

staff and their families, and the surrounding communities. Accordingly, action must be taken to mitigate the potential of a public health crisis. We acknowledge that in some of the Commonwealth's judicial districts, judges, district attorneys, the defense bar, corrections officials, and other stakeholders are currently engaged in a concerted, proactive effort to reduce the transmission of the disease in county correctional institutions and surrounding communities through careful reduction of the institutions' populations and other preventative measures.¹ In light of Petitioners' allegations that not all judicial districts containing county correctional institutions have so responded, there remains the potential of unnecessary overcrowding in these facilities which must be addressed for the health and welfare of correctional staffs, inmates, medical professionals, as well as the general public.

We emphasize, however, that the immediate release of specified categories of incarcerated persons in every county correctional institution, as sought by Petitioners, fails to take into account the potential danger of inmates to victims and the general population, as well as the diversity of situations present within individual institutions and communities, which vary dramatically in size and population density. Nevertheless, we recognize that the public health authorities, including the Centers for Disease Control and Prevention and the Pennsylvania Department of Health, continue to issue guidance on best practices for correctional institutions specifically and congregate settings generally to employ preventative measures, including social distancing, to control the spread of the disease.

We DIRECT the President Judges of each judicial district to coordinate with relevant county stakeholders to ensure that the county correctional institutions in their

¹ We further acknowledge the efforts of the Pennsylvania Department of Corrections and others to address similar issues in the State Correctional Institutions.

districts address the threat of COVID-19, applying the recommendations of public health officials, including the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (Mar. 23, 2020).² If utilization of public health best practices is not feasible due to the population of the county correctional institutions, President Judges should consult with relevant county stakeholders to identify individuals and/or classes of incarcerated persons for potential release or transfer to reduce the current and future populations of the institutions during this health crisis with careful regard for the safety of victims and their communities in general, with awareness of the statutory rights of victims, and with due consideration given to public health concerns related to inmates who may have contracted COVID-19. Moreover, consistent with these above considerations, President Judges are to undertake efforts to limit the introduction of new inmates into the county prison system.

Additionally, the Application for Leave to Intervene, or in the Alternative, Application for Leave to File *Amicus Curiae* Answer in Opposition to Petitioners' Extraordinary Jurisdiction Application filed by Marsy's Law for Pennsylvania, LLC and Kelly Williams is **DENIED** as to the request to intervene and **GRANTED** as to the application to file an *amicus curiae* answer in opposition.

Chief Justice Saylor files a Concurring Statement in which Justices Todd, Dougherty and Mundy join.

² The CDC's Guidelines are available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

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

CONCURRING STATEMENT

CHIEF JUSTICE SAYLOR

FILED: April 3, 2020

I join the present Order, since it does not sanction actual releases, but rather, merely requires the identification of qualifying prisoners for potential release. In my view, the primary authority to release qualifying prisoners on account of a disaster emergency rests with the Governor -- who is invested with the power to direct and compel necessary evacuations and control the movements of persons within disaster areas, see 35 Pa.C.S. §7301 -- and/or the General Assembly.

Perhaps some releases may be effectuated by the judiciary under existing statutory provisions already sanctioned by the Legislature, such as via the probation and parole authority available under the Sentencing Code. See, e.g., 42 Pa.C.S. §9776. Otherwise, I believe the Governor should fashion an appropriate Executive Order -- and/or the General Assembly should enact appropriate legislation -- to secure those releases deemed to be necessary by the Health Department and which are consonant

with the preservation of public safety and other relevant factors, such as those delineated in the Court's present Order.

Justices Todd, Dougherty, and Mundy join this concurring statement.