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COMMONWEALTH OF PENNSYLVANIA  
THE PENNSYLVANIA COMMISSION ON SENTENCING

**PUBLIC HEARING ON HB 2329 [PN 3017]**

**House Judiciary Committee**  
**Subcommittee on Crime and Corrections**  
**August 21, 1996**

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Good morning Chairman Birmelin and members of the House Subcommittee on Crime and Corrections. Thank you for providing the Commission on Sentencing this opportunity to offer testimony regarding HB 2329 [PN 3017] dealing with an amendment to Section 9721 of Title 42. The proposal before this committee would permit the court to consider and select one or more of the sentencing alternatives, and impose them partially consecutively and partially concurrently.

My first reaction to HB 2329 is, admittedly, confusion. What is a “partially consecutive and partially concurrent” sentence? How would such a sentence be implemented within our current sentencing scheme? What purpose would such a sentence serve? Does the proposed amendment achieve the outcome(s) sought? What is the potential for unanticipated negative consequences? As I considered these questions, I recalled the advise that Hippocrates imparted to physicians: “As to diseases make a habit of two things-- to help, or at least, to do no harm.” I think that his words are just as relevant as you consider legislation. Will HB 2329 help to correct some problem in the sentencing code? And perhaps more importantly, will it do no harm?

In order to begin to answer these questions, I considered the Judicial Code (Title 42) and relevant appellate court decisions, and in particular the case of Com. v. Ward (524 Pa. 48, 568 A.2d 1242 (1990)) (369 Pa.Super. 94, 534 A.2d 1095 (1987)). In this case, the defendant was convicted of robbery and burglary in the Adams County Court of Common Pleas. Following an initial remand relating to the statutory maximum, the court sentenced the defendant to 2 ½ years - 10 years on the robbery conviction and 2 ½ years - 12 ½ years on the burglary conviction. The court directed that the minimum sentences be served consecutively and that the maximum sentences be served concurrently, resulting in a total sentence of 5 years - 12 ½ years.

On appeal, the Superior Court characterized this as a partially concurrent-partially consecutive sentence. Relying on its earlier interpretation of 42 Pa.C.S. §9757 which required aggregation of consecutive sentences as a matter of law, the Superior Court concluded that the

trial court had abused its discretion by attempting to impose non-aggregating consecutive sentences. The court held that such a sentence was not legal, it being neither a consecutive sentence nor a concurrent sentence.

HB 2329 would create a sentencing hybrid to fill the void suggested in Ward between a consecutive sentence and a concurrent sentence, and arguably address the concerns raised by the Superior Court. This “partially consecutive and partially concurrent” sentence might be particularly useful to a judge sentencing an offender currently incarcerated on another offense. Under this amendment, the court could extend the minimum sentence being served while preserving the original maximum sentence, an option not always possible under current statute. It would also be useful when combining a short period of total confinement with an intermediate punishment sentence. The amendment might also provide the court with greater flexibility in determining place of confinement, parole eligibility and jurisdiction to grant parole. However, the fundamental question before you today should be: does the amendment which would provide these benefits undermine our present sentencing system?

The sentencing scheme in Pennsylvania, as related to incarceration, requires an offender to be supervised on parole for a period of time equal to or greater than the period of incarceration. This post-release supervision period, a built-in safeguard for communities, provides the offender with a structured transition back into society while at the same time creating a mechanism for the collection of restitution, fines and costs. During this parole period, the offender may be required to participate drug and alcohol treatment, employment development, and other rehabilitative programs. In addition, for any case in which consecutive sentences of total confinement are imposed for multiple sentences, 42 Pa.C.S. §9757 requires the court to indicate the minimum sentence to be served for the total of all offenses, which shall not exceed one-half of the maximum sentence. Recently, the Supreme Court upheld previous decisions by the Superior Court which interpret §9757 as mandating an aggregation of both the minimum and maximum of consecutive sentences of total confinement for multiple offenses (*Com. v. Tilghman*, 673 A.2d 898, Pa. 1996).

The degree to which this amendment would benefit or undermine the present system is dependant on a number of factors. Would this amendment allow the court to extend the minimum to the point that it exceeds one-half of the maximum sentence, or to the point that the result is a flat sentence? Does this amendment limit the “partially consecutive” portion to the minimum sentence and the “partially concurrent” portion to the maximum sentence? Is a “partially consecutive and partially concurrent” sentence subject to the provisions of §9757, created to eliminate the practice of constructive parole and to require a minimum sentence which does not exceed one-half of the maximum sentence?

Assuming arguendo that the safeguards of §9757 would apply to “partially consecutive and partially concurrent” sentences, I am nonetheless concerned that this amendment would further complicate an already difficult process of determining credit for time served (42 Pa.C.S. §9760) and computation and order of service of sentences (42 Pa.C.S. §9761). The fact that the amendment would apply as well to the other sentencing alternatives, particularly probation and intermediate punishment, only compounds the problem.

This hearing today provides an excellent opportunity for the subcommittee to consider modifications to the Judicial Code which could improve the quality of sentencing in the Commonwealth. HB 2329 suggests one such amendment which would significantly alter the status quo, providing courts with greater flexibility in the crafting of sentences for offenders with multiple convictions. The Commission on Sentencing has attempted unsuccessfully in the past to address this “all or none” impact of the consecutive/concurrent sentencing dichotomy, and so we have an appreciation of the policy benefits of a partially consecutive, partially concurrent sentence. Nonetheless, we also appreciate the unanticipated consequences that may result from major changes in public policies.

For this reason, I would encourage the subcommittee to exercise caution, and use HB 2329 as a vehicle for a more comprehensive modification of the sentencing statutes. How could sentencing be improved in Pennsylvania? Should judges be permitted to sentence violent

violent offenders to a minimum sentence of greater than one-half of the maximum sentence? Should common pleas judges be permitted to sentence offenders to a flat period of incarceration of 90 days, as permitted for summary offenses, when used in conjunction with probation or intermediate punishment? Should the standards for place of confinement, parole eligibility and paroling authority be modified? By carefully studying these and other fundamental issues of sentencing, I believe the subcommittee can draft legislation that is both responsive to immediate needs within Pennsylvania's criminal justice system, and that provides a framework for long term policies supporting a more rational, integrated and purposeful use of correctional resources.

Thank you again for providing us with the opportunity to testify this morning. We would be pleased to answer any questions.