

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

IN RE: THE PETITION OF THE	:	
PENNSYLVANIA PRISON SOCIETY,	:	
BRIAN MCHALE, JEREMY HUNSICKER,	:	No. 70 MM 2020
CHRISTOPHER AUBRY, MICHAEL	:	
FOUNDOS, AND FREDERICK LEONARD,	:	
ON BEHALF OF ALL SIMILARLY	:	
SITUATED INDIVIDUALS,	:	
	:	
Petitioners	:	

**Response of Edward D. Reibman, President Judge of the 31<sup>st</sup> Judicial District  
(Lehigh County), to the Court’s Order of April 3, 2020**

On April 3, 2020, the Supreme Court directed the President Judges of each judicial district, or their judicial designees, “to engage with the county stakeholders to review immediately the current capabilities of the county correctional institutions in their district to address the spread of COVID-19.” This response is filed for three reasons: First, to comply with the Supreme Court’s directive. Second, to inform the community of the steps taken to protect the health and safety of the inmates, correctional staff and their families, and the general public, and assure them plans are in place to meet any change in the spread of COVID-19 as it may affect the County’s correctional facilities. And, third, to emphasize it is the responsibility of the Judges of the Court to determine who is to be incarcerated and who is to be released from those facilities.

**HISTORY**

The Court had been looking at unnecessary incarceration in the context of the national conversation regarding “mass incarceration” and “bail reform” throughout 2019. The President Judge and the Administrative Judge of the Criminal Division of the Court participated in various

meetings and events throughout 2019 with stakeholders within the criminal justice system and the community to assess the issue as it pertained to Lehigh County, all well before the first known case of COVID-19 in the world.<sup>1</sup> On February 4, 2020, the Court, in conjunction with the Lehigh County Department of Corrections (“DOC”), District Attorney, Public Defender, Office of Adult Probation and Parole, and Pre-Trial Services conducted an educational session with all of the Magisterial District Judges, who initially determine bail in all criminal cases, to review the appropriate standards for bail and the various options available to avoid incarceration.<sup>2</sup> Particular emphasis was placed on the unfairness of imposing an unreasonable amount of money bail on one who could not afford it; the social costs of unnecessary incarceration, including a defendant’s loss of employment, housing and mental health; the expense of incarceration to the County; and a realistic assessment of the danger a defendant poses to self or the community if not incarcerated. In short, the objective was to ensure only those people who should be incarcerated were incarcerated.

---

<sup>1</sup> The first known case of the coronavirus in the world is traced back to Hubei province China on November 17, 2019, and not understood to be a pandemic until a month later.

<sup>2</sup> The Pennsylvania Constitution provides all prisoners are bailable except for capital offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community. The purpose of bail is to incentivize, if necessary, a defendant’s appearance at subsequent court proceedings. The factors used in determining bail include the nature of the offense charged, including any mitigating or aggravating circumstances; the defendant’s employment status and history, and financial condition; the nature of the defendant’s family relationships; the length and nature of the defendant’s residence in the community; the defendant’s age, character, reputation, mental condition, and whether addicted to alcohol or drugs; the defendant’s previous history on bail; whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape; the defendant’s prior criminal record; and use of false identification; and any other factors relevant to whether the defendant will appear as required and comply with the conditions of bail.

Some options to avoid incarceration include requiring a defendant post a monetary amount of bail as determined by a Magisterial District Judge or a bail bond or be supervised by Lehigh County Pre-Trial Services.

## COVID-19

That objective of ensuring only those people who should be incarcerated are incarcerated was given a different dimension and added urgency with COVID-19. As the Supreme Court noted, unnecessary overcrowding is a primary concern in managing the risk of transmission and severe disease in correctional facilities.

The first confirmed case of COVID-19 in the United States was on January 20, 2020, in the State of Washington; Governor Wolf confirmed the first “presumed positive” case of COVID-19 in Pennsylvania on March 6, 2020; and the first case of COVID-19 in Lehigh County was reported on March 15, 2020.

The DOC operates the Lehigh County Jail (“LCJ”), a secure facility with an operational capacity of 1,267 inmates, and the Lehigh County Community Correctional Center (“CCC”), a community-based work release facility with 400 beds. It has been constantly receiving guidance from the U.S. Centers for Disease Control and Prevention (“CDC”), the Pennsylvania Department of Health and PrimeCare Medical, Inc., (“PrimeCare”) the DOC’s healthcare provider, and has been in regular communication and collaboration with other correctional facilities within the Commonwealth as it works its way through the COVID-19 epidemic.

Unlike some county jails, the DOC’s healthcare provider, PrimeCare, has dedicated space within the LCJ that is staffed 24/7 by qualified healthcare professionals.

On February 27 and 28, 2020, the DOC took inventory of its Personal Protective Equipment (“PPE”) and cleaning chemicals; evaluated the efficacy of its cleaning and sanitation chemicals in light of what was known about COVID-19; prepared to procure additional supplies; and joined a county pandemic response team consisting of various departments to begin collaboration and planning.

During the week of March 1, the DOC undertook deeper cleaning and enhanced sanitation measures for all public and commonly used areas throughout the LCJ and the CCC and provided its staff and inmate workers with additional education and direction on how to prevent the spread of the virus. Also, PrimeCare added recommended screening questions to its medical intake assessment regarding COVID-19 risk indicators and an evaluation of new commitments as to their current health, including temperature, respiratory issues etc.

On March 6, 2020, the District Attorney, the Public Defender and Pre-Trial Services, who had been working well together throughout 2019 to reduce the jail population, began meeting with other officials, including the Court, to further reduce the jail population in light of COVID-19.

Effective March 13, the DOC suspended visitation of all non-essential visitors and volunteers; sent reminder instructions to all staff about washing hands, wearing gloves, etc.; and initiated a policy that newly incarcerated persons, in addition to their initial screening, be maintained in a classification/quarantine status for a period of 14 days to monitor their health for any flu-like or COVID-19 symptoms and then, if free of any flu-like symptoms, moved into the general population of the LCJ. The DOC also established quarantine and isolation procedures for all other housing units if inmates were suspected or positive for COVID-19.

During the week of March 15, the DOC initiated temperature checks to all food service employees, the inmate workforce and all staff entering the buildings prior to their shift, and efforts were continued to educate and encourage the inmate population to practice proper and appropriate hygiene and sanitation within the cells and common areas of their housing units.

On or about March 16 and thereafter the District Attorney, working in conjunction with the Public Defender and Pre-Trial Services, requested the DOC identify pretrial detainees, inmates serving county sentences and “vulnerable inmates” in the LCJ and the CCC. Representatives of the District Attorney’s Office, the Public Defender’s Office, Pretrial Services and Adult Probation and Parole met the following day to review a list of pretrial detainees and collectively agreed upon stipulations that approximately nineteen (19) such pretrial detainees could be released on unsecured bail. Since that first meeting, such information has been exchanged on a daily basis; and over the next two weeks a total of sixty (60) defendants have been released on pretrial supervision. Those sixty (60) include releases from LCJ as well as twenty-three (23) non-commitments to the LCJ. It breaks down to thirty-seven (37) persons being released based upon agreements to reduce bail to unsecured, and twenty-three (23) releases prior to defendants even being committed to the LCJ, i.e. at preliminary arraignment.

That effort and cooperation has continued on an almost daily basis in order to release any defendant that can be safely released into the community.

During the week of March 29, upon PrimeCare’s recommendation, the inmate work force was split into different housing units and the inmate kitchen workers were divided into two different shifts and housed in different units to prevent the potential spread among workers. Such spread would have negative impact upon the operations of the facility. That process led to the separation of housing units into four fairly equally-divided quadrants in anticipation of commencing a lockdown process and forced social distancing of inmates. Also, during that time the residents that were still employed in essential jobs at the CCC were no longer permitted to work in the community and letters explaining their situation were sent to their employers.

Additional changes and measures were taken in the first several days of April to further prevent the potential for spread of COVID-19. They will remain in effect until it is deemed safe and appropriate to return to normal operations or, if warranted, further restrictions may be imposed. Specifically, staff were issued and required to wear surgical masks at all times. Fewer inmates were permitted out of their cells at one time to contact family, shower, use the law library, etc. The inmates were required to eat meals in their cells.

Additional PPE supplies that were ordered were delivered on April 3. Although the CDC recommends staff wear an N95 mask and protective gear when in direct contact with a suspected or positive COVID-19 person, the DOC requires staff working and entering high risk areas, the Admissions and Discharge area, Classification Housing units, as well as Transport Officer, wear an N95 mask, and all new commitments wear a mask prior to entering the Admissions and Discharge area and throughout their 14-day quarantine period. In addition, enhanced mental health services have been provided throughout the LCJ to ensure the well-being of all inmates.

The DOC's first positive COVID-19 test results came on April 3, one involving a resident of the CCC and the other a staff member. The CCC resident was identified with a temperature during the screening process, returned to the LCJ and placed in isolation. The staff member had already been at home. There have been no positive test results for COVID-19 since that date.

For its part, the Court has:

- 1.) declared a judicial emergency on March 17, 2020, and, on April 2, 2020, extended it to April 30, 2020;
- 2.) continued all jury and non-jury trials, summary criminal appeals, and Gagnon II and truancy hearings to minimize sending persons to the DOC;

3.) placed persons on electronic monitoring in lieu of serving their mandatory sentence in jail; and

4.) remained in session to dispose of bench warrants, body attachments, bail review, habeas corpus, pleas, time-served sentences, early parole, furloughs, etc. to reduce the number of persons in the LCJ or the CCC or those going to the LCJ or the CCC.

### **CONCLUSIONS**

1.) The COVID-19 epidemic, even with all of its attendant risks, does not entitle everyone, including those already incarcerated, to a “get out of jail free” card. The hard reality is some people need to be incarcerated to protect the public and punish criminal conduct. Each case is reviewed separately. Persons charged with or convicted of a crime of violence, a personal injury crime, a Megan’s Law offense or firearms are given especially careful review.

2.) Throughout 2019, the District Attorney, the Public Defender, private defense counsel, Adult Probation and Parole, and Pre-Trial Services have worked well together and with the Court in identifying appropriate inmates for release from the LCJ or the CCC by recommending reduced bail, early parole, a time-served sentence or in-patient rehabilitation. Between March 19 and April 7, 2020, alone, the Court granted approximately 127 early parole requests.

3.) On March 16, when efforts to reduce the population in the LCJ and the CCC began in light of COVID-19, the population in the LCJ was 710, of whom 70 were federal inmates, and the population in the CCC was 116. On April 9, the population in the LCJ is 585, of whom 71 are federal inmates, and the population of the CCC is 59. In other words, during that time the

efforts of the County's criminal justice stakeholders have resulted in a reduction of 125 inmates in the LCJ, a reduction of 18 %, and 59 inmates in the CCC, a reduction of 49%.

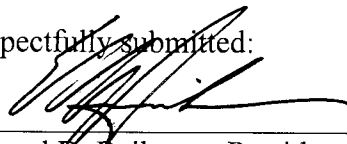
4.) There is no overcrowding in the LCJ or in the CCC. The LCJ has an operational capacity of 1,267 and a current population of 585, or 46% of capacity. The CCC has a capacity of 400 and a current population of 59, or 15% of capacity.

5.) The DOC and its incredibly dedicated staff working under extremely difficult circumstances have taken many steps consistent with the recommendations of the CDC, Pennsylvania Department of Health and PrimeCare to minimize the risk of transmission and severe disease within its facilities. In some instances, the DOC has exceeded those recommendations.

6.) The COVID-19 epidemic and the responses to it are fluid, not fully understood and ever-changing. They are challenging every aspect of the criminal justice system everywhere as they are challenging every aspect of our society at-large. The County's criminal justice stakeholders are committed, competent professionals working exceedingly well together to meet those challenges while being faithful to their respective responsibilities to protect the health of the inmates, the correctional staff and their families, and the general public, including the victims of crime and the taxpayers of Lehigh County, all within the context of their statutory and constitutional obligations.

7.) Ultimately, it is the Court's responsibility - not that of the District Attorney, the Public Defender, the private defense bar or the DOC - to balance those interests and determine whether to send or keep someone in jail.

Respectfully submitted:



---

Edward D. Reibman, President Judge

April 9, 2020