

December 17, 2024

Via email to cherelle.parker@phila.gov & adam.geer@phila.gov



Mayor Cherelle Parker
Chief Public Safety Director Adam Geer
City Hall, Office 215
Philadelphia, PA 19107

Re: The City’s Proposed Neighborhood Wellness Court Raises Numerous Due Process & Fairness Concerns

Dear Mayor Cherelle Parker and Chief Public Safety Director Adam Geer,

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The signatories to this letter represent a cross-section of members of the Philadelphia legal services community who are concerned with the constitutional implications of the City’s proposed plans for a Neighborhood Wellness Court (“NWC”) focused on the Kensington neighborhood. We, of course, recognize the desire for the City to address the longstanding substance use disorder (“SUD”) crisis and the related housing and health crises, but its approach must be evidence-based and constitutionally compliant.

The proposed NWC program—first rumored to start on September 7th of this year, but now seemingly ready to start sometime in December 2024—raises more questions than it answers. While few details of this program have been forthcoming, the information we have been able to discern raises grave concerns similar to those raised in a letter to the City from Concerned Harm Reductionists United (CHRU) about how the NWC will perpetuate harmful treatment of people in the Kensington neighborhood and place their constitutional rights at risk. We also echo the calls of the many impacted persons and professionals in this space who call on the City to abandon reactionary carceral approaches, and instead focus on housing, evidence-based treatment modalities, and evidence-based harm reduction interventions.

We therefore write to highlight some of the legal concerns the NWC raises and urge the Parker Administration to abandon its proposal in favor of a plan that more meaningfully addresses the root causes of the issues many Kensington residents face: housing instability, mental health concerns, and SUD.

The NWC has been described generally as a diversion program wherein, all on the same day, involved individuals would be issued summary citations, held in custody, and appear in Municipal Court where they would be given the opportunity to either request a trial for the alleged conduct or to enter a treatment program for up to 90 days. Eligibility for this diversion program appears to be entirely discretionary, determined solely by the arresting officer(s) issuing a summary citation(s) instead of recommending a misdemeanor or felony charge(s). On the surface, the goals sound laudable; however, the program raises crucial constitutional concerns. The NWC and the accompanying police action seem poised to undermine equal protection and due process rights guaranteed by the U.S. and Pennsylvania Constitutions.

The proposed program, by definition, will treat people in Kensington differently under the law than similarly situated people in any other part of the City. Under this program, only those receiving summary citations in the Kensington neighborhood could be taken into custody, as it is the general policy of the Philadelphia Police Department's ("PPD") not to arrest summary citation recipients.¹ PPD presently arrests people of color for low-level offenses at a far higher rate than White people, meaning this process would likely have a greater effect on Black and Brown Philadelphians.² As a result, citation recipients under the NWC program would lose the opportunity to obtain evidence to aid in their defense before their same-day adjudications.

While those challenging their summary citations usually have their citations reviewed by the Philadelphia District Attorney's Office, those in the NWC program would not have enough time for such a review, especially since they would be held pending their expedited adjudication. Any decision to issue a citation under these circumstances would not be based on a prosecutorial determination of what charges can be supported by evidence, but rather based on the perceived convenience and expediency of the NWC process being created for the Kensington neighborhood alone. The program is set to skirt due process protections for those who receive summary citations in Kensington.

Additionally, it is not clear the City has accounted for the likely scenario in which many individuals before the NWC lack the capacity to participate in its processes. By the very nature of this program, many citation recipients would presumably be taken into custody immediately after or just before getting intoxicated, meaning some citation recipients would be intoxicated or in the throes of intense, and sometimes deadly, withdrawal symptoms while in custody.³ Anyone before a criminal court, be it minor or otherwise, must be able to knowingly, intentionally, and voluntarily make decisions because decisions in that forum can affect their liberty and other important interests (e.g. immigration status). *See Padilla v. Kentucky*, 559 U.S. 356 (2010). However, jurisprudence from both federal and state courts make clear that intoxicated individuals do not have the capacity to knowingly, intentionally, and voluntarily make decisions regarding their liberty in criminal proceedings. *See U. S. ex rel. Wakeley v. Russell*, 309 F. Supp. 68, 73-74 (E.D. Pa. 1970) (finding

¹ Philadelphia Police Department, Directive 12.10 (updated Jan. 24, 2023),

<https://www.phillypolice.com/assets/directives/D12.10-IssuanceOfNonTrafficSummaryCitations.pdf>.

² *See Racial Injustice Report: Disparities in Philadelphia's Criminal Courts from 2015-2022*, Philadelphia District Attorney's Office (Jun. 8, 2023), <https://phillyda.org/wp-content/uploads/2023/06/RACIAL-INJUSTICE-REPORT-2023.pdf>.

³ *See* Adrienne Webster, *Fentanyl Withdrawal Symptoms, Timeline, and Detox Treatment*, American Addiction Centers (updated Nov. 8, 2024), <https://americanaddictioncenters.org/opioids/fentanyl/withdrawal-detox>.

that Defendant’s confession, made while he was intoxicated, “was not the product of a rational intellect and free will and was therefore involuntary”); *Commonwealth v. Eden*, 317 A.2d 255, 257 (Pa. 1974) (holding that the defendant’s intoxication contributed to his inability to knowingly and intelligently waive his constitutional rights, and his inability to voluntarily make inculpatory statements).

As a part of the guilty plea colloquy, courts within the First Judicial District asks anyone pleading guilty if they have “taken any drugs...within the past 48 hours” and if they are currently “under the influence of medication, drugs, alcohol, or any substance that would prevent [them] from understanding what is happening.”⁴ As was previously explained, the very nature of the NWC is such that most individuals who would appear before it would have taken narcotics at some point in the 48 hours preceding their appearance, meaning they would lack the legal capacity to knowingly and intelligently make decisions about their criminal cases. Likewise, defense attorneys could not proceed with representation without violating numerous rules of professional conduct. *See* Pa.R.P.C. 1.3, 1.14, 3.3, & 8.4, among others. Rushing citation recipients to hastily decide between ill-defined treatment options or criminal consequences while intoxicated or experiencing intense pain would undermine the constitutional validity of such decisions—hence, the aforementioned questions of the First Judicial District’s colloquy.

Moreover, it is not clear whether the City has accounted for how to care for detained citation recipients who may be intoxicated or experiencing withdrawal symptoms. Any notion that intoxicated individuals should be held until they regain the capacity to knowingly, intentionally, and voluntarily make decisions intensifies our concerns about individuals from Kensington being incarcerated longer than similarly situated individuals of other Philadelphia neighborhoods, while also increasing the risks to their physical safety. Philadelphia’s detention facilities are the subject of major litigation for their “horrendous” conditions and they are extremely understaffed.⁵ As such, they would be ill-equipped to safely care for citation recipients who, as the City’s Department of Health states, “rapid[ly] transition from intoxication to withdrawal” such that their initial treatment requires strong medication (e.g., methadone) and hospital-level support.⁶ With this in mind, many wonder if the Parker Administration forgot about the tragic deaths of Amanda Cahill⁷ and Jonathan Lau.⁸

⁴ *Guilty Plea Colloquy Form (English)*, The Philadelphia Courts | First Judicial District of Pennsylvania (last accessed Dec. 9, 2024), [https://www.courts.phila.gov/pdf/forms/criminal/Guilty-Plea-Form-\(English\).pdf](https://www.courts.phila.gov/pdf/forms/criminal/Guilty-Plea-Form-(English).pdf).

⁵ *See* Samantha Melamed, *Held in contempt over jail conditions, Philly must pay \$25M and quickly boost staffing, a judge has ordered*, *The Philadelphia Inquirer* (Aug. 18, 2024), <https://www.inquirer.com/news/philadelphia/jails-contempt-order-25-million-class-action-prisoners-civil-rights-20240818.html>.

⁶ Frank Franklin, et al., *Hospitals and behavioral health providers are reporting severe and worsening presentations of withdrawal among people who use drugs (PWUD) in Philadelphia*, Philadelphia Department of Public Health (Dec. 10, 2024), <https://hip.phila.gov/document/4874/PDPH-HAN-00444A-12-10-2024.pdf>.

⁷ *See* Anna Orso, Ellie Rushing, Samantha Melamed, *A 31-year-old woman arrested during a Kensington sweep last week died in jail days later*, *The Philadelphia Inquirer*, (Sep. 8, 2024), <https://www.inquirer.com/news/philadelphia/kensington-drug-sweep-amanda-cahill-died-jail-20240908.html>.

⁸ *See* Rodrigo Torrejón, *Man died of drug withdrawal in Philly police custody as officers ignored his suffering, lawsuit says*, *The Philadelphia Inquirer* (Dec. 4, 2024), <https://www.inquirer.com/news/philadelphia/man-dies-withdrawal-philadelphia-police-custody-20241204.html>.

It is unclear, as structured, that the NWC program would be able to run as envisioned without violating the due process rights of its participants. Unable to prepare a defense while in custody awaiting the summary hearing, and lacking any opportunity to have their citations reviewed for sufficiency, citation recipients from our Kensington neighborhood would be afforded less due process than other similarly situated Philadelphians. As the letter CHRU sent to City officials so succinctly stated, “[u]nhoused people and people with substance use disorder are *people*; they deserve the same dignity, care, autonomy, respect, and assistance that all [residents] of Philadelphia deserve.”

We, the undersigned legal organizations, urge the City to reconsider instituting the NWC program, and instead provide more transparency about the efficacy of existing City services and diversionary programs that could meaningfully address the root causes of the issues many in Kensington face: housing instability, mental health concerns, and SUD. The most effective solutions are those that result from community led, participatory processes that are designed and implemented by those who are most impacted. This must happen before the City funds additional law enforcement-led diversion programs.

If you would like to discuss this matter further, select members from the undersigned legal organizations, and harm reduction advocates whose expertise we trust, are available to talk. Please contact Executive Director Mike Lee at mlee@aclupa.org or 215-592-1513 to set a meeting with signatories to discuss this matter.

Respectfully,

Mike Lee
Executive Director
American Civil Liberties
Union of Pennsylvania
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Signatories listed alphabetically by organization with individual signatories at the end:

	Name	Title	Organization
1.	Robert Saleem Holbrook	Executive Director	Abolitionist Law Center
2.	Ronda Goldfein	Executive Director	AIDS Law Project of Pennsylvania
3.	Elena Cohen	Partner	Cohen Green PLLC
4.	Nancy Rimmer	Legal and Advocacy Director	Homeless Advocacy Project
5.	Paul Messing	Partner	Kairys, Rudovsky, Messing, Feinberg, & Lin
6.	Marni Jo Snyder	Attorney, Owner	Law Officer of M.J. Snyder, LLC
7.	Dr. Bill McKinney	Executive Director	New Kensington Community Development Corporation

8.	Mimi McKenzie	Legal Director	Public Interest Law Center
9.	Dina Schlossberg	Executive Director	Regional Housing Legal Services
10.	Marsha I. Cohen	Executive Director	van Ameringen Foundation
11.	Jon Cioschi	Partner	Wiseman, Schwartz, & Cioschi
Individual Signatories			
12.	Mary Catherine Roper	Of Counsel	Langer Grogan & Diver, P.C.
13.	Michael N. Huff	Attorney, Owner	The Law Offices of Michael N. Huff
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