

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

* * * * *

House Bill 1724

* * * * *

House Judiciary Committee
Subcommittee on Crime and Corrections

Room 205
Capitol Annex
Harrisburg, Pennsylvania

Wednesday, September 22, 1999 - 9:41 a.m.

--oOo--

BEFORE:

Honorable Jerry Birmelin, Majority Chairperson
Honorable Craig Dally
Honorable Scot Chadwick
Honorable Stephen Maitland
Honorable Albert Masland
Honorable Harold James, Minority Chairperson
Honorable Peter Daley
Honorable Kathy Manderino
Honorable Dave Mayernik
Honorable Joe Petrarca
Honorable Don Walko

ALSO PRESENT:

Brian Preski, Esquire
Majority Chief Counsel

Judy Sedesse
Majority Administrative Assistant

Mike Rish
Minority Executive Director

LeAnne Bronstein
Minority Research Analyst

C O N T E N T S

WITNESSES

PAGE

Larry Frankel, Executive Director
American Civil Liberties Union
of Pennsylvania

6

1 CHAIRPERSON BIRMELIN: Good morning. We're
2 going to have to operate without the benefit of the PA
3 system. So when members are asked to identify themselves
4 later if they ask any questions, please speak loud enough
5 so our stenographer can hear you.

6 If not, we'll have to stop you and ask you to
7 repeat whatever it is you said. And Mr. Frankel, the same
8 admonition holds true for you, since you're our only
9 witness this morning. This is part two of the Pennsylvania
10 House Judiciary Subcommittee on Crime and Corrections
11 hearing on House Bill 1724.

12 We have with us this morning only one
13 testifier, Larry Frankel, who is the Executive Director of
14 the American Civil Liberties Union of Pennsylvania. And we
15 had some other witnesses that we thought were going to be
16 here today. And for whatever reason, that didn't work out.

17 So I apologize to the members for not having a
18 more full slate of several hours of testimony. I'm sure
19 you're disappointed. But we'll manage to get by with only
20 one testifier today. We did have a good meeting yesterday,
21 for those of you that were not here.

22 We heard from several different people and had
23 some good comments and good direction on some amendments
24 that we think ought to be offered to this legislation which
25 we will be hopefully voting on next week in the scheduled

1 Judiciary Committee meeting.

2 Those of you who have looked at your calendar
3 know that it is on the calendar next week to be voted on so
4 that we will hopefully be able to amend it and vote it out
5 of committee next week and then, according to the dictates
6 of our Republican leadership, sometime on the House floor
7 in the next few weeks.

8 We're going to ask you to introduce
9 yourselves, those of you who are members of the Judiciary
10 Committee. And I'll start with Representative Walko.

11 REPRESENTATIVE WALKO: I'm State
12 Representative Don Walko of Allegheny County, City of
13 Pittsburgh.

14 REPRESENTATIVE MANDERINO: Kathy Manderino,
15 Philadelphia County.

16 REPRESENTATIVE CHADWICK: Scot Chadwick,
17 Bradford and Susquehanna Counties.

18 REPRESENTATIVE JAMES: Harold James,
19 Democratic Chairman of the Subcommittee on Crime and
20 Corrections. I'm from 186th District in Philadelphia.

21 REPRESENTATIVE DALLY: Craig Dally,
22 Northampton and Monroe Counties.

23 CHAIRPERSON BIRMELIN: Still playing with the
24 sound system is Brian Preski, Chief Counsel. And I think I
25 forgot to mention that my name is Representative Birmelin

1 and I chair the Subcommittee. And my Democratic
2 counterpart to my right is Representative Harold James,
3 who's Chairman of the Subcommittee on the Democratic side
4 as well.

5 Mr. Frankel, we want to thank you for coming
6 here this morning and ask you, if you're prepared to do so,
7 to share your testimony with us at this time.

8 MR. FRANKEL: Thank you very much, Chairman
9 Birmelin. And I guess I feel honored that all of you came
10 here to listen to just me. Although --

11 CHAIRPERSON BIRMELIN: I'm not sure they all
12 knew that it was just you. I did, but I'm not sure about
13 everybody else.

14 MR. FRANKEL: Well, don't hold it against me
15 that if you came all the way to Harrisburg today and I'm
16 your only witness. That's all I would ask. I want to
17 thank you for inviting the ACLU to testify on the issue of
18 community reparative boards.

19 The ACLU believes that there are various ways
20 to sanction a person who commits a criminal act.
21 Deprivation of an individual's physical freedom through
22 incarceration is one of the most severe interferences with
23 liberty that the government can impose.

24 Moreover, in many instances, imprisonment may
25 be too harsh and all too often counterproductive. For

1 these reasons, the ACLU favors the use of fines or
2 restitution in lieu of incarceration for nonviolent
3 offenses. Thus, we are encouraged to see that you are
4 considering community reparative boards as an alternative
5 to traditional sentencing.

6 We think that community reparative boards can
7 fit into a comprehensive system of intermediate punishment
8 that provides more justice for the victims of crime and
9 more opportunities for rehabilitation for criminal
10 defendants.

11 We support House Bill 1724 because it will
12 allow for a consideration of the individual circumstances
13 of the defendant and the specific facts of the incident.
14 Unlike mandatory sentences, a system of reparative
15 probation can permit the community to design a punishment
16 that fits the crime.

17 The victim and the community will have more
18 opportunities to express what they want from the criminal
19 justice system, and defendants will be given more
20 opportunities to make meaningful amends for the harms they
21 have caused.

22 While we support House Bill 1724, I would like
23 to address a couple of concerns that we do have. The first
24 concern is that eligibility for participation in the
25 community reparative disposition program is limited to

1 those charged with crimes graded as a misdemeanor of the
2 third degree or a summary offense.

3 We think that participation in the program
4 should not be so limited. We understand it's a new concept
5 for the Commonwealth and it may take several years to
6 implement it. We hope that once the program proves
7 successful, consideration will be given to expanding the
8 eligibility criteria so that more offenders and more
9 communities can benefit from the program.

10 And from what I understand -- although, I did
11 not visit in Vermont as some of you did -- but in Vermont,
12 it is open to a wider spectrum of defendants and not as
13 limited as it is here. Not suggesting today that you amend
14 the bill immediately; but I hope that in the future if it
15 does prove successful, that consideration will be given to
16 a larger pool of individuals.

17 Our second concern goes to the question of
18 whether House Bill 1724, as drafted, is too specific when
19 it comes to detailing court proceedings. Section 5 of the
20 bill describes the motion that may be filed and what should
21 be in that motion. It also describes what should be in the
22 order of the court.

23 Section 7 discusses what should happen at the
24 court hearing on the motion filed under Section 5. Section
25 11 sets forth in considerable detail how the court shall

1 proceed if an offender is alleged to have violated any
2 condition of the program.

3 We have some fear that if this bill is enacted
4 as drafted, the Pennsylvania Supreme Court might find it to
5 be an unconstitutional interference with its authority
6 under Article V, Section 10. The ACLU believes that an
7 independent judiciary is vital to protecting the liberties
8 and freedoms of all Pennsylvanians.

9 We think the Supreme Court is in a better
10 position to promulgate the rules affecting specific court
11 proceedings. We do not agree with those who have harshly
12 criticized various decisions by the Supreme Court that
13 found the General Assembly had encroached on the power of
14 the judicial branch when the legislature attempted to enact
15 specific procedures for the courts.

16 In fact, we think that the principle of
17 separation of powers has served the citizens of this
18 Commonwealth and the United States of America very well.
19 Again, we support the concept of community reparative
20 boards. We would not want to see the implementation of the
21 program delayed because the Supreme Court determined that
22 the General Assembly had gone too far in detailing the
23 exact procedures to be used in the community reparative
24 disposition program.

25 While we are not predicting that the court

1 would declare this law to be unconstitutional, we would not
2 like to see such an unfortunate result. Therefore, we
3 suggest that Sections 5, 7, and 11 be reviewed and modified
4 so that they do not appear to run afoul of Article V,
5 Section 10 of the Pennsylvania Constitution.

6 I understand that yesterday several of the
7 witnesses pointed out that the agency was incorrectly
8 named. I too -- I guess I passed the test. I read the
9 bill and saw it was incorrectly named, too. And I'm sure
10 that's one of the amendments that will be taken care of.
11 So I will not beat that horse.

12 In any event, the ACLU looks forward to the
13 creation and successful implementation of the community
14 reparative disposition program. We are encouraged by your
15 willingness to consider more alternatives to incarceration
16 and more opportunities for rehabilitation.

17 Thank you again for asking us to testify, and
18 I will be happy to try to answer any questions you may
19 have.

20 CHAIRPERSON BIRMELIN: Thank you, Mr. Frankel.
21 Let me address the two areas of concern that you have at
22 least from my perspective. First, the participation of
23 those in the program is limited somewhat, I guess, at
24 first. But that's for a couple of what I believe are good
25 reasons.

1 Number one, it is a new program. And I don't
2 think you want to risk political opposition to it when
3 you're just trying to get it off the ground. And inclusion
4 of other groups may be appropriate at a later time if the
5 program is successful.

6 And as I explained to many of those who were
7 testifying yesterday, we're looking at, if this becomes
8 law, trying to fund some pilot projects in the state for a
9 period of three or four years, getting a good handle on how
10 it's doing, and then make recommendations to expand or to
11 drop the program if it doesn't work. But that's one of the
12 things that we will have to consider sometime down the
13 road.

14 Second is also a legitimate consideration; and
15 that is, How is the Supreme Court going to react to the
16 specifics of what we're doing? It is our sense from people
17 that we've talked with and those who understand or at least
18 think they understand how the Supreme Court operates -- I'm
19 not sure anybody does -- but that there may be some
20 attempts or some consideration on their part to consider it
21 an unconstitutional interference, as you described it.

22 But the bulk of those that we've talked with
23 don't think it will be. Again, there's not a -- it's not a
24 finite thing that you can sometimes pin down exactly. So
25 your comments are well-advised. And we're aware that that

1 particular problem may arise.

2 MR. FRANKEL: I'm glad that you thought about
3 this before I got here today. And I'm not predicting that
4 they would. I just hope that as you're amending the bill,
5 if there's areas where you really don't need to specify the
6 procedure that explicitly, maybe take it out so that they
7 don't get upset.

8 CHAIRPERSON BIRMELIN: And we're going to look
9 carefully at that to see if that is necessary to keep it
10 in. And if not, we may downscale it a little bit. I'm
11 going to give the rest of the members of the panel an
12 opportunity to ask questions. So we'll start with
13 Representative Walko. Do you have any questions?

14 REPRESENTATIVE WALKO: No.

15 CHAIRPERSON BIRMELIN: Representative
16 Manderino?

17 REPRESENTATIVE MANDERINO: Mr. Frankel, one of
18 the suggestions that was made yesterday for modification of
19 the bill, which I think was a good idea, dealt with the
20 area of victim input and victim involvement. And as the
21 bill's written now, I think there was provisions for the
22 victim to appear.

23 And the victim advocate for Pennsylvania, when
24 she testified, had suggested that we broaden that and also
25 allow victims to, you know, if they can't appear or they

1 don't want to appear but they want to send a written
2 statement saying how the crime has impacted on them and
3 what -- what kind of restitution or reparations would
4 satisfy them, that they be allowed to do that.

5 I know that you were supportive when we added
6 in the law the whole issue of a victim impact statement at
7 the time of sentencing. So I'm going to assume, but I
8 wanted to know whether or not the ACLU would have a problem
9 with expanding the victim impact notion in this reparation
10 board concept?

11 MR. FRANKEL: I think that the involvement of
12 the victim where there is an individual victim as opposed
13 to the community where the, quote/unquote, victimless crime
14 would probably be very helpful in promoting the sense that
15 this is about rehabilitation, reparation, restitution and
16 that the victim should have some impact, should not have
17 control, obviously, of the process; but their input could
18 be had.

19 And I don't see a problem with coming in the
20 form of a written statement. This is not a court
21 proceeding. It's informal. I don't think this hearsay
22 will apply. I do have to, with all due respect, correct
23 you about one thing.

24 There was at least one bill regarding victim
25 impact statements which we oppose which would have

1 permitted them to be used in the sentencing proceeding in a
2 capital case, a bill that would permit victims to -- the
3 survivors to testify.

4 So we're not consistently in favor of it. But
5 I think given what this program is attempting to do and the
6 principles that underlie the program, I think that that
7 would be a useful and helpful amendment.

8 REPRESENTATIVE MANDERINO: Thank you.

9 CHAIRPERSON BIRMELIN: Representative James.

10 REPRESENTATIVE JAMES: Thank you. And thank
11 you, Larry, for testifying. You had mentioned something,
12 and I heard the Chairman's explanation. I just wanted to
13 see if you can think of any -- when you talk about programs
14 should not be so limited as it relates to misdemeanors of
15 the third, can you think of any misdemeanors, second or
16 one, that you think make a fit in the program?

17 MR. FRANKEL: I can't think specifically at
18 this point. But especially where the grading is based on
19 the amount of the damage, then maybe -- especially if the
20 victim is more concerned about restitution than anything
21 else, you may want to include it with that kind of an
22 expansiveness.

23 You know, I think that the Chairman was
24 correct in stating for political reasons at this point
25 should probably start with misdemeanors of the third degree

1 and summary offenses, see how that goes. And I think you
2 need to probably keep it within the area of property damage
3 as opposed to personal injury in terms of looking further.

4 And there may be other things that have now
5 been graded M-2, M-1 which there can be some consensus
6 around, well, you know, that was meant to send a message
7 rather than any sense that the harm that's been caused has
8 become that much greater. Those could be looked at as
9 well. But I don't have specific ones in mind.

10 REPRESENTATIVE JAMES: Thank you. And thank
11 you, Mr. Chairman.

12 CHAIRPERSON BIRMELIN: We've also been joined
13 by two other members. Representative Masland is here from
14 Cumberland County and Representative Petrarca from
15 Westmoreland County. Do either of you gentlemen have a
16 question for Mr. Frankel?

17 (No response.)

18 CHAIRPERSON BIRMELIN: There being no further
19 questions, Mr. Frankel, we want to thank you for coming
20 today. We appreciate your willingness to share with us on
21 this. And as you may have heard earlier, the committee is
22 going to be amending this bill and hopefully voting next
23 week, if not the week after, and look forward to your
24 continued input on this legislation.

25 MR. FRANKEL: Thank you very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

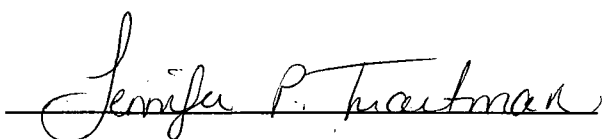
CHAIRPERSON BIRMELIN: Mr. Frankel is our only witness today. So as of now, our committee meeting is adjourned.

(Whereupon, at 9:56 a.m., the hearing adjourned.)

* * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause and that this is a true and correct transcript of the same.



JENNIFER P. TROUTMAN

Registered Professional Reporter

My Commission Expires:
April 30, 2001

JENNIFER P. TROUTMAN, RPR
P.O. Box 1383
2nd & W. Norwegian Streets
Pottsville, Pennsylvania 17901