



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 1, 2020

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Pennsylvania Judicial Center
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Re: *In re: Petition of Pennsylvania Prison Society, et al.*
Docket No. 70 MM 2020

Pursuant to Pa. R.A.P. 123, Governor Wolf, by and through counsel, respectfully advises this Court that the Office of the Governor will not file a formal answer to the application for extraordinary relief recently filed by the Pennsylvania Prison Society *et al.* This letter should not, however, be construed as concurrence with any factual assertion or legal argument presented in the Petitioners' application, and Governor Wolf reserves the right to present all arguments, as appropriate, in this or future proceedings. For the benefit of this Court, the following applicable information regarding the administration's public health response is provided.

COVID-19 is a novel virus that has rapidly spread from person to person across the world and is currently stretching the limits of health care systems in other states and in other countries. Certain elements of the population are particularly vulnerable to succumbing to the virus. The CDC has categorized the following individuals as high risk for serious illness: persons aged 65 or older; persons with chronic lung disease or moderate to severe asthma, serious heart conditions, severe obesity, diabetes, chronic kidney disease undergoing dialysis, liver disease; and persons who are immunocompromised.

The Governor and the Secretary of Health are applying lessons learned from across the country and the world to protect Pennsylvania residents. Their mitigation efforts have focused on minimizing the opportunities for the virus to be transmitted and have included the issuance of Orders closing schools, prohibiting non-life-sustaining businesses from physically operating, and requiring persons to stay at home across the Commonwealth. Before COVID-19 overtakes the Commonwealth's health care systems, everyone must take responsible action. Every person in the Commonwealth must work together to ensure that the resources of the Commonwealth are preserved for the needs that will arise throughout the undoubtedly long and difficult response to the crisis, and that all actions that are possible are taken to help mitigate the spread of disease, and not contribute to its acceleration.

As the lead agency in the fight against COVID-19, the Department of Health (PADOH) has been advising its sister agencies on a wide variety of public health issues. Prisons and jails, like any congregate setting where persons live in close proximity, present serious infection control challenges. Infectious disease can spread easily through any such setting, particularly where persons are unable to move about freely or take their own precautions to protect themselves from disease. Mitigation is made more complicated under circumstances involving a novel virus whose attributes, including whether there is asymptomatic spread and for what length of time the virus is viable outside the host, are not fully understood. The Commonwealth is currently experiencing outbreaks in several long-term care facilities and in at least one county prison.

The complexities associated with mitigating the spread of COVID-19 in general are even more heightened in the corrections environment. The World Health Organization has advised that prisons around the world can expect "huge mortality rates" from COVID-19 unless they take immediate action. The federal Centers for Disease Control and Prevention (CDC) has issued guidance for disease prevention and control in these and other congregate settings. Some examples of these measures include:

- The option to place persons at high risk for COVID-19 together, or to "cohort" them, within their current facilities as much as possible, as well as cohorting the staff that work with them. Cohorting is defined by the CDC as the practice of grouping together patients who are infected with the same organism to confine their care to one area and prevent contact with others. This is a recognized containment method to reduce the likelihood that a sick individual (inmate or staff) or a small group of sick individuals would be able to transmit a communicable disease throughout the entire population.

- Staff who work with positive or probable positive individuals should be advised to take extra precautions not to import the disease into that high-risk population, and the facility should emphasize other control measures (enhanced cleaning, etc.) around that high-risk population. Enhanced screening (temperature and symptom checks) among individuals who live in congregate settings, with the earliest possible removal, isolation, and testing of symptomatic individuals (either staff or inmates).
- Social distancing (a distance of 6 feet if possible, according to the CDC) for the entire incarcerated population.
- Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages.

Not all these measures can be successfully instituted in every congregate setting. Lack of space, health care providers, medical equipment, and other resources contributes to the challenges that correctional facilities face in their attempts to control the spread of the virus to individuals living and working in the facilities. Due to lack of resources, practices such as handwashing and disinfecting may be limited in some correctional facilities. Segregation or solitary confinement of individuals may not always be an effective strategy for containing infectious diseases like COVID-19. Isolation without specialized negative pressure rooms does not contain the transmission of the virus because droplets continue to flow through the air from isolation rooms to the rest of the building or areas served by the same ventilation system. Additionally, utilizing solitary confinement could decrease medical attention given to the individual could increase in risk of death.

PADOH understands that circumstances vary from prison to prison and jail to jail. One facility may be able to meet such mitigation standards, and another not. Under circumstances where such measures cannot be successfully implemented, it may be more appropriate to consider other control and mitigation measures, including diversion or release of individuals who are at high risk of serious illness from COVID-19 into the community. This action could provide protection for those individuals and provide ability for the correctional facilities to implement some of the simpler mitigation measures, like social distancing.

It is also true, however, that without a clearly articulated plan regarding housing, food, health care, and other "wrap around" services, release may create public health problems other than those specifically related to COVID-19, in the communities into which such persons are released. There are challenges in connecting released individuals with necessary resources and services, such as housing, employment, mental and behavioral health services, health care, substance

use treatment, and public benefits. This population faces many barriers to receiving the services and resources necessary to adjust to community life, and the COVID-19 pandemic has the potential to increase barriers to receiving those services and resources.

There may also be a concern that a released individual might have an increased risk of exposure in the community. Conversely, there could potentially be a threat of more devastating impact with the release of a person who may appear to be well, but actually has the virus, into a community-based facility with a population of only at-risk individuals. The potential of releasing individuals with suspected or confirmed COVID-19 into the community raises the same concerns.

On balance, as a general public health policy matter, considering all of the information available regarding the virus, its spread, and concerns relating to congregate facilities, particularly prisons and jails, and the ability to respond to the pandemic, minimizing the number of individuals in correctional facilities reduces the risk of rapid transmission of COVID-19 between residents and staff in correctional facilities. This letter is not intended to recommend the best means to achieve a reduction in population, including by specifying which inmates would be appropriate for diversion or release from a public safety perspective, or by what mechanism release would best be achieved. There may be countervailing legal or public safety concerns that prevent the diversion or release of certain individuals from county prisons or jails. This letter is merely intended to convey that policies and practices aimed at reducing the number of individuals in a facility are recommended to better protect the health of individuals who cannot be released and the staff who serve in these settings.

Respectfully submitted,

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cc: Per Proof of Service

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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