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PROCEEDING WITH THE PAROLE PROCESSING OF
NON-VIOLENT STATE PRISONERS: FINDINGS AND
RECOMMENDATIONS

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Proceeding with the Parole Processing of Non-Violent State Prisoners: Findings and Recommendations

On September 29, 2008, Governor Edward G. Rendell announced a “top to bottom” review of “the process by which Pennsylvania paroles violent offenders...in a thorough and complete review” in responding to the death of Officer Patrick McDonald. In addition, the Governor announced an indefinite moratorium on the overall paroling process during the review. At the same time that the processing of violent offenders was frozen, several hundred non-violent offenders had their parole decisions and/or releases halted as well. As an initial step in the review of the process of handling violent offenders in corrections and at parole, this report presents first-level findings and recommendations concerning the processing of the cases of non-violent offenders affected by the Governor’s order.

Recommendation (1): This review, in its earliest stages, recommends that the normal processes for handling non-violent state-sentenced offenders for parole be re-started as soon as is feasible.

Rationale

The initial examination of the corrections/paroling process turned first to the handling of non-violent offenders as a means of isolating them from the violent incarcerated offenders who form the main basis for this review because of the far greater threats the latter group pose to public safety.¹ It is clear that the primary concerns for public safety and possible violent behavior among offenders potentially to be released from incarceration are associated with violent offenders, i.e., those whose offenses, behaviors and prior histories show a pattern or level of violence that poses a threat to public safety. According to statistics provided by the Pennsylvania Board of Probation and Parole (PBPP), about 60 percent of all offenders interviewed by the board each year are approved for parole; about 65 percent of offenders with nonviolent instant offenses are approved. The parole board has an average monthly docket of 2,400 cases for review, with about 1,700 interviews. More than half of these are offenders classified as non-violent.

¹ Offenders are characterized as nonviolent based on their instant offenses. The PBPP designates offenses as violent and sexual, and nonviolent, based on relevant state law, state sentencing guidelines and board policy. In the files we reviewed, crimes categorized as nonviolent included drug offenses (possession, possession with intent to deliver, and/or paraphernalia), theft (unlawful taking, identity theft, fraud, receiving stolen property), and prostitution or promoting prostitution.

Our first-level review of a randomly-selected sample of non-violent cases at or near the parole decision stage and of the processes relevant to parole determinations for non-violent offenders serving state sentences finds a sound and rational process in these (non-violent) cases, with careful attention paid not only to the public safety issues that may be raised by individual cases, but also to the issues that may be associated with successful return to the community. The current decisionmaking process determining whether candidates should be released and, if so, under what conditions, appears prudent and reasonable, and is guided by appropriate policy concerns and best practices in the field.

We do have a suggestion (see **Recommendation 2** at the end of this document) that may enhance the already heavy emphasis on public safety in the process. Nonetheless, based on our initial findings at this stage, we recommend that the standard paroling process be re-started as soon as is feasible for non-violent offenders while our investigation turns to the issues associated with violent offenders, including the processes in corrections and parole that precede the parole determination, more extensive review of the parole decisionmaking process in these cases, the handling of prerelease and parole supervision, parole revocation procedures and related programming, decisionmaking, condition-setting and monitoring.

Working Assumption for Corrections and Parole: The Inevitability of Release for Most Imprisoned Offenders: The correctional and paroling processes deal with the difficult challenges of managing and reducing the crime risk and public safety threat by persons who have demonstrated some notable degree of irresponsibility by the very fact of their conviction and incarceration for serious crimes. Less serious crimes are generally first dealt with through other means than incarceration in a state facility and thus state offenders have often benefitted from chances given to them prior to the episode that resulted in prison incarceration.

Among non-violent offenders, the risk of reoffending posed—whether low, medium or high—may more often be one of repetition of property, drug, or pub-type crimes than of engaging in violent behavior. The literature generally shows that recidivism is higher among offenders with crimes of less seriousness, and lower among offenders involved in more serious crimes. One of the most challenging aspects of the correctional/paroling process is that, with the exception of persons under capital or life sentences, all prisoners will reenter the community—if not by way of parole, then through mandatory release upon expiration of the maximum sentence with no constraints placed upon or supportive services provided, a form of release that offers little community protection or offender support and risk management in the community.

From a public safety perspective, a key question for corrections and parole is how to reduce the risks posed by prisoners released on parole (prior to completion of their maximum sentence) and how to increase the prospects that released offenders can function as law abiding

and productive members of the community. Meeting this challenge involves the use of appropriate correctional intervention and supportive programming, phased release (such as through a community correctional center) and other preparation prior to release, and necessary support, monitoring and accountability of offenders once released back to the community.

Risk and “Stakes”: From the point of view of public safety, the parole release process focuses on two predictions about offenders facing release. One is the likelihood that they will reoffend. Certainly, a zero likelihood of reoffending would be most desirable (though unlikely in this population), but, failing that, second-best would be to reduce an offender’s risk to “as low as possible.” The second is the probable nature of reoffense, if it were to occur. Thus, the release process weighs the safety of release differently for an offender who may have a low likelihood of reoffending but, if reoffending does occur, a high likelihood that the new offense would involve a serious crime. A higher risk non-violent offender whose reoffense might involve retail theft would not be considered to pose the same kind of threat to public safety as the low risk violent offender. High risk of reoffending does not suggest that they should not be released but rather that they may require additional programming and support to prepare for release and upon their reentry into the community. Generally high risk for nonviolent offenders does not translate into high stakes for the community, provided the release decision has taken adequate account of the offender’s history prior to the instant offense.

The importance of considering the risk of reoffending as well as the possible type of reoffending that might occur is built into the Pennsylvania Parole Decision Guidelines in their separation of nonviolent and violent offenders (and sex offenders). The parole decisionmakers might be facing release decisions for nonviolent offenders who have a medium or even high risk of reoffending, but, based on available information, with a type of reoffending that would be unlikely to involve crimes of violence. At the same time, an offender classified as violent (because of his current offense), might be ranked as lower risk according to the Level of Service Inventory-Revised (LSIR) assessment instrument (i.e., less likely to reoffend), but could be seen as posing more of a problem for public safety, should he or she reoffend with a serious or violent offense. In this regard, some “higher risk” non-violent offenders may be more appropriate candidates for release than some “lower risk” violent offenders.

Prediction Tools, Policy Guidelines, and Matching Release Decisions (Conditions) with Offenders’ Risks and Needs: The parole release preparation and decision process must deal centrally with prediction, in estimating the risk posed that a defendant will reoffend and in anticipating the kind of reoffense likely, if one is likely to occur. The ability to predict—while never perfect—is enhanced by the use of a) pertinent and verifiable information about the offender and his or her cases, as well as b) well-tested empirical tools to aid decisionmaking, c) the appropriate exercise of discretion by experienced, well-trained and professional

decisionmakers, and d) clear policy guidance that suggests which approaches should generally be taken for various types of offenders. Among the tools employed by corrections and parole officials in evaluating offenders nearing eligibility for the parole decision are the LSI-R risk/needs assessment for all offenders, the Static 99 for sex offender risk, the Texas Christian University (TCU) drug assessment, the Hostility Index Questionnaire (HIQ), and the CSSM (Criminal Sentiments Scale). Finally, from the point of view of public safety as well as the parolee's ultimate success, the policy tool should align decision options (e.g., conditions of parole) with the type of individual identified in the parole preparation and evaluation process and the problems he or she may face in successfully reentering society. The review at this stage shows that these attributes are centrally woven into Pennsylvania's Parole Guidelines and related processes.²

The Guidelines Process: Seen most broadly, preparation for the determination of release eligibility occurs throughout the correctional process. For the purposes of this initial examination of the process as it pertains to non-violent offenders, the important preparation for the release decision begins within 8 months of the minimum sentence being served. A great deal of information is assembled by corrections and parole staff, including prior criminal history, prior parole decisions, background information (education, health, behavioral health, drugs, alcohol, family, employment, special problems/needs), institutional information (institutional adjustment, participation in programs, misconducts), and risk (as calculated using the LSI-R instrument). At the parole interview, ordinarily two³ decisionmakers (hearing officer, parole board members) draw on the assembled file information and interview the parole candidate, touching upon important issues relating to his or her offending, performance in programs and future (parole) plan.

The Parole Guidelines Themselves: The Pennsylvania Parole Guidelines' "decisional instrument" serves several important functions in supporting the parole decision. First, it assembles the necessary information in an organized and useful way for the decisionmakers deciding release. Second, it reflects Pennsylvania Parole policy through its organization, having differently-adjusted approaches for nonviolent, violent and sex offense cases. Third, it makes the

² Act 81 and Act 83 of 2008, which Governor Rendell signed into law just weeks ago, authorizes the Pennsylvania Commission on Sentencing to promulgate guidelines to be used by the Board of Probation and Parole when it exercises its powers to parole or reparole. These guidelines are intended to build on the tools, instruments and other guidelines discussed in this report, as well as to enhance the transparency of the parole decision process.

³ Under Board policy, a majority vote of board members is required for parole in cases of sex offenses, 2nd and 3rd degree murder cases and in other special cases at board request.

reasoning for the parole decision explicit or transparent—providing a list of factors that might argue for or against a favorable parole release decision. Decisionmakers are asked to indicate reasons for favorable or unfavorable decisions for parole (while decisionmaker discretion and judgment play important roles, reasons are required by law to make the reasoning explicit and reviewable). Finally, the conditions that will apply to the offender’s parole—both general (applying to all parolees) and special (tailored to the particular offender)—are also indicated and explained.

The Board uses the Parole Decisional Guidelines to ensure consistency and transparency in the decision making process. Guidelines were created to ensure consistency in decision making based on past practice of the Board. The decision instrument combines standardized elements that are scored to suggest parole release or refusal with discretionary factors that take into account the offender’s adult and juvenile criminal history; institutional adjustment and recommendations from DOC, judge and DA; reentry planning; and impressions of the offender gained during the parole interview. The decision instrument has recently been modified to apply the risk principle more centrally, with greater attention given to completion of recommended programming requirements for medium and high risk offenders. This approach takes into account the risk principle, which holds that program resources are most appropriately focused on higher risk offenders. One result of the revised decision guidelines is that higher risk offenders are not scored favorably for simply participating in or being on a waiting list for a program; release on parole is commonly conditional on program completion. The instrument has also been revised to simplify and clarify indications of countervailing factors and reasons for the parole decision, approval or denial.

Pennsylvania among Leading States in “Best Practices”: In comparing the Pennsylvania parole procedures for non-violent offenders with procedures used in other states, Pennsylvania appears to have adopted “best” practices which place it among the leading states in the area of parole. The features that place the Pennsylvania Parole Guidelines among the leading states include: the use of explicit policy and procedures, the combined use of in-depth and reliable information as well as decisionmaker discretion, reliance on empirically derived tools, such as the LSI-R and the Static 99, for determining risk and needs, and the fact that evidence-based practice is thematic. Particularly noteworthy is the Parole Board’s practice of periodic self-re-examination of its policies and practices. For example, the Parole Guidelines themselves were reviewed in 2001 and 2007, resulting in a revision of the guidelines that went into effect in September of 2008. The proprietary risk instrument (LSI-R) employed by the parole guidelines has been validated (tested) against the Pennsylvania inmate population several times, most recently in 2003 and 2007. Currently, the Parole Board is using an outside consultant to review the penalties/sanctions that are or could be employed for violations of parole, short of re-incarceration. These activities not only reflect the agency’s evidence-based practices philosophy,

but also reveal an agency that is continually re-examining its practices, assumptions and effectiveness, so that, for example, as the prisoner population changes over time, the agency's policies are kept relevant, are being re-thought, and needed adjustments are being made, if suggested by such reviews. They are not viewed as being inflexibly "carved in stone," as crime attributes and problems may change.

According to information provided by the PBPP, the parole review process begins with the assembly of case files approximately 8 months before an offender becomes eligible for parole review at the minimum sentence date. Case files generally include information on the nature and circumstances of the crime for which the offender was convicted; an official version of the offense, as well as the offender's version; the offender's criminal history; sentencing information from the court; family (including history of family violence), social, educational and addiction history; mental health condition, history and evaluations; victim statements; judge and prosecuting attorney recommendations; status of program completion; institutional misconduct and institutional staff and warden or superintendent recommendations; reports on experience under community supervision and on prerelease, where applicable; the parole case summary and a parole reentry plan; and the presentence investigation (PSI), where available. The files contain the DOC Correctional Plan Evaluation, DOC misconduct reports, the Integrated Case Summary, the DOC Vote Sheet for Parole Reviews and CCC, the Preparole Investigation Request/Report, the Psychological Evaluation for Parole and any program evaluations. They also contain various assessments administered by DOC (the LSI-R for all offenders, the Static 99 for sex offender risk, the TCU drug assessment, the HIQ and the CSSM). The files we reviewed included copies of administrative actions, an Offender Transition Accountability/ Supervision Plan, requests for drug screening and drug screening results, education class contracts and outcomes, prior board reviews and decisions, the Sentence Profile, Sentence Status Summary, and a Review Summarization Report that includes a detailed narrative of the instant offense, stipulations, social history, mental health and parole planning.

Review of Non-Violent Cases: In addition to examining the guidelines procedures employed by the Pennsylvania Board of Probation and Parole for reviewing parole eligibility for non-violent offenders, we examined the files of random samples of offenders who had been interviewed for parole on nonviolent instant offenses but who had not been released as of October 18, 2008. This first stage of the requested review randomly sampled 36 cases of offenders classified in one of three groups at the time of the Governor's moratorium on parole release. These included: Sample 1: 5 out of 23 offenders (a 23% sample) to whom the Parole Board has granted parole and issued a formal decision but whose cases currently are "frozen." Sample 2: 21 out of 239 offenders (9%) who have been approved for release but to whom the Board has not yet issued a formal decision. Sample 3: 10 out of 39 offenders (26%) who have been denied release. (These

included cases decided or about to be decided under the former (unrevised) and the recently revised parole guidelines.)

Although our focus at this stage was on offenders presumptively eligible for release determinations immediately or in the near future, we wanted to be able to compare their circumstances to those under which nonviolent offenders might be denied parole. The purpose of the review of sample cases was to examine the available appropriate information on each sampled offender and to review the parole guidelines file to track the use of the information and the decisions made. The purpose of the review of these non-violent cases was not to re-decide cases, but rather to examine that the decisions had been made or were about to be made following the Board's policies and to, in essence, see how the policies play out in actual decisionmaking.

Speaking at this stage about non-violent cases only, this review suggested that the criteria employed by the parole decisionmakers were closely adhered to and the process overall gave careful consideration to public safety issues that might be raised by particular cases. In addition to background information and consistent with the board's established policies, such factors as program completion, institutional performance and behavior (misconducts), parole plan, living arrangements, interview attitude, and other factors were given as reasons both for favorable and for unfavorable parole release decisions. These considerations reflected a balancing of professional judgment with the results available from assessment instruments, institutional and parole records and other documents and recommendations.

The parole decision instrument employed by the Pennsylvania Board of Probation and Parole, in both its earlier and recently revised versions, is structured in such a way as to assist decisionmakers in reviewing the available information and to highlight key items that Board policy specifies as especially significant in decisionmaking on the basis of relevant state law, the nature of the offense, research on prediction of reoffending and measures useful in reducing risk, and other considerations. This tool gives greatest weight to the nature of the instant offense (violent/non-violent), the risk/needs level of the offender, participation in or completion of institutional programming designed to reduce the offender's risk level, and institutional behavior as indicative of demonstrated behavior change. The instrument also aids in documenting the factors taken into account and the considerations that proved most salient in determining the action taken in each case, as well as requirements for subsequent reviews, conditions of parole and special instructions to personnel. This initial review of PBPP policies and decisionmaking instruments as applied in a sample of cases of nonviolent offenders suggests that both the tools employed and the manner in which they are applied are consistent with best practices in the field and well designed to serve the interests of public safety and the other goals of the parole process.

Recommendation 2: Defining Nonviolent Offenders by the Conviction (Instant) Offense:

The current PBPP designation of nonviolent versus violent offenders—drawn primarily from the sentencing guidelines—is based on consideration of the conviction offense. Although this may be generally useful for classifying offenders under the guidelines, it may also be useful to consider the pattern of offenses revealed in the offender’s prior history, juvenile and adult, in the definition of non-violent. In addition, when the decision is one of re-parole or consideration of a non-technical violation (i.e., a Convicted Parole Violation) in serving back-time on an original sentence involving non-violent offenses, it may be useful to consider whether the violation offense itself was violent and whether this would add another dimension to the definition of the classification of violent versus non-violent. We recommend that the potentially useful role of these other definers of “violent” offending in predicting behavior in the community be examined using empirical methods, hopefully in the next stages of this review, to adhere to the value of evidence-based practice. Research profitably could examine the extent to which these factors other than the nature of the instant offense may be additionally helpful in predicting the likelihood of subsequent criminal behavior and whether violent behavior of the sort posing a serious threat to public safety can be predicted, or whether the future misbehavior is more likely to be non-violent and therefore would not contribute significantly to assessment of public safety concerns at the release stage.

Conclusion: More than half of prisoners and potential candidates for parole determinations are offenders serving state sentences for non-violent offenses. As the fuller attention of this review now turns to the violent offender and the ways in which he or she is handled in corrections and at and during parole, we strongly recommend that the normal parole process, including determination of parole release decisions themselves and their execution, be restarted for non-violent offenders (only).