

March 27, 2020

Francis V. Kenneally, Clerk
Supreme Judicial Court for the Commonwealth
John Adams Courthouse
1 Pemberton Square, Suite 1400
Boston, MA 02108

Re: Committee for Public Counsel Services and Massachusetts Association of
Criminal Defense Lawyers v. Chief Justice of the Trial Court, No. SJC-12926

Dear Clerk Kenneally,

For the last 25 years, Citizens for Juvenile Justice has been the only independent, nonprofit, statewide organization working exclusively to improve the juvenile justice system in Massachusetts. Our mission is to advocate for statewide systemic reform that achieves equitable youth justice. In light of this mission, we write to urge this Court to act in the best interests of public health and safety and grant Petitioners' request to safely release as many people as possible from confinement. However, we also urge the Court to ensure that young people under the age of 18 who are currently incarcerated in the juvenile justice system are included in any relief granted pursuant to this petition. The petition as drafted is not clear whether or not young people under the jurisdiction of the juvenile court are included and the Department of Youth Services, who holds juveniles who are in custody is not an involved party.

We absolutely agree with the Petitioners that we are in the midst of

“extraordinary circumstances” that warrant extraordinary relief to ensure the health and safety of residents of the Commonwealth during this current pandemic. However, it is imperative not forget that young people are also seriously at risk due to the spread of COVID-19 in incarcerated settings.

The lower morbidity and mortality of young people due to Covid-19 infection is often cited. However, doesn’t mean they are not physically at risk. Among youth under age 20 in the general population with a confirmed diagnosis, 2%-3% resulted in hospitalizations¹. Additionally, high rates of mental health needs for youth in juvenile justice system puts them at higher risk of increased stress and anxiety, especially when separated from their families during a time of crisis like this.

This need for decarceration in juvenile justice is also grounded in the national call for youth to be released from juvenile justice confinement as a means of controlling the spread of Covid-19. Youth Correctional Leaders for Justice, a national organization of current and former youth correctional administrators, state that “while most young people are at lower risk from the virus, youth in the justice system are less healthy than their peers. They have more gaps in Medicaid enrollment and higher rates of asthma, which increases

¹ Centers for Disease Control, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12–March 16, 2020*.
<https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>

the severity of COVID-19. Locking youth up exacerbates mental illness, dramatically increases the risk of self-harm and is associated with risks lasting into adulthood, including poorer overall general health and increased incidence of suicide.”²

The public health community has stressed the importance of limiting the number of young people taken into custody and of weighing the threat of COVID-19 when assessing the need for pretrial detention. Physicians for Criminal Justice Reform state that “Further detention and incarceration of any minors who can remain safely at home with families and/or caretakers is inconsistent with the rehabilitative goals of the juvenile justice system and contrary to public health recommendations.”³

The Department of Youth Services, as of March 25, 2020 has 112 young people in detention due to the inability of their families to post bail and an additional 221 young people who are in either residential or secure facilities. In the interest of equity, the Department of Youth Services should be added as an involved party in this action and any relief granted under this petition should extend to the young people held in their custody. To extend relief to adults and

² Youth Correctional Leaders for Justice Steering Committee COVID-19 Press Release – March 19, 2020. <https://yclj.org/covid19statement>

³ Physicians for Criminal Justice Reform, Letter to State Governors, State and Local Juvenile Detention and Correctional Departments, and Juvenile Court Judges and Magistrates – March 22, 2020. <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>

not to children who bear similar health risks due to the current pandemic is not in the interest of justice. Furthermore, the unique structure of the juvenile justice system allows youth released to have access to more services and supports upon reentry into the community than many discharging from Massachusetts prisons and jails would receive.

Therefore, we urge that the court grant Petitioners' request to safely release as many individuals as possible from confinement, and to extend this ruling to youth in the juvenile justice system.

Sincerely,

Leon Smith, Esq.
BBO#649856
Executive Director
Citizens for Juvenile Justice
44 School Street, Suite 400
Boston, MA 02108
(617) 817-1488

Amicus curiae Citizens for Juvenile Justice declares that (a) no party or party's counsel authored the brief in whole or in part, (b) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; (c) no person or entity—other than the amicus, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief; and (d) neither amicus nor its counsel represents or has represented any of the parties to the present petition in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present petition.

CERTIFICATE OF SERVICE

On March 27, 2020, I served a copy of this brief on all parties by e-file.

/s/ James Leon Smith, Jr
BBO #649856
James Leon Smith, Jr.
Citizens for Juvenile Justice
44 School Street, Suite 400
Boston, MA 02108
(617) 338-1050