

MEMORANDUM

TO: JOHN PECK, DISTRICT ATTORNEY
WAYNE MCGREW, CHIEF PUBLIC DEFENDER
PRIVATE DEFENSE COUNSEL & CONFLICT COUNSEL
AMY DEMATT, ESQ, COURT ADMINISTRATOR
SHARON BOLD, DIRECTOR, APO
JOHN WALTON, WARDEN
JODI CAMARATA, PRISON POPULATION CONTROL

FROM: CRIMINAL COURT BENCH

RE: **PROCEDURE FOR PRESENTATION OF MOTION FOR RELEASE OF LOW LEVEL OFFENDERS AND PRE-SENTENCE INCARCERATED INMATES HAVING SERVED MAJORITY OF A NEGOTIATED PLEA AND OFFENDERS AT HIGH RISK OF INFECTION OR DEATH DUE TO EXPOSURE TO COVID-19**

DATE: APRIL 8, 2020

In light of the pandemic and the number of random petitions and requests the courts are receiving for the release of low level offenders, we are implementing a more organized manner of presentation of these motions.

Accordingly, if the Public Defender's Office or Private Counsel believe that they have a client who is a low level offender, *or* a client who is in jail in a pre-plea/sentencing posture who has served most or all of his/her negotiated time pursuant to a TPA, *or* if they represent a defendant who is serving a county sentence who falls into a high risk category because of a diagnosis of, or a combination of the following:

*Being over the age of 65, with an underlying **diagnosed** health condition such as: Diabetes, Cancer, Heart condition, AIDS positive, Hepatitis, or other similar serious **diagnosed** health condition, that would place them at an increased high risk of infection or death if exposed to the corona virus, they shall file a Petition for Release with the sentencing criminal court judge by following the procedures listed below:*

- 1. Counsel shall present a motion for release from incarceration by *first* providing a copy of the Notice of the motion to the District Attorney's Office and the sentencing judge, at least 72 hours in advance of the date of presentation to the Sentencing Court. (In no event, however, should notice be provided later than twenty four (24) hours prior the hearing).** The petition shall state specifically the reasons for the relief requested in succinct form.
- 2. Thereafter, at 11:00 AM, on the sentencing judge's next duty day, and after notice upon the ADA and Court has been provided,** the PD/Private Counsel and ADA shall appear before the sentencing judge and present the motion for release. If the ADA consents, that should be noted in the Petition when presented each morning, and signed by the sentencing judge. *(Please be cognizant of the on-call judge's schedules which will be made available at the Court Administrator's Office)*

TO SUMMARIZE:

- 1. Present a Motion for Release from Incarceration to the Sentencing Judge's chambers and to the District Attorney's Office at least 72 hours in advance of the date of presentation to the Court.** *(In no event, however, should notice be provided later than twenty four (24) hours prior the hearing).* If the judge's office is locked, Petitions shall be slid under the judge's door.
- 2. You will then appear before the Sentencing Judge on the date set forth in your petition (sentencing judge's next on-call day) at 11:00 AM and present your petition.**

If there is consent, please note that when the Petition is dropped off so that the Order can be signed immediately authorizing the release of the defendant.

If there is no consent, the Court will make a decision on whether the defendant may be released and under what conditions.

Judges' rotation schedule of "on-call" status is available at the Court Administrator's Office.

We feel that this is the most expedient manner in which to address low level offenders release from the WCP while maintaining the safety of the community. Each judge will make a decision on a case by case basis considering all relevant circumstances.

In these difficult times, we are asking for everyone to be flexible and cooperative as possible within reason so that we may ensure the release of those inmates who pose little or no risk to the community, while still maintaining community safety.

In addition to the above procedure, the office of Adult Probation is actively screening their caseload of incarcerated defendants who may qualify for consideration of release based upon the above criteria. In that event, the Probation Officer will make every attempt to notify defense counsel and the assigned assistant district attorney to advise of the circumstances. In this event, and if defense counsel believes that their client falls into a category that may justify release from the WCP, they shall promptly file a petition under the procedures outlined in this Memorandum.