

**TESTIMONY BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
ON PRISON OVERCROWDING**

**July 17, 1989**

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## PRISON OVERCROWDING TESTIMONY

Thank you for the opportunity to testify on the current crisis in prison populations. I want to begin by noting that my remarks reflect my views and not necessarily those of the Pennsylvania Commission on Sentencing. In addition, my remarks reflect not only my views as an educator for almost 20 years and director of the Pennsylvania Commission on Sentencing but as a counselor in an overcrowded maximum security institution as a parole officer.

I have been the Executive Director of the Pennsylvania Commission on Sentencing since June 1979. When I began working with the Commission ten years ago our state prison populations housed only about 8,000 inmates. In the intervening ten years prison populations have grown to over 19,000.

It is important to point out that prison overcrowding jeopardizes the effectiveness of the guidelines to reduce sentencing disparity. To the degree that some courts, for some

defendants, depart or negotiate around the guidelines and mandatory provisions because of overcrowding, the Commission's goal of sentencing equity is undermined. Similarly, the guidelines were intended to increase severity for serious violent offenders, but prison overcrowding also seriously jeopardizes the effectiveness of the guidelines in this area as well.

In understanding my concern, let us consider for a moment our current track. Prison growth last month alone set a new one month record, breaking the record set in May. Prison population is escalating at a rate faster than any of us anticipated a few months ago. Having worked in the Ohio Penitentiary which had a rated capacity of 2000 and a population of 4800, I have some appreciation of the pressures building on our correctional system. Let me just note a few:

1. Overloaded resources. Inability to provide adequate education, work, therapy and physical resources to inmates;

2. Increased violence. Riots and fighting are more likely and more dangerous (the overcrowding at the Ohio Penitentiary was not seriously addressed until two major riots occurred in which several inmates were killed);
3. Federal intervention. Allegheny and Philadelphia counties are currently under Federal court mandate to control prison populations. Many states, including Georgia and Texas, have their state systems under similar mandates. This is an unnecessary and inappropriate.
4. Public safety. It is not clear that the collective incapacitation strategies that we are currently using have significantly increased public safety. The state of Washington leases space to overcrowded states because it directed its sentencing commission to be very selective in its use of prison space. Changes in

its crime rate have been similar to Pennsylvania's with its burgeoning prison population.

The above is merely a preamble to my remarks so that you know that I begin with the assumption that we can and must seriously address the problem.

Prison overcrowding results from the combined effect of the number of inmates entering prison, the length of their stay, the number returning as parole violators and the length that they serve as parole violators.

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

**H.R. 151 PA COMMISSION ON SENTENCING  
IMPACT STUDY REQUIRED**

H.R. 151 mandates county and state prison population projections by the Pennsylvania Commission on Sentencing for any bill which may cause an increase in state or county prison populations. It may be the most important bill in the package because it would ensure that the legislature is informed of the potential consequences of legislation. I want to bring to your attention H.R. 1683 (PN 2038) which would also mandate correctional impact assessments but which has two components which the committee may find advisable.

First, H.R. 1683 mandates that the Consensus Review Committee provide the impact assessments. This committee is sponsored by the Pennsylvania Commission on Crime and Delinquency and includes representation from the Board of Probation and Parole, the Department of Corrections, the Commission on Sentencing and the Governor's Office of Policy and Planning. This committee was formed so that the combined resources, data

and knowledge of the agencies could be utilized in developing the impact assessments. I would recommend that the Consensus Review Committee be the specified group for providing prison impact assessments.

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

Finally, I would recommend that any legislative action, or agency action, such as changes in the Commission's sentencing guidelines or parole release or revocation guidelines, be subject to assessment as well. It seems unfair to restrict the General Assembly more than state agencies when state agency decisions can have a profound effect on prison populations.

Regarding the other bills that are the subject of today's public hearing, I would like to make a general observation and then comment on a few of the specific bills.

My general concern is that the bills offer the potential for an important first step in alleviating the overcrowding problem, but they will not solve the problem. I would suggest that this Committee ask the Commission on Sentencing to provide specific suggestions to it regarding ways in which the Commission could revise its guidelines to reduce the number of inmates entering state prison and/or reduce the length of incarceration. The Commission, as the Sentencing Commission in Tennessee has done, could provide the Committee with a series of choices that would specify the impact on sentences and prison populations. I think that this is a reasonable way to proceed and it is within the Commission's mandate in its enabling legislation to:

"Make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes which the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy." (18 Pa. C.S.A. §1382(a)(12))

Now I will proceed with a few comments on the remaining bills.



H.B. 1157 EARNED TIME (Kosinski)

There are several issues regarding H.B. 1157. The bill excludes rape, involuntary deviate sexual intercourse and offenses for manufacturing, packaging, possession with intent to deliver, sale, or distribution of controlled substances under 18 Pa. C.S. §7508. I think these exclusions eliminate some of those offenders who would most likely benefit by participation in rehabilitation programs.

As the bill is drafted, the parole authorities are given unlimited authority to revoke all earned time accumulated while on parole regardless of whether the violation is a new offense or a technical violation. I would recommend that the authorities be mandated to set forth specific guidelines for the removal of good time for parole violations.

With the passage of this act, it is very important that the Department of Corrections be provided the resources for the specified educational, vocational, therapeutic or community

service activities. Absent available programs, the earned time credit for program participation may be of little impact.

It is also important to note that several states, including Minnesota and Washington, have abandoned linking release from prison to program participation. They have done this because of beliefs that programs are ineffective, that forcing program participation is unfair, and that unwilling participants are poor candidates to benefit from programs.

**H.B. 1709 PROGRAM PARTICIPATION EARNED TIME**

My previous comments regarding H.B. 1157 generally apply to this bill as well. The bill does not allow inmates serving a mandatory minimum sentence to earn credit days for program participation. It can be argued that these individuals not allowed to earn credit days are the very individuals whom we should strongly encourage to participate in prison programs. In fact, this bill may discourage the Department of Corrections from placing or admitting mandatory sentenced offenders from programs so that the limited space in these programs is given to those who can get earned time.

Another concern I have is that the earned time provision would expire on June 30, 1992. If the intent of the bill is to reduce overcrowding, then the repealer clearly imposes very short term assistance. In view of the long term prison population forecasts, such a repealer seems dysfunctional. If the earned

time is intended to encourage program participation and to serve as a management tool, then they will be needed long past 1992.

Therefore, I would encourage removing the repealer.

In terms of prison overcrowding, this bill contains a provision that removes the restriction that the minimum not exceed one-half of the maximum. The obvious impact of this is to increase minimum sentences and thus parole eligibility.

Consequently, this bill in the long run may increase prison populations.

**H.B. 1094 TITLE  
ALLOWING HOMICIDE BY VEHICLE WHILE  
DUI SENTENCES TO BE SERVED IN COUNTY PRISON**

This bill recognizes that mandatory sentences for 75 Pa. C.S. §3735 (relating to homicide by vehicle while driving under the influence) are being circumvented, in part, to keep such offenders in county facilities.

I am aware of the data indicating that courts are manipulating the convictions and sentences to keep such offenders in county prison. I am concerned, however, that this act reflects more on the special social characteristics of the defendants than on issues of fairness.

There is perhaps another message in what is happening and that is that the courts generally feel that the three year minimum is excessive for many defendants and will continue to avoid the mandatory to achieve sentences more proportionate to their perception of the severity of the crime. If this is true, then the General Assembly may need to consider reducing the three

year mandatory provision and leave with the court the option of going higher if the case warrants.

**H.B. 1712 - FIVE DAYS CREDIT PER MONTH ON ACTIVE  
PAROLE SUPERVISION**

H.B. 1712 is good to help reduce our overloaded parole caseloads. I support the bill although I would encourage the act be amended to limit the number of days that can be revoked for technical violations. I would also require that the board be mandated to develop and publish guidelines regarding the removal of credit days within six months of the effective date of the legislation.

**H.B. 1711 APPROPRIATION TO BOARD OF PROBATION AND  
PAROLE FOR INTENSIVE PAROLE PROGRAM**

An intensive parole program is strongly needed as part of any prison overcrowding package and I strongly encourage the funding contained in this bill.



**H.B. 935 ESTABLISHING REQUIREMENT OF PARTICIPATION  
IN DRUG TREATMENT PROGRAM FOR PAROLE  
ELIGIBILITY FOR DRUG OFFENDERS.**

The requirement that all drug law violators participate in a drug treatment program is somewhat misdirected. The bill assumes that such offenders are drug users which may not be true and certainly may not be the cause of many of those involved in drug trafficking. I would suggest that this may merely tie up space in drug treatment programs unnecessarily and make it more difficult for those who could use such treatment to get it.

## CONCLUSION

I want to conclude my remarks by commending this Committee and particularly the sponsors of the legislation being discussed today. It is imperative that Pennsylvania maintain control of its prison system. These bills indicate that you are beginning to take prison overcrowding seriously. Again, I suggest you request that the Commission on Sentencing provide you with options in the guidelines to assist in alleviating the problem.

Thank you.