

The Ohio Association of Criminal Defense Lawyers

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The Honorable Mike DeWine
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April 27, 2020

Governor DeWine:

On behalf of the Ohio Association of Criminal Defense Lawyers (OACDL), we write again with regard to the urgent situation involving COVID-19 in Ohio's prisons. We have expressed in the past our willingness to assist your administration with safely reducing the number of people incarcerated in Ohio's prisons. Today, we write to provide an update on our organization's efforts and to urge you to take additional executive action to reduce Ohio's prison population.

The OACDL and the Ohio Public Defender (OPD) received a list of approximately 1,600 prisoners eligible for judicial release. The OPD identified the prisoners for whom it would seek judicial release, either through its own lawyers or the lawyers of large public defender offices. The OPD then provided the OACDL with a list of the remaining prisoners.

The OACDL contacted the attorney of record for each inmate and provided that attorney with resources for seeking judicial release. For inmates with attorneys of record who declined or did not respond, the OACDL recruited members to seek judicial release on behalf of those inmates. We are also encouraging all members to seek judicial release for all clients who are eligible and good candidates. However, practically speaking, the judicial release project is cumbersome and not designed to work quickly enough in light of the ongoing emergency.

Despite the best efforts of your administration, the OPD, and the OACDL, the infection in prisons has become an emergency. Thousands of inmates and staff have tested positive for the virus, and some have already died. Two of America's biggest coronavirus hot spots are in Ohio prisons: Marion and Pickaway. The longer we go without significantly reducing the prison population, more prisoners and staff will be infected, and more people will die.

In the midst of this unprecedented emergency, we respectfully request that you reconsider implementing executive powers to release inmates who are incarcerated for non-violent, non-sexual offenses. We believe this could be accomplished through the mechanisms of commutation and/or reprieve with anticipated judicial release. Both mechanisms are at your disposal, both methods are more efficient than judicial release, and time is of the essence.

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Commutation. As we have outlined previously, we believe the Ohio Constitution and the Ohio Revised Code provide you with the authority to grant emergency commutation. Article III, Section 11 of the Ohio Constitution authorizes you to grant commutations. While the General Assembly has permissive power to power to prescribe the process for commutation, the statutory framework for commutation is superseded by the statutory authority of the Ohio Department of Health (ODH) to make orders for the preservation of life. That authority has been invoked to preserve life in the general public, and it is time to invoke that power to preserve life in the prisons.

Reprieve With Judicial Release. In addition to Commutation, you have the authority to grant reprieve. The permissive power of the General Assembly to determine commutation procedures does not apply to the executive power of reprieve, granting reprieve does not require any type of hearing, and granting reprieve does not require an inmate to file a petition. As reprieve is only a temporary solution, it could be granted with the intention that the released inmates would file for judicial release. In the event judicial release is not granted, an inmate would return to serve the remainder of his or her sentence after the prisons' health conditions have improved.

Victim Notification. According to Article I, Section 10(A)(5) of the Ohio Constitution ('Marsy's Law'), victims have the right to a reasonable notice of a prisoner's release. In this emergency situation, the release notice could be provided to victims simultaneous with the release decision. With this notice, release under commutation or reprieve would comply with Marsy's Law while also allowing for expedited release of inmates. It should be noted that most of the inmates in our proposed categories of release are incarcerated for offenses which do not involve individual victims, so victim notification would not be required.

Categorical Release. To reiterate our position, we propose a rolling release, based on the categories below, until the prison population has been reduced to a level which protects the safety of prison staff and prisoners alike.

To that end, we propose that you order the immediate release of inmates:

- whose **most serious** offense is either a **Fourth - or Fifth - Degree** felony;
- who have **either** under one year of their sentence left to serve in prison, or, who have served **at least 75%** of their sentence;
- who are **Level 1 or Level 2 security**, and;
- who have **verified addresses** for necessary two-week self-quarantining and post release supervision.

If the release of those individuals does not reduce each prison's population to a safe level, we request that you then order the release of inmates:

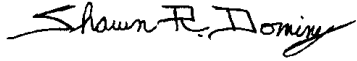
- whose **most serious** offense is a **Third-Degree Felony**;
- who have **less than 18 months** left on their sentence or have served **at least 75%** of their sentence;
- who are **Level 1 or Level 2 security**, and;
- who have **verified addresses** for necessary two-week self-quarantining and post release supervision.

If the release of those individuals does not reduce each prison's population to a safe level, we request that you then order the release of inmates:

- serving sentences for **non-violent offenses** (regardless of the level of offense);
- who are **either** above a certain **age** or have a **pre-existing health condition**, which would compromise their health and/or safety with regard to COVID-19;
- who are **Level 1 or Level 2 security**, and;
- who have **verified addresses** for necessary two-week self-quarantining and post release supervision.

We are grateful that you have included us in the conversation regarding prison population reduction, and we have gladly assisted with accomplishing that through your recommended method of judicial release. At this point, however, it is necessary to release many more prisoners to avoid significant loss of life in the prisons. We are convinced you have the legal authority to release inmates through executive powers, and, respectfully, we believe you have a moral obligation to do so. Thank you for considering this proposal.

Sincerely,



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