

From: Civil Justice Clinic, Quinnipiac University School of Law
Re: State Actions Regarding Release of Sentenced Prisoners in Light of
COVID-19 Crisis
Date: April 13, 2020

Below are examples of recent state actions nationwide relating to the release of sentenced prisoners in response to the COVID-19 crisis.¹ The focus of this memo is on release of sentenced prisoners rather than on those individuals being held pretrial.²

I. ACTIONS BY GOVERNORS

- **New Jersey:** On April 10, New Jersey's Governor signed an executive order establishing a process to provide temporary home confinement for some categories of incarcerated individuals. The order creates the Emergency Medical Review Committee (jointly chaired by designees of the DOC Commissioner and the Chairman of the State Parole Board) to recommend who should be placed on temporary home confinement through the DOC Commissioner's furlough authority. Under the order, DOC must compile an Emergency Medical Referral list that includes individuals whose current age or health status puts them at risk for COVID-19, those who were denied parole within the last year, and those who are serving a prison sentence with either a maximum release date within 90 days or a parole eligibility date within 90 days. The Committee is required to review the Emergency Medical Referral list and, within 7 days, recommend to the DOC Commissioner who from the list should be placed on temporary home confinement. The recommendations must include for each individual on the list details regarding the plan for housing, supervision, and access to medical care. Should the Commissioner grant temporary home confinement, DOC must provide photo identification to the individual and assist him or her in applying for Medicaid and social services benefits. In addition, all those on the Emergency Medical Referral list already eligible for parole shall receive expedited parole consideration. <https://nj.gov/infobank/eo/056murphy/pdf/EO-124.pdf>; <https://nj.gov/governor/news/news/562020/approved/20200410d.shtml>.
- **Pennsylvania:** On April 10, the Governor of Pennsylvania established a Temporary Program to Reprive Sentences of Incarceration. Under the program, the Governor will use his reprieve power to temporarily place on home confinement individuals who do not pose a public safety risk and otherwise would be eligible for release within the next 9 months or who are considered at high risk for complications of COVID-19 and are within 12 months of release. The program excludes individuals convicted of certain categories of offenses. <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reprive-release-order-COVID-19.pdf>; <https://www.governor.pa.gov/newsroom/gov-wolf-department-of-corrections-to-establish-temporary-program-to-reprive-sentences-of-incarceration/>

¹ Several organizations are tracking information relating to COVID-19 and prisons and jails. See, e.g., Prison Policy Initiative, *Responses to the COVID-19 Pandemic*, <https://www.prisonpolicy.org/virus/virusresponse.html>; Justice Collaborative, *COVID-19 (Coronavirus) Response & Resources*, <https://thejusticecollaborative.com/covid19/>

² Although the focus of this memo is on sentenced prisoners, the recent decision from the Massachusetts Supreme Judicial Court regarding pretrial detainees is also included.

- **Oklahoma:** On April 10, Oklahoma’s Governor announced that he was commuting prison sentences for more than 450 individuals to decrease prison overcrowding and reduce the risk of a COVID-19 outbreak in prisons.
<https://kfor.com/health/coronavirus/gov-stitt-approves-hundreds-of-prison-commutations-to-mitigate-coronavirus-spread/> The Pardon and Parole Board is also seeking to expedite its process for consideration commutation requests.
<https://www.publicradiotulsa.org/post/covid-19-risk-grows-prisons-oklahoma-pardon-and-parole-board-may-streamline-commutations>
- **Illinois:** On April 6, the Governor of Illinois issued an executive order that gives the Illinois Department of Corrections permission to use its furlough power to allow medically vulnerable people out of prison temporarily for as long as the Governor’s disaster proclamation is in effect. <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-21.aspx>
- **Ohio:** On April 8, the Governor of Ohio announced that he was seeking the release of 141 inmates whose release dates are less than 90 days away.
<https://abc6onyourside.com/news/local/141-inmates-to-be-released-under-ohios-overcrowding-emergency-statute>
- **Kentucky:** The Governor of Kentucky announced on April 2 that the state will release more than 900 state prisoners. The Governor signed an executive order commuting the sentences of 186 people convicted of C or D felonies who are more susceptible to COVID-19 because they have respiratory, heart and/or other health problems. Before their release, the prisoners will be screened for COVID-19, and state officials will verify that they have a home where they can be quarantined. The state has identified an additional 743 people to release who are within six months of completing their sentences.
https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html
- **Colorado:** The Governor of Colorado issued an executive order on March 25 suspending all statutory caps and criteria for the award of earned time and giving DOC “the discretion to make awards of earned time credits as it deems necessary and appropriate to safely facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons.” The order suspends the criteria for release on Special Needs Parole, and gives DOC the discretion to identify interim criteria for Special Needs Parole and refer people who meet those criteria to the parole board.
<https://drive.google.com/file/d/18o0yWHzZleHJ87hmgLuBmXwpM8R74Q5x/view>
- **Michigan:** Michigan’s Governor issued an executive order on March 29 permitting actions that would be authorized in the event of a declaration of a county jail overcrowding state of emergency. Judges are authorized to “reduce any validly imposed jail sentence” and are “strongly encouraged to consider early release” of “[o]lder people, people who have chronic conditions or are otherwise medically frail, people who are pregnant, and people nearing their release date”—as long as they do not pose a public

safety risk. https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523422--_00.html

II. STATE DEPARTMENT OF CORRECTION & PAROLE BOARD RESPONSES

- The **Arkansas Board of Corrections** voted on March 25 to expedite parole consideration for 114 prisoners. <https://www.arkansasonline.com/news/2020/mar/25/parole-consideration-moved-114-inmates-crowded-pri/>
- The **California Department of Corrections and Rehabilitation** announced on March 31 that it would expedite the transition to parole for nonviolent offenders with 60 days or less left on their sentences, with priority going to individuals with less than 30 days left. <https://thehill.com/homenews/state-watch/490498-california-to-release-3500-non-violent-inmates-amid-coronavirus-outbreak>
- The **Georgia Board of Pardons and Paroles** on March 31 announced that it had begun to review approximately 200 people for early release. The Board is considering people serving time for nonviolent offenses who are within 180 days of completing their prison sentences (or of their tentative parole date). <https://www.ajc.com/news/local/breaking-georgia-release-some-inmates-due-covid-fears/np6zhBrIP1oe2jOkUmWVoL/>
- The director of the **Iowa Department of Corrections** reported on March 23 the expedited release of about 700 incarcerated people who have been determined eligible for release by the Iowa Board of Parole. <https://www.timesrepublican.com/news/todays-news/2020/03/iowas-prisons-will-accelerate-release-of-approved-inmates-to-mitigate-covid-19/>
- The **North Dakota** parole board on March 20 granted early release dates to 56 people held in state prison with expected release dates later in March and early April. <https://www.kxnet.com/news/health/coronavirus/over-50-inmates-granted-early-release-to-prepare-state-penitentiary-for-covid-19/>
- **Utah Department of Corrections** on March 26 announced that it had recommended more than 80 people for release from state prisons to the Board of Pardons and Parole. The DOC reported that the people referred for release are within 90 days of completing their sentences. <https://corrections.utah.gov/index.php/home/alerts-2/1239-utah-identifies-early-releases-to-create-additional-capacity-within-correctional-facilities>

III. ACTIONS BY STATE SUPREME COURTS

- **Louisiana:** On April 2, the Chief Justice of the Louisiana Supreme Court asked that all criminal court judges “in conjunction with prosecutors, public defenders and sheriffs, conduct a comprehensive and heightened risk-based assessment of all detainees.” In addition to addressing the pretrial population, judges are instructed to review cases of those serving sentences for misdemeanors to “consider modification to a release and

supervised probation or simply time-served.” <http://www.lasc.org/COVID19/2020-04-02-LASC-ChiefLetterReCOVID-19andjailpopulation.pdf>

- **Massachusetts:** On April 3, the Massachusetts Supreme Judicial Court ruled in a pending lawsuit that people who are held pretrial on bail (and have not been found dangerous or charged with a violent or otherwise excluded offense) and those being held pending a final probation violation hearing are entitled to a hearing within two business days of filing a motion for release, where they will be entitled to a rebuttable presumption of release. A special master appointed by the court will facilitate the hearings. The Court ordered the state Department of Correction and each sheriff to provide daily reports on the number of COVID-19 tests and number of positive results for all people in their custody, correctional officers, and other staff, and the number of people released pursuant to the Court’s procedures and guidance. The Court also urged the parole board to expedite the hearings of individuals who are eligible for parole.
https://www.aclum.org/sites/default/files/field_documents/sjc-12926_41_opinion.pdf
- **Michigan:** On March 26, the Chief Justice of the Michigan Supreme Court and the Executive Director of the Michigan Sheriffs’ Association issued a joint statement urging judges and sheriffs to “use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk.”
https://courts.michigan.gov/News-Events/press_releases/Documents/CJ%20and%20MSA%20Joint%20Statement%20draft%202%20%28003%29.pdf
- **New Jersey:** On March 22, the Chief Justice of the New Jersey Supreme Court issued a consent order, which reflected a negotiated agreement between Public Defender’s office and the Attorney General and County Prosecutors. The order creates a presumption of release for individuals serving county jail sentences as a condition of probation or for probation violations, municipal court convictions, low-level indictable crimes, or disorderly persons offenses. The order required release by March 24 or 26 (depending on the category of case), unless prosecutors objected in a particular case on the ground that “the inmate would pose a significant risk to the safety of the inmate or the public.” A special master or judge was asked to resolve the objections by March 27. After the state of emergency ends, courts will consider whether to convert the sentences to time served or require the individuals who were released to serve the remainder of the term.
https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf
- **Rhode Island:** On April 3, the Rhode Island Supreme Court established a process for the trial courts to hear on an expedited basis motions to reduce the sentences of inmates within 90 days of the end of their sentences in cases where the Public Defender, Attorney General, and DOC have not stipulated to the early release of the inmate. The court ordered the release of 52 inmates where the parties had already reached an agreement on release. Certain categories of inmates are not eligible for early release consideration.
[https://www.courts.ri.gov/PDF/In%20re%20Request%20for%20Prison%20Census%20Control%20\(Order\).pdf](https://www.courts.ri.gov/PDF/In%20re%20Request%20for%20Prison%20Census%20Control%20(Order).pdf)