



March 21, 2020

To the Honorable Judge Fox, Judge Tucker, Judge Murphy, Judge Allen, Judge Olszewski, and Judge Dugan,

We are in the midst of a pandemic. The First Judicial District of Pennsylvania is failing to adequately respond to this crisis. As we write this letter, there are [300,227 confirmed cases and 12,948 deaths](#) from the coronavirus COVID-19 outbreak, worldwide. There have been more than [100,000 additional cases](#) reported worldwide in less than 2 weeks. In the USA, there are a total of [22,738 cases, with 288 deaths](#). As of today, there are [371 reported cases of COVID-19 confirmed in Pennsylvania, and 2 deaths](#), with 85 cases in Philadelphia. The number of cases for Pennsylvania has increased by [156 cases](#) since just Thursday, March 19, 2020. This disease is spreading at an exponential rate.

Researchers and clinicians alike agree that the key to slowing the progression of this pandemic – the key to *saving lives* – is [social distancing](#) and proper hygiene practices. Social distancing and recommended hygiene practices [simply cannot be accomplished inside of detention facilities and local prisons. Prison populations are especially vulnerable to COVID-19.](#) Today, all incarcerated individuals in Philadelphia are at risk. And they are not alone. Correctional officers, social workers, healthcare workers, maintenance staff, and everyone working in the prisons are at risk as well. In this critical moment, our courts must act with urgency to release adults and children from prisons and detention centers. At this moment, these measures are necessary to *save lives*.

Court systems around the world are taking action as they recognize the inhumane danger posed for incarcerated individuals during this pandemic. We, too, must act.

The Supreme Court of Pennsylvania issued an order on March 18th instructing courts across the Commonwealth to close to the public for non-essential functions through at least April 3, 2020. The Supreme Court defined essential functions to include “Emergency bail review and habeas corpus hearings,” “Juvenile delinquency detention,” and “Any pleading or motion relating to public

health concerns and involving immediate and irreparable harm.” In doing so, the Supreme Court recognized what is abundantly clear to experts across the world: keeping people in custody is going to cost lives.

In declaring a statewide judicial emergency, the Supreme Court entrusted each Judicial District with the critical task of ensuring that these essential hearings happen in a fashion befitting the emergency we face. In doing so, the Supreme Court “authorized and *encouraged*” the use of technology to conduct court proceedings. The Supreme Court also ordered that all local trial courts shall review bail requests and requests for habeas corpus on an emergency basis. Philadelphia is failing to act swiftly in complying with the Supreme Court’s directives and as a result thousands of people remain exposed to COVID-19 in our jails and prisons.

We are deeply concerned that only 53 adults, out of approximately 4,500 incarcerated people, have been released from our prisons since Tuesday. [According to the Prison Policy Initiative](#), 58% of the average daily Philadelphia prison population are in custody for probation or parole violations - the largest percentage in the country. The vast majority of the Philadelphia jail population - [69.2% - is African American](#), and [18.8% is Latinx](#). Of the total jail population, 10.5% are incarcerated on detainers alone with no open criminal matters. [For February 2020 alone](#), 1,156 people were in custody for Philadelphia probation detainers with open criminal matters. 335 people were in custody solely for Philadelphia detainers with no open criminal matters. [In Philadelphia alone](#), about 1 in 23 people are under supervision, *nearly double the national average* of 1 in 55; 1 in 14 African American adults in Philadelphia are under supervision, *quadruple the national average*.

We are extremely concerned that only 11 out of the 126 children and youth in Philadelphia detention have been released to their families since Tuesday - this number does not include the 239 children and youth from Philadelphia in placement across the state. Even by the Philadelphia Juvenile Justice Service Center’s own estimation, approximately 33% of its population is categorized as “medically fragile.” As schools across the country close their doors to support social distancing and reduce the spread of COVID-19, another set of doors remain locked and closed for some of our nation’s most vulnerable youth - those in our youth prisons. Confining children to their cells is not an appropriate response to the COVID-19 pandemic - isolating children is solitary confinement and it is both insufficient to stop the spread of this disease and inhumane.

We recognize that over the past few days the First Judicial District has taken some [steps](#) to hold bench warrant hearings for both Municipal and Common Pleas Court cases, hold juvenile

detention hearings for children and youth taken into custody, and [to review](#) “paper only” motions to lift detainers. While some people have been released through these measures, these efforts are inadequate and insufficient to address our growing public health crisis.

We call upon the leadership of the First Judicial District to adopt the following measures in responding to this unprecedented public health crisis:

1. Order the immediate release from Philadelphia County Prison and Juvenile Justice Services Center any person with a serious physical, mental, or behavioral health concern, where that health issue puts them at heightened risk due to the COVID-19 virus. During this health crisis, these health concerns would be better treated in the community.
2. Immediately release from the Juvenile Justice Services Center (“JJSC”) all children who are awaiting trial or placement.
3. Prior to April 3, 2020, hold a review hearing for any child held in placement post-adjudication to assess their suitability for discharge. Order the immediate release of all children held in placement post-adjudication for health concerns, technical violations and misdemeanors.
4. Order Department of Human Services and all Community Umbrella Agencies to immediately evaluate, if necessary, any child held in JJSC awaiting placement, review level of care recommendations and assess appropriate placements identified for youths being held at the JJSC, and release children to appropriate placements as soon as possible.
5. Order the immediate release of any person in custody awaiting release on pre-trial house arrest. Since March 12th, 2020, the pre-trial Electronic Monitoring Unit (“EMU”) has ceased operations and is no longer processing any pending house arrest petitions.
6. For any person held in county custody because their indigency prevents them from posting bail, order the immediate reduction of cash bail to ROR or SOB.

7. On March 17th, Philadelphia Police Commissioner Outlaw [announced a policy](#) to arrest and immediately release any person alleged to have committed any of a list of enumerated charges, to avoid creating unsafe conditions in the prisons. We call on the Court to order the immediate release from county prison any person currently held pretrial on any of those enumerated charges. If it wouldn't lead to their arrest today, they should not be held in prison simply because they were arrested prior to Commissioner Outlaw's order.
8. Order the immediate lifting of all probation detainers issued due to alleged direct violations, where the direct violation constitutes one of the enumerated charges in Commissioner Outlaw's March 17, 2020 order.
9. Order the immediate lifting of all probation detainers issued due solely to alleged technical violations.
10. Establish and conduct emergency review of all motions for parole or early termination of probation, and liberally grant any application for parole or early termination of probation on an emergency basis in the interests of the health and safety of the defendant and the community. Order the immediate release of any person as soon as they have served their maximum sentence.
11. For all other detainers, rather than limit motions to lift detainers to a paper review as dictated in the Court's Order No. 13 of 2020, on an expedited basis hold a hearing using all technological means to allow for meaningful review of the motion, and lift those detainers in accordance with the safety and health of the community and the defendant.

We stand prepared to work with our institutional partners at the First Judicial District and Philadelphia District Attorney's Office to accomplish the goals outlined above and to protect the people of Philadelphia in this time of crisis. **We urge you to act now.**

Defenders Union