

125 pages

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

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HB 1096

Verbatim record of the House
Judiciary Committee Public
Hearing held in the Gold Room,
Allegheny County Courthouse,
Pittsburgh, Pennsylvania, on
Friday,

June 12, 1987
11:00 a.m.

Hon. Gerard A. Kosinski, Chairman Pro Tempore,
Subcommittee Courts

Hon. Michael P. Edmiston, Chief Counsel, Judiciary Committee

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ALSO PRESENT:

Amy Nelson
Research Analyst, Judiciary Committee

Joseph Preston
Allegheny County Delegation Member

Mary Woolley, Esquire
Counsel, Minority

Barbara Burtyk
for Rep. Allen Kukovich

Rob Hirtz,
for Rep. Babette Josephs

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1 (Whereupon, the hearing commenced at 11:00 a.m.)

2 ACTING CHAIRMAN KOSINSKI: I would like to bring
3 this meeting to order.

4 Welcome to today's session of the House Judiciary
5 Committee. It's a Public Hearing on House Bill 1096 (sic),
6 the Earned Time Bill.

7 I am the Subcommittee on Courts, Jerry Kosinski,
8 a Representative from Philadelphia. I will be the Chair
9 Pro Tem today.

10 Sitting to my left is Representative Jeff Piccola
11 from Dauphin County. To my right, the Chief Counsel of the
12 Judiciary Committee, Mike Edmiston. Our staff member, Amy
13 Nelson, is to our far right.

14 A few ground rules for today.

15 First of all, if you feel more comfortable wearing
16 no jacket, you are more than welcome to take it off. It is
17 quite humid and comfort is what we're concerned with.

18 Second, we do have strict time limits today.
19 Twenty minutes for each person. I'm not going to be keeping
20 a clock. If you go over a reasonable amount of time, that
21 is fine.

22 We're giving you the option today whether to speak
23 from the podium or sit down in the chair, if you have lengthy
24 testimony. We also ask you to respect the speaker by not
25 talking or carrying on in the background.

1 We hope to get the meeting done by one or one-fifteen
2 today. If you are not a scheduled speaker and would like to
3 speak on the Bill, we do give you time after the final speaker
4 to have your say.

5 I would like to call the first person testifying
6 today, Mr. William Babcock, Executive Director of the
7 Pennsylvania Prison Society.

8 Mr. Babcock.

9 MR. BABCOCK: Thank you.

10 I want to thank the Committee for inviting us to
11 speak today. I understand that the purpose of the hearing
12 is to address House Bill 1096 which would establish an earned
13 time system for prisoners in Pennsylvania.

14 I also understand that the Senate has already
15 passed a Senate Bill 424 which also would establish an
16 earned time system in Pennsylvania.

17 I assume we're dealing primarily with two questions.
18 First, whether we should have an earned time system in
19 Pennsylvania, and secondly, if so, what form it should take.

20 With regard to the first question, I think the
21 answer would be an unqualified yes. Having worked on prison
22 issues in several other states and reviewed the earned time
23 system in most of the rest, I was somewhat shocked when I
24 came to Pennsylvania to find out there is no such system in
25 this state. Some form of the system is employed by the

1 Federal Bureau of Prisons in the District of Columbia and
2 forty-eight states as an accepted correctional practice and
3 has been for many, many years. So we're not talking about
4 something revolutionary or outlandish.

5 In fact, the concept was initially developed
6 primarily to serve the dual purposes of providing an incentive
7 for good behavior to inmates and a management tool of staff.
8 Based on the fact it is still employed in the fifty jurisdic-
9 tions to which I referred, it appears to be working rather
10 well.

11 Some form of earned time also was used in twenty
12 counties throughout Pennsylvania and was employed in the
13 state system until 1965. It was repealed at that time due
14 to implementation of parole, minimum/maximum sentences. It
15 was thought at that time that earned time was no longer
16 needed.

17 Which brings us to another important function over
18 this time, which is population control or population reduction
19 within the state system. The time that the law was repealed,
20 Pennsylvania prisons were not overcrowded. In fact, in 1970,
21 the state, I understand, sold the eastern state penitentiary
22 in Philadelphia because it was no longer needed. Shortly
23 thereafter, the prison population began to increase rapidly.
24 In 1980, we had about eighty-two hundred prisoners in the
25 state system.

1 Some seven years later, we have over fifteen
2 thousand prisoners despite a small increase in the general
3 population of the state. Our state prisons are operating
4 about one hundred thirty percent of their rated capacities,
5 despite the fact that we are spending three hundred million
6 dollars to build four new prisons. Projections already show
7 we will continue to be overcrowded even after the cells are
8 on line.

9 As a result of the overcrowding and physical plants,
10 the prisons deteriorate faster. The cost of maintenance,
11 of course, will increase. Security is more difficult to
12 maintain. Fewer programs are available for a small percentage
13 of the inmates.

14 The job working within the institutions becomes
15 more difficult and more dangerous, making it more difficult
16 to recruit qualified personnel.

17 Just to sum promoted mandatory prison sentences as
18 a means of solving the problem of crime, many will suggest
19 that the simple solution to overcrowding is to simply build
20 more prisons. A recent experience should teach us otherwise.
21 As I say, as these four new prisons come on line, we will
22 continue to be overcrowded. Population within the institutions
23 will continue to grow.

24 We're not the only state to have made that mistake.
25 Governor's Panel recently indicated an attempt to build out

1 of their overcrowding problems have failed. In California,
2 they recently appropriated two billion dollars, two billion
3 dollars, for prison construction. They are expected to have a
4 prison population of one hundred thousand by the year of
5 two thousand. They still will be overcrowded.

6 A study produced by the Clark Foundation states
7 emphatically that it is not possible to quote build out of
8 end quote the overcrowding problem. This is due primarily
9 to the elastic pull of offenders. We have almost an
10 infinite number of people we could lock up, too.

11 Other measures must be employed to help us deal
12 with the overcrowding. Methods which carry the added
13 advantage of being considerably cheaper than building and
14 maintaining prisons. Front door methods, in other words,
15 diverting offenders to alternative sanctions such as intensive
16 probation, house arrests, community corrections, or community
17 service are one direction. Another would be backdoor
18 methods, which would be to accelerate releases, which earned
19 time is one of the most time-tested. Another, of course, is
20 parole which the state already provides. The two systems
21 obviously can be used jointly and are in most states.

22 Finally, earned time has the seal of approval of
23 the overcrowding task force of the Pennsylvania Commission on
24 Crime and Delinquency which recommends its implementation in
25 a report issued in February of 1985. So if we are to implement

1 earned time in Pennsylvania, what form should it take.

2 The Legislature is in an enviable position right
3 now, because you are able to construct the best possible
4 system for Pennsylvania, starting from scratch. You should
5 adopt the best features available that are used in the other
6 fifty jurisdictions.

7 It was the Society that has had an opportunity to
8 study many of these systems. We would make the following
9 recommendations.

10 First of all, rather than a flat monthly figure
11 applicable to every inmate, we would recommend a graduated
12 system of crediting inmates with earned time. This approach
13 would have at least two benefits. It would accelerate the
14 accumulation of earned time and, therefore, have a greater
15 impact on reducing prison overcrowding. It would provide
16 more of an incentive for good behavior by the inmates and,
17 thus, a better management tool.

18 There are different methods of implementing a
19 graduated system. One is to tie the earned time into the
20 classification system so that as an inmate's classification
21 increases, he is able to earn more time.

22 Concomitantly, if an inmate's classification is
23 reduced as a result of prison misconduct, that individual's
24 earning capacity would also reduce. This has the benefit of
25 being tied into the concept of good behavior totally.

1 The second option is to tie the graduated earned
2 time system into the inmate's sentence length which is
3 proposed in House Bill 1096. The advantage of this sytem
4 is that it would be easier to administer by the Department
5 than a system tied into classification, because the latter
6 does not change after predictable periods of time.

7 The second recommendation is that we feel it would
8 be important that the ability to earn credits off one's
9 sentence be applicable to all inmates within the institutions.
10 And when we say that, we're speaking, obviously, primarily
11 about mandatory prison sentences. There also has been some
12 debate as to whether earned time credit should be awarded to
13 those serving mandatory minimums.

14 We feel that they should, because it is important
15 that whatever legislation is passed, is used to maximize its
16 effectiveness in reducing prison overcrowding. With an
17 ever increasing number of inmates serving mandatory minimums,
18 the goal of reducing overcrowding is greatly diminished if
19 not applied to everyone.

20 Also, obviously the other functions of having an
21 earned time system serving as an incentive, serving as a
22 management tool, wouldn't apply for those individuals.

23 Thirdly, you have created a class of have-nots if
24 you eliminate these people from being able to earn earned
25 time. That creates tension within the institution and

1 potential for problems.

2 Attached to the testimony that I have submitted, I
3 gave you three copies of articles from the Philadelphia Daily
4 News and the Philadelphia Inquirer regarding the effects of
5 the 1982 Act which requires a five-year mandatory minimum
6 sentence for every offender found guilty of an offense
7 involving the use of a firearm. Earlier this year, that Act
8 was upheld by the United States Supreme Court as
9 constitutional.

10 There are about seventy people state-wide, many in
11 Philadelphia, who previously had been given sentences of
12 less than five years by judges who felt the law was
13 constitutional. Those individuals had to be sent back to
14 prison to serve their mandatory minimum five years.

15 The articles from the newspapers point out that
16 many of these people had already been out of prison having
17 served their minimums and found jobs and were supporting
18 families. The purpose of bringing that to your attention is
19 to show somebody serving a mandatory minimum is not per se
20 more dangerous than somebody else in the institution. So to
21 not give them earned time simply because they have a mandatory
22 minimum isn't logical.

23 One final note on applying to everyone within the
24 system would deal with those people who are sentenced to life
25 in prison. With a population which is growing rapidly in

1 Pennsylvania, I think we have around seventeen hundred
2 inmates with life sentences. They are not eligible for
3 parole. It is possible for the Department to calculate the
4 number of days that an inmate serving a life sentence has
5 earned, if you make them qualify for the earned time system.
6 We think that going through that process may be a worthwhile
7 exercise for these reasons.

8 The inmate may have his or her sentence commuted
9 to a term of years at a certain point. In such an instance
10 where whatever time that the individual has accumulated
11 earned time would be applied to that sentence. Probably more
12 practical is simply having the ability to earn such credits
13 serving as an incentive for a life sentence inmate because
14 he can use that information in applying for commutation.

15 It would serve, obviously, as another ray of hope
16 for possible release and an incentive for good behavior.

17 Third recommendation is that the implementation of
18 earned time should include a period of retroactivity.
19 According to the PCCD study I referred to earlier, a system
20 that included an earned time rate of six days per month
21 with a one-year retroactive period would result in a reduction
22 in the average daily population in the state institutions of
23 six percent during the first year of operation.

24 Obviously, retroactivity would have a significant
25 immediate impact on the population. If one of the main

1 reasons to pass this type of legislation is in fact an over-
2 crowding, retroactivity is almost essential. Also, it
3 clearly is not a difficult factor to administer by the
4 Department.

5 Our final recommendation is that this committee
6 consider the implementation of meritorious credits in addition
7 to the system of earned time credits. These would refer to
8 benefits that an inmate could accrue for enrollment in a
9 voluntary program within the institution. It could be
10 educational, training program, educational program, treatment
11 program such as alcohol or drug addiction treatment.

12 The drawback to implementing such a system in
13 Pennsylvania is that obviously with our overcrowded situation,
14 there probably are not enough programs available for every-
15 one to have gotten one, especially if you give them that type
16 of incentive to enroll in one.

17 On the other hand, the advantages that it would
18 serve as an incentive. People would volunteer for these
19 programs who would not otherwise. It may also have the
20 effect of prodding the Department to establish, and the
21 Legislature to fund, more programs within our state prison
22 system.

23 Finally, as I noted earlier, twenty counties
24 already in Pennsylvania have implemented some form of earned
25 time. The PCCD study for 1985 states that quote the wardens

1 of several Pennsylvania county jails where earned time has
2 been implemented are vocal proponents of its use as an
3 important management tool. In Chester County, for example,
4 there was a seventy percent drop in disciplinary infractions
5 after implementation of a system of earned time. Close
6 quote.

7 Further more, in a county which has implemented
8 earned time, those inmates in the jail who are serving a
9 state sentence are not earning credits off of their sentences.
10 This creates a disparity between those inmates serving state
11 time and those serving county time within the same
12 institution. The easiest way to correct that is for the
13 state to be at least as creative as the officials in the
14 twenty counties which have now implemented earned time.

15 In conclusion, we would reiterate that we strongly
16 endorse the implementation of earned time. We feel that the
17 Legislature should pass the best possible earned time bill
18 that can be and should include the factors which we have
19 delineated. And that implementation of the earned time is
20 simply the first step in Pennsylvania to help alleviate the
21 overcrowding of our prisons, and much more needs to be done.

22 Again, I thank you for allowing me to speak today.
23 If you have any questions, I would be happy to answer them.

24 ACTING CHAIRMAN KOSINSKI: Thank you for your
25 testimony, Mr. Babcock. I would like to add that Representa-

1 tive David Mayernik from the North Hills in Allegheny County,
2 a member of the Committee since 1983. Also I forgot to
3 mention that Chairman Bill DeWeese, the Committee Chairman
4 of the Judiciary, and the prime sponsor of the bill, Allen
5 Kukovich, were unable to attend today's hearing due to other
6 business.

7 I would like to announce the presence of Mary
8 Woolley from the Republican House Judiciary Staff. We also
9 have Rob Hirtz of Representative Babette Josephs' office in
10 Philadelphia.

11 Question. Mr. Mayernik?

12 REPRESENTATIVE MAYERNIK: None at this time.

13 ACTING CHAIRMAN KOSINSKI: Mr. Piccola?

14 REPRESENTATIVE PICCOLA: Yes, Mr. Chairman.

15 BY REPRESENTATIVE PICCOLA:

16 Q Mr. Babcock, first of all, I didn't follow your
17 testimony word for word from your prepared statement.

18 A Right.

19 Q Could we have permission to incorporate into the
20 record the prepared statement, as was presented to the
21 members of the Committee?

22 A Yes.

23 Q There is nothing in here you would change, I assume?

24 A No. I happened to be watching the basketball game
25 last night and wrote down how I was going to present it. I

1 lost interest in the game.

2 Q I had the opportunity just very briefly this morn-
3 ing, to read or skim through your prepared text. I gather
4 from the arguments that you put forth, that the chief, if not
5 the only reason that we should be adopting a good time
6 proposal for Pennsylvania, good time system for Pennsylvania,
7 is overcrowding.

8 Is that accurate?

9 A I wouldn't say that. I think it is one very
10 important factor. As I tried to also express, I think that
11 having that carrot at the end of the stick also is important.
12 To have that incentive for an inmate for good behavior. I
13 think you will hear testimony today from representatives of
14 the officers' union that it also is seen as a good management
15 tool. That is the main reason that it was ever introduced
16 to start. It was a management tool, much as parole has
17 been.

18 Q Isn't it true, that we already have that carrot at
19 the end of the stick, as you say, with our present parole
20 system because it's my understanding that an inmate currently
21 sentenced in Pennsylvania is sentenced to a maximum and a
22 minimum sentence?

23 A That's right.

24 Q And that the minimum sentence can be no longer
25 than one-half of the maximum sentence; am I accurate to that

1 point?

2 A That's right.

3 Q And that the inmate automatically becomes eligible
4 for parole at the end of the minimum sentence?

5 A That's right.

6 Q So, for example, if there is a particular offense
7 whereby the individual is sentenced to a -- could be sentenced
8 to a ten-year maximum, the judge can only impose under state
9 law, a five-year minimum and that the inmate is automatically
10 eligible at the end of five years for parole?

11 A That's right.

12 Q He is not automatically paroled, but some of the
13 factors that go into the parole decision are his record within
14 the institution; is that not correct?

15 A That's right.

16 Q So in fact, we have a system of incentives for good
17 behavior within our prisons right now which would encourage
18 good behavior because if the inmate does not behave himself,
19 he will not, or it's likely that he will not, be paroled at
20 the end of his minimum sentence which, right now, is one-half
21 of the maximum; is that accurate?

22 A That's right.

23 Q Maybe you can't answer this question because you
24 weren't around in 1965 and I was only a junior in high school
25 at that time, but I believe from my historical reading that

1 the reason that good time was repealed at that time was
2 because we put in the system of parole that we currently
3 have?

4 A That's right.

5 Q Which created the incentive. So that operates as
6 the management tool that you are testifying to. So the only
7 changed item that we have now that makes good time, in your
8 view, a good idea is overcrowding?

9 A Well, I think you can have more than one management
10 tool. I don't think you can say, well, we should either have
11 parole or earned time, we can't have them both. Because
12 many states do.

13 For somebody, let's say the individual's minimum
14 term is ten years, that's a fairly sizable chunk of time.
15 I know from my experience of dealing with prisoners in
16 several states, is maybe for the first five years, the idea
17 of parole in ten years doesn't mean a lot. It's so far away
18 that it's not really relevant to him.

19 By implementing another system such as this, you
20 do have, you got an added incentive. The two can work
21 together. I don't think they need to be exclusive. I am not
22 going to snow anyone. I'm not going to say I don't care if
23 it affects the failure or not. That's an important factor.
24 That's one of the reasons we would push for.

25 Q You do agree, I believe, and I don't mean to

1 reiterate this point, but you do believe that the current
2 system of parole with the incentive for good behavior in
3 order to be paroled at the end of your minimum, is the same
4 type of management tool?

5 A Yes.

6 Q That you are proposing or being proposed with good
7 time?

8 A Yes.

9 Q What would your position be with respect to a
10 proposal amending either one of these bills to eliminate the
11 requirement that the minimum be one-half, no longer than one-
12 half the maximum, and permit the judge to sentence to a
13 minimum that he believes is appropriate for each individual
14 case, perhaps in excess of one-half of the maximum?

15 A I would not be in favor of that, simply because I
16 think that it would negate whatever -- to a large extent,
17 whatever positive effect the good time or earned time
18 legislation would have on the overcrowding.

19 Q So, again, you are saying that the primary reason
20 that we should be adopting good time is because we have an
21 overcrowding situation in our state institutions?

22 A Fair enough. I think -- I don't think it's the
23 only reason, but I think it's clearly if not the most
24 important, one of the top three.

25 Q Have you done any projections based upon either one

1 of these Bills that would indicate that either House Bill
2 1096 or Senate Bill 424 would eliminate overcrowding in
3 Pennsylvania in the near future?

4 A It would not, clearly not eliminate. It will only
5 make a dent. This is a first step.

6 Q A relatively small dent?

7 A Well, as I said, it could be a six percent decrease
8 under the projection of PCCD made in 1985.

9 Q You say it's a first step. First step to what?
10 What is the second step? The first step scares me. I am
11 afraid of the second step.

12 A That is what this Legislature needs to start
13 contemplating. Something has to be done to resolve the
14 problem.

15 Q Now, in your testimony, and I don't think I saw it
16 in your prepared text, but I just wanted to get this on the
17 record.

18 You indicated back in 1965 when we repealed good
19 time, we didn't have an overcrowding situation. We had a
20 dramatic increase in prison population with a small increase
21 in general population of the state?

22 A Right.

23 Q Isn't it a fact, however, that during that period
24 of time, the rate of criminal activity has increased
25 dramatically?

1 A No, not consistently. I know -- I think 1984 and
2 '85 was actually a drop in the crime rate in Pennsylvania.
3 There has been, there was.

4 Q Eighty-what?

5 A I believe '84 and '85.

6 Q After we imposed mandatory sentences?

7 A I don't think that has been proven. I don't think
8 that's a direct effect of that.

9 Q But it did occur after we adopted mandatory
10 sentences?

11 A Yes, chronologically.

12 Q Now, your proposal is that we apply good time, both
13 to all prisoners within the institution, including those
14 sentenced to mandatory minimums?

15 A That's right.

16 Q Now, I don't suppose, and I think you alluded to
17 the fact, that you agree with the theory behind mandatory
18 minimum sentences.

19 You do not believe there is any correlation between
20 a mandatory sentence and a deterrent on crime?

21 A Right.

22 Q Assume for the moment that that theory has validity.
23 Isn't it true, that by applying the good time to the mandatory
24 minimum sentence, you really destroy the theory behind
25 mandatory minimum, because you no longer have mandatory

1 minimum?

2 A No. I think in sentencing, a judge would be able
3 to take into consideration the fact that an inmate given a
4 mandatory minimum could still earn credits off his sentence.
5 If he wanted to adjust the minimum -- the fact that it is
6 minimum doesn't mean he couldn't give more. He could adjust
7 that sentence appropriately, if necessary.

8 Q If it's in the discretion of the judge, it's no
9 longer mandatory; it's discretionary?

10 A Which is where sentencing should be, I believe.

11 Q I understand your position. We differ on that.

12 A Yes.

13 Q I am asking you if for argument's sake, if you
14 adopt the theory behind mandatory minimum, applying good
15 time to mandatory minimum would effectually destroy the
16 theory?

17 A The individual -- it wouldn't necessarily mean he
18 was released prior to, let's say, over a five-year minimum.
19 He simply would be eligible for parole at that time. Again,
20 the discretion shifts from the judge to the parole board.

21 Q You mentioned briefly overcrowding results in
22 double celling in cells designed to hold only one inmate.

23 Just for the record, isn't it a fact that the
24 United States Supreme Court has ruled that double cells is
25 constitutional under --

1 A No, it has not ruled that.

2 Q They have not?

3 A What they have ruled is, under the case which is
4 Rhodes versus Chapman that was before them, it was not
5 unconstitutional in that case.

6 Q In that case?

7 A That's right. Which does not mean that if someone
8 filed a suit involving Holmesburg or Graterford or Sing Sing
9 or whatever, that they would not in fact get a favorable
10 order. It depends on the totality of conditions within the
11 institution.

12 Q You are throwing the lawyers' arguments. I agree
13 with you that every case --

14 A I'm sorry.

15 Q That's right. I deserve it.

16 ACTING CHAIRMAN KOSINSKI: You are direct.

17 BY REPRESENTATIVE PICCOLA:

18 Q It's true, that every case before any court, the
19 law is applied to the facts in that case. The Court has
20 effectually said that double celling per se is not
21 unconstitutional?

22 A That's right.

23 Q There are circumstances where double celling is
24 constitutionally permitted?

25 A That's right. We don't know where to draw the

1 line. They have only heard the one case. It was a brand
2 new institution in Ohio.

3 Q We got some nice new institutions in Pennsylvania
4 coming on line.

5 A There are a lot of them.

6 REPRESENTATIVE PICCOLA: I think I have more than
7 taken up the time that is allotted to you and your testimony.
8 I thank you for your answers.

9 MR. BABCOCK: Thank you.

10 ACTING CHAIRMAN KOSINSKI: Thank you, Representa-
11 tive.

12 Mr. Edmiston?

13 BY REPRESENTATIVE EDMISTON:

14 Q Mr. Babcock, House Bill 1096 contains within a
15 graduated schedule -- I believe it's five, ten, fifteen?

16 A Yes.

17 Q Are you familiar with the workings of a schedule
18 like that in any other earned time system that you have
19 mentioned in your testimony?

20 A In fact, I just spoke with the person with the
21 Federal Bureau of Prisons who administers theirs. That's
22 the same schedule. He says it's very easy to administer.
23 You simply take the individual sentence and project a
24 tentative release date based upon how much time that person
25 could earn during the course of his or her sentence. Then

1 you would simply, if the individual loses that time during
2 the course of his or her sentence as a result of misconduct,
3 that time would be subtracted. You make the calculation on
4 day one, when the individual enters the system.

5 Q How does an individual lose earned time credits
6 in that federal system?

7 A In any system -- I am going back to my lawyers'
8 arguments.

9 Q If I can interrupt you for a moment. How do you
10 measure the extent of loss? If you earn at the rate of
11 five, ten, fifteen, are there rates for loss?

12 A Yes. They have a schedule for how many days can
13 be lost. I don't know exactly what the federal system is.
14 Most states would set up a system based on the severity of
15 the misconduct. If you have a system where it's Class 1,
16 Class 2 offenses within the Department, the less serious
17 offenses you could lose from zero to twenty days, or thirty.
18 The more serious offenses would be fifty or sixty. Whatever
19 system is set up.

20 You need some kind of limits because I have seen
21 states where there were no limits. An individual who talks
22 back to officers loses two thousand days. I think it should
23 be graduated, based on the seriousness of misconduct. Just
24 as you would with criminal violations of the street. You
25 are not going to give somebody a life sentence for jaywalking.

1 **ACTING CHAIRMAN KOSINSKI:** Any further staff
2 **members?**

3 **I have a few questions.**

4 **BY ACTING CHAIRMAN KOSINSKI:**

5 **Q** Mr. Babcock, what counties in Pennsylvania currently
6 **have the earned time credit?**

7 **A** I know Chester County has it, and we have a list
8 **that I can supply to you.**

9 **Q** Philadelphia and Allegheny?

10 **A** No.

11 **Q** In the counties that have them --

12 **A** Philadelphia doesn't. Allegheny, I can't say.

13 **Q** Well, in the counties that do have the earned
14 **time credit, what plan do they use? Do they use the one**
15 **modeled here? Do they use another plan?**

16 **A** It varies from county to county.

17 **Q** Have they been successful?

18 **A** I know from having spoken with Warden Frame from
19 **Chester County, he is very happy with it. As a quote from**
20 **the PCCD study shows, he sees it as a great management tool.**
21 **They also have, of course, parole in the county.**

22 **ACTING CHAIRMAN KOSINSKI:** Any further questions?

23 **Thank you, Mr. Babcock.**

24 **MR. BABCOCK:** Thank you.

25 **ACTING CHAIRMAN KOSINSKI:** The next person to

1 testify is Lee T. Bernard, II, Department of Corrections,
2 Deputy Secretary for Administration.

3 Mr. Bernard.

4 MR. BERNARD: I have prepared a statement that I
5 can read or summarize.

6 ACTING CHAIRMAN KOSINSKI: I think it would be
7 best to summarize, Mr. Bernard.

8 MR. BERNARD: The Department of Corrections
9 strongly supports the concept of earned time legislation.
10 We feel that earned time should be viewed not simply as a
11 reaction to overcrowding, but as a sound correctional
12 approach which we would want to have implemented irregardless
13 of population levels. Forty-eight other states already have
14 earned time legislation, and a vast majority that have them,
15 implemented them long before the current population crunch.

16 We feel, as Mr. Babcock has already stated, that
17 earned time legislation gives correctional managers an
18 effective tool for managing institutions. But not only for
19 managing institutions but encouraging and in terms of
20 managing inmates to behave. By encouraging them to get
21 involved in the type of programs that will enhance the
22 opportunity for them to lead crime-free lives when they are
23 released.

24 There are three key elements that we feel should
25 be in any earned time legislation.

1 Number one, we feel it should be applicable to all
2 sentences. He would make an exception for life sentences
3 there. We don't see the point of life sentences. We do feel
4 that earned time legislation could be applicable to mandatory
5 minimum sentences.

6 We feel that excluding mandatory minimum sentences,
7 you are excluding a large and growing portion of the inmate
8 population, and you are also distorting the effect on
9 sentences in that a person with a mandatory sentence could
10 wind up being forced to serve a longer sentence than a
11 person with a nonmandatory sentence, where the judge
12 originally had given the person with a nonmandatory a longer
13 term.

14 For this reason, we feel mandatory sentences
15 definitely should be included. We don't see in any way that
16 this distorts the concept of mandatory sentences.

17 We feel that earned time credit should not be
18 awarded solely on the basis of an inmate sitting in a cell
19 and putting in time. We feel that there should be some
20 way of awarding credit for participation in programs such as
21 that which is outlined in Section 4 of the Bill before you.
22 However, we would go beyond Section 4 and ask that the
23 Department be given the power to award credit for participa-
24 tion in other programs not simply limited to educational and
25 vocational. They might be able to award credits for

1 participation in drug or alcohol abuse programs, something
2 of this nature.

3 Finally, the third element that we think is
4 important in earned time legislation is we feel that it
5 should be revoked according to a clear and fair schedule.
6 We do not like the provisions of Section 5 of House Bill
7 1095 the way it is currently written, because that sets a
8 fixed number of days which would be lost for any violation
9 of a Class 1 or Class 2 misconduct. And what constitutes a
10 Class 1 misconduct, for example, are a number of activities
11 which we feel have a great difference in severity.

12 For example, Class 1 misconduct includes such things
13 as escape, holding a person against his will, assault, lying
14 to an employee, using abusive or obscene language to an
15 employee. They are all Class 1 misconduct.

16 Under 1096, they would all carry the same penalty.
17 We don't think those offenses warrant the same penalties.

18 We would like to see the Department be permitted
19 to promulgate regulations that would set a fixed number of
20 days for each specific violation. If there is a concern that
21 the Department might be heavy-handed or take away too much
22 earned time, set a limit by saying there should be a maximum
23 of so many days for a Class 1 and a maximum for Class 2 rather
24 than say all Class 1 gets the same amount of reprecation (sic).

25 We do not see, really, the usefulness of extending

1 earned time to light sentences, because when commutations
2 are granted, the traditional practice has been for the
3 parties aboard to recommend to the Governor to grant a
4 commutation in such a manner that the inmate will get out in
5 a fixed term, which is usually one or two years when the
6 commutation is granted. Earned time thus would be mathemati-
7 cal exercise. Certainly parties aboard would take that into
8 consideration when setting a release date.

9 That summarizes our position.

10 I appreciate the opportunity to come here. I am
11 available to answer any questions.

12 ACTING CHAIRMAN KOSINSKI: Representative Mayernik?

13 REPRESENTATIVE MAYERNIK: No.

14 ACTING CHAIRMAN KOSINSKI: Representative Piccola?

15 REPRESENTATIVE PICCOLA: Yes, Mr. Chairman.

16 BY REPRESENTATIVE PICCOLA:

17 Q Mr. Bernard, let me give you a scenario.

18 An offense which carries a mandatory five-year
19 minimum for which there is statutorily a ten-year maximum,
20 I am thinking perhaps that some type of offense that is
21 committed with a firearm, which is a mandatory five-year
22 minimum.

23 Under our current law, the judge must impose a
24 five to ten-year sentence; is that not correct?

25 A That's correct.

1 Q By applying good time, the judge doesn't even have
2 it -- under our current law, as it is currently written, the
3 judge can't even increase that to take into account possible
4 good time. He cannot increase the minimum.

5 A That's not correct, Representative Piccola. The
6 mandatory minimum law says the judge must impose the minimum
7 of at least five years. The judge may impose a minimum
8 beyond five years.

9 Q Not if the maximum he can impose is only ten years.

10 A That's correct, if the maximum was only ten.

11 Q That was my scenario.

12 A Okay.

13 Q In that circumstance, if you apply good time, you
14 have eliminated the mandatory minimum. You have desecrated
15 it.

16 A I wouldn't say that. You certainly haven't
17 eliminated it; you have changed it from being a flat five
18 years. It is five years minus whatever earned time the
19 Legislature allows a person to earn. You haven't eliminated
20 it. You haven't desecrated it.

21 Q It is no longer a mandatory minimum, because nobody
22 knows what the minimum is going to be for sure.

23 A It is a mandatory minimum. The judge would
24 certainly have the ability to calculate what the minimum
25 would be. If, for example, you were allowing as this Bill

1 proposes, five days a month for every month served, the judge
2 would sit down and calculate what it would be. Assuming the
3 inmate earned the maximum earned time possible, the judge
4 would then say that is the absolute minimum sentence, the
5 least amount of time that the person can serve, if I sentence
6 this person to five years. There would be a mandatory
7 minimum. It would just be a different sentence.

8 ACTING CHAIRMAN KOSINSKI: Just for the record, a
9 five-year sentence would become a four-year, five-month
10 sentence.

11 REPRESENTATIVE PICCOLA: Possibly.

12 ACTING CHAIRMAN KOSINSKI: Yes. I'm sorry. Four
13 year, two-month sentence. I was always bad at math. I was
14 a liberal arts major.

15 REPRESENTATIVE PICCOLA: Or something in between.

16 BY REPRESENTATIVE PICCOLA:

17 Q Your testimony here, and I quote from your prepared
18 text, "Earned time should be viewed not simply as a reaction
19 to overcrowding, but as a sound correctional approach which
20 should be implemented irregardless of population levels."

21 Don't we already have this sound correctional
22 approach that you refer to in requiring that an inmate
23 record within the institution be reviewed in terms of his
24 presentation to the Parole Board to determine whether he is
25 paroled at the end of his minimum? Don't we already have

1 that in Pennsylvania?

2 A To a limited extent. Not to the extent we're going
3 to have under earned time.

4 Q How is it limited?

5 A It is limited in that as Mr. Babcock mentioned in
6 his testimony, if you have an inmate with, say, a ten to
7 twenty-year sentence, the inmate does not see a great deal
8 of benefit.

9 Q Can I stop you right there. I recall he said
10 that. Taking -- I don't know which one of these Bills is
11 the most liberal, but the Senate Bill takes twenty percent
12 off of a minimum. So in the case of the Senate Bill, you
13 would be talking about an eight-year minimum instead of a
14 ten-year.

15 A Eight years and four months, I believe. Earned
16 time after that.

17 Q Eight years and four months. In terms of looking
18 at eight years, four months versus ten years, I really don't
19 see a whole lot of difference looking down the road for an
20 inmate who is incarcerated. It seems to me you have the
21 same approach in looking at eight years, four months versus
22 ten years versus twenty years versus something in between
23 ten and twenty.

24 A I think there is a very big difference of an
25 inmate looking down the road ten years for parole. He is

1 often taking the attitude I will get my act together in the
2 last couple of years. When I go before the Parole Board, I
3 want to look like I can make it on the street. Whereas,
4 earned time, earned time is something which a decision is
5 made every month. It's not like the Parole Board, where the
6 decision is made at the end of ten years. Every month a
7 person earns time. They can only have a limited amount of
8 time taken away.

9 Under most legislation I have seen, it is no more
10 than six months worth for a single offense. The inmate has
11 an incentive. He is made aware every month. He is notified
12 you have now earned X number of days this month. Second
13 month, you've earned --

14 The inmate is aware, constant incentive. The
15 inmate knows if he goofed off for eight years under earned
16 time and goes down for the last two years, he is not going
17 to do well. It's not something you can do well in the last
18 couple of years, and say, oh, gee, now let me out early;
19 whereas, the parole, a lot do have the attitude that the
20 last couple years I will get into vocational programs and
21 drug abuse programs, volunteer for everything and look good
22 before the Parole Board.

23 Q On page 2 of your testimony, you refer to the fact
24 that the inmate should receive some sort of credit for
25 participation in education, vocational, rehabilitation programs.

1 Do we currently have enough of those programs in
2 place that every inmate who wanted to could participate?

3 A Probably not. There are waiting lists for some
4 programs now.

5 Q How would you propose that be handled? If we can't
6 accommodate somebody, how would we --

7 A Well, as you know, Governor Casey has appointed a
8 task force that is looking into the whole issue or a variety
9 of issues in the correctional system. I think this is one
10 of the things addressed. The other thing is through earned
11 time, we would save more than enough money with the jails
12 that we wouldn't be building staff to pay for additional
13 programs in this area.

14 I think these would be much better an investment.

15 REPRESENTATIVE PICCOLA: That's all I have.

16 ACTING CHAIRMAN KOSIŃSKI: Thank you, Representative.
17 Staff?

18 MS. WOOLLEY: Yes.

19 BY MS. WOOLLEY:

20 Q Mr. Bernard, what is the Department's position on
21 the retroactive application of good time?

22 A We have no objection to a one-year retroactive
23 period. The only thing is, we would like to have sixty
24 months lead time as included in the Bill. I'm sorry, sixty
25 days lead time as included in the Bill in order to give us

1 time to make the calculations. If the Bill were to be
2 enacted tomorrow, we would have a problem going back. We
3 could do it easily within sixty days.

4 Q My understanding in discussions with Senate staff
5 regarding Senator Fisher's Bill, was that the Department
6 expressed reservation to the retroactivity clause. That's
7 why Senator Fisher removed it, because of a concern about
8 basically the headache it would cause in terms of computing
9 every inmate's misconducts and earned time.

10 A I discussed this at length with Commissioner
11 Desmond Owens. Part of my responsibility includes operation
12 of the computer system. I assure you two months lead time,
13 we would have no problem implementing.

14 Q My second question is with regard to Representative
15 Kukovich's Bill which sets forth -- I am not sure if you
16 reviewed the proposed amendment. The proposed amendment
17 sets forth taps that you would be allowed to basically
18 penalize the inmate with in terms of Class 1 misconduct,
19 Class 2 misconducts and the amount of days you would actually
20 be allowed. So there are maximums, basically. You could
21 work within those maximums.

22 A I haven't seen the amendment. From your description,
23 that sounds like what we would like to see.

24 Q You would prefer to see that sort of statutory
25 structure versus Senator Fisher's Bill which grants the

1 Department total discretion to set the amount of time the
2 inmate can be penalized?

3 A If I understand Senator Fisher's Bill, even within
4 that discretion, the Department would be expected to promul-
5 gate regulation.

6 Q That was my next question.

7 A In part of the regulations, we would want to set
8 regulations and guidelines so that we did not have that kind
9 of difference.

10 Q My question is, which do you prefer; the Legislature
11 to choose what the maximum shall be, or the Department to
12 choose to have that discretion and set it in regulation?

13 A I suppose I should say as a good bureaucrat, the
14 Department would like to have as much discretion as possible.
15 I haven't had a chance to discuss the question with Mr. Owens.
16 I would say we would not object if you chose not to give us
17 that much discretion and putting that kind of restriction
18 which you have discussed.

19 MS. WOOLLEY: Thank you.

20 ACTING CHAIRMAN KOSINSKI: Any further questions?

21 Michael?

22 BY REPRESENTATIVE EDMISTON:

23 Q Mr. Bernard, have you projected the likely impact
24 of House Bill 1096?

25 A No, I have not had an opportunity to do 1096.

1 Q Have you done it for Senate Bill 424 on the popu-
2 lation of the state facilities?

3 A We have done some rough projections. I emphasize
4 they are rough. We had some difficulty in gathering informa-
5 tion that would be needed to implement the Senate Bill. Our
6 estimates on Senate Bill 424 would indicate a reduction of
7 approximately one hundred ninety, two hundred ten inmates in
8 the first year that earned time is enacted. That's assuming
9 that there is no retroactivity clause. Within three years,
10 we would expect a reduction in the population of approximately
11 nine hundred, which is about five and a half percent. Within
12 five or six years, it would grow to about six or seven
13 percent reduction in total population and level off at about
14 seven percent.

15 Q Can you develop a projection for us on 1096?

16 A I think I could get that information to the
17 Committee by the middle of next week.

18 Q That would be most welcome, if you could.

19 ACTING CHAIRMAN KOSINSKI: Thank you, Mr. Bernard.

20 I would like to call Angus Love, Co-Convener,
21 Pennsylvania Legal Services Prison Task Force.

22 MR. LOVE: Good morning.

23 I come before this Honorable Committee on behalf of
24 a state-wide coalition advocating for the passage of earned
25 time legislation. The coalition represents a broad based,

1 loosely knit group of individuals and groups concerned with
2 the criminal justice system. It includes religious groups,
3 volunteer groups, social service agencies, advocacy groups,
4 labor organizations, and professionals in the correctional
5 field. Our list is too long to mention, so I have included
6 it at the end of my prepared written remarks.

7 Our group met approximately a half dozen times in
8 Philadelphia and a few additional times in Harrisburg over
9 the past year in order to formulate a comprehensive strategy
10 towards implementation of an earned time bill. The group was
11 largely organized through the efforts of the Pennsylvania
12 Prison Society.

13 Initially, we attempted to educate ourselves with
14 regard to all available literature on the subject of earned
15 time. This included various law review articles and studies
16 done by correctional experts. We then traced the historical
17 development of earned time legislation in Pennsylvania from
18 its initial conception in 1861, through its repeal in 1965.

19 We also reviewed what other states had done
20 regarding earned time legislation. Our goal is to develop
21 a piece of legislation that would achieve its designated
22 purpose.

23 While the group is strongly committed to the
24 passage of earned time legislation, there exists a variety
25 of options and variables that make it necessary to carefully

1 analyze all aspects of a proposed program so that such
2 legislation would achieve the desired effect.

3 Our group defined this desired effect as three-fold.
4 To give prison administration an additional tool in order to
5 maintain order and discipline within the institutions,
6 provide Pennsylvania with a sensible, well thought out plan
7 to alleviate already overcrowded prison conditions, and to
8 slow the growth of taxpayer spending in the field of correc-
9 tions.

10 My remarks today will be confined to the various
11 alternatives considered by the coalition, the decisions made
12 on those alternatives, and our collective belief in the
13 necessity of such a legislation in Pennsylvania.

14 Initially, we reviewed a number of publications
15 which I have listed in the Appendix B of my proposed remarks.
16 After reviewing that material, our group attempted to out-
17 line a variety of options and alternatives based upon these
18 studies and examples from other states. During the meetings
19 we listed the various topics of concern, alternatives with
20 regard to each topic, discuss the alternatives and attempt
21 to develop a consensus as to what best would serve the
22 interests of our group.

23 I would like to go through a list of topics that
24 we discussed and give a little bit of an explanation of what
25 the discussions were and what the consensus was. Initially,

1 we discussed responsibility of defining the earned time
2 program. The majority of the states have delegated to their
3 Legislature with the obligation of developing earned time
4 programs. A minority of states have chosen to delegate the
5 responsibility to the Department of Corrections. It was the
6 consensus of our group that this would best be left to the
7 Legislature.

8 The second consideration involved the type of rate
9 that such a claim would have. We debated whether a flat rate
10 or graduated rate would best serve the interests of the group.
11 According to our calculations, eighteen states currently
12 impose a flat rate of earned time credit. Essentially, this
13 means that whatever rate is decided upon covers any and all
14 inmates, regardless of sentence or classification.
15 Thirty-three states favored a graduated rate with anywhere
16 from two to eight distinct categories. Discussions in favor
17 of a flat rate revolved around the administration of the
18 program and the desire to keep the system as simple as possible.
19 Arguments in favor of an accelerated rate were many. As
20 prison populations have undergone a rapid expansion in the
21 eighties, long-term inmates represent the fastest growing
22 segment of that population.

23 The arguments in favor of an accelerated rate which
24 allows for a faster accumulation of good time for persons with
25 longer sentences are as follows. Incentive for long-termers.

1 Long-term inmates have a greater need for incentives due to
2 the lengthy sentences and possibility of disillusionment.
3 The Pennsylvania study entitled "Long-Term Offenders in the
4 Pennsylvania Correctional System" by Unger and Buchanan noted
5 that staff reported diminished morale, motivation, depression,
6 and boredom as problems associated with managing long-term
7 inmates.

8 Thus there exists a greater need for positive
9 incentives for the class of inmates. An accelerated good
10 time program would provide just such a management tool for
11 correctional administrators.

12 Security costs. Long-term inmates are generally
13 held in a more maximum security setting. As long-termers
14 continue to grow within the system, more maximum security
15 facilities are needed. The United States Justice Department
16 study notes for every new correctional position created, five
17 new individuals must be hired.

18 Medical costs. Long-termers tend to experience
19 significantly larger medical costs than other inmates. This
20 is due to the fact that as the inmates grow old, the medical
21 costs increase dramatically. Problems such as heart condi-
22 tions and life-threatening situations can be extremely costly
23 to the Department of Corrections.

24 Control problems. The literature and my experience
25 suggest that long-termers' political power within an institu-

1 tion often outweighs their numbers. This is due to their
2 familiarity with the institution, its day-to-day operations,
3 ability to manipulate and penetrate blackmarketing, longstand-
4 ing alliances with other inmates, and better organization.

5 In order to counterbalance their disproportionate
6 influence, accelerated good time would provide management
7 with an additional tool of providing positive incentives for
8 good behavior on the part of long-termers.

9 Bed space. With the nearly sixty percent increase
10 in the state population in the eighties, there is reduced
11 inmate turnover and an increase in need for additional bed
12 space. Legislation such as mandatory sentencing, sentencing
13 guidelines, and new proposals for tougher penalties for drug
14 users have and are coming about without sufficient knowledge
15 of their long range implications.

16 The United States Justice Department's report
17 cited in the Appendix regarding long-term inmates notes that
18 such legislation should include the cost of implementation.
19 Only now are we beginning to see the overall effects of these
20 legislative initiatives.

21 Recently, at the State Correctional Institute at
22 Graterford, at which I have occasion to visit on a regular
23 basis, embarked upon a sixty million dollar capital improve-
24 ment project which only will provide temporary relief to
25 overcrowded conditions. Are we willing to make such expendi-

1 tures on a regular basis?

2 Privacy issues. Long-teners, especially lifers,
3 are nearing the date when they will be double celled in
4 Pennsylvania. At Graterford, there are currently between
5 three and four hundred lifers. If the population continues
6 to expand without counter measures, they will soon be double
7 celled.

8 This will cause an increase in internal tension and
9 the potential for costly and time-consuming litigation.
10 It is for these reasons the group favors an accelerated rate
11 of earned time.

12 We also decided that the three-tiered approach was
13 a reasonable and manageable compromise between a flat rate
14 and an extensive system such as the eight-tiered one in New
15 Jersey.

16 Rate of earned time. A review of earned time
17 legislation in other states indicated a wide range of options
18 on this topic. The most generous program from the inmate
19 perspective was found in Alabama, which gives seventy-five
20 days off for every thirty days of good behavior for inmates
21 classified in the lowest security setting. The average rate,
22 as suggested by the Jacobs Law Review article and the systems
23 currently in place in California and New York set a ratio of
24 one day off for three days of good behavior.

25 The least generous include our state, Hawaii, and

1 to a certain extent, Georgia, where there is no such legisla-
2 tion. In the spirit of compromise we settled upon a one to
3 three ratio for the middle category of our three-tiered
4 graduated scale, that scale being five days off for sentences
5 of one to five years, ten days per month off for sentences of
6 five to ten years, and fifteen days off for sentences longer
7 than ten years.

8 Meritorious earned time. Currently, the federal
9 system has a two-tiered approach to this issue. In addition
10 to a statutorily defined graduated rate of good time, the
11 Attorney General has authorized via eighteen U.S.C. 4162,
12 quote to deduct extra good time credit for performing
13 exceptional meritorious service or performing duties of out-
14 standing importance in connection with industrial -- excuse
15 me, institutional operations or for actual employment in an
16 industry or camp end quote.

17 A number of states have followed the federal
18 example in providing for meritorious good time. As with other
19 issues, there is little continuity in the way in which states
20 approach this issue. Some states such as North Carolina
21 and Oklahoma only have meritorious program. Eleven of the
22 eighteen states that have a flat rate system include
23 meritorious programs.

24 The majority of the states that have a graduated
25 rate also have meritorious programs.

1 The assumption accompanying meritorious good time
2 involves the inmate seeking benefit for himself and others
3 through endeavors above and beyond the normal prison routine.
4 No near consensus was established in our group with regard
5 as to what activities should warrant consideration for
6 meritorious good time. Thus, it was determined that we should
7 delegate this authority to the Department of Corrections,
8 who is best able to ascertain what type of activities would
9 best be served for meritorious good time.

10 Exemptions. Another issue debated by the coalition
11 involved who should be covered by such a program and who
12 should not be covered. Once again, the states showed a
13 variety of different methods of implementation and exclusion,
14 the most controversial of which involved lifers. Most states
15 specifically exclude lifers from any form of earned time
16 credit. Some states indicate that lifers should be included
17 but restrict their participation.

18 There was much debate pro and con within our
19 coalition on this issue. A number of groups representing
20 lifers' interest strongly urged us to include lifers in the
21 program. Others fearing a potential backlash, suggested
22 that we exclude them from our program.

23 In order to compromise between the two views, it
24 was our position that lifers would be excluded until they
25 are commuted by the Governor, at which time they would receive

1 earned time credits due them.

2 Other categorical exclusions included habitual
3 offenders, sexual offenders, parole violators, inmates in
4 county jails, and pretrial detainees. After debating each
5 of these categories, it was decided that a program which
6 included such exceptions would be extremely difficult to
7 manage and subject to great debate. Thus, it was our
8 recommendation not to include any of the aforementioned
9 categories in a model bill.

10 Forfeiture. Forfeiture of earned time credit was
11 another key issue raised by the coalition. We agreed in
12 principle that forfeiture should proceed along the same
13 lines as the accumulation rate. Thus, if an inmate is
14 sentenced to a six-month term for disciplinary infraction,
15 the loss of earned time should be equivalent to the amount
16 of earned time that could be gained for a similar period of
17 time. Additional days would be lost for repeated violators.

18 The use of a vested system which allows for earned
19 time to be credited as earned, appears to be the fairest
20 method which will still allow for the use of good time as an
21 incentive for good conduct and as an effective management
22 tool.

23 Finally, I would like to discuss a few miscellaneous
24 provisions that we also went over. Few states set the rate
25 based upon classification system as opposed to the length of

1 sentence. Inmates classified to the least secure setting
2 achieved the greatest number of credits. Those in more
3 secure areas are held to a slower rate of accumulation.

4 As this would not address the concerns of long-
5 termers, it was our belief that such a system would not go
6 towards addressing many of the concerns raised by our members
7 and the various studies on the subject.

8 Another issue involved retroactivity. Many favored
9 a one-year retroactivity, while others favored implementation
10 upon the date of passage. We did not come to any conclusion
11 on this. We would defer to the Department of Corrections on
12 this issue.

13 Another debate involves whether to use the maximum
14 sentence, the minimum sentence, or both. Essentially, we
15 agreed that we should use the minimum, and it's optional as
16 to whether or not to use the maximum. I believe Mr. Jacobs
17 of the Parole Board will have some input on this subject,
18 also.

19 Finally, in conclusion I would like to reaffirm the
20 coalition's commitment to the passage of an effective earned
21 time program in Pennsylvania. Over the past decade, the
22 legislative, judicial and executive branches have responded
23 to the majoritarian cry for punishment of criminal offenders.
24 Our judges have handed out sentences considerably longer than
25 those imposed for the same crimes of our European neighbors.

1 The Legislature, through the passage of the
2 sentencing guidelines and the mandatory sentencing act, have
3 further increased the incarceration rate without a clear
4 understanding of the costs of such actions. The previous
5 Governor departed from past practice and virtually rejected
6 commutation as a viable release mechanism, resulting in the
7 greatest accumulation of long-termers and lifers in Pennsyl-
8 vania correctional history.

9 Our prison population has expanded over sixty
10 percent during this decade. Pennsylvania has gone along
11 with other states in developing a greater reliance upon
12 incarceration as the primary tool in fighting crime. The
13 United States is already incarcerating individuals at a rate
14 higher than any other industrialized nation, with the
15 exception of South Africa and the Soviet Union.

16 Despite these efforts, the crime problem continues.
17 As the numbers in the prison grow, day-to-day operating
18 expenses increase, as well as the need for capital expendi-
19 tures necessary to expand existing facilities. A study of
20 the Pennsylvania Commission on Crime and Delinquency indicates
21 that the problem will get worse in the near future if
22 remedial measures are not taken.

23 As Pennsylvania is one of only two jurisdictions
24 in this country that does not have an earned time program,
25 it would appear that such a program should be the first step

1 towards a sensible reduction in prison population.

2 All too often, prison reform occurs only after a
3 major disruption or court intervention. The majoritarian
4 cry for punishment should not drown out the voices of
5 professional correctional experts who call for the implementa-
6 tion of both a meritorious and an earned time program.

7 The voices of the inmates themselves should also be
8 heard as ninety-five percent of these individuals will
9 eventually be released back into the society. Their pleas
10 call attention to the continued dilution of services to the
11 inmates and the increased space limitations upon their
12 living environment.

13 Finally, we ask you to consider the pleas of our
14 coalition which represents a broad cross-section of society.
15 Our desire is to see an effective and workable earned time
16 program that will reduce overcrowding, provide correctional
17 administration with an effective tool to manage increasingly
18 volatile populations and to curtail the already expanding
19 correctional budget.

20 Thank you.

21 ACTING CHAIRMAN KOSINSKI: Thank you, Mr. Love.

22 To correct the record, on page 7, you mentioned
23 that Alabama allowed seventy-five days off for every thirty
24 days. Isn't that 7.5?

25 MR. LOVE: I thought it was seventy-five.

1 ACTING CHAIRMAN KOSINSKI: Seventy-five?

2 MR. LOVE: For minimum security inmates. I have
3 the data. I can check. I understand it is seventy-five.
4 There is a wide range.

5 ACTING CHAIRMAN KOSINSKI: That's amazing.
6 Questions? Representative Piccola.

7 BY REPRESENTATIVE PICCOLA:

8 Q Mr. Love, it is evidenced from your testimony that
9 your group made an extensive study of the laws of other
10 states.

11 Could you tell us how many other states do as
12 Pennsylvania does, and that is restrict the sentencing judge
13 to imposing a minimum sentence of no longer than one-half of
14 the maximum?

15 A I do not have that data available. It seems, as I
16 said earlier, there is a variety of programs in every state.
17 It is unique in the sentencing guidelines and the earned time
18 program and the parole consideration. I do not, in the data
19 I read, I do not see any definite figure with regard to that
20 issue.

21 Q Do you have any access to data that might contain
22 that information?

23 A I would be happy to review it and see if there is
24 anything in the material we have available.

25 Q Do you think that information is relevant?

1 A Certainly.

2 Q To our deliberations?

3 A You have to take the whole package into consideration.
4 The sentencing guidelines, parole considerations, good time
5 legislation, the existing facilities, the extent of over-
6 crowding, budget.

7 I think everything has to be looked at in a package.

8 Q Let me ask you this.

9 Did you review any information that would indicate
10 how many states make an inmate immediately eligible for
11 parole upon the serving of the minimum sentence, or do they
12 all do that?

13 A I believe they all do who are eligible, yes.

14 Q Immediately become eligible for parole?

15 A That's my understanding.

16 Q Do you have any statistics as to the percentage in
17 each state that are paroled at the end of their minimum
18 sentence?

19 For example, I think the Pennsylvania statistics,
20 and Mr. Jacobs can correct me if I am wrong, are around
21 sixty-four percent. Something in that range. Are immediately
22 paroled upon eligibility or very shortly thereafter.

23 A I don't have that information.

24 Q Do you have any data that you could review to find
25 out?

1 A **Certainly.**

2 Q **Have that information and provide it to us?**

3 A **Certainly.**

4 **REPRESENTATIVE PICCOLA: Thank you.**

5 **ACTING CHAIRMAN KOSINSKI: Staff?**

6 I would like to acknowledge the presence of my
7 colleague, Representative Joseph Preston of Allegheny County.
8 He is here because of his interest in the subject matter
9 today, even though he is not a member of the House Judiciary
10 Committee.

11 **BY REPRESENTATIVE HAYERNIK:**

12 Q **I have a question.**

13 In South Carolina, for thirty days you get seventy-
14 **five days off?**

15 A **Alabama.**

16 Q **Alabama.**

17 A **Yes. I have confirmed that with the data I have.**
18 **It is seventy-five days off for every thirty days served, of**
19 **Class 1 inmates.**

20 Q **That means that that's minimum security you are**
21 **talking about, two years and under, right?**

22 A **Well, not necessarily. The classification system**
23 **takes into account sentence. But that's not the only factor.**
24 **It could be the type of crime committed, previous record,**
25 **a lot of things. Psychological profile. So on and so forth.**

1 Classification is something done after the individual comes
2 into the institution, done by the institution.

3 Q In essence, though, if an individual is sentenced
4 for two years, and we're looking at thirty to seventy-five,
5 that's two and a half to one, basically is what you are
6 getting at. Two and a half days off for every one day served.

7 If you have a sentence of two years, if you serve
8 six months, you get twelve and eighteen months off; is that
9 correct? Does that sound right?

10 I mean, why? You get fifteen months off, okay.
11 What happens if an individual commits a crime, say a multiple
12 crime with three or four misdemeanors. The police officers
13 arrest him. He is adjudicated guilty. Let's say that he
14 stole a car, and then he burglarized a house and then
15 receiving stolen property and maybe sell it to somebody else.
16 He has all these crimes. Next thing you know, he ends up in
17 court.

18 The Public Defender or his attorney decides that,
19 well, we're going to plea bargain. Let's eliminate three of
20 the charges and plead one of them. Let's give him a two-year
21 minimum sentence.

22 Now in Alabama, he gets away with three crimes, in
23 my opinion. They sent him to jail for two years and we bring
24 in this system of thirty to seventy-five. Instead of him
25 spending two years for four crimes which he initially committed

1 and was found guilty of -- well, he pleaded one. Now he only
2 spends six months. Does that seem right?

3 A No, it doesn't seem right. I would like to say
4 two things on that. We're talking a ratio of one to two and
5 a half in Alabama. Our group is favoring a ratio of three
6 to one. So we're not suggesting a rate anywhere near as
7 liberal as Alabama.

8 The second thing I would like to point out is I
9 recall Judge Johnson had to judicially take over the Alabama
10 prison system due to overcrowding conditions. Maybe there is
11 some historical reason why they have that liberal program.
12 That's all I can say on that.

13 Q Even in Alabama -- let's go to the Pennsylvania
14 system.

15 Even to arrest somebody, by the time they get
16 through the court system, by the time they are adjudicated
17 guilty and all the plea bargaining and everything that's done,
18 by the time they get to their sentence and we in Pennsylvania's
19 General Assembly enacted a mandatory minimum sentencing.

20 Isn't this another way of circumventing mandatory
21 minimum sentencing by putting good time in?

22 A I don't believe so.

23 Good time only gets you to your parole eligibility
24 date. It is not an automatic release mechanism. I don't
25 think it would override, especially in light of recent failure

1 of constitutional challenges to mandatory sentencing law,
2 I don't believe that this law would override the mandatory
3 sentencing. I think if an individual became eligible prior
4 to that date, there may be a strong legal ground to continue
5 to hold him until he has done his mandatory time.

6 Q He must -- is that written in the context of the
7 Bill; he must do his mandatory minimum?

8 A It's not written in the context of the Bill, because
9 earned time is not a release mechanism per se. It gets a
10 certain potential release. Then other factors such as parole
11 consideration and parole plans, job, home and, perhaps, the
12 mandatory sentence would all then come into play after the
13 good time credits have been accumulated.

14 Q But it is possible that an individual could be
15 eligible for parole before their mandatory minimum under this
16 program?

17 A That is possible. It raises a difficult issue.

18 Q How do we address that?

19 A I am not sure the Bill itself would have to address
20 it. I think that if it's clear that you have to do five
21 years, then even if you are eligible, the five year thing
22 would override any kind of eligibility, and you wouldn't be
23 released until you did the time.

24 Q So in a case where there is a mandatory minimum,
25 this good time really wouldn't apply?

1 A That's my understanding.

2 REPRESENTATIVE MAYERNIK: No further questions.

3 ACTING CHAIRMAN KOSINKI: Mr. Edmiston.

4 BY REPRESENTATIVE EDMISTON:

5 Q House Bill 1096 addresses, as I understand it, only
6 inmates who are state sentenced. I'm sorry, Senate Bill 424
7 addresses only inmates who are state sentenced, either in
8 state institutions or county institutions under a state
9 sentence.

10 However, House Bill 1096 would apply to both county
11 inmates and state inmates alike, as I understand it.

12 Do you have a preference on that point?

13 A Yes. I think that a uniform system -- and we did
14 propose an amendment to strike the word state sentence and
15 suggested all sentences under the Pennsylvania Crimes Code
16 be covered. That way, you have a more uniform system as a
17 lot time state prisoners are held in the county jails beyond
18 their two-year suggested minimum.

19 It would appear for equal protection arguments that
20 county sentences should be included. We would also favor
21 inclusion of pretrial detention. That if and when they are
22 found guilty, they receive credit for the time served prior
23 to trial.

24 MR. EDMISTON: I have nothing further.

25 ACTING CHAIRMAN KOSINSKI: Thank you, Mr. Edmiston.

1 I want to point out that Representative Preston is
2 a co-sponsor of this Bill, along with myself.

3 Thank you, Mr. Love.

4 No further questions from the staff?

5 Thank you, Mr. Love.

6 The next testimony will come from the Pennsylvania
7 Wardens Association. We have two people testifying. Paul
8 Sheasley, I was told, was here.

9 Is that correct, ma'am?

10 MS. SHEASLEY: Yes.

11 ACTING CHAIRMAN KOSINSKI: And Mr. William Laughner,
12 who is the Warden of the Armstrong County Prison.

13 MS. SHEASLEY: Honorable Representatives, thank
14 you.

15 I am testifying in reference to the Pennsylvania
16 Prison Wardens Association position on earned time legisla-
17 tion.

18 I have been asked to report to you on behalf of
19 the Pennsylvania Prison Wardens Association concerning the
20 matter of earned time legislation that is currently before
21 the General Assembly of this Commonwealth.

22 We discussed this issue in great detail at the May
23 meeting of the Wardens Association, and at that time, without
24 a single dissenting vote, the organization passed a resolution
25 supporting the concept of good time, specifically making

1 reference to the Senate Bill introduced by Senators Fisher
2 and O'Pake.

3 At the time of our discussion of earned time, we
4 were not aware of any legislation in the House of Representa-
5 tives. But now, of course, we are well aware that various
6 bills have been introduced and that hearings will be held
7 today in Pittsburgh.

8 Irregardless of the different perspectives contained
9 in the Senate and House Bills, the Pennsylvania Prison
10 Wardens Association absolutely and without condition supports
11 the concept of earned time in Pennsylvania. It is a tool
12 that has been missing for many years to assist correctional
13 administrators in operating their facilities, with special
14 interest towards staff safety, institutional management,
15 creating some positive expectations on the part of well
16 behaved prisoners, and in general, creating an environment
17 that is conducive to safe and efficient institutional
18 operation.

19 As you certainly are aware, Pennsylvania is one of
20 the few states in this nation that has not enacted some form
21 of earned time legislation, and the time has certainly come
22 now to develop what has been accepted throughout this nation
23 for many years.

24 The Pennsylvania Prison Wardens Association
25 approaches the issue of earned time, as might be expected,

1 from the perspective of those who are responsible for the
2 safety and security of the Commonwealth, state and county
3 correctional institutions. Correctional administrators have
4 known for many years that providing some impetus for good
5 behavior, namely some formula for earned time, helps bring
6 about a positive institutional environment.

7 Most inmates will respond to the potential for
8 reasonable sentence reduction as a result of good behavior
9 and positive program involvement. This situation creates a
10 significantly improved institutional climate, and this
11 improved climate is definitely related to reduced levels of
12 violence as it affects both staff and inmates.

13 One must never forget the thousands of state
14 residents working in our correctional institution. They
15 should not have to be subjected to environments without hope
16 or where a sense of violence and desperation prevail. A
17 reasonable and moderate earned time formula gives hope to
18 individuals who have chosen to behave within the correctional
19 environment and have chosen to either work or participate in
20 treatment and self-growth programs.

21 It does not guarantee that there shall be no
22 criminality in the future, but it certainly recognizes that
23 positive performance is a step in the right direction and
24 that there is some positive gain to be earned from following
25 institutional regulations and from participating in appropriate

1 programs.

2 Our overcrowded institutions always carry the
3 potential for violence and even the potential loss of lives
4 for staff and inmates alike. Some reasonable and appropriate
5 methodology for generating earned time offers most inmates
6 a good reason to cooperate and to avoid those inmates who
7 would undermine institutional safety and security by
8 organizing their fellow prisoners in some form of insurrection
9 or day-to-day misconduct.

10 It is a simple concept, and obviously this is why
11 it has been so widely accepted from one end of this nation to
12 another. Correctional administrators, namely the wardens
13 and superintendents of Pennsylvania institutions, need some
14 tool to help them, especially during this period of substantial
15 and dangerous overcrowding.

16 We leave to the General Assembly the choice of an
17 appropriate methodology and formula, for we believe that
18 while the Senate Bill creates an extremely rational and
19 appropriate methodology, there certainly could be others.
20 Formulas and methodologies being discussed in the House of
21 Representatives were not available to us at the time of our
22 meeting in May, so we would not specifically respond to the
23 particular formulas contained in current legislation before
24 the House.

25 What is important, is that some earned time legis-

1 lation be passed and that it be passed soon, for the problem
2 in our state and county institutions is dramatic and it has
3 only been through extraordinary good management coupled with
4 a good deal of luck, that significant problems have not
5 developed in Pennsylvania prisons and jails as a result of
6 the gross overcrowding that has characterized the criminal
7 justice system in this state.

8 Revocation of earned time. The Pennsylvania Prison
9 Wardens Association certainly supports a method for removal
10 of good time already earned as a result of misconduct and
11 misbehavior. This should be instituted at the institutional
12 level, not through some higher authority, for the inmate must
13 respect those who operate the institution in which he/she is
14 incarcerated. Therefore, the removal of earned time already
15 awarded and any restoration of earned time, must rest solely
16 at the institutional level.

17 The Wardens Association would not support methodolo-
18 gies that remove this function from the institution in which
19 the individual is being held, for that would create a system
20 where those who work most closely with the inmate feel
21 removed from the process. Due process guarantees are already
22 a part of the institutional operation as a result of a long
23 constitutional history for conducting disciplinary hearings.
24 Inmates would quickly come to understand the basic policies
25 to be followed and the types of infractions and behaviors

1 that would lead to a revocation of earned time.

2 Support for the development of earned time at the
3 county level.

4 County corrections has often gone unnoticed by the
5 General Assembly, especially as the Senate and House have
6 responded to problems at the state level.

7 As I am sure you are aware, much of the new
8 criminal justice legislation has taken an enormous toll upon
9 county population levels, and county prison population levels
10 have exploded, creating substantial financial hardships
11 upon local jurisdictions and the potential for difficulty in
12 many of our larger counties where overcrowding has become
13 excessive.

14 The legislation should provide some approval for
15 the development of earned time programs within county
16 institutions. While some counties already operate earned
17 time programs, others feel that the general approval for
18 developing such a concept should appear in state-wide legis-
19 lation. Therefore, the Pennsylvania Prison Wardens Associa-
20 tion earnestly requests that any legislation that is ultimately
21 passed contain a potential for a reasonable good time program
22 within the county institutions of this Commonwealth.

23 Summary and conclusion.

24 The Pennsylvania Prison Wardens Association extends
25 its congratulations to the Senate of Pennsylvania for passing

1 an earned time bill and also extends its congratulations to
2 the House of Representatives for introducing various draft
3 bills and for moving forward to complete work on earned time
4 legislation.

5 This type of legislation is long overdue, and from
6 our perspective, will have an impact not only on overcrowd-
7 ing, but on the absolutely crucial issues of life safety that
8 affect the men and women who work within our institutions
9 and those who reside there as a result of court commitment.

10 We urge the House of Representatives to move
11 forward quickly and pass a bill that upon concurrence by the
12 Senate will become law in our Commonwealth.

13 Speaking for the Pennsylvania Prison Wardens
14 Association as their spokesperson on this matter, I want to
15 let you know that we are available to assist in any way you
16 deem appropriate to move this issue forward.

17 We are pleased that the Pennsylvania Prison Wardens
18 Association can appear before the House Judiciary Committee
19 to express our concerns and our support for the work you are
20 doing on this crucial issue. Many within the Pennsylvania
21 Prison Wardens Association believe that earned time legisla-
22 tion will be the single most important legislative initiative
23 impacting upon corrections in this Commonwealth in the past
24 decade or beyond.

25 Thank you for your interest and your willingness to

1 listen to our concerns.

2 On behalf of the Pennsylvania Prison Wardens
3 Association, I remain sincerely yours, Arthur M. Wallenstein
4 of the Legislative Committee, Pennsylvania Prison Wardens
5 Association, Director of Bucks County Department of Corrections.

6 Thank you. If you have any questions, William
7 Laughner will try to respond to those.

8 ACTING CHAIRMAN KOSINSKI: For the record, I would
9 indicate that Ms. Sheasley is the Associate Warden of the
10 Armstrong County Prison.

11 Mr. Laughner, would you want to take the microphone.
12 I have a few questions.

13 (A brief recess was held.)

14 ACTING CHAIRMAN KOSINSKI: I would like to call
15 the meeting back to order.

16 A couple questions, Mr. Laughner.

17 BY ACTING CHAIRMAN KOSINSKI:

18 Q First one has to do with the revocation of earned
19 time.

20 I would be against the proposal to put it back
21 into the directional institution level, because then we would
22 have the disparity of classifications, disparity of earned
23 time across the Commonwealth.

24 I can see a situation where I believe some county
25 prisons house inmates from other counties; is that correct?

1 A Yes, that is correct.

2 Q I can see a system where some prisoners would have
3 one system of earned time and another system of earned time.
4 That defeats one of the major reasons for having earned time
5 credit.

6 Everybody should be created equally in the system.
7 Would you care to comment on that?

8 A First of all, I would like to apologize that Arthur
9 Wallenstein from Bucks County and Chairman of the Legislative
10 Committee, could not be here. Art is well versed in this.
11 I am sure youn'se all know him.

12 I am third Vice President of the Association and
13 was called in on this real quick: Art couldn't come over.

14 My comment is the formula the General Assembly
15 would like to work out is fine with the Association. We're
16 not going to say we want six days, ten days. We do believe
17 in earned time. If there was a formula, then if Armstrong
18 County, which I held prisoners for various counties and even
19 federal authorities, there would be a uniform system. We
20 would go by that uniform system.

21 Yes, we would like to have the earned time in the
22 county stay the same as state level.

23 Q Could you tell us about your earned time system in
24 Armstrong County?

25 A We have no earned time system in Armstrong County.

1 One of the neighboring counties, Westmoreland County, who I
2 have talked to the Warden down there, he has went to earned
3 time on summary offenses.

4 Q The information we have from the Prison Society is
5 that Armstrong does use earned time.

6 Is that incorrect, then?

7 A That is incorrect. We do not have an earned time
8 system in Armstrong County. Westmoreland County, the Warden
9 down there instituted one on summary offenses which they
10 have given the Warden sole authority to make decisions on
11 summary offenders. It is an inmate's behavior management
12 tool without question, because we can tell through the trustee
13 program, inmates being classified just at the trustee status,
14 inmates getting out on work release. It is a management
15 tool.

16 Somebody will have the opportunity to be released
17 earlier because of good behavior, because of programs, getting
18 involved in programs; given a little initiative and
19 incentive, we believe that the system would work.

20 ACTING CHAIRMAN KOSINSKI: Questions?

21 Representative Preston.

22 BY REPRESENTATIVE PRESTON:

23 Q I am curious. We're starting to talk more about
24 this private prison system.

25 A I thought that was dead.

1 Q We've already been known to raise things from the
2 dead from time to time.

3 I am looking at it because I have heard statements
4 about you are worried about losing control. In the sense
5 without this uniformity and such things as this does happen.
6 If we have outside contractors, I can't imagine how can you
7 monitor someone else. I was hoping we could possibly get you
8 really to agree that with the great state per se monitoring
9 everybody, it would be a little bit better and uniform.

10 How would you do that, manage it, if you did have
11 private prisons and they were under your jurisdiction within
12 your county. How are you going to monitor as far as earned
13 time?

14 A That's a very hypothetical question.

15 Q It's more than hypothetical. It's possible in
16 the next year.

17 A Well, anything that would be private certainly
18 wouldn't fall in the color of a ward, color of law. I know
19 the moratorium and privatization --

20 Q Are you telling me that under the private prison
21 system, that the Warden wouldn't be over that, over those
22 as far as your county is concerned and responsible for that
23 on a contractual basis?

24 A You are saying if a county would contract private
25 prisons?

1 Q Yes. And I am bringing this that this is something
2 to think about as we're trying to establish the uniformity
3 of it. I can understand every local government entity
4 wanting to keep as much control as possible.

5 A The prison is now run under Title 37. I am sure
6 that the private prison would also have to fall under that
7 if that type of legislation was ever enacted.

8 It certainly is something that should be uniform
9 for everybody if privatization does happen.

10 ACTING CHAIRMAN KOSINSKI: Representative Mayernik.
11 BY REPRESENTATIVE MAYERNIK:

12 Q I have a question.

13 Right now you have prisoners incarcerated six
14 months, nine months?

15 A Up to two years.

16 Q They are prisoners sentenced for two years. Under
17 the present system, if he doesn't do anything wrong, he gets
18 out in a two-year period, right? He gets out after the
19 sentence?

20 A Two year maximum sentence.

21 Q Let's say he has some offense. What happens then?

22 A You are talking about misconduct inside the
23 institution?

24 Q Yes.

25 A That is on his record. If he is found guilty and

1 depending on the type of infraction, he would be dealt with
2 through disciplinary hearing. Yes, that would impact on
3 losing earned time from this Bill if this legislation is
4 passed. This is one of the reasons the Wardens would like to
5 have a lot of input on taking away good time or saying, yes,
6 this person we agree with good time. He should get his six
7 days, four days, whatever the formula might be.

8 If there were other criminal charges filed, then
9 you are starting all over again.

10 Q Isn't this a reversal of society rules here? It
11 seems that what you are saying is in your job, if you do a
12 good job, do you get less time off your pension? Do you have
13 less time you have to go before you get your pension? Do you
14 get a reward, get candy bars, anything in the end? No, but
15 if you screw up, you get axed, right?

16 Why are we doing this?

17 A Two reasons. One is an inmate management, behavior
18 management device. Two, it's a relief valve for the prisons
19 that are about ready to blow up.

20 REPRESENTATIVE PRESTON: Mr. Chairman?

21 ACTING CHAIRMAN KOSINSKI: Representative Preston.

22 REPRESENTATIVE MAYERNIK: I don't understand.

23 That doesn't happen that way in society. Why are we treating
24 these people differently?

25 REPRESENTATIVE PRESTON: I can understand my

1 colleague because he was a policeman. He feels that if he
2 has done his job and seen people come back out, then they are
3 not willing to pay the time for the crime they have done.

4 BY REPRESENTATIVE PRESTON:

5 Q I am trying to imagine that you are telling me for
6 budgetary reasons you are supporting this. I am going to
7 have problems with that.

8 A Budgetary would be a factor. The two factors is
9 there is people in there that administrators feel could be
10 released a little earlier because of their behaviourment,
11 involvement. If they do have a problem, naturally their
12 maximum sentence which they're going to be paroled on, they
13 will come back to the sentence because the Parole Board is
14 going to violate them.

15 Q What if --

16 A You are putting me on the spot. I am not prepared
17 to answer these questions.

18 Q What if someone has earned credit time and it's
19 your estimation that they are not ready to go back out;
20 what do you do?

21 A That would be an institutional, the treatment, the
22 staff, would make that determination for various reasons.
23 I feel I would go along with the treatment staff. There
24 would have to be some reason in the formula for him or her
25 not to get the six days or four days, or whatever.

1 **REPRESENTATIVE PRESTON:** Let me understand. Under
2 this Bill, if a person has earned good time and administra-
3 tion feel that they are really not ready, is there a chance
4 to override that, or does it have to be?

5 **REPRESENTATIVE EDMISTON:** You earned the time, it's
6 yours. It's yours in terms of making you available for
7 parole. Then you would get to the parole determination at
8 an earlier date; not necessarily be paroled.

9 **ACTING CHAIRMAN KOSINSKI:** Representative Piccola.

10 **REPRESENTATIVE PICCOLA:** Thank you, Mr. Chairman.

11 First for the record, let me state that I have the
12 greatest respect and admiration for Art Wallenstein, who is
13 the Chairman of your Legislative Committee. I served with
14 Art on the Pennsylvania Commission of Crime and Delinquency.
15 He is an outstanding and extremely well qualified representa-
16 tive of your association. I have all the respect in the
17 world for him, in particular, and I have a particular respect
18 for those of you who are wardens in our county and state
19 institutions, because I consider you folks to be on the front
20 line of the criminal justice system.

21 Everyone who has any dealings with that system
22 should know that we owe a great debt of gratitude to the
23 wardens of Pennsylvania. However, I have to take exception,
24 and I've expressed this exception to Art personally on a
25

1 couple of occasions with the position, and I've also
2 expressed that exception to my own warden in Dauphin County
3 when he lobbied me for this bill.

4 BY REPRESENTATIVE PICCOLA:

5 Q I would like for the record, to ask a couple of
6 questions which I think you can answer.

7 I want the record to be clear.

8 Isn't it correct, and I think we have had testimony
9 to this effect before, that under the current status of the
10 law with the Legislature doing absolutely nothing, every
11 county in the Commonwealth of Pennsylvania could, if they
12 desired, implement a system of good time in their particular
13 county. In fact, some have already done that.

14 A I believe you are correct.

15 Q Isn't it correct, that the authority for creating
16 that system is the county Courts of Common Pleas in various
17 counties of the Commonwealth?

18 A Yes.

19 Q In other words, the judges have it within their
20 power to create a system of good time for county-sentenced
21 prisoners?

22 A Yes.

23 Q In Armstrong County, or any other county for that
24 matter, isn't it also a fact that unlike in the state system,
25 when a county prisoner is sentenced, he is also sentenced to

1 a minimum and a maximum sentence, but that the judge in that
2 case can parole that individual at any time after the
3 sentence is imposed. He doesn't have to wait until the
4 minimum is served.

5 Isn't that accurate?

6 A Yes, that's true. The judge has the authority to
7 release a county sentence at his discretion.

8 Q I believe that peculiar facet of the law is the
9 authority under which the judges would have the opportunity
10 in a county to create a good time system, if they so desire?

11 A I believe we have sixty-seven or sixty-nine counties
12 in Pennsylvania. Yes, they would have that authority to do
13 that.

14 I guess what we're looking at is guidance from the
15 House of Representatives to be uniform.

16 Q Let me ask you this. Maybe you can't answer it;
17 I don't know. It may be just a rhetorical question, but if
18 this is such a good idea, and it has the support of you folks
19 who are on the front line of it, law enforcement, and it
20 is such a terrific idea for maintaining all this money-
21 saving and all this control in our prisons, why have the
22 wardens been unable to persuade the vast majority of the
23 judges in this state to adopt such a system in all sixty-
24 seven counties?

25 A I really can't answer that question. My opinion

1 would be that we really never have organized and tried to do
2 something until now.

3 Q You are a warden in Armstrong County?

4 A Yes.

5 Q My county is Dauphin County. I know my warden
6 favors good time. You favor good time.

7 A You have a good warden out there.

8 Q Excellent, no doubt about it.

9 If the need in Dauphin County, or Armstrong County,
10 is there for a good time system, why can't you bring the
11 necessary persuasive talents of you and your organization to
12 bear upon these judges in those counties to adopt this great
13 idea?

14 A Well, again, it's a hard question for me to answer.
15 In my opinion, I think that's what we're trying to do today.

16 Q No, you are not. I respectfully disagree with you.
17 You are attempting to have us tell the judges it's such a
18 good idea and tell them this is what they have to do. You
19 are bypassing your local people. You are bypassing the
20 judges who are elected in the various counties. You are
21 coming to the State Legislature and telling us let's impose
22 this system on the whole state, that we can't convince our
23 local people to adopt. That's what you are telling us. You
24 are not telling us to convince the judges; you are telling
25 us just to put it on.

1 A I see what you are saying. I think in many
2 counties this has not even been addressed to the courts.

3 Q What you are saying is, although your association
4 favors it, and you would favor it to be imposed upon the
5 counties, most counties don't even need it.

6 Is that what you are saying?

7 A No, I am not saying that. I am saying --

8 Q Explain what you are saying.

9 A I don't believe that a warden in certain counties
10 went to the courts and said work out some kind of good time.
11 I think some counties that do have a situation that is so
12 critical, they were looking for options. I think that is
13 when it started coming out.

14 Q Well, Philadelphia County, I think the testimony
15 was they have no good time. I don't know of a county where
16 a situation is more critical in terms of overcrowding, if
17 that's the reason we're adopting this.

18 A They have a cap, right?

19 Q Why hasn't the warden of that system been able
20 to persuade -- maybe you don't know the answer to that
21 question.

22 A I really don't.

23 ACTING CHAIRMAN KOSIHSKI: I do.

24 It's a political consideration that they don't
25 want to face; they don't have the guts to face it. So they

1 are dumping it on us just like they do every other considera-
2 tion. Wage tax, sales tax, any other issues. We get all
3 that catch-all.

4 REPRESENTATIVE PICCOLA: Thank you, Mr. Chairman.

5 I don't have any more questions along that line.

6 BY REPRESENTATIVE PICCOLA:

7 Q Warden, in Art's letter, he has a section on
8 revocation of earned time. He said this should, the revocation
9 procedure, should be instituted at the institutional level,
10 not through some higher authority, blah, blah, blah.

11 You are warden of a relatively small county. Have
12 you ever been sued by an inmate?

13 A I don't know of any wardens that have never been
14 sued. I have several lawsuits against me.

15 Q Let's take the hypothetical that we tell these
16 counties, okay, you've got to have a system of good time.
17 You've got to work it, you've got to implement it, you've
18 got to revoke it when necessary.

19 Don't you think that when you start revoking it,
20 or perhaps not giving it to a guy for a particular infraction,
21 cutting it off at a certain point, that you are going to
22 get sued a little bit more?

23 A I don't believe so.

24 Q Why do you say that?

25 A Well, if it's handled due process. If the man

1 gets a misconduct, and it's handled through the channel we
2 do now, which has been tested in the United States Courts,
3 I don't think we would have any problems. The other thing
4 is when they start taking good time away -- like if you get
5 a misconduct. Like, again, I'm not aware. We're not
6 pushing any type of formula. Again, we would only take the
7 time for the month away instead of all the guy's time, okay?
8 Again, like you say, it's a hypothetical.

9 Again, the Association is in favor of the concept.
10 Yes, we're putting a lot on your shoulders. We believe it
11 will be a good management tool because of other management
12 tools we have. We believe this will put things in a better
13 perspective for us.

14 It will help alleviate some of the overcrowding
15 in some of the jails. I don't know of any administrators
16 leaving somebody out or put his name, sign his name on a
17 release. I sign my name on petitions for early release for
18 parole. I am very discreet about that. It's something that
19 we study and we talk over with other staff before letting
20 somebody out on the minimum.

21 Q I have no quarrel with the performance of the
22 wardens, both individually and collectively, in this state.
23 I have no quarrel with you. I am merely trying to point out
24 some of the problems with this legislation.

25 Now, you indicate that everybody will be fine if we

1 follow due process and do everything according to the book.
2 I assume you do everything now -- I would advise you not to
3 say you don't. You will get problems if you do.

4 I think you do everything now by the book and get
5 sued by the current procedures you have to implement. That
6 small county like yours, think how many times the wardens in
7 Dauphin County, Montgomery County, Philadelphia County,
8 Allegheny County, get sued for various procedures and rules
9 and regulations that they have to implement in the existing
10 law.

11 Here you are doing something where you are giving
12 the man in the institution or taking away from the man in the
13 institution something that is probably the most precious
14 item that he has, and that is the opportunity to be released
15 earlier.

16 You are telling me, even though you are going to
17 follow every rule and regulation, you don't think you are
18 going to get sued any more frequently or get sued at all
19 based upon the implementation of good time?

20 A I don't believe so.

21 Q Not at all?

22 A I am not going to say not at all; I don't believe
23 frequency is something you would go, wow, can you believe this.

24 Q YOU do believe that it --

25 ACTING CHAIRMAN KOSINSKI: The answer has been given,

1 Representative Piccola. We're going to have to move on.

2 BY REPRESENTATIVE PICCOLA:

3 Q You do believe that you would be sued over this,
4 you and other wardens of the Commonwealth and the counties
5 would be sued as a result of prisoners perceiving or believing
6 they were improperly denied due time?

7 A I would say there is a possibility.

8 REPRESENTATIVE PICCOLA: Thank you.

9 ACTING CHAIRMAN KOSINSKI: He used the word
10 irregardless, too.

11 REPRESENTATIVE PICCOLA: Art Wallenstein did.

12 ACTING CHAIRMAN KOSINSKI: It's the second one
13 today.

14 REPRESENTATIVE PICCOLA: That's all I have, Mr.
15 chairman.

16 Thank you.

17 ACTING CHAIRMAN KOSINSKI: Thank you, Representative
18 Piccola.

19 I would like to introduce Representative David
20 Dawida, who is a member of the Judiciary Committee; also a
21 co-sponsor of this Bill. He's from Allegheny County.

22 Michael, do you have any questions?

23 REPRESENTATIVE DAWIDA: Not yet.

24 ACTING CHAIRMAN KOSINSKI: Representative Edmiston?

25 BY REPRESENTATIVE EDMISTON:

1 Q I just have one question. It's a question as to
2 your understanding of the populations in the county jails
3 state-wide, as compared with the populations in our state
4 correctional institutions.

5 What is your sense of those populations in comparison?
6 I understand that overcrowding prevails in each instance. I
7 think more a matter of degree in terms of the difference
8 between the two. But can you comment on that?

9 A The difference between overcrowding in state and
10 county?

11 Q The extent of it, yes.

12 A I really don't have those figures. I know that
13 there is county institutions that are severely overcrowded
14 right now. I believe there is a cap on Philadelphia. I know
15 we have some Western Pennsylvania counties that are in a
16 critical situation. We're talking over one hundred percent
17 capacity. I talked to a warden yesterday. He had fourteen
18 sleeping in an aisleway in the county institution.

19 ACTING CHAIRMAN KOSINSKI: Amy?

20 BY MS. NELSON:

21 Q In your testimony, you have indicated that you
22 understand the importance of work and vocational programs and
23 treatment programs. You support an earned time system.
24 Would you also support a meritorious credit system where
25 inmates earn credit for participating in programs like this,

1 above and beyond the time for behaving?

2 A Again, that would be a formula. The Wardens
3 Association would say those two factions are the formula.
4 However youn'se would like to do that, we would have no
5 problem with that.

6 MS. NELSON: Thank you.

7 ACTING CHAIRMAN KOSINSKI: Rob?

8 BY MR. HIRTZ:

9 Q You talk about the value of having a discretion for
10 the warden in revoking earned time for one. In some states,
11 I am not sure which, time has just been revoked. Can it be
12 reinstated such as somebody repeatedly make abusive language
13 at an employee and have all the earned time revoked?

14 Can that be reinstated if the correctional people
15 feel it? Would you personally think that is a good
16 discretionary piece to put into that legislation?

17 A The administrators to have discretion?

18 Q To reinstate revoked time.

19 A Probably under special circumstances, it would be
20 suitable.

21 MR. HIRTZ: Thank you.

22 ACTING CHAIRMAN KOSINSKI: Thank you, Mr. Laughner.

23 MR. LAUGHNER: I would like to thank all of youn'se
24 for having us.

25 ACTING CHAIRMAN KOSINSKI: Our next scheduled person

1 to testify is Barry Bogarde, who is the Assistant Legislative
2 Director of the American Federation of State County Municipal
3 Employees Council 13.

4 He is not here today. He has submitted his remarks
5 for the record.

6 I would like to add to the record that his Council
7 represents over three thousand people employed in the Common-
8 wealth and the Department of Corrections. It's very rare to
9 see an agreement with the wardens, Department of Corrections
10 and the union on the same matter.

11 (The following is the text submitted by Barry
12 Bogarde to the House Judiciary Committee.)

13 THE TEXT PREPARED BY BARRY BOGARDE:

14 Good afternoon, Mr. Chairman. My name is Barry
15 Bogarde, and I am the Assistant Legislative Director of the
16 American Federation of State, County, and Municipal Employees,
17 Council 13 (AFSCME), which represents over sixty thousand
18 public employees in Pennsylvania. Over three thousand of
19 these are employed by the Commonwealth in the Department of
20 Corrections.

21 I want to thank the Committee for the opportunity
22 to offer this testimony today concerning House Bill 1096,
23 Printer's Number 1237.

24 AFSCME Council 13 supports the concept of "earned
25 time" found in the content of this legislation and believes
that the earned time provisions of House Bill 1096 provide

1 corrections professionals of the Commonwealth Department
2 of Corrections with a necessary management tool that will
3 address a major issue of concern that AFSCME sees as a
4 priority -- that is, the overcrowding in our state correctional
5 facilities.

6 Many of the members of this Committee experienced
7 first-hand the results of the unrest and tension caused by
8 overcrowding after a tour of the State Correctional
9 Institution in Pittsburgh following the riot that took place
10 at that prison in January.

11 There are numerous studies and reports that the
12 members of this Committee have or will receive testimony on
13 today that go further into detail concerning the many bene-
14 fits of having earned time legislation in Pennsylvania.

15 I want to address the issue of overcrowding through
16 the benefits of eligibility for an earlier parole date.

17 Not only does this impact on reducing the inmate
18 population in our prisons, it gives corrections personnel,
19 with the use of a number of designed incentives for the
20 inmate, the ability to control the inmates' behavior while
21 incarcerated in order for the inmate to receive consideration
22 for earned time and early parole.

23 This probable reduction in inmate population and
24 behavior modification, in the opinion of AFSCME, will then
25 provide another benefit, that is, a safer workplace for our

1 members, and a safer prison environment for the inmates.

2 Although not a part of this proposed legislation,
3 I would ask the Committee not to overlook the lack of
4 staffing at the correctional facilities. Providing more
5 staffing that is to bring the institutions up to their
6 appropriate staffing levels will improve the safety of
7 employees and inmates at the prisons.

8 As the legislation excepts certain inmates from
9 the earned time process, AFSCME would hope that stricter
10 sentencing guidelines set by the Legislature and tougher
11 sentencing by the states' judicial bodies, do not negatively
12 impact on the intent of this Bill.

13 Again, I want to thank the Committee for the
14 opportunity to provide my brief and general testimony.

15 (That concludes the text of Barry Bogarde, as
16 given to the House Judiciary Committee.)

17 ACTING CHAIRMAN KOSINSKI: The next person to
18 testify is Fred W. Jacobs, Chairman of the Pennsylvania
19 Board of probation and Parole.

20 At this time, I would like to turn the meeting
21 over to Representative Dave Mayernik who is the Secretary
22 of the Judiciary Committee.

23 MR. JACOBS: Mr. Chairman, Members of the House
24 Judiciary Committee, I appreciate the opportunity to appear
25 before you today to provide testimony relative to House Bill

1 1096 which would establish a system of awarding inmates serv-
2 ing sentences in correctional institutions credits toward
3 early release in return for good behavior, as well as
4 completion of educational and/or vocational programs.

5 It is understood that the earning of such credits
6 simply accelerates the parole eligibility date and the final
7 decision whether to parole remains with the Pennsylvania
8 Board of Probation and Parole.

9 I support the earned time concept since correctional
10 administrators generally regard this as an effective tool
11 for population management and control. Before I get to
12 the specific comments concerning Housing Bill 1096, I want
13 to comment on significant issues that I believe must be
14 addressed if an earned time law is to be put into place.

15 The most critical issue, I believe, is a resource
16 issue for the supervision of those offenders in our state
17 parole system, which is already overburdened in terms of
18 manpower problems.

19 Another issue to be addressed is how this message
20 is communicated to the general public. Are we looking for
21 population management tools, or are we looking for a way to
22 reduce overcrowded prisons in this state. The message to
23 the public should be clear and honest. We must also be
24 able to assure the public that persons released early from
25 prison as a result of earned time will be supervised

1 appropriately by parole officials with resources provided
2 for that specified purpose.

3 With regard to the resource issue for parole
4 supervision, it is important to know that within the last
5 several weeks, the Pennsylvania Board of Probation and
6 Parole received a four hundred thousand supplemental
7 appropriation to pay overtime costs as a result of the Garcia
8 decision of the United States Supreme Court to meet minimum
9 supervision standards for the fiscal year.

10 It is also important to know that the Governor's
11 budget includes no new resources for parole supervision
12 services. It does include five hundred thousand for the
13 payment of overtime since the Garcia liability is an ongoing
14 situation.

15 To expect the parole supervision system to provide
16 services for an even larger parole population and for a longer
17 period of time if earned time becomes a reality, would be
18 problematic. Without sufficient resources, community safety
19 would be compromised, and I want you to recognize that.

20 With regard to the need for an earned time system
21 and the public's right to know, we must be forthright in
22 stating the real reasons for proposing a system of earned
23 time credits. As I see it, it grows directly out of the
24 prison and jail overcrowding task force report published by
25 the Pennsylvania Commission on Crime and Delinquency in

1 February, 1985.

2 The sentencing commission, having been created
3 by the Legislature, was charged with developing guidelines.
4 Those guidelines that were finally adopted represented a
5 significantly more harsh judicial sentencing requirement
6 than past practice reflected.

7 But even those guidelines were not harsh enough,
8 which is evidenced by the passage of mandatory sentencing
9 laws which superceded the guidelines in certain instances.
10 The culmination of all of that is a now overcrowded prison
11 system. Earned time has come to the rescue to reduce these
12 harsh sentences. Making it retroactive communicates an
13 effort to reduce prison population.

14 The task force report also recommended other ini-
15 tiatives to deal with overcrowding, such as intensive
16 parole supervision services. Earned time was one component
17 of an overall strategy to reduce crowding and should not be
18 held out as the only alternative.

19 It is true that an earned time system will provide
20 correctional managers with another tool to deal with prison
21 management problems. It is also true that good behavior in
22 prison has no direct relationship to law abiding behavior
23 on parole. Therefore, the view of the Pennsylvania Board
24 of Probation and Parole toward earned time is necessarily
25 different than from a corrections standpoint. Evaluation

1 of risk and ability to safely supervise in a community
2 setting are the keys for parole, while reducing and managing
3 prison populations are the keys for corrections.

4 Earned time does not assure that an offender has
5 reduced his risk to society through good behavior in prison.
6 There is no direct correlation. In fact, many dangerous
7 offenders serve time rather easily, but continue to be
8 dangerous to others if paroled. Therefore, even though many
9 of these people will become eligible for parole sooner, they
10 will not be paroled unless their risk has been reduced.

11 For example, pedophiles do very well in prison,
12 but when released and around children, their rate of
13 recidivism is extremely high. Sex offenders are currently
14 a very serious concern for the Pennsylvania Board of Probation
15 and Parole because of the risk they pose to others.

16 The Department of Corrections generally does not
17 offer any therapeutic programming for sex offenders who do
18 not admit guilt for their crimes. Many of these offenders
19 have an otherwise good adjustment in the prison setting.

20 They are generally not recommended for parole
21 because they have had no therapeutic involvement to reduce
22 their risk to others. This represents a large number of
23 offenders who will probably earn time off their minimum
24 sentences if House Bill 1096 becomes law.

25 However, they will not be paroled in many cases

1 because of the continued risks they represent to society.
2 The Larry Singleton case in California is a classic example
3 of the wrong person being able to earn time off of a sentence
4 for a crime as heinous as his.

5 One alternative to deal with offenders with
6 exemplary behavior, but still considered a high risk for
7 parole, would be for the Department of Corrections to place
8 such offenders in community service centers so that we can
9 further evaluate them in a structured community setting
10 prior to further considering them for parole release.

11 Another issue I wish to bring to your attention is
12 the victim's rights movement. Many legislators sponsoring
13 House Bill 1096 were very supportive of victim's rights
14 legislation passed the last several years. My concern is
15 balancing the impact of the victim's testimony to the Pennsylv-
16 ania Board of Probation and Parole with the fact that, with
17 earned time, the offender may serve even less time than
18 stipulated by the sentencing judge.

19 Act 134 of 1986 required District Attorneys to
20 notify victims of crime immediately following sentencing of
21 the opportunity to present oral or written testimony to the
22 Pennsylvania Board of Probation and Parole. Such testimony
23 provides information concerning the continuing nature and
24 extent of any physical harm or psychological or emotional
25 harm or trauma suffered by the victim, the extent of any loss

1 of earnings or ability to work suffered by the victim, and
2 the continuing effect of the crime upon the victim's family.

3 A balanced criminal justice policy is necessary,
4 and a policy that can be understood and accepted by the
5 general public should, in my opinion, be a very high priority
6 of the General Assembly.

7 With regards to the specifics of House Bill 1096,
8 I make the following observations: House Bill No. 1096 does
9 not amend any specific Act. It would appear that it should
10 amend the Pennsylvania Board of Probation and Parole Law of
11 August 6, 1941, as amended in 1951, 1965 and 1986.

12 Section 1 of the proposed legislation. The state-
13 ment of purpose should also include earned time as a
14 responsible way to reduce prison overcrowding by providing
15 funding for adequate parole supervision services to safely
16 supervise more offenders in the community setting. It
17 should clearly be stated that the Legislature recognizes the
18 need for providing adequate protection to Pennsylvania's
19 citizens, and that an earned time law will not compromise
20 that resolve.

21 Section 2(b), this section inaccurately speaks of
22 the Pennsylvania Board of Probation and Parole commuting
23 sentences. Only the Governor has clemency power and such
24 recommendations are made to the Governor by the Board of
25 Pardons.

1 I would also suggest that life sentences should be
2 exceptions unless commuttd by the Governor, and only after
3 such commutation could that person receive earned time
4 credit. Persons serving time as parole violators should also
5 be exempt from earning early release.

6 Section 4, I support the meritorious credit
7 principle. I suggest, however, that appropriate therapeutic
8 involvement, which has been determined as necessary by the
9 Department of Corrections and the Pennsylvania Board of
10 Probation and Parole to reduce risk, should also receive
11 meritorious credit if, in fact, such programming has
12 reduced risk based upon professional evaluations.

13 These possibilities for meritorious credit should
14 be directly related to the offenders prescriptive program
15 which is determined during and after the classification
16 process by the Department of Corrections.

17 This raises another issue concerning whether
18 therapeutic programming during incarceration should be
19 voluntary or mandatory. If we are to correct behavior, it
20 seems to me that the system has a responsibility to society
21 and the victims of crime to force therapeutic involvement to
22 deal with drug, alcohol, mental health, sexual abberation,
23 assaultive, and other anti-social behaviors.

24 Therapists will tell you that ideally the client
25 comes for help voluntarily, and that real change is much more

1 possible when clients want to change their behavior. I agree.
2 However, our system is not a voluntary system. People do
3 not volunteer to serve prison sentences out of a motivation
4 to change.

5 Frequently, parole refusals are coupled with
6 specific expectations to be accomplished prior to a further
7 review. Failure to comply by the offender generally leads to
8 another parole refusal with similar expectations. Corrections
9 has a responsibility to provide opportunities to reduce risk
10 of offenders prior to release to the community. Good behavior
11 alone falls far short of assuring this.

12 When a person on parole demonstrates behavioral
13 problems such as drug abuse, that person is referred for
14 appropriate counseling and random urinalysis tests are
15 performed. It is not a voluntary situation as a condition of
16 parole, and, therefore, it need not be a voluntary condition
17 of serving a prison sentence that can be reduced by earned
18 time credits.

19 One additional comment with regard to meritorious
20 credit concerns the pay issue. Currently, an offender can
21 earn more money by working than by going to school. Equal
22 pay for educational and vocational training would provide
23 incentives for offenders to pursue these program areas more
24 readily.

25 The positive impact of education and job skill

1 development and employment on parole success is well documented.
2 This should be recognized in any reward system that reduces
3 the length of prison sentences.

4 Section 5(a), the forfeiture of earned time credits
5 should be based only on a well defined policy with regard to
6 the hearing process when misconducts are charged. I believe
7 this policy should be defined through the regulatory review
8 process, since there is potential liberty interest involved.

9 Also, it appears in this section that the increments
10 of earned time that can be forfeited are different than the
11 rate at which time is credited for good behavior in Section
12 3(a).

13 My final comments relate to an extension of the
14 earned time concept of the minimum sentence to the same
15 opportunity to earn time off of the active parole supervision
16 period on the maximum sentence only after parole has been
17 granted. Let me preface any further comments by saying that
18 this idea does not necessarily represent any thinking other
19 than my own.

20 I have asked, however, for the recently appointed
21 task force on corrections to consider this concept as they
22 determine future directions for criminal justice initiatives.
23 The justification for such a policy direction seems supportable.

24 If earned time incentives can reduce disciplinary
25 infractions during incarceration, it can be expected that

1 anti-social behavior while on parole supervision could be
2 reduced with similar incentives for good behavior. This
3 obviously would have a cost benefit to the Commonwealth in
4 reducing a parole population, through earned time credit
5 incentives.

6 The only alternative currently available to reduce
7 maximum sentences is through a special commutation process
8 which can only be granted by the Governor. Earned time on
9 the maximum sentence beginning after parole release would
10 complement the commutation process by allowing a reduction in
11 supervision time through an administrative process directly
12 related to good behavior. The judicially imposed maximum
13 sentence would otherwise be preserved. However, the amount
14 of active supervision could be reduced commensurate with good
15 behavior.

16 An example to illustrate earned time reducing both
17 the minimum and maximum sentences might be helpful. Under
18 the provisions of House Bill 1096, for a sentence of two to
19 five years, a total of one hundred twenty days could be
20 earned to reduce the minimum sentence.

21 If the person is paroled, the period of parole
22 supervision for an already overburdened system is increased
23 by one hundred twenty days for that particular offender. If
24 the person could earn time off the maximum sentence once
25 paroled, in this example, there would be three years, one

1 hundred twenty days on which to earn it.

2 At a rate of five days per month, this person could
3 earn two hundred days off of the active supervision period.
4 Violations of parole could cause the loss of earned time
5 credits similar to infractions of prison rules.

6 The following language seems appropriate to
7 accommodate an earned time credit philosophy on the period
8 of parole supervision. I would suggest that this language
9 be considered as an amendment to the legislation.

10 Except for mandatory sentences, life sentences, or
11 parolees recommitted for any violation of parole, persons
12 released on parole shall be awarded five days credit for each
13 calendar month without violations of the conditions of parole
14 toward the reduction of active supervision on parole. The
15 Board in its discretion may revoke any or all of the credit
16 of time reduced from active supervision after a finding of
17 violation of parole.

18 During the period of inactive supervision as so
19 provided, a parolee may be recommitted by the Board only by
20 reason of a crime committed for which he is convicted or
21 found guilty by a judge or jury or to which he pleads guilty
22 or nolo contendere at any time thereafter in a court of
23 record.

24 Without appropriate consideration for adequate
25 resources for parole supervision, the acceleration of parole

1 eligibility through the awarding of earned time credits is
2 conterproductive. The estimated cost, based on six months
3 funding to implement the work requirements of this legisla-
4 tion for our agency would be about five hundred thousand,
5 considering personnel, operating and equipment costs.

6 Earned time on the maximum sentence after parole
7 would substantially reduce the costs of the bill, as the
8 length of active parole supervision time would be reduced.

9 My testimony today was a sincere attempt to
10 responsibly look at not only earned time as a concept or tool
11 to deal with prison management and population concerns, but
12 also the effect such a law could have on the total criminal
13 justice system, specifically parole, and on the general public,
14 who obviously have a stake in this.

15 Thank you for the opportunity to testify before
16 you. I would be pleased to respond to any questions you may
17 have.

18 ACTING CHAIRMAN DAWIDA: Mr. Jacobs, are you able
19 to stay around for fifteen minutes?

20 MR. JACOBS: Yes.

21 ACTING CHAIRMAN DAWIDA: Judge Penkower is here on
22 his lunch hour. We would like him to continue to administer
23 justice. If you wait a few minutes, when he is off, come
24 back for questioning.

25 We have the distinguished Alan Penkower who is the

1 next on the agenda.

2 HONORABLE ALAN PENKOWER: Thank you, Representative
3 Dawida.

4 I have to be back on the bench at one-thirty
5 whether I like it or not.

6 I welcome the opportunity to appear before this
7 Committee this afternoon to give some very brief remarks
8 concerning House Bill 1096. I apologize for not having any
9 written remarks prepared. I just received the Bill a few
10 days ago and haven't had an opportunity to review it in
11 detail. I think it's a Bill whose time is a long time coming
12 in Pennsylvania.

13 Just so the record is clear, my bar experience
14 which brings me here today involves the past four years as a
15 Judge of the Court of Common Pleas of Allegheny County,
16 assigned to the Criminal Division. Prior to that, I served
17 eleven years in the Pittsburgh Magistrate Court system.
18 Five years of which were Chief Magistrate. Most of my
19 professional career as an attorney and Magistrate and Judge
20 has been involved in the criminal justice system.

21 I was quite shocked to find upon reading the back-
22 ground of this Bill that Pennsylvania, which I always felt
23 was in the forefront of many issues in the area of criminal
24 justice to my way of thinking, was the rear guard when it
25 came to certain aspects of corrections and correction reform.

1 To be one of only two jurisdictions in the entire country
2 not to give any credit for time, good time, rather shocked
3 me.

4 I don't state that with any sense of naivete. As
5 a trial judge, our obligation, particularly with a state
6 sentence in contrast with a county sentence, ends after the
7 sentence is imposed and the appellate time has gone by without
8 change. Other than a post-conviction hearing, communications
9 from the inmates that are serving sentences, or from the
10 families, the Court has very little involvement, certainly
11 no legal involvement, and no authority to make any changes
12 on the correctional end.

13 Usually, very little information as to what happens
14 other than when a prisoner is ultimately released and perhaps
15 subject to being brought back to court at a later time.

16 Upon reading the Bill, I am one hundred percent in
17 favor of it in terms of its philosophy. My commentary with
18 regard to any specific provisions is minimal because it
19 mostly deals with matters outside the competence and interest
20 of the judiciary. The rest of my comments today are first
21 of all, again so the record is clear, I am here solely in an
22 individual capacity, as a citizen of this Commonwealth with
23 some experience and expertise to share with this Committee.

24 I have not had the opportunity to discuss anything
25 concerning this Bill with my fellow colleagues. I can't

1 speak for them. I would hope that they share some or most
2 of what I have to tell you this afternoon.

3 To assist this Committee in evaluating this Bill,
4 I would like to spend a few minutes concerning what goes
5 through at least one trial judge's mind at the time of
6 imposing sentence. The trial judge's responsible for taking
7 into consideration as a matter of law, a variety of factors.
8 It must look at the provisions of the Judiciary Code which
9 sets the standards that the judge must follow in determining
10 whether or not incarceration or probation or some mix is an
11 appropriate sentence in this case.

12 The Court must look at the provisions of the
13 sentencing code and the very complex provisions of the
14 sentencing commission guidelines before the Court. The
15 trial -- excuse me. The sentencing judge must also look at
16 a variety of mandatory sentencing laws, if they are deemed
17 applicable. It must hear from the Defendant, the Defendant's
18 attorney, character witnesses review and, in many instances,
19 an extensive presentence report. Then at some point, try to
20 make an intelligent, fair and responsible decision concern-
21 ing what an appropriate sentence would be. That's at point
22 one.

23 From there, the judge's responsibility input ends
24 with respect to a stay sentence. That is a sentence with a
25 maximum of two years or more. What happens afterwards is

1 solely within the authority and jurisdiction of the Pennsyl-
2 vania Board of Pardons and Parole, and to certain other
3 extents, the Department of Corrections.

4 The judge has no authority to have any input in
5 that process later in a state sentence, and therefore, can
6 only when requested on occasion from the family members of
7 Defendants, as well as correspondence from the Defendants,
8 themselves, simply write letters back saying you will have to
9 take your problems and grievances or your questions for
10 information elsewhere.

11 When I read this Bill, at the very least, what a
12 trial judge can say not only to him or herself, but also to
13 the inmate involved, is that at some point if you prove
14 yourself worthy, so to speak, you can earn some good time.
15 And the types of letters we get generally deal with look what
16 I have been doing for the last two, three, five years. Can
17 I get some consideration for that.

18 As a trial judge, we have no way of knowing two,
19 three, five years previously that in fact this inmate would
20 take advantage of appropriate rehabilitation, either personal
21 or what's available through the Corrections Department. We
22 have no way of assisting or advising that individual.

23 This Bill at the very least, provides a starting
24 point for that process. I have some specific comments on the
25 Bill. I think -- I have read through the proposed amendments.

1 One of those amendments eliminates the Bill's applicability
2 to only state sentences, but makes it applicable to county
3 sentences, as well. With respect to county sentences, those
4 with a maximum of less than two years, the trial judge or
5 sentencing judge exercises sole parole authority. The
6 judge is not bound by minimums or maximums. As a practical
7 matter, if a judge sentences somebody to eleven and a half
8 to twenty-three months, assuming the procedure is followed
9 properly, that inmate can be paroled after a matter of days
10 or weeks.

11 This Bill does not do anything to change that.
12 What the Bill would do, if it's applicable to county
13 sentences, as well, is at least require the county judge to
14 consider parole at an earlier date.

15 As a matter of law, in my opinion, the inmate
16 would be entitled at the very least to a hearing pursuant
17 to the federal case. I think it's the Gregoritch (phonetic)
18 case, to have a hearing concerning whether or not that
19 Defendant should be released at or about his or her minimum
20 and at an earlier point in time. I think that's a positive
21 aspect of the Bill.

22 I would specifically alert the Committee to line
23 15 of Section 2(a), the reference to the word state should
24 be deleted from that line to be consistent with the earlier
25 opposed amendment.

1 A more controversial matter that I do want to
2 address is the exception concerning mandatory sentences. I
3 am not here, by the way, to dispute with this Committee or
4 the Legislature the wisdom of particular mandatory sentences.
5 As trial judges, we learned to live with that and learned to
6 accept. In many, if not most instances, agree with the
7 philosophy of mandatory sentencing. Again, I'm speaking for
8 myself.

9 There are unusual cases, however, where the types
10 of sentences we impose and are required to do so, we would
11 do so with very heavy hearts because of what we perceive to
12 be inequities or inhumanities, only as a matter of fact, not
13 because any short-sightedness on the part of the Legislature
14 or even possibly the District Attorney, deciding to proceed
15 under mandatory sentencing provisions.

16 I can see other than the deterrent effect of
17 mandatory sentences, which is the most important aspect, I
18 can see no good reason why not to include mandatory
19 sentencing being subject to the applicability of this Bill.
20 If we could take one or two brief examples.

21 The hardest cases involve the drunk driving,
22 homicide-type cases where, fortunately, there haven't been
23 that many. Mandatory minimum sentencing is three years in
24 jail. With rare exception, the Defendants sentenced on those
25 cases, but for this one unusual circumstance, and I don't

1 mean to minimize the severity of it, are law abiding
2 citizens, otherwise capable and likely to be productive
3 members of society. Some of whom have suffered many times
4 over, more than they would in prison, because maybe it was
5 one of their loved ones who was the victim of the homicide
6 by vehicle.

7 Not to be able to hold out a rather brief or short
8 end, a rather limited shortening of the minimum sentence
9 from either a policy point of view or from a mandatory
10 sentence point of view, again, that makes no sense to me
11 at this time. Again, I have not had the opportunity to
12 review other comments or the analysis of this Bill.

13 For example, a drunk driving homicide by vehicle
14 case where five days would be earned each month. That's
15 approximately one-sixth of the sentence. What we would be
16 saying to an individual whose mandatory minimum sentence is
17 two years, you can earn up to one-sixth of that minimum and
18 be eligible for parole just a few months before. I don't
19 believe that shortening that minimum sentence would in any
20 way deviate from the important policy or a deterrent effect
21 of those types of sentences.

22 The same argument perhaps to a more limited
23 extent would be made with other types of sentences. I will
24 not comment about crimes committed with firearms, but
25 certainly certain types of crimes committed on public trans-

1 portation property and the like, have also come under the
2 same argument. If the Legislature chooses to retain the
3 Bill in its current form without amending the mandatory
4 sentence exception, then I think there's some ambiguity, and
5 the Bill would have to be addressed. If a Defendant is
6 sentenced to both a mandatory sentence and a consecutive
7 nonmandatory sentence, it is unclear whether the Defendant
8 would receive credit towards the nonmandatory part of the
9 sentence by way of earned good time during the time the
10 Defendant is actually serving the mandatory part of the
11 sentence.

12 As I go through the Bill in more detail, as I come
13 up with more specific comments, I would be happy to address
14 the Board, in writing, concerning them.

15 One other, and it's a practical matter outside my
16 area of expertise. That is, insofar as this bill would apply
17 to the county sentences, and therefore, the wardens of the
18 county jails would be responsible for the disciplinary
19 record keeping, I am not sure whether the Department of
20 Corrections in their misconduct I or misconduct II evaluation
21 and hearing procedures pertaining thereto, would also be
22 applicable to county wardens. I think that would have to be
23 clarified, as well.

24 I would be happy to answer any questions you might
25 have. I still have nine minutes before my case is involved.

1 ACTING CHAIRMAN DAWIDA: Thank you, Judge.

2 Jeff?

3 BY REPRESENTATIVE PICCOLA:

4 Q Thank you, Your Honor, for your testimony.

5 Does Allegheny County currently have a system of
6 good time in place for its county-sentenced prisoners?

7 A There is no formalized procedure. Each individual
8 judge will respond to requests for early parole on a case-by-
9 case basis. What the warden at our local jail has done,
10 and his appropriate authority, is send us progress reports
11 on good behavior of inmates; they are oftentimes taken into
12 consideration, but there are absolutely no standards to
13 follow in those types of cases.

14 Q You do acknowledge, however, that Allegheny County
15 or any county in the Commonwealth, and some counties have by
16 virtue of order of Court, adopted a system of good time for
17 the county prison, for county-sentenced prisoners?

18 A I was not aware of that. I am glad you brought
19 that to my attention. We might be able to follow up in
20 Allegheny County.

21 Q I think that's interesting, because I think as one
22 individual legislator, that that perhaps is where we ought
23 to start with this thing and not at the top. But back at the
24 county level. Because I think you judges have it within your
25 power right now, without any legislative action, to create

1 systems of good time within the county. And let's get some
2 hstory on this, see how it works, and what works best, and
3 which counties have better experience before we start
4 adopting legislation willy-nilly at the state level to
5 determine a policy state-wide.

6 I think we had testimony some twenty counties have
7 a system of good time. I think it would be incumbent upon
8 counties like Allegheny to perhaps consider having their
9 court adopt such a system for that particular county.

10 A I will request that our Administrative Judge of
11 our division put this on our next eriminal agenda. I would
12 be happy to discuss it and report back to the Committee.

13 REPRESENTATIVE PICCOLA: Thank you. That's all I
14 have.

15 ACTING CHAIRMAN DAWIDA: Rob from Representative
16 Joseph's office.

17 BY MR. HIRTZ:

18 Q We heard several concerns expressed that earned
19 time would, among other things, desecrate our mandatory
20 minimum sentencing laws.

21 In your opinion, do you find that you think earned
22 time would enhance it?

23 A I believe so. It would hold out a little bit of
24 hope. A little bit more, I should say, for those individuals
25 who feel that although they deserve to be sentenced for their

1 crimes, don't feel that the numbers that the Act provides,
2 that five years, three years, two years, makes sense in
3 their particular case. This is a way of responding to them
4 that they would receive not a desecrated sentence, but a
5 relatively small decrease in their minimum, if they were
6 deserving of it.

7 Q Do you feel, as a practicing jurist, this would
8 enhance your ability to mete out justice?

9 A Absolutely. Your question brings out one other
10 point. Whenever we read about -- whether it be Larry
11 Singleton's case or some other cases in more or less
12 enlightened jurisdictions, where people get sentenced let's
13 for argument's sake say fifteen to twenty years of a minimum
14 particular sentence and are out on parole in five years,
15 whether they are murder cases, rape cases, or otherwise,
16 that kind of scares off people. Certainly, the media get
17 involved in that. Victim's rights organizations probably
18 would so get alarmed. That has not been the case in Pennsyl-
19 vania throughout my experience here. In fact, a minimum
20 sentence in Pennsylvania has always been a true minimum
21 sentence.

22 This legislation, as I read it, would not unduly
23 deviate from that very strong position in Pennsylvania and
24 also in this area. I feel that's something as this Bill gets
25 moved along should be emphasized.

1 ACTING CHAIRMAN DAWIDA: Amy has a question.

2 BY MS. NELSON:

3 Q In the directing of this legislation, some concerns
4 came up that judges, in order to make up for time that
5 inmates may earn off their sentence, would increase the
6 sentence they impose.

7 In your practice, do you think you have seen
8 indications that would lend some credence to that? Do you
9 think that judges might tack on heavier sentences to make up
10 for time they may earn?

11 A I've heard about those. Quite frankly, I have not
12 seen it in practice, as either an attorney or a judge.
13 There are those rumors about what some judges will or will
14 not do. I can see an appropriate case where I feel the
15 particular Defendant is extraordinarily dangerous, and I
16 don't believe from the front end that that person should be
17 entitled to consideration. That's something that would have
18 to go into a determination of the sentence in accordance
19 with sentencing guidelines. If that approaches unreasonable,
20 the Supreme Court has reversed sentences where judges
21 ostensibly have sentenced people because of the concern for
22 the practical result of their sentence. There would be an item
23 of redress if that started to occur. I frankly have not
24 seen it.

25 MS. NELSON: Thank you.

1 **HONORABLE ALAN PENKOWER:** By the way, I do have a
2 case. Coincidentally, it is scheduled for one-thirty.
3 Knowing the way this hurry up and wait syndrome operates in
4 the Courthouse, I have a reasonable period of time to
5 remain.

6 **ACTING CHAIRMAN DAVIDA:** Mike Edmiston, the counsel
7 for the Committee.

8 **BY REPRESENTATIVE EDMISTON:**

9 **Q** I have one brief question, Judge Penkower.

10 Is it fair to conclude from your testimony that you
11 do not regard the concept of earned time as increasing the
12 risk to the public's safety were it enacted, whether on a
13 graduated system, five, ten, fifteen days depending on the
14 extent of the sentence, or whether it be on a flat basis,
15 as opposed to Senate Bill 424?

16 **A** I haven't seen Senate Bill 424. I think the
17 concept itself does not pose any undue risks. To reiterate
18 that point, decisions on sentencing are educated guesses at
19 best. Ultimately, the behavior within the correctional
20 system will be an important factor, although as Mr. Jacobs
21 indicated, that's not necessarily a true barometer.

22 Parenthetically, I agree with almost everything
23 Mr. Jacobs testified about, but the Board ultimately will
24 have the decision to make, based on much more information
25 than the sentencing judge.

1 **ACTING CHAIRMAN DAWIDA:** Thank you, Judge Penkower.
2 I appreciate your time.

3 Fred Jacobs is going to be answering any questions.
4 (Fred W. Jacobs returned to the podium.)

5 **REPRESENTATIVE PICCOLA:** I don't have any questions.
6 I just wanted to thank Mr. Jacobs for some very enlightening
7 testimony that I think although he comes down in support of
8 a system of earned time, he points out some of the real
9 problems with legislation before us and gives us some
10 positive ways of curing some of the defects. I appreciate
11 that, as usual, Fred.

12 **ACTING CHAIRMAN DAWIDA:** Mike Edmiston had a
13 question.

14 **BY REPRESENTATIVE EDMISTON:**

15 **Q** Mr. Jacobs, if I am remembering correctly, you
16 recommended that House Bill 1096 should be amended to amend
17 the Board of Probation and Parole Law?

18 **A** That's correct.

19 I think it needs to amend something. That I think
20 is an appropriate vehicle. If the Senate Bill was correct,
21 that's what they did.

22 **Q** If 1096 were amended to amend that law, would you
23 regard it as applicable to inmates sentenced for a period of
24 less than two years?

25 **A** With the amendment that you have attached, it has

1 not yet been introduced. It would remove the word state.
2 Yes, it would. If you keep the Bill the same way, it would
3 not. It just says state sentences.

4 Q Have you had that amendment reviewed by counsel to
5 the Board?

6 A Yes, I have.

7 Q That's the opinion of counsel?

8 A That's the opinion of counsel.

9 REPRESENTATIVE EDMISTON: Thank you.

10 BY MS. NELSON:

11 Q I have a question.

12 On page 4 of your testimony, you suggest an
13 alternative to dealing with offenders who have behaved very
14 well in prison, but still are a high risk for parole, to be
15 placed in community service centers. Can you not suggest
16 that now as a condition of parole?

17 A We do very frequently, but not as a condition of
18 parole. We have no authority for parole to community
19 service centers. Those centers aren't in the jurisdiction
20 of the Department of Corrections. We use it strictly as a
21 pre-release mechanism now prior to minimum sentences.

22 If I can give you an example what we're confronted
23 with.

24 Let's say we had a person doing time for a second
25 rape. The person denies their guilt in that offense. The

1 Department of Corrections policy now prohibits that person
2 from entering into a therapeutic program in the institutional
3 setting for sexual offenders, even if the person wants to go
4 in the program. If they can't or won't admit guilt, they
5 don't get in.

6 Many times these people do very well otherwise in
7 prison; no misconduct, do everything else the way they
8 should. Go to school, work, do everything else. But at the
9 time that we consider a person for parole, the Department of
10 Corrections frequently will not recommend the person for
11 parole because they have not been involved in the appropriate
12 therapeutic program.

13 We, likewise, when we are considering a person for
14 parole, particularly if it's a second sexual offense, we'll
15 not parole that person until they have done something that
16 can reduce their risk to the general public. What I am
17 suggesting is that the offenders now are in a catch 22
18 situation. Many people are saying, yes, I would like to get
19 in and can't get in, either because the program won't accept
20 them, or there is a waiting list that is enormous, or that
21 that person can't otherwise prove his or her lesser risk to
22 the Parole Board in any other way.

23 I am suggesting that those people, if the Department
24 of Corrections feels in spite of all that that they should
25 make parole, then they ought to at least put them into a

1 graduated release program to demonstrate in a structured
2 community setting, that that person can behave responsibly.
3 Then we're in a better position to make an assessment of
4 what the risk is to the general public.

5 Currently, frankly, the Department of Corrections
6 will not touch a person with a sex offense in a community
7 service center. They won't do it.

8 Q Then I am trying to understand what you said would
9 apply, I guess to earned time, as to why you wouldn't want
10 earned time because of that.

11 A You have to look at the total package. What I am
12 saying is that I don't believe that a therapeutic program in
13 an institutional setting may be only voluntary. I think it
14 needs to be coerced and enforced, in certain situations.
15 That is not the policy of the Department of Corrections.
16 That's what I believe should happen. That's what we do on
17 the parole level. If that happens, that's fine. Then we
18 can forget about the community service center issue.

19 If current policy prevails, however, and the
20 Department still feels these offenders should make parole,
21 then let's see the behavior in the community setting. The
22 Department has the ability to put those offenders in those
23 settings to demonstrate that they are, in fact, a safe risk.
24 They do not do it because of the offense. In fact, the whole
25 policy with regard to even a recommendation for parole, the

1 requirement from a Department level for recommendation for
2 parole, is less than it is to make a weekend furlough.

3 To make a weekend furlough, an offender has to go
4 at least nine months without any misconduct. To make a
5 parole recommendation, they only have to go six months.
6 We're giving mixed messages all over the place. I have
7 dealt with five different correction commissioners on that
8 issue. We have not been able to resolve it, because we have
9 different interests.

10 The Department is interested in reducing and
11 managing population; the Parole Board is interested in
12 reducing risk, so that people can be safely supervised in a
13 community setting without compromising the safety of the
14 general public. Two very different interests. That's why
15 we need to have some coordinated policy.

16 MS. NELSON: Thank you.

17 ACTING CHAIRMAN DAWIDA: Thank you. That was very
18 thoughtful. I believe you have provided the Committee with
19 a great deal of insight. That isn't always the case with
20 these hearings.

21 Thank you.

22 Mr. Chairman, you can take over.

23 ACTING CHAIRMAN KOSINSKI: I want to mention the
24 Superintendent of the State Correctional Institute in Waynes-
25 burg, Margaret Moore. I have very good recommendations from

1 Representative Preston and Representative DeWeese also
2 wanted to recommend you also, since you are in his home
3 county. You are a constituent. Thank you for joining us
4 today.

5 Our final, or at least our final scheduled person
6 to testify, is Dr. Martha Connomacher of the University of
7 Pittsburgh Prison Project.

8 Dr. Connomacher.

9 MS. CONNOMACHER: First, it's Connomacher.

10 ACTING CHAIRMAN KOSINSKI: The record shall be
11 corrected.

12 MS. CONNOMACHER: I have been teaching chemistry
13 and physics in the University of Pittsburgh's prison program
14 at SCI Pittsburgh, since 1980. The prison program was begun
15 in the early seventies. Since that time, inmates at SCI
16 Pittsburgh have been able to earn Bachelor Degrees from the
17 University of Pittsburgh. A few have even gone on to do
18 post graduate work while still incarcerated. One inmate has
19 almost completed the requirements for a doctorate.

20 I am strongly in favor of House Bill 1096 as it
21 was first amended. That is, the form which grants inmates
22 who exhibit good behavior from five to fifteen earned days
23 per month, depending on the length of the inmate's sentence.
24 There should be no exceptions.

25 As a teacher, I know how important it is to treat

1 all students equally, to give the same rewards for the same
2 work, and the same demerits for the same mistakes. We
3 group students according to grade level, each level having
4 its own standard, but within a grade the standards are the
5 same.

6 The same idea should apply here, only now inmates
7 are grouped according to the sentence, each with its own set
8 number of days of credits earned per month of good behavior.
9 The standards of behavior are already the same for all;
10 therefore, the rewards must be granted to all.

11 I am well aware of the fact that the unamended
12 version, as well as the second amended version of HB 1096
13 contains exceptions. If these exceptions remain in the
14 final bill, it will make life more difficult for teachers,
15 as well as for the prison administration, because everyone in
16 the same program will not be able to earn the same rewards.

17 This can and will lead to resentment on the part
18 of those excluded. It is all the more difficult to motivate
19 people to do their best when they are unable to earn the
20 credit days that others will be able to earn for equivalent
21 effort.

22 In the event that these exemptions do remain in
23 the bill, then at least allow those excluded to earn the
24 credits for the day when they become applicable. Since this
25 can be overturned, reduced or commuted; the Legislature might

1 decide at a later date to allow mandatory sentences to be
2 reduced with earned time.

3 The Legislature might even decide to make lifers
4 eligible for parole. Until that day comes, at least let
5 those inmates receive the credits due them for the work they
6 have done. To do otherwise would be grossly unfair.

7 Until this time comes, the credits will still be
8 of some value to the inmate. The accumulation of credits
9 will be another indicator of the inmate's desire to improve
10 himself, as well as abide by society's rules, that he can
11 show to the Parole or Commutation Board. This will be
12 particularly significant because these credits would be of
13 no immediate value to the inmate.

14 Going to college is not an easy task. For some,
15 those who presently enroll in classes, the thrill of learning
16 and, eventually obtaining a degree, is incentive enough.
17 But for many others, additional incentives are needed to get
18 them into the classroom.

19 Meritorious earned time is the perfect incentive.
20 When an inmate enrolls in an educational program, everyone
21 benefits. The individual obviously benefits by obtaining
22 additional skills, a better self-image, and an expanded view
23 of society and his place in it. Society benefits because
24 the inmate can become a productive member of society. It is
25 difficult enough for an ex-con to obtain employment upon his

1 release.

2 But it is virtually impossible without skills and
3 an education, making his return to life a crime almost
4 inevitable, as he, like the rest of us, must eat. The more
5 varied his skills, the easier it will be for him to find
6 meaningful work, since he will not be limited as to the type
7 of jobs he can perform.

8 In addition, once an inmate is educated, he can
9 in turn educate others until he is due to be released.

10 From my own experience of teaching inmates, I can
11 unequivocally state that being educated helps them deal with
12 many, many stresses they face every day. When disputes
13 occur, as they do for all of us, people who can think through
14 and discuss the problem from various viewpoints do not need
15 to resort to violence. When people are denied the intellec-
16 tual and verbal skills needed to settle disputes, they have
17 no alternative but their fists.

18 During my seven years at SCI Pittsburgh, I have
19 seen many angry, hostile men enter the college program.
20 But by the time they graduate, all have transformed them-
21 selves to cooperative caring individuals with a purpose and
22 seemingly inexhaustible drive to contribute to society.
23 Many, many of these inmates also have a great desire to help
24 those who have not yet made the transformation.

25 When I was asked to speak today, I asked my students

1 what they thought would be an equitable plan for meritorious
2 earned time. They were very aware that other states gave
3 earned time. But as far as I know, none knew the exact
4 formulas used. Yet when I compared their suggestion to the
5 rules listed in "Survey of Time Credit Laws by State"
6 prepared by the Oklahoma State Department of Corrections in
7 September, 1985, I found that the suggestions were in line
8 with what other states are already doing.

9 Of the forty-eight states that give earned time,
10 twenty-nine give meritorious credit in addition to credits
11 earned for good behavior. California is unique in that for
12 crimes committed after the first of '83, it gives one day of
13 credit for every day of work, educational or vocational
14 program, rather than credit for simple good behavior.

15 However, they also give additional meritorious
16 credit for heroic acts or exceptional assistance in maintenance
17 or safety and security. Thus, a total of thirty states give
18 some form of meritorious credit in addition to other credits
19 earned.

20 Twenty-six states give meritorious credit for
21 participation in work or program participation. Arkansas,
22 like California, grants one day credit for each day of
23 volunteer work. This is in addition to credits earned for
24 good behavior. These credits for good behavior range from
25 eight to thirty days for each month served. Thus, it might

1 be possible for some inmates in Arkansas to earn two days of
2 credit for each day served.

3 The consensus of opinion of my class was that
4 participation in a vocational program that runs year-round
5 should entitle a person to one hundred twenty credits per
6 year. Completion of college courses would entitle a person
7 to fifteen days credit per course per term. A student who
8 takes four courses, which is full time, would earn sixty
9 credits per term. I might add that sixty credits is suggested
10 in House Bill 1096.

11 Graduation from the program would entitle the
12 inmate to an additional one hundred twenty days of credit.
13 ABE and GED classes should be worth sixty credits per term.
14 In addition, those inmates who work in the school teaching
15 classes and/or tutoring students, should also receive one
16 hundred twenty credits per year; that's assuming if they
17 teach or tutor full time.

18 Assuming that all students went to school full time,
19 they could earn from ten to twenty days per month, depending
20 on the length the program involves. Additionally, inmates
21 should earn credit for jobs properly done, drug programs
22 completed, and other similar beneficial activities.

23 A number of states besides Arkansas and California
24 give earned time in the above-mentioned range. Florida
25 gives twenty days per month for industrial good time, based

1 on conduct, performance and responsibilities. Texas gives
2 fifteen days per thirty days in an educational or vocational
3 program. Tennessee gives up to fifteen days credit for work
4 or program participation.

5 In addition, depending on how many years the inmate
6 has served, he can earn one to two days credit for every
7 six days of above average performance in his work or program.
8 Thus, in Tennessee it is possible to earn up to twenty-three
9 days of meritorious credit per month.

10 A program such as I have outlined is vital for all
11 of Pennsylvania's prisons. It is even more crucially needed
12 at SCI Pittsburgh. The new addition has greatly reduced the
13 outdoor area available for programs and recreation. The
14 fire of last January destroyed the auditorium.

15 With fewer programs available for more and more men,
16 it is even more important to make what is still available as
17 attractive and productive as possible. Meritorious earned
18 time could help in that goal.

19 In closing, I would like to say that of those
20 students who have kept in touch with me after their release,
21 not a one has returned to prison for a new crime. One of my
22 former students, Carl Upchurch, is now the Executive
23 Director of the Progressive Prisoners Movement. He had hoped
24 to be able to speak today, but he was unable to get on the
25 agenda. However, he is in the audience if you have any

1 questions for him or wanted to hear the views of an ex-inmate.

2 Thank you.

3 ACTING CHAIRMAN KOSINSKI: Questions?

4 MR. HIRTZ: I do have a couple short ones.

5 BY MR. HIRTZ:

6 Q These college graduates, is this an Associate's
7 Degree or B.A.?

8 A It's a Bachelor's. You can get a Master's or
9 PhD.

10 Q We were lucky enough, Representative Josephs and
11 I and Roxanne Jones, to go up and attend the first graduation
12 or the graduation of the first woman to get a B.A. while in
13 prison in Pennsylvania.

14 How many college graduates are there at SCI
15 Pittsburgh this year and last year?

16 A I don't know for each year. Since the program
17 started in the seventies, they had about sixty graduates.

18 Q Also up at SCI in Muncie, there is a waiting list
19 for every single educational course offered.

20 Is that the case at SCI?

21 A I don't know for sure. I think. I know for many
22 of them, but not all.

23 Q In order to administer a reasonable program for
24 meritorious behavior, you should expand the educational
25 opportunity available?

1 A Yes, we should. There is often room there. When
2 I go to teach, there is many days there are empty classrooms.
3 It would not be difficult.

4 ACTING CHAIRMAN KOSINSKI: Mr. Upchurch, do you
5 want to say a few words? You are more than welcome.

6 MR. UPCHURCH: I would like to answer any questions.
7 I am not prepared to make a statement. I was cut off the
8 list. If there are questions by the Committee, from an
9 ex-prisoner's point of view.

10 MS. NELSON: I have a question, if you don't mind.
11 BY MS. NELSON:

12 Q As an ex-inmate, how do you think earned time
13 credit or meritorious credit would impact on morale and
14 behavior of inmates?

15 Do you agree that it would be a great incentive
16 for good behavior?

17 A From a personal perspective, there is no doubt in
18 my mind that this is a great incentive. For example, I sat
19 inside the penitentiary for six years before I realized I
20 should do something to perhaps prepare myself for society.
21 That six years was a wasted time period, chiefly for the
22 reason that there was no incentive on my sentence. While
23 preparing for the Parole Board, then I decided to get my
24 act together with some of the educational opportunities, as
25 Dr. Connomacher outlined.

1 From mornings of Phil Donahue and basketball,
2 maybe I could have substituted those for something more
3 concrete, something more valuable.

4 MS. NELSON: Thank you.

5 BY ACTING CHAIRMAN KOSINSKI:

6 Q Sir, does the county have in Allegheny -- I assume
7 you are from Allegheny County?

8 A I was sentenced out of Philadelphia. I served my
9 time here in Western Penitentiary.

10 Q You would know about the Allegheny County Prison.
11 I know Philadelphia County Prison does have educational
12 opportunity programs. I used to work in the system.

13 ACTING CHAIRMAN KOSINSKI: Any other questions?

14 Thank you, sir.

15 At this time, our scheduled agenda is complete.
16 If there is anyone who has any business before the Committee
17 that would like to speak to the Committee, you are more than
18 welcome to step to the microphone at this time.

19 Seeing none, I adjourn this meeting of the House
20 Judiciary Committee.

21 Thank you for coming.

22 (Whereupon, the hearing terminated at 1:47 p.m.)

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I hereby certify that the proceedings and evidence taken by me before the House Judiciary Committee are fully and accurately indicated in my notes and that this is a true and correct transcript of same.


Susan L. Nears, Reporter/sig