COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING INDIVIDUALS INCARCERATED IN STATE CORRECTIONAL INSTITUTIONS

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention have declared the coronavirus disease 2019 ("COVID-19") a pandemic; and

WHEREAS, the President of the United States of America has declared the COVID-19 outbreak a national emergency and the U.S. Department of Health and Human Services ("HHS") Secretary has declared the COVID-19 outbreak a public health emergency; and

WHEREAS, pursuant to section 7301(a) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(a), I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania ("Commonwealth") that result from disasters; and

WHEREAS, in executing the extraordinary powers outlined above, I am further authorized, pursuant to section 7301(b) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(b), during a disaster emergency to issue, amend, and rescind executive orders, proclamations, and regulations, and those directives shall have the force and effect of law; and

WHEREAS, on March 6, 2020, pursuant to section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(c), I proclaimed the existence of a disaster emergency throughout the Commonwealth as a result of COVID-19; and

WHEREAS, the Commonwealth has taken extraordinary but vital measures to prevent the spread of COVID-19, including ordering non-life sustaining businesses to close (pursuant to my Business Closure Order of March 19, 2020, and as amended thereafter) and ordering all Commonwealth individuals to stay at home (pursuant to my Stay at Home Order of April 1, 2020); and

WHEREAS, as of April 10, 2020, 19,979 persons have tested positive for COVID-19 in the Commonwealth in all 67 counties, and 416 persons are reported to have died from the virus; and

WHEREAS, the complexities associated with mitigating the spread of COVID-19 in general are even more heightened in the corrections environment, as evidenced by the advisement from the World Health Organization that prisons around the world can expect "huge mortality rates" from COVID-19 unless they take immediate action, and that the federal Centers for Disease Control and Prevention (CDC) has issued specific guidance for disease prevention and control in these and other congregate settings; and

WHEREAS, the Secretary for the Department of Health has advised that on balance, as a general public health matter, considering all of the information available regarding the virus, its spread, and concerns relating to congregate facilities, particularly prisons and jails, and the ability to respond to the pandemic, minimizing the number of individuals in correctional facilities reduces the risk of rapid transmission of COVID-19 between residents and staff in correctional facilities by better allowing for the institution of social distancing and other mitigation efforts; and

WHEREAS, the Secretary for the Department of Corrections has identified individuals who are currently incarcerated by the Department of Corrections, including those who are at greater risk from the effects of COVID-19, and who may be temporarily and safely released from the current sentence of state incarceration to supervised community placement; and

WHEREAS, in addition to general powers during a disaster emergency, I am specifically authorized, pursuant to section 7301(f)(5) and (7) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(f)(5) and (7), to direct and compel the evacuation of all or part of the population from any stricken or threatened area within this Commonwealth if this action is necessary for the preservation of life or other disaster mitigation, response, or recovery and to control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein; and

WHEREAS, pursuant to Article IV, Section 9 of the Constitution of the Commonwealth of Pennsylvania, Pa. Const. Art. IV, § 9(a), I am specifically authorized to grant reprieves in all criminal cases except impeachment.

NOW THEREFORE, pursuant to the authority vested in me and the Executive branch by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

The Pennsylvania Department of Corrections shall establish a Reprieve of Sentence of Incarceration Program as the Department of Corrections deems necessary to transfer to Community Corrections Centers, Community Corrections Facilities, or home confinement vulnerable individuals who would otherwise be eligible for release within the next twelve (12) months; or any inmate within nine (9) months of their minimum eligibility release date. In either instance, the inmates must meet the defined criterion and the release must not pose a risk to public safety.

Vulnerable inmates shall include inmates at risk based upon age, anyone with autoimmune disorders, who is pregnant, or who has serious chronic medical conditions like heart disease, diabetes, chronic respiratory disease, bone marrow or organ transplantation, severe obesity, kidney disease, liver disease, and cancer, or other medical condition that places them at higher risk for coronavirus, as defined by the Centers for Disease Control and Prevention.

Regardless of the sentence imposed, the Reprieve of Sentence of Incarceration Program would not apply to:

> ***(1) persons committed for or with an aggregate sentence containing a personal injury crime, or any criminal attempt, criminal solicitation, or criminal conspiracy to commit a personal injury crime as defined in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act;***
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> ***(2) persons committed for or with an aggregate sentence containing a crime of violence, or any criminal attempt, criminal solicitation, or criminal conspiracy to commit a crime of violence as defined in 42 Pa.C.S. § 9714(g) (relating to sentences for second or subsequent offenses);***
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> ***(3) persons committed for or with an aggregate sentence containing an offense under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or a criminal attempt, criminal solicitation, or criminal conspiracy to commit the offense;***
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> ***(4) persons committed for or with an aggregate sentence containing an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or where the attorney for the Commonwealth has demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or a criminal attempt, criminal solicitation, or criminal conspiracy to commit the offense or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, or a foreign nation;***
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> ***(5) persons committed for or with an aggregate sentence containing a violation of any of the following provisions or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, or a foreign nation, including a criminal attempt, criminal solicitation or criminal conspiracy to commit the offense:***
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> > ***18 Pa.C.S. § 4302(a) (relating to incest).***
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> > ***18 Pa.C.S. § 5901 (relating to open lewdness).***

18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child pornography).

A criminal sentence pursuant to 42 Pa.C.S. § 9712.1 (relating to sentences for certain drug offenses committed with firearms).

An offense listed under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

An offense listed under 42 Pa.C.S. Ch. 97 Subch. I (relating to continued registration of sexual offenders).

(6) persons committed for or with an aggregate sentence containing an offense of drug trafficking as defined in section 4103 (relating to definitions) or a criminal attempt, criminal solicitation, or criminal conspiracy to commit drug trafficking as defined in section 4103;

(7) persons who are subject to a pending felony or misdemeanor arrest warrant or detainer;

(8) persons who are currently serving a sentence to State prison and have been denied parole on that sentence;

(9) persons convicted of any criminal offense committed while incarcerated;

(10) persons who pose an identifiable risk to public safety; or

(11) persons with a prior conviction within the past 10 years for any crime contained under paragraphs (1) - (5) above.

Notwithstanding any criterion set forth above, a person who has received a positive Board Action from the Parole Board and who remains incarcerated is eligible for the Reprieve of Sentence of Incarceration Program.

Further, the Department will confer with the Court, the Office of Attorney General, and District Attorney's Office in the county from which the inmate was sentenced prior to any inmate being recommended by the Department pursuant to this program.

Each inmate that the Department recommends through the Reprieve of Sentence of Incarceration Program will be submitted to me for consideration for issuance of a conditional reprieve. Each reprieve will be contingent upon compliance with all terms and conditions of community supervision imposed by the Department. The reprieves will temporarily suspend the sentences of incarceration of those persons who qualify and comply with supervision requirements for such length of time as may be necessary to respond to the Disaster Emergency proclaimed on March 6, 2020, or at such time as the Disaster Emergency is terminated.

This order is effective immediately and shall remain in effect for the duration of the disaster emergency.

GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this tenth day of April two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

TOM WOLF
Governor