



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
P.O. Box 112
TRENTON, NJ 08625-0112

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

May 22, 2020

VIA E-MAIL

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, New Jersey 08625

Re: In the Matter of the Request to Modify Prison Sentences,
Expedite Parole Hearings, and Identify Vulnerable
Prisoners, OTSC Docket No. 084412

Response to Rutgers Criminal Youth and Justice Clinic's
Notice of Motion for Leave to Participate as Amicus
Curiae

Dear Ms. Baker:

Please accept this letter and Supplemental Certification of Jennifer LeBaron, Ph.D., JJC Acting Executive Director ("LeBaron Cert.") on behalf of Respondents, the Office of the Attorney General, Department of Corrections, and the State Parole Board (collectively, the "State"), in response to Rutgers Criminal Youth and Justice Clinic's ("Clinic") Notice of Motion to Participate as Amicus Curiae. The State does not oppose the Clinic's motion for



leave to appear as amicus and respectfully leaves resolution of the application to the Court's discretion. To the extent the Court approves such participation, the State provides additional information to clarify the record about the JJC and to respond to certain of the Clinic's factual assertions.

First, as Acting Executive Director Jennifer LeBaron explains in her certification, "[a]s of May 20, 2020, all JJC residents have been tested for COVID-19. Of these 273 tests, 28 were positive for COVID-19 and 245 were negative for COVID-19." LeBaron Supp. Cert. at ¶9. Contrary to the Clinic's assertion, see Br. at 4, the results of this universal testing do not suggest that the rate of COVID-19 infection among JJC residents is disproportionately high compared to the rate of infection among New Jersey's populace. That assertion likens apples to oranges because there has not been universal testing among the general population, and such testing that did occur was largely limited to the symptomatic. Indeed, early studies have suggested that the infection rate in this region is likely significantly higher than was previously estimated, and higher than that of JJC residents.¹ The JJC is proud of its commitment to universal testing, but given that commitment, a

¹ A recent study found that approximately 21% of New York City participants had tested positive for coronavirus antibodies. See <https://www.nytimes.com/2020/04/23/nyregion/coronavirus-antibodies-test-ny.html>

comparison to the general population falls short. That there have only been 28 positive results for COVID-19 among JJC residents, and none "have required hospitalization or died," LeBaron Cert., at ¶9, instead speaks volumes of the JJC's efforts to protect its residents and staff.

Beyond clarifying the questions on testing, the supplemental certification also provides additional relevant information as to the treatment of JJC residents during the current health crisis, including information about quarantine quarters and access to education and mental health services. While certain services for residents are no longer taking place in person to address the COVID-19 risks, residents are receiving support from social workers, contracted mental health counselors, and substance abuse counselors who have been working remotely with them. Id. at ¶3. The same is true for educational staff. Id. at ¶4.

Further, while some residents have been placed in medical isolation to ensure the health of the JJC population, they "are offered time each day for activity outside of their room" and "are offered an array of opportunities and items to keep them comfortable and engaged, including extra phone calls to family; video calls with family; video games, DVD players, television, books, puzzles, and/or special meals; educational materials/school assignments; daily interaction with medical staff; and regular contact with/access to social services staff, chaplaincy services,

and the ombudsman." Id. at ¶8. Despite the circumstances, the JJC is making all best efforts to care for its residents.

Finally, the relief sought by the Clinic goes above and beyond the processes proposed in the Movants' Order to Show Cause and is therefore improper. See Br. at 14-15 (seeking, inter alia, blanket modification of all custodial terms of juveniles in the Parole system to "time served;" an expedited 5-day briefing schedule for all COVID-19 related applications; and automatic reconsideration of any modification denials in which a court does not accord "substantial weight" to the ongoing pandemic). It is well settled that amicus may not raise issues or seek relief beyond the relief requested by the parties. See State v. J.R., 227 N.J. 393, 421 (2017)("This Court does not consider arguments that have not been asserted by a party, and are raised for the first time by an amicus curiae."); see also Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n, 91 N.J. 38, 48-49 (1982) ("[A]n amicus curiae must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties.").

For the reasons set forth in this letter and the State's response brief, the Court's intervention is unnecessary and unwarranted.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: s/Stephanie J. Cohen
Stephanie J. Cohen
Assistant Attorney General
Attorney ID # 004551997

c: All Counsel