

# **SENATE GOVERNMENT MANAGEMENT & COST STUDY COMMISSION**

## **TESTIMONY BY CRIMINAL JUSTICE ORGANIZATIONS**

**Given by Jean Bickmire, Justice & Mercy, Inc.**

### **QUESTIONS AND ANSWERS BY**

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#### **Introduction:**

As a collaboration of criminal justice organizations of Pennsylvania, we appreciate the opportunity to address you, Chairman Argall and members of the Senate Government Management and Cost Study Commission. We are honored to give input into our correctional and judicial systems to become more cost-efficient while, at the same time, increasing public safety. Justice & Mercy, Inc. has been joining with such organizations as the Pennsylvania Institutional Law Project, the Pennsylvania Prison Society, the American Civil Liberties Union (ACLU), and the Defenders Association of Philadelphia to address these very same issues to state legislators. Angus Love is the Executive Director of the Pa Institutional Law Project and is available to answer any questions after the testimony.

Despite our wide diversity, our mutual concern is the well-being of our Commonwealth. Our goal is to reduce crime and the cost of crime without sacrificing the safety of our residents. In fact, we have been communicating with noted experts in the field such as the PA Commission on Crime and Delinquency, the PA Sentencing Commission, PA Department of Corrections, PA Board of Parole and Probation, PA District Attorneys' Association, Office of Victim Advocate, County Commissioners Association of PA, PA Chiefs of Police Association, PA Department of Public Welfare and so on. Thorough discussions have ensued in how to address this critical juncture in our state's history.

Much of our data has been used by experts in the field at previous testimonies to various legislative committees for recommended policies and practices. Through our interactions, we have arrived at the following proposals. We hope that the legislature will enact what are demonstrated as optimal practices by experts with accountability for the good people of Pennsylvania.

#### **Current Outlook:**

Despite Pennsylvania being ranked toward the bottom of the states in the crime rate according to Uniform Crime Reports 2008 (-5% from 2000 to 2005), our incarceration rate is not declining but has grown 21% from 2000 to 2006 and is projected to grow 30% from 2008 to 2013

according to the Department of Corrections. Conversely, from 1940 through 1980, the inmate population averaged between 5,000 and 8,000 offenders. From 1980 to 2010, the population increased more than 500% from 8,000 inmates in 8 prisons to over 51,000 inmates in 26 prisons with no end in sight.

Corrections has mushroomed to the third largest allocation in our state budget behind Health Care and Education. In 1980, the DOC and Board of Probation and Parole were combined and the general fund budget for both was roughly \$112 million. Adjusted for inflation, that would translate to about \$300 million in 2006 dollars. However, in 2006, the combined budgets of the DOC and PBPP were about \$1.5 billion, 425% higher after allowing for inflation. The proposed allocation for the DOC this year is \$1.9 billion, an increase of \$136.8 million or 7.7%. Last year's budget was \$1.8 billion which had been an increase of almost 10% over the previous year of \$1.64 billion. Cost per inmate is roughly \$95 per day or over \$34,000 per year.

The DOC is building four new prisons at a cost of \$800 million plus annual operational costs of \$60 million each. However, with the current growth rate, the DOC will be at 115% again by 2013 and, according to the Pew study, will need to build one more prison per year if the current policies continue.

The increase is not contributed to an influx of new residents since our population has been relatively stable. An increase in prison population is contributed to two factors: an increase in the number of crimes requiring prison terms and longer lengths in prison largely due to mandatory minimum sentences.

Back in 2008, legislation was enacted in Pennsylvania that made it a requirement that so-called hardened criminals sentenced to 2 to 5 years not serve their time in the county jails but be moved to state prisons. However, over the past 10 years, only 2% of admissions to the state system are due to violent offenders and 55% of the growth is for less serious Part II offenders. The Department of Corrections cited that over 3500 inmates each year have less than a year to serve, eight months before their minimum sentence. These offenders being diverted are nonviolent serving longer sentences at more cost to taxpayers. The average serve 143% of their minimum sentences according to Secretary Beard.

Ironically, the state is now paying ten county jails to house state inmates as they no longer have room. Instead of addressing the problem, we have merely passed the buck from the counties to the state and back again. And now, Pennsylvania is also sending inmates to other states that are reaping the benefits of diverting offenders from prisons. Michigan and Virginia have now taken over 2071 inmates from Pennsylvania at a cost of \$62 per day each or \$128,402 per day for all 2071 plus the cost of transportation. The contract is for five years or until four new state prisons are built, at the cost of incarceration alone as much as \$234,333,650.

Pennsylvania is leading the nation in drastically increasing the numerical number of its prison population, with 595 inmates over the nearest state of Florida, a 4.3% increase in 2009 (Pew

Center of the States 2009). The DOC prison population is 115.9% over capacity with more than 51,000 inmates.

Meanwhile, the majority of states are decreasing their prison populations. New York and New Jersey have lowered their prison populations by 20% in the past ten years (Greene & Mauer, 2010). New Jersey has estimated they will save \$14 million in 2010 by implementing services to help offenders in danger of committing technical parole violations (NJ Parole Board testimony 2008). Michigan has reduced its prison population from 51,400 to 45,000 according to a 2010 report, and its parole rate is the highest it's been in 16 years. Estimates are that Michigan will save more than \$130 million in the next year with 7,500 fewer inmates. These accomplishments were attributed to reducing mandatory and minimum sentencing laws and stressing treatment over lengthy incarceration.

This reduction in the prison population did not lead to an increase in crime. In fact, many states saw a **reduction in crime** with diversion programs including Michigan with 23%, New York with 33% and New Jersey with 30%. (Justice Policy Institute, *Factsheet: Percent Change in Incarceration and Crime Rates, 1998-2007* (Washington, DC: 2008).

California was cited a few years ago as having a dangerous, overcrowded prison system and not enough funding for treatment programs to address root causes of crime or proper reintegration efforts so ex-offenders have the necessary tools not to return to crime. Now, California has a huge budget crisis and the federal government has ordered them to cut the prison population by 20%. They are merely releasing a large number of ex-offenders back into the community who are not prepared to be responsible citizens and no doubt will create more victims. If Pennsylvania continues its present course of stressing incarceration even for nonviolent offenders, we are likely to face the same situation.

### **A Change of Course:**

Pennsylvania must decide if it wants to stay the present course, heading down a dangerous precipice, or if we want to choose proper strategies that can significantly reduce the size, cost and recidivism rates of our prison system. The legislature must start to take the actions that will change the direction from building prisons at soaring costs to less expensive and proven alternatives.

Since over 90% of prisoners will be released back into our communities, treatment and reintegration must be addressed properly. Sentencing must not rely on incarceration of offenders which does not prevent crime as has been indicated by the booming prison industry we currently are experiencing. In fact, lengthier prison sentences have been shown to **increase** recidivism as offenders become institutionalized and can not function in society upon release. (Lynne Vieraitis and others, "The Criminogenic Effects of Imprisonment: Evidence from State Panel Data, 1974 – 2002", *Criminology & Public Policy* 6, no. 3 (2007): 589-622.) Data from the Department of Justice also shows little correlation between longer and shorter sentences.

If offenders can learn to make the right decisions and feel part of neighborhoods, studies show that they are less likely to return to crime.

True cost-cutting from the justice system will take the will to make the change and a concentrated effort of all of those involved from the judiciary to corrections to parole and re-entry services.

### **The Judiciary:**

Many defendants have parole for multiple offenses and, thus, can receive violations affecting more than one offense. Court hearings on parole violations and technical parole violations for one defendant should be consolidated so there are not multiple hearings. Therefore, they could be expedited and heard at the same time.

Also, the state could expand funding for County Intermediate Punishment Programs. Prison must be reserved for violent offenders while nonviolent offenders can be kept in communities where treatment can be more effective. In addition, correct decision-making can be learned through interaction with service providers and mentors. This has never been fully funded according to the PA Sentencing Commission which stated that we need \$60 to \$90 million to use this effective, less costly program.

We support Senator Greenleaf, Chair of the Senate Judiciary Committee, who has proposed SB 1299 to make nonviolent offenders eligible for alternative sentencing such as county intermediate punishment, state intermediate punishment, boot camp and Recidivism Risk Reduction Incentive (RRRI). Many offenders would be better in less costly community corrections centers rather than the intense security at the state prison system. The anticipated net savings to the DOC would be \$217,000 in the first year, \$6,683,000 in the second year and \$15,595,000 in the third year.

We also support SB 1145 sponsored by Senator Greenleaf which would amend the Judicial Code to adopt a needs and risk assessment tool that would be used by judges in sentencing. The proposal, based on a Virginia pilot project which saved \$1.2 million and is estimated could save \$2.8 to \$3.6 million if implemented throughout Virginia, is integral in determining if offenders can be rehabilitated and better served in alternative sentences or should be in more secure incarceration. According to the PA Commission on Crime and Delinquency, if all eligible offenders were sentenced to the State Intermediate Punishment (SIP) Program, it could reduce the state prison population by 9,180 offenders by the third year. If only 25% of those eligible were sentenced, the state prison population could be reduced by 2,295 by the third year. The DOC, instead of building prisons of about 2,000 offenders each, may be closing facilities.

### **Sentence Mergers:**

In December 2002, a statute was enacted that allowed an interpretation of merger law by allowing a defendant to receive separate and consecutive sentences for more than one offense where all the elements of each offense are contributed to the same core conduct. In Commonwealth v. Blaine Baldwin, 985 A.2d 830 (Pa. 2009), the new statute governing sentencing merger, 42 Pa.C.S. §9765, the Court held that when two crimes each contain two distinct elements, those two crimes never merge for sentencing regardless of the facts proven at trial and the defendant can receive two separate sentences for the two crimes although one single criminal act.

Thus, an amendment to §9765 is needed. The current statute reads:

#### **§ 9765. Merger of sentences**

No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

We offer the following amendment:

#### **§ 9765. Merger of sentences**

No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and the facts (as proven or stipulated) necessary to prove one offense satisfy all of the elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

This change in statutory language would return the merger law to the principles enunciated in Commonwealth v. Anderson, 650 A.2d 20 (Pa. 1994) and refined by Commonwealth v. Comer, 716 A.2d 593 (Pa. 1998), and later cases. Single crimes should receive single sentences and multiple crimes receive multiple sentences.

### **Mandatory Minimum Sentences:**

Since the "War On Drug" policies started in the 1970s, mandatory minimum sentences have become more popular with the goal of making sentences more uniform. However, the problem has been that the mandatory sentences have taken discretion away from the judiciary in cases which may be better served with alternative means. Although mandatories have expanded to encompass a wide array of offenses, much of the mandatory minimums have addressed drug crimes. While this policy may seem practical in the short term, the reality is that substance abuse is prevalent among those who are incarcerated.

According to the National Center on Addiction and Substance Abuse at Columbia University (CASA), two-thirds of U.S. inmates in 2006 have a substance abuse disorder but

only 11% received professional treatment while incarcerated. In Pennsylvania, with an estimated population of 12.4 million, 864,853 need treatment according to the Department of Health. However, the actual number receiving treatment is only 77,292. From 2005 to 2009, the admissions for drugs have decreased from 92,115 to 77,292 or 16%. Meanwhile, the inmate population has increased from 40,965 in 2005 to 49,133 in 2009, a 20% increase (Drug & Alcohol Service Providers Organization of Pennsylvania).

Secretary Beard has said that 68% of state inmates have substance abuse. For every \$1 spent on treatment, there is a \$7.46 savings in crime-related spending and lost productivity according to the RAND Corporation.

Pennsylvania's prisons were designed for violent offenders and yet, now, nonviolent prisoners make up half the population, contributed largely by mandatory minimums. The state is mandated to provide security and medical care to state prisoners. However, with limited resources and the influx of these large numbers of nonviolent offenders into the system, the state has cut program expenses, the very essence of what corrects the people sent there in the first place.

In a case in point, Tenesha K. Range is serving 2 to 5 years in state prison for a single drug deal in Easton. This was her first offense so the prosecutors were willing to reduce the charges and she could have gotten 9 months. However, last May, the court's hands were tied and she was sentenced according to a mandatory minimum for selling within 1000 feet of a school, even though she was selling to a 19-year-old man. These zones exist even when school is not in session. The PA Commission on Sentencing has recommended the repeal of the drug-free zone enhancements to allow the court to consider individual circumstances.

Pennsylvania should follow other states in repealing mandatory sentences that preclude more effective treatment. In New York, legislation reform has repealed many of the Rockefeller Drug Laws and allowed nonviolent offenders treatment. Specialized drug and alcohol service programs report 72.5% complete successfully. New York has reduced their prison population nearly 8% from 2007 to 2010 and by 19% since 1999. This decline is expected to continue by another 1000 through 2011. Not only has the inmate population decreased but these policies have resulted in a decrease in crime.

If Pennsylvania were to reduce the inmate population by 8% for the past three years, or 3360 based on 42,000 inmates, the savings could save \$114,240,000 per year or \$342,720,000 for the past three years. Therefore, we would ask the legislature to review the current mandatory minimum sentencing laws to allow alternative sentences where success has been demonstrated.

Repealing some mandatory sentences does not take away judicial responsibility in applying sentencing guidelines. In order to create an appropriate balance so sentences are not proposed in excess of that required for the particular circumstances of a case,

Karl Baker of the Defender Association of Philadelphia has proposed that the following be exceptions to the mandatory minimum sentences:

1. The defendant was less than 18 years of age at the time of the commission of the offense;
2. The defendant, at the time of the commission of the offense, was acting under substantial duress or provocation but not such duress or provocation as would constitute a defense to prosecution;
3. The defendant's mental capacity, at the time of the commission of the offense, was significantly impaired but not so impaired as to constitute a defense to prosecution. Impairment due solely to the voluntary consumption of alcohol or controlled substances shall not be considered an exception to the imposition of any applicable mandatory sentencing;
4. The offense committed by the defendant was a crime of omission which involved no victim.

In a recent study, only 34% of the public could name one offense that carries a mandatory sentence according to the PA Commission on Sentencing 2009, "Study on the Use and Impact of Mandatory Minimum Sentence". People are not likely to be effectively deterred by their threat.

We should avoid one size fits all sentences and allow for exempting certain extraordinary cases from mandatory sentences, and this should be under the control of an impartial judge and not an advocate. For instance, the following escape clause proposed by Karl Baker is:

"The sentencing court may depart from the mandatory term of imprisonment required by this section if it finds on the record that there are substantial and compelling reasons for doing so, and the departure below the otherwise applicable mandatory term is reasonable."

In addition to these proposals by Mr. Baker, we would also emphasize that the legislature consider alternatives where appropriate for the drug offenses that may be based on SB 1145 risk and needs assessment tools.

#### **State Intermediate Punishment Program (SIP):**

In May 2005, the SIP program was implemented which diverts offenders from traditional incarceration to treatment, saving as much as 30 months of incarceration according to Dr. Beard. Since that time, 6,081 offenders were sentenced to the DOC who could have been eligible for the program. However, only 2,023 were evaluated by the DOC. Of those,

1,494 were admitted to the program. The majority rejected from the program were due to outstanding detainers or pending legal action.

Of those 1,494 admitted, 427 or 29% successfully completed, 198 or 13% were expelled, and 869 or 58% were still enrolled as of the last PA Commission on Sentencing report of May 2009. The major reasons for being expelled were escaping from a Community Corrections Center or treatment services, and disregarding the rules and regulations.

As of July 2009, there were 525 offenders who had successfully completed the program. The recidivism rates for those who completed the program were significantly lower than those who were sentenced to prison, 11.9% compared to 20.4% for those not in the program.

The problem is the underutilization of the SIP program. Although the program has demonstrated success, there were about 4000 inmates who were eligible be in the program vs. incarceration. Considering just half of them or 2000 to be admitted to the program, with an estimate of incarceration of 30 fewer months at \$34,000 each, this is a cost of approximately \$68.4 million annually that could be saved by the state.

Coupled with the reduced recidivism rates of the offenders going through the program of about half those in traditional sentences, the cost savings could be \$5,780,000 per year. (2000 inmates with 238 recidivating vs. 408 in traditional incarceration).

More offenders were likely to recidivate if sentenced to prison at 36% compared to the SIP at 12% after a year study by the PA Commission on Sentencing.

Currently the District Attorney must motion the court to the SIP program with the agreement of the defendant. We propose that sentencing court have greater discretion in ordering participation and remove the requirement of agreement of the district attorney and the defendant.

In addition, to expand the SIP program, we agree with the PA Sentencing Commission and propose that some offenses currently deemed ineligible be allowed such as misdemeanor 3 offenses as simple assault and harassment. Thereby, some offenders may benefit from the treatment aspects of the program rather than current traditional sentencing.

#### **Recidivism Risk Reduction Incentive Program (RRRI):**

Effective November 2008, Pennsylvania implemented the RRRI as a part of a broader package of bills. The program allows release from state prison before minimum sentences for certain offenders who qualify. The program is intended for nonviolent offenders serving two to five years at state prison.



From its inception through 2009, 2,568 offenders were received by the DOC identified as eligible for RRR. Of these, 710 were eligible for release as of December 20, 2009. Among those, 138 or 19% were certified after successfully completing the program. The majority of 67% had pending certifications. Among the certified offenders, 42 or 30% had been released from prison but only two were released at their RRR minimum sentencing. The average release date was four months after the RRR minimum sentence release date. The average release date for RRR eligible offenders is less than one month prior to their minimum sentence release date.

One of the biggest factors for the program not working is the high number of offenders being sent to the state prison on short minimum sentences. All offenders serving state sentences of two to five years are required to go to the state prison system. However, many have already served much of their sentences in the county jails while awaiting court and have time-served. Therefore, they can not get programming completed before their RRR minimum. The average time for a RRR sentences was 5.4 months and the average minimum for their regular sentences were 8 months according to the PA Commission on Sentencing 2010 report. Among those released, 30% to 45% were released after their parole date.

Therefore, we would recommend the legislature to pass SB 1161 sponsored by Senator Greenleaf that would allow inmates within 18 months of completing minimum sentences when committed to the DOC to transfer to a prerelease center where they can complete programming. Both inmates eligible for RRR and those with short minimum sentences could benefit. The result would be a net savings to the DOC of \$877,000 for the first year, \$8,046,000 in the second year and \$17,355,000 in the third year.

The "parole at minimum" provision would provide a net savings to the DOC of \$5,473,000 in the first year, \$18,368,000 in the second year and \$23,055,000 in the third year.

We would also recommend expanding the types of sentences eligible for RRR sentences to include mandatory sentences.

#### **Parole:**

The current parole rate for the state prison system is 55%, about 943 offenders per month. Secretary McVey, Chair of the PA Board of Probation and Parole (PBPP) recently cited the problems of inmates not being released as efficiently as they could, stating that significant numbers could be paroled if required programs were completed. In the previous year, 7,132 inmates had not completed programs or were still on waiting lists for them. Much of the backlog is due to program needs for the DOC not meeting the increased demands of inmates entering the system. A record number of short minimum cases have entered the state prison system and the DOC and the PBPP simply can not keep up.

The 7,132 inmates alone at a cost of \$34,000 each per year contributed \$242,488,000 in cost to the state DOC versus what would have been the cost to the PBPP of \$21,396,000, or a savings to the state that could have been \$221,092,000.

Again, SB 1161 would allow these same offenders to be treated with programs in community correction centers or facilities at lower costs. Paroling an offender is 16% of the cost of incarceration or an average of \$5000 per year per parolee.

Title 18 Section 11.1101 (e) of the PA Statutes operates as an impediment to cost savings and reintegration of offenders back into the community. Costs must be paid by offenders in order for them to be eligible for probation, parole, or accelerated rehabilitative disposition. Inmates are being required to pay \$60 before parole and, if they can't pay due to being indigent, they must sit in prison at a cost of \$95 per day, obviously to taxpayers. Currently there is no waiver in the language for indigent inmates. However, we have proposed the following language:

"No court order shall be necessary in order for the defendant to incur liability for costs under this section, but this provision does not alter the court's discretion under PA R. Crim. P. 706(C). Costs under this section must be paid in order for the defendant to be eligible for probation, parole, or accelerated rehabilitative disposition unless the defendant does not have the present ability to pay costs."

PBPP has begun using intermediate sanctions for technical parole violators (TPVs) after assessment and only sending high risk offenders back to prison. So far, Chair McVey said 100 offenders are diverted and estimates are that the program will save \$800,000 in the first year, \$12 million in the second year and \$15 million in the third year, or a total of \$27.8 million.

Other states such as Michigan are reaping savings of \$120 million overall for corrections by investing \$23 million in parole and community corrections locally. Texas has diverted \$24 million from prison construction to alternative programs. Although Pennsylvania has yet to follow suit, three parole violation centers have saved the state \$133 million.

We propose that nonviolent offenders with short minimum sentences be diverted to community correction centers to complete their programs. Investing in offenders in the communities so they have marketable employable skills, counseling and treatment will reap benefits to our state in the long run, not only by less costly sentencing but by creating tax-paying citizens of our Commonwealth rather than tax burdens.

Senator Greenleaf has proposed SB 1198 to amend the Prisons and Parole Code to establish a comprehensive program that will reduce recidivism and ensure successful re-entry and reintegration of offenders into the community. The PBPP has proposed at

\$11,666,275 investment in parole and re-entry services. SB 1298 appropriates an additional \$15 million. For every offender successfully reintegrated, the state would save countless dollars.

SB 1275 proposed by Senator Greenleaf would establish a graduated sanctioning process for technical parole violators to hold offenders accountable through intermediary means but yet avoid the cost of recommitting parolees to prison for up to one year. According to the DOC, this bill would save the DOC \$3,065,000 in the first year, \$16,417,000 in the second year and \$18,433,000 in the third year. The PBPP estimates a savings to the DOC of \$3 million, a \$2.3 million additional cost to the PBPP and net savings in the first year of \$700,000; \$11.6 million in savings for the DOC in the second year, a cost to the PBPP of \$4.1 million and net savings of \$7.5 million; and for the third year, \$14.3 million savings to the DOC, \$3.7 million of costs to the PBPP and \$10.6 million in net savings. Although there are slight variations, the accumulated net savings are apparent.

TPVs could also serve no more than 30 days back at the state prison followed by community corrections facility treatment on the first two returns to prison as recommended by Secretary Beard.

#### **Other Considerations:**

We have only addressed some of the cost savings potential in this testimony. Many other state programs could be researched for more proposals. For instance, the geriatric population continues to grow in the prison system at a cost of up to \$100,000 per inmate per year with health care. The Joint State Government Commission Study researched the geriatric offenders a few years ago and several of their recommendations have yet to be given serious consideration. Federal health care such as Medicare and the Veterans Administration do not pay the astronomical costs for these inmates so the state must pick up huge bills. Why not review their risks and look at other options that would allow release in some circumstances?

Pennsylvania leads the nation and the world in the number of juveniles serving life sentences without parole. Juveniles can spend up to 60 years incarcerated. Why not re-evaluate the sentences of juveniles, particularly in light of recent U.S. Supreme Court issues on the subject? The legislature may want to consider the age and circumstances in allowing for parole evaluations after a certain period of the sentence has been completed.

All crime bills affecting corrections should have an impact statement of the cost and benefit of the proposed legislation before a full vote of the House and Senate are taken.

**Conclusion:**

No longer can Pennsylvania just build prisons in order to fix the problem of crime. The people of our state are not getting a return on the dollars they are paying into the justice system in terms of public safety and healthy communities. In the past, Pennsylvania has reacted to isolated incidents based on emotions rather than reason. While we need to be tough on crime, we also need to be smart on crime and base our future on evidence-based practices and demonstrated progress.

Anecdotal politics as usual needs to end. The time has come for true leadership and the courage to implement a new direction proven to address crime while having the added benefit of reducing costs.

Thank you. Angus and I will take any questions at this time.