

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON JUDICIARY

In re: Prison Overcrowding

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Stenographic report of hearing held  
in Room 418, Minority Caucus Room,  
Main Capitol Building, Harrisburg, PA

Monday,  
July 17, 1989  
1:00 p.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN  
Hon. Babette Josephs, Secretary  
Hon. Gerard Kosinski, Subcommittee Chairman on Courts  
Hon. Kevin Blaum, Subcommittee Chairman on Crime  
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Michael Bortner	Hon. Jeffrey E. Piccola
Hon. Lois S. Hagarty	Hon. John Pressmann
Hon. Richard Hayden	Hon. Karen A. Ritter
Hon. David J. Mayernik	Hon. Michael R. Veon
Hon. Paul McHale	Hon. Chris R. Wogan
Hon. Nicholas B. Moehlmann	

Also Present:

William Andring, Counsel  
David Krantz, Executive Director  
Katherine Manucci, Staff

Reported by:  
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY  
536 Orrs Bridge Road  
Camp Hill, PA 17011

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1 CHAIRMAN CALTAGIRONE: The House Judiciary  
2 Committee hearing will come to order.

3 We'll start off with the first person to  
4 testify, Arthur Wallenstein, Legislative Chairman,  
5 Pennsylvania Wardens Association, Doylestown, and would  
6 you please repeat that for the record, Art.

7 MR. WALLENSTEIN: Arthur Wallenstein, and  
8 I'm representing today the Pennsylvania Prison Warden's  
9 Association.

10 CHAIRMAN CALTAGIRONE: For the record, those  
11 members that are present at the time we started the  
12 hearing, if you'd just like to introduce yourself and  
13 we'll go right down the row.

14 REPRESENTATIVE McHALE: Representative Paul  
15 McHale, Lehigh County.

16 REPRESENTATIVE HAGARTY: Lois Hagarty,  
17 representing Montgomery County and Republican Chairman of  
18 the Subcommittee on Crimes and Corrections.

19 MR. ANDRING: Bill Andring, Democratic  
20 Counsel to the committee.

21 REPRESENTATIVE HAYDEN: Representative Dick  
22 Hayden, Philadelphia County.

23 REPRESENTATIVE JOSEPHS: Representative  
24 Babette Josephs, Philadelphia County.

25 REPRESENTATIVE MOEHLMANN: Representative

1 Nick Moehlmann, Lebanon County, Republican Chairman of the  
2 Judiciary Committee.

3 REPRESENTATIVE PICCOLA: Representative Jeff  
4 Piccola, Dauphin County.

5 CHAIRMAN CALTAGIRONE: Okay.

6 MR. WALLENSTEIN: I come to you today as a  
7 member of the Legislative Committee of the Warden's  
8 Association, and I serve as the warden in Bucks County.  
9 My comments reflect legislative issues and policy issues  
10 approved by the Wardens Association, and it's in that  
11 capacity that I'm testifying today.

12 We have two bills which graciously were  
13 introduced by Representatives Blaum and Hagarty, House  
14 Bills 1106 and 1107, but I'd like to make just a few brief  
15 introductory comments, recognizing that your time is very  
16 short today.

17 Nine years ago, the population in  
18 Pennsylvania county institutions was approximately 8,000.  
19 Thirty days ago, the population was 16,000. The world has  
20 ceased to exist as we knew it in the past for Pennsylvania  
21 county prisons. We are moving on new ground, in new  
22 territory, in areas that county commissioners who  
23 supported the criminal justice initiatives in the early  
24 1980's really never anticipated and for which in many  
25 respects counties find themselves very poorly prepared.

1 Projections for the future certainly are equally difficult  
2 and have raised many questions of concern at the local  
3 level.

4 I recall the hearings held by Representative  
5 David Sweet and Representative Jeff Piccola in 1983 when  
6 the Thornburgh initiatives were going into operation. I  
7 had the honor to testify before their committee at that  
8 time and urged at that point that all new sentencing  
9 initiatives should carry intensive and rigorous population  
10 projections, and those projections should have affixed to  
11 them financial incentives, financial reimbursement, for at  
12 the time we projected that the counties were essentially  
13 going to be an iceberg, that everyone projected that the  
14 population increases would impact the State, that there  
15 were major new bond issues to provide 2,500 new beds to  
16 the State correctional system and not \$1 of initiative to  
17 assist corrections at the local level.

18 It doesn't surprise anyone today that those  
19 predictions have come to be true, that while State  
20 populations have increased significantly and a great deal  
21 of State resources have gone toward that problem and  
22 certainly more is needed, no resources were made available  
23 to the county and county populations have absolutely  
24 skyrocketed far beyond any population projections that  
25 this committee or its subcommittees had before you in

1 1983. In fact, virtually every population projection that  
2 has been rendered has proven to be if not false, certainly  
3 far under the mark because the growth has been so  
4 significant on all dimensions.

5 Al Blumstein, who's written extensively on  
6 this, the Chairman of the PCCD, and from his position at  
7 Carnegie-Mellon has certainly stated in many different  
8 ways that populations are a function of how many people  
9 enter the system and how long they stay, and we know from  
10 all of the work that PCCD has done in advising the  
11 legislature and the Governor through its many reports that  
12 all dimensions are increasing, and there appears to be an  
13 ever-increasing spiral of both the dimensions, namely how  
14 many are entering the system and how long they stay.

15 The counties are well on their way toward  
16 bankruptcy in many jurisdictions. We're not talking about  
17 average daily populations and simply the incremental  
18 increases for each additional 10 or 20 or 30 inmates who  
19 are there each day, we're talking about major capital  
20 construction, new prisons having to be built where there  
21 were never projections that the growth would be so  
22 significant five, six, and seven years ago.

23 The message that I would like to bring to  
24 you today is that the same vigor that was demonstrated in  
25 1983 toward providing some relief for the State

1 correctional system with the advent of mandatory  
2 sentencing and sentencing guidelines and was wholly missed  
3 as it relates to the counties must now be focussed in  
4 significant measure on all 67 county jurisdictions in  
5 Pennsylvania. While perhaps one-third of the counties  
6 don't have a population problem and most likely never will  
7 because of the population's composition and just general  
8 population level, certainly one-half of Pennsylvania  
9 counties who have received zero financial incentives or  
10 zero reimbursement for any portion of the adult criminal  
11 justice system are feeling enormous pressure and are  
12 likely to feel significant additional pressure in the  
13 future.

14 I also recognize that legislation in its  
15 incremental approach to problem solving is a difficult  
16 device to use to solve the issue of prison overcrowding  
17 and you will not and most likely should not be held  
18 responsible to do so, but it does not mean that there  
19 should not be incremental improvements in the system that  
20 will give some relief to the jurisdictions that you all  
21 represent and offer some kind of incentive to county  
22 government for the enormous burden of financial  
23 responsibility it holds and also for the fact that in many  
24 respects the lines between county and State corrections is  
25 blurring more and more each year.

1                   We offer two bills, and I'll discuss them  
2 very briefly because certainly you'll be reviewing them at  
3 a later date. House Bill 1107 is a very simple bill which  
4 simply says, given the influx of partial confinement  
5 prisoners, weekend prisoners, short 48 hour DUIs, please  
6 amend the work release law so the counties can charge them  
7 the \$5 or \$6 or \$7 a day that they now charge inmates on  
8 work release to bring a few extra dollars into county  
9 coffers. There is no State money involved, there is no  
10 county money involved. These would be the persons who  
11 were convicted paying this very small fee.

12                   This bill was introduced in the Senate in  
13 '87, it passed with very little debate, it was nonpartisan  
14 in nature, it went to the House and died, for reasons  
15 which we still aren't particularly sure, since no one  
16 indicated any disagreement with the bill. It then went  
17 back to the Senate and the Senate passed it again in  
18 January of 1989. We would urge you to certainly vote out  
19 Bill 1107 just so counties can reap a little bit of money  
20 back for this enormous influx of partial confinement  
21 prisoners, and you will remember that this group is not a  
22 particularly destitute group of inmates. These are people  
23 who are permitted to serve sentences on weekends and are  
24 generally working during the week. So we would hope that  
25 this would be a high priority, noncontroversial,



1 nonconfrontational bill that would affect every single  
2 county in Pennsylvania and help raise some revenue.

3 Bill 1106, from our perspective, is sort of  
4 a housecleaning bill. There's an old Pennsylvania law  
5 going back to 1923 that indicates that all inmates are to  
6 have two hours of recreation every day of the week. This  
7 bill, when it was first drafted and passed, was really the  
8 beginning of the end of 24-hour lock-up in Pennsylvania  
9 prisons and jails. It had nothing to do with inmates in  
10 disciplinary status. It was the bill that opened  
11 institutions and said that inmates should be allowed out  
12 of their cells. Well, what's happened, the bill has been  
13 allowed to encompass disciplinary problems. So here we  
14 sit with inmates who have assaulted correctional officers,  
15 assaulted other inmates, dealt drugs in the prison, caused  
16 mayhem, who, under an old piece of legislation, which  
17 everyone acknowledges was old and not meant to relate to  
18 that group, finding themselves having two hours of  
19 recreation a day with extra correctional officers having  
20 to be hired to supervise the most violent group we have,  
21 when national standards say for this group one hour a day,  
22 five days a week is quite sufficient and passes  
23 constitutional muster.

24 Again, this is a very, very small issue, but  
25 as the populations in Pennsylvania institutions have grown

1 and grown and grown, certainly the institutions need  
2 relief in those small incremental areas where you may be  
3 able to be of assistance to us. We ask your consideration  
4 of this bill which was introduced in this session of the  
5 General Assembly because it will help county and State  
6 prisons cope with a very small part of that overcrowding  
7 problem at the operational level.

8           The Warden's Association certainly supports  
9 any initiatives to reimburse States for a portion of the  
10 costs from the DUI program. Again, David Sweet introduced  
11 legislation several years ago to create a formula for  
12 reimbursement to the counties, and that bill has remained  
13 dormant, largely dormant, over several years, and perhaps  
14 that kind of reimbursement could be worked into other  
15 reimbursement ratios or formulas for local corrections.

16           And our last comment is simply that we  
17 support the concept of earned time. We leave to your  
18 choice the methodology and how it should be handled. We  
19 indicate in some detail in our testimony why we support  
20 earned time, because it does have an impact on the fiscal  
21 safety of the correctional staff who work in these  
22 institutions and the large number of inmates who are  
23 trying to serve their time in a peaceful and  
24 nonconfrontational way. We do urge though that any  
25 revocation of good time be tied directly to the

1 institution's ability to take it away and not some outside  
2 body, so we don't remove the authority that institutional  
3 administrators might have over potentially troublesome  
4 inmates.

5                   Again, I've just made incremental comments  
6 on a very, very large problem. In conclusion, I would  
7 simply ask you, begin to bring county corrections into the  
8 front of your focus. It has remained dormant far too  
9 long, and the implication of both the human and the fiscal  
10 concern are enormous and likely to grow in the future.

11                   Those are my comments.

12                   CHAIRMAN CALTAGIRONE: Thank you.

13                   We've had some additional members of the  
14 committee join us. If you'd just like to introduce  
15 yourself and the county you represent for the record?

16                   REPRESENTATIVE KOSINSKI: Jerry Kosinski,  
17 from the kingdom of Philadelphia.

18                   REPRESENTATIVE PRESSMANN: It depends how  
19 you guys look at it.

20                   John Pressmann from Allentown, Lehigh  
21 County.

22                   REPRESENTATIVE RITTER: Karen Ritter from  
23 Allentown, Lehigh County.

24                   CHAIRMAN CALTAGIRONE: We'll open it up for  
25 questions from the members.

1 Jeff.

2 REPRESENTATIVE PICCOLA: Thank you, Mr.  
3 Chairman.

4 BY REPRESENTATIVE PICCOLA: (Of Mr. Wallenstein)

5 Q. Art, thank you for your testimony, and I  
6 commend you for memorizing all of that. There's no doubt  
7 I think that county prisons or jails are now overcrowded,  
8 unlike they were a number of years ago.

9 Would you agree that the DUI sentencing  
10 scheme is the single biggest contributor to that  
11 overcrowding, or would you disagree to with that?

12 A. I would disagree.

13 Q. Okay, could you tell me why?

14 A. Most counties have found interesting and  
15 certainly safe alternatives to how they deal with their  
16 DUI population. Many are using alternative housing, work  
17 release concepts, a wing in a YMCA. More and more have  
18 availed themselves of grants from PCCD to create  
19 alternative housing, so less and less the DUI population  
20 impacts on the, let's say, hard-core jail population.

21 Again, I've not done rigorous analysis of  
22 the data, but as to what is leading to the greatest  
23 increase in population, from my perspective it has always  
24 been sentencing guidelines, and that was always the  
25 iceberg, to me, and appropriately so. We knew what the

1 legislature intended, to reduce the potential for  
2 discretion and toughen up the concept of sentencing for  
3 all crimes based on the totality of an offender's record.  
4 So since more and more people are coming before the  
5 courts, and the average dispositions are again only  
6 incrementally more severe than they used to be, you have  
7 more people coming in and less people going out.

8           It's such a simple mathematical area. If 10  
9 were arrested and only 1 went to prison in the past, you  
10 had 1 person in prison. But today, 7 are being arrested  
11 and 2 stay and they stay twice as long, well, then the  
12 beds are not being turned over as quickly. And add to  
13 that the new laws, such as the drug law, which we found  
14 many legislators felt everyone convicted under the new  
15 drug laws went to the State prison. Not true, of course.  
16 There's a 1 to 2 provision at the bottom end and many of  
17 the drug offenders are going to the county. And who  
18 wouldn't plead guilty, given the opportunity to serve  
19 their sentence at home as opposed to going off to the  
20 State correctional institution?

21           So I believe it is the totality of the  
22 sentencing enhancements that have come down since '83,  
23 given the public attitudes, and certainly the reduction in  
24 discretion available to members of the judiciary. So it's  
25 not just DUI.

1           Q.    What emphasis would you place on the recent  
2 change in the law that permits the prisoner sentenced up  
3 to almost five years, I guess one day less than five  
4 years, to serve their sentence in a county jail? What  
5 impact does that have on the county?

6           A.    It's a fair question and one that you will  
7 accept that I do not respond to because it's not in my  
8 province as a member of the Wardens Legislative Committee.  
9 I would be glad to respond to you in my capacity as a  
10 county employee, but I am confined and I can only testify  
11 about things that we've passed at the Wardens Association.

12          Q.    Can we swear you in as an individual and ask  
13 you to testify?

14          A.    You'll have a nice letter from me tomorrow.  
15 I'd be more than happy to share my thoughts with you.

16          Q.    If you would send that to me on your  
17 personal stationary.

18                    Then do the county Wardens Association, do  
19 you have a list of causes that -- or priorities that need  
20 to be addressed and you said we should put county prisons  
21 on the front burner. If you had three wishes, what would  
22 your three wishes be to help solve the county overcrowding  
23 problem?

24          A.    First of all, you shouldn't feel compelled  
25 to solve it, because you won't. Population dynamics and

1 current sentencing structure will ensure it can't be  
2 solved. The question is, what's the responsible way to  
3 respond to it? There's three issues involved.

4 Trying to restrict the inflow, obviously,  
5 and that means creating alternatives for non-violent  
6 offenders. Senator Greenleaf has a very creative proposal  
7 that is starting to be discussed in the Senate regarding  
8 community corrections and providing financial incentives  
9 for counties who want to do something, not who just want  
10 to pass the problem on to someone else. I would urge your  
11 committee to at least take a look at the concept of  
12 community corrections for the non-violent offenders.

13 Secondly, how long people stay. Well,  
14 there's no climate to reduce the nature of the sentences  
15 that have already been established. In fact, the climate  
16 most likely runs in the other direction, but you certainly  
17 could venture into the world of earned time. So we don't  
18 have to pull out something like emergency release.  
19 Remember, earned time was a very moderate proposal, a  
20 middle range proposal from the PCCD statewide report from  
21 1985 or 1986. In reality, the counties can implement  
22 earned time now because it's not precluded, and therefore  
23 many counties have. So I suppose that issue really rests  
24 with the individual counties.

25 I also believe there are some proposals,

1 some of which have just been discussed with some of the  
2 county commissioners, about reimbursing counties for  
3 holding long-term prisoners, because essentially you are  
4 then providing them with the wherewithal to keep people  
5 from entering the State correctional system.

6 And the far extreme relates to capacity, and  
7 you all don't have enough money to start financing the  
8 construction of major new prisons throughout this  
9 Commonwealth, although certainly the issue of capacity and  
10 bed space is one potential solution. I think if you  
11 listen to county concerns and continue to assume that now  
12 that the county system is as big as the State system, it  
13 ranks equal priority, you will be taking a major step  
14 forward and some legislative initiatives will come to you  
15 of their own volition.

16 Q. One final question, and perhaps you don't  
17 have an answer to this one. It just seems to me that the  
18 concept of a county prison, if you will, that contains or  
19 houses DUI offenders, minor offenders, non-violent  
20 offenders, low security offenders, with some very  
21 significant offenders and detainees is a kind of a, you  
22 know, maybe it worked in the 1950's and the 1960's, but it  
23 seems to me that in the 1980's and perhaps in the '90's  
24 that there's something else we should be looking at. Are  
25 you aware of any research or development in the area of



1 organization of corrections so that we might get a better  
2 handle on this? It seems like we know what the State  
3 systems are for, but the county system has a whole  
4 hodgepodge of everything, and I'm wondering if there has  
5 been any work done in that area that you might direct us  
6 to that would show the directions?

7 A. We do know one thing. Rates of case  
8 disposition are a key in the county corrections. The more  
9 efficient the court, the more efficient the prosecutorial  
10 systems, the quicker people move through the system.  
11 There's less doubt and people either move on to the State,  
12 go home, or move on to complete their county sentences.  
13 That's something that has been discussed in some detail  
14 and there's a problem in some counties, obviously. Case  
15 closure and the whole system of efficiency of criminal  
16 court.

17 I will tell you that Pennsylvania is unique,  
18 and I think we all know that. Persons can serve longer  
19 sentences in Pennsylvania than virtually anywhere else in  
20 the United States, so the county prison is a prison. It's  
21 never been a jail in the State. It never has had the  
22 requirement of 365 days and you're a county prisoner, and  
23 366 and you're a State prisoner. But that's also helped  
24 move cases through the system, too, because people have  
25 been willing to plead guilty to virtually anything in

1 order to serve that sentence closer to home. But you all  
2 have created a great many opportunities to stay at home  
3 given the long sentences that are possible to be served in  
4 the counties. So again, it should come as no surprise to  
5 anyone that the county prison populations are going up,  
6 but they're holding longer and longer offenders. It's not  
7 your fault, it's the nature of the era in which we live as  
8 it relates to criminal justice. It's just that the funnel  
9 is larger in the State as it relates to corrections at the  
10 local level.

11 REPRESENTATIVE PICCOLA: Thank you.

12 CHAIRMAN CALTAGIRONE: One thing I'd like to  
13 just leave with you is I've been looking at the  
14 possibility of developing alternative sentencing or  
15 allowing the judges from the counties to look at that as a  
16 possibility for a relief valve, and specifically with the  
17 drug and alcohol cases and the non-violent type offenders,  
18 and I do have an inventory now of all the State and local  
19 facilities that are available for such demonstration  
20 projects, tying in to the county and the State as a  
21 demonstration with a number of State prisoners and a  
22 number of county prisoners in such a facility. Have the  
23 wardens approached that subject at any of your meetings?

24 MR. WALLENSTEIN: Yes, we've held major  
25 sessions on alternatives. There's no need to reinvent the

1 wheel. It's all there. I mean, you have PCCD to generate  
2 whatever studies you need that your staff may not have  
3 access to. Every program in this world has been tried  
4 somewhere because all 50 States have the same difficulty.  
5 Alternative programs are extremely efficient and  
6 enormously cost effective for non-violent offenders, and  
7 in reality, every time a non-incarceration sentence is  
8 imposed, you're testing those programs anyway in the  
9 field. Senator Greenleaf's suggestion regarding a  
10 community corrections act which formalizes that process  
11 and puts money back into the coffers of counties who do  
12 something is simply a way to institutionalize it, and  
13 there's virtually no risk. There's always risk when you  
14 deal with offenders. I mean, if there was 100-percent  
15 non-risk, well, we would be perfect, and so I would urge  
16 you to consider any options in that area.

17 CHAIRMAN CALTAGIRONE: Okay. Thank you.

18 The Honorable Fred W. Jacobs.

19 MR. JACOBS: Would you like for me to  
20 proceed, sir?

21 CHAIRMAN CALTAGIRONE: Yes.

22 MR. JACOBS: My name is Fred Jacobs, and I  
23 am Chairman of the Pennsylvania Board of Probation and  
24 Parole.

25 Mr. Chairman, members of the House Judiciary

1 Committee, I appreciate the opportunity to appear before  
2 you today to provide testimony on the issue of prison  
3 overcrowding. I shall not be giving testimony on House  
4 Bill 1707, House Bill 1706, House Bill 1107, House Bill  
5 1106, House Bill 1094, House Bill 129, and House Bill  
6 1710. The content of those pieces of proposed legislation  
7 do not directly impact on the Pennsylvania Board of  
8 Probation and Parole, therefore, I thought it  
9 inappropriate to make any specific comments, unless the  
10 committee has specific questions they wish to address to  
11 me on those issues. I shall provide testimony this  
12 afternoon on House Bill 935, House Bill 1708, House Bill  
13 1709, House Bill 1711, House Bill 1712, House Bill 1157,  
14 and House Resolution 151.

15           With reference to House Bill 935, the  
16 specific issue which impacts on the Pennsylvania Board of  
17 Probation and Parole is the requirement that the board  
18 shall not release a person on parole unless that person  
19 has successfully completed a drug program or a drug  
20 treatment and rehabilitation program approved by the  
21 Department of Health. This provision relates only to  
22 those inmates sentenced for violation of the Controlled  
23 Substance, Drug, Device and Cosmetic Act. The board  
24 supports the passage of this House Bill.

25           I would comment, however, that many

1 offenders in the State and county correctional systems  
2 have serious substance abuse problems. For example, it  
3 has been estimated that in the Department of Corrections,  
4 approximately 70 percent of the population has serious  
5 drug and/or alcohol problems. To limit the requirement  
6 for substance abuse treatment to only those inmates who  
7 have been convicted of violating the Controlled Substance,  
8 Drug, Device and Cosmetic Act would only touch the tip of  
9 the iceberg. Many offenders with substance abuse problems  
10 are serving time for robbery, burglary, theft, and a  
11 multitude of similar crimes.

12 Another issue I would like to address is the  
13 need to provide appropriate research support to all  
14 correctional facilities housing State sentenced inmates if  
15 they are required to provide expanded programming in  
16 substance abuse treatment.

17 One last comment concerning House Bill 935  
18 which should be clarified is the issue of what constitutes  
19 successful completion of a drug treatment and  
20 rehabilitation program. That term appears in Section 21,  
21 page 2, line 11, and Section 22 page 3, line 16. What  
22 agency carries the responsibility of determining  
23 successful completion? It appears that either the  
24 Department of Corrections, the Pennsylvania Board of  
25 Probation and Parole, or the Department of Health could be

1 that agency. In any event, the term should be defined in  
2 the legislation. The difficulties in predicting  
3 individual human behavior are well documented.

4 House Bill 1708 deals with the release  
5 planning for prison inmates. My comments regarding this  
6 bill recommend some cosmetic changes. In numerous places,  
7 the term "Bureau of Corrections" should be changed to  
8 "Department of Corrections"; and "Department of Justice"  
9 should be "Department of Corrections."

10 In Section 2(c)4, page 3, line 10, reference  
11 should be to the chief adult probation officer, not simply  
12 probation officer, as to notification of the release of  
13 each person in this status.

14 My last comment on this particular bill  
15 refers to Section 2(c)5. This section deals with  
16 participation in an electronic surveillance program for  
17 the final 30 days of a person's minimum sentence. Since  
18 the Pennsylvania Board of Probation and Parole considers  
19 for parole approximately two months prior to the  
20 expiration of their minimum terms, the Department of  
21 Corrections would have knowledge of those inmates we  
22 intend to parole. Only those inmates who we have decided  
23 to parole should be eligible for electronic surveillance  
24 for the last 30 days of their minimum sentence. It is  
25 unclear whether the intent is to house the perspective

1 . parolee in his or her approved residence for parole or in  
2 some other community setting. I would suggest, therefore,  
3 that if the person is to be used at his or her proposed  
4 residence, that it should not be done until the parole  
5 plan has been investigated and approved by the Board of  
6 Probation and Parole.

7           The committee should also consider whether  
8 the electronic surveillance program referred to in this  
9 House Bill should be an active or a passive system. My  
10 recommendation would be for an active system which  
11 continuously signals whether the person in the program is  
12 complying with the requirements appropriately. A passive  
13 system does not provide the same kind of accountability.

14           One last comment concerning House Bill 1708  
15 refers again to the same section as above, page 3, line  
16 23, the term "panel". This section talks about returning  
17 the person to a State regional panel or correctional  
18 institution. It is unclear to me what is meant by  
19 regional panel. Possibly the term should be penal,  
20 P-E-N-A-L, or perhaps the term "regional facility" might  
21 be more appropriate.

22           The Board of Probation and Parole endorses  
23 the concept of electronic surveillance for inmates who  
24 have been selected for parole for a period prior to the  
25 expiration of a minimum sentence. It is understood,

1       however, that the board would have no supervision  
2       jurisdiction or authority over those offenders until their  
3       minimum term expires.  Therefore, the Department of  
4       Corrections would have to monitor for violations of the  
5       electronic surveillance program and take whatever  
6       appropriate action is necessary for violations of this  
7       sanction.

8                       House Bill 1709 establishes an incentive for  
9       offenders to earn time off their minimum sentences by  
10      involvement in institutional programs.  This would expire  
11      on June 30, 1992.  The maximum amount of time to be earned  
12      is 52 days per calendar year, which translates into one  
13      day per week.  Our board supports meritorious earned time.  
14      It is important that offenders become involved in  
15      programming that can have the effect of reducing risk to  
16      society at the time of parole.  The only difficulty I  
17      foresee is that with the overcrowded prison population,  
18      the relative lack of programs available, and the long  
19      waiting lists for those programs could create significant  
20      tension among inmates as they compete for those slots  
21      ostensibly to reduce their risk to society and at the same  
22      time earning time off of their minimum sentences.  When  
23      considering an inmate for parole, the Board of Probation  
24      and Parole will have to be cognizant of this and continue  
25      to evaluate risks before any parole decision is made.



1           Section 34.2 indicates that if an inmate is  
2 found guilty of a misconduct violation, the department can  
3 penalize the offender up to a maximum of 104 days for each  
4 violation. Theoretically, therefore, an inmate could lose  
5 two years of meritorious earned time for a rather  
6 insignificant violation. This section of the bill  
7 requires the department to promulgate regulations that  
8 should preclude this from happening. It is important to  
9 determine with an earned time system if there is any  
10 liberty interest involved and whether or not the  
11 misconduct violation hearings will become full due process  
12 proceedings with attorney representation, confrontation of  
13 witnesses, and other due process issues. I think this  
14 would be an issue that the legal staff of the Judiciary  
15 Committee, along with other appropriate counsel, should  
16 consider.

17           Section 34.3 limits the offender population  
18 eligibility for earned time as proposed in this bill. One  
19 such exclusion includes offenders return to prison by the  
20 Board of Probation and Parole for violations of parole.  
21 We support this provision, but perhaps the committee would  
22 want to the consider a distinction between technical  
23 parole violators and convicted parole violators.  
24 Convicted parole violators are those parolees who have  
25 been convicted of a new criminal offense while serving

1 time on parole, whereas technical parole violators are  
2 those parolees who have committed violations of the  
3 conditional release on parole.

4 House Bill 1711 provides an appropriation of  
5 \$930,000 to the Pennsylvania Board of Probation and Parole  
6 for the fiscal year July 1, 1989 to June 30, 1990, for an  
7 intensive parole supervision program. We have found  
8 intensive parole supervision programs to be effective not  
9 only as alternatives to re-incarceration for some  
10 parolees, but as a reasonable and responsible way to  
11 provide community control of offenders under our  
12 jurisdiction. New criminal activity can be reduced with  
13 appropriate supervision, although technical violations are  
14 more prevalent. There are implementation problems with  
15 any new program. If the board were to receive this  
16 funding, which would provide for 17 positions, we would  
17 reassign experienced parole agents for this program and  
18 hire new parole agents to pick up the remaining workload.

19 It should be known that new parole agent  
20 hires cannot carry a full supervision workload until they  
21 have completed a 12-month training program with the board.  
22 Workload responsibilities are phased-in over that one-year  
23 period of time, and only after successfully completing a  
24 probationary period is the new parole agent given a full  
25 supervision workload.

1           The other issue you should be aware of  
2 concerns office space limitations currently being  
3 experienced in our agency. New leased office space would  
4 be necessary to implement this or any other new program.  
5 The leasing process conservatively takes six to nine  
6 months. Based on these limitations, I would suggest that  
7 the appropriation should be for the period January 1, 1990  
8 to June 30, 1991 fiscal year. To do more than a four- or  
9 five-month program this fiscal period would be  
10 problematic.

11           The board is very encouraged, however, that  
12 many members of the House of Representatives recognize the  
13 value of intensive parole supervision programs, as  
14 evidenced by cosponsorship of this proposed legislation,  
15 and we thank you for that.

16           House Bill 1712 extends the earned time  
17 concept to the maximum sentence for certain offenders who  
18 are serving the balance of their sentences on parole  
19 supervision. Section 21.2 essentially contains the  
20 language that I suggested to this committee in similar  
21 testimony in June of 1987. If earned time incentives can  
22 reduce disciplinary infractions during incarceration, it  
23 may be expected that antisocial behavior while on parole  
24 supervision could be reduced with similar incentives for  
25 good behavior. This would have a cost benefit to the

1 Commonwealth in reducing a parole population through  
2 earned time credit incentives.

3 The only alternative currently available to  
4 reduce maximum sentences is through a special commutation  
5 process, which can only be constitutionally granted by the  
6 Governor. Earned time on the maximum sentence beginning  
7 after parole or release would complement the commutation  
8 process, and the judicially imposed maximum sentence would  
9 remain intact.

10 The only other comment I have concerning  
11 House Bill 1712 deals with some cosmetic changes by  
12 changing, again, the name from the "Department of Justice"  
13 to the "Department of Corrections".

14 House Bill 1157 provides for earned time  
15 credits awarded at the rate of five days for each calendar  
16 month without institutional infractions. It also provides  
17 meritorious earned time at the same rate for enrollment in  
18 educational, vocational, therapeutic or community service  
19 activities not mandated by prison regulations.  
20 Correctional administrators regard earned time as an  
21 effective tool and extra incentives for good behavior  
22 which will assist in prison population management and  
23 control. The Board of Probation and Parole supports this  
24 correctional concept, since it is designed to supplement  
25 the existing parole process and recognizes the impact

1 earned time can have on the parole population.

2 The parole supervision program in our agency  
3 is over capacity, just as the prison populations is over  
4 capacity. The board spends upwards of \$500,000 a year in  
5 overtime to meet minimum supervision requirements. To  
6 expect the parole supervision system with existing  
7 resources to provide services for an even larger parole  
8 population for long periods of time would be problematic.  
9 Without additional sufficient resources for parole  
10 supervision in community control programs, public safety  
11 would be compromised, and it is important that you  
12 recognize that. Therefore, an appropriation to the board  
13 similar to that in proposed House Bill 1711 is recommended  
14 as an amendment to this bill.

15 Section 2(b) deals with exceptions to earned  
16 time. In addition to the exceptions noted, perhaps the  
17 committee should consider offenders serving mandatory  
18 sentences, life sentences, and parole violators who have  
19 been recommitted for committing new crimes while on  
20 parole.

21 Not relating specifically to House Bill 1157  
22 but I think important for the Judiciary Committee members  
23 to know are some philosophical concerns of the Board of  
24 Probation and Parole which may be different from the views  
25 of prison and jail administrators. Our view is that an

1 earned time system will provide correctional managers with  
2 another tool to deal with prison management problems, and  
3 we support any provision that will provide correctional  
4 managers with the tools they need to control the large  
5 populations under their jurisdiction. Certainly, parole  
6 is a substantial incentive currently.

7 We recognize, however, that good behavior in  
8 prison does not necessarily lead to law-abiding behavior  
9 on parole. The strength of all of the proposed  
10 legislation concerning earned time is that it retains the  
11 parole process so that offenders are not simply released  
12 early on their sentences in all situations where they have  
13 accumulated earned time credits. Evaluation of risk and  
14 the ability to safely supervise in a community setting are  
15 the keys for parole decisionmakers, while reducing and  
16 managing prison populations are the keys for correctional  
17 administrators.

18 Earning time off of one's sentence does not  
19 assure that an offender has reduced his or her risk to  
20 society. We should all be aware that many dangerous  
21 offenders serve time rather easily but continue to be  
22 dangerous to others. Many of these offenders do not take  
23 responsibility for the crimes they have committed and  
24 therefore are not involved in any therapeutic program  
25 specifically related to their offense. Many of these

1 offenders have an otherwise good adjustment in the prison  
2 setting, however they generally are not paroled because  
3 they have had no therapeutic involvement which may reduce  
4 their risk to others.

5 One alternative to deal with offenders with  
6 exemplary behavior but still considered a high risk for  
7 parole would be to require therapeutic programming rather  
8 than having it voluntary, or in the alternative, to place  
9 such offenders in community service centers so that we can  
10 further evaluate them in a structured setting prior to  
11 further considering them for parole.

12 Another concern of the Board of Probation  
13 and Parole deals with the rights of the victims of crime.  
14 Our concern is in responsibly balancing the impact of a  
15 victim's testimony to the Pennsylvania Board of Probation  
16 and Parole with the fact that the offender may serve even  
17 less time than stipulated by the sentencing judge at the  
18 point earned time proposals become operational. The  
19 message we convey to the general public and the victims of  
20 crime must be very clear. If we are supporting the earned  
21 time concept as a way of reducing overcrowded prisons, the  
22 message to the public should be clear and honest. We must  
23 also be able to assure the public that persons released  
24 early from prison as a result of earned time will be  
25 supervised appropriately by parole officials with

1 resources provided for that specified purpose. In some  
2 cases, that would mean intensive supervision to exercise  
3 maximum community control.

4           Victim's rights legislation in the form of  
5 Act 134 of 1986 requires district attorneys to notify  
6 victims of crime, immediately following sentencing, of the  
7 opportunity to present oral or written testimony to the  
8 Board of Probation and Parole prior to the release  
9 decision being made. Such testimony provides information  
10 concerning the continuing nature and extent of any  
11 physical harm or psychological or emotional harm or trauma  
12 suffered by the victim, the extent of any loss of earnings  
13 or ability to work suffered by the victim, and the  
14 continuing effect of the crime upon the victim's family.  
15 A balance of criminal justice policy is necessary, and a  
16 policy that can be understood and generally accepted by  
17 the public should, in my opinion, be a very high priority  
18 of the General Assembly. The issue of victim's rights  
19 must not get lost as we embrace an earned time policy.  
20 Perhaps the sentencing judge should have the discretion to  
21 determine, as part of the sentence, if earned time should  
22 apply in particularly assaultive offenses.

23           My final comment concerning House Bill 1157  
24 concerns Section 5(b). This, again, is a proposal to  
25 extend the earned time concept to the maximum term imposed



1 upon the parolee. The language contained in Section 21.2  
2 of proposed House Bill 1712 is preferable because it deals  
3 with the inactive period of supervision occurring since  
4 the judicially imposed maximum sentence remains unchanged.

5 My final comment this afternoon relates to  
6 House Resolution 141. The Pennsylvania Board of Probation  
7 and Parole strongly supports the necessity for prison  
8 population impact studies to be completed prior to passing  
9 new legislation. We would also recommend parole  
10 population impact studies in similar instances.

11 My testimony today concerning all of the  
12 related pieces of legislation was an attempt to  
13 responsibly look at earned time in the framework of prison  
14 overcrowding and parole consideration and supervision.  
15 The package of bills that you have before you represents  
16 significant contributions by members of the House of  
17 Representatives, and I appreciate the opportunity to  
18 provide testimony on these issues.

19 That concludes my testimony. I shall be  
20 pleased to respond to any question you may have.

21 CHAIRMAN CALTAGIRONE: Thank you, Fred.

22 Members?

23 Gerry.

24 REPRESENTATIVE KOSINSKI: Thank you, Mr.  
25 Jacobs. Not really a question, but just a comment. For

1 once in my life I'm going to do some listening today  
2 instead of asking questions, so I enjoy the change of  
3 pace.

4 But I do want to say that one thing that is  
5 a primary consideration of House Bill 1157 is the issue of  
6 victim's rights. I'm very attuned to that throughout my  
7 legislative career and thank you for your comments on that  
8 today, and you can rest assured that anything we do in  
9 this committee as far as earned time, that the victim's  
10 rights are paramount, and thank you for your comments on  
11 that.

12 That's about all I want to say.

13 REPRESENTATIVE RITTER: Thank you, Mr.  
14 Jacobs.

15 I want to follow up with you later on this  
16 point you made about previous parole violators. I have an  
17 amendment to House Bill 1157, which I should probably send  
18 to you, which will make exceptions for first-degree  
19 murders offenses, for life sentences, for sexual abuse of  
20 children, and your comment about the previous parole  
21 violators I think may be something that should be included  
22 also, and I'll get in touch with you about the language on  
23 that.

24 Thank you.

25 MR. JACOBS: Okay, thank you.

1 CHAIRMAN CALTAGIRONE: Lois.

2 REPRESENTATIVE HAGARTY: Thank you.

3 BY REPRESENTATIVE HAGARTY: (Of Mr. Jacobs)

4 Q. I also want to thank you for your  
5 constructive comments on the package of bills that  
6 Representative Piccola and I introduced and that were  
7 co-sponsored by many members of the committee.

8 On the electronic surveillance piece which  
9 you gave hopeful additional changes to that, have you  
10 studied any of the other the State systems which use  
11 electronic surveillance, and I wonder if you could share  
12 with us your observations on those systems?

13 A. There are two basic systems of the  
14 electronic surveillance. One is commonly referred to as  
15 an active system, and the other is a passive system. We  
16 are experimenting with both in Pennsylvania. We have, in  
17 our intensive drug unit in Philadelphia, we use the active  
18 system, and in Pittsburgh we use the passive system. And  
19 the reason that we are experimenting with both is to try  
20 to define for ourselves which direction we want to go in  
21 the future, which seems to be most reliable for what kinds  
22 of offenders.

23 Electronic surveillance has been used  
24 primarily around the country for pretrial diversion  
25 programs and relatively minor offenders. Our experience

1 in using with high-risk drug offenders seems to be an  
2 exception to the rule. However, the active system, which  
3 is a continuously signaling system, tells us all the time  
4 whether or not the parolee is being maintained in his or  
5 her residence within 100 feet of the monitor which is in  
6 the home. Now, the exceptions to that are when the  
7 parolee has prior approval for work, to be out of the  
8 house for work, or to go grocery shopping or to doctors'  
9 appointments and things like that, but outside of those  
10 times, the computer constantly monitors those people.

11 In the passive system, however, the computer  
12 simply randomly calls up the parolee to see if that person  
13 is at home, and the parolee then sticks a bracelet in a  
14 monitor and that signals whether or not the parolee is  
15 there. But in between times, the parolee can play games  
16 with it and go wherever they really want to go, so you  
17 really have to have an active supervision curfew with that  
18 kind of a system. It doesn't save you much manpower. The  
19 active system, however, is much more preferable.

20 Q. In your experience with the active system  
21 then, you view -- I guess do you view this as a good  
22 parole technique and do you believe that the public's  
23 safety is sufficiently safeguarded?

24 A. Well, I do view it as a good additional  
25 tool. It does not really replace anything, but it

1 supplements the whole aspect of community control, so that  
2 for an active system, for example, we know all the time  
3 whether the person is within 100 feet of the monitor.  
4 That doesn't tell us whether the person is using drugs  
5 during that time or strangling his wife or anything else,  
6 but it does tell us that he's confined. In addition to  
7 that, though, we still go out on curfew checks and we  
8 still monitor all hours of the day and night, 7 days a  
9 week, 24 hours a day.

10 The other thing that we do with electronic  
11 surveillance is that some people we only have on what is  
12 called a voice identification system. They don't have to  
13 wear any electronic apparatus, but the computer will call  
14 them randomly at times they're supposed to be home.  
15 They'll have to repeat some words so the computer can make  
16 a voice identification print to see whether in fact that's  
17 the real person that is there. So, you know, a  
18 combination of those techniques are very helpful in parole  
19 supervision.

20 Q. You don't envision this, I take it, as being  
21 available, I guess, to allow people to leave prison  
22 earlier to help with overcrowding?

23 A. Oh, no, I do. I do. I just think that the  
24 techniques that we have applied to the program need to be  
25 applied there also. I think it's a great the idea and I

1 don't think 30 days is anything magical. It could be 60  
2 days prior to the minimum sentence, as long as the home  
3 has been approved and investigated and that the Department  
4 of Justice is monitoring the sanctions. And if people  
5 violate, there has to be some activity taken.

6 Q. Okay. Thank you.

7 A. Sure.

8 CHAIRMAN CALTAGIRONE: Mike.

9 REPRESENTATIVE BORTNER: Thank you.

10 BY REPRESENTATIVE BORTNER: (Of Mr. Jacobs)

11 Q. Mr. Jacobs, I would also assume, following  
12 up on that question of the active and passive system, that  
13 the active system is much more expensive?

14 A. No. They are relatively the same price.

15 Q. Pardon?

16 A. They cost approximately \$10 per offender,  
17 and they're generally lease/purchase kinds of equipment,  
18 so that the cost is really minimal.

19 Q. \$10 per--

20 A. Per person.

21 Q. For what period of time?

22 A. Per day.

23 Q. Per day?

24 A. Yeah.

25 Q. Are they helpful when -- are these used

1 primarily for people that aren't employed or are they also  
2 usefui when somebody is employed?

3 A. For our use they are primarily used for  
4 people who have an awful lot of leisure time on their  
5 hands and people who are not employed, although we do use  
6 it occasionally for people who are employed. We are just  
7 trying -- really trying to control movement and control  
8 activity.

9 Q. I assume computers can do anything, they can  
10 be programmed to do their monitoring or checking during  
11 evening hours--

12 A. That's right

13 Q. --or weekends or whatever you ask to it to  
14 do.

15 A. That's right, and when you program the  
16 computer to randomly make calls, there's no way any  
17 parolee can predict when those calls are coming, so, you  
18 know, they have to be there. You know, in our experience  
19 with it, we've only had one parolee actually abscond with  
20 the equipment on, and we've had nobody destroy the  
21 equipment. So, you know, it's been relatively successful  
22 in that regard. And before we put anybody on it, we sit  
23 down with them and completely go through the reasons for  
24 it and so forth, and most people are willing to just have  
25 the extra freedom that go with that.

1           Q.   Typically for the kind of prisoners that  
2 you're using this on, how many contacts would your parole  
3 officers be making with that person if they weren't using  
4 this system?

5           A.   If they were not using this system?

6           Q.   Right.

7           A.   Well, we're using it for high-risk drug  
8 offenders, which means that in addition to the system,  
9 they have at least six personal contacts a month. Okay?  
10 If they were not in the intensive supervision program and  
11 not on electronic monitoring, they would be having  
12 probably a maximum of two per month.

13                   REPRESENTATIVE BORTNER: Thank you very  
14 much.

15                   CHAIRMAN CALTAGIRONE: Thank you very much.  
16 Appreciate your testimony.

17           MR. JACOBS: Okay, thank you.

18           CHAIRMAN CALTAGIRONE: Charlotte Arnold.

19           MS. ARNOLD: Good afternoon. I'm Charlotte  
20 Arnold, and I thank you, the distinguished members of the  
21 Judiciary Committee, for asking me to testify today. I am  
22 the Executive Director of The Program for Female  
23 Offenders, and I would like to speak to you today. I'm  
24 going to address the concerns of female offenders as well  
25 as the crises on the county level.



1                   The Program for Female Offenders began to  
2 serve the women of Pittsburgh community in 1974. At that  
3 time, the incarcerated female was usually found in the  
4 corner of a jail and neglected and ignored. The numbers  
5 were so small that they were considered to be  
6 insignificant. Recognizing that these women had been  
7 abused and neglected children whose reaction to that  
8 treatment turned them into dependent and depressed  
9 persons, the program designed a project to help them find  
10 jobs, develop job skills, and, in essence, to break the  
11 cycle of crime and welfare dependency and to become  
12 independent and productive. This program has been so  
13 successful, the recidivism rate among the participants has  
14 been so low that it has received recognition nationally  
15 and internationally. In Pennsylvania, three communities  
16 have replicated the model, and projects exist in Dauphin  
17 and Cumberland Counties, the Lehigh Valley, and in  
18 Philadelphia, as well as in Allegheny County.

19                   In addition to providing direct services to  
20 female offenders, the program felt that it had a mission  
21 to call the plight of this population to the community's  
22 attention. So misunderstood, so invisible was this woman.  
23 The misunderstanding certainly continues to exist, but the  
24 female offender is no longer invisible.

25                   On my first visit To the Allegheny County

1 jail in 1971, there were 12 women to whom I offered  
2 assistance. By 1983, there were more than 70. Today,  
3 there are more than 100 women in the Allegheny County  
4 jail; a 1,000-percent increase. And although these  
5 persons are fewer in total numbers than the male  
6 population, the percentage of increase is more  
7 significant.

8           Why are there growing numbers of women in  
9 the county jail? There are a myriad of causes. Firstly,  
10 the baby boomers are still heavily in the crime age  
11 categories. Secondly, there are a significant number of  
12 women who, after experiencing a teenage pregnancy, are  
13 thrust into the role of single head of household. The  
14 result is the increasing feminization of poverty, and  
15 since most female crime is property crime, I think we can  
16 draw conclusions. The most frightening cause of  
17 increasing numbers of women in jails and prisons is the  
18 increased use of Crack and cocaine. These women who in  
19 the '70's may have stolen to feed their children are now  
20 stealing to feed their habits.

21           What is needed? Motivational welfare  
22 policies which encourage women to leave the welfare  
23 system, residential work release, drug abuse centers in  
24 lieu of incarceration, parenting programs, and affordable  
25 child care.

1                   This is simply an overview of the female  
2 aspect of the problem, but the jail crowding problem is  
3 even of more significance than the female issue alone. I  
4 recently prepared for Allegheny County a criminal justice  
5 plan to meet a Federal court order on jail crowding. In  
6 preparation for developing that plan, we looked at the  
7 national scope of the problem. Three-fourths of the jails  
8 in the United States are at 108 percent of capacity or  
9 greater, and 23 percent of them are under court order  
10 similar to that in effect in Allegheny County. In the  
11 1960's, crime rates skyrocketed while prison populations  
12 declined. In the 1970's, the climate surrounding criminal  
13 justice changed, and there was a public opinion shift to a  
14 tougher attitude toward criminal offenders. New laws were  
15 passed requiring mandatory sentences for most crimes,  
16 while removing judicial discretion in the sentencing area.  
17 These guidelines increase the length of time that most  
18 offenders would now serve. In 1983, with the passage of  
19 Act 289, mandatory sentences for DUI offenders added  
20 additional persons to the jail system. Unfortunately, the  
21 legislature has not addressed the issue of appropriations  
22 to meet the resultant need for additional county jail  
23 cells.

24                   Nationwide, the total growth for prison  
25 populations from 1980 to '87 was 76 percent.

1 Pennsylvania's prison are at an average of 136 percent of  
2 capacity. But it is at the county level where the  
3 increase is most dramatic. In 1976, in Allegheny County,  
4 there were 388 persons incarcerated in the jail. On  
5 February 17, 1989, there were 1,120 persons, a growth of  
6 300 percent.

7           Since the prison population nearly doubled  
8 in this decade and State prisons became crowded, local  
9 authorities have been forced to assume what had been the  
10 State's responsibility for housing offenders. Prior to  
11 the State's crowding problem, county jails were typically  
12 places where persons were detained prior to sentencing.  
13 Persons sentenced from 6 to 23 1/2 months were most often  
14 housed by the State in regional facilities. The State no  
15 long accepts these prisoners, and they are now housed in  
16 local jails. In Allegheny County, on February 7, 1989, 27  
17 percent of the prisoners were sentenced. This sentenced  
18 population is likely to grow in the county jails.

19           Nationwide, the impact of jail crowding has  
20 resulted in most local government's inability to house  
21 prisoners in accordance with standards which have been set  
22 by the Federal government for inmate services. The courts  
23 have thus become more active in ruling on the  
24 constitutionality of conditions of confinement and are  
25 requiring jail administrators to meet the standards.

1 These court orders are in effect in many communities, from  
2 Marin County, California to Dade County, Florida; and in  
3 Pennsylvania from Philadelphia County to Allegheny County.

4 Solving the problem must be a joint effort  
5 of municipalities working together and of the State  
6 providing help to those municipalities. It can't all be  
7 solved by building bigger and better jails, but there will  
8 have to be some of that, and the State should help to foot  
9 the bill. There must be creative solutions to  
10 overpopulation as well:

11 --Work release facilities where DUI and  
12 other non-violent persons can serve productive time.

13 --House arrest projects.

14 --Mental health and inebriate diversion  
15 projects.

16 --Multi-county DUI facilities.

17 --Establishment of more drug programs for  
18 offenders.

19 --The use of earned time or good time, which  
20 is not only a good jail management tool many but allows in  
21 essence for early parole as a reward for good behavior --  
22 the release of prisoners at the end of their sentencing  
23 rather than release before guilt or innocence has been  
24 determined, which has been called emergency release,  
25 certainly makes sense.



1 evidence that private operation of correctional facilities  
2 would save money and concluded that contracting out does  
3 not relieve the State or local government from liability  
4 for civil rights or tort actions brought by the inmates.

5 All of this to say that privatisation is not  
6 an answer to be entered into lightly, and if you consider  
7 the cost for the Department of Corrections to license,  
8 train, and monitor, it may be a costly venture. However,  
9 it is certainly an avenue that you ought to consider.

10 House Bills 1712, 1157 and 1709 deal with  
11 earned time. As I noted before, there is a motivational  
12 concept that ought to be part of the Pennsylvania prison  
13 system as well as the county's jail system. A bill which  
14 would establish this system in both jails and prisons  
15 would be preferable.

16 House Bills 1094 and 1582 seem to be at  
17 opposite ends of the spectrum. House Bill 1094 will add  
18 to the counties' jail crowding problem and indicates no  
19 recognition that the counties are in dire need of  
20 solutions not more restrictions regarding prisoners  
21 remanded to the State system.

22 On the other hand, 1582 seems to present a  
23 more thoughtful solution for the county jail problem.  
24 Intensive parole programs, pre-release centers, drug  
25 treatment programs within the prison system are creative

1 solutions to the problem which are components of the other  
2 bills before you.

3 House Bill 1707 is a building solution for  
4 the State system. I would request that you add one more  
5 component to any of the above bills, and that involves  
6 help to the counties to build, to create alternatives, to  
7 comply with the myriad of court orders that are being  
8 handed down.

9 I thank you for the opportunity to speak  
10 with you today about my biggest concerns, the female  
11 population statewide and the plight of the counties and  
12 the county jail system, and I thank you for your  
13 attention.

14 CHAIRMAN CALTAGIRONE: Questions?

15 Jeff.

16 REPRESENTATIVE PICCOLA: Thank you, Mr.  
17 Chairman.

18 BY REPRESENTATIVE PICCOLA: (Of Ms. Arnold)

19 Q. Charlotte?

20 A. Hi.

21 Q. On page 5 of your testimony, when you're  
22 talking about House Bills 129 and 1710, actually, I'm the  
23 prime sponsor of 1710, it is the intent for this  
24 legislation to apply to both profit and nonprofit  
25 corporations. In my mind, there's really not a whole lot



1 of difference between a profit and nonprofit except  
2 nonprofits don't pay dividends. But be that as it may,  
3 the intent was for this to apply to both. And I think  
4 with your testimony what you are, in essence, saying is  
5 that your Program for Female Offenders is, in essence, a  
6 private prison?

7 A. Well, I guess the difference is for-profit  
8 or not-for-profit. The Program for Female Offenders  
9 operates in Allegheny County and in Philadelphia County  
10 work release programs which are alternatives to  
11 incarceration at the county jail level. These are not  
12 profit-making organizations. We simply do a service for  
13 the county by operating these projects. I think the  
14 difference is this whole concept, and I didn't say in my  
15 testimony that I don't approve of prisons for profit, just  
16 that I think it's an area that needs to be very well  
17 considered before that plunge is taken, and you need to  
18 look at the experience around the country, some of which  
19 has been good and some of which has been bad. But I think  
20 that you'll find most unions, for instance, don't have a  
21 real problem with nonprofit corporations like The Program  
22 for Female Offenders running work release centers, or in  
23 the juvenile area there are many nonprofit agencies that  
24 run facilities for juvenile offenders. Any controversy  
25 that has existed has existed in the prison for profit

1 area. And again, I'm not sure whether it's -- sometimes  
2 it seems like the way to go because it would certainly be  
3 faster. Sometimes people out of the government realm can  
4 move in a faster way.

5 Q. Well, putting aside the issue of profit or  
6 nonprofit for just a second, you then would agree with  
7 what I have been saying for a number of years now that we,  
8 in essence, do have private operating correctional  
9 facilities in the Commonwealth of Pennsylvania now both in  
10 the juvenile and in the adult field?

11 A. Indeed we do.

12 Q. Okay. And you also made reference, and I  
13 was a member of that task force, I think it's the task  
14 force, the Joint State Government Commission Task Force,  
15 that you're referring to on page 6 of your testimony, that  
16 indicates that where we concluded that contracting out  
17 does not relieve State or local government -- no, I'm  
18 sorry, I'm reading--

19 A. Yeah, that's the paragraph. Um-hum. That's  
20 a quote from the that.

21 Q. Yeah. We found no evidence that the private  
22 operation of correctional facilities would save money.  
23 Given your experience in Allegheny County and elsewhere in  
24 the Commonwealth with private correctional operations,  
25 wouldn't you agree that there is a cost savings,

1 particularly to the counties, for the operations that you  
2 provide, that they wouldn't have to build additional cell  
3 space, they wouldn't have to provide the special needs  
4 that the female offenders require? Wouldn't you agree  
5 there is some cost savings to the county government?

6 A. Oh, I think there could be -- it's not  
7 cheap. It's still not cheap even when you contract out at  
8 all, and I'm not sure that that savings is significant. I  
9 think it's a way of getting something done, because we're  
10 talking about mostly what we do, for instance, are  
11 alternatives. We are not running the kinds of prisons  
12 where people cannot come and go sort of thing. It is  
13 certainly not that much cheaper. It may be cheaper from  
14 the standpoint of unions, but you still have to provide a  
15 certain level of and certain amount of space per person  
16 and that kind of thing. There are still restrictions.

17 Labor and Industry comes in and looks at the  
18 facilities that we run. The Department of Corrections  
19 comes in to inspect the facilities. So I think that that  
20 sounds like you could almost do less or do a poorer job,  
21 and that's not true. I don't think so. And, you know,  
22 community corrections are not cheap. People shouldn't  
23 think of it as being cheaper than putting people in  
24 prison. That's not the point. The point is that it's  
25 more productive. It's better for the offender to pay rent

1 and to contribute to a community, not that it's cheaper,  
2 necessarily.

3 Q. Now, this is a little bit out of your field,  
4 but wouldn't you say that if you had several counties in a  
5 geographic region who had in the aggregate a significant  
6 special needs population, whether it be women, whether it  
7 be AIDS patients, whether it be mentally retarded inmates,  
8 don't you believe that there would be some cost savings  
9 for those counties to regionalize perhaps a private  
10 nonprofit center for those types of special needs inmates  
11 as opposed to each individual county jail having to  
12 provide the extra space, the extra manpower, et cetera, to  
13 take care of them?

14 A. Well, I do believe in regionalization, and  
15 when we were doing Allegheny County's criminal justice  
16 plan, we met with all of the counties that surround  
17 Allegheny County and we met with the Department of  
18 Corrections to talk particularly about doing a regional  
19 DUI center. We did not specifically discuss whether it  
20 would be one, for instance, operated by the Department of  
21 Corrections to which the counties would pay a per diem for  
22 each one of its residents or whether or not it would be  
23 one that was operated for a for-profit or not-for-profit.  
24 But we certainly believe in regionalization. We think  
25 that it needs to come to that, and that could be a great

1 cost-saving factor.

2 We did look, for instance, at facilities  
3 owned by the State where we might be able to --  
4 particularly former Department of Welfare facilities,  
5 tried to see if there wasn't something that we could do in  
6 that area, because we do think regionalization could be  
7 very, very helpful.

8 Q. And one final question. Have you looked at  
9 House Bills 129 and 1710 with the thought in mind that  
10 they might apply to you as a private -- your organization  
11 or your Program for Female Offenders, as they might apply  
12 to you as a nonprofit corporation? And if you have, what  
13 is your reaction to them as a potential subject?

14 A. Well, I really hadn't, and the reason that I  
15 hadn't was that when they put a moratorium on private  
16 prisons several years ago, a number of people from the  
17 State government called me often, and in each case I tried  
18 to assure them that we shouldn't be -- I begged them not  
19 to put us into the same category, and they didn't, and  
20 when they had the moratorium, it was really on  
21 profit-making prisons. So when I read this I thought that  
22 maybe that had all been swept under the rug, and so I  
23 wasn't defending it or I didn't even deal with it in terms  
24 thinking whether or not it affected The Program for Female  
25 Offenders.

1 Q. Well, I think--

2 A. If it does, then of course I think you  
3 should do this.

4 Q. I think that it will apply. I think that is  
5 the intent, that it applies to private nonprofit. I don't  
6 think we make a distinction in the bill, and you might  
7 want to review it in that context, since you are operating  
8 what I would call a private prison in Pennsylvania, and  
9 maybe give us some comments from that perspective, because  
10 while we want to regulate them adequately, we don't want  
11 to do something that would unfairly drive up your costs or  
12 increase your bureaucratic contacts that would impede your  
13 operation. So if you could look at it from that respect  
14 and give us your comment on that?

15 A. I will certainly do that. I will certainly  
16 do that.

17 REPRESENTATIVE PICCOLA: Thank you, Mr.  
18 Chairman.

19 REPRESENTATIVE BORTNER: Thank you.

20 BY REPRESENTATIVE BORTNER: (Of Ms. Arnold)

21 Q. I have a couple questions. I want to make  
22 sure I understand your program, especially based on some  
23 comments Mr. Piccola made. Does your program actually  
24 confine people?

25 A. What we are currently operating now, through

1 our program in Pittsburgh and our affiliate in  
2 Philadelphia, and we also have a male affiliate in  
3 Pittsburgh called Renewal, Inc., we are operating programs  
4 which are work release programs for these people. They  
5 are people who are sentenced to the county jail and  
6 transferred, by court order, to our facility. They get up  
7 in the morning and they go to work or to school or to AA  
8 meetings or whatever their plan is, returning back to the  
9 facility, and have programming in the evening. If they  
10 fail to return, and we don't usually have escapes because  
11 it's not that kind of a place, but if they fail to return,  
12 they are guilty of prison breach.

13 Q. You've answered my question. They are, in  
14 fact, serving sentences?

15 A. Yes, they are.

16 Q. They are not probationers, they're not  
17 parolees?

18 A. No, they're not.

19 Q. They're under sentence?

20 A. Yes.

21 Q. Have you ever had any experience with Atkins  
22 House?

23 A. I know of Atkins House in York County.

24 Q. Yes. Have you ever had occasion to visit  
25 it?

1           A.    No, I have not.

2           Q.    Because it is, in fact, also a little known  
3 fact, I think, but a private prison that serves women who  
4 are under sentence and has been, for a very long -- quite  
5 a long period of time, very successful, in my view.

6           A.    Um-hum.

7           Q.    I do want to comment on something or correct  
8 something that I think is incorrect, and somebody else can  
9 correct me if I'm wrong, but you indicated in part of your  
10 testimony that previously, I think you said in most cases,  
11 persons sentenced to 6 to 23 months were doing their  
12 sentence or their time in State -- regional State  
13 institutions. I don't think that's correct. To the best  
14 of my knowledge, those have been county jail sentences,  
15 although the State could accept prisoners and is probably  
16 very reluctant to do that at the present time.

17          A.    Well, they don't do it at all now, but  
18 Allegheny County was sending most of their 6 to 23 1/2  
19 month prisoners to Mercer and Greensburg.

20          Q.    To the State correctional institutions  
21 there?

22          A.    Um-hum. And it has been increasingly  
23 difficult, once those two institutions were closed to the  
24 county.

25          Q.    One other thing I'd like to comment on.



1 You've listed reasons as to why you think there are more  
2 women, you've seen this dramatic increase. I think the  
3 biggest difference or the biggest reasons is just a change  
4 in attitude of judges, quite honestly.

5 A. Oh, I'd say so.

6 Q. When I first started prosecuting cases 10  
7 years ago, women did not go to jail, period.

8 A. That's right.

9 Q. If they had children, you could come into  
10 court and represent that fact. They did not go to jail.  
11 And I'm not sure if it's just part of the demand for  
12 equality, I suspect part of it is mandatory sentences  
13 which don't differentiate between males and females, but I  
14 think the biggest reason is that judges are just  
15 sentencing far more women or are much less reluctant to  
16 sentence women to prison than they were 10 years ago.

17 A. Fifteen years ago, women were looked at as  
18 fallen angels and given every opportunity to, although  
19 once they were in jail they were very neglected, they were  
20 given more of an opportunity to stay home with their  
21 children, and I would agree with you that equal justice  
22 has not served the female offender well when it comes to  
23 her freedom.

24 Q. I think part of it is another point you put  
25 your finger on is that women have become, over that same

1 period of time, increasingly involved in more serious  
2 crimes.

3 A. Because of drugs.

4 Q. Of course the cases I was handling were  
5 welfare cases, and so forth.

6 A. That's right.

7 Q. Now I look and I see serious drug offenders,  
8 armed robberies, murders.

9 A. Unfortunately, that's true.

10 Q. So the strive for equality is pretty much  
11 across the board.

12 A. That's true.

13 Q. One last question. In most of your comments  
14 you seem to imply that the State, you know, has got to  
15 provide funding to the counties to provide additional  
16 prison space. Why do you make that statement?

17 A. Well, you know, and don't forget that my  
18 experience on county level and county jails is limited to  
19 Allegheny County, but I see a situation in Allegheny  
20 County where we have been under court order where we were  
21 told at one point that our county jail must be closed by  
22 1990, and the cost of building a new jail is so extreme  
23 that any help that the State could give us, and that's why  
24 I mentioned there's one of them, and I don't remember the  
25 number, but one of them called for money for the State

1 prisons, that there should be some help for the counties,  
2 too, because right now we were able to get a pact and we  
3 now have until 1992 instead of 1990.

4 But nevertheless, Allegheny County is going  
5 to have to spend upwards of \$54 million to build 600 to  
6 900 new beds. And, you know, they also have all of the  
7 other human resources crises, and I know that the county  
8 is seeking and would be grateful for any help, even low  
9 interest loans, whatever the State can give to help them,  
10 because they have no recourse. They've lost every appeal  
11 to the Federal courts.

12 Q. Well, I agree with what you're saying,  
13 except for the last thing you said, which is that they  
14 have no recourse, and I think we frequently look at the  
15 counties as being powerless to do anything in this  
16 situation. You've mentioned, I know, legislation to  
17 require earned time apply to county jails. My county  
18 several months ago just began an earned time program.  
19 There's nothing in the law to prohibit counties from  
20 undertaking an earned time program. My county just  
21 floated a \$20 million bond issue for a major prison  
22 expansion, and I'm sure they'd like some money too, but I  
23 think they've recognized that one way or the another  
24 they've got to face up to their responsibilities, and I  
25 doubt that there's any county in the Commonwealth, spare

1 maybe some few sparsely populated areas, that aren't  
2 pretty much at the same situation to varying degrees.

3 A. Well, Allegheny County has provided for a  
4 total picture of alternatives to incarceration, work  
5 release facilities, we're doing the electronic monitoring.  
6 Almost anything you can think of we have put into our  
7 plan. But I think it's what Art Wallenstein talked about,  
8 too, that there are just more people who need more strict  
9 supervision than can go into those alternatives, and  
10 therefore we're talking in Allegheny County of at least  
11 600 beds over and above what we have in an antiquated jail  
12 which will cost \$40 million to rehab, and once it's  
13 rehabbed we will only be able to put in half the number of  
14 people that we have in now. And I think that we have to  
15 -- I think that you have to recognize what a serious  
16 problem this is, particularly for the more populous  
17 counties, and some help would be appreciated--

18 Q. Well, I do. I do.

19 A. --I can assure.

20 Q. I'm not sure that there's enough money there  
21 to make a big difference for any one county, although I'm  
22 sure anything would be appreciated.

23 REPRESENTATIVE BORTNER: Thank you, Mr.  
24 Chairman.

25 CHAIRMAN CALTAGIRONE: Thank you, Charlotte,

1 for your testimony.

2 MS. ARNOLD: Thank you.

3 CHAIRMAN CALTAGIRONE: We will now move to  
4 Charles Gallagher.

5 MR. GALLAGHER: Good afternoon, Mr.  
6 Chairman, members of the committee. My name is Charles  
7 Gallagher, and I am the Deputy District Attorney for  
8 Policy and Planning in the Philadelphia District  
9 Attorney's Office.

10 Let me commence my remarks by extending the  
11 gratitude of Ronald D. Castile, the District Attorney of  
12 Philadelphia, on whose behalf I present these remarks  
13 today on the pressing issue of prison overcrowding in  
14 Pennsylvania.

15 In the city of Philadelphia and throughout  
16 the State of Pennsylvania, the most glaring weakness of  
17 the criminal justice system is our overcrowded prison  
18 system. It is embarrassingly obvious that any war on  
19 crime, and more specifically, any war on drugs, which is  
20 the overwhelming cause of street crime, cannot be fought  
21 properly without adequate jail and prison space to hold  
22 defendants prior to trial and imprison them upon  
23 conviction. The citizens, the police, the prosecutors,  
24 and the judges of Philadelphia are experiencing  
25 exasperating frustration in combating the scourge of drugs

1 on our city. Drug dealers are being arrested at an  
2 alarming pace, but then they are quickly returned to the  
3 street to continue their illicit business because of  
4 inadequate jail cells.

5 Brazen proof of this revolving door was  
6 provided on June 6, 1988 when the Federal court,  
7 overseeing the prison overcrowding suit in Philadelphia,  
8 allowed wholesale release of pretrial detainees to meet an  
9 artificially low prison cap. I recall the evening  
10 television news showing a video clip of defendants walking  
11 out of the county jail in northeast Philadelphia. One of  
12 the inmates was interviewed, and the interview went as  
13 follows:

14           Newsperson: "What were you in jail for?"

15           Releasee: "Selling drugs."

16           Newsperson: "What will you do now that you are  
17 out? "

18           Releasee: "Sell more drugs."

19           Hence, the word went out to all criminals, and  
20 especially drug dealers the Delaware Valley region, the  
21 jails in Philadelphia are closed, let's go there and do  
22 some jobs. Law enforcement must respond to this drastic  
23 crisis. More prisons, both county and State, must be  
24 built as soon as possible.

25           Due to law enforcement's success in fighting

1 crime, which has been greatly assisted by the work of this  
2 committee in recent years, the State prison population  
3 over the last 9 years has increased by over 135 percent,  
4 from 7,800 in 1980 to over 18,600 inmates in June of this  
5 year. The State prison population is now reportedly 38  
6 percent over capacity. The enactment of drug mandatory  
7 sentencing and tougher sentencing guidelines will increase  
8 the number of prisoners even more. Without more prison  
9 cells throughout the State, the State prison system could  
10 possibly be faced with the imminent risk of a prison  
11 debacle similar to the Philadelphia Federal court suit  
12 disaster now known as Harris v. Reeves. All of our gains  
13 in the legislature and the courts will be seriously  
14 compromised. The pressure to formally and informally  
15 discount sentences to reflect prison capacity will  
16 continue to increase. Any increase in investigations and  
17 prosecution must be accompanied by a true commitment to  
18 keep convicted offenders in prison and off our streets.  
19 Further, any efforts in the legislature will be futile  
20 without adequate prison space.

21 In the Philadelphia County prison system,  
22 the city administration entered into an out-of-court  
23 settlement of an inmate lawsuit over alleged prison  
24 crowding. The result was a consent decree agreeing to an  
25 unrealistically low prison cap -- an agreement our office

1 has fought all the way to the United States Supreme Court.  
2 In June 1988, the Federal district court, to enforce the  
3 artificially low cap of 3,750 inmates, released over 250  
4 detainees and entered a moratorium on jail admissions.  
5 The city administration, instead, should have increased  
6 staffing, rehabilitated unused cells, and sought a higher  
7 cap.

8 In addition, the city has continued to  
9 support early release programs which, like the admissions  
10 moratorium, only foster further disrespect by the criminal  
11 element in Philadelphia. As I mentioned earlier, the word  
12 went out among the criminals and drug dealers that the  
13 Philadelphia prison system was closed and you could only  
14 get in if you committed murder, rape, or other violent  
15 charges.

16 These type of release programs have had  
17 tragic consequences in 1989 in Philadelphia. Four  
18 defendants released under Harris v. Reeves are charged  
19 with five homicides on Philadelphia streets after their  
20 release. One of these defendants even engaged in a wild  
21 west shoot-out with a rival drug gang in front of city  
22 hall.

23 Burglars, many drug dealers, and repeat car  
24 thieves have been having a field day in Philadelphia since  
25 June 1988 because they no longer need to post bail or stay



1 in jail, no matter how many times they got arrested.  
2 Furthermore, they haven't had to show up for court and  
3 have been arrested and held only after their second  
4 fugitive or failure to appear warrant. Outstanding  
5 fugitive bench warrants on felony cases in Common Pleas  
6 Court in Philadelphia have increased from 2,857 in January  
7 of 1987, to 5,165 as of March 1989 - an incredible  
8 increase of 80 percent. All of this has been occurring  
9 even though there has been ample available space in our  
10 county jail.

11 A common response to the prison overcrowding  
12 problem is that although we would like to make society  
13 safer by having adequate prison capacity, it is simply too  
14 expensive to build and staff enough prison space to house  
15 all the Commonwealth's sentenced prisoners. However, an  
16 analysis prepared by the National Institute of Justice in  
17 July of 1987, which we have attached, plainly establishes  
18 that societal costs are greater when convicted criminals  
19 are released rather than kept in prison to serve out their  
20 sentence. Building the necessary prison space will, in  
21 the end, save money for Pennsylvania.

22 In order to respond to this dilemma of  
23 increasing overcrowding in Pennsylvania, District Attorney  
24 Castille urges this committee to take the following  
25 action: First, Mr. Castille strongly supports the six

1 point overcrowding legislative package recently unveiled  
2 by Representatives Hagarty and Piccola and Senator Fisher.

3 Those points are:

4 --One, House Bill 1701 provides for a \$100  
5 million capital appropriation to build two \$50 million  
6 State prisons.

7 --Two, House Bill 1708 creates a system for  
8 electronic surveillance house arrest for eligible  
9 pre-release prisoners for the final 30 days of the  
10 person's minimum sentence. No offenders convicted of drug  
11 trafficking are eligible for this program.

12 --Three, House Bill 1709 creates a system of  
13 meritorious earned time for State prisoners of 52 days per  
14 calendar year, in accordance with the Department of  
15 Corrections regulations. Such earned time which must be  
16 earned by successful involvement in educational,  
17 vocational, and rehabilitative programs may be forfeited  
18 for violation or escape. Defendants serving either a life  
19 sentence or a mandatory sentence are ineligible for  
20 meritorious earned time. The earned time legislation will  
21 expire in 1982 and will have to be re-enacted at that  
22 time.

23 --Four, House Bill 1710 allows for  
24 contracting with private prisons.

25 --Five, House Bill 1711, making an

1 appropriation of \$930,000 to the Pennsylvania Board of  
2 Probation and Parole for an intensive parole supervision  
3 program.

4 --And six, House Bill 1712 provides a system  
5 for earned time for parolees. That is, parolees should be  
6 awarded five days credit for each calendar month without  
7 violation. All credit may be revoked upon a violation.

8 Next, Mr. Castille also strongly supports  
9 Senate Bill 981 sponsored by Senator Rocks. This bill  
10 mandates that no consent decree may be entered limiting  
11 the number of inmates in a municipal or county prison  
12 without the consent of the Governor, the Attorney General,  
13 and the district attorney of that county. This recently  
14 introduced legislation is now before the Senate Judiciary  
15 Committee.

16 Furthermore, Mr. Castille recommends a sales  
17 tax increase to fund prison construction as outlined in  
18 the attached letter to the House and Senate members. This  
19 recommendation is based on information that Mr. Castille  
20 received from the district attorney of Oklahoma City at a  
21 recent meeting of the National District Attorneys  
22 Association Legislative Committee, of which Mr. Castille  
23 is chairman. In Oklahoma County, the electorate recently  
24 has responded to an equally grave prison overcrowding  
25 problem by approving a temporary one-half cent additional

1 sales tax designated to fund prison construction. A  
2 statewide referendum on this was approved by an 80 to 20  
3 margin. When the prison capacity demand is fully met, the  
4 extra sales tax will cease. Along the same lines,  
5 California voters recently approved an \$817 million prison  
6 construction bond issue, with a portion of that amount  
7 designated for county prison construction.

8 Last week, Mr. Castille presented a  
9 resolution on this sales tax plan to the Pennsylvania  
10 District Attorneys Association at their semi-annual  
11 meeting, and it was unanimously supported. This  
12 recommendation allows the electorate to vote on a  
13 referendum for a temporary 1-percent additional sales tax  
14 for prison construction. Part of the funds generated  
15 could be designated for State prison construction and  
16 construction of necessary juvenile facilities, while the  
17 remaining funds could be offered to the counties as 50  
18 percent matching fund for county prison construction. The  
19 matching funds probably would be best administered by the  
20 Pennsylvania Commission on Crime and Delinquency.

21 Finally, once the necessary construction has  
22 been funded, it might be advisable to continue to tax for  
23 an additional year and to use the income generated by  
24 those additional funds to help defray the increased  
25 operational costs. Our estimates are that it would take

1 no more than three years to eliminate the prison  
2 overcrowding crisis once this plan is undertaken.

3 In summary, the fact that the prison  
4 population has significantly increased is competent  
5 evidence of law enforcement's valiant war against drug  
6 trafficking and crime in Pennsylvania. However, if  
7 convicted prisoners are merely released because we are  
8 unwilling to pay for the adequate prison space, then all  
9 of our efforts will be in vain.

10 Thank you very much.

11 (Whereupon, Representative Moehlmann assumed  
12 the Chair.)

13 ACTING CHAIRMAN MOEHLMANN: Thank you, Mr.  
14 Gallagher.

15 Are there any questions from any of the  
16 members of the panel?

17 Representative Josephs.

18 REPRESENTATIVE JOSEPHS: Thank you. Thank  
19 you, Mr. Chairman.

20 BY REPRESENTATIVE JOSEPHS: (Of Mr. Gallagher)

21 Q. I have before me, Mr. Gallagher, a report  
22 commissioned, I think, by the master of the prisons in  
23 Philadelphia which talks about some of the problems or  
24 some of the reasons why our prisons in that county at  
25 least are so overcrowded. And I have it in front of me,

1 I've read it before, I'm not sure I remember all of the  
2 statistics, but this report does point out that the vast  
3 majority of people who are held and who are contributing  
4 to the overcrowding in Philadelphia County are those that  
5 are being held before trial. They have not been  
6 adjudicated guilty of anything, but they cannot meet bail  
7 because they're poor. And I would like to tell you what  
8 this report, I'm going to read part of it for the record,  
9 says about the district attorney's office's responsibility  
10 for this problem, and I would like to have your comment on  
11 that.

12 And what we're talking about here is plea  
13 bargaining. As everybody knows, and I'm paraphrasing a  
14 little bit, the optimum case is not a trial but a plea to  
15 the appropriate charge. And given the resources of all  
16 the players here, which include the district attorney's  
17 office, the defender's office, the police, the courts, et  
18 cetera, litigation should be the last resort. And in this  
19 regard, one would think the district attorney's office and  
20 the court would have the same interests.

21 In Philadelphia, and I'm now quoting,  
22 "despite public posturing over plea policies, the district  
23 attorney's own statistics show that in 1987, 5,531 of the  
24 7,960, or 70 percent, of guilty verdicts in the Trial  
25 Division came about as a result of pleas, not trials.

1 Even in the career criminal division, 203 of 293, or 69  
2 percent, of all guilty verdicts resulted from pleas not  
3 trials. These are excellent statistics. The problem,  
4 therefore, is not if pleas are taken but when. The  
5 unnecessary delay, docket backlogs, jail pile-ups, and the  
6 resultant waste of resources exist because nearly all  
7 pleas, 85 percent, occur on the trial date rather than  
8 months earlier.

9 "With sentencing guidelines, sentencing  
10 discretion is limited. Within prescribed ranges,  
11 negotiated settlements should occur shortly after  
12 bindover. Settling all cases for trial and waiting to  
13 take pleas on the trial date is an inexcusably wasteful  
14 practice. The District Attorney's office and the court  
15 are responsible for prolonging this practice and should  
16 share responsibility for terminating it as quickly as  
17 possible.

18 "The District Attorney's office suffers from  
19 a lack of accurate information required for effective  
20 management. For example, the DA's office claims a trial  
21 conviction rate of 89 percent, but a review of the DA's  
22 statistics show that the actual Trial Division conviction  
23 rate is 57 percent. The trial conviction rate in the  
24 major trial unit is 58 percent, not 89. It is 53 percent,  
25 not 88, in the waiver union. The error is caused by

1 adding guilty pleas to guilty verdicts."

2 And they go on to recommend some  
3 standardized method of measuring the performance of the  
4 district attorney's office. And they make some other  
5 recommendations. They say the DA's office should "adopt a  
6 cut-off date for settlement offers. There is currently no  
7 incentive for a defendant to enter a plea before the trial  
8 date and the DA must therefore try to prepare every case  
9 for trial," and so on.

10 I basically would like to hear you comment  
11 on the criticism. And these people, I can give a copy of  
12 this study for the record, are well-known, respected jail  
13 and criminology experts, and this is, I think, a pretty  
14 well-respected report and study.

15 So your comment, please, sir?

16 A. Representative, first of all, that is the  
17 EMT report that you're referring to, and I believe the  
18 section you read from was a section that we submitted to  
19 the EMT reviewers was in error, and they recognized their  
20 error. I don't know if you have the amended part there,  
21 but what I think you've read was the initial report, which  
22 has been subsequently amended. As a result of the  
23 response that we filed in Federal court in the Harris v.  
24 Reeves matter, we filed a detailed response to the EMT  
25 report where we point out, number one, there were several



1 errors. Specifically, there was an error in those  
2 statistics. Secondly, we pointed out that many of the  
3 recommendations that the EMT people came up with were very  
4 good recommendations, and we were glad that someone had  
5 said those things, and I, myself, have been personally  
6 working on a committee to review those EMT recommendations  
7 and enact them in the criminal justice system in  
8 Philadelphia.

9 But going back to the comments about the  
10 district attorney's office and about plea bargaining,  
11 first of all, the conviction rate for the DA's office is  
12 91 percent in 1988. That is based on the number of cases  
13 that have gone to trial. That means that either a person  
14 pleads guilty or he's found guilty after conviction. 91  
15 percent of those people are found guilty, the other 9  
16 percent are found not guilty as a result of trial.

17 Your comment about the fact that there's  
18 plea bargaining that goes on and also the amount of pleas.  
19 Last year, and in 1987, of the 100 percent of the cases  
20 that went to adjudication in Philadelphia, 30 percent were  
21 as a result of trial, 40 percent were as a result of an  
22 open guilty plea, and 30 percent were a result of a  
23 negotiated plea. The DA's office in Philadelphia will put  
24 those statistics up against any other jurisdiction in the  
25 United States as far as actively pursuing plea

1 negotiations and also justified open pleas.

2 The comment that the court and the DA's  
3 office is responsible because pleas don't happen until the  
4 last day, possible. The reason that happens in the court  
5 system is that that report failed to indicate, although  
6 they do make some comment about the Public Defender's  
7 office, it takes two to tango in a courtroom when you're  
8 negotiating a plea or when there's going to be a plea  
9 entered. The defendant must agree to a plea, and the  
10 defendant knows that he can either outlast the witnesses  
11 that are coming into court to testify against him by his  
12 attorney continually getting continuances, or get to a  
13 point where he gets a judge that is not a tough judge that  
14 he can work out an easier plea. He's not going to jump at  
15 what we believe to be a responsible offer at the first  
16 listening of the case. We presently make, in all serious  
17 cases, an offer at the first listing of the case for a  
18 plea. If the defendant wants to take it, he can take it.  
19 If not, then the case gets continued for trial. And those  
20 offers that we make are directly in line with the  
21 Pennsylvania Sentencing Guidelines that have been  
22 promulgated throughout this State.

23 Also, we're not going to plea away a  
24 mandatory minimum case. It's ridiculous. Those things  
25 have been legislated in this State because they're needed,

1 and we're not going to offer something under a mandatory  
2 minimum sentence.

3           And the other comment that you make about  
4 people are in Philadelphia County jail because they are  
5 held there because they are just poor is not true.  
6 Certainly many of the people and inmates that are in  
7 county jail are poor, but they also are repeat offenders.  
8 75 percent of the people that are in Philadelphia County  
9 jail are awaiting jail, the other 25 percent are  
10 sentenced. But of those 75 percent, you have murderers,  
11 you have rapists, you have somebody picked up on a car  
12 theft that might have a prior murder conviction, so  
13 they're there on two things.

14           We did a study that I was involved in back  
15 in 1983 with the Philadelphia Criminal Justice  
16 Coordinating Commission in which it was determined that  
17 most of the prison population in Philadelphia are there  
18 because of multiple holds. They're not there because of  
19 just one case. We did another study just this year that  
20 came up with the same results. It's simply not that that  
21 person is in there for one little car theft or one little  
22 retail theft. Those people get washed out of the system,  
23 and if you look at the EMT report, there's another section  
24 in there that talks about review of the people that are in  
25 the prison. There are seven stages of review where a

1 defendant, either on his own, through his counsel, or  
2 through programs set up by the State court suit and the  
3 Federal court suit, has an opportunity for review. So the  
4 only people that are presently in Philadelphia prison, I  
5 submit to you, are people who fail to show up time and  
6 time again or are violent people charged with violent  
7 crime, or are people that have committed violent crime,  
8 been convicted, serve sentences, and are now out on  
9 probation or parole.

10                   The problem in Philadelphia is space.  
11 There's sufficient amount of space now to go beyond the  
12 cap of 3,750, probably up to 4,500 or 4,600, where it  
13 presently is, and also what we need is more prison space  
14 because based on the mandatory minimum that is presently  
15 the law, and in the number of cases that are coming into  
16 the Philadelphia court system for the drug dealing, there  
17 is more space needed.

18                   Thank you.

19                   Q. Thank you. I would like to have a copy of  
20 the amended EMT report. I don't have it. I'd like to see  
21 it. I think probably the rest of us would like to see it.

22                   A. I will see that it is sent to all members of  
23 the committee.

24                   Q. Thank you.

25                   Part of what is in this report not directly

1 in the section about the district attorney's office says  
2 nearly 75 percent of the entire prison system population  
3 is made up of pretrial inmates. As I remember the other  
4 statistics, the average stay now in Philadelphia County of  
5 a person who cannot make bail is the something like a  
6 year. I don't really find very credible the people who  
7 are faced with staying in jail for a year don't plea  
8 bargain on purpose. I think they're not being given the  
9 chance to, and I certainly hope that your office will look  
10 into this and correct that practice.

11 I have one other question. You were talking  
12 about a \$50 million State -- I think it's House Bill 1701  
13 -- talking about \$50 million to build more State  
14 facilities, more State cells. You were talking about a  
15 1-percent sales tax and talking about 3 years in order to  
16 solve our prison overcrowding problem. I don't know that  
17 I want the answer at this moment because it involves some  
18 calculation, but I'd like you at some point to look at the  
19 rate of people being arrested and incarcerated, multiply  
20 that by the trend in escalation of those numbers and tell  
21 me in all seriousness that there is some way to catch up  
22 by building cells faster than we're incarcerating people.  
23 When I did this little mathematical exercise at another  
24 Judiciary Committee hearing we found that all of the bills  
25 right now in the hopper for money, assuming we could buy

1 State cells to have them ready tomorrow, every State cell  
2 we build would be filled in 18 months, and I expect you  
3 would find the same thing if you did some minor arithmetic  
4 with your figures. So if you can give us some projection,  
5 I appreciate that, based on your testimony.

6 A. Fine. The important thing is we should  
7 start building cells. In Philadelphia, we've been waiting  
8 for them to start building cells for well over a year.

9 Q. In my view, the important thing is we ought  
10 to know what we're doing before we embark on any program.

11 A. Well, we certainly know we need cells.

12 REPRESENTATIVE JOSEPHS: Thank you, Mr.  
13 Chairman.

14 ACTING CHAIRMAN MOEHLMANN: Thank you.  
15 Are there any other questions?

16 (No response.)

17 ACTING CHAIRMAN MOEHLMANN: Thank you.

18 MR. GALLAGHER: Thank you very much.

19 ACTING CHAIRMAN MOEHLMANN: Allen Hornblum.

20 MR. HORNBLUM: Mr. Chairman, members of the  
21 committee, my name is Allen Hornblum. I am with the Board  
22 of Trustees of the Philadelphia Prison System. I would  
23 like to quickly read through my statement, which covers  
24 the Philadelphia problem, how the overcrowding is  
25 affecting the institutions we have and the personnel

1 there, our electronic monitoring program, and how earned  
2 time would impact us, and I'd be happy to take any  
3 questions once I am through.

4 I appreciate the opportunity to appear  
5 before you to discuss the perplexing and seemingly  
6 intractable problem of prison overcrowding which is  
7 seriously affecting both the State and county correctional  
8 systems. As a member of the Board of Trustees of the  
9 Philadelphia Prison System and the Pennsylvania Commission  
10 on Crime and Delinquency, I spend a considerable amount of  
11 time inspecting overcrowded penal facilities.  
12 Unfortunately, although we are incarcerating people in  
13 unprecedented numbers, that does not translate into a  
14 decrease in the crime rate or a more secure citizenry. It  
15 does mean, however, an additional strain on governmental  
16 budget, as more and more money is allocated to the  
17 correctional arena.

18 As you are probably aware, the State  
19 Department of Corrections recently reported that its  
20 original forecast of slightly less than 20,000 inmates by  
21 the end of this year would have to be revised due to an  
22 extraordinary jump in new admissions. The predicted 148  
23 per month growth rate has virtually doubled, resulting in  
24 an increasing burden for administrators, greater  
25 infrastructure demands, and an added financial burden for

1 taxpayers. By 1990, the State prison system may very well  
2 have tripled in size since a decade ago.

3 Our situation in Philadelphia is no less  
4 daunting. The city's prison system is currently being  
5 micro-managed by the Federal court in an effort to  
6 alleviate the acute overcrowding dilemma and reach a  
7 mutually agreed upon population cap of 3,750.  
8 Regrettably, the daily census exceeds the target figure by  
9 at least a thousand, and on at least one occasion rose  
10 beyond the 5,000 mark.

11 Our system's four prisons run the gamut from  
12 decaying 19th century structures to modern, state of the  
13 art facilities. What they have in common, though, is the  
14 an overabundance of humanity. Institutions like  
15 Holmesburg, that were designed for 850 inmates, are  
16 presently housing over 1250. The extra stress and tension  
17 this has on inmate-staff relations, not to mention its  
18 impact on the physical plant, is considerable and quite  
19 visible. Add a few other ingredients, such as a summer  
20 heat wave and strident inmate leaders, and you have a  
21 recipe for disaster.

22 Since the city's prison system is  
23 technically a jail, holding primarily pretrial detainees  
24 and those individuals serving sentences under 23 months,  
25 there is a rapid turnover rate. In fact, during 1988, 28



1 percent of our inmate population turned over every 48  
2 hours, and 41 percent came and went every 7 days. In all,  
3 nearly 31,000 people were incarcerated during fiscal 1988.  
4 Interestingly, during the course of the last year, our  
5 population has become more stable, as turnover has  
6 witnessed the sharp decline, and a growing percentage of  
7 our inmates are in the sentenced category. For example,  
8 during 1989, there was only 15 percent turnover every 48  
9 hours and 24 percent every 7 days. Our sentenced  
10 population is now approximately 1,500. Considerably  
11 higher, I suspect, than any other counties in the  
12 Commonwealth. Also higher would be the population growth  
13 rate, which would probably exceed all except the State's.  
14 For instance, at this time last year, Philadelphia's daily  
15 average was 3,877 inmates. Today, we are a thousand above  
16 that, and in March of this year our population averaged  
17 4,940.

18           Clearly, something must be done to stem or  
19 at least ameliorate the rising tide of prisoners.  
20 Philadelphia has been aggressively pursuing several  
21 fronts, including programmatic as well as construction, to  
22 alleviate inmate overcrowding. The city is currently  
23 under a Federal court order to build a new prison by  
24 December, 1990. A series of innovative bail programs have  
25 been operationalized, along with a controversial court

1 mandate that assures only serious violent offenders are  
2 incarcerated, while those accused of lesser crimes are  
3 placed on bail.

4           Additionally, several programs serving our  
5 sentenced population allow inmates to leave before their  
6 sentences are completed. The Pennsylvania Prison Society,  
7 for example, conducts a program that allows sentenced  
8 individuals to leave two months early to work in an  
9 assortment of community-oriented programs.

10           Another innovative program that only a few  
11 counties have opted for at this time is house arrest and  
12 the utilization of electronic monitoring. Begun in  
13 August, 1988, approximately 160 inmates have taken part in  
14 the program. Regrettably, the house arrest alternative is  
15 underutilized due to consistent opposition by the local  
16 district attorney's office and reluctance by members of  
17 the Philadelphia judiciary. Presently, only 51  
18 individuals participate in the electronic monitoring  
19 program, of which 15 are sentenced and 3 are weekenders.  
20 Considering our crowding conditions and the success the  
21 program has achieved here and around the country, our  
22 efforts should be redoubled to assure greater utilization  
23 of this concept.

24           Proscriptively, I and my colleagues on the  
25 Philadelphia Prison Board have endorsed and strongly

1 encouraged the General Assembly to promptly pass  
2 substantive earned time legislation. It is inconsistent  
3 with evolutionary penal management and our supposed  
4 collective concern about prison overcrowding to continue  
5 to reject a concept that is successfully practiced in  
6 almost every State in the union. We are not talking about  
7 an experimental high-risk program on the frontier of  
8 corrections. We are talking about a policy, time off for  
9 good behavior, and program that is almost a century and a  
10 half old in America and has repeatedly been proven a sound  
11 management tool and positive behavioral stimulant for  
12 inmates. Pennsylvania, in fact, was one of the first  
13 States to adopt such a program and utilized it for a  
14 hundred years.

15           During the past year I have had the  
16 opportunity to visit prisons in New York, Michigan, Texas  
17 and Florida, as well as Europe. In each of the State and  
18 county prisons I have toured, earned time is an integral  
19 and valuable part of the prison's operations. In  
20 addition, prison managers have expressed surprise that  
21 Pennsylvania has the luxury to discard a program that  
22 helps to alleviate overcrowding and helps create an  
23 improved prison atmosphere.

24           The administrator of the Tarrant County  
25 Jail, which is Fort Worth, Texas, for example, recently

1 told me that inmates there receive 1 day off of their  
2 sentence for every 33 served. He went on to inform me  
3 that the State system is even more lenient, offering 20  
4 and 30 days off per month served. In Florida, it is much  
5 the same. The jail in Naples, Florida, offers inmates 7  
6 days off per month if good behavior is demonstrated. The  
7 State system provides inmates with several methods to  
8 accumulate time off their sentence, which can total 30  
9 days per month, and on some occasions as much as 40 days.  
10 One method is straight earned time, or gain time, as they  
11 refer to it in Florida, for good behavior. A second  
12 category is based on programmatic or rehabilitative  
13 efforts, and finally, meritorious service, which would be  
14 for exemplary actions or conduct, such as coming to the  
15 aid of a distressed correctional officer. It must be  
16 remembered that Florida and Texas are rarely labeled  
17 liberal, soft on crime political jurisdictions. They are  
18 both quite robust in their efforts to combat crime,  
19 encourage stiff penalties for lawbreakers, and have  
20 established a clear leadership role in the execution of  
21 convicted murderers. Both States, however, are strong  
22 proponents of earned time.

23 Just two weeks ago, I towards the Wayne  
24 County jail in Detroit, Michigan. Earned time there is  
25 also a valued and accepted procedure that helps keep their

1 prison population near their capacity of 1,800.  
2 Throughout Michigan, inmates uniformly receive 5 days per  
3 month for good behavior. Once again, staff and  
4 administrators expressed surprise that Pennsylvania did  
5 not take advantage of such a useful and widely accepted  
6 program.

7           An earned time legislative package should  
8 include both flat rate and meritorious or programmatic  
9 earned time credit. Using Representative Kosinski's HB  
10 1157 as a reasonable prototype, we have projected a few  
11 numbers to illuminate how such a such a program would  
12 impact the Philadelphia prison population. Using the  
13 average of 58 individuals sentenced each week, and a  
14 25-percent exclusion factor for drug and sex crimes, 43  
15 individuals would qualify for the program. That would  
16 translate into 2,530 inmate days saved and a yearly total  
17 of 131,500 inmate days saved. What this means in prison  
18 management population terms is that through the  
19 implementation of HB 1157, our daily sentenced population  
20 of 1,500 would be reduced by 350 inmates.

21           Although that figure in itself would not  
22 unilaterally curtail the overcrowding dilemma, it would be  
23 a considerable factor in any mix of alternative sentencing  
24 programs. At the very least, it would relieve the  
25 untenable situation of as many as 120 inmates sleeping on

1 the gymnasium floor of the Philadelphia Detention Center.  
2 This morning as I left Philadelphia I called in to get our  
3 latest number, and there were 87 sleeping last night in  
4 the gymnasium floor in the Philadelphia Detention Center.

5 In short, elected officials and correctional  
6 administrators can no longer blind themselves to recent  
7 innovative developments in the field or those that were  
8 first operationalized 150 years ago and have become  
9 standard procedure across the country.

10 This does not mean, however, that all  
11 conceptual suggestions to remedy a beleaguered criminal  
12 justice system are equally sound, meaningful and  
13 progressive. Privatised corrections, for example, has won  
14 a number of supporters, but too many philosophical and  
15 practical land mines exist for it to be seriously  
16 considered a step forward. Pennsylvania's unfortunate  
17 experience with the 236 Center in Armstrong County several  
18 years ago is a more graphic and eloquent statement about  
19 the inherent drawbacks of prisons for profit than any of  
20 the comments you will hear today. The snatching of one's  
21 liberty, combined with a profit motive, is a dangerous mix  
22 that warrants the skepticism it has received. It would be  
23 all too easy for a private entrepreneur or corporation to  
24 cut back on a guard post, a social worker's position, a  
25 physician or two, to ensure an enhanced profit margin.

1 The issue of private prisons is intertwined with an array  
2 of thorny moral, legal, administrative, and financial  
3 questions. To embark on such a course could well result  
4 in adding new problems, as opposed to correcting an old  
5 one.

6 In conclusion, I would like to admit that  
7 the field of punishment, or corrections as we call it  
8 today, has rarely been known for its creativity or  
9 innovative approach in reforming unsanctioned behavior.  
10 While other fields have witnessed dramatic advancements,  
11 our approach to combating crime today is as similar to the  
12 cells we construct today compared to a century and a half  
13 ago. If anything, they are smaller and less hospitable.

14 As long as we continue to attack the problem  
15 of crime at the back end rather than the front, we will  
16 have assigned ourselves a task very much similar to a  
17 plumber mopping up a wet floor while the tub faucet  
18 continues to run. Electronic monitoring, community  
19 service, restitution, and intensive parole and probation  
20 supervision are all sound alternatives to incarceration.  
21 However, earned time should be the centerpiece of such  
22 programmatic alternatives. If we can gravitate towards  
23 21st century high-tech gadgetry, such as electronic  
24 monitoring, we should certainly be able to finally adopt  
25 19th century programs, such as time off for good behavior.

1 I don't believe we can afford to wait any longer.

2 Thank you for your attention. I'd be happy  
3 to take any questions you may have.

4 (Whereupon, Chairman Caltagirone resumed the  
5 Chair.)

6 CHAIRMAN CALTAGIRONE: Representative  
7 Hayden.

8 BY REPRESENTATIVE HAYDEN: (Of Mr. Hornblum)

9 Q. Mr. Hornblum, in your experience of studying  
10 jails and jail populations, are you aware of any  
11 jurisdictions that use electronic monitoring pretrial?  
12 Meaning you have a defendant who is unable to post bail  
13 and electronic monitoring is used as a way to relieve some  
14 of the prison cap problems in some of the--

15 A. There's a great many States that are doing  
16 it, and I believe we are doing it in Philadelphia. A good  
17 portion of the people on electronic monitoring are  
18 pretrial, and we are using an assortment of programs and  
19 procedures to try and alleviate the burden. Our  
20 population is approximately 4,800, 4,900 today, and we're  
21 trying to get down to a target of 3,750, but we seem to be  
22 running away from it rather than towards it. Electronic  
23 monitoring, which would be much more useful and would have  
24 a greater impact in the city if we did not have such  
25 strong opposition from the DA's office as well as some



1 judges who are reluctant in the age of the Willie Horton  
2 syndrome to be perceived as soft on crime, but in the  
3 jurisdictions that I've gone to, they are very pleased  
4 with electronic monitoring and they've had very few bad  
5 experiences with it.

6 Q. Well, at this point, who is making the  
7 decision about who qualifies or doesn't qualify for  
8 pretrial electronic monitoring?

9 A. It is recommended by administrators of the  
10 prison, as well as some other programs working in  
11 coordination with the prison, but the final say is up to  
12 the judge, and there's very strong input by the DA's  
13 office.

14 Q. So the municipal court judges then, for the  
15 most part, exercise that, and Common Pleas?

16 A. Municipal and Common Pleas.

17 REPRESENTATIVE HAYDEN: Thank you.

18 BY REPRESENTATIVE BORTNER: (Of Mr. Hornblum)

19 Q. I'd just like to follow up somewhat on that.  
20 Why haven't you embarked on an earned time program in  
21 Philadelphia in your county system?

22 A. We have made initial inroads into that by  
23 talking to city council members and talking to some  
24 judges, and unfortunately, there is a dispute between them  
25 right now as to whose bailiwick it comes under. There are

1 members of council who think that they can initiate it and  
2 just by passing an ordinance would do it, but that is  
3 being opposed by judges on the Board of Judges in  
4 Philadelphia who believe it's a matter of the judges on  
5 Common Pleas.

6 Q. This sounds familiar, believe me.

7 A. Well, I didn't know whether counties were  
8 having that same problem. I thought it was unique,  
9 actually, to Philadelphia. I thought it would be easier  
10 in other counties, since there are approximately 18  
11 counties that have initiated it.

12 Q. No, I mean it sounds familiar to most  
13 Philadelphia problems. I mean, there's nothing out there  
14 that prevents you from embarking on an earned time program  
15 other than your own internal political inability to deal  
16 with it internally.

17 A. This wouldn't be the first time or issue  
18 that we've had that experience, but it doesn't mean that  
19 the State should be off the hook from initiating a uniform  
20 unilateral program that everybody falls under.

21 Q. Why? Why should we mandate a program that  
22 every county in the Commonwealth is under absolutely no  
23 restrictions now to institute if the they choose to do so,  
24 as I pointed out earlier, which my county has already  
25 begun and I think there are some other counties that have

1 as well?

2 A. My argument to that would be why should it  
3 be done in 67 different areas and 67 different ways when  
4 there is probably more experience, more information,  
5 coming through the State and the State legislature than to  
6 each county?

7 Q. Because Philadelphia County is different  
8 than Sullivan County, different than York County.

9 A. It may be different with regard to the  
10 numbers and maybe to some of the specifics of the crimes,  
11 but I think, as we've heard from a number of testifiers  
12 already today, the problems we're talking about are  
13 uniform throughout the Commonwealth, and since it has been  
14 done in 46 other States and was operational in  
15 Pennsylvania for a hundred years, we should try and  
16 initiate it once again so that it covers everybody and we  
17 all understand what the program is in the State.

18 Q. As in most cases, it sounds as though  
19 Philadelphia is different with respect to the way their  
20 prison is managed as well. I know in third-class counties  
21 there's a prison board. How is the -- I realize there's a  
22 Federal court involved now, too, but under ordinary  
23 circumstances, who runs the Philadelphia prison system?

24 A. Well, even as a board member I sometimes  
25 wonder, but the prison board has six members, and we

1 basically decide policy. There's a superintendent and his  
2 administrative staff, and you also have the input from the  
3 mayor, and it is a combination of all of these folks.

4 Q. But the board, you're a trustee?

5 A. That's right.

6 Q. There are six trustees?

7 A. We could not set a policy like this with  
8 regard to sentencing. That would come from the judges, I  
9 believe.

10 Q. And that's been the difficulty with  
11 proceeding? The judges have not been willing to move  
12 forward?

13 A. There are some who off the record have said  
14 it's a good idea, you should pursue it, but nobody wants  
15 to step up and be the one who's out front, considering  
16 they may have to run for re-election at some point and  
17 this could be used against them, that they were more  
18 interested in turning people out of prison rather than  
19 putting them in.

20 Q. Okay. Thanks very much.

21 A. Thank you.

22 CHAIRMAN CALTAGIRONE: A question has been  
23 raised, what would happen if the board did it yourself?

24 MR. HORNBLUM: I don't think legally we have  
25 that power. There is certain jurisdiction that we have,

1 and we certainly don't have, with regard to changing  
2 sentences. That's strictly the policy of the judge.

3 REPRESENTATIVE HAGARTY: How can that be the  
4 case, though, when in every other county the judges have  
5 not been involved?

6 REPRESENTATIVE BORTNER: But I think they  
7 have, Lois.

8 REPRESENTATIVE HAGARTY: They have, you're  
9 saying?

10 REPRESENTATIVE BORTNER: Yeah.

11 REPRESENTATIVE HAGARTY: Okay. I take that  
12 back.

13 REPRESENTATIVE BORTNER: Because it is -- I  
14 mean, if a prisoner under a county sentence stays under  
15 the supervision of the municipal judge, and if the  
16 sentencing judge decides that he wants to release him  
17 early, for whatever reason, he can do that.

18 REPRESENTATIVE HAGARTY: You're right. I  
19 take that back.

20 CHAIRMAN CALTAGIRONE: Kevin.

21 REPRESENTATIVE BLAUM: Thank you, Mr.  
22 Chairman.

23 BY REPRESENTATIVE BLAUM: (Of Mr. Hornblum)

24 Q. Mr. Hornblum, on page 3 of your testimony  
25 you point out that Pennsylvania had a policy of time off

1 for good behavior and that it was utilized for 100 years.  
2 When that was done away with, Pennsylvania went to a  
3 system of minimum and maximum sentences 5 to 10, 10 to 20,  
4 so that indeed if you behaved yourself you would be  
5 eligible for parole not at 20 years but at 10, not at 10  
6 years but at 5. In your testimony, you mentioned Texas  
7 Florida, and Michigan, and I was wondering if the good  
8 time proposals, time off for good behavior, in those  
9 States were on top of something like Pennsylvania has of  
10 the minimum/maximum sentences or not?

11 A. It is in addition to that.

12 Q. And they have systems of minimum/maximums in  
13 those States as well as earned time?

14 A. Yes. Right.

15 Q. Thank you very much.

16 REPRESENTATIVE BLAUM: Thank you, Mr.  
17 Chairman.

18 BY REPRESENTATIVE PICCOLA: (Of Mr. Hornblum)

19 Q. To follow up on Representative Blaum's  
20 question, I do not think they are the same systems.  
21 Florida and Texas do not, I believe, limit the minimum to  
22 one-half of the maximum, as Pennsylvania does.

23 A. I don't know if they limit it on that  
24 specific. I don't know that either.

25 Q. I can, almost with certainty, say they do

1 not. In other words, they may impose a minimum and a  
2 maximum--

3 A. But it may not be half.

4 Q. --but they may be the same. In  
5 Pennsylvania, there's a limitation that our minimum could  
6 be no longer than one-half of the maximum. So at the very  
7 worst, you become eligible for parole after serving half  
8 of your maximum sentence. That's the worst-case scenario  
9 from a prisoner's perspective.

10 Now, my question to you, as apparently an  
11 advocate of this generous good time off for good behavior,  
12 would you be in favor of going to the flat sentencing or  
13 eliminating that restriction on one half the maximum if  
14 you're in favor of doing it the way Florida and Texas do  
15 it?

16 A. Could you be a little bit more specific?

17 Q. Well, in other words, if a statute or a  
18 crime carries a maximum sentence of 20 years, under the  
19 current law, the judge, if he wants to give that person  
20 the maximum permitted, he must sentence him to 10 to 20  
21 years. No more than that. And he becomes eligible for  
22 parole after 10, and under the good time provisions, he  
23 gets the time off of that 10.

24 A. Correct.

25 Q. Now, you're suggesting that Florida and

1 Texas have similar type statutes. I suggest that under  
2 the Florida statute I think a judge, and probably Texas as  
3 well, can sentence a flat 20 years. Now, he may not do  
4 that. Maybe he will make it 15 to 20 years, or maybe  
5 he'll make it 17 to 20, but whatever the minimum is, it  
6 may be higher than 10 years. And then they get that good  
7 time off of that minimum sentence, which is a higher  
8 minimum. And what I'm suggesting is if we go to this good  
9 time scheme, as you're suggesting, that we repeal that  
10 limitation of one-half the maximum being the minimum.

11 A. I would not be in favor of that.

12 Q. Didn't think so. Okay.

13 So in essence, you're not -- you're  
14 suggesting that we go to something even more generous than  
15 what Texas and Florida are offering?

16 A. Well, it doesn't mean that it will be more  
17 generous. It will be more practical and more helpful to  
18 prison administrators. There are many States, such as  
19 Florida and Texas, that are giving uniformly 20 and 30  
20 days off. They are giving 1 for 1. Now, obviously, in  
21 many southern States, the sentences they give are much  
22 tougher than they are up north, so if somebody is  
23 sentenced for 5 years here on a drug charge, it could be  
24 10 to 15 in Mississippi or Texas or where have you, so,  
25 you know, it may balance out in the end. But it seems to



1 me that we are struggling here in Pennsylvania, we're  
2 trying to decide do we give 2 days, 4 days, 6 days, when  
3 most of the places around the country are giving much more  
4 than that and the programs have worked fine.

5 Q. You're missing my point entirely, and I  
6 think the advocates of this have missed this point.  
7 Representative Blaum has just so accurately pointed out to  
8 me that Pennsylvania law today starts out with a 1 for 1.  
9 In other words, as soon as you're sentenced to that  
10 maximum of 20 years, you get half of it off for good  
11 behavior. So we already give it.

12 A. Well, I think you're looking at a policy  
13 which has a philosophy based on maybe the 1960's when it  
14 was initiated then, but as our first testifier said today,  
15 Art Wallenstein, you know, we're basically in a new age  
16 and new problems, and they have to be dealt with new  
17 programs.

18 Q. Okay, then let's get rid of that 1 for 1.  
19 Let's get rid of that limitation on the judge putting half  
20 the maximum/minimum on there. Let the judge sentence the  
21 full 20 years if he feel it's appropriate in a certain  
22 case.

23 A. How does that move us forward, then?

24 Q. What do you mean, move us forward? Are you  
25 trying to clean out the jails or are you trying to have a

1 satisfactory system of sentencing? What's your goal?

2 A. I'm trying to have a satisfactory system of  
3 sentencing, but we have to recognize we do have other  
4 problems. I mean, we have people who are sleeping in  
5 gymnasiums and we do have people who are doing, let's say,  
6 11 months on a 14-month sentence and they could come out  
7 after 12 months. It's not necessary to do the entire 14  
8 months.

9 Q. But you're suggesting that we go back to the  
10 pre-1960's when we repealed good time and re-enact good  
11 time, but if we strictly go back to that point in time,  
12 we're going to get rid of that provision that limits the  
13 judge in imposing his minimum sentence, too?

14 A. But he could be raising the maximum  
15 sentence. I mean, what he could do--

16 REPRESENTATIVE HAGARTY: Can't raise the  
17 maximum.

18 BY REPRESENTATIVE PICCOLA: (Of Mr. Hornblum)

19 Q. The maximum is the maximum.

20 A. Okay, but the point is, he could always hit  
21 that person with a maximum sentence.

22 Q. He can't now.

23 A. But if we go to the system that you're  
24 articulating, then--

25 Q. And that's called flat sentencing, I think,

1 and I think you then would have some better argument, I'm  
2 not saying I necessarily agree with it totally, but you  
3 have a much better argument to say that perhaps then we  
4 should let the good time provisions take over. And I  
5 think that's probably what Florida and Texas do. They  
6 probably have something closer to a fiat sentencing where  
7 they have real heavy maximums, but then people get a lot  
8 of good time off and you're really only keeping the  
9 incorrigibles in there for the full maximum. I think the  
10 result is basically the same. We in Pennsylvania, we put  
11 our good time at the front end. We tell you, you're  
12 getting a maximum of 20, but you're already getting half  
13 of it off for good behavior.

14 A. Well, I will try and find out how many  
15 States do offer the earned time with the flat sentence and  
16 get back to you on that, but I believe a fairly high  
17 percentage are offering the minimum and the maximum with  
18 earned times.

19 Q. Okay. Now shifting to private prisons, and  
20 I was intrigued by your horrific description of the  
21 Philadelphia prison system and how awful it is and how  
22 understaffed and inadequate it is, and then when you come  
23 to page 6, "It would be all too easy for a private  
24 entrepreneur or a corporation to cut back on a guard post,  
25 a social worker, a physician or two, to ensure or enhance

1 a profit margin." Well, what in the heck has Philadelphia  
2 been doing? Now, it's not profit, but they're cutting  
3 back on something. What's the difference?

4 A. The difference is that I believe it would be  
5 far more likely to happen in the private sector with a lot  
6 less public scrutiny of it.

7 Q. Well, have you examined the bills that  
8 provide for the public scrutiny and regulation? I don't  
9 think you've read the bills.

10 A. No, I haven't.

11 Q. I didn't think so. The bills provide for an  
12 exhaustive system of regulation and provide for an  
13 exhaustive system of inspection, much more than you're  
14 going to get, I think, in the public correction system.  
15 In fact, I venture to say that if a private correctional  
16 system gets operated, whether it be profit or nonprofit,  
17 and in fact we have had some operating, I suggest that  
18 you're going to have a system that is much better  
19 operated.

20 A. But why can't that be done in the public  
21 sector now?

22 Q. You tell me. You're a trustee.

23 A. Maybe one -- I don't know if this is the  
24 sole reason, one reason could be that these inmates that  
25 we have, these thousands of people across the

1 Commonwealth, in Philadelphia, across the nation, they  
2 don't have the power to vote, and legislators don't listen  
3 to them, and they're not really interested in people who  
4 break the laws.

5 Q. Well, I don't think that is a relevant  
6 answer. I think the question is what's the best way to  
7 solve the problem? And obviously the system we have now  
8 isn't doing it.

9 A. But it doesn't mean you can't reform the  
10 system.

11 Q. Well, you have it in your power. The  
12 Philadelphia correctional system is under your control,  
13 under the control of Philadelphia and the people of  
14 Philadelphia.

15 A. I wish I had as much power as you grant me,  
16 but it's not the case.

17 Q. I'm not saying you individually, I'm saying  
18 you collectively. And yet nothing is going to be done  
19 about it. I think by connecting the profit motive to  
20 incarceration, I think snatching one's liberty combined  
21 with the profit motive is inflammatory and is not  
22 accurate.

23 A. I agree that we have done a fairly lousy job  
24 of monitoring the prisons in Philadelphia and in the  
25 State, and they are horrendous institutions, and it's part

1 of the problem that we have so many folks coming back in  
2 again. We don't rehabilitate, we recycle. And there has  
3 to be a great more attention paid to that because  
4 everybody is preoccupied with crime today and we can  
5 continue to give out tougher sentences and put people in,  
6 but there's always more people to take their place on the  
7 street, and we just seem to be, you know, treading water,  
8 not moving anywhere.

9 Q. Well, I'll end this dialogue. I think it is  
10 flippant to say that just because a profit motive, perhaps  
11 a nonprofit motive, is attached to it that it is not a  
12 good way to go, especially since we've seen such utter  
13 failure in the public sector up to this point in time. I  
14 think you should read the bills and see how much public  
15 scrutiny there would be provided for under this scheme and  
16 then perhaps give us your comments at that juncture.

17 REPRESENTATIVE PICCOLA: Thank you, Mr.  
18 Chairman.

19 CHAIRMAN CALTAGIRONE: Kevin.

20 REPRESENTATIVE BLAUM: Thank you, Mr.  
21 Chairman.

22 BY REPRESENTATIVE BLAUM: (Of Mr. Hornblum)

23 Q. Just one follow-up, and I want to thank  
24 Representative Piccola for his questioning, which I think  
25 illustrated that the witness's quick answer to my question

1 may have been a little off. And what I'm saying is, you  
2 know, that Pennsylvania used to have a system of good  
3 time, earned time, time off for good behavior, and got  
4 away from that in name only. It institutionalized it by  
5 saying we're going to guarantee by law that there will be  
6 time off with good behavior. That is, a 10-year sentence,  
7 you automatically get 5 years off if you behave yourself,  
8 and you're eligible for parole after serving only 5 years  
9 instead of the 10. Pennsylvania made that the law.

10 My question is, and you may have answered,  
11 but I'm not sure, my question is, how many other States,  
12 are there any other States, that have Pennsylvania's exact  
13 system and on top of that take time off that minimum when  
14 you're eligible for parole? That's my question. I was  
15 wondering if you--

16 A. I don't know exactly how many States there  
17 are with regard to the minimum can't be more than half the  
18 max. I will try to get a hold of that number and get back  
19 to the committee with the answer.

20 REPRESENTATIVE BLAUM: Thank you.

21 CHAIRMAN CALTAGIRONE: Chris.

22 MR. WOGAN: Thank you, Mr. Chairman.

23 BY MR. WOGAN: (Of Mr. Hornblum)

24 Q. Mr. Hornblum, did the Philadelphia Prison  
25 Society formulate a position on the construction of the

1 new Philadelphia Justice Center?

2 A. To be quite honest, I don't know if they do  
3 have a position. Generally, the Prison Society and  
4 organizations like it are opposed to new construction if  
5 it is going to just foster more cells. If it is going to  
6 supplant an old institution that can no longer function, I  
7 think they are in favor of that. Specifically on the  
8 Criminal Justice Center, I don't know if a position was  
9 ever formulated. We do have the executive director who  
10 will be speaking shortly who would be a more appropriate  
11 person to answer that.

12 Q. Well, then you personally, have you  
13 formulated a position on construction of a Criminal  
14 Justice Center in Philadelphia?

15 A. I think a Criminal Justice Center in center  
16 city would be very helpful to everybody concerned with  
17 criminal justice issues. What we have in northeast  
18 Philadelphia, as you well know, are four prisons, each  
19 have approximately 1,000 people in them, three of them are  
20 along State Road, a fourth is scheduled to be built by  
21 December 1990 that will not be able to handle the capacity  
22 that we have, the overcapacity, and I would think within  
23 four or five years we'll probably have two or three more  
24 to the point that it will be prisons row in maybe 10  
25 years.



1 Q. Then it is your belief that we could use an  
2 additional prison in Philadelphia County?

3 A. Considering the fact that we have inmates  
4 sleeping on gymnasium floors, yes, but that is not a  
5 position probably shared by a good many members of the  
6 Prison Society--

7 Q. I would think not.

8 A. --who feel we will just continue building  
9 and building and it will never correct the problem.

10 Q. Okay. Did you happen to catch the comments  
11 Mr. Gallagher made concerning the possibility of imposing  
12 a 1-percent sales tax to finance the construction of new  
13 prisons in Pennsylvania?

14 A. Yes, I did.

15 Q. Do you think that's an idea that would have  
16 merit?

17 A. I think it has merit and I think there are  
18 probably a host of other single issue groups who would  
19 like the same sort of vehicle for their concern. I don't  
20 know how palatable or digestible this will be to the  
21 electorate.

22 Q. I was just about ready to get to that. If  
23 you had to make a choice, if it were in your power to make  
24 a choice between a 1-percent sales tax to finance new  
25 prison construction in Pennsylvania or to finance mass

1 transit operations in Pennsylvania, what would be your  
2 answer?

3 A. I would probably do as you would do and give  
4 a half to each.

5 Q. Very good answer, Mr. Hornblum. Thank you.

6 Since we're putting ourselves in the place  
7 of a legislator, suppose that you didn't have that choice  
8 because your leadership had structured it so that you had  
9 only that choice. You couldn't give a half percent to  
10 mass transit and you couldn't give a half percent to the  
11 prison system and you lost the motion to suspend the  
12 rules. How would you vote, Mr. Hornblum? Would you vote  
13 for money for prisons or would you vote for it for mass  
14 transit?

15 A. Do I have an opportunity to consult with the  
16 chairman of the committee for the proper answer?

17 I would probably try and find additional  
18 mechanisms to raise money or cut back on some other area.

19 Q. Well, Mr. Hornblum, that's not part of the  
20 scenario I've given you. Sometimes we're given that type  
21 of a situation where we have to choose. It's a tough  
22 choice that we have to make sometimes, and we don't always  
23 like making them, but if you had to make that tough  
24 choice, you're here to give us advice this afternoon, what  
25 would be your choice?

1           A.    I would probably give the money to mass  
2 transit and not going forward with the construction but  
3 look for alternative sentencing programs.

4           Q.    Thank you, Mr. Hornblum.

5           REPRESENTATIVE WOGAN:  I have no further  
6 questions.

7           CHAIRMAN CALTAGIRONE:  Thank you very much.  
8 John Kramer.

9           MR. KRAMER:  Thank you, Mr. Chairman, and  
10 the members of the committee.  With the hour of 2:00  
11 o'clock apparently here and well here--

12           REPRESENTATIVE HAGARTY:  This is judiciary  
13 time.  We're always on this time.

14           MR. KRAMER:  This is judiciary time.  All  
15 right.

16           I will also warn you that I am in the  
17 process of a migraine and eyesight is affected with a  
18 migraine, so that if I stumble a few moments, forgive me.

19           Also, I will not go through my full  
20 testimony here.  I will abbreviate my remarks considerably  
21 and read the part particularly about, I'll give you some  
22 perspective myself a little bit and then to comment on a  
23 particular bill which affects the commission and a couple  
24 of others and then leave that, if you have questions, and  
25 then leave the rest for you to read, please.

1 I want to begin by noting that my remarks  
2 reflect my views and not necessarily those of the  
3 Pennsylvania Commission on Sentencing. Mr. Bortner is  
4 here but these remarks are not approved by the commission.

5 REPRESENTATIVE BORTNER: You don't need a  
6 disclaimer.

7 MR. KRAMER: In addition, my remarks reflect  
8 not only my views as an educator for almost 20 years and  
9 Director of the Pennsylvania Commission on Sentencing, but  
10 as a counselor in an overcrowded maximum security  
11 institution in Ohio, and as a parole officer. I've been  
12 the Executive Director of the Pennsylvania Commission on  
13 Sentencing since June 1979. When I began working with the  
14 commission 10 years ago, our State prison populations  
15 housed only about 8,000 inmates, and in the intervening 10  
16 years, prison populations have grown to almost 19,000.

17 It is important to point out that prison  
18 overcrowding jeopardizes the effectiveness of the  
19 guidelines to reduce sentencing disparity. To the degree  
20 that some courts for some defendants depart and negotiate  
21 around the guidelines and the mandatory provisions because  
22 of overcrowding, the commission's goal of sentencing  
23 equity is undermined. Similarly, the guidelines were  
24 intended to increase severity for serious violent  
25 offenders. The prison overcrowding also seriously

1 jeopardizes the effectiveness of the guidelines in this  
2 area.

3           In understanding my concern, let us consider  
4 for a moment our current track. Prison growth last month  
5 alone set a new one-month record, breaking the record set  
6 in May. Prison population is escalating at a rate faster  
7 than any of us anticipated a few months ago. Having  
8 worked in the Ohio penitentiary, which had a rate of  
9 capacity of 2,000 and a population of 4,800, I have some  
10 appreciation of the pressures on our correctional system.  
11 Just as a side note, in the Ohio penitentiary we had four  
12 inmates to a cell. We didn't talk about double celling.  
13 We had dorms and while the capacity was 2,000, one of  
14 those cell blocks had been destroyed by a fire so that our  
15 population, when one person had to go to bed at night in  
16 that institution, all four inmates had to go to bed at  
17 night, because as soon as the beds came down there was no  
18 space for sitting or moving within the cell.

19           Let me just add a note of a few of the  
20 problems:

21           --Overloaded resources. Inability to  
22 provide adequate education, work, therapy, and physical  
23 resources to inmates.

24           --Increased violence. Riots and fighting  
25 are more likely and more dangerous. And again, a

1       parenthetical note, the overcrowding at the Ohio  
2       penitentiary was not seriously addressed until two major  
3       riots occurred in which several inmates were killed.  
4       Five, to be exact.

5               --Federal intervention. Allegheny and  
6       Philadelphia Counties are currently under Federal court  
7       mandate to control prison populations. Many States,  
8       including Georgia and Texas, have their State systems  
9       under similar mandates. This is unnecessary and  
10      inappropriate.

11             --Public safety. It is not clear that  
12      collective incapacitation strategies that we are currently  
13      using have significantly increased public safety. The  
14      State of Washington leases space to overcrowded States  
15      because it directed its sentencing commission to be very  
16      selective in the use of prison space. Changes in its  
17      crime rate have been similar to Pennsylvania's with its  
18      burgeoning prison population.

19             The above is merely a preamble to my remarks  
20      so that you know that I begin with the assumption that we  
21      can and must seriously address the problem. Prison  
22      overcrowding results from the combined effect of the  
23      number of inmates entering prison, the length of their  
24      stay, the number returning as parole violators, and the  
25      length that they serve as parole violators, and it's

1 important that the committee understand all of those  
2 factors have to be looked at in terms to understand what  
3 our current population sits at at this point in time and  
4 how it's growing and where it's growing.

5 The package of bills that are the subject of  
6 the public here today focus on providing more space,  
7 providing earned time to allow for earlier eligibility for  
8 release and to encourage rehabilitative efforts, and  
9 providing an intensive parole program to enhance  
10 supervision, rehabilitation, and capacity. Let me begin  
11 by commenting on perhaps the most important bill in the  
12 package and the only one that specifically affects the  
13 Commission on Sentencing.

14 HR 151 mandates county and State prison  
15 population projections by the Pennsylvania Commission on  
16 Sentencing for any bill which may cause an increase in  
17 State or county prison populations. It may be the most  
18 important bill in the package because it would ensure that  
19 the legislature is informed of the potential consequences  
20 of legislation.

21 I want to bring to your attention HR 1683,  
22 which would also mandate correctional assessments but  
23 which has two components which the committee may find  
24 advisable. First, HR 1683 mandates that the Consensus  
25 Review Committee provide the impact assessments. This

1 committee is sponsored by the Pennsylvania Commission on  
2 Crime and Delinquency and includes representation from  
3 many agencies, including the Sentencing Commission, the  
4 Board of Probation and Parole, Department of Corrections,  
5 and the Governor's Office. This committee was formed so  
6 that the combined resources, data, and knowledge of the  
7 agencies could be utilized in developing the impact  
8 assessments. I would recommend that the Consensus Review  
9 Committee be the specified group for providing impact  
10 assessments.

11 Second, HR 1683 specifies that the impact  
12 assessments be completed within 25 days. Although this  
13 time frame is relatively short, I think it appropriate to  
14 impose a time limit so that bills would not be unduly  
15 delayed.

16 Finally, I would recommend that any  
17 legislative action, or agency action, such as changes in  
18 the commission's sentencing guidelines or parole release  
19 or revocation guidelines, be subject to assessment as  
20 well. It seems unfair to restrict the General Assembly  
21 more than State agencies when State agency decisions can  
22 have a profound impact on prison populations.

23 Regarding the other bills that are the  
24 subject of today's public hearing, I'd like to make a  
25 general observation and then probably a comment or two



1 about a couple of the bills and then stop for any  
2 questions.

3 My general concern is that the bills offer  
4 the potential for an important first step in alleviating  
5 the overcrowding problem but that they will not solve the  
6 problem. I would suggest that this committee ask the  
7 Commission on Sentencing to provide specific suggestions  
8 to it regarding ways in which the commission could revise  
9 its guidelines to reduce the number of inmates entering  
10 State prison and/or reduce the length of incarceration.  
11 The commission, as the sentencing commission in Tennessee  
12 has done, could provide the committee with a series of  
13 choices that would specify the impact on sentences and  
14 prison populations. I think that this is a reasonable way  
15 to proceed and it is within the commission's mandate and  
16 its enabling legislation to, and I quote from that  
17 legislation, "Make recommendations to the General Assembly  
18 concerning modification or enactment of sentencing and  
19 correctional statutes which the Commission finds to be  
20 necessary and advisable to carry out an effective, humane  
21 and rational sentencing policy."

22 Now I will proceed with just a few comments.  
23 Let me just talk about House Bill 1157, a comment or two  
24 on that particular bill, and then on House Bill 1709, just  
25 very briefly.

1                   There are several issues in 1157. The bill  
2                   exclude rape, involuntary deviate sexual intercourse, and  
3                   offenses for manufacturing drugs, et cetera, from earning  
4                   the good time. I think these exclusions eliminate some of  
5                   those offenders who would most likely benefit by  
6                   participation in rehabilitation programs. And again, it  
7                   becomes in part a question of what's the purpose of the  
8                   earned time? As a management tool it has one purpose and  
9                   then exclusions don't present a problem, unless you're  
10                  trying to manage those people. If it's a rehabilitation  
11                  purpose, then earned time, if you're trying to encourage  
12                  participation in programs, some of those individuals are  
13                  the very individuals you want to make sure they  
14                  participate.

15                   As the bill is drafted, the parole  
16                   authorities are given unlimited authority to revoke all  
17                   earned time accumulated while on parole regardless of  
18                   whether the violation is a new offense or a technical  
19                   violation. I would recommend that the authorities,  
20                   meaning the parole authorities, be mandated to set forth  
21                   specific guidelines for the removal of good time for  
22                   parole violations and also in terms of, I think I heard  
23                   Mr. Jacobs commenting, and I think I came in the middle of  
24                   his remarks, some distinction between whether it's a  
25                   technical violation or a new offense violation is an

1 important consideration, because they are considerably  
2 different.

3           With the passage of this act, it is very  
4 important that the Department of Corrections be provided  
5 the resources to further specify programs. Absent  
6 available programs, the earned time credit for program  
7 participation may be of little impact. And let me just  
8 say as a sidebar note, I've done work in many other States  
9 and worked with the State of Connecticut at one point in  
10 time seven or eight years ago and they have an earned time  
11 flat time sentencing bill with earned time as part of it,  
12 and in that particular jurisdiction they were overcrowded,  
13 they had people sleeping in the dorms like they do in the  
14 Philadelphia institution. They ended up with the  
15 Department of Corrections was giving good time to  
16 everybody by running paper programs. They did that  
17 because they were in a crisis situation. They had a  
18 crisis situation and they had I don't remember how many  
19 hundreds of people defined as being window washers because  
20 they were supposedly supposed to be working in the  
21 institution in order to get earned time, about one part of  
22 the earned time. They had everybody assigned to earned  
23 time because they had everybody assigned as window  
24 washers. None of them were actually washing windows.

25           That is one of the subversive forces that is

1 created if one does not think through carefully  
2 eligibility and the way in which earned time is given.  
3 The institutions are in a crisis situation. They are  
4 going to take what is given to them. That's been  
5 happening in other jurisdictions. And so I think it's  
6 very important in order to meet the mandate of the  
7 legislation to make sure that they are able to fulfill it  
8 by providing the resources and the programs that are  
9 required or mandated in order to earn good time.  
10 Otherwise, you result and you have inequity within the  
11 correctional system.

12           It is also important to note, and this is  
13 again a side comment about other States, including  
14 Minnesota and Washington, that they have abandoned linking  
15 release from prison to program participation. They have  
16 done this because of beliefs that programs are  
17 ineffective, that forcing program participation is unfair,  
18 and that unwilling participants are poor candidates to  
19 benefit from those programs, and I say that not in terms  
20 of a personal support of that position but that is a  
21 particular direction that many jurisdictions have gone in  
22 the last 10 years.

23           Similar comments about 1709 in that 1709  
24 eliminates good time being earned by people under  
25 mandatory, again, a concern, and I understand certain

1 people don't want certain people to be released early. On  
2 the other hand, the broader, as everybody starts putting  
3 in their particular concerns about who they don't want to  
4 earn good time, it both questions the intent, the  
5 philosophical purpose of the good time, and it also means  
6 that the impact of it in terms of overcrowding is  
7 lessened, and those, obviously, are more political issues  
8 in many respects than anything else, but I think those are  
9 comments I wanted to make about that.

10 I would also be concerned about in House  
11 Bill 1709 regarding the repealer which occurs on June 30,  
12 1992. It seems to me that I would hate to see this  
13 committee have to try to reconsider good time again if it  
14 does pass good time, and I think that puts this committee  
15 potentially in the future in an awkward situation. And if  
16 Representative Piccola wants to ask about  
17 minimums/maximums, we can talk about that in a moment. I  
18 have feelings about that. That's an encouragement.

19 Finally, I'm going to skip over my comments  
20 on other bills and just note my conclusion. I commend  
21 this committee and particularly the sponsors of the  
22 legislation being discussed today. I think they are  
23 important steps and I support most of them, with things  
24 that I would amend if I had control to do so. It is  
25 imperative that Pennsylvania maintain control of its

1 prison systems, and I have seen States that have not and  
2 it is not a position that this State wants to find itself  
3 in. These bills indicate that you are beginning to take  
4 prison overcrowding seriously. Again, I suggest you  
5 request that the Commission on Sentencing provide you with  
6 options and the guidelines to assist in alleviating the  
7 problem. There are things that can be done there that we  
8 can study and come back with a series of recommendations.  
9 As I indicated to you Tennessee has done, they provided  
10 four to the legislature for their consideration, some  
11 which they thought were good, some of which they thought  
12 were bad, but at least they made proposals to this  
13 committee, or in this case to the Judiciary Committee in  
14 Tennessee.

15 I close my remarks with that.

16 CHAIRMAN CALTAGIRONE: I'd like to formally  
17 request of you, since you've mentioned it twice, whatever  
18 suggestions or opinions the Commission may have regarding  
19 these issues, to formally communicate with us on the  
20 committee so that we can share that with the members.

21 MR. KRAMER: Okay.

22 CHAIRMAN CALTAGIRONE: I know that certainly  
23 we would appreciate those kind of recommendations that you  
24 may very well make to us.

25 MR. KRAMER: I would suggest, in order, I

1 think, and perhaps Representative Bortner might have  
2 another comment on this as a member of the commission, I  
3 would suggest that the committee, in order to formalize  
4 that and to make it a clear recommendation or request,  
5 that it perhaps come from the committee directly, perhaps  
6 a letter from yourself to myself or to the Chair of the  
7 Sentencing Commission. In other words, we can do it  
8 informally. We can go through that process. I just think  
9 that if it comes more clearly from the committee, either  
10 by the committee as a whole or by the Chair of the  
11 committee, some other fashion, it would have more meaning  
12 and more thrust in terms of the commission's response in  
13 doing that.

14 CHAIRMAN CALTAGIRONE: Okay.

15 Questions?

16 Jeff.

17 BY REPRESENTATIVE PICCOLA: (Of Mr. Kramer)

18 Q. On that point, John, I'm not sure exactly  
19 what you're asking for or what you're going to give us. I  
20 guess I'm more concerned with what you're going to give us  
21 than what you're asking for. But what I don't want is a  
22 range of choices on how to lower sentences or make  
23 sentences less stringent than they currently are. And I  
24 don't know what you're proposing.

25 A. Well, I think that if you look at growth in

1 prison populations, what some jurisdictions have done,  
2 clearly there's no way you can go forward and manage our  
3 current prison overcrowding problem without consideration  
4 of how many are going in, how long are they staying, how  
5 many are getting -- when are they getting paroled, and how  
6 many are getting parole revoked and how long are they  
7 staying on parole revocation. Those are the variables  
8 that you have to work with. Now, good time is a way of  
9 trying to reduce minimums. That's one way. States of  
10 Minnesota, Washington, other States, the Federal  
11 government, have abolished the parole release mechanism.  
12 They've gone to a flat time, 54 days a month good time,  
13 and basically they will anticipate, and they have a prison  
14 population increase protection.

15 Q. What State was that?

16 A. That's the Federal government.

17 Q. Oh, the Federal government.

18 A. They have a sentencing commission that  
19 provided guidelines and they can project out the impact of  
20 those guidelines.

21 The question that you have, I think, in  
22 terms of the guidelines, and I think that things that can  
23 be done within the guidelines, there probably are  
24 sentences that should be more severe than they currently  
25 are. If I were rewriting the guidelines, there probably



1 would be some that I would look back and say I would  
2 recommend the commission increase the severity. On the  
3 other hand, I think I would only recommend that only go  
4 forward with that kind of notion. If the commission also  
5 considered ways in which there would be a release of  
6 others abbreviating, shortening sentences for some other  
7 offenders, some offenders, if you get to offenders with  
8 long prior records in retail theft and other things,  
9 you're talking about serious State time. The question is,  
10 do you want to take up your State time with those as  
11 opposed to other kinds of offenders?

12           It's a balancing act, and what I'm  
13 suggesting to you is that I think what's happening in  
14 Pennsylvania's system, and it's going to happen worse, if  
15 you look at the numbers coming down the road, it's going  
16 to become a worse problem for Pennsylvania. We're going  
17 to be in a system of not controlling it.

18           I would recommend, I think without any  
19 threat to public safety, that we could look at reducing  
20 some lengths of some offenders, and on the other hand  
21 perhaps increasing some, but basically with some concern  
22 about alleviating the problem. I mean, you're talking  
23 about public safety and you're talking about public cost,  
24 and it seems to me that there are ways of doing that  
25 without jeopardizing that we're letting crazies out on the

1 street. I mean, that's not happening. The basic thing --  
2 in fact, I think what's going to happen worse is that  
3 we're going to get so overloaded and what's going to  
4 happen is we're going to have an informal system of  
5 criminal justice in this State. It's going to be operated  
6 by defense attorneys, district attorneys and judges who  
7 are looking, and I think these bills reflect to a great  
8 degree in part what's already happening.

9 If you look at the bills that talk about the  
10 DUI offenders, homicide by vehicle, and we've looked at  
11 those numbers as they've happened, clearly the courts, in  
12 part because of overcrowding, I think in part because they  
13 don't agree with the three-year mandatory minimum for  
14 homicide by vehicle, are avoiding it. You can have paper  
15 lions that tell you, you can write the mandatories, but  
16 they can be paper lions unless you provide the opportunity  
17 for the courts to fulfill it as well as if those things  
18 are reasonable to the court's point of view in terms of a  
19 sentence recommendation. And I think when we look at  
20 homicide by vehicle and the numbers, you see juries coming  
21 back with verdicts, and you see also a lot that begin with  
22 the potential of being homicide by vehicle while DUI and  
23 the numbers drop precipitously, come in with other  
24 verdicts, which means they can avoid the three-year  
25 mandatory minimum. And I think in part that reflects

1 concern about putting -- there's a social class issue  
2 here, certain kinds of offenders in institutions that are  
3 overcrowded and overcrowded with people who are perhaps  
4 very different than the white middle class person that may  
5 happen to be before us in court who is guilty of homicide  
6 by vehicle while DUI.

7 Q. Well, don't we, I think with our independent  
8 unified judiciary, we always run that risk, whether we  
9 have an overcrowded system or not?

10 A. That's true, yes.

11 Q. I'm still not clear on what you're going to  
12 give us, but--

13 A. Well, I'm not either. What I'm saying is,  
14 we could come through.

15 Q. I'm not asking for it, but if the chairman  
16 asks for it, fine. I just don't want to go through what I  
17 think Representative Hagarty recalls we went through a few  
18 years ago in battling back and forth your guidelines.

19 A. No, all I'm proposing is if this committee  
20 wanted information, this committee, and we're not talking  
21 about a series of revised guidelines being submitted,  
22 we're talking about a series of possibilities that would  
23 be in the guidelines. What could the commission do?  
24 First, could the commission do anything? If it can do  
25 something, what does it think it could do without

1       jeopardizing public safety and fairness in sentencing,  
2       that it could be of some help in dealing with prison  
3       overcrowding? And we could come back with a series of  
4       possibilities this committee could look at and discuss.  
5       There would not be any action taken unless this committee  
6       came back with some sort of notion to the commission that  
7       they thought some of those perhaps should be promulgated  
8       or considered by the commission. They would not be  
9       formal. I'm not suggesting that they be formal action on  
10      the commission at this point in time on it, but that we  
11      explore ways that we could be helpful in your trying to  
12      address this problem of prison overcrowding. Maybe we  
13      can, maybe we can't. We're certainly not the cause of the  
14      problem. I mean, sentencing is one part of the problem,  
15      and we can't take 6,000 people out of the State prison  
16      system now. They're there and they're probably going to  
17      still be there. But I think there are things that could  
18      be done within the guidelines that would not violate your  
19      sense of propriety in terms of sentences that are being  
20      given and still be helpful to the State system.

21               Q.    One question that I have, and that is,  
22      looking at our current sentencing scheme from the point of  
23      view not as someone involved in the correction system or  
24      in the criminal justice system or the system at all but  
25      looking at it from the point of view of an average,

1 law-abiding citizen for a moment, which many of us don't  
2 -- have sort of forgotten that guy for many, many  
3 instances, don't you think that the current system of a  
4 minimum/maximum, minimum being no longer than half the  
5 maximum, no possibility for parole, when you're in the  
6 State system at any rate, until you've served that minimum  
7 with no time off for good behavior is a more honest  
8 sentencing system from that guy's point of view than  
9 having, say, a flat system with an indeterminate amount of  
10 time off for good behavior?

11 One of the biggest complaints that I get  
12 from constituents is that, well, yeah, he got 10 years,  
13 but he'll be out inside of 5 because of time off for good  
14 behavior. Well, I tell them, that's not the case in  
15 Pennsylvania. You don't get time off for good behavior in  
16 Pennsylvania.

17 A. That's right.

18 Q. And I think it's a more honest approach for  
19 the public. They know that the the guy, he's in there for  
20 five years. There's no chance unless the Governor  
21 commutes his sentence or pardons him. But a sentence is a  
22 sentence. Do you agree with that?

23 A. Yes, I do. I think that in Pennsylvania  
24 we're one of the few States that don't have the good time  
25 coming off, and I think obviously, as the testimony has

1 indicated before, I think in terms of being one reason  
2 that the commission could write guidelines on minimum and  
3 could basically treat it as any other States that were  
4 going to a flat determinant sentencing system like  
5 Minnesota or Washington, the United States system, was  
6 because of that particular parameter. If some of the  
7 other jurisdictions, California, for example, which had 1  
8 to life or 1 to 15 years, those kinds of systems would be  
9 very, very hard to operate with any kind of semblance of  
10 determinacy, predictability, certainty, and I think  
11 fairness, which is the ultimate question.

12 I think we have, in that respect, a system  
13 which is relatively clear -- I say relatively because the  
14 average citizen still gets laws in the mire. In fact,  
15 when I started as Director of the Sentencing Commission, I  
16 made many appearances before the judges and judges were  
17 very unclear about Pennsylvania's sentencing system and  
18 often times thought that people were eligible for release  
19 at one-half of the minimum not one-half of the maximum.  
20 So they were thinking -- in fact, I had a judge in a  
21 particular session at the Trial Judges Conference say that  
22 he always doubled the minimum so he'd make sure the person  
23 served. If he wanted the person to serve one year, he  
24 gave him two years so that he'd make sure that he served  
25 the one year, which in our system was a lot of people out

1 of that county, I won't tell you which county, I assume  
2 got double minimum sentences for a while, and hopefully  
3 that individual I think finally understood what the  
4 process was.

5 We do have a fairly clear, explainable  
6 system, and we do have a longer tag than normal in terms  
7 of the parole supervision time at the end. Some States  
8 will give, if a person has served time on parole and there  
9 have not been any problems, that is basically time served.  
10 That's the notion, they don't lose that if their parole is  
11 revoked. And they have easier systems for being taken off  
12 of parole than Pennsylvania does, and I think one of the  
13 bills here for reducing the maximum by the parole board is  
14 a good way of maybe trying to get down to that where they  
15 have a better opportunity to release people earlier, to  
16 take them off of parole supervision earlier.

17 Q. Thank you.

18 REPRESENTATIVE PICCOLA: Thank you, Mr.  
19 Chairman.

20 REPRESENTATIVE BORTNER: Just one or two  
21 quick questions.

22 BY REPRESENTATIVE BORTNER: (Of Mr. Kramer)

23 Q. John, I think I know the answer to this, but  
24 I want to make sure. Our guidelines are written to the  
25 minimum sentences, are they not?

1           A.    That's right.  And they were done so, they  
2 were written in 1980-81.  At that time, the predicted  
3 sentence was basically the minimum.  The Sentencing  
4 Commission operated with the concept that the minimum  
5 sentence was basically going to be time served.

6           Q.    So, I mean, if you go through the  
7 calculations, the guidelines call for a 12-month sentence,  
8 the judge would impose a 12- to 24-month sentence?

9           A.    That's right.

10          Q.    Not a 6- to 12-month sentence?

11          A.    That's correct.

12          Q.    That's all I have.  Thank you, John.

13 BY REPRESENTATIVE HAGARTY:  (Of Mr. Kramer)

14          Q.    My question was of the same nature.  I guess  
15 going back to Kevin and Jeff's questions from before, my  
16 experience as a prosecutor was, and that's what our  
17 sentencing guidelines obviously are based on, is that  
18 judges didn't give or don't give the maximum sentence  
19 being the expected sentence but they give the minimum  
20 sentence being the expected sentence, and so in fact I  
21 guess my first question is, is that your belief then?  
22 That the minimum sentence is the sentence that is given  
23 because that is the expected time, but that's the sentence  
24 that the judge wants that defendant to serve?

25          A.    At least.  At least to serve that much.



1           Q.    And this causes me to wonder, and I really  
2 haven't questioned this before, but does our system and  
3 your belief then make sense at this point or shouldn't we  
4 go if what we're in fact doing is giving minimum sentences  
5 and our guidelines, or recommending minimum sentences,  
6 that we expect those sentences to be the sentences served?  
7 Does the minimum, no more than half the maximum, make any  
8 sense, and should we be considering a flat sentence in  
9 Pennsylvania if we're going to go -- and I say I guess you  
10 could ask the question even if we're not going to go to  
11 some type of earned time, but if we are going to go to  
12 earned time, doesn't it make sense then to abandon that  
13 system?

14           A.    Well, I think there is certainly a number of  
15 States which have looked and gone to a flat sentencing  
16 system, and there are certainly advantages to doing that.  
17 It is a philosophical issue in the sense that what the  
18 minimum/maximum system is based on the notion of  
19 rehabilitation and that you can explain that a person is  
20 release readily.  If -- and we're not using that kind of  
21 system -- and basically the other thing is that the  
22 information that is known at sentencing is not sufficient  
23 to decide when that person should be released.  If you  
24 feel, I think you as the committee feel, that the  
25 information known at sentencing in terms of what this

1 person has done, how serious the offense is, how dangerous  
2 this offender is, whatever the parameters you want to use  
3 in making sentencing decisions, if you feel that that  
4 information is known in sentencing, then sentencing, a  
5 flat system with some good time, which is basically a  
6 prison management tool, is one of which many States have  
7 gone to and has worked very well in those jurisdictions  
8 without major problems of prison control or crime rates or  
9 anything else.

10 Q. So you're saying in a sense then the issue  
11 really is, do we want the judge to decide in the beginning  
12 how long that sentence is or do we want the parole board  
13 to decide sometime in the middle?

14 A. That's right. And that's a philosophical  
15 issue that you have to wrestle.

16 Q. On that question, it seems to me that by  
17 your asking the committee or posing the question in the  
18 context of prison overcrowding to recommend to us  
19 different proposals, if the question comes up, we might  
20 decide that it would be preferable to reduce sentencing  
21 guidelines rather than enact a system of earned time, the  
22 result very well -- although obviously not to deal with  
23 the immediate overcrowding in Pennsylvania but long term,  
24 clearly we could reach the same result in terms of number  
25 of incarcerated defendants by changing our sentencing

1 practices. And I wonder whether does that make -- is that  
2 something that you advocate? I mean, do you think that it  
3 is better to have sentences that are realistic with regard  
4 to what our prisons can accommodate rather than going to  
5 this makeshift system of good time, which in large part I  
6 don't think we're inclined to do because of managerial  
7 effectiveness, that's another argument, but I think if  
8 this legislature considers doing it, it's going to be  
9 because of overcrowding. And so my question is, should we  
10 then be considering instead less severe sentences rather  
11 than good time?

12 A. Well, with Commissioner Owens behind me, and  
13 having worked in the correctional system before, I have  
14 certain reservations. My personal opinion would be that a  
15 system of sentencing clearly specified and demarcated and  
16 when you have -- you have to either have a good time or  
17 parole release mechanism to provide some management  
18 control. But in terms of fairness and in terms of issues  
19 of overcrowding, leaving aside the issue of the Department  
20 of Corrections managing a huge number of inmates at this  
21 point in time, I would certainly advocate -- prefer a  
22 system in which sentences are clear and understood and  
23 demarcated, and that means a system of sentencing  
24 guidelines preferable to a patchwork system, which is what  
25 we're trying to do, in a sense, with all these bills is

1 kind of a patchwork system. We're going to give a little  
2 here, give a little there, and we're going to try to patch  
3 something together to deal with the problem, and I think  
4 what you'll come out with is a kind of patchwork model and  
5 not a particularly good one because I don't think it's a  
6 very well coordinated system with this series of bills.  
7 And I'm not criticizing the bills, the intent of the bills  
8 and whatever, but I think it is still going to leave us  
9 with a problem and I think we're still going to be -- we  
10 have basically a vehicle to be clearer to the public and  
11 clearer to you about who's getting it and how it's being  
12 enforced in terms of the sentencing guidelines.

13           And that's what guidelines have done in  
14 other jurisdictions. Washington and Minnesota, basically  
15 the legislature specified, we want sentencing guidelines  
16 to be 95 percent of capacity. I mean, that was their  
17 mandate to them. And basically, you know, what they did  
18 was they wrote guidelines to do that. Tennessee said,  
19 encourage the commission to write guidelines at 95 percent  
20 of capacity. The Commission came back with four models,  
21 in part because they're overcrowded it would have required  
22 reducing severity of sentences, and the commission did not  
23 want to endorse that. They came back with a model -- one  
24 of the models said, yeah, this will keep you within 95  
25 percent of capacity, but sentences are going to do this,

1 and they're going to get shorter and there are going to be  
2 fewer people incarcerated.

3 Q. Have you ever considered capacity? Has the  
4 commission ever considered capacity when promulgating the  
5 guidelines?

6 A. We always present, any time that we can  
7 calculate for the commission what the impact will be of  
8 any changes they make, such as the recent changes in the  
9 drug guidelines that went into effect last April 25. We  
10 calculated those figures and I think in the bulletin, when  
11 we released those guidelines to the legislature, we said  
12 that the impact of these guidelines is available upon  
13 request, and what we did was, and we provided to the  
14 commissioners what we thought, and the commissioners  
15 debated whether to make that a part of the presentation to  
16 the legislature or not. They decided to leave it as a  
17 requested document if anybody wanted to look at it.

18 Q. Is the political climate the reason that you  
19 have not yet recommended to the legislature the kinds of  
20 changes that you would now like to at least informally  
21 suggest?

22 A. I think -- well, certainly the commission is  
23 a legislative agency and is very sensitive to the  
24 leadership presented by this committee, yourself, and from  
25 the Senate, and so I wouldn't say that it's only a

1 political issue, but there is--

2 Q. Well, I don't mean that in a negative sense.  
3 I mean, I do believe we represent -- I say politically we  
4 represent the public's will with regard to sentences, but  
5 I'm curious, in listening to you, clearly your own  
6 proclivity at this point would be to skew in some effect  
7 the sentences which are now in affect to better reflect  
8 the overcrowding situation, and I don't dispute the  
9 worthiness at least of that thought or discussion.

10 A. Well, and again, with the caveat that you  
11 only can do that within the limits of the numbers and the  
12 severity of certain offenders, certain ones that there is  
13 no way would come back with any kind of recommendation for  
14 decreasing probably lengths of incarceration or the amount  
15 decision, but there are numbers that I think we could do  
16 safely without jeopardizing.

17 Q. And you haven't done it then because you  
18 don't think it would be acceptable to the legislature?

19 REPRESENTATIVE BORTNER: Can I make a  
20 comment, John?

21 MR. KRAMER: Sure.

22 REPRESENTATIVE BORTNER: As a Commission  
23 member.

24 REPRESENTATIVE HAGARTY: I should ask you.

25 REPRESENTATIVE BORTNER: You know, we've

1 talked about this, and I think the bottom line was that we  
2 did not feel that it was part of our mandate as part of  
3 the enabling legislation, that taking into consideration  
4 the impact on prisons was really not part of the  
5 assignment that was given to the Pennsylvania Commission  
6 on Sentencing by the legislature through the enabling  
7 legislation.

8 REPRESENTATIVE HAGARTY: And I'm just  
9 wondering now if we want to be responsible, and I, for  
10 one, think we ought to be more responsible in looking at  
11 overcrowding when this legislature mandates sentencing.  
12 I'm wondering then is the answer we change that enabling  
13 legislation--

14 REPRESENTATIVE BORTNER: It's not as though  
15 it's never been discussed, but I think we felt that those  
16 are rather significant policy decisions that ought not to  
17 be made by a commission made up of members whose real task  
18 was to come up with a scheme for some uniformity in  
19 sentencing.

20 MR. KRAMER: And Representative Bortner is  
21 right.

22 BY REPRESENTATIVE HAGARTY: (Of Mr. Kramer)

23 Q. But in other words, another thing that we  
24 could obviously be doing with regard to prison  
25 overcrowding is changing the enabling legislation of the

1 Sentencing Commission.

2 A. You could change the enabling legislation.  
3 I think even a request from the committee to begin, for us  
4 to come back with some recommendations, although I think  
5 that's much weaker, would be something in the interim that  
6 could be started. And again, I think what you presented  
7 is not something -- I would not foresee a document that  
8 would come back and we would publish a bulletin submission  
9 that you either accept or reject. We would publish a  
10 series of issues that we could have public hearings on or  
11 public debate about and what the impact would be, what the  
12 impact would be in terms of public safety, what the impact  
13 would be on the institutions, because I think we have a  
14 delicate balance that we have to reach in this regard.

15 Q. I don't favor lighter sentences, but I do  
16 believe that this committee should be considering all of  
17 the options and discussing all of those options to deal  
18 with what I see also is a crisis in our prisons.

19 Thank you.

20 A. Sure. You're welcome.

21 REPRESENTATIVE BORTNER: Tom, can I make  
22 just one last comment?

23 John is being a little bit modest. I think  
24 all of this information is available and really I think  
25 readily easy to produce. You know, when we look at these



1 things, if you want to take one crime and the discussion  
2 is should we raise that from a 5 to a 6, I mean, they've  
3 been compiling all the information from sentences handed  
4 out every day. You plug that into the computers and you  
5 can pretty much tell how many more inmates are going to  
6 come in at the front end, and I suppose we can do -- the  
7 same thing can be done. If you want to cut prison  
8 population by 10 percent and tell John that, I assume  
9 staff can come back with what you would need to do in  
10 terms of changing guidelines to do that. I mean, the  
11 information is all there.

12 MR. KRAMER: Yes, certainly. And I think  
13 what we're seeing in certain areas -- agg assault. When  
14 the legislature changed agg assault from a Felony 2 to a  
15 Felony 1, the Sentencing Commission rewrote the offenses.  
16 What we're even hearing from the DA's is that we've ranked  
17 them perhaps excessively severely in terms of what the  
18 courts feel appropriate, again problems of victim  
19 involvement in the assault or other things that may be  
20 occurring that may be important for us to consider. But  
21 those are -- yeah, we would provide that information and  
22 try, as we make best guesses, and any projections are  
23 guesses, and we try to make, with assumptions, things that  
24 will be helpful to understand what the impact will be.

25 REPRESENTATIVE BORTNER: Thank you.

1 MR. KRAMER: Thank you.

2 CHAIRMAN CALTAGIRONE: Thank you very much.

3 CHAIRMAN CALTAGIRONE: William Reznor,  
4 county commissioner.

5 MR. REZNOR: Good afternoon. My name is  
6 Bill Reznor. I am a Mercer County Commissioner since  
7 1980, I am President of the Mercer County Prison Board  
8 since 1982, and I am chairman of the Pennsylvania State  
9 Association of County Commissioners Jail Overcrowding Task  
10 Force. On behalf of the Association of County  
11 Commissioners, I wish to thank the chairman and members of  
12 the House Judiciary Committee for this opportunity to  
13 present testimony.

14 I'm not going to take up much time to tell  
15 you about what you already know, and that is county jails  
16 are overcrowded to the point of crisis. The Commissioners  
17 Association has testified on numerous occasions about the  
18 conditions of county jails, the causes of overcrowding,  
19 and offered our solutions to the crisis.

20 What I would like to do today is, one,  
21 address some of the legislation in front of us; and two,  
22 present to you some provocative proposals to deal with the  
23 crime problems we are facing. For brevity, I am only  
24 going to discuss four of the many legislative proposals  
25 for your consideration.

1           The first bill I want to address is House  
2 Bill 1582, which would change the sentencing procedures as  
3 to place and length of confinement. The Association of  
4 County Commissioners strongly supports this bill. County  
5 jails are not intended as long-term correctional  
6 facilities but rather they are for short-term sentenced  
7 inmates and holding facilities for those awaiting trial.  
8 This bill would clearly define the county jail's purpose  
9 and function. There are approximately 1,800 inmates with  
10 maximum sentences of more than 2 years but less than 5  
11 years housed in county jails. This hidden State prison  
12 population is costing the counties \$30 million per year.  
13 We are one of a few States that allows offenders to be  
14 housed in county jails for sentences for over one year.  
15 Two of our neighboring States, New Jersey and New York,  
16 limit to one year the time sentenced offenders can stay in  
17 the county jails. In addition, offenders sentenced to  
18 over one year must move within 10 days or the State pays the  
19 county \$45 per day.

20           I suggest that we work towards limiting the  
21 number and the time spent in county jails to one year.  
22 While this phase-in is taking place, the State could or  
23 should reimburse the counties the actual per-day cost for  
24 housing inmates held longer than one year.

25           The second bill I would like to address is

1 HB 1157, which establishes standard earned time/good time  
2 provisions for both county and State sentenced inmates.  
3 The concept of rewarding inmates for program participation  
4 and adherence to rules works in 46 States and 17  
5 Pennsylvania counties to reduce inmate populations and as  
6 a management tool for controlling inmates. This concept  
7 alone will not totally solve our problems, but used with  
8 other management techniques and population controls, it  
9 will assist in reducing overcrowding.

10 The County Commissioners' Association has  
11 requested State reimbursement for DUI offenders since the  
12 passage of the DUI law in 1983. We maintain the position  
13 that the DUI mandatory sentences are State sentences  
14 regardless of the length of sentence. The county has no  
15 control or option in this matter. We therefore believe  
16 that the State should reimburse the counties for the total  
17 incarceration costs of all DUI offenders. House Bill 1706  
18 outlines a partial reimbursement formula of \$7,500 per  
19 year per DUI jail year. The average cost of one year of  
20 incarceration is over \$16,000. The County Commissioners'  
21 Association requests that House Bill 1706 be amended to  
22 reflect this actual county cost of DUI incarceration. In  
23 1988 there were 9,621 DUI offenders sentenced to county  
24 jails costing county government in Pennsylvania over \$13.5  
25 million.

1           The last bill that I would like to address  
2 is House Bill 1710, which would authorize and regulate  
3 private prisons and jails. The Association, while not  
4 endorsing private prisons, would like to see its  
5 membership have the option available for those counties  
6 who choose to pursue contracting out to the private sector  
7 for correctional services. This bill appears to have the  
8 necessary standards and regulations.

9           In my opening remarks I stated that we all  
10 are aware of the crisis that we are facing. I think we  
11 all can agree that mandatory sentences have a dramatic  
12 effect on inmate populations. They have not, however,  
13 been the deterrent to committing crime that we all  
14 anticipated. The crime rate continues to grow and a  
15 recommitment rate continues to grow even faster. We know  
16 that 63 percent -- 63 percent -- of prisoners released  
17 from jail will be re-arrested within three years. Either  
18 the concept of rehabilitation is not working or not really  
19 being tried, or the threat of jail is not serving as a  
20 deterrent to crime. Without developing new solutions to  
21 this crisis, we will be forced to spend more and more of  
22 our tax dollars for jails and prisons at the expense of  
23 other critical services, such as education and health.

24           I would like to offer some legislative  
25 considerations and some solutions to this problem. Let's

1 truly make the threat of jail real and meaningful. If  
2 somebody is convicted for the third time of a felony in  
3 Pennsylvania, that person should receive a life sentence  
4 in prison. No parole, no early release - life in prison.  
5 That's it. Now, I know you're going to say we cannot  
6 afford to build enough prison cells, and I say you can and  
7 you must if you want to be serious about deterring crime.

8 Let's look at what this might mean to a drug  
9 dealer. Today we have or are about to have mandatory  
10 sentences ranging from one to five years or more for  
11 certain offenses. If I'm a drug dealer who is making  
12 \$1,000 to \$2,000 a week, and that's low, it's worth the  
13 risk spending a few years in jail for making \$50,000 to  
14 \$100,000 a year. If I know that my third conviction means  
15 a life sentence, there is a chance I'll change my  
16 behavior.

17 Along these same lines, let's look at what  
18 being in jail is like. While jail restricts offenders'  
19 access to freedoms, and we know how important that is,  
20 most jails are relatively clean, offer three square meals  
21 a day, have television, cable TV, and in some cases air  
22 conditioning. To us, the threat of jail sometimes serves  
23 as a deterrent itself, but to some criminals, especially  
24 drug dealers who are exposed to death every business day,  
25 jail can be somewhat of a holiday. Maybe we should make

1 time in jail a little bit unpleasant and uncomfortable.

2 One of my favorite pieces of legislation that you  
3 are considering is the taking of driving privileges for  
4 someone or anyone convicted of drug dealing. If I'm a  
5 drug dealer, driving without a license is no big deal, and  
6 if it were, I'd hire someone to drive my car. I think we  
7 must start developing legislation that will truly make  
8 potential offenders think, "Is what I'm about to do worth  
9 the consequences?" We must stop seeing legislation that  
10 is only intended to give the impression that we are  
11 serious about crime.

12 Another idea advanced by some is the taking  
13 of limbs, fingers and other extremities of those convicted  
14 of serious crimes. This is advanced as a deterrent to  
15 committing new crimes. If you are concerned about this  
16 being inhumane, give them pain killers before the taking  
17 of the extremities. Public whippings might work.

18 I have my tongue in my cheek, but my point  
19 is, if we are to get tough with criminals, well, then  
20 let's find deterrents that really work. The real message  
21 is that we have to ask ourselves the question - is sending  
22 everyone to jail for every social behavior we decide is  
23 wrong the answer? I submit to you that we have to explore  
24 other methods of facing sanctions against those who break  
25 laws. Jail and prison space is a limited and very

1 expensive resource. We must use this resource only to  
2 incarcerate those who are a danger to society. For other  
3 offenders we can use work camps, work details, community  
4 service obligations, and victim restitution. These  
5 sanctions are cost efficient and in some cases are more  
6 meaningful than the time spent in jail.

7 I offer all of these suggestions to  
8 stimulate discussion and to make the point that what we  
9 are doing now is not working in Pennsylvania. We cannot  
10 afford to sit on our hands while the prison and jail  
11 populations continue to explode. The State Association of  
12 County Commissioners is calling for the legislature to  
13 take leadership in the development of a long-term plan  
14 that will solve this problem, and we stand ready to work  
15 with you and the administration in the development of such  
16 a plan.

17 Again, thank you for this opportunity to  
18 present the testimony, and I would be more than happy to  
19 respond to any of your questions.

20 CHAIRMAN CALTAGIRONE: Could we reinstitute  
21 the firing squad and the guillotine?

22 MR. REZNOR: Well, it's probably less humane  
23 than those who would use the philosophy that taking away a  
24 person's freedom is also inhumane. I'm only suggesting to  
25 you that with the number of people who are going back into



1 our prisons today are in most cases, 63 percent of those  
2 people who have been released are going back into the  
3 system again. The system simply is not rehabilitating  
4 whoever was intended to be rehabilitated, and it certainly  
5 isn't serving as a deterrent to those who we suggest  
6 should be deterred. So there has to be some consideration  
7 of the penalty of committing a crime, and that's a tough  
8 societal question. It really is the basic foundation of  
9 what we're talking about here today.

10 CHAIRMAN CALTAGIRONE: No, I'm quite serious  
11 when I say to you that I think until society gets to the  
12 point where they're so absolutely and completely  
13 frustrated with the criminal justice system in this  
14 country, and in particular in this State, will they start  
15 acting out in desperation to react to the violence that  
16 surrounds us in most of our urban areas mostly related to  
17 the drug situation today that I think society will cry out  
18 for some very severe types of reaction to the situation  
19 that we're presently confronted with, and I think it's  
20 going to get worse and then I think there are going to be  
21 other measures that are going to have to be taken.

22 Questions from the committee?

23 REPRESENTATIVE BORTNER: Just a comment. I  
24 guess I want to dissent from both you and the Chairman,  
25 frankly. You know, people say they want more people in

1 jail. You tell me the system's not working. I tell you  
2 the system is working too well. You know, we've got to  
3 decide, you know, we spent all afternoon here talking  
4 about ways to get people out of jail. I mean, I think we  
5 better decide, do we want people in jail, is that the  
6 appropriate response to crime? And if so, then let's  
7 build more prison cells. And if it is, then let's stop  
8 standing around here wringing our hands about ways that  
9 we're going to get people out of jail.

10 You know, the problem is nobody can decide  
11 what the appropriate response is to crime, and I guess  
12 that's my comment. I think you seem to think that some  
13 place out there there's a very simple answer and we just  
14 need to sort of, with some leadership, put our fingers on  
15 this. Some of these are just the result, in my opinion,  
16 of some very basic choices. Is incapacitation, is  
17 imprisonment, a proper response? If it is, then we need  
18 to put more people in jail, and if it takes more prison  
19 space, we need to spend the money to build them. If  
20 rehabilitation is going to be the focus, or if we're  
21 concerned about putting too many people in jail, you know,  
22 then maybe some of these other ideas work. But until we  
23 decide, you know, the proper course of action or the  
24 proper response, I think we're wasting our time on a lot  
25 of this.

1 MR. REZNOR: If I could just comment on  
2 that. I think the issue of sentencing people to jail,  
3 basically it serves at least three motives that come  
4 immediately to mind. One is in the eyes of society to try  
5 to rehabilitate, and I don't necessarily agree that that's  
6 what it does. And the other thing that it does is it  
7 protects society against the person that you sent to jail,  
8 and the other thing is--

9 REPRESENTATIVE BORTNER: It incapacitates  
10 criminals.

11 MR. REZNOR: Well, and the other purpose is  
12 to serve as a penalty. I think there has to be some  
13 consideration of what the Commonwealth feels is the first  
14 priority and the primary responsibility of putting people  
15 in jail. If it's to rehabilitate people, then you have a  
16 different element that you have to deal with. I think you  
17 have programs and a lot of other things that you have to  
18 do and I think you have to have incentives, but if it's to  
19 take that person off the street to protect the society,  
20 then you have to find out how long that person has to be  
21 off the street in order for that society to be protected.

22 REPRESENTATIVE BORTNER: Well, I think that  
23 decision has been made. I think if you look at the  
24 sentencing guidelines and the mandatory sentences that  
25 have been enacted by the legislature, you know, the idea

1 that's put forward that either the legislature or even the  
2 courts are weak on crime and criminals I just don't think  
3 is an accurate, fair position. We're putting lots of  
4 people in jail. That's why we're here this afternoon.

5 MR. REZNOR: But the jail that they're going  
6 into in some cases is a relatively comfortable environment  
7 in comparison to perhaps what it was several years ago. I  
8 don't want for one second, however, to suggest that taking  
9 away that person's freedom in some small part is not a  
10 severe penalty. It is a severe penalty. I'm only saying  
11 that some of the places they go to and some of the  
12 institutions that they're in are not as bad as they were  
13 many, many years ago.

14 REPRESENTATIVE BORTNER: Well, I wouldn't  
15 argue that but I don't know, have you visited a lot of  
16 State correctional institutions?

17 MR. REZNOR: Yes, I have.

18 REPRESENTATIVE BORTNER: Do you think  
19 they're country clubs?

20 MR. REZNOR: No, I sure don't. But I also  
21 don't think the counties have the ability and the  
22 wherewithal and the money to build prisons in each of  
23 their facilities larger and larger and larger to meet a  
24 need that's been created in part by legislation.

25 REPRESENTATIVE BORTNER: Well, there's where

1 we disagree again because the need has come from the same  
2 people that put you in office. The same people that put  
3 you in office and elect you to run your county prison come  
4 to me and say, "Bortner, we want tougher penalties, we  
5 want tougher legislation. We want more people going out  
6 to the York County jail and going to the State prison."  
7 So I don't buy the argument that somehow counties are in a  
8 tough situation merely because legislators decide that  
9 more people ought to go to jail. It's coming from the  
10 public.

11 MR. REZNOR: Well, that same public comes to  
12 me and asks the questions, "Why are we putting so many  
13 people in jail and why are our tax dollars having to go up  
14 and why are they living in air conditioned environments?"

15 REPRESENTATIVE BORTNER: Well, I can't  
16 recall anybody writing to me, other than maybe some  
17 letters I get from prisoners, complaining about too many  
18 people going to jail. I haven't had one letter yet -- I  
19 shouldn't say that, there may be one someplace, but by and  
20 large, what I hear from people is not complaints that  
21 jails are overcrowded and too many people are going to  
22 jail. I haven't had that experience.

23 MR. REZNOR: You haven't heard anybody say  
24 anything at all concerning the need to build a \$20 million  
25 new jail?

1                   REPRESENTATIVE BORTNER: Ah-ha, that's  
2 different. That's different. Now you're talking about  
3 paying for it.

4                   MR. REZNOR: That's what I am talking about.

5                   REPRESENTATIVE BORTNER: That's a different  
6 question, and yeah, I think there's a lot of -- that's  
7 where the hypocrisy comes in.

8                   MR. REZNOR: Right.

9                   REPRESENTATIVE BORTNER: Everybody wants a  
10 lot of people in jail but aren't willing to pay the price.

11                  CHAIRMAN CALTAGIRONE: If I may jump in  
12 here, I think another problem that we're confronted with  
13 and I think a lot of people lose sight on is the high  
14 recidivism rate. You know, every time we have hearings on  
15 specific issues dealing with these kinds of problems, 63  
16 percent repeat. You know, what are we doing wrong? We're  
17 doing something wrong. Something isn't working with the  
18 system. The system has broken down. The repeat rate, the  
19 drug abuse and alcohol offenders, 60, 70 percent in State  
20 and local prisons, there's a problem, and we're not  
21 addressing it. We are not addressing that problem, and  
22 it's getting worse because they go through that cycle of  
23 stealing to feed their habit and they don't care whose  
24 home or whose person or whose automobile they pillage to  
25 feed that habit.

1                   So what are we doing? We're arresting them,  
2 we're running them through the system without any  
3 treatment facilities. One in the State, Camp Hill, which  
4 we toured, 500 - 384 on the waiting list, 2,500 prisoners.  
5 You're having the same problem in the counties. Worse,  
6 because you don't have any facilities in the counties,  
7 because you have them in every available space that could  
8 be utilized to help them with that problem, and it's just  
9 getting worse. So we started PennFree and it's a drop in  
10 the bucket, and I don't think they'll be geared up to do  
11 anything until the end of this year, if they really know  
12 what they are going to do, when they're going to do it and  
13 set that in motion. You know, think about it.

14                   REPRESENTATIVE BLAUM: I could not agree  
15 with the Chairman more, and as I see his emotion, and  
16 that's how I feel at this point whenever we have these  
17 hearings, usually sometime in the afternoon I get tired of  
18 hearing it. We are dealing with a whole new ball game.  
19 It just seems that drugs has changed the definition of  
20 everything we do. The costs are impossible. The room is  
21 not there. The recidivism rate, because they can make  
22 \$3,000 a week doing it. And no matter how long we put  
23 them in there, I mean, can you establish a deterrent?

24                   Mr. Hornblum offered a great analogy when he  
25 talked about the tub overflowing and instead of turning

1 the faucet off we're there mopping the floors, and it  
2 always happens at this hour in the afternoon when I  
3 believe that our county commissioners, who are doing a  
4 great job, our district attorneys, our State Police, our  
5 local police, legislators who are passing enormous  
6 sentences, David Owens and the Department of Corrections,  
7 are doing a superhuman job of mopping the floor and this  
8 Federal government will not turn off the spigot.

9 REPRESENTATIVE HAGARTY: Did you read the  
10 Inquirer yesterday, Kevin?

11 REPRESENTATIVE BLAUM: No, I didn't.

12 REPRESENTATIVE HAGARTY: I thought of you.  
13 They had a long article on the problems with trying to do  
14 anything in foreign countries, particularly Panama.

15 REPRESENTATIVE BLAUM: And no one will turn  
16 this spigot off, this poison that is coming into the  
17 country that Ernie Preate says is responsible for 70  
18 percent of our crime. And here we are once again day in  
19 and day out having these hearings, and I just wonder what  
20 the answer is. Your statements on deterrence and  
21 everything else, they work on the old playing field. It  
22 doesn't seem to work with drugs. And I know in my  
23 hometown, the city of Wilkes-Barre, I mean, the prettiest  
24 little city you ever saw, we have Jamaicans in my  
25 hometown, you know, with guns and drugs. I mean, this is



1 sick. And, I mean, the tub's overflowing, Mr. Hornblum,  
2 and we in State and local government are doing our best at  
3 mopping that floor and we just can't keep up with it until  
4 somebody gets sick and tired enough and turns the spigot  
5 off.

6 CHAIRMAN CALTAGIRONE: It's just sheer  
7 frustration. I might add that the Jamaican situation  
8 isn't only in the Wilkes-Barre area. You have it in York,  
9 we have it in Reading, they have it in Philadelphia.

10 MR. REZNOR: We have it in Mercer.

11 CHAIRMAN CALTAGIRONE: Right here in  
12 Harrisburg. I mean, it's a total conspiracy of putting  
13 drugs on the street through foreign immigrants that are  
14 here illegally to begin with. We've developed a whole  
15 network - Bethlehem, Allentown, Easton - the whole east  
16 side of Pennsylvania, everybody throws their hands up in  
17 the air trying to figure out, will any of this legislation  
18 help to stop some of that, correct the situation?

19 MR. REZNOR: We hope.

20 CHAIRMAN CALTAGIRONE: Okay. Thank you

21 MR. REZNOR: Thank you very much, Mr.

22 Chairman.

23 CHAIRMAN CALTAGIRONE: William Babcock.

24 MR. BABCOCK: Thank you, Mr. Chairman.

25 My name is Bill Babcock. I am the Executive

1 Director of the Pennsylvania Prison Society, and I want to  
2 commend the committee on your stamina this afternoon. I  
3 know it's been difficult. I share some of the  
4 frustrations that have been expressed today. For your  
5 information, I grew up in Great Bend, Pennsylvania, and my  
6 parents have not reported seeing any Jamaicans there yet,  
7 so there are some--

8 REPRESENTATIVE HAGARTY: Where is Great  
9 Bend?

10 MR. BABCOCK: North of Wilkes-Barre.

11 REPRESENTATIVE PICCOLA: Geez, and I wanted  
12 to go to Jamaica.

13 MR. BABCOCK: The Jamaicans are complaining  
14 about Americans coming down there, I understand.

15 I do want to thank the committee for  
16 inviting us and also for addressing the issue of prison  
17 overcrowding. I realize that people are frustrated by  
18 that and there are no easy answers, but we appreciate the  
19 fact that you are at least addressing it and looking for  
20 answers.

21 I do want to go on the record as being  
22 opposed to cutting off fingers and toes, and the copy of  
23 the EMT report that Representative Josephs has is the  
24 amended copy.

25 REPRESENTATIVE JOSEPHS: I'm not surprised.

1 REPRESENTATIVE PICCOLA: How about  
2 floggings?

3 MR. BABCOCK: We reserve judgment on  
4 floggings.

5 REPRESENTATIVE JOSEPHS: Only for district  
6 attorneys.

7 REPRESENTATIVE HAGARTY: Now, wait a minute.

8 REPRESENTATIVE JOSEPHS: Not former.  
9 Present.

10 REPRESENTATIVE HAGARTY: Okay.

11 MR. BABCOCK: We were aware of 12 bills at  
12 least the committee is considering. I've heard a couple  
13 of others that have been talked about today. I will go  
14 over as many of them as I can as quickly as I can and try  
15 to make the afternoon a little bit shorter.

16 House Bill 935 would amend the Parole Law to  
17 provide that any inmate sentenced for a violation of the  
18 Controlled Substance, Drug, Device and Cosmetic Act cannot  
19 be paroled until the inmate successfully completes a drug  
20 treatment and rehab program. First of all, we would  
21 reiterate a concern that was raised earlier today, and I  
22 can't remember which speaker it was, about the definition  
23 of the term "successfully completes," and I think that  
24 needs to be worked out.

25 We are encouraged by the fact that the bill

1 recognizes the need to treat people who have been  
2 convicted of drug offenses. We believe that there is a  
3 major omission in the bill. Specifically, that there  
4 needs to be an evaluation of the number of inmates who  
5 fall into this category as well as the number of treatment  
6 program spaces available in the Department of Corrections.

7 It is likely that there are not sufficient  
8 programs for everyone who falls into the category, and if  
9 that is the case, then I think that you have probably  
10 created a constitutional problem that would lead to  
11 litigation. Inmates, we find, do sue, and often.

12 If the evaluation indicates that sufficient  
13 programs are not available, the next step, of course,  
14 would be to determine how much money the Department of  
15 Corrections would need to establish adequate programs and  
16 the appropriation of those funds. If the programs are  
17 underfunded, the result would be mediocre programs,  
18 inadequate treatment, and the problem that you're  
19 attempting to address, the high recidivism rate, would  
20 continue.

21 House Bill 1094 would give judges discretion  
22 to sentence those convicted of homicide by vehicle while  
23 driving under the influence to county prison irrespective  
24 of the length of the sentence. This bill would have  
25 little or no impact on overcrowding. The most recent

1 statistics I saw, in 1987, the Department of Corrections  
2 admitted only 30 inmates in this category. Thus, the bill  
3 would result in some small number of offenders being  
4 diverted away from the State system and into the county  
5 system. Let's assume that the purpose of the bill would  
6 be to allow these offenders to remain closer to their  
7 homes and to avoid what is perceived to be the more  
8 onerous State system, but it's unclear why these  
9 particular offenders should be given that type of  
10 preferential treatment, and we believe that it would be a  
11 misuse of county facilities which are ill-equipped, as  
12 you've already heard today, to provide services and  
13 programs for long-term offenders.

14           House Bill 1582 would dramatically alter the  
15 housing of convicted offenders by reducing maximum  
16 discretionary county sentences to under two years and  
17 maximum mandatory county sentences to under six months.  
18 This would greatly reduce county prison populations while  
19 increasing the State prison population.

20           Now, I also served as a Special Master in  
21 the county prison lawsuit in Philadelphia, and I certainly  
22 in that capacity would be happy to see passage of a bill  
23 that would reduce sentences in county facilities, but to  
24 take a broader perspective and to look at the entire  
25 State, as the Prison Society must, it is easy to see that

1 the bill would merely help to reduce overcrowding in the  
2 county system and shift the problem to an already  
3 critically overcrowded State system.

4 We don't believe that it is a sound policy  
5 to try to address the county problem at the expense of the  
6 State problem. We would strongly urge that if the bill is  
7 to be given serious consideration, an evaluation of its  
8 impact on both systems needs to be performed, and we  
9 assume that that can be done by PCCD. Now, it may well  
10 be, as the county commissioner testified earlier, that the  
11 State system is better equipped in terms of programs and  
12 services to deal with maximum sentences of more than one  
13 year, and in other jurisdictions in which I have worked  
14 county sentences are always under one year, but I think  
15 that before you take that step you really have to evaluate  
16 what the impact is going to be on the State system, which  
17 is already operating at almost 140 percent of its  
18 capacity.

19 House Bill 1106 reduced the minimum amount  
20 of time made available for exercise for prisoners held in  
21 administrative or disciplinary segregation. Current law  
22 requires 2 hours a day, 7 days a week, for a total of 14  
23 hours a week for all inmates. This bill would reduce the  
24 time to 1 hour a day, 5 days a week, or a total of 5 days  
25 a week for inmates in segregation.

1           We oppose the bill because of the importance  
2 of providing out-of-cell exercise for segregation inmates.  
3 In most situations, in most institutions, this is the only  
4 time that segregation inmates are allowed out of their  
5 cells, other than to shower. Plus they are already  
6 confined 22 hours a day, and this bill would further  
7 restrict their movement by increasing confinement to 23  
8 hours a day, 5 days a week, and 24 hours a day, 2 days a  
9 week.

10           Not only is out-of-cell time important to  
11 the prisoner's mental and physical well-being, but it  
12 helps to reduce the daily tension normally felt in prison,  
13 which is exasperated by extended segregation and further  
14 exasperated by severe overcrowding. Such reduction in  
15 tension is, of course, to the advantage of prison staff.  
16 While it is acknowledged that the bill would comply with  
17 the minimum recommended by the American Correctional  
18 Association, it should be emphasized that that is the bare  
19 minimum recommended, and that the standard was established  
20 in 1981, before overcrowding reached critical proportions.

21           The current law has existed since 1983, and  
22 we believe that to take the drastic step of reducing these  
23 prisoners' out-of-cell time by 65 percent should take more  
24 than just a showing of administrative inconvenience on the  
25 part of prison administrators, with all due respect to Art

1 Wallenstein, for whom I have the utmost respect.

2           House Bill 1706 would provide State funding  
3 to the counties to help defray the costs of incarcerating  
4 DUI offenders. We recently testified in Philadelphia  
5 before this same committee about a PCCD study that showed  
6 the ineffectiveness of the current DUI law in deterring  
7 drunk driving. At that time we stated that if the State  
8 intended to continue to support such legislation, the  
9 least that it could do would be to help to defray the cost  
10 to the counties of having to incarcerate all of these  
11 individuals, and House Bill 1706 does that. That's why we  
12 continue to take the position that drunk drivers should be  
13 treated for their drinking problems rather than merely  
14 punished by incarceration. We appreciate the fact that  
15 the State is expressing a willingness to help pay the  
16 costs for its policy.

17           House Bill 1708 would authorize the  
18 Department of Corrections to place those offenders in pre-  
19 release centers on electronic surveillance for the last 30  
20 days of their minimums. We are very much in favor of the  
21 intent of this legislation to move people out of the  
22 pre-release centers early to make more beds available for  
23 those still incarcerated.

24           We would, however, make some  
25 recommendations. First, we don't believe that this



1 measure will have an appreciable impact on reducing the  
2 population unless there is an expansion of State  
3 pre-release facilities, which we would strongly encourage.  
4 All inmates should have the opportunity to phase back into  
5 the community in stages, thus helping them to avoid the  
6 high recidivism rates that we've heard about.

7           Second, we agree that another stage between  
8 staying at the pre-release center and release on parole  
9 may be beneficial both for the inmate and for reducing  
10 overcrowding. We're not sure, however, whether the use of  
11 electronic monitoring devices is the best method or  
12 whether the Department of Corrections is the most  
13 appropriate agency to provide the supervision.

14           The use of house arrest or intensive  
15 supervision has been successful in other jurisdictions,  
16 and it does not have to include electronic monitoring.  
17 The use of such devices by the Philadelphia prisons has  
18 illustrated that there are problems associated with their  
19 implementation. For example, a number of the families  
20 contacted did not have telephones, which are essential to  
21 the program, and do not feel that they could afford the  
22 installation of a telephone. Others, on a perhaps lighter  
23 note, when informed that the electronic device could not  
24 function on a telephone with call forwarding or other  
25 options, were not particularly enthusiastic about dropping

1 those services.

2 More importantly, the electronic devices  
3 have not substantially added to the security element of  
4 the program. Pretrial inmates who have been placed on the  
5 program as opposed to sentenced inmates have soon learned  
6 that it is just as easy to walk away with or without a  
7 device on one's ankle, and the prisons have found that it  
8 is just as difficult to locate that person once he or she  
9 has walked away. The major difference being that the city  
10 has lost a rather expensive piece of equipment.

11 Further, as Fred Jacobs has pointed out  
12 earlier, it does not prevent the commission of other  
13 crimes while the person is in the home. An intensive  
14 supervision program, on the other hand, which calls for  
15 regular daily contact and observation provides both a  
16 better form of surveillance as well as the type of human  
17 contact and support that an offender needs upon release to  
18 the community. For that reason, we would encourage the  
19 early parole of the individuals to an intensive  
20 supervision program administered by the Parole Board, with  
21 transfer to a regular parole program upon completion of  
22 their minimums.

23 House Bill 1711. This bill would  
24 appropriate \$930,000 to the Parole Board for an intensive  
25 supervision program. As I just indicated, we obviously

1 support such a bill or such a concept. It is unclear,  
2 however, from this bill exactly what the program would  
3 entail. It simply says \$930,000 would go to establish an  
4 intensive supervision program. Our concern primarily  
5 would be the population that's targeted and the different  
6 ways that it could be used, and we would simply suggest  
7 that some steps need to be taken to insure that the people  
8 who are placed in the program are those who otherwise  
9 would have been incarcerated, because to simply set up an  
10 intensive supervision program for people who would not  
11 have been incarcerated is simply widening the net of  
12 social control without at all addressing the problem of  
13 prison overcrowding.

14                   Now, I've spoken with Fred Jacobs about it  
15 and obviously the intent of the department and the board  
16 is to use it for people who would be going through a  
17 revocation process, and we would be in favor of that.  
18 Rather than them simply being sent back to the  
19 institution, they would be stepped into this program of  
20 intensive supervision.

21                   House Bill 1712 would provide earned time  
22 credit toward an offender's maximum sentence while on  
23 parole. The Prison Society strongly favors this concept,  
24 and especially in view of the large caseloads currently  
25 carried by State parole officers. The idea of time off

1 for good behavior is a sound one, offering both an  
2 incentive for good behavior for the parolee, and an  
3 effective management tool for the board. Plus, it, of  
4 course, has the added benefit of helping to turn over  
5 caseloads more quickly.

6 The only objection would be the exceptions  
7 established for those serving mandatory sentences or life  
8 sentences. We believe the people in those categories are  
9 just as capable of performing well on parole and should be  
10 offered the same incentive and reward for good behavior.  
11 Similarly, the Parole Board would find such a management  
12 tool just as useful for those people on mandatorics and  
13 life sentences. Obviously, the person on life sentence  
14 would have had it commuted to a term of years.

15 House Bills 1157 and 1709 both deal with the  
16 subject of earned time for prisoners. The Prison Society  
17 has come out in favor of House Bill 1157 previous to this  
18 hearing, so let me try to address where we differ with  
19 respect to House Bill 1709.

20 The most significant difference is that,  
21 while House Bill 1157 provides for credit both for good  
22 behavior and for participation in programs, House Bill  
23 1712 provides only for credit for program participation.  
24 As discussed with respect to credit for good behavior for  
25 parolees, it is both a good management tool for staff and

1 an important incentive for offenders, and it would work as  
2 well in prisons as on parole.

3 Let me just stop there, and until I heard  
4 the testimony of Mr. Hornblum and the question and  
5 answering that went on, I wasn't quite sure why you were  
6 opposing time off for good behavior for prisoners as  
7 opposed to parolees, because the bill for parolees does  
8 call for time off for good behavior. What you are saying  
9 is that the minimum/maximum sentence has replaced that  
10 process, and therefore good time or time off for good  
11 behavior isn't necessary. The fact is, and Mr. Hornblum  
12 alluded to the Florida and Texas systems. I worked in  
13 both of those States in connection with corrections  
14 systems and I know that in Texas, an inmate is given a  
15 flat sentence. He's not given a minimum and maximum.  
16 He's told, you've got 10 years, for example, but he's  
17 automatically eligible for parole after serving one-third  
18 of that sentence, or since September 1987 or 1988, after  
19 serving 25 percent of the sentence. So in effect, it is a  
20 minimum and maximum. Pennsylvania's doing nothing  
21 different. All you're really saying by giving a  
22 minimum/maximum is here's your sentence and you're  
23 eligible for parole after serving 50 percent of it.

24 In Texas, the person is allowed to earn  
25 credit toward an earlier parole consideration, and that

1 means that after they have served one-third of their  
2 sentence, or for those sentenced after 1988, if you've  
3 served 25 percent of your sentence, the time that you earn  
4 for good behavior is taken off of that parole eligibility  
5 date. In fact, to verify that, to make sure that I was  
6 giving the committee the proper testimony, I called the  
7 Texas Department of Corrections about an hour ago and  
8 talked with somebody in their records room, and as an  
9 example, somebody given a 10-year sentence in Texas would  
10 be eligible for parole after serving 3 years and 4 months.  
11 It's one-third of the sentence. If they come in as a  
12 Class 4, which everybody does, they would earn, I believe,  
13 it's they would earn 10 days a month and they would then  
14 be eligible for parole after serving 1 year and 5 months  
15 and another 10 days. That's with the good time. So it  
16 does come off of the minimum, in effect. It would be the  
17 same as if in Pennsylvania a person got a 10-year  
18 sentence, he's eligible for parole after 5 years, and he  
19 would earn credit toward an earlier parole off of that 5  
20 years.

21 So it is done in other jurisdictions. They  
22 do, as Mr. Hornblum pointed out, grant larger amounts of  
23 time than what Pennsylvania is proposing, and this really  
24 is a rather conservative mainstream approach to  
25 corrections. It is a good management tool, it is a good

1 incentive for inmates, and while parole is also an  
2 incentive for those people who have relatively long  
3 minimum sentences, for example 10 years, they're not that  
4 concerned with their parole eligibility date the first 6,  
5 8, maybe even 9 years because those people are aware that  
6 what the parole board takes into consideration is  
7 primarily that 10th year leading up to their parole date.  
8 And you will find in Pennsylvania that inmates' behavior I  
9 think would improve if the added incentive of good time  
10 was there. And we are obviously not opposed to the  
11 meritorious good time. We think that's also a good idea.  
12 We would, of course, be concerned that there are not  
13 enough programs available for every inmate to take  
14 advantage of them. I think that the way the bill is  
15 drafted though, the department -- and I think John Kramer  
16 alluded to this -- could probably frame just about  
17 anything an inmate does is a program for which they could  
18 earn credit.

19 Finally, on private prisons, the Prison  
20 Society in the past has, of course, opposed private  
21 for-profit prisons, along with the Pennsylvania Council of  
22 Churches, the AFL-CIO, AFSCME, the ACLU, and other  
23 organizations. We have testified against the  
24 privatisation of prisons during the last three legislative  
25 sessions. We don't believe that the state and county

1 function of opposing criminal sanctions on lawbreakers  
2 should be turned over to a private business whose primary  
3 goal is to turn a profit, and our reasons are basically  
4 because of some fear that there may be a curtailment of  
5 services available to the inmates in order for the  
6 organization to make a profit.

7           We are concerned about the quality of staff  
8 that are hired, because one of the ways of cutting back  
9 staff is to eliminate union staff and to bring in  
10 non-union staff, and we know that in Butler County a few  
11 years ago when they hired a private firm to come in and  
12 manage their institution, one of the first things that  
13 they tried to do was to fire all of the union staff and to  
14 bring in their own people at much lower salaries. The  
15 union went to court and received an injunction to prevent  
16 that.

17           Now, whether you support unions or not, the  
18 concern is that if you are offering even lower salaries  
19 than what officers are earning now, first year officers,  
20 is that it limits the pool of people who are going to be  
21 interested in those jobs, and I think that working in  
22 prisons is already an extremely difficult and dangerous  
23 occupation, and it's difficult to recruit people as it is,  
24 and I think that if you try to cut corners by eliminating  
25 unions and bringing non-union people, you may find a decline



1 in the quality of the staff.

2 Now, we are aware that the American Bar  
3 Association in 1986 adopted a resolution urging  
4 jurisdictions to delay contracts with private operators  
5 until satisfactory legislation was made on the complex  
6 constitutional, statutory, and contractual issues. Since  
7 that time, they have issued a report which analyzes these  
8 areas. "The Legal Dimensions of Private Incarceration,"  
9 by Ira Robbins, Professor of Law and Justice at the  
10 Washington School of Law at American University, outlines  
11 a model statutory provision for counties and States to  
12 contract with private providers.

13 In Pennsylvania, the Private Prison  
14 Moratorium and Study Act of March 1986 imposed a  
15 moratorium on the operation of private prisons and, as has  
16 been referred to earlier, created a task force which  
17 issued a report recommending that legislation to prohibit  
18 private prisons should be introduced. Now, since that  
19 time, we have not had private for-profit prisons in the  
20 Commonwealth. If this is to change, and we see no reason  
21 why it should, we would recommend that whatever  
22 legislation is introduced adopt the provisions of the  
23 model statute prepared by the American Bar Association.

24 In conclusion, we again would express our  
25 appreciation to the committee for your concern with the

1 issue of prison overcrowding. We would recommend that you  
2 do an evaluation of the system from sentencing to parole,  
3 because it is not a system that lends itself to easy  
4 answers. We would suggest that prison beds are scarce and  
5 expensive resources and should be treated as the sanction  
6 of last resort rather than sanction of choice, to be used  
7 when all else fails. Other sentencing options need to be  
8 explored, other than cutting off limbs, with a spectrum of  
9 sanctions available to sentencing judges.

10 There are no easy solutions. I would,  
11 however, reiterate John Kramer's testimony and the  
12 importance of legislation such as House Bill 1683 which  
13 would require that a prison impact statement be prepared  
14 in conjunction with any bill that relates to prisons or  
15 jails. We can no longer in good conscience pass criminal  
16 justice legislation without first knowing what impact it  
17 will have on our prison jail and parole populations.

18 Thank you, and if you have any questions,  
19 I'd be happy to answer them.

20 CHAIRMAN CALTAGIRONE: Thank you.

21 Questions?

22 REPRESENTATIVE PICCOLA: Thank you, Mr.  
23 Chairman.

24 BY REPRESENTATIVE PICCOLA: (Of Mr. Babcock)

25 Q. First, Bill, let me say that you are right,

1 Dauphin County does have a good time system. I was in  
2 error. They slipped that one by me without any publicity  
3 whatsoever.

4 A. I was surprised.

5 Q. All I ask is that you update your list so  
6 that I don't carry misinformation around with me.

7 You didn't read this portion of your  
8 testimony but in your written statement you alluded to  
9 what you thought was an inconsistency between sponsoring  
10 House Bill 1709 and House Bill 1712, I think. I may have  
11 these numbers wrong.

12 A. Right. I think that's right.

13 Q. Because in the one we're rewarding parolees  
14 for simply behaving themselves but not incarcerated  
15 inmates.

16 A. Right.

17 Q. And you did explain one of the reasons why I  
18 don't think that's an inconsistency with respect to the  
19 fact that we already have, in my view, a system--

20 A. Right, a parole system.

21 Q. --a system that encourages good behavior.

22 The other reason is, if I could, in defense of my two  
23 positions, is that I think the parolee is out in the real  
24 world, and good behavior in the real world is good  
25 behavior, real good behavior. I don't think good behavior

1 in prison is necessarily indicative that the person is  
2 going to behave themselves when they get on the outside.  
3 Now, that, I think, has been substantiated by a number of  
4 people that have testified. I remember Fred Jacobs  
5 testified in Pittsburgh. I believe you were there when he  
6 said that some of the best behaved prisoners are the ones  
7 most likely to repeat their offenses when released, such  
8 as child molesters and that type. So that's the other  
9 reason for what would appear to be an inconsistency but  
10 which I don't think is.

11 A. I understand what you're saying. On the  
12 other hand, you are in favor of providing credits for  
13 participation in programs, and I think that you will find  
14 that inmates are just as apt to take programs because it  
15 looks good to the Parole Board, not necessarily because  
16 it's something that they think is going to make them into  
17 a better human being. I have met more chaplain's  
18 assistants since working in prisons than you can imagine  
19 because suddenly that makes, you know, their record look  
20 better. Yes, some inmates will do that. Some inmates  
21 will maintain good records simply because, you know, it  
22 gets them an earlier parole. But that's why you pass  
23 mandatory prison sentences, because you're hoping that  
24 there is a deterrent in effect that some civilians will  
25 behave themselves who might not otherwise behave

1 themselves because there is this fear that you're going to  
2 go to prison. So I don't really think that there is that  
3 much difference. I don't think the concepts are that  
4 different.

5 Q. Don't disabuse me of the merits of my own  
6 legislation. You got me sold on meritorious time. You  
7 got me that far. Maybe you're trying to disabuse me of  
8 that fact.

9 A. No.

10 Q. If that's not a good idea, I'll withdraw the  
11 bill.

12 REPRESENTATIVE HAGARTY: Yes, I'm getting  
13 worried, too.

14 REPRESENTATIVE PICCOLA: I thought I went  
15 more than halfway with you.

16 MR. BABCOCK: No, all I'm saying is that you  
17 will always find a certain number of people who will do  
18 something simply to take advantage of the system, and  
19 you'll find that on the outside just as much as you find  
20 it on the inside.

21 REPRESENTATIVE PICCOLA: Well, we're  
22 counting on Commissioner Owens back there to see to it  
23 that that doesn't happen.

24 MR. BABCOCK: Well, we had a training  
25 session for our volunteers in Harrisburg about a year ago

1 where we talked about, how do you deal with prisoner  
2 manipulation? And one of our volunteers responded,  
3 somewhat upset, angrily, and said, "Well, what do you mean  
4 prison manipulation? Everybody manipulates you. That's  
5 the nature of the beast. When your child first raises his  
6 hands up to you and says, 'Please pick me up,' he's  
7 manipulating you," and I've had a different perception of  
8 my child ever since she told me that. But be that as it  
9 may--

10 REPRESENTATIVE HAGARTY: You have a nice  
11 daughter.

12 MR. BABCOCK: It's my son. He's the one.  
13 He's the trouble.

14 But, you know, there's always going to be  
15 people who will take advantage of the system, but there  
16 are other people for whom it is something that it's a  
17 help. It helps them and it clearly is going to help  
18 prison administrators. And the fact that the person gets  
19 out of the prison in four years and six months as opposed  
20 to five years, I mean, my position is that that's not  
21 going to make a whole lot of difference in their behavior.  
22 All right? I mean, the fact that you punished them an  
23 extra six months doesn't mean that they're going to come  
24 out and be a better citizen than if you gave them that six  
25 months because of good behavior. In fact, maybe they'll

1 be a better person and somewhat grateful for having that  
2 kind of option.

3 BY REPRESENTATIVE PICCOLA: (Of Mr. Babcock)

4 Q. Well, and that brings me right to my next  
5 point, which indicate our current parole system is not a  
6 good prison management tool, that good time would be a  
7 better prison management tool--

8 A. Well, I think in conjunction, if you used  
9 them together--

10 Q. Now, wait.

11 A. Okay.

12 Q. And the reason that you state here is  
13 prisoners know that the 10th year is the one to be weighed  
14 most heavily by the board and the administration needs a  
15 management tool for the first nine years. Well, if what  
16 you're saying is correct, that these guys aren't looking  
17 down the road 8, 9 years, why is he even going to behave  
18 himself? I mean, a couple of extra months off of his  
19 minimum sentence 9 years down the road for good behavior  
20 today isn't going to mean any more to him, if your  
21 analysis is correct, than being paroled at his minimum if  
22 he behaves himself today 9 years down the road.

23 A. Right.

24 Q. I mean, to me, the argument is the same  
25 whether it's parole or whether it's good time, it's still

1 the same long period down the road that if your guy is not  
2 inclined to be -- have the incentive or to react to the  
3 incentive that we have now with our parole system, he's  
4 certainly not going to act the same way with a good time  
5 system.

6 A. Well, I'd respond with two points. First of  
7 all, I would argue for the ability to earn more credits  
8 than what the committee is considering already, and Mr.  
9 Hornblum alluded to Texas and Florida where they are able  
10 to earn much larger amounts of time.

11 Secondly, the person will lose that good  
12 time if he misbehaves. Whether it's meritorious or  
13 whether it's just good behavior, if they violate an  
14 institutional rule, they're given a hearing, they can lose  
15 that time, and inmates are very well aware of that, and  
16 they may say, well, that's a long way down the road, but  
17 they know that's something they've got in hand. And in  
18 most jurisdictions they compute good time or earned time  
19 the day you get there and they say, okay, if you maintain  
20 good behavior throughout your stay in the institution, you  
21 will earn X number of days and therefore you'll be  
22 eligible for parole on this day. So the inmate knows  
23 ahead of time how much money he's got in the bank and he  
24 can only lose it at that point.

25 Q. And he knows now how much money he's got in



1 the bank. He know that if he's sentenced 5 to 10 years,  
2 that 5 years down the road he is going to be paroled if he  
3 behaves himself and if he gets involved in a program and  
4 convinces the parole board that he is a fit person to be  
5 out on the streets. I don't know what better incentive  
6 that could be.

7 A. Well, except as I say, he's not going to  
8 lose that.

9 Q. I mean, all the same arguments that you give  
10 me for saying that our current parole system is no good  
11 apply to your good time.

12 A. First of all, I'm not saying it's no good.  
13 I never said that. The parole system in this State is a  
14 good parole system.

15 Q. Well, it doesn't provide the incentives.

16 A. Well, at a certain point it does, yeah. All  
17 I'm saying is that what we're suggesting is that you move  
18 the incentives up earlier in the process. He's got a  
19 10-year minimum. In his second year he gets into a fight  
20 with another inmate and he goes into the disciplinary  
21 hearing. If he's got earned time, he can lose that. He's  
22 not going to lose his parole eligibility that second year.  
23 All right? He's still going to be eligible on year 10,  
24 and he knows that and he knows that right up until year 9,  
25 okay? Whereas with the good time, that's something that

1 he can lose immediately starting from year 1, starting  
2 from day 1.

3 Q. But if he's in that fight come parole  
4 eligibility date--

5 A. Eight years later? Do you think that's  
6 going to make that much difference?

7 Q. Well, it's on the record. It's on the  
8 record. I mean, I'll have to defer to the parole people  
9 to tell me how much emphasis they put on that, but it  
10 certainly is on the record.

11 A. Oh, absolutely it's on the record. I'm just  
12 suggesting that if he then maintains a good record after  
13 that, that it's not going to make that much difference.

14 Q. Well, I hope that it does make a difference.  
15 If it doesn't make a difference with our current parole  
16 system, it certainly should make a difference.

17 A. I think the current parole system--

18 Q. The entire record, the entire record,  
19 whether it is day 1 in the institution or the last day in  
20 the institution, in my mind should count in making up that  
21 parole decision, and I'm assuming that it does, and I  
22 haven't heard anything to tell me it doesn't.

23 A. Oh, I'm not saying they don't weigh it, but  
24 in balancing everything that's available, if you deny  
25 parole to everybody who's ever had a disciplinary

1 violation, there would be practically nobody who got  
2 parole on their minimum. I mean, you've got to weigh  
3 everything there, and, you know, if the guy's had a  
4 significant period of time without a violation, then  
5 clearly that should be weighed. That's all I'm saying.

6 Q. Going to your Texas example, do you know  
7 what percentage of their inmates that reach that 33 1/3  
8 percent of their maximum are paroled at that the point?

9 A. I don't know the exact percentage, but I  
10 know that it's very significant. Their last Parole  
11 Commissioner, John Byrd, worked very closely with the  
12 Department of Corrections and emphasized with his staff  
13 the need to parole people in order to help the Department  
14 of Corrections get down -- they are working under a  
15 population cap instituted by Federal Court. If they go  
16 above 95 percent of their cap, there is an emergency  
17 system that goes into effect under State law and they have  
18 to start immediately shortening people's sentences in  
19 order to get down to that cap. So the Parole Board, in an  
20 attempt to work with the Department of Corrections to  
21 avoid that necessity as much as possible, had a very  
22 lenient parole policy.

23 Q. So the whole Texas system is under Federal  
24 Court order?

25 A. That's correct.

1 Q. Do you know when that court order went into  
2 effect?

3 A. Yes. 1981.

4 Q. Oh, so there aren't any really what I would  
5 call free-market type statistics from Texas except before  
6 1981? In other words, Texas has been under orders to  
7 reduce their populations since '81?

8 A. But both the parole system and the earned  
9 time system were in place in 1981 before the court order.  
10 The number of paroles.

11 Q. Well, but in terms of the statistics, I  
12 mean, you can have this system that you said 33 1/3  
13 percent of your maximum you become eligible for parole but  
14 if only 10 percent of the people were paroled at that  
15 time, that doesn't tell me a thing. In Pennsylvania, it's  
16 much, much higher. It's now 60-some, 67 percent, I  
17 believe, and earlier in this decade it was as high as  
18 80-some percent.

19 A. Right.

20 Q. I mean, it was almost an automatic release  
21 at one point in time in Pennsylvania.

22 A. Without a court order.

23 Q. Without a court order, right.

24 A. That's right.

25 Q. I think tampering with our system with

1       throwing all this good time stuff into it is a major  
2       mistake because I don't know what you're going to get when  
3       it comes out the other end of the process.

4                 Let me see if I had any -- oh, I know, I  
5       wanted to -- well, maybe you wanted to respond to that  
6       while I'm looking. I don't know if you do.

7                 A.    No. You know, I would disagree with you,  
8       certainly. I mean, you've already come out in favor of  
9       meritorious credit, so it strikes me that you've already  
10      made that commitment.

11                Q.    Well, I'm reconsidering now based on your  
12      testimony.

13                A.    Please. You've come a long way.

14                Q.    On the private prison issue.

15                A.    Yes.

16                Q.    You listed here 12 points that I presume are  
17      contained in the model legislation.

18                A.    That's correct.

19                Q.    Have you examined 1710 against that?

20                A.    I have not had the opportunity to examine it  
21      point for point. I would agree with you that it is a  
22      comprehensive statute. I have not had the opportunity to  
23      compare it point for point with the ABA standard.

24                Q.    Well, it was drafted with the idea that it  
25      should conform to most, if not all, of the ABA standards,

1 and I would appreciate your comments, when you have the  
2 chance to do that.

3 A. Okay.

4 Q. Do you not admit that we presently have  
5 private for-profit corporations operating in the juvenile  
6 detention field in this State?

7 A. I'm aware of one which I think is run by the  
8 RCA Corporation. I think that's the only one.

9 Q. I thought I was -- one more comment.

10 I thought I had a breakthrough when we were  
11 on TV the other month when you indicated that you thought  
12 you might be in support of private prisons if they were  
13 for the treatment. Now, we have crafted this, and I want  
14 you to look at the legislation, you don't have to give me  
15 the answer now, but we have crafted this so that it is  
16 restricted to minimum security so that you don't have to  
17 worry about hiring big, burly guards, and we've restricted  
18 it to special needs type inmates so that the potential for  
19 treatment is there if the county or a judicial system  
20 wishes to impose treatment. Look at that again with that  
21 kind of -- those kind of restrictions in place and see if  
22 you might be reconsidering your position on that.

23 A. Well, I guess the key phrase would be  
24 "potential for treatment." I mean, if it was clearly  
25 designed that this was going to be the sole function of

1 it, it was designed to treat drunk drivers or drug addicts  
2 or whatever, I think that's something other than a prison,  
3 and we would be in favor of treatment centers that are set  
4 up for people who have addictions.

5 Q. Well, I guess that's where we have --  
6 semantics gets in the way of this issue.

7 A. Maybe.

8 Q. If you're a juvenile, no matter where they  
9 put you, you're not put there for incarceration, you're  
10 put there for treatment, even though many of the places  
11 know full well they're not getting through and it is  
12 incarceration.

13 A. Right.

14 Q. Where as an adult we don't use those terms,  
15 although some do get treatment in the system. So perhaps  
16 our semantics are what's getting in the way of real  
17 progress on that issue.

18 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
19 Chairman.

20 CHAIRMAN CALTAGIRONE: Thank you, Mr.  
21 Babcock.

22 MR. BABCOCK: Thank you.

23 CHAIRMAN CALTAGIRONE: Honorable David S.  
24 Owens, Commissioner of the Pennsylvania Department of  
25 Corrections.

1 Thank you for being so patient.

2 COMMISSIONER OWENS: Good afternoon, Mr.  
3 Chairman.

4 May I suggest before I begin my testimony  
5 that I walked into this hearing a healthy man. I am now  
6 totally schizophrenic. Chairman Reznor wants me to cut  
7 off fingers and hands, and although I started a diet two  
8 weeks ago, Representative Piccola talked about big, burly  
9 guards. I looked around to see if there was any other  
10 big, burly guards in the room other than me. So I just  
11 want you to know that I came here healthy and I'm going to  
12 leave here schizophrenic and going straight to the my  
13 psychologist as I leave.

14 I appreciate the opportunity to appear  
15 before the House Judiciary Committee today, and as you  
16 receive comments about prison and jail overcrowding, this  
17 public hearing on prison overcrowding could not be more  
18 timely. Earlier this year our remarks to the members of  
19 the House Subcommittee on Crime and Corrections that the  
20 Commonwealth must regard cell space as a scarce resource,  
21 my opinion holds today. As of July 1, 1989, the  
22 department was confining 19,369 inmates, though our cell  
23 capacity remains at 13,468, which places us at 44 percent  
24 over our rated capacity.

25 The Commonwealth's county prisons are in a



1 similar, if not more difficult, position. The inmate  
2 population has grown by 1,440 in the first 6 months of  
3 1989. Of particular concern is the fact that the growth  
4 rate has averaged to 285 per month for the past 4 months.  
5 The Commonwealth's population projections estimates a  
6 growth rate of 148 inmates per month. This would have  
7 placed our population at 19,800 as of December 31, 1989.  
8 It is now apparent that we will be well over 2,000 inmates  
9 by that date. This compares with a population of 7,806 at  
10 the beginning of 1980.

11 With the support of Governor Casey and the  
12 General Assembly, the Department of Corrections will make  
13 progress in our housing capacity. In June, Governor Casey  
14 announced plans for the consolidation and conversion of  
15 part of Farview State Hospital to include up to a thousand  
16 new beds. Farview's current population of criminally  
17 insane patients will be consolidated into one section of  
18 the facility. The remaining portion of Farview will be  
19 converted into housing inmates. September 15th is the  
20 date for the scheduled transfer.

21 Legislative approval has been granted to us  
22 to search outside of Philadelphia for sites for a new  
23 650-cell prison. This facility will be for inmates in  
24 need of treatment for drug and alcohol problems.

25 The department is currently undertaking

1 several projects which will increase our capacity by 586  
2 cells by expanding existing institutions. However, we  
3 must look at some alternatives which do not require prison  
4 construction.

5 In 1988, officials in 33 States reported  
6 using electronic monitoring devices to supervise nearly  
7 2,300 ex-offenders. House Bill 1708, introduced by  
8 Representative Hagarty, would permit the department to  
9 place inmates currently in our community service centers  
10 on electronic surveillance for 30 days prior to their  
11 minimum sentence. These individuals have demonstrated  
12 that they are no longer a risk to the community.

13 I applaud this proposal but would  
14 respectfully ask the Representative to expand the proposal  
15 to the final 60 days. Inmates would be monitored by the  
16 community service center staff and would be required to  
17 report to the center.

18 Currently, correctional officials are  
19 required to provide inmates with two hours of exercise per  
20 day. House Bill 1106, introduced by my good friend  
21 Representative Blaum, would specify that inmates housed in  
22 disciplinary status only be required to receive a minimum  
23 of at least one hour daily -- one hour per day, five days  
24 per week. This change would be consistent with the  
25 current standards established by the American Correctional

1 Association. I support this change.

2 Drunk driving continues to be a major  
3 concern to the county prisons. Our latest figures  
4 indicate that in 1986, 7,069 individuals were committed to  
5 our county prisons to serve an average of 26 days. The  
6 arrest rate is also increasing, according to the  
7 Pennsylvania State Police 1988 Uniform Crime Reports.

8 While drunk driving is a major threat to the  
9 safety of our families, perhaps these convicted offenders  
10 should not take up scarce cell space. The Department of  
11 Corrections currently incarcerate 99 individuals for drunk  
12 driving. While they have broken our laws, they do not  
13 require the level of supervision they typically receive.

14 I propose that the Commonwealth assist the  
15 counties in establishing regional facilities for offenders  
16 convicted of driving under the influence. These  
17 facilities would be operated by a regional authority which  
18 would provide day-to-day supervision. This removes the  
19 inmate incarcerated for driving under the influence from  
20 the custodial setting into a more treatment-oriented  
21 facility. It would keep the offender close to home, free  
22 up valuable cell space, and costs significantly less than  
23 traditional incarceration. This, I believe, is a more  
24 realistic approach to dealing with the drunk driver.  
25 House Bill 1094, introduced by Representative Saurman,

1 recognizes the need for regional facilities.

2 This General Assembly just recently approved  
3 plans for the Department of Corrections to expand its drug  
4 and alcohol program by providing a 52-bed therapeutic unit  
5 at State Correctional Institution at Cresson. This is a  
6 proactive and progressive plan to address the drug problem  
7 and the inmate population. Therefore, I solicit your  
8 support.

9 I would urge your consideration for Senate  
10 Bill 648. This bill would enable the department to  
11 transfer prisoners to the Federal Bureau of Prisons  
12 without going through the Governor's Emergency Powers Act.  
13 Passage of this bill would permit me to transfer inmates  
14 for many reasons, among them those who are being placed  
15 under the Federal Witness Protection Program. Inmates  
16 transferred to Federal authority are exchanged on a  
17 one-to-one basis or on a non-reimbursable basis. Passage  
18 of this bill would not result in increasing the inmate  
19 population or transfers whatsoever. It would only make  
20 the infrequent necessity more practical to administer.

21 Finally, I am pleased that there is still  
22 interest in introducing earned time legislation, and may I  
23 pause here to say, Representative Piccola, I, too, was  
24 going to walk up and say, "Now, Bill, please, take it  
25 easy. We've worked very hard with the Representative."

1 Forty-six States use earned time as a response to prison  
2 overcrowding. It is a management tool. The concept of  
3 earned time is supported by this department.

4 I have commented upon several issues which  
5 the Department of Corrections has special interest in. I  
6 would be very happy to respond to any questions of this  
7 committee.

8 Thank you.

9 CHAIRMAN CALTAGIRONE: Thank you,  
10 Commissioner.

11 REPRESENTATIVE PICCOLA: Thank you,  
12 Commissioner, especially for indulging us in the late  
13 hour. I just have two questions.

14 BY REPRESENTATIVE PICCOLA: (Of Commissioner Owens)

15 Q. The 650-cell facility that I guess you are  
16 going to look for a site somewhere in the Philadelphia  
17 area but outside the city.

18 A. Yes, sir, in the southeast area.

19 Q. Right. Is that going to be one 650-bed  
20 facility?

21 A. Yes, sir.

22 Q. I recall a couple of years ago, I guess when  
23 we were going through this expansion under the prior  
24 administration, and I can't put my finger on where I heard  
25 this, but it seems to me that it was some correctional

1 standard that the maximum amount of cells that you want to  
2 put in any one new facility is 500. Is that still a  
3 standard? And if so, why would you be increasing that to  
4 650?

5 A. That standard, the standard that you speak  
6 of, Mr. Representative, is the one in the ACA, and it is  
7 the thinking of the professionals that a 500-bed facility  
8 is the economy of scale. It's the best size for a  
9 facility. That's the ideal, sir. The modern thinking  
10 today is that we'd love to have it, but given the reality  
11 of overcrowding, we have to go larger. The ACA is now  
12 thinking of upscaling it to a thousand. So that's the  
13 reason. You are totally correct. The standard has  
14 historically been 500, but the profession is now moving it  
15 up because of the overcrowding.

16 Q. I'd like to see if you have any studies or  
17 reports on that issue, if you could just send a copy to my  
18 office, I'd like to just keep up on that.

19 A. Absolutely.

20 Q. And the second question that I had, the  
21 regional DUI centers, you mentioned that they would be set  
22 up by an authority. Is there a reason why there's going  
23 to be an authority? Is it going to be -- I guess my  
24 question is, under whose auspices is the authority going  
25 to be formed? Is it going to be under the State's

1       auspices or under a number of counties getting together  
2       forcibly or voluntarily? How is that all going to work?

3               A.    I hope voluntarily, Mr. Representative.

4               Q.    Don't count on that.

5               A.    And what I am giving you, sir, is the raving  
6       of a tired Commissioner at 6:00 o'clock in the evening  
7       saying, "Now, how can I make this thing work? " Having  
8       spent a little time in a county facility, I know that the  
9       counties will not rush to that concept. They will say,  
10      "Well, who's going to hire, who's going to fire, who's  
11      going to administer?" So because of that, I thought that  
12      the authority might be the best way to go. That way there  
13      would be someone controlling the authority, and the four  
14      or five counties that would be functioning would all be  
15      able to sit on a board of the authority. It is my way of  
16      finding some middle ground that I think all could stand  
17      on. But please, let me emphasize that it is my concept.  
18      Your deliberation may decide to go in another direction.

19              Q.    I think it's a good concept. I'm just not  
20      sure it will ever get off the ground if we sit around and  
21      wait for counties to get together because I just don't  
22      know that they -- even to form authorities it's going to  
23      be rather difficult. We may have to do something, if we  
24      like the concept, we may have to do something to entice  
25      them to do that. I don't know what it would be, but I'd

1 like to see a little bit more on that.

2 A. Well, fine, I would be very happy to provide  
3 it, sir, but history has taught us that you are correct,  
4 the counties would respond to motivation I think rather  
5 than doing it -- I just think that when you take a look,  
6 sir, at the overcrowding situation, specifically in the  
7 western part of the State, and you look at 40 percent of  
8 those individuals who are coming into the county prison  
9 sentence are there for DUIs, and it is in both the State's  
10 best interest because we now have 99, and Bill gave you  
11 the figure of 30, and that was totally true less than a  
12 year ago, we can see that it is beginning to climb. So if  
13 we can work together to divert those individuals from  
14 coming into our system, it's in the counties' best  
15 interest and in ours.

16 Q. Thank you. Thank you, Commissioner.

17 REPRESENTATIVE PICCOLA: Thank you, Mr.  
18 Chairman.

19 CHAIRMAN CALTAGIRONE: Thank you,  
20 Commissioner. We appreciate your testimony.

21 COMMISSIONER OWENS: Thank you.

22 CHAIRMAN CALTAGIRONE: James Thomas,  
23 Executive Director of Pennsylvania Commission on Crime and  
24 Delinquency.

25 MR. THOMAS: Thank you very much. And I



1 certainly, as well as the other witnesses, do commend you  
2 for spending the afternoon on this issue. I take it it is  
3 an issue that's driving those of us who are in the room to  
4 stay past 6:00 o'clock or however long it would take in  
5 order to try and solve.

6 I'll abbreviate my comments, in the interest  
7 of time. Certainly after you sit and listen to the range  
8 of testimony, there's not much I would think that I could  
9 add that hasn't already been said and hasn't already been  
10 thought-provoking.

11 I am the Executive Director of the  
12 Commission on Crime and Delinquency, and on the Judiciary  
13 Committee Representative Hagarty, Representative Blaum,  
14 and Representative Mayernick are also members of the  
15 Commission. Testifying before you today was, of course,  
16 Commissioner Owens and Warden Wallenstein, Charlotte  
17 Arnold and Al Hornblum are also members of the Commission,  
18 and I wanted to mention that fact.

19 Listening to the testimony of this  
20 afternoon, let me just give you a few bits of information  
21 that may add to your deliberations. One is that there's  
22 five counties now that have electronic monitoring, only  
23 one of which, Philadelphia, is using that in a pretrial  
24 sense. Allegheny County is trying to but they have not  
25 yet established that.

1                   We talked a little earlier today about at  
2 the time the Sentencing Commission was formed, the  
3 presumption was that the minimum sentences would be the  
4 time served. The time served now is roughly 6 months past  
5 the minimum, so that that presumption of 10 years ago has  
6 changed. And there's about 17 to 18 counties within the  
7 Commonwealth today that have earned time systems, and  
8 earned time is established simply by the president judge  
9 so making the order to the system.

10                   The first couple pages of my testimony were  
11 to try to impress upon us the sense of the problem, the  
12 dramatic, the worsening problem that we have, and that's  
13 certainly been accomplished by the other witnesses before  
14 me. The one fact that I would point out as relative to  
15 the DUI's, clearly the DUI sentences is a large problem of  
16 the county jail populations -- county jail problem of  
17 crowding. DUI admissions have risen over 1,400 percent  
18 since 1981. It went from 629 to 9,621. Lest it be  
19 overlooked as well, Commissioner Owens' statement that  
20 last month they had an increase in the population of 423  
21 inmates in one month. Also, it's noted that the  
22 projections that we're using are underestimating the  
23 problem, and we're tracking on that to see if we can't  
24 determine why we're missing the targets by so much at the  
25 moment. As we are able to clarify that, we will be

1 clarifying it both for Commissioner Owens as well as the  
2 committee. But 423 inmates per month in 1 month is  
3 shocking to try and build -- even to just to try and keep  
4 status quo. If we were averaging 400 a month, 4,800  
5 inmates a year, we have to bring on 5,000 prison cells on  
6 line each and every year.

7 We note that the PCCD has been very  
8 seriously involved with the prison and jail overcrowding  
9 problem for at least six years. Certainly, we've attended  
10 to it for longer than that. We're very concerned about it  
11 for the last six years. Representative Piccola was on the  
12 original task force that issued its report in 1985, and  
13 indeed as you would go back and look at the report, the  
14 recommendations that were crafted at that time are as  
15 germane and applicable today as they were in 1985 when the  
16 report was released. The numbers would all be changed but  
17 they would all be changed to a much more severe  
18 description of the problem.

19 The sense of that report is to take a  
20 comprehensive view of the correctional system. I believe  
21 Representative Piccola was speaking earlier, almost  
22 suggesting, that we ought to be trying to craft a  
23 philosophy of corrections in the Commonwealth. Indeed, we  
24 should. And as we look at the recommendations that are in  
25 the overcrowding report echoed later by the Governor's

1 Inter-Departmental Task Force on Corrections that was  
2 issued in October of '87, and indeed the Legislative  
3 Budget and Finance Committee Performance Audit of the  
4 Department of Corrections issued in April of '88, both of  
5 those reports sort of mirror the PCCD report. It speaks  
6 of looking at a comprehensive approach. That is, we need  
7 to deal both at the county jail level, we need to deal  
8 with prison expansion, we most definitely need to deal  
9 with the supervision resources in the community, whether  
10 that's to expand beyond the community service centers that  
11 we have now of the Department of Corrections that houses  
12 about 400 inmates -- out of 19,000 that they have, only  
13 about 400 are housed in community service centers -- and  
14 most definitely speaks to the need of expanding parole  
15 services.

16 As we look at the recidivism rate, and who  
17 really knows whether it's 63 percent or 67 or 75 percent,  
18 there's really no very accurate numbers to play with, but  
19 we do know that it's high, it's unacceptably high. And as  
20 we look at that and we look at the lack of programming  
21 that can be available in the institutions and then look at  
22 the type of release mechanisms we have where the inmate is  
23 going back out on the street and then, not in every case  
24 but in the majority of cases, with very limited  
25 supervision, very few contacts with the parole board, not

1 of desire but because of the number of parole agents that  
2 are available and the number of community service centers  
3 that are available, if we are looking to provide for  
4 public safety, and this is the essence of the PCCD report  
5 as well as the other reports, the Governor's Task Force  
6 Report and the Sunset Performance Audit Report, it's  
7 public safety. And if you're concerned about public  
8 safety, then clearly we've got to be concerned about not  
9 only putting the person in the prison but as they're  
10 coming out, having enough supervisory and monitoring  
11 resources in the community in order to be able to track  
12 that person.

13           And as you start to build that continuum,  
14 then you have the opportunity of pushing the offender back  
15 into the institution. Not only is it a release mechanism,  
16 that is of coming out into a halfway-out system, it's also  
17 halfway back in. If we can devise a philosophy and a  
18 structure where you would have a continuum of options from  
19 community services at the county level up through  
20 community service centers or halfway houses, if you went  
21 through intensive supervision through regular parole, then  
22 it would give the authority and the ability to, when you  
23 identify an offender who is on the verge of messing up,  
24 gives you the ability to push them back into the system  
25 without going back into the jail, push them back into

1 intensive supervision, push them back into having the  
2 electronic monitoring, push them back into the community  
3 service center, ultimately back into jail. And by having  
4 that kind of close supervision and monitoring, you may be  
5 able to affect the recidivism we have. Right now, the  
6 only option is in fact to return the individual, as a  
7 parole violator, back into the prison, and indeed that may  
8 be very much of the contributing factor of why the  
9 population, the monthly net population, increases have  
10 occurred so dramatically over the last three or four  
11 months.

12           The one program that we're quite pleased  
13 with is our county jail technical assistance program.  
14 We've worked in 17 counties. If you look at pages 5, 6,  
15 and 7, it gives an idea of the types of programs that we  
16 work with. We are not in any sense dictating to counties.  
17 We work with the county. One of the keys, however, is  
18 that the county has to make a commitment. The district  
19 attorney, the public defender, the warden, the president  
20 of the prison board, county commissioners, they have to  
21 form a team. And if they make a commitment, then we'll  
22 come in and help them to look at their population, for  
23 them to decide who they want to have in jail and who they  
24 can leave out, and with some very limited Federal funding  
25 that we've been able to have available we've been able to

1 start a number of programs which have helped the county  
2 jail crowding problem.

3 We're operating on a shoestring. We have  
4 one full-time staff person doing it. We have very limited  
5 Federal moneys that are available, and that money will, as  
6 of next year, go up to 50 percent match, and it's very  
7 hard to have a county buy into the program if in the first  
8 year they have to come up with 50 percent of the costs.  
9 If, on the other hand, there were State moneys available  
10 to offset that match and so you could do a program where  
11 it would be 25 percent county money, 50 percent the second  
12 year, and 75 percent the third, you have much more of a  
13 chance of moving the counties gradually into developing  
14 the alternative type programs.

15 Picking up on page 8 is in recognizing that  
16 there are both resolutions and bills pending which would  
17 require a population projection and impact analysis of any  
18 bill going through--

19 REPRESENTATIVE HAGARTY: Jim, we only have  
20 five pages.

21 MR. THOMAS: I'm sorry, I'm reading from an  
22 expanded paper.

23 REPRESENTATIVE HAGARTY: Because we do have  
24 on pages 3, 4, and 5 your examples of projects, but that  
25 was on pages 3, 4, and 5, not 5, 6, and 7.

1                   CHAIRMAN CALTAGIRONE: Is there another  
2 sheet?

3                   MR. THOMAS: No, what happened is I just  
4 have one that has a little bit bigger type so I can read  
5 from it. You have the exact same testimony.

6                   So looking at page 5 then, the need for  
7 analysis of those prison populations and in tying those,  
8 having those available for your consideration, for the  
9 General Assembly's consideration prior to passage of any  
10 legislation is exactly the way to go. It's very  
11 commendable that that legislation has been introduced, and  
12 I certainly could concur with John Kramer's statement that  
13 if there were further sentencing guideline changes and as  
14 they were presented to the General Assembly for  
15 ratification or to let those guideline suggestions become  
16 implemented, that clearly the General Assembly also ought  
17 to have that available, that impact analysis, available.  
18 It is available to the Commission, it ought to be  
19 available to the members of the General Assembly, and I  
20 certainly concur with that.

21                   And the essence of the testimony, if I went  
22 through it in a slower fashion, is that it needs to be in  
23 a comprehensive approach. We need to be looking both at  
24 the county -- particularly at the county level looking at  
25 the DUI population, and as we move into looking at the



1 State system, that we need to be looking for not only the  
2 expansion of prisons and the building of capacity but an  
3 expansion of community supervision resources which is both  
4 community service centers and in the expansion of parole  
5 services.

6 And with that, I'd be happy to stand for any  
7 questions.

8 BY REPRESENTATIVE PICCOLA: (Of Mr. Thomas)

9 Q. Jim, maybe you've done this, I don't know.  
10 I haven't seen it myself, but maybe you've done it. It  
11 might be helpful if you took your Jail Technical  
12 Assistance Program, and I know you're working with a  
13 number of counties now and have worked with some in the  
14 past, that perhaps you ought to list those with some  
15 really hard, concrete results that you obtained in the  
16 various counties. It might give us some ammunition to  
17 perhaps get some additional funding for that. Not  
18 obviously for this fiscal year, but maybe next fiscal  
19 year.

20 A. Sure. Be very happy to.

21 Q. I've heard good things about it and I know  
22 that we've got you hooked up with Dauphin County now and  
23 I'm hopeful that good things will occur there, too. But  
24 if we could have something easy to digest, not too  
25 technical but heavy on results, might be easier for us to

1 sell to other members of the General Assembly that this  
2 program is relatively low-cost and perhaps should be  
3 funded in the next fiscal year.

4 A. Very good. I'd be happy to provide that.

5 REPRESENTATIVE PICCOLA: Thank you.

6 BY REPRESENTATIVE BLAUM: (Of Mr. Thomas)

7 Q. Jim, maybe you heard my comments a little  
8 earlier of just the frustration of dealing with this issue  
9 and is it not drug driven, the whole recidivism problem,  
10 the statements by the Attorney General that drugs are  
11 responsible for 70 percent of our crime, et cetera, et  
12 cetera. If we pass the whole package of ideas that may be  
13 floating around the Senate of Pennsylvania and the House  
14 dealing with overcrowding and we build, you know, a few  
15 more prisons, are we back here in the not too distant  
16 future with exactly the same problem when we're talking  
17 about 200 people a month coming into the system?

18 A. Clearly what's driving the prison population  
19 -- if your question is, will I be back here talking about  
20 prison crowding problems, what's driving prison crowding  
21 is certainly the sentencing guidelines, the mandatory  
22 sentencing, the parole revocations. I mean, those things  
23 are what's driving the prison crowding.

24 Q. I would suggest that crime is what's driving  
25 the prison population up and up and up. What I'm saying

1 is, have we seen anything, you know, in the statistics  
2 that the Commission may have, have we seen anything like  
3 that drug phenomena that I believe is driving this whole  
4 problem, I mean, since 1980?

5 A. I think we've got a problem that's going to  
6 be here for a long time, and I don't see any quick-fix.  
7 Even if we passed every piece of legislation that's both  
8 in the Senate and the House, I don't see that solving the  
9 drug problem or solving the criminality associated with  
10 it. You're talking about the interdiction at the Federal  
11 level. Clearly, where are we in negotiating with those  
12 governments? The Department of State seems to be on a  
13 different side than law enforcement. I mean, that's  
14 clear.

15 Q. It's crystal clear.

16 A. The prevention, everything that we talk  
17 about in prevention, I am well aware that you were on the  
18 panel with the Governor and the Attorney General as we  
19 went across the State. Prevention - the solutions there  
20 are going to take 10 years, if they work. There's no  
21 certainty of that occurring.

22 What we do know is that the recidivism rate,  
23 I'm just reiterating testimony that's been out here  
24 already today, we do know that the recidivism rate is way  
25 high. We know that the offenders, by and large, have drug

1 and alcohol problems, and so we need the treatment  
2 resources.

3 Q. May I stop you there? Well, why is that?  
4 Is that a lack of programs or is that because I can make  
5 \$1,500 to \$2,000 a week selling this poison? I mean, is  
6 any program that you and the Commission or any of the  
7 experts who testified here today going to change that when  
8 you can make \$1,500, \$2,000 a week selling this kind of  
9 stuff?

10 A. Well, I'm sure that you're talking about  
11 only sellers, and you're talking about sellers that are  
12 making a lot of money, and if they can go in and walk  
13 their time for three or four years and come back out, it's  
14 going to be hard to change their behavior. But you're  
15 certainly not presuming that most offenders in the  
16 institutions, the 60 or 70 percent that have drug and  
17 alcohol problems, are sellers. And so we aren't doing  
18 much, we are not doing much at the State level relative to  
19 those drug and alcohol offenders. The programming that  
20 was in place 10 and 15 years ago hasn't expanded in the  
21 same rate that the prison population has expanded, so  
22 we're doing much less, much less than we did back in the  
23 '70's. And so basically, most people that have drug and  
24 alcohol problems going in prison have them when they're  
25 coming back out.

1           Q.    With the electronic surveillance and even a  
2           compromised earned time proposal, a few facilities for DUI  
3           offenders, can we manage the 200 to 300 a month increase  
4           in the population? Will all of these changes improve the  
5           situation to the point where that begins to go in the  
6           other direction? Do we know enough?

7           A.    It would seem to me if we maintain a level  
8           of 200 or 300 a month coming in, that we need every  
9           alternative that we spoke of plus a major amount of  
10          construction in order to handle those kind of numbers.  
11          The facilities are full at this point. There's not much  
12          room at all. So if those numbers are right and they keep  
13          coming, I don't see what the alternative is, other than a  
14          lot of construction, plus all the alternatives we've  
15          talked about.

16                    What I would hope we wouldn't miss sight of,  
17          though, is that just the construction and doing nothing  
18          relative to the program and letting someone do their time  
19          and coming back out hasn't done a thing in terms of the  
20          recidivism rate or helping them with their problems or  
21          doing anything relative to the public safety once that  
22          person is back out on the street. And I guess the one  
23          piece I left out as I was trying to build that continuum,  
24          as we would increase those community resources, then the  
25          parole board can make less conservative decisions. They

1 have a little more confidence that they can monitor the  
2 person if the parole resources are there to keep  
3 reasonable size caseloads. If the community service  
4 centers can take, under the Department of Corrections,  
5 they can take an inmate a year prior to the minimum, if we  
6 would double them from 15 to 30, that would be another 400  
7 or so inmates in any one day that would be out in the  
8 community but under supervision. And it doesn't mean that  
9 once they're out they couldn't be put back in, so that in  
10 order to have the public safety, even if we were to launch  
11 on a large construction program, we need those community  
12 resources in order to monitor the person once they are  
13 back out on the street.

14 As far as the recidivism rate, there's no  
15 doubt in my mind the more attention to the person's  
16 problems and the more certainty of the surveillance that's  
17 upon them is going to have a large affect on their  
18 decision to recidivate. And I can't deal with the  
19 singular issue that you're getting at of the seller when  
20 he's making mucho dollars and coming back out.

21 Q. It's a difficult problem, and I want to  
22 thank the Commission and the staff of the Commission  
23 primarily for all the work they've done in not only  
24 keeping it in the forefront but in helping this committee.

25 Thank you.

1                   CHAIRMAN CALTAGIRONE: I just want to say  
2 that I think we're involved in an insidious situation. I  
3 would humbly predict that it's going to get a hell of a  
4 lot worse, to be very honest about it. Most elected  
5 officials will not put their votes up for the taxes that  
6 it's going to take for the extra amounts of moneys that  
7 we're going to need to do a total job, because what we're  
8 doing is patchwork. We're going to build a few more  
9 prisons. With the numbers that you're talking about, and  
10 you can say it's 50 percent, 60 percent, 70 percent, it  
11 could be as high as 80 percent recidivism. We don't  
12 really know, do we? But it's going to get worse. That we  
13 can all, I think, come to the same kind of a conclusion  
14 that you can't seal off your borders, you can't seal off  
15 you air space, your water space, so it's a national  
16 problem as well as a State problem.

17                   Where are we going to get all the additional  
18 funds not only to put the manpower on the streets for  
19 probation and parole as well as the prisons let alone  
20 building the prisons and end up with some white elephants  
21 somewhere down the line, 20, 25, 30 years down the line  
22 that we may not have any need for? And we're not putting  
23 our money, I don't think, where our mouth is with a lot of  
24 the rehabilitative programs that are absolutely needed,  
25 because sending them through the system and putting them

1 back out on the street in the same jungle or nest that  
2 they came from, especially the users, is just compounding  
3 the problem. And I don't know if there really is an  
4 answer in the short term. I don't personally think there  
5 is, short of doing something that communist China did when  
6 Mao took over that country when they had a tremendous drug  
7 problem, especially in their urban areas, and that was the  
8 only way that the westerners could control those people  
9 was through the use of opium and the opium dens, and they  
10 gave them the cure through treatment programs and what  
11 not, and those that refused to take the cure and continued  
12 to use, sad to say, they no longer remained around. They  
13 eliminated that problem.

14 And it's a hell of a way to look at society  
15 and talking about a problem that we're faced with. I  
16 mean, we don't, as a civilized society, want to discuss  
17 those alternatives yet. I predict that some day in this  
18 country we will eventually start talking about, and in  
19 this State, the alternatives that may have to be employed  
20 in order to eliminate those kinds of problems from society  
21 as we know it in order to protect us from what we come to  
22 know as our American society and the Pennsylvania dream.  
23 Because it's absolutely out of control and it's going to  
24 get worse and it's going to continue to get worse.

25 MR. THOMAS: Clearly, the substance abuse



1 treatment, our efforts in substance abuse treatment need  
2 to be entirely intensified. We also need that additional  
3 community staffing in order to follow and to guide the  
4 inmates as they are returning. Cost is going to be  
5 incredible as we would try to add up what a system ideally  
6 would look like, but I think what the members are  
7 certainly afraid of, as well as I can tell you the  
8 professionals in the field are afraid of, that it's not  
9 that the money won't be spent, because it will be spent  
10 quickly if we blow one of these places up. The money will  
11 get spent, the emergency appropriations will go through,  
12 we'll rebuild, and all we have to look at is every sister  
13 State that we have in the nation to know that that's what  
14 will happen. And that's kind of the adage of pay me now  
15 or pay me later, and I'm sure that's what's in the minds  
16 of the committee as well.

17 CHAIRMAN CALTAGIRONE: I appreciate your  
18 testimony, and we'll now conclude today's hearing. Thank  
19 you.

20 (Whereupon, the proceedings were concluded  
21 at 6:00 p.m.)  
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

*Ann-Marie P. Sweeney*

ANN-MARIE P. SWEENEY

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Ann-Marie P. Sweeney  
536 Orrs Bridge Road  
Camp Hill, PA 17011