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Testimony of Pennsylvania Prison Society Before the Judiciary Committee of the Pennsylvania House of Representatives in Response to Twelve Bills Pending Before the Committee

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I want to thank the members of the Committee and Chairman Caltagirone for inviting The Pennsylvania Prison Society to testify on the legislation pending before the Committee. We very much appreciate the fact that these bills, or at least most of them, are designed to address the critical problem of prison overcrowding in Pennsylvania.

For the last four years, we have been coming to Harrisburg to warn of the crisis in our state and county corrections systems. As you know, the inmate population in both systems has more than doubled in the last eight years and prison capacity has not and, indeed, cannot keep pace. It is not possible to "build out of" the overcrowding problem, and therefore it is gratifying to see the Committee taking a look at a number of alternative methods for addressing the problem. It also, frankly, is a pleasure for a change, to be able to testify about legislation about which we have points of agreement.

While we agree in concept with several of the bills, we disagree with some of the provisions therein. Others we oppose in concept. Let me now attempt to address each bill pending before the Committee.

HB935

This bill would amend the Parole Law to provide that any inmate sentenced for a violation of "The Controlled Substance, Drug, Device and Cosmetic Act" cannot be paroled until the inmate "successfully completes a drug treatment and rehabilitation program approved by the Department of Health."

We are encouraged by the fact that this bill recognizes the need to treat those who have been convicted of drug offenses. We believe, however, that there is a major problem with this bill. Specifically, there needs to be an evaluation of the number of inmates who fall into this category, as well as the number of treatment program spaces available in the Department of Corrections.

It is very likely that there are not sufficient programs for everyone who falls into this category. If that is the case, then you have created a constitutional problem that will lead to litigation. Inmates will sue.

If the evaluation indicates that sufficient programs are not available, the next step should be a determination of how much money the Department of Corrections needs to establish adequate programs and that money should be appropriated. If the programs are underfunded, the result will be mediocre programs, inadequate treatment, and the problem you are attempting to address, the high recidivism rate, will continue.

HB 1094

This bill would give judges discretion to sentence those convicted of homicide by vehicle while driving under the influence to county prison irrespective of the length of the sentence. This bill would have little or

no impact on the overcrowding problem. In 1987, the Department of Corrections admitted 30 inmates in this category. Thus, the bill would result in some small number of offenders being diverted away from the state system and into the county system.

One must ask, therefore, the purpose of this bill. It is assumed that it is meant to allow these offenders to remain closer to their homes and to avoid what is perceived to be the more onerous state system. It is unclear why these particular offenders should be given preferential treatment other than perhaps they more frequently come from middle class backgrounds. As such, it itself is offensive and would be a misuse of county facilities, which are ill-equipped to provide the services and programs needed for long-term offenders.

HB 1582

This bill would dramatically alter the housing of convicted offenders by reducing maximum discretionary county sentences to under two years and maximum mandatory county sentences to under six months. This would greatly reduce county prison populations while greatly increasing the state prison population.

As the special master in the Philadelphia County prison overcrowding case, I would be a fool not to be happy to see the passage of this bill. However, I am here today in my capacity as executive director of the Pennsylvania Prison Society, and, in that capacity, it is easy to see that this bill would merely help to reduce overcrowding in the county system, while greatly exacerbating an already critical overcrowding problem in the state system.

We do not believe that it is sound policy to try to address the county problem at the expense of the state system. Again, we would strongly urge that, if this bill is to be given serious consideration, an evaluation of its impact on both systems needs to be performed and the Pennsylvania Commission on Crime and Delinquency can produce those numbers.

It may well be that the state system is better equipped in terms of programs and services, to deal with those with maximum sentences of more than one year, but, before taking that step, a thorough evaluation of the impact on both systems would need to be done.

HB 1106

This bill would reduce the minimum amount of time made available for exercise for prisoners held in administrative or disciplinary segregation. The current law requires two hours a day, seven days a week (or a total of 14 hours a week) for all inmates. This bill would reduce the time to one hour a day, five days a week (or a total of 5 hours a week) for inmates in segregation.

We oppose this bill because of the importance of providing out-of-cell exercise to segregation inmates. In most institutions, this is the only time that segregation inmates are allowed out of their cells, other than to shower. Thus, they already are confined 22 hours a day, and this bill would further restrict their movement by increasing the confinement to 23 hours, five days a week and 24 hours, two days a week.

Not only is out-of-cell time important to the prisoner's mental and physical well-being, but it helps to reduce the daily tension normally felt in prison and which is exacerbated by extended segregation and further

exacerbated by severe overcrowding. Such reduction in tension is to the advantage of prison staff. While it is acknowledged that this bill would comply with the minimum recommended by the American Correctional Association, it should be emphasized that that is the bare minimum recommended, and that the standard was established in 1981 before overcrowding reached critical proportions.

The current law has existed since 1923, and we believe that to take the drastic step of reducing these prisoners' out-of-cell time by 65% should take more than just a showing of administrative inconvenience on the part of prison administration.

HB 1706

This bill would provide state funding to the counties to help defray the cost of incarcerating DUI offenders. We recently testified before this same Committee about the ineffectiveness of mandatory prison sentences in deterring crime, generally, and cited a PCCD study that showed the ineffectiveness of the DUI provision, specifically.

At that time, we stated that, if the state intended to continue to support such legislation, the least that it could do would be to help to defray the cost to the counties of having to incarcerate all of these individuals. HB 1706 does that. Thus, while we continue to take the position that drunk drivers should be treated for their drinking problems rather than merely punished by incarceration, we appreciate the fact that the state at least, is expressing a willingness to help pay the costs of its policy.

HB 1708

This bill would authorize the Department of Corrections to place those offenders in pre-relese centers on electronic surveillance for the last thirty days of their minimum sentences. We are very much in favor of the intent of this legislation; to move people out of the pre-release centers early to make more beds available for those still incarcerated.

We do, however, have some concerns about the method employed. First, we do not believe that this measure will have an appreciable impact on reducing the population. We are very supportive of the use of the pre-release centers and therefore would strongly advocate the expansion of those facilities. All inmates should have the opportunity to phase back into the community in stages.

Second, we agree that another stage, between staying at the pre-release center and release on parole, may be beneficial. We are not sure, however, whether the use of electronic monitoring devices is the best method or whether the Department of Corrections is the most appropriate agency to provide the supervision.

The use of house arrest or intensive supervision has been successful in other jurisdictions, and it does not have to include electronic monitoring. The use of such devices by the Philadelphia Prisons has illustrated that there are problems associated with their implementation. For example, a number of the families contacted did not have telephones, essential to the program, and did not feel that they could afford the installation of a telephone. Others, when informed that the electronic device could not function on a telephone with call forwarding and

other options, were not particularlly enthusiastic about dropping those services.

More importantly, the electronic devices have not substantially added to the security element of the program. Participants have soon learned that is just as easy to walk away with, or without, a device on one's ankle. And the Prisons have found that it is just as difficult to locate the person once he/she has walked away. The major difference is that the City has lost a rather expensive piece of equipment. Further, as the District Attorney's office has pointed out, if the person has sold drugs out of his/her house in the past, the electronic device will not prevent that from occurring again.

An intensive supervision program, on the other hand, which calls for regular, daily contact and observation, provides both a better form of surveillance as well as the type of human contact and support that an offender needs upon release to the community. For that reason, we would encourage the early prole of the individuals to an intensive supervision program, administered by the Parole Board, with transfer to a regular parole program upon completion of their minimums.

HB 1711

This bill would appropriate $930,000 to the Parole Board for an intensive supervision program. As I indicated, we support the concept of intensive supervision, but this bill is a little short on details. It does not indicate what population will be targeted for the program or how the figure of $930,000 was arrived at. Thus, it is impossible to say anything meaningful about this bill.

HB 1712

This bill would provide earned time credit toward an offender's maximum sentence while on parole. The Prison Society strongly favors this concept, especially in view of the large caseloads currently carried by state parole officers. The idea of time off for good behavior is a sound one, offering both an incentive for good behavior for the parolee and an effective management tool for the Parole Board. Plus, it has the added benefit of helping to turn over caseloads more quickly.

Our only objection would be to the exceptions established for those serving mandatory sentences or life sentences. Those serving mandatories are just as capable of performing well on parole and should be offered the same incentive, and reward, for good behavior. Similarly, the Parole Board will find such a management tool just as useful for those serving mandatory terms.

With regard to life sentences, the only reason they would be released would be by a commutation to a term of years. Assuming that a life sentence was commuted after fifteen years, an overly optimistic assumption under the circumstances currently prevailing, the maximum would still be 30 years, leaving an additional fifteen years on parole. Further assuming that the person earned all available credits on those fifteen years, it would mean termination of parole after 12.5 years, or a total maximum of 27.5 years, rather that thirty years. Thus, the person would still be under supervision for a very significant period of time, but with the advantage of having an incentive for good behavior while on parole.

HB 1157 and HB 1709

These bills are considered together because they both deal with the subject of earned time for prisoners. The Prison Society already has endorsed HB 1157, so I will attempt to point out those provisions in HB 1712 with which we disagree.

The most significant difference is that, while HB 1157 provides for credit both for good behavior and for participation in programs, HB 1712 provides only for credit for program participation. As discussed with respect to credit for good behavior for parolees, it is both a good management tool for staff and an important incentive for offenders.

The same holds true for prisoners as for parolees. In fact, it certainly is arguable that the need for incentives and management tools within prisons is considerably greater than it is for parolees. In view of the fact that Representative Piccola is the primary sponsor of both HB 1709 and HB 1712, it would appear to be logically inconsistent that time off for good behavior is alright for parolees but not for prisoners. At the Wardens Association conference in May, Rep. Piccola stated with respect to prison earned time that he did not believe that people should be rewarded simply for doing what they are supposed to do. Yet, HB 1712 does just that for parolees. If time off for good behavior is good enough for the Parole Board, why is it not good enough for the Department of Corrections?

Nor is it an effective argument that the possibility of parole is an adequate incentive and management tool in prison. As David Owens will tell you, when an inmate has a minimum of ten years to serve prior to parole eligibility, the first eight or nine years often are served with little

thought about the Parole Board. Prisoners know that the tenth year is the one to be weighed most heavily by the Board, and the administration needs a management tool for those first nine years. Parole and earned time are not mutually exclusive. They work hand in hand.

Furthermore, another benefit of earned time is the reduction of the offender population. That is, after all, the main purpose of HB 1712-the reduction of parole case loads. Why then go about earned time for prisoners half-naturedly? Credit for program participation is a good idea, but it will have little impact on population reduction, in view of the capacity of programs available to prisoners. If earned time is to have any real impact on population reduction, it will have to include credit for good behavior.

We have two other major concerns with HB 1709. First, it does not apply to inmates serving county sentences. Overcrowding is just as severe in county institutions and the need for incentives and management tools is just as great. It is true that counties can implement earned time on their own, as eighteen counties already have dóne. It would be preferable, however, to have a uniform system throughout the state. Just as Pennsylvania implemented sentencing guidelines to prevent sentencing disparities around the state, a uniform earned time system would avoid the anomaly of inmates in different counties serving different amounts of time on the same sentences.

Second, what makes this bill totally unsupportable from our perspective is Section 2, which repeals the portions of Title 42, Section 9755 and 9756 which restrict minimum sentences to no more than one-half of the maximum sentences. At a hearing called to address the issue of prison overcrowding, such a provision could most diplomatically be described as

peculiar. It will not help to reduce the prison population. All available evidence points to the fact that longer sentences will, in fact, exacerbate overcrowding. If this Committee is at all serious about addressing overcrowding, this provision will not be enacted into law.

HB 129 & HB 1710

The Pennsylvania Prison Society is opposed to private for profit prisons. Along with the Pennsylvania Council of Churches, AFL-CIO, AFSCME, and the ACLU, we have testified against the privatization of prisons during the last three legislative sessions.

We do not believe that the state and county function of imposing criminal sanctions on law breakers should be turned over to a private business whose primary goal is to turn a profit. The profit motive may very well lead to diminished services and programs for the prisoners, and the incentive would be to fill all of the beds rather than to treat and release. Not only will you have created a private lobby for even tougher sentencing, but it is easy to forsee the creation of monopolies where the private enterprise names the price at contract time.

Finally, another method to reduce costs will be to eliminate union labor and hire at lower salaries. It already is difficult to recruit correctional officers, and the introduction of private enterprise may mean a severe reduction in the quality of staff.

In 1986, the American Bar Association adopted a resolution urging jurisdictions to delay contracts with private operators until satisfactory resolution was made on the complex constitutional, statutory, and contractual issues. Since that time, a report was issued which analyzes these critical areas. The report, The Legal Dimensions of Private

Incarceration by Ira Robbins, Professor of Law and Justice at the Washington School of Law at American University, outlines model statutory provisions and standards.

In Pennsylvania, the Private Prison Moratorium and Study Act of March 1986 imposed a moratorium on the operation of private prisons and created a legislative task force known as the Private Prison Task Force to study the issue of private correctional facilities. The Task Force recommended that legislation to prohibit private prisons should be introduced.

Following the report of the Task Force in March 1987, we have not had private for-profit prisons in the Commonwealth. If this is to change, and we see no reason why it should, we would strongly recommend that whatever legislation is introduced adopt the model statute prepared by the ABA, which includes the following sections: 1. Enabling legislation, 2. site selection, 3. contract term and renewal, 4. standards of operation, 5. use of force, 6. employee training requirements, 7. monitoring, 8. liability and sovereign immunity, 9. insurance, 10. termination of contract and resumption of government control, 11. nondelegability of contracting agency's authority and 12. conflict of interest.

Conclusion

Again, we appreciate the Committee's concern with the issue of prison overcrowding. With all due respect, however, we would like to suggest that the bills pending before the Committee today offer only a piecemeal and inadequate solution. What is needed is an evaluation of the criminal justice system, from sentencing through parole.

Prison beds are scarce and expensive resources and should be treated as the sanction of last resort rather than the sanction of choice; to be used when all else fails. Other sentencing options need to be explored, with a spectrum of sanctions available to sentencing courts.

There are no easy solutions to overcrowding, but it is encouraging to see this Committee begin to address the issue. As a final point, I would like to recommend that this Committee also consider HB 1683, which would require that a prison impact statement be prepared in conjunction with any bill that relates to prisons or jails. We can no longer in good conscience pass criminal justice legislation without first knowing what impact it will have on our prison, jail and parole populations.

Thank you, again, for the opportunity to testify and I will be happy to answer any questions you may have.