Based on how the classrooms are set up and the size of the room, we are not able to sit 6 feet away from one another. Additionally, there are 3 staff members in the room with us.
14. Before COVID-19, I was on track to graduate and receive my high school diploma in the beginning of May. I was very proud that I was going to receive my diploma and now I am unsure that I will be able to do so. I'm waiting to speak to one of my teachers about how I should go about completing my senior project. The staff themselves do not seem to know and the teachers are not accessible to me.
15. The camp has not given us masks but I feel that they should and have expressed this. The staff at the facility are coming and going every day. Last week a staff member was

coughing and was sent home. His wife works at a hospital and I was told she may have contracted COVID-19. I was told by a counselor that staff are having their temperature taken every day before they enter the facility. I worry that staff may still bring in the virus and that it will spread quickly given the current conditions.

I, Annie Ruhnke, hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Annie Ruhnke, Mitigation Specialist
Youth Sentencing & Reentry Project
Dated: March 30, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# DECLARATION OF DR. JULIE DEAUN GRAVES

I, Dr. Julie DeAun Graves, declare as follows:

1. My name is Julie DeAun Graves. I am a physician licensed to practice medicine in the states of Florida, Maryland, New Jersey, South Carolina, Texas, Virginia, Wisconsin, and in the District of Columbia. I am currently working in family medicine and public health private practice as the Associate Director of Clinical Services at Nurx. I have been certified by the American Board of Family Medicine since 1989.

2. I am a public health physician, previously serving as Regional Medical Director for the Texas Department of State Health Services for the Houston region, as Medical Services Coordinator for the Texas Department of Aging and Disability Services, and as a medical consultant to the Texas Medical Board. I managed the H1N1 influenza outbreak for the Texas State Supported Living Centers and oversaw public health efforts for the Houston region (population seven million) for Ebola virus, Zika virus, West Nile virus, highly pathogenic avian influenza, tuberculosis outbreaks, and natural disasters.

3. I obtained my medical degree and completed a surgical internship then family medicine residency at the University of Texas Southwestern Medical School in Dallas, Texas, then completed a fellowship in faculty development at the McLennan County Medical Education and Research Foundation in Waco, Texas. I earned a Master's degree in Public Health and a Doctor of Philosophy in Management, Policy, and Statistics at the University of Texas School of Public Health. I have practiced family medicine and public health since 1989, and in 2018-2019 I was Associate Professor and Vice-Chair for Education at

Georgetown University School of Medicine. At Nurx I care for patients seeking contraception, HIV (human immunodeficiency virus) prevention, sexually transmitted infection diagnosis and treatment, cervical cancer screening, and coronavirus (SARS-CoV-2, the virus that causes COVID-19) testing and treatment. I am a former member of the Public Health Committee of the Texas Medical Association and a former member of the Executive Board and current Governing Councilor of the American Public Health Association.

COVID-19

4. COVID-19 is an illness caused by the SARS-CoV-2 virus, which is a novel coronavirus that was first detected in humans during the outbreak (now a pandemic) we are experiencing now. The Centers for Disease Control and Prevention reports that as of March 31, 2020 at 1:30pm there were 175,067 cases reported in the United States, with cases reported in every state, and 3,415 reported deaths so far. See www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6. On March 18, 2020, there were 7,038 cases reported and 150 deaths.

5. The United States is in the early stages of the pandemic, and because there has been insufficient testing for cases, the reported cases numbers are lower than actual cases. There is a high probability that there are many more infected individuals in the population. The spread of the virus is faster and more dangerous when people are in close quarters. People with health conditions such as diabetes, asthma, emphysema, heart disease, kidney disease, pregnancy, diabetes, cancer, HIV, and autoimmune diseases such as lupus and rheumatoid arthritis are at higher risk for severe illness, complications, and death

from COVID-19. People over age 60 have higher death rates, but severe cases of illness and deaths are reported in people of all ages, including children. The ratio of cases of COVID-19 to deaths from this illness is much higher than for other contagious diseases such as influenza. The SARS-CoV-2 virus damages the lung tissue, which means that even those who recover need prolonged medical care and rehabilitation. They are likely to have permanent disability from loss of lung capacity. The heart itself can be infected, and kidneys and the nervous system can also be impacted and damaged permanently.

6. There is no vaccine and no treatment for COVID-19. We only have prevention as a tool to stop the pandemic. If people remain in congregate settings, most of them plus the staff who work with them will become infected, and many will die or have permanent disability. COVID-19 is transmitted from person to person by breathing in expired air that contains the droplets an infected person has coughed or the virus they have shed, or by touching a surface with the virus on it, unless there is full personal protective equipment: mask, gloves, gown, plus thorough hand washing before putting on the equipment and after removing it. The only way to avoid transmission is for people to distance themselves at least six feet from others (commonly referred to as "social distancing" or "physical distancing"). People should not be in large buildings full of many people, and people must practice frequent and thorough hand washing with adequate soap and water. If we do not implement these two steps – physical distancing and hand washing – the pandemic will only continue to spread and the number of deaths will continue to increase.

7. There is a national shortage of COVID-19 tests. Medical providers cannot test everyone who they believe should be tested, and so are

presuming that people with a certain set of symptoms are positive. This is an appropriate and common situation with new infectious diseases and is a widely recognized strategy in public health disease control. Individuals and communities should not rely solely on the criteria of a positive COVID-19 test to implement precautions or quarantine symptomatic persons. A public health response requiring widespread preventive measure of physical distancing and appropriate hand washing is our only tool to slow the spread of the virus.

8. While children may make up a minority of COVID-19 patients, children have died from COVID-19 and have also experienced serious medical complications that required ventilators and extended hospitalization. Additionally, children with pre-existing medical conditions such as asthma and diabetes are at heighted risk for serious complications.

9. There is no question that requiring children to remain detained in congregate care facilities is more dangerous than the travel required to release children to their homes. While there is level of risk in traveling at this time, the risk of exposure in congregate care environments is much higher. All of the risks of exposure during travel – such as persons coming within six feet and transmitting the virus through respiratory droplets – also apply to congregate care environments, because multiple staff members are constantly entering and exiting the facility and there is potential for them to expose children to the virus. These children are at risk every single time a staff member or visitor walks into the facility – because any one of them could be an asymptomatic carrier of COVID-19. Even if juvenile and criminal justice facilities faithfully adhere to screening protocols to minimize the risk of transmission, there is still the risk that a staff member is an

asymptomatic carrier. Children will be significantly safer in a home environment, where they can truly avoid public spaces and practice appropriate social distancing.

10. Many facilities are quarantining youth who exhibit coughing, fever, or difficulty breathing. This response is too late – if a child is not quarantined when there is an initial exposure, then there is much higher likelihood that the virus spreads around the facility, especially when everyone is in such close contact and social distancing is not possible.

CDC COVID-19 Guidance for Correctional and Detention Facilities

11. I have reviewed the CDC "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (CDC Detention Facility Guidance) issued March 23, 2020, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html. The CDC Detention Facility Guidance highlights many ways in which people in detention facilities and congregate environments are at a higher risk of contracting COVID-19.

12. The CDC Detention Facility Guidance acknowledges that "(i)ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced." Further, it states that "(t)here are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members."

13. The CDC Detention Facility Guidance instructs facilities to "implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally six feet between all individuals, regardless of the presence of symptoms," but acknowledges that "not all strategies will be feasible in all facilities." Social distancing does not work when it is only followed part of the time. The CDC's "Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19)" issued on March 7, 2020 states that "(d)ata are insufficient to precisely define the duration of time that constitutes a prolonged exposure. However, until more is known about transmission risks, it is reasonable to consider an exposure greater than a few minutes as a prolonged exposure. Brief interactions are less likely to result in transmission; however, clinical symptoms of the patient and type of interaction (e.g., did the patient cough directly into the face of the HCP) remain important" and "(e)xamples of brief interactions include: briefly entering the patient room without having direct contact with the patient or their secretions/excretions, brief conversation at a triage desk with a patient who was not wearing a facemask." Repeated interactions, even brief, that occur throughout the day in these facilities, are each an independent opportunity for transmission of infection. Because it is not known whether people who have recovered from infection develop immunity to subsequent infections with COVID-19, and because transmission may occur when the infected person has no symptoms, each interaction between a staff member and a detainee and each interaction between two individual detainees or two individual staff members is an independent opportunity with the same risk of infection. The risks are additive with each interaction.

14. The CDC Detention Facility Guidance states that "The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent hand washing) may be limited and is determined by the supplies provided in the facility and by security considerations." Facilities are instructed to provide no-cost access to liquid soap (or bar soap), running water, and hand drying supplies.

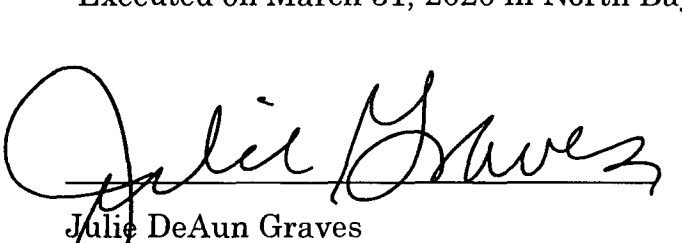
15. Detention facilities are instructed to "(o)ffer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza seasons." Preventing influenza cases in these facilities can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.

16. Even if all of the recommendations made in the CDC Detention Facility Guidance are followed, the conditions of detention are such that children in detention and correctional settings would still be at high risk of contracting COVID-19. Because this virus is transmitted through droplets, through the air, and on surfaces, and because people who do not have symptoms but are infected transmit the virus to others, even one infected person in a facility, either a detainee or a staff member, can infect the majority of people in the facility. This is worsened by the crowded conditions in the facilities.

17. If we are to contain the spread of the COVID-19 virus, we must relocate as many people as possible out of congregate settings. If we prevent people from practicing adequate physical distancing from others and the other steps outlined above, institutional centers will become clusters in which high percentages of persons are infected with COVID-19. Such clusters not only endanger those who are immediately

infected, but the health of those residing in the communities in which congregate facilities are located.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 31, 2020 in North Bay Village, Florida.



Julie DeAun Graves

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# Declaration of Timene Farlow

I, Timene Farlow, declare as follows:

**Background and Expertise:**

1. I am the former Deputy Commissioner for the Philadelphia Department of Human Services' Division of Juvenile Justice Services, having served in that capacity for 10 years – from 2009 until my retirement in June 2019.

2. As part of my portfolio, I was directly responsible for oversight of Philadelphia County's only secure juvenile detention facility, namely the Philadelphia Juvenile Justice Services Center (PJJSC), where young people ranging in age from 10 – 20 are held while awaiting court decisions. During my tenure, the PJJSC was responsible for approximately 4,000 admissions annually.

3. I was the First Deputy Commissioner to have received the "DHS Honors Award" for exemplary leadership in January 2011, and I was recognized as "Social Worker of the Year" by the Philadelphia/Southeastern Division of the National Association of Social Workers (NASW) in May 2015. I received my Master of Social Work Degree from Temple University in 1996, and my Bachelor of Arts from LaSalle College (now LaSalle University) in 1982.

**Potential Impact of COVID-19 Pandemic at Philadelphia Juvenile Justice Services Center (PJJSC):**

4. Given my direct experience and firsthand knowledge of the workings of the PJJSC I am extremely concerned about the complexity and/or inability of the facility to properly care for, supervise, and protect its young residents from contagion.

5. The configuration of the living units does not allow for the kind of social distancing recommended by the CDC. On the contrary, young people are housed in very close quarters with one another on their respective living units and generally participate in all activities as a group – that is, they eat together, play board games together, watch television together, etc. – and thus are seated in close proximity to one another to accomplish this.

6. The furnishings in the cafeteria are such that students sit well within a couple of feet of each other at tables which are bolted to the floor and have fixed seats, preventing them from moving apart from one another at the recommended 6-foot distance.

7. Even the Admissions area of the facility has its own set of distancing challenges. The general practice is to co-house newly arrested youth together in a single cell while they await health assessments by nursing staff. There has never been the capacity nor practice to quarantine new admissions. For example, although each child is typically administered a purified protein derivative (PPD) skin test to determine their tuberculosis status, they

are sent immediately to their assigned living units when the test is complete. Even in cases where the test results (which are best read the third day after the PPD is planted) are positive, the youth has already by then been introduced into the population.

8. Staff are not outfitted with proper N-95 masks and likely feel vulnerable to contagion by the youth and one another should they be located within 6 feet of them.

**Lack of Necessary Medical Expertise at PJJSC to Appropriately Respond to COVID-19:**

9. As described throughout this declaration, there are a number of reasons why the PJJSC is ill-suited to meet the needs of the more than 100 youth currently detained there, not the least of which is that it lacks the medical expertise to efficiently address an instance of a potential positive COVID-19 test result.

10. In the event that a youth were to present with symptoms suggesting they might be positive for the virus, in the absence of any diagnostic testing on site, the youth would need to be sent out to one of the local hospital emergency rooms. In Philadelphia, hospitals have fewer beds than the pandemic now calls for. In many cases, the hospitals are recommending that individuals suspected of being positive "self-quarantine in place." That is not possible for a youth who tests positive at the PJJSC. At best, the youth could be housed in the admissions area of the Center in a cell designed not for sleeping, but for holding – outfitted with a concrete slab upon which the youth could sit or lie down.

11. Though there are nursing staff located at the PJJSC, they are obligated to meet the demands of all of the PJJSC residents – distributing medications, conducting health assessments, and responding to an array of sick calls. They are neither capable of nor dedicated to meeting the unique needs of a child who tests positive for the virus.

12. Finally, any child who must be transported outside of the complex to an external medical appointment or for an emergency room visit is both handcuffed and shackled. This is an experience that only further exacerbates the trauma of being potentially positive for the virus.

**Potential Impact of COVID-19 on the Emotional and Behavioral Health of Residents at the PJJSC:**

13. To create the recommended social distancing, there is a strong likelihood that youth are being held within the confines of their individual rooms – a form of solitary confinement, even if that is not the staff's intention. For youth with mental health disorders, particularly those with suicidal thoughts, such isolation serves only to exacerbate the symptoms of depression and creates dangerous opportunities for carrying out such ideations.

14. Inasmuch as the youth at the PJJSC are currently prevented from having physical visits from their families during this pandemic, the absence of this essential demonstration of love and support is likely creating and/or exacerbating the complex mental health

disorders with which so many of these youth present. While there is mention in the media of "virtual visits" being made available for these youth, the technology and equipment to facilitate such visits did not exist throughout my tenure at the PJJSC and likely does not exist now. Even if the equipment and technology did exist, facilitating such visits would hinge also on the youth's parent or caregiver having access to compatible equipment and technology. While some staff may use their discretion to afford some limited number of youth opportunities to place phone calls to their families, in the absence of facial masks and other protective equipment, this practice stands to further promote the spread of the virus as there is just a single phone on each living unit.

I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Timene Farlow
Dated: March 31, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# DECLARATION OF ANNE MARIE AMBROSE, PHYLLIS BECKER, SUSAN BURKE, GLADYS CARRION, PATRICK MCCARTHY, DAVID MUHAMMAD, MARC SCHINDLER, AND VINCENT SCHIRALDI

**We declare as follows:**

1. We are former leaders of youth justice agencies in multiple states across the country. As members of the Steering Committee for Youth Correctional Leaders for Justice (YCLJ), we serve as a resource to the youth corrections field, engaging in an array of technical assistance, guidance, research and policy activities in order to advance reform. Earlier this month, YCLJ issued *Recommendations for Youth Justice Systems During the COVID-19 Emergency* signed on to by 32 current and former youth correctional administrators throughout the country recommending measures youth justice systems could take to avoid the inadvertent spread of the coronavirus into and out from youth correctional facilities.[1]

2. Anne Marie Ambrose is the Managing Director for the Technical Assistance Unit for Systems Improvement at Casey Family Programs. She was previously the Commissioner of Human Services for the City of Philadelphia with responsibility for child welfare and juvenile justice, and Bureau Director for child welfare and juvenile justice for the Commonwealth of Pennsylvania's Department of Public Welfare.

3. Phyllis Becker is the former director of the Missouri Division of Youth Services.

4. Susan Burke is the former director of the Utah Division of Juvenile Justice Services.

5. Gladys Carrión is the co-chair of Youth Correctional Leaders for Justice, former Commissioner of New York State's Office of Children and Family Services and former Commissioner of New York City's Administration for Children's Services.

6. Patrick McCarthy is a Stoneleigh Fellow and Research Scholar with the Columbia University Justice Lab, former director of the

[1] Retrieved on 3/30/20 from https://yclj.org/covid19statement

Delaware Division of Youth Rehabilitative Services and former President and CEO of the Annie E. Casey Foundation.

7. David Muhammad is the Executive Director of the National Institute for Criminal Justice Reform, he is the former Chief Probation Officer of Alameda County (in California) and the former Deputy Commissioner of the New York City Department of Probation.

8. Marc Schindler is Executive Director of the Justice Policy Institute and former interim director of Washington, D.C.'s Department of Youth Rehabilitation Services.

9. Vincent Schiraldi is co-director of the Columbia University Justice Lab, co-chair of Youth Correctional Leaders for Justice, former director of Washington, D.C.'s Department of Youth Rehabilitation Services, and former Commissioner of New York City Probation.

10. COVID-19 is a serious, highly contagious disease that is particularly likely to spread in juvenile detention and correctional settings. According to the most recently available information, COVID-19 cases have been confirmed for over 200 incarcerated individuals and over 100 facility staff members in adult and juvenile correctional settings across the United States.[2] Incarcerated individuals have reported confirmed cases of COVID or COVID-like symptoms in 25 states.[3]

11. Worldwide, catastrophic COVID-19 outbreaks have already occurred. Data released on February 29 showed that almost half (233 out of 565) of new infection cases out of Wuhan, China were inmates in the city's prison system.[4] Iran recently released 54,000 prisoners to address the pandemic.[5] The spread of the disease on

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[2] Ned Parker et al., *Spread of Coronavirus accelerates in U.S. Prisons and Jails* (March 28, 2020), *available at* https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-us-jails-and-prisons-idUSKBN21F0TM.

[3] COVID Behind Bars https//www.google.com/maps/d/u/0/viewer?mid=1cAMo2yrrmxupUZ_IJVBuuZO4UizfVxm8&ll=40.09352283139395%2C-86.87937406451238&z=4.

[4] ZI Yang, *Cracks in the System: COVID-19 in Chinese Prisons,* The Diplomat (March 9, 2020).

[5] BBC News, *Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread* https://www.bbc.com/news/world-middle-east-51723398 (March 3, 2020).

cruise ships, churches, nursing homes and in malls further highlights the dangers of keeping multiple people enclosed in a confined space.

12. Youth in juvenile justice facilities, including detention centers, correctional placements, group homes, and private facilities, live, eat, learn, and spend almost all of their time in close contact with each other. These facilities are, in many respects, designed for exactly the opposite of the physical distancing measures required by this pandemic. A myriad of living arrangements can be found in youth justice facilities, from single cells or rooms to double celling or bunking to large dorm-type sleeping arrangements, with a dozen or more youth sleeping in one large room in close quarters. Facilities generally include shared bathroom and showering facilities, dining facilities, and day rooms. During the day, youth are mostly "locked out" of their cells or rooms, forcing them into congregate environments. Programs and education, necessary for rehabilitation and the safe and secure operation of such facilities, almost always occur in groups and in spaces that rarely allow for distancing. Of course, in facilities in which youth sleep in dormitory settings, they are almost constantly congregated with one another.

13. Youth justice facilities do not have the capacity to ensure the hygiene and sanitizing necessary to protect from the spread of COVID-19. In many cases, youth do not even have regular access to soap and water that would allow them to wash hands when they sneeze, cough, prepare to eat, touch an object, or go from one room to another. Youth typically do not have access to hand sanitizer. Ventilation is often inadequate. And the facilities are not staffed sufficiently to ensure that all surfaces will be regularly cleaned and disinfected.

14. Youth justice facilities typically lack the medical staffing, and often the physical capacity, to hold young people in a safe medical quarantine. Relying on nearby hospitals risks overwhelming local, often rural, health systems; failure to properly treat infected youth risks facility-wide exposure.

15. Youth in the justice system tend to be less healthy than their peers. They have more gaps in Medicaid enrollment and higher rates of

asthma and other medical vulnerabilities[6] that can increase the severity of COVID-19.[7]

16. Failing to release youth and properly address the justice system's role in the spread of and exposure to COVID-19 will disparately impact Black, Latino, and Indigenous youth. Research consistently shows racial disparities in rates of incarceration. For example, in 2017, Black and native youth were incarcerated at 5.8 and 2.5 times the rate of white youth.[8] In 2015, Latino youth were 1.7 times more likely to be incarcerated than white youth.[9] Research has shown that these disparities reflect differential treatment from our justice system rather than differing youth behaviors.[10]

17. Youth correctional facilities are often short-staffed and generally staffed in shifts, with program, educational, health/mental health, and custody staff frequently rotating through these facilities three times a day, seven days a week. Like youth, these staff will have a very difficult time maintaining physical distance from the youth, risking carrying the virus into, or out from, the facility from their home communities.

18. Once they, their families and youth in the facilities begin to fall ill or test positive, staff will likely begin calling in sick, either because

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[6] Matthew C. Aalsma et al., Preventive Care Use Among Justice-Involved and Non–Justice-Involved Youth, Pediatrics (November, 2017).

[7] Centers for Disease Control, *What to Know About Asthma and COVID-19,* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html.

[8] Sickmund, Melissa, T. J. Sladky, W. Kang, and Charles Puzzanchera, Easy Access to the Census of Juveniles in Residential Placement, Bureau of Justice Statistics. Washington, DC: U.S. Department of Justice (2019), *available at* https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Facility_Operation.asp?state=59&topic=State_Facility_Operation&year=2017&percent=rate; Puzzanchaera, Charles, Sladky, A., and Kang, W., "Easy Access to Juvenile Populations: 1990-2018." Office of Juvenile Justice and Delinquency Prevention. Washington, DC: U.S. Department of Justice (2019), available at https://www.ojjdp.gov/ojstatbb/ezapop/asp/profile_selection.asp.

[9] The Sentencing Project, *Still Increase in Disparities in Juvenile Justice,* 2017 *available at* https://www.sentencingproject.org/news/still-increase-racial-disparities-juvenile-justice/.

[10] Pope, Carl E., Rick Lovell, and Heidi M. Hsia. *Disproportionate Minority Confinement: A Review of the Research Literature from 1989 Through 2001.* Juvenile Justice Clearinghouse/National Criminal Justice Reference Service. Rockville, MD: Office of Juvenile Justice and Delinquency Prevention (2002), *available at* https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=198428.

they or their family members are ill, or because they fear contracting the virus in a closed setting. Staff will not only be required to quarantine themselves in the event of exposure, but the exposure or contagion of family members may also impede them from continuing to work. This could also exacerbate staff turnover and make staff recruitment more difficult. This, in turn, can thin already stretched staffing complements and endanger remaining youth and staff.

19. Combined, these staff disruptions will inevitably lead to diminished programming for youth, including education or special education, individual or group counseling and other rehabilitative programs. Reduced programming will likely lead to increased depression and frustration of residents. It may also lead to behavior problems in the facility, resulting in decreased safety for both youth and staff.

20. Facilities attempting to comply with physical distancing recommendations to prevent the spread of COVID-19 will, therefore, likely rely instead on isolation of individual youth. Withdrawing visitation, reducing or eliminating programs, reducing staffing complements and increasing isolation will likely exacerbate facility tension, mental illness and histories of trauma. This, in turn, can dramatically increase the risk of self-harm and is associated with risks lasting into adulthood, including poorer overall general health and increased incidence of suicide.[11]

21. Given the physical and staffing constraints of youth justice facilities, the only appropriate way for states to respond to the COVID-19 pandemic is to close intake to detention and placement facilities for all but the most serious offending youth and release as many youth as safely possible back to their homes. Youth systems should quickly develop and implement individualized transition and aftercare plans for those currently in confinement; and policymakers should augment resources for community programming and access to health care to assure that releases are carried out in a safe manner. Families must be provided the necessary financial resources to meet the basic needs of their child,

[11] Casiano, H, Katz, LY, Globerman, D, Sareen, J. (2013). Suicide and deliberate self-injurious behavior in juvenile correctional facilities: A review. Journal of Canadian Child and Adolescent Psychiatry, 22(2), 118–124.

including adequate housing, food, access to educational supports, and health care.

22. Shifting youth from placement to home is possible, practical, and can be done safely. In New York City and Washington D.C., the vast majority of youth were safely moved out of incarceration and into community programs while ensuring public safety.[12] This is true throughout the country; in the overwhelming majority of states, youth incarceration has declined by double-digits. Nationally, from 1997-2017, there has been a 59 percent decline in youth incarceration during which time youth crime has continued to plummet nationally by 71 percent. Because youth incarceration actually worsens youth behavior, prioritizing community-based solutions whenever possible is not only medically-appropriate, but also better for community safety.[13]

23. For those youth who cannot be safely released back to the community, every effort must be made to ensure that youth and staff inside facilities stay safe and healthy. To that end, facilities must fully comply with all guidance currently being issued by public health officials, including maintaining social distance, increased handwashing, and frequent disinfecting and sanitization of common areas. Additionally, facilities must support youth during this unprecedented time by providing access to technology to facilitate communications with their families and loved ones, as well as distance learning and other activities aimed at supporting rehabilitation. Youth should have regular access to health and mental health care while in custody during this pandemic period to ensure they can get needed medications and support in a timely manner. Finally, under no circumstances should the current pandemic justify the use of punitive measures, such as room confinement or isolation.

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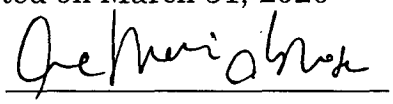
[12] Center for Children's Law and Policy, Implementing New York's Close to Home Initiative: A New Model for Youth Justice (2018) available at http://www.cclp.org/wp-content/uploads/2018/02/Close-to-Home-Implementation-Report-Final.pdf; Liz Ryan and Marc Schinder, Notorious to Notable: the Crucial Role of the Philanthropic Community in Transforming the Juvenile Justice System in Washington, D.C, https://www.yumpu.com/en/document/read/41029454/notorious-to-notable.

[13] Anna Aizer, Joseph J. Doyle, Jr., Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges , *The Quarterly Journal of Economics*, Volume 130, Issue 2, May 2015, Pages 759–803, https://doi.org/10.1093/qje/qjv003.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2020



Anne Marie Ambrose
Phyllis Becker
Susan Burke
Gladys Carrion
Patrick McCarthy
David Muhammad
Marc Schindler
Vincent Schiraldi

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# DECLARATION OF LEOLA M. HARDY, DEFENDER ASSOCIATION OF PHILADELPHIA, CHILDREN AND YOUTH JUSTICE UNIT

**I, Leola M. Hardy, Esq. declare as follows:**

1. I am the Chief of the Children and Youth Justice Unit of the Defender Association of Philadelphia.

2. The Defender Association of Philadelphia is a non-profit criminal defense law firm representing approximately seventy percent of children arrested in Philadelphia. The Association's Children and Youth Justice Unit works to ensure that the legal rights of children are protected at every phase of the criminal justice process.

3. The Defender Association continues to advocate for the children we serve, both legally and holistically, during the governmental closure. We file motions on behalf of children in pretrial detention and placement, requesting hearings and advocating for their release. We telephone our clients in residential placement to gauge their mental and physical health, and to ensure communication with their families.

4. Children are often forgotten in discussions around prison reform. The lexicon surrounding the incarceration of children is sanitized; for example, we use words like "residential placements" in lieu of prison, "detention" instead of jail, and "rooms" rather than "cells." While the vocabulary we use when discussing the detention of children is different than that we use for adults, the reality and the experiences are often exactly the same Incarcerated children have the same vulnerabilities as incarcerated adults; many times, those vulnerabilities are heightened due to their young age and general immaturity.

5. Many of the children we represent suffer from underlying medical conditions, such as asthma or diabetes, that make them more susceptible to the COVID-19 virus. 62% of defender clients have a documented mental or medical health diagnosis. When the Philadelphia Family Court was closed on March 16, 2020, there were 41 clients of the Defender Association categorized as medically at-risk at the Juvenile Justice Services Center, our county detention center. As of this writing, approximately half of them continue to be detained. While our clients are forced to remain incarcerated, they routinely come into contact with staff members and newly detained children, all of whom have contact with

members of the outside community. Our county detention center does not have adequate screening measures in place to ensure that staff and incoming children do not unwittingly spread the virus within the detention center.

6. If a large number of youth need to be quarantined, most facilities are not structurally set up to do this. Our clients uniformly report that the on-grounds medical facilities have a negligible number of beds to accommodate youth who might become infected. Our clients report that none of the facilities where they are detained/incarcerated are enforcing social distancing. Staff, who come into contact with others from outside the facilities, are rarely wearing gloves, and almost none are wearing masks. Some juvenile facilities in Pennsylvania, such as Youth Forestry Camps #2 and #3 and Abraxas have dormitory-style living, including 8 to 24 young people living in one room; have youth housed and sleeping in bunk beds; and are at heightened capacity, making it impossible for youth to maintain distance, even when sleeping.

7. Youth across Pennsylvania, many held for low-level offenses, remain in juvenile detention and correctional settings. Pennsylvania frequently places youth for non-criminal acts and has particularly high rates of placement for technical violations. Four out of five youth in Pennsylvania have been placed for offenses not found on the violent crime index, and 26% of youth in Pennsylvania placements were committed for technical violations, compared to 15% nationally.

8. Black youth are nine times more likely to be incarcerated, and Latinx and Native American youth three times more likely to be incarcerated as white youth in Pennsylvania. Pennsylvania also has a significantly higher rate of juvenile court placement than other states across the country.

9. Like adults, children in a group or institutional setting are at risk. The very nature of incarceration means that social distancing is difficult to achieve in such a milieu without resorting to solitary confinement. Our office recently learned that 9 children at our local detention center are currently being isolated in their cells after exposure to a medical staff member who tested positive for COVID-19. Human contact for the children is at a minimum. Everything is done inside the cell, including eating meals and reviewing school packets. These youth are denied access to telephones; they cannot even communicate with their parents, guardians, or attorneys. Given what we know about adolescent brain

development, denying basic human contact to children is not only temporarily inhumane, it creates significant risks for long term emotional and developmental damage.

10. Direct File Juveniles, or children who are initially charged in adult court, are included in the population particularly vulnerable to solitary confinement as a measure to "protect" the rest of the prison population. These children are incarcerated in county adult prisons, both on the juvenile designated wing at Riverside Correctional Facility and those that have "aged out" to general population at adult prisons. New admissions must be quarantined for 14 days to prevent the spread of the virus. In adult prison settings, "quarantine" means solitary confinement. These children are held in custody, often with high bails, without family visitation. In our conversations with these youth, they are fearful of exposure to the virus. In addition, they have no access to teachers who often serve a supportive role in lieu of family to help calm their fears. Furthermore, these clients are missing court dates that would allow for a possible decertification to juvenile court, with no idea of when those court dates might be rescheduled.

11. Since the Governor's order to close schools, there has not been a uniform effort to provide an education to children in both detention facilities and placements. Some children have absolutely no educational materials provided, some are being given packets to fill out without qualified teachers to provide assistance, and some youth are being provided instruction through computer learning. None of those "options" involve contact with teachers. However, many school districts are providing access to teachers for children who are at home with their families through online education.

12. Since the state of emergency was declared in Pennsylvania, family visits have stopped. Home passes have stopped. Phone calls are limited. Children cannot hug their parents, grandparents, siblings. Treatment, rehabilitation, and supervision cannot happen without family visits, family participation, and home passes. All youth spoken with across the Commonwealth have reported increased stress; those youth with mental health diagnoses report extreme anxiety.

13. Family Court Judges are only responding to petitions for release when the District Attorney's Office, Probation, and the Defender Association are in agreement. However, our county detention facility is still housing

significantly more youth than it has in years. Court hearings for routine placement reviews scheduled to take place after the courts were closed have yet to be rescheduled. Children consistently ask when they can see their Judge.

14. Through this pandemic, we cannot forget that we are working with children; as one client told her attorney today, "I just want to hug my mom." All children in detention or placement need judicial hearings to assess whether they can and should be released during this pandemic. Judges must err on the side of leniency, given these unusual historical circumstances, and our most vulnerable clientele.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 1, 2020

Leola M. Hardy
Defender Association of Philadelphia
Children and Youth Justice Unit

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of C.Z.**

I, C.Z., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to questioning over the telephone by Annie Ruhnke, Youth Sentencing & Reentry Project Mitigation Specialist on March 26, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is C.Z. I am a resident of Philadelphia County, PA.
2. I am currently incarcerated at the Juvenile Justice Services Center (JJSC) and have been at JJSC for eight months. Before I was transferred to JJSC on an Act 96 petition, I was in custody at Riverside Correctional Facility on State Road.
3. During my time at JJSC, I have gained firsthand knowledge of the facility.
4. Without a significant population reduction in the JJSC, it would be extremely difficult to practice social distancing, as recommended by the Center for Disease Control, given my below observations about the physical structure of the facility.
5. The facility consists of twelve units. Each unit contains ten rooms and houses up to twelve people: two of the rooms have double huts, or two single beds. These beds are spread about ten feet apart. There are currently eight girls in my unit. All of us sleep in our own rooms.
6. There are toilets and sinks in only three of the ten rooms in my unit. None of these rooms provide soap.
7. Each unit shares one day room. The day room has two toilets, two sinks with soap, and two showers. Because we all share the day room to use the toilet, wash our hands, and

shower, it is very difficult to use the day room without coming into close contact with each other.

8. I have been to the other units before. To the best of my knowledge, all units are set up in exactly the same way.
9. Before the coronavirus pandemic, everyone ate meals in the cafeteria. The eight girls in my unit occupied two tables.
10. Before the coronavirus pandemic, people exercised in the gym. The gym is the size of a normal school gym or basketball court. Two units would go at a time and exercise for one hour each day.
11. Before the coronavirus pandemic, everyone learned in the school area. The school area consists of twelve classrooms, each classroom holding one unit. We would spend one hour in a classroom, then rotate to a different classroom, staying in our unit the whole time. In total, we spent four hours in four different classrooms.
12. There is only one medical facility in the entire JJSC. From what I observed, the medical facility can fit only about ten people. The doctor is there only on weekdays. The ability to properly isolate and quarantine ill inmates at the facility is lacking.
13. The facility, on the whole, is unsanitary. Staff usually clean the different spaces once a day, but do not wear any masks, hazmat suits, or other protective gear.
14. Hand sanitizer dispensers are stationed in the hallway, but are frequently empty. No other hygiene supplies, such as masks or gloves, are available for the incarcerated.
15. Since the coronavirus pandemic, we have not been allowed to leave the unit to go to the school area, cafeteria, or gym. We eat meals and complete worksheets in our units. We no longer exercise or go outside.

16. Other than these travel restrictions, the facility is operating as normal, and we are interacting with each other as normal. No one has instructed us to practice social distancing or cautioned us to be extra careful. It is difficult for me to stay six feet away from the other girls and/or the three other staff in my unit.
17. Last week, I overheard a staff person say on her 10pm-6am shift that she had come into contact with someone potentially infected with the coronavirus, warning other staff to stay six feet away from her. That night she was at my door for two hours. Later on, she was sent home and told to self-quarantine.

I, Annie Ruhnke, hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Annie Ruhnke, Mitigation Specialist
Youth Sentencing & Reentry Project
Dated: March 26, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of K.Q.**

I, K.Q., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Michelle Mason, Esq., on March 30, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

1. My name is K.Q. I am a resident of Philadelphia County, PA.
2. I am currently placed at the North Central Secure Treatment Facility (commonly known as Danville).
3. During my time at Danville, I have gained firsthand knowledge of the facility. Given my below observations about the physical structure of the facility, it is extremely difficult to follow the safety guidelines recommended by the Center for Disease Control during the COVID-19 outbreak.
4. The facility consists of 2 buildings reserved for girls with 2 units in each building. Each unit contains 12 rooms, each of which houses 1 person. There are currently 12 girls in my unit. All of us sleep in our own rooms. The individual rooms do not have toilets or sinks.
5. Each unit shares one day room. The day room has toilets, sinks with soap, and four showers. Because we all share the day room to use the toilet, wash our hands, and shower, it is very difficult to use the day room without coming into close contact with each other. Even since the outbreak of COVID-19, we still go in pairs to access the showers.
6. I have not been to the other units, but to the best of my knowledge, all units are set up in exactly the same way.

7. Before the Coronavirus pandemic, everyone ate meals in the cafeteria. The 12 girls in my unit occupied 2 tables. We still continue to eat our meals in the same way, leaving one space between each other.
8. Before the Coronavirus pandemic, people exercised in the gym. The gym is the size of a normal school gym or basketball court. 2 units would go at a time, now we go 1 unit at a time.
9. Before the Coronavirus pandemic, everyone learned in the school area. The school area consists of 12 classrooms, each classroom holding 1 unit. We would spend 1 hour in a classroom, then rotate to a different classroom, staying in our unit the whole time. In total, we spent 4 hours in 4 different classrooms. Currently we do not receive classroom instruction but we still can sign up for computer time in the school facility for self-instruction.
10. There is only 1 medical facility at Danville. From what I observed, the medical facility is like a nurse's station. There is only 1 bed for emergency hospitalization. The doctor is there once a month. The ability to properly isolate and quarantine sick youth at the facility is lacking.
11. The facility is marginally sanitary. Staff and students usually clean the different spaces, but do not wear any masks, hazmat suits, or other protective gear. Youth are provided gloves to wear while cleaning.
12. Hand sanitizer dispensers are stationed in the hallway. No other hygiene supplies, such as masks, are available for the incarcerated.
13. Since the Coronavirus pandemic, we have not been allowed to leave the unit to go to our jobs. All vocational programming has stopped.

14. Other than a few modifications in schedule, the facility is operating as normal, and we are interacting with each other as normal. No one has instructed us to practice social distancing or cautioned us to be extra careful, besides increasing the frequency of hand washing. It is difficult for me to stay 6 feet away from the other girls and/or the 4 staff in my unit.

I, Michelle Mason, Esquire, attorney for K.Q., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Michelle E Mason

Michelle Mason, Esq. Bar ID 65378
Director, Juvenile Special Defense Division
Defender Association of Philadelphia

Dated: March 31, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

**Declaration of K.Q.**

I, K.Q., hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. I provided the information below in response to a standard set of questions read to me over the telephone by Michelle Mason, Esq., on March 30, 2020. At the conclusion of the conversation, my responses to the questions were repeated to me, and I confirmed their accuracy.

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5. Each unit shares one day room. The day room has toilets, sinks with soap, and four showers. Because we all share the day room to use the toilet, wash our hands, and shower, it is very difficult to use the day room without coming into close contact with each other. Even since the outbreak of COVID-19, we still go in pairs to access the showers.
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I, Michelle Mason, Esquire, attorney for K.Q., hereby state that the facts set forth above are a true and accurate representation of the facts as they were relayed to me. Further, I understand that the statements herein are subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).

Michelle E Mason

Michelle Mason, Esq. Bar ID 65378
Director, Juvenile Special Defense Division
Defender Association of Philadelphia

Dated: March 31, 2020

Received 4/1/2020 5:41:30 PM Supreme Court Eastern District

Filed 4/1/2020 5:41:00 PM Supreme Court Eastern District
24 EM 2020

# DECLARATION OF DR. CRAIG W. HANEY, PHD

**I, Craig W. Haney, declare as follows:**

1. I am a Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz in Santa Cruz, California, where I engage in research applying social psychological principles to legal settings, including the assessment of the psychological effects of living and working in institutional environments, especially the psychological effects of incarceration. I was a co-founder and co-director of the UC Criminal Justice & Health Consortium – a collaborative effort of researchers, experts and advocates from across the University of California system working to bring evidence-based health and healthcare solutions to criminal justice reform in California and nationwide.

2. I also have served as a consultant to numerous governmental, law enforcement, and legal agencies and organizations on jail- and prison-related issues. Those agencies and organizations include the Palo Alto Police Department, various California Legislative Select Committees, the National Science Foundation, the American Association for the Advancement of Science, the United States Department of Justice, the Department of Health and Human Services (HHS), the Department of Homeland Security, and the White House (under both the Clinton and Obama Administrations). In 2012, I testified as an expert witness before the Judiciary Committee of the United States Senate in a hearing that focused on the use and effects of solitary confinement and was appointed as a member of a National Academy of Sciences committee analyzing the causes and consequences of high rates of incarceration in the United States. My research, writing, and testimony have been cited by state courts, including the California Supreme Court, and by Federal District Courts, Circuit Courts of Appeal, and the United States Supreme Court.[1]

3. COVID-19 is a serious, highly contagious disease and has reached pandemic status. At least 693,224people around the world have

[1] For example, see *Brown v. Plata*, 563 U.S. 493 (2011).

received confirmed diagnoses of COVID-19 as of March 30, 2020, [2] including 140,904people in the United States.[3] At least 33,106 people have died globally as a result of COVID-19 as of March 30, 2020,[4] including 2,405 in the United States.[5] These numbers are predicted by health officials to increase, perhaps exponentially. For example, the CDC has estimated that as many as 214 million people may eventually be infected in the United States, and that as many as 21 million could require hospitalization.[6]

4. The COVID-19 Pandemic poses such a threat to the public health and safety in the Commonwealth of Pennsylvania that, on March 6, 2020, Governor Tom Wolf declared a statewide State of Emergency, on March 13, he ordered all schools to close,[7] and on March 20, 2020, he ordered all Pennsylvania businesses that are not life-sustaining to close.[8] He has also issued "stay at home" orders in multiple counties to require residents to to stay home or at their place of residence except to facilitate certain authorized necessary activities..[9]

5. COVID-19 is a novel virus. At present there is no vaccine and no cure for COVID-19. No one has immunity. Currently, the most effective way to control the virus is to use preventive strategies, including social distancing, in order to maximize our healthcare capacity to treat a manageable number of patients. Otherwise,

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[2] World Health Organization, *Coronavirus disease (COVID-19) Outbreak*, https://www.who.int/emergencies/diseases/novel-coronavirus-2019

[3] Center for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/c.ases-updates/cases-in-us.html.

[4] *Supra*, fn. 2.

[5] *Supra*, fn. 3.

[6] Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. TIMES (Mar. 18, 2020), https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html.

[7] https://www.governor.pa.gov/newsroom/governor-wolf-announces-closure-of-pennsylvania-schools/
[8] https://www.pa.gov/guides/responding-to-covid-19/
[9] https://www.nbcphiladelphia.com/news/coronavirus/pennsylvania-extends-coronavirus-school-business-closures-indefinitely/2346050/

healthcare resources will be overwhelmed and the Pandemic will certainly be exacerbated.

6. Social distancing presents serious challenges for everyone in every part of our society, but nowhere more than in penal institutions, where living conditions are unusually sparse, prisoners necessarily live in unescapably close quarters, and have unavoidable contact with one another. Juvenile institutions are no exception to this general institutional rule.

7. Moreover, jails and prisons are already extremely stressful environments for adult prisoners and for children who are confined in secure facilities.[10] Research has shown that these environments are psychologically and medically harmful in their own right, leaving formerly incarcerated persons with higher rates of certain kinds of psychiatric and medical problems.[11] In fact, incarceration

[10] Much of this evidence is summarized in several book-length treatments of the topic. For example, see: Haney, C., *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. Washington, DC: American Psychological Association (2006); Liebling, A., & Maruna, S. (Eds.), *The Effects of Imprisonment*. Cullompton, UK: Willan (2005); and National Research Council (2014). *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press. In addition, there are numerous empirical studies and published reviews of the available literature. For example, see: Haney, C., Prison effects in the age of mass incarceration. *Prison Journal, 92*, 1-24 (2012); Johns, D., Confronting the disabling effects of imprisonment: Toward prehabilitation. Social Justice, 45(1), 27-55.

[11] E.g., see: Schnittaker, J. (2014). The psychological dimensions and the social consequences of incarceration. *Annals of the American Association of Political and Social Science, 651*, 122-138; Turney, K., Wildeman, C., & Schnittker, J., As fathers and felons: Explaining the effects of current and recent incarceration on major depression. *Journal of Health and Social Behaviour, 53(4),* 465-481 (2012). See, also: Listwan, S., Colvin, M., Hanley, D., & Flannery, D., Victimization, social support, and psychological well-being: A study of recently released prisoners. *Criminal Justice and Behavior, 37(10),* 1140-1159 (2010).

leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).[12]

8. The COVID-19 Pandemic presents penal institutions with an enormous challenge that they are ill-equipped to handle. Juvenile facilities in particular lack the operational capacity to address the needs of youth in custody in a crisis of this magnitude. They do not have the resources needed to provide youth with ready access to cleaning and sanitation supplies, or to ensure that staff sanitize all potentially contaminated surfaces during the day. Most lack the capacity to provide more than minimal emergency mental health or medical care. Yet the demand for such services in this crisis will grow, stretching already scarce treatment resources even further. In addition, juvenile facilities typically provide children in custody with very limited access to telephonic or other forms of remote visiting. However, these ways of connecting to others will become critically important if contact visiting is limited or eliminated. Furthermore, juvenile facilities cannot readily protect youth from contact with staff who regularly enter facilities after having been in the outside world. Staff members are at risk of contracting COVID-19 and then transmitting it to both youth and other staff inside.

9. Penal settings have limited options to implement the social distancing that is now required in response the COVID-19 Pandemic. It is very likely that many of them will resort to the use of solitary confinement. Indeed, I have seen precisely this form of social distancing utilized as a matter of course in numerous correctional institutions throughout the country, where medical quarantines are conducted in prison infirmaries or other housing units by effectively placing prisoners in solitary confinement.

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[12] E.g., see: Binswanger, I., Stern, M., Deyo, R., et al., Release from prison: A high risk of death for former inmates. *New England Journal of Medicine, 356,* 157-165; Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behavior, 49(1),* 56-71; and Massolglia, M., & Remster, B., Linkages Between Incarceration and Health. *Public Health Reports, 134*(Supplement 1), 85-145 (2019); and Patterson, E. (2013). The dose-response of time served in prison on mortality: New York state, 1989-2003. *American Journal of Public Health, 103(3),* 523-528.

10. Yet the experience of solitary confinement inflicts an additional set of very serious harmful effects that significantly undermine mental and physical health. The scientific literature on the harmfulness of solitary confinement in jails and prisons is now widely accepted and the research findings are consistent and alarming.[13] This research has led a number of professional mental and physical health-related, legal, human rights, and even correctional organizations to call for severe limitations on the degree to which solitary confinement is employed—specifically by significantly limiting when, for how long, and on whom it can be imposed.[14]

11. Although there is some variation in the specific recommendations, virtually all of them call for the drastic reduction or outright elimination of the use of solitary confinement with juveniles.[15] That is, because of the categorically greater vulnerability of children to

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[13] These many studies have been carefully reviewed in a number of publications. For example, see: K. Cloyes, D. Lovell, D. Allen & L. Rhodes, Assessment of psychosocial impairment in a supermaximum security unit sample. *Criminal Justice and Behavior, 33,* 760-781 (2006); S. Grassian, Psychiatric effects of solitary confinement. *Washington University Journal of Law & Policy, 22,* 325-383 (2006); C. Haney, Restricting the use of solitary confinement. *Annual Review of Criminology, 1,* 285-310 (2018); C. Haney & M. Lynch, Regulating prisons of the future: The psychological consequences of solitary and supermax confinement. *New York Review of Law & Social Change, 23,* 477-570 (1997); and P. Smith, The effects of solitary confinement on prison inmates: A brief history and review of the literature, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441-528). *Volume 34.* Chicago: University of Chicago Press (2006).

[14] For a list of these organizations and their specific recommendations, see: Haney, C. (2018) Restricting the use of solitary confinement. *Annual Review of Criminology, 1,* 285-310; Haney, C., Ahalt, C., & Williams, B., et al. (2020). Consensus statement of the Santa Cruz summit on solitary confinement. *Northwestern Law Review,* in press.

[15] For example, in December 2015, the U.N. General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Nelson Mandela Rules") that, among other things, prohibited the use of solitary confinement for juveniles. See: Commission on Crime Prevention and Criminal Justice. 2015. *United Nations standard minimum rules for the treatment of prisoners.* New York: UN Economic and Social Council.

harsh conditions of confinement and the potentially irreversible mental and physical harm that they are more likely to experience, solitary confinement should rarely if ever be imposed on them. In fact, Pennsylvania regulations preclude staff from placing a child alone in a cell or room except under very limited circumstances and even then with strict time limitations, measured in hours, not days.[16] These severe limitations on the use of solitary confinement with children are critically important to acknowledge and adhere to in the face of the COVID-19 Pandemic and in the context of the social distancing steps that juvenile institutions are likely to engage in.

12. The COVID-19 Pandemic will be a traumatic experience for many, especially for children. In the case of children housed in juvenile institutions, this trauma will affect an already highly traumatized population. In addition to the traumatic effects of incarceration itself for children,[17] and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood "risk factors" or "adverse childhood experiences."[18] Thus, juvenile incarceration represents a form of "retraumatization" for many of them. And even this retraumatization can be made worse, for example by placement in solitary confinement. It is thus hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.

13. Indeed, the United States Center for Disease Control and Prevention (CDC) has acknowledged that the COVID-19 Pandemic poses a threat the mental as well as physical health of the nation,

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[16] 55 PA. Code §§ 3800.202, 3800.206 3800.273.

[17] For example, see: Sue Burrell, Trauma and the Environment of Care in Juvenile Institutions, *National Child Traumatic Stress Network* (2013).

[18] For example, see: Carly Dierkhising, Susan Ko, Briana Woods-Jaeger, et al., Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology, 4,* (2013)

especially to its children and teens.[19] In order to mitigate the stressors created by the COVID-19 Pandemic, the CDC has recommended that parents and other caregivers undertake the following practices to support their children:[20]

- Take time to talk with your child or teen about the COVID-19 outbreak. Answer questions and share facts about COVID-19 in a way that your child or teen can understand.
- Reassure your child or teen that they are safe. Let them know it is ok if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you.
- Limit your family's exposure to news coverage of the event, including social media. Children may misinterpret what they hear and can be frightened about something they do not understand.
- Try to keep up with regular routines. If schools are closed, create a schedule for learning activities and relaxing or fun activities.
- Be a role model. Take breaks, get plenty of sleep, exercise, and eat well. Connect with your friends and family members.

14. Similarly, the World Health Organization (WHO) also has recognized that the COVID-19 poses an existential threat to the mental health of children.[21] The WHO recommended that care

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[19] Center for Disease Control and Prevention, *Manage Anxiety & Stress*, https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html

[20] *Ibid.*

[21] World Health Organization, *Helping children cope with stress during the 2019-nCoV outbreak*, https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff_2

providers undertake the following practices to support the mental health of children in their care:[22]

- Help children find positive ways to express feelings such as fear and sadness. Every child has their own way to express emotions. Sometimes engaging in a creative activity, such as playing, and drawing can facilitate this process. Children feel relieved if they can express and communicate their feelings in a safe and supportive environment
- Keep children close to their parents and family, if considered safe for the child, and avoid separating children and their caregivers as much as possible. If a child needs to be separated from their primary caregiver, ensure that appropriate alternative care is provided and that a social worker, or equivalent, will regularly follow up on the child. Further, ensure that during periods of separation, regular contact with parents and caregivers is maintained, such as twice-daily scheduled phone or video calls or other age-appropriate communication (e.g., social media depending on the age of the child).
- Maintain familiar routines in daily life as much as possible, or create new routines, especially if children must stay at home. Provide engaging age appropriate activities for children, including activities for their learning. As much as possible, encourage children to continue to play and socialize with others, even if only within the family when advised to restrict social contract.
- During times of stress and crisis, it is common for children to seek more attachment and be more demanding on parents. Discuss COVID-19 with your children using honest and age appropriate way. If your children have concerns, addressing those together may ease their

[22] World Health Organization, *Mental Health and Psychosocial Considerations During COVID-19 Outbreak*, https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf

anxiety. Children will observe adults' behaviors and emotions for cues on how to manage their own emotions during difficult times.

15. The COVID-19 Pandemic is a natural disaster that has already had a significant worldwide impact whose catastrophic effects are beginning to mount in the United States. The Pandemic has traumatic psychological as well as physical consequences. The consequences are especially severe for children who are not only experiencing the Pandemic but also trying to comprehend its magnitude and implications. They are seeking safety in an otherwise suddenly unsafe-feeling world. Not surprisingly, the CDC and WHO both recommend intense and expansive forms of family support, caring, and coping to ameliorate these traumatic effects. Yet this kind of familial support, caring, and coping is simply unavailable in (and in essence precluded by) juvenile institutions.

16. Thus, it should be obvious that few if any of the CDC or WHO recommendations for the appropriate way to address the needs of children in light of the present Pandemic can be effectively implemented in a secure juvenile facility. Of course, their recommendations for optimizing children's meaningful family contacts and ensuring that children are able to follow as normal a routine as possible should apply no less forcefully to children who have been placed in juvenile institutions. In fact, for the aforementioned reasons, in light of the likely past trauma they have suffered and the traumatic nature of their present circumstances, the recommendations apply with even more logic and force.

17. As I have noted, the continued detention/confinement of children during the COVID-19 Pandemic constitutes a grave threat to their physical and mental health. Young people confined to juvenile facilities are vulnerable emotionally; they are separated from their families; they likely face unhealthy and unsanitary physical conditions in such institutions, which will exacerbate any existing medical conditions and heighten the risk of their contracting and transmitting coronavirus; and their incarceration in the midst of this crisis will likely result in their placement in settings that are the equivalent of solitary confinement, placing them at even greater risk. The combination of these factors argues in favor of removing them from secure institutions and returning them to their families

for proper protection and care. Of course, the release of children from secure institutions can and should be done with adequate measures to protect them, their families and the broader community.[23]

18. With these things in mind, it is my professional opinion that returning incarcerated children to their families, where they can receive the kind of familial support that the CDC and WHO recommend, is the best possible course of action to take in response to the COVID-19 Pandemic.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 31, 2020 at Santa Cruz, California.

Dr. Craig W. Haney, Ph.D., J.D.

DR. CRAIG W. HANEY, PH.D., J.D.

[23] *See* Council for State Governments, Justice Center, "Seven Questions About Reentry Amid COVID Confusion."