



pennsylvania

OFFICE OF VICTIM ADVOCATE

Giving Crime Victims a Voice

Courage • Strength • Resilience

ELECTRONICALLY SUBMITTED VIA PACFILE

April 1, 2020

Supreme Court of Pennsylvania
Chief Justice Saylor and Esteemed Colleagues
601 Commonwealth Avenue, Suite 4500
Harrisburg PA 17106

RE: Petition of the Pennsylvania Prison Society, et al. -- 70 MM 2020

Dear Honorable Chief Justice Saylor:

The Pennsylvania Office of Victim Advocate is aware this Honorable Court has been asked to use its “King’s Bench” jurisdiction to grant extraordinary relief to provide direction affecting the operation of Pennsylvania County jails, potentially releasing incarcerated persons, as an effort to reduce the impact of the COVID-19 virus. The Office of Victim Advocate (“OVA”) in conjunction with many local and state victim advocacy partners listed on this letter are asking for the Court to specifically consider the impact upon victims, should such a release strategy be directed by the Court.

Furthermore, the OVA has heard from survivors and advocates who are deeply concerned about the potential release of violent offenders back into the community, and possibly back into the very household setting where the violence took place. For example, the Pennsylvania Coalition Against Rape and the network of rape crisis centers are concerned about the safety of sexual abuse and assault victims as individuals are released into the community without appropriate supervision, treatment, and safety planning implemented. In one county, an individual with numerous charges of child sexual abuse was released on reduced bail. Rape crisis centers are receiving calls from victims and their families who are scared and worried the person who harmed them will be released without warning, notification, or referrals to appropriate services.

Interpersonal violence takes many forms—sexual assault, child abuse, domestic abuse—and often criminal charges do not reflect the actual threat to the family. We also wish to highlight the prevalence of human trafficking and our general assembly's good faith efforts to pass laws that have empowered our justice system to respond in charging and prosecuting these horrific acts, allowing any release of offenders who are engaging in the trafficking of victims will only embolden their actions and place their victims in further harm. OVA strongly encourages that the Court direct that no offender be released who has a history of interpersonal violence, a past or currently active protection from abuse order or a finding of child abuse by the courts.

The OVA was created during the Special Session on Crime in 1998 upon the realization that the Commonwealth was significantly lacking in the provision of post-sentencing rights for crime victims. The OVA was established to ensure that all crime victims whose offenders received state sentences were afforded their rights. At the same time, Pennsylvania created an independent Victim Advocate to lead the agency. The role of the Victim Advocate is broader in its legislative mandate—that person is to advocate, in general, on behalf of all crime victims before the Department of Corrections and the Pennsylvania Parole Board. In short, the goal of the Victim Advocate is to ensure that all crime victims have a voice in all aspects of the Commonwealth's justice systems. The role of the Victim Advocate was further expanded in 2010, after an Interbranch Commission was convened. That Commission expanded the Victim Advocate's roles and duties to ensure the voices of all crime victims were advocated for at the state level in all matters. The Victim Advocate is the office where crime victims file complaints when they feel their rights have been violated and many victim advocates in local jurisdictions look to the Victim Advocate to represent their interests and needs in all policy matters. The OVA works to ensure that all crime victims' rights are afforded to them as deemed appropriate by law, and that the services they receive at all levels of the criminal justice system are done with adherence to the Crime Victim Act and other applicable laws affecting the rights of crime victims.

This letter highlights for the Court the public policy concerns and safety concerns underlying the above-captioned King's Bench Petition, since OVA and the undersigned agencies are compelled to respond on behalf of the crime victim community in the Commonwealth. While we appreciate the concerns raised within the context of the COVID-19 pandemic by all persons in the Commonwealth, including those who are incarcerated, it is incumbent upon the Court to consider the safety and legal rights of all participants in the criminal justice system, including crime victims. We cannot dismiss the acts of harm committed by offenders against the community and their victims, by making reactionary decisions to release people who have committed horrific instances of sexual violence, domestic assault, child abuse or murder, thus placing the health and welfare of offenders above the safety and well-being of the public and victims. Pennsylvania's county jails are full of many people who are charged with violent offenses and awaiting trial; the safety and security of those who have been egregiously harmed must be considered before any release decision can be made. In many instances, people detained in county jails are there on charges that started as very serious domestic violence assaults that have been or will ultimately be reduced to less serious offenses for purposes of a plea agreement.

The OVA along with the undersigned agencies are asking that consideration be given to an offender's entire criminal history before any release decisions are made. We advocate that the potential release focus on those who do not pose any threat or risk to the community. These are perilously uncertain times, and anyone currently incarcerated who has a victim associated with their case or a history of violence should be eliminated from release consideration. If such releases should occur, we advocate strongly for adequate supervision of any offenders, both pre-trial and post-sentencing to ensure compliance with all directives, treatment and strict adherence to no contact orders.

Crime victims have the right to be present, and to be heard during certain proceedings, including release hearings. Pursuant to Title 18, §11.201, known as the Crime Victims Act, crime victims have a right to be notified of certain significant actions and proceedings within the criminal and juvenile systems pertaining to their case, including access to information regarding detainment and release. Crime victims are required to have access to information regarding the grant or denial of bail, an opportunity to submit comment prior to the reduction or dropping of any charge,

or changing of a plea in a criminal or delinquency proceeding, or diversion of any case, including an informal adjustment or consent decree. They are afforded the right to provide prior comment on and to receive State post sentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement, to receive notice of the date of release of an adult from a local correctional facility, including work release, furlough, parole, release from boot camp or community treatment center placement, and in domestic violence cases, crime victims have the right to have their safety considered in the granting of bail and consideration of release. Also, 23 Pa.C.S, Chapter 61, relating to protection from abuse (“PFA”) provides that where an adult is committed to a local correctional facility for a violation of a PFA order or for a personal injury crime against a victim protected by a PFA order, the victim is to receive immediate notice of the release of the adult on bail. Any Court procedure directed, adopted or adjusted that does not afford the above-listed rights, is a violation of the rights of victims.

To comply with victims’ rights, if a criminal proceeding is to be continued, courts must ensure that victims receive timely notice of the delay and the proposed new court date, and that they have an opportunity to have input regarding the delay. If a defendant’s constitutional rights require a proceeding to move forward, accommodations for the victim(s) who wish to exercise their rights to be present and heard (if relevant). In this time of pandemic, alternative methods for a victim to be present must be made available. Victims cannot be presented with the “Hobson’s choice” of exercising their rights and accessing justice, or safeguarding their health.

During this time when courts must balance individual rights, the public health, and government closure mandates, the Orders of the Court must keep at the forefront the rights and interests of victims. A deprivation of these rights will not be excused by administrative inconvenience and logistical difficulty. *Wolfish v. Levi*, 573 F.2d 118, 127 (2d Cir. 1978), *rev’d sub nom. Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (finding that administrative inconvenience can never excuse the deprivation of constitutional rights).

Notably, violating victims’ rights will not only harm the individual victim, but it will have a secondary effect on the court system. At the very time when the courts are trying to reduce the urgency of the workload of the system, failure to consider victims’ rights risks court congestion and increased health risks for the community, as victims whose rights have been violated will necessarily seek court reconsideration.

Incorporating such alternate procedures as necessary is the only way that the courts can comply with the law and truly be in the best interest of the administration of justice. See *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991) (“[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained til it is narrowed to a filament. We are to keep the balance true.” (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 122, 54 S.Ct. 330, 78 L.Ed. 674 (1934))).

Recognizing the unprecedented nature of times, we certainly appreciate the quick attention of the Court to the human impacts of criminal justice caused by directing release of incarcerated people. It is our collective hope that the Court will act expeditiously to ensure that, if any such release strategies occur, that the concerns, welfare, and rights of victims are considered and addressed.

On behalf of crime victims who will be impacted by any relief granted by the direction of this Court it is respectfully requested the Court issue a standing order that ensures notice to the crime victim of any motion or consideration for release. It is also requested that the Court make clear in the order the mechanism for victims who want to exercise their rights, should respond to

any motion for release, recognizing that such response may be required to be on an expedited calendar, under the circumstances.

Finally, it is respectfully requested that the Court make clear, whether decisions will be communicated by paper transmission, or whether telephonic, electronic or other appearance options will be available.

Respectfully submitted by,

/s/ Jennifer Storm, Acting Victim Advocate for the Commonwealth of Pennsylvania

With support from:

Pennsylvania Coalition Against Domestic Violence
Pennsylvania Coalition Against Rape
Network of Victims Assistance, Bucks County
Crime Victim Alliance of Pennsylvania