

Senate Democratic Caucus Policy Committee
Pandemic in Our Prisons: Protecting People & Communities
PA Board of Pardons
Thursday, January 7, 2021

Good morning Chairwoman Muth, Senator Williams, Senator Street and members of the Senate Democratic Caucus Policy Committee.

For the edification of your membership, my name is Brandon Flood and I currently serve as secretary of the Pennsylvania Board of Pardons. That said, on behalf of the membership of our Board, I would like to thank you for convening this hearing and highlighting this critically important subject. In addition, we would like to express our appreciation to this body for extending us an invitation and allowing us to share our perspective on this matter.

As many of you may be aware, the primary function of our Board is to extend mercy to those that have been convicted of criminal offenses that have been incurred in either the Court of Common Pleas or on the magisterial district justice level. To be clear, while our role is not to determine either the innocence or guilt of an applicant, it is our responsibility to recommend clemency to applicants who are deserving of legal relief. That said, the primary driver of our desire to participate in this hearing was to shed light on a particular segment of our commonwealth's offender population – elderly inmates who are serving lengthy sentences and are seeking to have their sentences commuted (modified or reduced) by our Board. As of this writing, there are a total of 1061 elderly inmates that have active applications before our Board. It is important to note that this aggregate number of elderly applicants simply represents a potential universe of “suitable” elderly applicants. However, it is also worth noting that it is a pretty sizeable universe from which to assess.

Why is this significant? It is significant because as we all know that the older one is, the more susceptible one becomes to developing a severe illness and/or succumbing to the COVID-19 virus. In fact, the Center for Disease Control and Prevention (CDC) makes it very clear that this risk becomes even more heightened when there are certain underlying medical conditions present. Unfortunately, most of the elderly inmates comprising the Department of Corrections' (DOC) prison population are those serving long-term sentences for offenses categorized as

violent offenses, which as you know, does not tend to garner a great deal of sympathy from policymakers and oftentimes renders them ineligible for early release or furlough programs.

This reality borne itself out in April of 2020, following the Governor's Executive Order directing the DOC to establish a Temporary Reprieve of Sentence of Incarceration Program, which only resulted in 159 inmates classified as "non-violent" being furloughed. While it may seem counterintuitive to extend inmates classified as "violent offenders," it is important to note that there is ample data that exists which supports the notion that older offenders are substantially less likely than younger offenders to recidivate following release. Most notably the U.S. Sentencing Commission's 2005 report on "The Effects of Aging on Recidivism Among Federal Offenders" and the Pennsylvania Department of Corrections "2013 Recidivism Report." In addition, when it comes to the recidivism rates of offenders that have received any form of clemency from our Board between the years of 2009 and 2019, out of 3,037 applicants that applied for pardon, only 53 were subsequently rearrested for a crime and only 2 were arrested for a violent offense. In addition, over the course of the last 25 years, we have only had two lifers who previously had their sentences commuted only to go on incur new criminal convictions. That said, when it comes to the issue of public safety, while it certainly is impossible for us to accurately predict which class of offenders will recidivate upon release, at least our state policymakers can take some solace in the fact that our Board would be assessing the suitability of an offender population that presents a significantly reduced risk to public safety.

Lastly, should our state policymakers need an addition reason for why there should be a push to provide some form of legal relief to our elder offender population, there is a significant cost-savings to be realized. According to the Pennsylvania Department of Corrections, it costs approximately \$500 a day to house an offender who is 50 years of age or older, which is almost five times the costs of housing a youthful offender. Although the primary impetus for us providing relief to this population should not be pecuniary one, the fact of the matter is that there is both a medical imperative and a fiscal imperative when it comes to the task of mitigating the spread of the COVID-19 virus within our prisons.

In summary, although the Board of Pardons does not require any legislative authority in order to undertake the task of internally assessing elderly applicants who are suitable for commutation given the ravages of the COVID-19 pandemic, I am of the belief that it would pay dividends for

our state policymakers to put some wind behind our sails by publicly mandating that we undertake such efforts. Again, I would like to thank Chairwoman Muth, Senator Williams, Senator Street and the esteemed members of the Senate Democratic Policy Committee for its indulgence and its collective interest in this subject.