



THE PENNSYLVANIA PRISON SOCIETY

FOUNDED 1787

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Testimony before the Pennsylvania House Judiciary Committee on

HB 239-Sentencing Reform

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Ann Schwartzman

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My name is Ann Schwartzman, and I am the Associate Executive Director of the Pennsylvania Prison Society. The Prison Society appreciates the opportunity to testify today on HB 239 (PN 247) regarding sentencing reform.

The Prison Society, founded in 1787, monitors conditions in Pennsylvania prisons and jails and advocates for a more humane, just, and constructive correctional and criminal justice system.

For two centuries, we have been and remain concerned about the prisoner population these days, 90 percent of which will be released and will return to our neighborhoods. We are concerned about how corrections policies affect the public and we are concerned with public safety. The corrections system has always faced problems, but today these problems are more difficult to solve than ever before.

Nationally, the United States incarcerates more men and women than any other industrialized nation, even surpassing the Soviet Union and South Africa. In 1989, over 1.8 American adults were incarcerated in federal and state prisons while 4.1 million were under probation or parole supervision. At that time, one out of every 46 adults in the United States was under some form of correctional control; 1 out of every 25 men and 1 out of every 173 women were being supervised.

Pennsylvania shares this overcrowding and over incarceration problem with the rest of the nation. The state prisons, currently at 157 percent of capacity, now house nearly 22,500 men and women, and projections indicate we will reach a total of between 25,000 and 27,000 inmates by the end of 1993. In spite of the current construction of four new prison facilities, modular units, and the remodeling of Alliance College in northwestern Pennsylvania for a women's prison, the state's prison population will continue to surpass capacity by the thousands.

Given the seriousness and the complexity of the problems facing corrections today, we are encouraged that an overall comprehensive approach to these problems is offered in the Sentencing Reform Bill, HB 239. But we find ourselves in a dilemma. Although for years we have advocated for systemic change in the criminal justice system, in terms of this current effort to offer such an approach, we have some serious concerns.

First, the Prison Society has been a strong advocate in support of earned time--meaningful earned time. Along with others, we have testified before this committee previously on the merits of such a system.

Forty-four states, the Federal Bureau of Prisons, the District of Columbia, and 22 Pennsylvania counties use some form of earned time. The range of time credits is spread between 4.5 days per month in the Federal Bureau of Prisons to 75 days per month in Alabama. Credits earned apply to the prisoner's parole eligibility date in 19 systems and to the discharge date in 35 systems. Earned time credit systems were increased in Alaska, South Dakota, District of Columbia, Ohio, and California, while "Truth in Sentencing" laws were enacted in some states such as Delaware and New Hampshire to decrease the amount of time off. According to a survey conducted by Su Perk Davis for Corrections Compendium, May 1990, 36 states commented that earned time encouraged good behavior and that they used it as an effective management tool.

A copy of this survey, entitled "Good Time Credits for Inmates," conducted by Corrections Compendium, May 1990 is included as Appendix A.

Earned time, as listed and described in HB 239, is a step in the right direction, but it does not go far enough. The model proposed is too limited to provide the needed correctional tools to staff; it is too limited to provide necessary incentives to inmates to behave, and it is too limited to provide for

any real savings to the Commonwealth in both scarce prison space and in scarce budgetary dollars. HB 239 excludes a large and growing percentage of the inmate population from earning credits. At least 10% of the inmate population received mandatory sentences in 1989. Add to that 2,100 lifers (another 10% of the state inmate population) and 3,567 parole violators--and at least one-third of the inmate population is ineligible.

Regarding mandatory sentences, J. Michael Quinlan, Director of the Federal Bureau of Prisons, stated in an interview in the Third Branch, December 1990,

"I might add that mandatory minimum sentencing in the absence of parole, and with limited good time discretion, poses tremendous challenges for our field administrators, as they deal with inmates who now have very lengthy sentences and greatly reduced hopes for having those sentences ameliorated through traditional parole and good time opportunities."

(He also pointed out that 85 percent of the increase in inmate population growth is due to mandatory minimums, while 15 percent is a result of sentencing guidelines.)

It is important to remember that one-third of the prisoner population at SCI-Camp Hill was idle before the riot there in 1989. Programs, treatment, and work tasks as well as other activities are vital for a stable prison environment. Warehousing prisoners--keeping people locked up without anything to do fails to prepare anyone for the day of release back into the community. At least 70 percent of the inmate population nationwide has some form of addiction. In the past decade, the number of drug offenders in the state system jumped 530 percent

and 482 percent in the county jails, according to the March 1990 Pennsylvania Commission on Crime and Delinquency Report. Treatment is essential to combat this escalating problem. Treatment should be available to prisoners as well as in the community when an offender is released. To coerce prisoners into participating in programs is not an answer, but programs must be provided for those who want to make use of them.

We would suggest that the lack of activities inside the fifteen state facilities (and soon to be twenty facilities) is a potentially dangerous situation and that funding should be provided for meaningful programs, non-antiquated jobs, and intensive treatment. Until program levels meet the demand, earned time credits should be awarded for behavior--simply for learning to accept the societal norms and rules of prison life.

The number of credits awarded has been a controversial issue for years. We would suggest the credit rating be reversed--4 days for work and 1 day for programs due to the lack of adequate programs. Further, the number of days lost for misconduct should be altered for Class I or Class II misconduct to differentiate between the levels of infractions.

There is also potential confusion for prisoners serving state sentences in county jails. HB 239 states that earned time as an incentive for prisoners serving a maximum of two years or more, but does that include state prisoners in county jails with maximums of two or more years? At least 22 Pennsylvania counties now employ some form of earned time. A unified earned time program between the state prisons and county jails would be beneficial in sentencing and would help serve to clarify the nuances of the criminal justice system. Sentencing reform should include consideration and involvement of county prisoners as well as state prisoners.

In order to further determine the impact of earned time on the system, it is critical to assess the program as it develops. Reports including the fiscal impact, credits awarded and lost, and the impact on population such as that proposed in HB 239 are necessary in future plans and projections. We would support a projected earned time impact statement to accompany this bill as it is considered over the course of the 1991-92 legislative session.

In addition, we would suggest an amendment to HB 239 providing for impact statements on any and all legislation under consideration by the General Assembly that could impact on the criminal justice system. (Similar legislation was introduced last session in both the House and the Senate.)

HB 239 provides for minimum sentences which could exceed one-half the maximum sentence. This potential increase in sentence length would add to the overcrowding situation and exacerbate the continued problem of space, dollars, and safety. In July 1989, the Pennsylvania Commission on Crime and Delinquency (PCCD) did projections on earned time legislation and also calculated the potential impact of the repeal of the statute limiting the length of the minimum sentence to no more than one-half the maximum sentence. The projection, showed an increase in the prison population of 605 offenders in the first 5 years and 1,114 in the next 5 years. The potential, then in 10 years is the need for an additional state correctional facility at a cost of \$85 million or more.

According to an editorial in the May 18, 1990 Seattle Times, there was a trend in the state of Washington to sentence offenders to harsher punishment for certain flagrant offenses and for sentencing judges to impose increasingly long prison terms "well beyond the guidelines set out in Washington's Sentencing Reform Act." The editorial also suggested that sentences were lower for other crimes. The point is, however, that going outside of the guidelines can and does

happen. This means that in spite of setting up sentencing guidelines, there is no guarantee they will always be followed.

In Minnesota, the lengths of sentenced prisoners increased with the adoption of the guidelines in the late 1970's, according to the National Conference of State Legislatures in a 1989 report State Legislatures and Corrections Policies: An Overview; Criminal Justice Paper #2. The report also suggests that prosecutors in both Minnesota and Washington changed plea bargaining and charging practices to attempt to circumvent the guidelines-- and with some success.

Judges setting longer sentences would be responsible for documenting rationale as to why they went outside of the guidelines. Although it is unlikely, leaving the door open for a potential increase in sentencing and thus increase in prison population is far too risky. The repeal of 42 PA C.S. Section 9755 (b), 9756 (b), 9756 (c) and 9757 statute should be amended out and the statute providing for the minimum sentence to up to one-half the maximum should be retained. If not, this provision could negate any positive affect on overcrowding that earned time and other provisions may impose.

The Prison Society is debating the proposal in HB 239 providing for the release of authority to shift from Parole to Corrections. This critical alteration impacts on the remaining provisions of HB 239. At this point, we have generated a number of questions that may serve as an outline or guide to our concerns. A sample of these include:

1. Will a system of checks and balances be maintained?
2. Will community supervision and treatment receive necessary and adequate funding so as to work with ex-offenders and continue to help them secure employment

and stay out of prison?

3. Will inmates receive adequate due process in appealing decisions made by corrections to prevent their minimum sentence release date?

4. Does this shift signify a major step in "warehouse only" imprisonment? Is programming and treatment forfeited?

5. Who will pay for drug tests and service fees if inmates are indigent? Will we be sending these "technical" violators to a debtors' prison next?

6. What will be the impact on population and costs when we have a two-tiered program for those inmates sentenced prior to the sentencing reform act and those sentenced after it was enacted? How have other states addressed this period of transition?

7. What are other "truth in sentencing" states experiencing years after enactment of policy changes? Do we have impact statistics to compare? Is there any affect on recidivism and public safety?

8. Although we feel that inmates should not be penalized for being unable to secure a home or job plan, it is important to assist offenders in providing stabilized support. Will this proposal release offenders with no opportunity for assistance? Will we be diminishing an offender's chance for success on the outside?

9. Is there any opportunity for community involvement in Advisory Committees to the Department as well as for Probation?

10. Will there be a mechanism to include intermediate punishments in sentencing reform and to unify the new

structure with county jail systems and long sentenced prisoners?

The need for sentences to be unified with plans for the capacity of the criminal justice system is clear. What still needs to be explored further is the best solution.

In the state of Washington where a sentencing reform act has been in effect since 1984, the release of inmates through carefully supervised work-release and job placement programs is not as effective as originally planned. Work release was an important transitional reform but fewer than half of the inmates did as much as six months in work release according to the May 18, 1990 Seattle Times.

Larry Fehr the Executive Director of the Washington Council on Crime and Delinquency is quoted in that article as saying that for most prisoners "they get some gate money and a bus ticket back home, and that's pretty much it." Support services for released offenders are minimal at best. In late December 1987, the Washington Council on Crime and Delinquency requested a reinstatement of short term supervision for prisoners upon their release from prison.

Community support and involvement is critical and should be an important aspect of any policy change in the criminal justice system.

Washington and Minnesota, are often cited as being model criminal justice systems where structured sentencing laws have helped to ease prison overcrowding. Minnesota was the first state to use a commission to develop sentencing guidelines. Both Washington and Minnesota demonstrate that sentencing guidelines systems changed sentencing patterns in their states and provided for necessary future planning of prisoner populations. Initially, the prison population was reduced in Washington under the guidelines, but numbers are beginning to increase. In July 1988, the Seattle Times reported that Commissioner of

Corrections, Chase Riveland, was examining the possibility of increasing by more than double the prison population at McNeil Island Correctional Facility, from 800 to 1,800.

Washington State Penitentiary, according to a May 20, 1990, New York Times article, "State Prisons Continue to Bulge, Overwhelming Efforts at Reform" was prepared to increase its cell capacity from one or two to four to house 700 inmates beyond the prison's capacity of 1,800, unless seven new prisons open by July 1991. Washington, like Pennsylvania and other states is increasing its prison capacity to accommodate increased numbers. One Washington state senator, Leo Thorsness (R-Seattle), is concerned over predictions that the state prison population is expected to increase from 7,600 currently (January 1991) to 12,500 in 1995, and he is now advocating for drug treatment facilities and other alternatives to building prisons. The reasons for this projected increase are more mandatory sentences, larger prison terms, and more drug convictions. County officials in Washington also attribute the Sentencing Reform Act and the increase in the number of non-violent felony crimes, such as drug dealing, with increasing population, especially in the county jails.

Marilyn Bell, a consultant to the Sentencing Guidelines Commission in Washington, reporting on a study she conducted, concluded that the increase in felonies by nearly 50 percent from 1982 to 1988 is the main reason for increases in county jail populations. The study also suggested that sentencing disparity, one of the goals of the Sentencing Reform Act, was continuing. Inconsistencies in length of sentence, for example, reflect differences in earned time policies of local jails. Another reform, the increased use of alternatives, is not being utilized much, and there is evidence that there is a greater disposition these days to send people to jail or state prison instead. Bell's study states "the

percentage of felons sentenced to a community sanction only--that is, not sentenced to any jail or prison time--decreased from 25 percent of all felonies to 7 percent between 1982 and 1988.

Carl Maxey, a civil right attorney in Spokane, Washington, claims that the sentencing guidelines help perpetuate racism in the criminal justice system. According to him, the Sentencing Reform Act serves to reduce the judges' discretion, yet exceptions to the guidelines exist and are used, thus adding to the disparity of sentences between whites and non-whites.

We would urge the Committee to examine experiences in other states, to focus on the impact of sentencing reform on prison population, fiscal concerns, and public safety factors. In addition, we would recommend the introduction of intermediate punishments on the state level for appropriate offenders as was recently instituted in Pennsylvania for county offenders.

Further consideration should be given to an emergency powers act, such as that utilized in Michigan, Arkansas, Connecticut, Florida, Georgia, Oklahoma, Ohio, and Tennessee. The emergency powers act generally operates when a certain percentage over prison capacity triggers early release of certain offenders. This short term remedy may in fact alleviate the current overcrowding problem, but it will not impact on long term problems. It may, however, serve as an interim answer while more long term options are debated.

The overuse of incarceration cannot continue unhalting. The cost is too great, both in dollars that are not going to education, child care, senior citizens, housing and medical care and in lost human potential. The criminal justice system has been a dumping ground for society's ills far too long--the mentally ill, the disenfranchised, the homeless, the poor, and the addicted are

often incarcerated not as a last resort, but as the ONLY resort. The system is not equipped to handle these cases, nor can it afford to do so.

We may have issues of concern regarding HB 239, but we are pleased that the legislature is engaging in a comprehensive exploration into the corrections system. We encourage you to continue that process of exploration.