

# ***DEFENDER ASSOCIATION OF PHILADELPHIA***

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KEIR BRADFORD-GREY  
CHIEF DEFENDER

March 30, 2020

Lawrence S. Krasner  
District Attorney  
Philadelphia District Attorney's Office  
3 S. Penn Square  
Philadelphia, PA 19107

Dear Mr. Krasner:

The Defender Association is concerned that the policies and procedures in effect since the closure of the courts in Philadelphia on March 16, 2020, are insufficient to facilitate the timely release of incarcerated individuals who pose no threat to public safety and are at risk of contracting and spreading COVID-19.

For the last two weeks, the Defender has worked with our criminal justice system partners to do everything in our power to reduce the jail population in Philadelphia. Despite our best efforts, we have seen only a 3% reduction in that population. During the same period of time, other jurisdictions have responded to this health emergency by taking progressive steps to more significantly reduce jail populations.

We recognize that ongoing efforts to reduce the jail population in Philadelphia as part of the MacArthur Safety and Justice Challenge have been very successful so Philadelphia's jail population may be different than other jurisdictions. That said, **we do not believe that the small reduction in the jail population over the last two weeks is adequate in light of the looming crisis.** We have now seen our first confirmed case of COVID-19 inside the city jails, an environment that medical experts describe as an ideal setting for the transmission of the virus. It is imperative that we move more quickly to reduce the jail population in order to minimize the spread of the virus.

We believe that our efforts to release many inmates who pose no threat to public safety have been hampered by the case-by-case approach taken by the First Judicial District (FJD) and the District Attorney's Office (DAO). **Technical filing requirements and rule changes, coupled with delays in the review process have resulted in the denial of release to many people who are not a threat to public safety.**

We believe that now is the time to act in partnership with other criminal justice system actors to create streamlined policies and procedures that will result in the release of certain categories of people held in custody.

To expedite this, the Defender, the FJD and the DAO should immediately meet to **identify, agree and commit to categorical releases for:**

- those held on technical violations of probations;
- those with less than 6 months remaining on their sentence;
- those who are charged with a non-violent offense such as Possession with Intent to Distribute;
- those whose sentences would make them eligible for probation even if convicted;
- those approved for house arrest (but held due to a shortage of able monitors);
- those held on financial conditions of release who do not pose a threat to public safety; and
- those who are over 55 with underlying health issues, and others who are at a high risk of contracting the coronavirus, or are likely to suffer severe symptoms if infected.

A case-by-case approach can be used for those incarcerated who do not fall into any of these categories.

Additionally, in lieu of the current time-consuming process of filing paper motions, the Defender Association proposes a two-track process to address: **1)** persons who are serving county sentences and can be immediately paroled; and **2)** those who are detained on bail and/or violation of probation/parole detainers.

This proposal calls for two teams of attorneys and judges who can review the respective parole-bail-detainer motions simultaneously to expedite the release of those who are eligible, and would operate as follows:

- **The Defender Association and the District Attorney's Office would create separate lists of persons they believe are eligible for release:** a list of possible parolees and a list of possible releases held on bail and detainers.
- **Designated representatives from the Defender Association and the District Attorney's Office would then together meet with a judge authorized to rule on motions for release.** At these conferences, attorney representatives from both offices would have direct access to all relevant case material and criminal histories and would be prepared to provide the assigned judge with all information relevant to questions of release.
- **The parties would then present oral motions for release (or opposition to release)** so that decisions could be promptly made and orders issued.

The intent of this procedure is to both reduce the time it is taking to present, review, and rule on release motions. Orders could then be promptly communicated to the prison to effectuate prompt release.

During the current public health crisis, we need to reevaluate how we conceptualize public safety. In the current environment, their ability to spread COVID-19 inside and outside their walls makes jails a threat to the very notion of public safety. **There is simply no way to practice the type of physical distancing recommended by the CDC to slow the spread of the virus inside of a jail.**

The current approach—filing paper motions and case-by-case evaluations—is delaying the release of many people who are no threat to public safety. Worse, it is creating more opportunities for the virus to spread inside our jails and eventually, when those infected inmates are released, into our community.

The Defender Association of Philadelphia is willing to do whatever it takes to implement policies and procedures that will enhance the safety of our clients and our community. We urge our justice system partners to redouble their efforts to prevent the spread of COVID-19 in our city jails and in our community.

Sincerely,

*Keir Bradford-Grey*

Keir Bradford-Grey  
Chief Defender

KBG/cmn