

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

IN RE: THE PETITION OF THE	:	No. 70 MM 2020
PENNSYLVANIA PRISON SOCIETY,	:	
BRIAN MCHALE, JEREMY HUNSICKER,	:	
CHRISTOPHER AUBRY, MICHAEL	:	
FOUNDOS, AND FREDERICK LEONARD,	:	
ON BEHALF OF ALL SIMILARLY	:	
SITUATED INDIVIDUALS,	:	
	:	
	:	
Petitioners	:	

***CONCURRING STATEMENT***

**CHIEF JUSTICE SAYLOR**

**Filed April 3, 2020**

I join the present Order, since it does not sanction actual releases, but rather, merely requires the identification of qualifying prisoners for potential release. In my view, the primary authority to release qualifying prisoners on account of a disaster emergency rests with the Governor -- who is invested with the power to direct and compel necessary evacuations and control the movements of persons within disaster areas, see 35 Pa.C.S. §7301 -- and/or the General Assembly.

Perhaps some releases may be effectuated by the judiciary under existing statutory provisions already sanctioned by the General Assembly, such as via the probation and parole authority available under the Sentencing Code. See, e.g., 42 Pa.C.S. §9776. Otherwise, I believe the Governor should fashion an appropriate Executive Order -- and/or the General Assembly should enact appropriate legislation -- to secure those releases deemed to be necessary by the Health Department and which

are consonant with the preservation of public safety and other relevant factors, such as those delineated in the Court's present Order.

Justice Todd, Justice Dougherty, and Justice Mundy join this concurring statement.