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Judges of the Court of Common Pleas and
Judges of the Municipal Court of Philadelphia County

Re: Early Termination of Parole and Probation Supervision

Your Honor:

Introduction

I write to provide some information to the Court around one aspect of a major goal of the Philadelphia District Attorney's Office: To reduce excessively lengthy periods of supervision for those already under supervision that are doing more harm than good. While our internal policies on negotiating pleas and making sentencing recommendations post-trial and at VOP hearings relate to the same goal and are evolving after extensive research within our office, they are not the topic of this communication.

Many others, including the Defender Association of Philadelphia, for years have done great work around these issues. We believe that, despite our different roles, the Courts, the APPD, the Defender Association and the Philadelphia DAO share essentially the same goals of promoting public safety, rehabilitating offenders, improving society and preventing crime in the future. This letter is offered in that spirit.

The Problem of Excessive Supervision

Philadelphia's level of supervision is extremely high, as compared to other jurisdictions. This is especially true now as so many other jurisdictions have greatly reduced their levels of supervision. 1 of 22 adults in Philadelphia is under supervision, which is twice the national average. Nearly 40,000 people are currently being supervised by Philadelphia's Adult Probation and Parole Department in a city of about 1.6 million people. By comparison, New York---all 5 boroughs--- supervises 12,700 on a population of at least 8 million people. The same is true in many other cities.

Pennsylvania's levels of supervision are also extremely high compared to other states. Pennsylvania has the highest levels of parole in the United States. Pennsylvania has the second highest level of supervision (defined as probation and parole combined) in the United States, second only to Georgia (which has made major reforms in the last few years that may soon

result in Pennsylvania assuming the mantle of the most supervised state in the United States). There are structural reasons for this problem. Please consider a few, listed here:

Most states do not require a presumptive minimum sentence of incarceration that is no more than 50% of the maximum, a system that guarantees all presumptive paroles are at least as long as the presumptive incarceration. Many states require no parole or supervision post-release at all.

Pennsylvania is one of only 4 states that permit the length of a felony probation sentence to be as long as the maximum possible sentence.

Pennsylvania is the only state to permit the length of a misdemeanor probation sentence to be as long as the maximum possible sentence.

Pennsylvania allows lengthy probation periods to be consecutive to sentences of incarceration. This is commonly done in Pennsylvania, despite a Pennsylvania Commission on Crime and Delinquency study's finding that probation tails do not improve recidivism.

Excessive supervision is a major driver of mass incarceration, with up to 50% of our County jails filled with people who have detainers. As a result, Philadelphia's courts hold between 40 and 70 Gagnon I detention hearings daily, and hundreds more Gagnon II hearings.

Most re-offenses while under probation and parole occur within the first few years of supervision.

Philadelphia's levels of supervision require our County probation and parole officers to manage absurdly high caseloads contrary to national standards. We need every one of our county probation and parole officers now and moving forward, but we need them to be able to focus on the most serious and dangerous offenders and to focus on others who have special needs. It is unfair to them and Philadelphians to require them to manage unwieldy caseloads that diminish their time and resources for focused supervision.

Part of the reason for New York's far lower level of supervision is the legacy of Vinnie Schiraldi, former chief probation officer for the City of New York. His work at Columbia University's Justice Lab since leaving his prior position has illuminated this issue. The Justice Lab's 2018 report is included with this letter and is best expressed in a single point: *Supervision of less than 3 years does some good especially in the first year and less so thereafter. Supervision of more than 3 years makes things worse---it causes failure on probation and parole and harms public safety.* Obviously, every case is individual and efforts to achieve individual justice are required of the Philadelphia DAO just as they are separately, and totally

independently, required of each member of the Court with input from the ADPP. There will always be some individuals whose cases should be an exception to this evidence-based limit.

Philadelphia's unnecessary mass supervision problem is a revolving door to its unnecessary mass incarceration problem. Excessive supervision not only sets people up to fail, it also reduces employability, formation of families, and family and community connections in ways that contribute to criminogenic behavior, recidivism and poverty in Philadelphia, which remains the poorest of the ten largest U.S. cities.

The Effort to Terminate Probation and Parole Early in Appropriate Cases

The Philadelphia DAO is interested in supporting appropriate petitions filed by (or in conjunction with) the Defender Association or other defense counsel with individual judges that seek early termination of supervision according to standards determined by each individual judge of the Court of Common Pleas and the Municipal Court. Standards for filing these motions would not be universal, but would be consistent with each judge's independently stated criteria. Obviously, each judge is free to participate or decline to participate.

Consistent with input and guidance already received from leadership in the Courts, the Philadelphia DAO wholly endorses the position that each individual judge is best suited to exercise their own, independent discretion in evaluating people and groups of people under their probation and parole supervision.

For example, one judge may be inclined to grant petitions for all of their probationers and parolees who have had no supervision problems for 3 years. Another may feel 4 years is a better limit. Another judge may be inclined to grant such petitions for non-violent matters where there are no supervision issues after 2 years, or for drug offenses who have no supervision issues after 2 years where no weapon was involved. Another judge may have different criteria that address the reality of addiction issues and recovery. Each judge's independent standard would be observed for the purpose of groups of petitions, possibly small or large groups of petitions, to be decided without a hearing after a full opportunity for timely input from the APPD.

Ideally, the only groups of petitions filed with an individual judge would be in cases that the judge deemed easy enough to consider without a hearing. Other groups of petitions requiring hearings could also be filed, consistent with the Court's wishes and criteria if the Court is so inclined. There are other possibilities, which we look forward to exploring. Obviously, individual petitions can be filed in large and small groups without guidance from the Court, but this seems highly inefficient. We look forward to the input of any judge who is interested in an efficient process of early termination of people under supervision who, in the view of that judge, are appropriate candidates. Obviously, this process will never be ex parte.

We respect your independence - as should be clear from our demonstrated commitment after 15 months not to abuse the judiciary via the press and via other means as

was done at times in some prior DAO administrations. We offer you this information for your consideration as each of you makes your own, independent decisions around efforts at the early termination of probation and parole for those you currently supervise.

Conclusion

The road to mass supervision was mostly paved with good intentions. We recognize how hard the Court, the APPD, the Defender Association and the DAO, as well as other stakeholders, have worked for decades to make things better for all Philadelphians via various means, including supervision. During my 30+ year career, it became clear that many of us have honestly believed that more supervision could only make things better or that it couldn't hurt. I know I did many years ago. We believed more supervision was cost-free. But, more recently, science says something else: That too much supervision is indeed too much. In law, as in medicine, new research guides us. All Philadelphians, including the Philadelphia voters who elected each of us to our different and independent roles, expect nothing less.

Respectfully,



Larry Krasner
Philadelphia District Attorney

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cc: Darlene Miller, Chief, Philadelphia Adult Probation and Parole Department
Keir Bradford-Grey, Chief, Defender Association of Philadelphia

Enclosures.