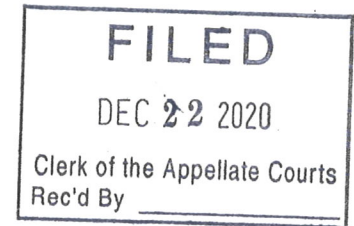


IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: COVID-19 PANDEMIC

No. ADM2020-0428



**JOINT PETITION TO RENEW EMERGENCY PETITION TO
SUPPLEMENT COURT'S ORDER WITH DIRECTIVES NECESSARY
TO REDUCE PUBLIC HEALTH RISKS ASSOCIATED WITH COVID-
19 IN TENNESSEE JAILS AND JUVENILE DETENTION CENTERS**

Come now the Petitioners, on behalf of their members and every person currently detained in a jail or juvenile detention center in Tennessee pursuant to an order or judgment entered by a court or judge subject to the oversight of this Court, and hereby renew the “Emergency Petition To Supplement Court’s Order With Directives Necessary To Reduce COVID-19 Public Health Risks Associated with Tennessee’s Jails, Juvenile Detention Centers and Prisons” (“Emergency Petition”), which was filed in this Court on March 24, 2020.¹ In doing so, Petitioners

¹ Petitioners have limited the scope of this renewed motion to persons held in Tennessee’s jails and juvenile detention centers, based on this Court’s conclusion that only the executive branch can direct the early

respectfully request that this Honorable Court renew and enhance enforcement of its directives requiring each judicial district to develop a written plan to affirmatively address efforts to reduce jail populations.² Specifically, Petitioners urgently move this Court to: 1) require each Judicial District to develop, implement, and monitor an updated plan consistent with the requests outlined herein; 2) publish the updated written plans on its website, along with a link to report non-compliance; and 3) supplement its previous Order with additional directives necessary to protect public health and safety from the ongoing health risks associated with the spread of COVID-19 in jails and juvenile detention centers.

In support of this Motion to Renew, Petitioners state as follows:

THE PETITIONERS

Petitioner Choosing Justice Initiative is a Tennessee non-profit law firm in Nashville working to end wealth-based disparities in the criminal legal system through education, advocacy, and direct legal

release of people held in Tennessee's prisons. *See Order Regarding Emergency Petition*, No. ADM2020-00428, at p. 2 (Tenn. April 27, 2020).

² *Order Continuing Suspension of In-Person Court Proceedings and Extension of Deadlines*, No. ADM2020-00428 (Tenn. March 25, 2020).

representation. Its clients include people detained pretrial in the Davidson County jails. It is also filing this Petition on behalf of two other organizations and its members. The first is No Exceptions Prison Collective, a grassroots initiative in Nashville dedicated to transforming the social segregation of prison by advocating that no exceptions be made to the abolition of slavery. The second is Unheard Voices Outreach, which advocates for decarceration, builds community bridges to prisons, co-constructs re-entry plans with prisoners, assists in parole support/preparation, and organizes to end felonism.

Petitioner Disability Rights Tennessee (DRT) is Tennessee’s Protection and Advocacy Agency, and is part of the nationwide Protection and Advocacy (P&A) system mandated by Congress to protect and advocate for the rights of people with disabilities in the United States. DRT is specifically empowered to “pursue legal...remedies or approaches to ensure the protection of” disabled individuals in Tennessee.³

³ See *Trivette v. Tennessee Dept. of Correction*, 3:20-CV-00276, 2020 WL 6685557, at *5 (M.D. Tenn. Nov. 12, 2020) (noting DRT’s associational standing to pursue legal remedies to ensure the protection of people incarcerated in Tennessee who are deaf under 42 U.S.C. § 15043(a)(2)(A)(i)).

Petitioner Just City is a Tennessee non-profit located in Memphis that works to transform local criminal justice policy and practice to ensure that it is fair for all people regardless of wealth, race, or ethnicity. Just City also operates the Memphis Community Bail Fund, which challenges the criminal legal system's reliance on wealth-based detention by directly paying bail for people in pre-trial detention in Shelby County.

Petitioner Tennessee Association of Criminal Defense Lawyers is an organization representing over 1000 public and private lawyers in Tennessee, and advocates for fairness and equality in the criminal justice system.

COVID-19 IS A WORSENING GLOBAL, NATIONAL, AND STATEWIDE HEALTH EMERGENCY THAT HAS REQUIRED AN ONGOING AND CONTINUED RESPONSE FROM THIS COURT

1. Since this Court declared a state of emergency for the Judicial Branch on March 13, 2020, the spread of COVID-19 throughout Tennessee has substantially worsened. On December 18, 2020, the Centers for Disease Control and Prevention reported Tennessee as the

state with the highest average daily number of new cases per 100,000 people in the last seven days.⁴

2. Throughout the state of emergency, this Court has issued multiple Orders directed at maintaining open courts through a Continuity of Operations Plan, and protecting public health and safety from the risks of COVID-19.

3. On March 25, 2020, this Court directed each Judicial District to develop a plan to reduce its jail population.⁵ At that point, Tennessee had reported just 1,917 cumulative COVID-19 cases.⁶

4. By July 31, 2020, the Court had mandated the wearing of face coverings by all persons entering any courthouse for court-related

⁴ See Centers for Disease Control and Prevention, CDC Covid Data Tracker, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (Dec. 18, 2020) (reporting Tennessee with a rate of 135.6 new cases/day per 100,000 people).

⁵ *Supra*, note 2.

⁶ See Johns Hopkins University, Coronavirus Resource Center: Tennessee, <https://coronavirus.jhu.edu/data/state-timeline/new-confirmed-cases/tennessee/59> (interactive timeline providing new and cumulative COVID-19 case counts for Tennessee)

business.⁷ Then, on November 17, 2020, the Court suspended jury trials for a second time (until at least January 31, 2021), due to the recent significant increase in the number of COVID-19 cases in Tennessee, particularly in rural areas.⁸ The following day, Tennessee reported 325,201 cumulative cases, and 4,472 new COVID-19 cases.⁹

5. In its November 17 Order, the Court noted it had received numerous reports of judges, attorneys, and litigants failing to adhere to the comprehensive written plans for in-person court proceedings, which the Court approved months earlier for each Judicial District,¹⁰ and published on its website.¹¹ As a result, the Court announced additional steps it considered “necessary . . . to protect all participants in the judicial

⁷ *Order Regarding Face Coverings*, No. ADM2020-00428 (Tenn. July 09, 2020).

⁸ *Order Extending State of Emergency and Suspending Jury Trials*, No. ADM2020-428, at p. 1 (Tenn. Nov. 17, 2020).

⁹ *See supra*, note 6.

¹⁰ *See supra*, note 8.

¹¹ *See* Administrative Office of the Courts, COVID-19 Judicial District Plans, <http://tncourts.gov/node/6042449>.

system and the public at large.”¹² The Court also added a link on its website where members of the public can report non-compliance with those plans.¹³

6. Unfortunately, the spread of COVID-19 throughout Tennessee will continue in 2021, likely until a vaccine is sufficiently distributed and administered nationwide.¹⁴ Before that happens, this Court will undoubtedly revise and update its pandemic-related Orders again to adapt to newly available information, respond to changing conditions, and continue protecting all persons having business in Tennessee’s courts.

**AN ONGOING AND CONTINUED RESPONSE FROM THIS COURT
IS NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY
FROM THE RISKS ASSOCIATED WITH COVID-19 IN
TENNESSEE’S JAILS AND JUVENILE DETENTION CENTERS**

¹² *See supra*, note 8.

¹³ *See* Administrative Office of the Courts, Coronavirus & Court Leadership, <http://tncourts.gov/coronavirus>.

¹⁴ *See generally* Food and Drug Administration, Vaccine Development – 101, <https://www.fda.gov/vaccines-blood-biologics/development-approval-process-cber/vaccine-development-101>.

7. On March 24, 2020, an “Emergency Petition to Supplement Court’s Order with Directives Necessary to Reduce COVID-19 Public Health Risks Associated with Tennessee Jails, Juvenile Detention Centers and Prisons” (“Emergency Petition”) was filed in this Court on behalf of several organizations. *See* Exhibit A. This Emergency Petition sought the categorical release of people from Tennessee jails, juvenile detention centers and prisons, in order to alleviate the inherently dangerous conditions COVID-19 creates within those congregate living facilities, where social distancing is impossible.

8. On April 27, 2020, this Court denied that Emergency Petition.¹⁵ In doing so, the Court noted that it had already directed each judicial district to develop a written plan to reduce jail populations. The Court further indicated that all judicial districts had complied with that directive, resulting in an overall reduction in Tennessee’s jail population of approximately 30% since March 13, 2020. The Court also stated it would “continue to monitor these matters closely in the coming days and weeks.”

¹⁵ *Order Regarding Emergency Petition*, No. ADM2020-00428 (Tenn. April 27, 2020).

9. Since then, this Court has not revisited the ongoing public health and safety risks associated with COVID-19 in Tennessee's jails and juvenile detention centers in any of its pandemic Orders. Nonetheless, significant problems exist and persist.

10. For instance, on June 23, 2020, the Davidson County Sheriff's Office reported that nearly 50 people held in its jail tested positive for COVID-19.¹⁶ By July 2, that number had grown to 180 people, as well as 24 Sheriff's Office employees.¹⁷ Two months later, the Sheriff's Office reported that a 64-year-old woman had died of COVID19 while jailed pretrial on a \$500,000 bail for a DUI charge.¹⁸

¹⁶ *Almost 50 Nashville Jail Inmates Test Positive for COVID-19*, Associated Press (June 23, 2020), <https://www.usnews.com/news/best-states/tennessee/articles/2020-06-23/almost-50-nashville-jail-inmates-test-positive-for-covid-19>.

¹⁷ Chuck Morris, *180 Inmates, 24 Davidson Sheriff Staffers Test Positive for COVID-19*, WSMV (July 2, 2020), https://www.wsmv.com/news/davidson_county/180-inmates-24-davidson-sheriff-staffers-test-positive-for-covid-19/article_ced58e9c-bc82-11ea-9fff-bbc3dd3ad763.html.

¹⁸ Natalie Neysa Alund, *Davidson County Jail Inmate Dies After Contracting COVID-19*, The Tennessean (Aug. 31, 2020), <https://www.tennessean.com/story/news/local/coronavirus/2020/08/31/coronavirus-nashville-jail-inmate-dies-covid-19/3448075001/>.

11. In May 2020, several medically-vulnerable people detained pretrial in the Shelby County jail filed a federal lawsuit seeking their immediate release, alleging violations of the Americans With Disabilities Act and the Fourteenth Amendment to the U.S. Constitution, and claiming that conditions in the jail were so dangerous due to COVID-19 that no remedial measures could adequately protect them.¹⁹ The Court certified a class of all current and future detainees with medical vulnerabilities putting them at high risk of serious illness due to COVID-19 as defined by the Centers for Disease Control (CDC), and a subclass of those high risk individuals also recognized as persons with disabilities under the ADA.²⁰ An independent inspection of the jail concluded that the jail's response plan was inadequate to prevent the spread of COVID-19 to medically vulnerable and disabled detained persons.²¹ The

¹⁹ *Busby v. Bonner*, No. 20-cv-2359-SHL, 2020 U.S. Dist. LEXIS 147280, at *2-5 (W.D. Tenn. Aug. 7, 2020).

²⁰ *Busby v. Bonner*, 466 F.Supp.3d 821 (W.D. Tenn. June 10, 2020).

²¹ Sabot Consulting, *Covid-19 Inspection of the Shelby County Men's Jail at 201 Poplar Ave., Memphis TN 38103: Final Report*, at p. 19 (June 29, 2020), available online at https://www.aclu.org/sites/default/files/field_document/76_-_inspection_report_by_m_brady.pdf.

inspector also pointed out that local court practices requiring in-person court appearances for people in jail were undermining public health recommendations.²² He further recommended a concerted effort to pursue supervised release for medically-vulnerable people charged with “garden variety felonies” who did not appear to be a threat to public safety.²³

12. Although the federal court denied the preliminary injunction sought, it found “grave areas of concern,” including “the lack of testing, social distancing, and isolation and quarantine measures at the Jail, not to mention *the persistent failure to consider detainees’ medical conditions when making bond decisions.*”²⁴ The court further noted that “[t]he reasons offered for continued detention focus on repeat offenses in the past, not safety or flight risks in the present.”²⁵

²² *Id.* at pp. 19-21.

²³ *Id.* at pp. 25-26.

²⁴ *Busby*, 2020 U.S. Dist. LEXIS 147280, at *29-32 (emphasis added).

²⁵ *Id.* at *31.

13. As of July 31, 2020, 225 people incarcerated at the Shelby County jail, and 131 employees working there, had tested positive for COVID-19 – at least one employee and at least one incarcerated person had died.²⁶

14. Public health problems related to COVID-19 are not limited to urban jails. On August 17, 2020, the Wilson County Sheriff's Office reported 41 people in its jail had tested positive for COVID-19.²⁷ As of August 26, 2020, the Sullivan County jail (which was then 100 people over its capacity) reported 176 incarcerated people and 22 staff had tested positive for COVID-19.²⁸

²⁶ ACLU, *Court Acknowledges Continuing Concerns and Encourages Jail to Correct Them* (Aug. 7, 2020), <https://www.aclu.org/press-releases/federal-court-denies-emergency-release-people-shelby-county-jail-most-vulnerable>.

²⁷ Ben Hall, *Wilson County Jail Has Seen 41 COVID-19 Cases Among Inmates as Jail Population Rises*, NewsChannel5 (Aug. 17, 2020), <https://www.newschannel5.com/news/newschannel-5-investigates/wilson-county-jail-has-seen-41-covid-19-cases-among-inmates-as-jail-population-rises>.

²⁸ Kaylyn Kluck, *Hundreds of Sullivan County Jail Inmates Refuse COVID-19 Testing During Outbreak*, News Channel 11 (Aug. 27, 2020), <https://www.wjhl.com/health/coronavirus-health/hundreds-of-sullivan-county-jail-inmates-refuse-covid-19-testing-during-outbreak/>.

**AFTER SOME INITIAL SUCCESS IN REDUCING TENNESSEE'S
JAIL POPULATION IN RESPONSE TO COVID-19, JAILS HAVE
RETURNED TO DANGEROUSLY HIGH POPULATIONS, LARGELY
DUE TO INCREASED PRETRIAL DETENTION**

15. Despite the increased risk of COVID-19 infection in the jail and detention center setting – and this Court's directive that judicial districts adopt plans to reduce jail populations because of the pandemic - the number of people detained in jails across Tennessee has steadily increased since April 2020.

16. On April 21, 2020, which was shortly before this Court denied the Emergency Petition, Tennessee's overall county jail population was 19,126 people.²⁹ By October 31, it was 24,599 -- a 29% increase.³⁰ Additionally, 54.6% of the people jailed in Tennessee on that date were held pre-trial.³¹ **That is the highest percentage of pre-trial detainees in Tennessee's jails in the past 15 months, and it is higher than the average**

²⁹ *Supra*, note 15, at p. 2.

³⁰ *See* Exhibit B (Tennessee Department of Correction, *Tennessee Jail Summary Report: October 2020*, at p. 4, available online at <https://www.tn.gov/content/dam/tn/correction/documents/JailOctober2020.pdf>).

³¹ *Id.*

annual percentage of pretrial detainees in Tennessee’s jails for at least the last ten years.³²

17. As a result of the overall jail population increase, many Tennessee jails were at or near their pre-COVID population by the end of October. In some places, that meant they were over capacity. For instance, as previously noted by this Court, the Hamblen County jail, which was built to hold 255 people, went from 384 people in December 2019 to 207 people as of April 21, 2020.³³ By October 31, it was back up to 274 people.³⁴

18. In addition to being overcrowded again, the Hamblen County jail still does not require staff or people incarcerated there to wear masks or face coverings in the jail.³⁵ During an in-person monitoring tour of the jail on October 26, 2020, DRT Staff Attorney Daniel L. Ellis saw just one

³² *Id.*

³³ *Supra*, note 15, at p. 2.

³⁴ *See supra*, note 30, at p. 1.

³⁵ Exhibit C, Declaration of Hunter Hancock, at ¶ 17.

person detained in the jail wearing a mask.³⁶ Further, the jail does not test people newly confined to the jail unless they are symptomatic, and it no longer performs mass-testing.³⁷ Detainees also have only limited access to soap and cleaning supplies,³⁸ and little or no ability to socially distance from each other.³⁹

19. Meanwhile, some jails in Tennessee have not seen their populations drop below capacity this year. In January 2020, the Blount County jail was at 158% of its capacity -- holding 553 people in its 350-bed jail.⁴⁰ By the end of April, its population was down to 366 people (104.6% capacity),⁴¹ but it was back to 498 people (142% capacity) by the

³⁶ Exhibit D, Declaration of Daniel Ellis, at ¶ 8.

³⁷ *Supra*, note 34, at ¶¶ 20, 24, and note 35, at ¶ 12.

³⁸ *Supra*, note 34, at ¶¶ 26-27.

³⁹ *Supra*, note 35, at ¶¶ 8, 11, 14-15.

⁴⁰ Tennessee Department of Correction, *Tennessee Jail Summary Report: January 2020*, at p. 1, available online at <https://www.tn.gov/content/dam/tn/correction/documents/JailJanuary2020.pdf>.

⁴¹ *See* Exhibit E (Tennessee Department of Correction, *Tennessee Jail Summary Report: April 2020*, at p. 1, available online at <https://www.tn.gov/content/dam/tn/correction/documents/JailApril2020.pdf>).

end of October – largely due to an increase in people held pretrial, including on misdemeanor charges only.⁴² Based on monthly reports published by the Tennessee Department of Correction, it also appears the Bedford, Franklin, Monroe and Sullivan County jails have never operated below capacity since the pandemic began.⁴³

20. As of October 31, 2020, jails in 23 of Tennessee’s 95 counties were operating at or above capacity. Those counties were: Blount (142%), Cannon (136%), Clay (143%), Cocke (318%), Franklin (151%), Giles (100%), Greene (109%), Hamblen (107%), Hancock (120%), Humphreys (160%), Loudon (159%), Macon (114%), Madison (133%), Meigs (109%), Monroe (170%), Morgan (156%), Rhea (137%), Scott (109%), Sullivan (140% & 105%), Trousdale (100%), Unicoi (100%), Union (101%), and Wayne (115%).⁴⁴

21. Nearly all of the jails at or above their capacity have experienced substantial increases in the number of people incarcerated

⁴² *Cf. supra*, note 30 *with supra*, note 41.

⁴³ Monthly reports are available online at <https://www.tn.gov/correction/statistics-and-information/jail-summary-reports.html>.

⁴⁴ *See supra*, note 30, at pp. 1-3.

pretrial since April. In fact, all but two Tennessee counties have seen an increase in their pre-trial detention population since April, with 50 counties at least *doubling* the number of people held in jail pre-trial.⁴⁵

22. In Anderson County, which was initially praised for lowering its jail population,⁴⁶ the jail went from 280 people on April 30, to 375 people on October 31. That increase resulted entirely from more pretrial detainees – 78 of whom were held on misdemeanor charges only.⁴⁷

**PEOPLE CONFINED TO JAILS AND JUVENILE DETENTION
CENTERS, STAFF WHO WORK THERE, AND THE COMMUNITIES
SURROUNDING THEM FACE SERIOUS AND URGENT HEALTH
RISKS FROM COVID-19 THAT REQUIRE ADDITIONAL ACTION
FROM THIS COURT**

⁴⁵ *Cf. supra*, note 30 *with supra*, note 41.

⁴⁶ Ben Pounds, *Jail: Fewer Inmates; No Virus Detected*, Oakridger (April 27, 2020), <https://www.oakridger.com/story/news/politics/county/2020/04/27/jail-fewer-inmates-no-virus-detected/112323382/>.

⁴⁷ On April 30, the Anderson County jail held 35 people awaiting trial on misdemeanor offenses. *Supra*, note 41. On October 31, it held 112 people awaiting trial on misdemeanors. *Supra*, note 30. Between those same dates, the number of people being held pretrial on felony offenses went from 88 to 116.

23. When a jail is at or over its capacity, it is impossible for people detained there to socially distance, or to comply with most of the CDC recommendations for preventing the spread of COVID-19. With the pandemic now at its worst, jails, juvenile detention centers and prisons (though beyond the scope of this motion) are some of the most dangerous places to be.⁴⁸

24. Of course, the majority of people incarcerated in county jail facilities and juvenile detention centers have not been found guilty of

⁴⁸ Because Tennessee jails do not publish data about their COVID-19 testing, hospitalizations and deaths, it is difficult for the public to know exactly how dangerous conditions are there. However, we do know that Tennessee's prisons have experienced some of the worst COVID-19 outbreaks in Tennessee, and at times, in the nation. *See* Steven Hale, *Two of the Country's Worst Covid-19 Hot Spots Are in Tennessee. Both are Prisons*, Nashville Scene (May 4, 2020), <https://www.nashvillescene.com/news/pith-in-the-wind/article/21131644/two-of-the-countrys-worst-covid19-hot-spots-are-in-tennessee-both-are-prisons>. As of December 17, 31 Tennessee prisoners have died from COVID-19. *See* <https://www.tn.gov/content/dam/tn/correction/documents/TDOCInmatesCOVID19.pdf> (Dec. 19, 2020). We also know that the COVID-19 infection rate in U.S. prisons is more than four times higher than in the general population. *See* Beth Schwartzapfel & Katie Park, *The Marshall Project & AP, 1 in 5 Prisoners in the U.S. Has Had COVID-19, 1,700 Have Died*, (Dec. 18, 2020), <https://apnews.com/article/pandemics-race-and-ethnicity-prisons-united-states-coronavirus-pandemic-0bef0673013aa579551db5ad61b885e0>.

anything. Exposing anyone -- much less people who are presumed innocent and awaiting trial -- to a greater risk of contracting COVID-19 than they would face in the community, in conditions where they cannot protect themselves, is wrong.

25. “Reducing the Jail’s overall population, particularly those who are medically-vulnerable, better protects those individuals from any spread of the virus within the Jail and allows for more social distancing among those who remain detained.”⁴⁹

26. The ability to reduce local jail populations rests squarely with the judicial branch -- with the magistrates and judges who set conditions of pretrial release, impose sentences to serve in the county jail, and have discretion to release people early from those sentences. It appears, however, that this Court’s initial directive was insufficient to reduce Tennessee’s jail populations low enough or long enough.

27. Given the general human weariness around the ongoing pandemic, this is not surprising. But it is very dangerous, and failures to

⁴⁹ *Busby*, 2020 U.S. Dist. LEXIS 147280, at *30.

adhere to jail population reduction plans must be as unacceptable to this Court as failures to adhere to approved court reopening plans.

**THIS COURT IS OBLIGATED TO MITIGATE THE RISK
ASSOCIATED WITH COVID-19 FOR ALL PERSONS HAVING
BUSINESS BEFORE TENNESSEE COURTS, ESPECIALLY THOSE
CONFINED TO JAILS AND JUVENILE DETENTION CENTERS**

28. This Court has stated that “[j]udges and attorneys have an ethical obligation to strictly adhere to the approved comprehensive written plans of judicial districts and to the provisions of all applicable orders of this Court related to COVID-19.”⁵⁰ Included therein is the obligation for all Tennessee judges to adhere strictly to the written plans submitted by each judicial district to reduce jail populations.

29. Petitioners submit that every Tennessee judge who orders someone to be held in a jail or juvenile detention center in this state also has an ethical and a moral obligation to ensure that those facilities are safe, and do not pose an unreasonable threat to that person’s health and life. Regrettably, Petitioners submit that is not currently happening, and likely will not happen without further direction from this Court.

⁵⁰ *See supra* note 8.

30. Accordingly, Petitioners ask this Court to take immediate additional steps to protect participants in the judicial system who are confined to jails and juvenile detention centers, as well as members of the public who work at those facilities, from health risks associated with COVID-19.

31. Toward that end, this Court can provide judicial districts with more specific guidelines and benchmarks for reducing pretrial jail populations, and require them to provide the Court with updated written jail population reduction plans. It can also direct each judicial district to determine whether its local jails are complying with CDC guidelines for reducing the risk of COVID-19 spread in correctional and detention facilities.⁵¹ To the extent any court finds jail conditions are inadequate to

⁵¹ Center for Disease Control, Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>. Some of those guidelines include: a) identifying points of contact where detainees utilize shared space, and developing a plan to reduce the amount of traffic to those specific areas; b) allocating separate physical locations to quarantine, test, and provide medical treatment to COVID-19 positive individuals; c) providing a no-cost supply of soap and masks to every person detained; d) training staff on how to identify COVID-19 symptoms and properly quarantine suspected COVID-19 cases; e) requiring all staff members to practice personal hygiene and properly wear PPE (Personal Protective Equipment) at all times; f)

prevent the spread of COVID-19, this Court can order judicial districts to require specific reductions in jail populations to reduce that risk.⁵²

32. This Court can publish each judicial district's written plan for reducing jail populations on its website, along with a link to report concerns about non-compliance.

33. To improve transparency around COVID-19 outbreaks in jails and juvenile detention centers, this Court can require each judicial district to collect and report data every month regarding COVID-19 infections, illnesses, and deaths of people held in those facilities, as well as the people working there. It can also direct judicial districts to identify people in its jails who are medically vulnerable to COVID-19 according to CDC guidelines, and to weigh that in favor of releasing such persons into the community.

conducting COVID-19 symptom screening of staff before every shift; g) screening members of the public for COVID-19 symptoms upon entry into the facility; and h) reducing unnecessary contact between members of the public and incarcerated individuals.

⁵² See e.g., Order on Writ of Habeas Corpus and Writ of Mandate, *Campbell v. Barnes*, Case No. 30-2020-1141117 (Orange County Superior Court, Dec. 11, 2020), available online at: <https://www.aclu.org/legal-document/order-ahlman-v-barnes> (directing the Orange County, CA, jail to reduce its jail population to 50% capacity to reduce the risk of COVID-19 spread).

34. These measures are reasonable, and have been implemented in other jurisdictions. For example, court officials in Cuyahoga County, Ohio, recently adopted policies to release all pretrial detainees charged with misdemeanors, except those involving domestic violence, and to turn away anyone charged with a parole violation.⁵³ In Cook County, Illinois, where the jail recently experienced a dramatic spike in COVID-19 after its population returned to pre-COVID levels, officials have implemented widespread COVID-19 testing, mandatory mask issuance, and distribution of hygiene products to every detainee.⁵⁴ The jail also began testing and quarantining every new person detained there.⁵⁵

⁵³ Ed Gallek, *Cuyahoga County Jail to Release Some Inmates, as Scramble to Control COVID-19 Outbreak Continues*, Fox 8 (December 15, 2020) <https://fox8.com/news/i-team/cuyahoga-county-jail-scrambling-to-control-covid-19-outbreak/>.

⁵⁴ Matthew Hendrickson, *Cook County Jail Was One of the Nation's Largest COVID-19 Hot Spots Last Spring. It's Worse Now*, Chicago Sun Times (December 15, 2020), <https://chicago.suntimes.com/coronavirus/2020/12/15/22165917/cook-county-jail-covid-19-coronavirus-bond-release-reform-judge-kim-foxx-tom-dart>.

⁵⁵ *Id.*

WHEREFORE, for all the reasons stated herein, Petitioners respectfully renew the Emergency Petition filed in this matter on March 24, 2020, and move this Court to issue an Order directing the following actions as soon as possible:

1. Require every Judicial District to submit a revised written plan for reducing its jail and juvenile detention populations consistent with the following guidelines:
 - a. eliminate unaffordable bail conditions for people charged with misdemeanor offenses, as well as violations of misdemeanor probation;
 - b. eliminate unaffordable bail conditions for people charged with felony offenses, unless the State can establish that the person's release from custody poses a compelling public safety risk or risk of flight;
 - c. identify people in the jail with medical conditions that make them more vulnerable to COVID-19 infections, and release them from custody unless the State can establish that confinement is absolutely necessary to prevent a substantial risk to public safety risk;

- d. identify any sources of increasing jail population since April 2020 other than pretrial detention, and adopt measures specifically designed to reduce those trends;
 - e. reduce current jail and juvenile detention center populations to 50% or less of their capacity, so detainees can socially distance and quarantine consistent with CDC guidelines; and
 - f. maintain jail and juvenile detention center population reductions as long as the pandemic is ongoing.
2. Require every judicial district to determine the extent to which its local jails are complying with CDC guidelines for correctional and detention facilities, and issue any necessary orders to ensure that conditions in the jails are adequate to protect people confined there or working there from COVID-19 infection, including:
- a. COVID-19 testing for every new person committed to the jail, issuing a mask (and necessary replacements) to any person committed to the jail, and isolating newly committed people from general population for 14 days, due

to the danger of spread from asymptomatic persons and the confined conditions of jails and juvenile detention centers;

- b. quarantining consistent with CDC guidance of any person held in the jail who tests positive for COVID-19 until they receive two consecutive negative COVID-19 tests; and
- c. implementing and following CDC guidelines to prevent the spread of COVID-19 in detention centers and correctional facilities.

3. Require every judicial district to obtain monthly COVID-19 data for people confined at or working in local jails and juvenile detention centers, including the number of COVID-19 tests administered; the number of positive results; the number of COVID-19 hospitalizations; the number of COVID-19 deaths, if any; the number of detainees quarantined; the number of intra-facility transfers, and from which facilities, and whether any transferees tested positive for COVID-19; and the number of inmates with health conditions that place them at greater risk of hospitalization or death arising from a COVID-19 infection.

4. Publish every Judicial District's written plan for reducing its jail population on this Court's website, and a link where people can submit concerns about non-compliance with the plans.

Respectfully submitted,



C. Dawn Deaner, BPR #017948
Choosing Justice Initiative
1623 Haynes Meade Circle
Nashville, TN 37207
615-431-3746
dawndeaner@cjnashville.org



Daniel L. Ellis, BPR #028130
Disability Rights Tennessee
9050 Executive Park Drive, Suite B-101
Knoxville, TN 37923
865-670-2944
daniele@disabilityrightstn.org

Josh Spickler by permission


Josh Spickler, BPR #021019
Just City
P.O. Box 41852
Memphis, TN 38174
901-206-2226
josh@justcity.org



Mike Working, BPR #025118
**President, Tennessee Association of
Criminal Defense Lawyers**
2 International Plaza, Suite 406
Nashville, TN 37217
615-329-1338
workinglaw@gmail.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon all of the Petitioners by email within seven (7) days of filing with the Court.



C. Dawn Deaner