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OFFICE OF VICTIM ADVOCATE

*Giving Crime Victims a Voice*

*Courage • Strength • Resilience*

## **Written Testimony Re: Governor Wolf Reprieve in Light of COVID**

Senate Judiciary Committee

May 15, 2020

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Thank you, Chairwoman Baker, Chairman Farnese and members of the Senate Judiciary Committee, for inviting the Office of Victim Advocate (OVA) to submit testimony on Governor Wolf's reprieve order. OVA has been at the table from the very beginning as discussion began to occur around the rising concerns from the twenty-five state correctional institutions and the Department of Corrections (DOC) central office as COVID-19 began to emerge within our state. For the first few weeks of the statewide shut down, we were engaging DOC and Parole staff on daily calls discussing concerns, issues, complications and logistics as we all began to pivot our daily operations around this new reality - a reality that was changed sometimes minute by minute. Concerns began to rise around inmate and staff safety due to the natural realities of our institutions and the challenges presented with confinement and social distancing; Secretary Wetzel was proactive and engaging immediately and OVA began working with DOC staff on furlough lists of offenders who were currently on parole in Community Corrections Centers (CCC) to enable social distancing in those facilities. OVA was given immediate and full access to information on cases DOC was considering; we were able to run our safety checks on those cases, make victim notifications, check for domestic violence indicators and protocols to ensure any home plan was one without any known, prior or current domestic violence issues. For these offenders

specifically, the victims were already informed that these individuals were on parole, and while they were in a CCC, they still have access to the community for work purposes, appointments etc.

As we observed our neighboring states, particularly New York, conversations shifted toward possible legislation to allow DOC to release a subset of non-violent offenders with criteria mirroring that of the recent passage of Justice Reinvestment. While that legislation was being drafted, DOC sent a list of inmates that they were vetting to our office, as well as the district attorneys in each county. OVA cross referenced that list against our current registered victims; we immediately suggested the removal of any cases where there was someone registered. With the knowledge that some victims are just never informed of OVA,

we requested that any inmate on that list who was charged with a crime that would have resulted in a personal crime victim be removed. The DOC immediately removed every case we flagged without question.

Secretary Wetzell and I spoke often and it was abundantly clear to me that he wanted to make safe decisions that did not interfere with any victims or create any safety concerns. Additionally, we suggested that OVA be allowed to cross reference every inmate against the Protection from Abuse database, this would tell us if there were any

existing and past domestic violence concerns. This is the current practice when inmates receive a positive parole action prior to release, to ensure that the agent is aware of any domestic violence issues with that offender upon release. This affords the agent some knowledge of the pattern of domestic violence and ensures the offender is not attempting to submit a home plan that includes a residence where a domestic violence victim could live. OVA also has a program specific to domestic violence called Victim Wrap, this allows the

Not all legally eligible victims are registered with OVA, this is an opt in program and it is incumbent upon the county DA to inform victims of who OVA is at the time of sentencing. This does not always result in registration. Often, victims are confused and do not fully appreciate that OVA is a separate state entity. OVA has advocated for a legislative change to require the District Attorneys to give OVA victim information so that we may make a more formal and trauma informed introduction to our services. This was to be a part of the overall JRI 2 package and, unfortunately, our bill, sponsored by Senator Bartolotta and Senator Hughes, passed by this chamber, never made it out of the house.

victim to waive confidentiality and work directly with the agent on the case. It is vital to note how truly impossible it is to determine if someone is a "non-violent" offender. More often than not, offenders with domestic violence, child abuse or sexual violence histories are rarely held legally responsible for those acts. It's more common that someone is charged initially and then the charge is reduced to a lesser offense that does not include a "victim" per se but if you look at the history of the crime, there was an initial victim. Quite often, a violent offender will get caught up on drug or gun charges that are a result of a pattern of violent behavior that again, on face value, do not have a "victim" attached. It is vital that we take into consideration past criminal history and accessing the civil databases that hold critical information about possible concerns for public safety. OVA was not engaged in any negotiations with house or senate leadership on those bills other than to offer that we would be supportive, as long as there were no conceivable victims and OVA could cross reference for past and prior Protection from Abuse Orders.

At the same time this was happening, county jails across the state were releasing all types of offenders, including violent offenders charged with and/or convicted of rape, domestic violence, and other horrific crimes. OVA saw an increase in our incoming hotline calls from victims in crisis worried about their safety. OVA has zero control or input on county releases. We did our best to field the calls and re-direct clients to the county services. We also increased our social media and public awareness efforts by creating outreach and materials to help ease the anxieties of our state's crime victims, including interviews and a live Facebook event to answer questions and address concerns. The ACLU filed a motion with the court to release a massive amount of inmates and OVA took a very strong stance in opposition to the request and filed a letter to the PA Supreme Court (See attached).

Thankfully, the PA Supreme Court agreed and did not entertain the request. At some point, it became clear that a bill would not be an option, and the Governor signed his executive order granting the DOC the ability to put forth inmates for his reprieve consideration. Once

again, we were in constant communication with DOC on which inmates would be considered. Secretary Wetzel asked me to eliminate anyone on the lists that raised a public safety concern. We met with - and worked closely with- the directors and agents in the field to ensure that every name given consideration was vetted by our office, and if any concerns were found they were eliminated from consideration. We worked very closely with our victim service stakeholders during this timeframe and kept them all up to date with what was happening. PA Coalition Against Rape, PA Coalition Against Domestic Violence, The Center for Children's Justice, Crime Victims Alliance of PA and NOVA of Bucks County were all engaged in dialogue as we were navigating these releases at the state and county levels. While I firmly believe that we took every conceivable action to ensure public safety, among balancing the issues of public health inside our state prisons, some issues were identified and are being offered as possible recommendations.

### **Legislative Recommendations**

- 1.) While many county prosecutors were engaged in the release decisions happening at the county level, some were not. In many instances, no victim input or notification occurred. Victims' rights violations occurred and victims were livid and in crisis at the thought of their offenders being released. It is still alarming that crimes like Endangering the Welfare of a Child (EWOC) are not considered crimes of violence or personal injury crimes which are the legal mechanisms for victims to have rights. We would recommend it be added to ensure victims in those cases have associated legal rights. It is our recommendation that a victim of crime always be afforded the opportunity to be heard and have their rights upheld.
- 2.) At the state level, while we deployed every safety mechanism at our disposal to avoid possible public safety issues, we realized we did not have access to two sets of data that could have been useful - the Child Abuse Database and Sexual Violence Protective Orders. It was never customary for DOC, OVA or Parole to have access to this

information or use it in any way in terms of re-entry planning. Child advocates and PCAR raised many concerns about this to us, which we raised with DOC and the administration. The administration immediately reached out to the Department of Human Services and the Office on Advocacy and Reform and began dialogue on how we could meaningfully and legally access information regarding identified perpetrators of child abuse. Internally, OVA and DOC immediately met and added questions to the re-entry checklist that would have the agent begin to inquire about any and all child abuse so that could be considered during home plan investigations and re-entry. A possible legislative fix for this could be an amendment to Title 23 Chapter 63 §6340 allowing for the release of confidential reports to parole agents for the purpose of identifying home plans investigations and re-entry planning. We have seen cases of offenders with past histories of child abuse released into homes with children resulting in further harm to the child - and in some cases death. The Sexual Violence Protective orders are stored in a statewide database held by the Pennsylvania State Police; consistency of county level input and uniform access to this database would enable us to cross reference these protective orders as well.

- 3.) Encourage the passage of the final Justice Reinvestment Bill that expand victim's rights, provides additional access to victim's compensation and ensures that every district attorney in PA is required to give eligible crime victims information to OVA so eligible crime victims can make trauma informed decisions.

## **Conclusion**

The current public health pandemic has created a situation unlike anything we have ever seen in our country, creating a responsibility for state government to mitigate its impact upon the constituents we serve. OVA feels that the statewide process, led by DOC, to help mitigate exposure to their staff and inmates was done thoughtfully, in absolute concert with OVA, and with a lens towards the protection of victims at every step.