4 pages

TESTIMONY OF THE PENNSYLVANIA COMMISSION ON SENTENCING

ON

HOUSE BILL 239

Prepared By:
Dr. John H. Kramer
Executive Director of
Pennsylvania Commission on
Sentencing
and
Associate Professor of
Sociology & Criminal Justice
The Pennsylvania State
University

February 26, 1991

On behalf of the Pennsylvania Commission on Sentencing, thank you for the opportunity to testify on House Bill 239. This is one of the most important pieces of criminal justice legislation proposed in the last decade. We strongly support this legislation because it will increase the quality of justice in this state and it will provide the state with the ability to coordinate correctional resources with sentencing decisions. The Commission's endorsement of this legislation complies with its mandate to "Make recommendations to the General Assembly concerning modifications 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 (42 Pa.C.S. section 2153(a)(12)." We believe that this legislation is advisable for a more rational and humane system of justice in this Commonwealth.

Before commenting on H.B. 239, it might be helpful to clarify what the Commission on Sentencing is and its functions. The Commission is an agency of the General Assembly with a membership which includes two state representatives, two state senators, four judges, and three gubernatorial appointments. The Commission is mandated to write sentencing guidelines for all misdemeanors and felonies. These guidelines must be considered by the court in sentencing, and if the court departs from the guidelines, it must provide written justification for the departure. Any sentence may be appealed by the district attorney or the defense. The guidelines have been in force since 1982. As I will indicate later, the guidelines have been one of the factors that have increased the severity of sentences.

Over the past fifteen years many states have reformed their sentencing structures. Many of the efforts have been ill conceived and poorly implemented. Perhaps the worst examples are the sentencing reforms in Maine and Connecticut where they not only abolished parole release decision-making but the supervision function of parole as well. These states also failed to provide a comprehensive system of sentencing guidelines to provide direction for the judge. The legislation proposed in H.B. 239, however, builds on the successful reforms implemented in Minnesota and Washington. These states' reform efforts were successful because they carefully crafted legislation to unify the system of justice, to provide for equity and certainty, and to conserve correctional resources. These states have improved the quality of justice while conserving the financial resources of the state.

A sentencing system must perform several very important functions. Primarily, it must be honest. To be honest, it must clearly tell the community, the victim, and the offender what the sentence will be and that a sentence given will be a sentence served. This is <u>truth in sentencing</u>. This bill provides for truth in sentencing by establishing a presumed release date at sentencing and setting forth the opportunity for the offender to be rewarded for work and program participation.

We believe that truth in sentencing is the key to an effective, accountable, and fair sentencing system. Currently, the system rests on uncertainty and ambiguity. The public, the judge, the victim, the offender and the legislature are all uncertain as to what a state prison sentence means. This uncertainty results in confusion and hostility. In addition, it encourages offender game playing. For the legislature, it results in unpredictability as to the correctional needs of the state.

Along with being honest, a sentencing system must also be just. A just system of sentencing must establish punishments that are commensurate with the severity of the offense and criminal history of the defendant. The current system rests on a bifurcated sentencing system in which the offender is sentenced first by the court and then resentenced by the parole board. We think that a system that vests sentencing responsibility in the judge is the best model. The facts that are needed to ascertain whether a person should be incarcerated and whether the incarceration should be to a state institution are the basic facts that are necessary to determine the length of that incarceration. The most crucial pieces of information necessary to determine the appropriate length of incarceration are the severity of the current offense and the frequency and severity of previous convictions. These are the major factors used in reaching the sentencing guideline recommendations. Needed additional information is contained in the presentence report. It is clear that the court has available comprehensive information with which to sentence the offender.

It is important to note that H.B. 239 only deals with the length of incarceration of the approximately 20 percent of all offenders who receive state sentences. For the remaining 80 percent, we rely on the judiciary in consultation with the sentencing guidelines to determine whether an individual should be incarcerated and, if so, the length of incarceration. This bill extends the authority of the court to cover the presumed length of state incarceration. In effect, this unifies our sentencing system by locating sentencing discretion with our elected judiciary. This maximizes sentencing visibility and accountability.

Moreover, the current sentencing scheme which generally vests sentencing authority in the judge with mandated consideration of sentencing guidelines has worked well. Over the past nine years, it has proven effective in increasing the rate of incarceration and, for violent offenders, the length of incarceration. With 85 percent conformity to the guidelines and the requirement that the court justify in writing any departures from the guidelines, we have the groundwork for the comprehensive sentencing policy proposed in this legislation. H.B. 239 will expand this successful policy by giving the judiciary the authority to give minimum sentences that are greater than are allowed by current law and by giving the judge the authority to set the presumed release date. This bill preserves the one concern not able to be addressed at sentencing and that is for the exceptional case in which the offender's institutional conduct justifies that the Department of

Corrections request an extension of the minimum.

In closing, let me note that the current parole decision rests on the ability of the Board to predict future dangerous behavior. Unfortunately, the ability of the board or any other body to predict whether any particular individual will commit a future violent act is highly inaccurate. The techniques that have been developed over the years have been able to group individuals into broad classifications as to their relative risk. However, the application of these risk predictors to individuals is highly inaccurate. Moreover, the factors that are the best predictors are the current offense and the offender's prior criminal record (As previously noted these are already systematically considered by the judge at sentencing). In fact, this is corroborated in a study published in Law and Society Review in 1982 and coauthored by the Director of Management Information of the Pennsylvania Board of Probation and Parole. This study concluded that institutional behavior and "predictions" of future risk and rehabilitation were important to paroling decisions, but on follow-up these predictions were found to be virtually unrelated to actual post-release outcomes, ie. recidivism. Such conclusions are typical of other research studying our ability to predict future criminality.

One question that may be raised is what will the Commission do if this legislation passes. We are currently in the process of reviewing and revising the guidelines. The passage of this bill will make this reassessment even more important. One area that I anticipate the Commission giving careful attention to is sentences for violent offenders. I expect that the guideline sentences for murder, rape, involuntary deviate sexual intercourse, spousal sexual assault, aggravated indecent assault, robbery and other violent offenses would be carefully revised and the sentences for many of these offenses increased. It must be remembered that when the Commission wrote the guidelines for these offenses, it was restricted to setting minimums no greater than one-half the maximum which for felony 1s is ten years. Under the most serious situations, I would expect that the Commission will increase the severity of the guideline recommendations. In fact, a recent study conducted by the Commission indicated that Pennsylvania's guidelines tended to be less harsh on violent offenders than the guidelines in Minnesota and Washington and more severe for property offenders. On this basis alone, I would recommend that the Commission review its current recommendations for violent offenders. In order to conduct such a review, we request that the effective date of the sentencing components of the bill provide the Commission at least one year to conduct such a review before the Act goes into effect.

On behalf of the Commission and myself, thank you for the opportunity to share our views regarding this legislation with you. I would be pleased to answer any questions.