



**HEARING BEFORE THE SENATE JUDICIARY COMMITTEE
ON INMATE REPRIEVES
SENATE JUDICIARY COMMITTEE
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Chairwoman Baker, Chairman Farnese, and members of the Judiciary Committee. Thank you for the opportunity to testify this morning on the Governor's Executive Order regarding inmate transfers during the Covid-19 emergency.

As you are aware, on April 10, 2020, the Governor issued an Executive Order authorizing the transfer of certain inmates during the pandemic to community supervision. According to the Governor's Executive Order, the source of authority for this action was in 35 Pa. C.S. § 7301(f)(5) and (7) and Article IV Section 9 of the Pennsylvania Constitution. The Order did not make any distinctions between the specific powers that may or may not be authorized by statute or the Constitution.

The Order includes vulnerable inmates (a term defined in the Order) eligible for parole within the next 12 months, as well as any other inmate within 9 months of his or her minimum sentence date.

The Order specifically excludes from consideration those who have been convicted of more violent crimes. These would include, among others:

- Crimes of Violence, defined in 42 Pa. C.S. § 9714(g)
- Personal Injury crimes, defined in the Crime Victims Act
- Firearms Crimes, defined in 18 Pa. C.S. § 6100 et seq.
- Crimes where there has been a deadly weapon sentencing enhancement
- Sex crimes, defined as those listed in our Megan's Law statute
- High level drug trafficking offenses
- Those denied parole on their underlying sentence
- Those committed of a crime while incarcerated
- Those who pose a risk to public safety
- Those convicted of crimes of violence, personal injury crimes, firearms crimes or sex crimes within the past 10 years

Notably, these exclusions were taken, for the most part, from existing law: the exclusions from the short sentence parole criteria in the recently enacted JRI 2 legislation (SB 501). Under the Executive Order, however, these exclusions do not apply, to anyone who has received a positive recommendation by the Parole Board. The Order requires the DOC to ask for and consider any responses provided by the prosecuting district attorney or Attorney General and the trial court. The Order goes on to say that each reprieve is contingent on compliance with the terms of supervision imposed by the DOC. A press release accompanying the Executive Order stated that while on temporary reprieve, individuals will be monitored similarly to parolees and will be supervised by parole agents. Upon expiration of the order, individuals would be returned to prison to complete any remaining portion of their sentences.

The Governor has transferred more than 150 state inmates out of the Department of Corrections pursuant to his Executive Order.

The DOC has sent out two sets of lists to district attorneys, listing those who may potentially be eligible for transfer under the Executive Order. The first list was sent on Wednesday, April 8, 2020 and contained 862 names. The second list was sent on April 23, 2020 and contained 378 names. The DOC sent the same lists to the trial courts as well. Judges and district attorneys had a few days to respond to each list, and DOC staff was available to answer any questions.

As the risk of overgeneralizing, the first list included many (though not exclusively) individuals who were not excluded from the eligibility criteria, who were already approved for parole by the Parole Board, and who were up to three months from their earliest eligible parole date. The second list contained primarily those who had never been seen by the Parole Board and whose parole eligibility date was farther out, namely up to 9 months before their earliest eligible parole date. Some individuals on both lists were actually ineligible based on the criteria, and district attorneys worked with the DOC to identify those individuals.

Many district Attorneys responded quickly to the request by the Department and provided the information requested. Reprieves announced by the Governor occurred after the information by district attorneys and judges was due to the DOC.

District Attorneys approached consideration of the incarcerated individuals in the manner and fashion they deemed appropriate, in a way that reflected their beliefs, values and consideration of public safety, as well as carefully considering their communities and constituents. They were thoughtful and fully engaged in this process and looked at each case individually. This is a key point: each case was different and required careful examination, including the facts of the case, the background, facts related to prior criminal history, and the existence of victims. Moreover, it was necessary to examine whether the case involved domestic violence, sexual assault, or child abuse. Returning incarcerated individuals who are at a heightened risk of committing such acts of abuse was and remains particularly worrisome, and extensive attention must be paid to these issues.

The analysis of each person on the list also involved the reality that some of the incarcerated individuals suffer from substance use disorder. For those individuals the ability to make good use of treatment outside of the prison walls is greatly diminished during the pandemic. Meaningful treatment options are simply unavailable in many communities, and an individual

released to a home plan who needs treatment but cannot get it is in significant danger of relapsing and/or overdosing.

Moreover, the hallmark of successful reentry from prison to society is employment, and no one needs to be reminded of the depressingly high unemployment rates throughout the Commonwealth (and nation, for that matter) as a result of COVID-19 outside of the prison walls. Those released pursuant to the Executive Order will find it incredibly difficult to be gainfully employed.

How these areas relate to these two reentry issues – treatment and employment – translates to larger policies surrounding temporary transfers out of prison during a pandemic. These policies need to be examined carefully and in great detail. And while it may be premature to draw conclusions, decision-makers must at a minimum identify these issues and find ways to address them in the short-term.

When the threat of COVID-19 began to be of significant concern in our county jails, district attorneys worked collaboratively with their courts, defense bar, probation departments, and victim witness coordinators to help recommend, shape or make appropriate decisions to release inmates based on all of the circumstances. The use of these local practices was central to the Pennsylvania Supreme Court's rejection of petitions to require the categorical early release of certain county inmates or those held in youth detention facilities. The process for these temporary transfers from State Correctional Institutions bore similarities to how district attorneys approached releasing inmates from local county jails: consideration of enhancing social distancing within the prisons, careful consideration of public safety, victims rights, instant offenses, criminal backgrounds, drugs and alcohol treatment, and reentry overall.

Any approach which is not balanced will have deleterious consequences: Consider some of the following that was a result of new policies implemented to address COVID-19 in other jurisdictions:

- Los Angeles: Los Angeles adopted a virtual no bail policy for most misdemeanor and low-level felonies during the pandemic. During that time 213 individuals were arrested multiple times.
- Florida: man imprisoned on drug charges shot and killed someone in Tampa a week after his release

- New York:
 - an inmate at Rikers initially jailed for setting his girlfriend's door on fire and choking her mother was released early but returned to his girlfriend's apartment and threatened to kill her.
 - another was accused of assaulting a Department of Homeless services officer was released was subsequently arrested for punching an agency sergeant two days later

If done right, the harm can be minimized and public safety can be protected. District Attorneys very much appreciate the goal of keeping inmates safe from COVID-19. Collaborative efforts can and have been fruitful, and we appreciate the efforts by Secretary Wetzel and his staff to maintain public health and public safety and to have included individual district attorneys in the process the DOC undertook.