

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE HEARING

STATE CAPITOL
MAJORITY CAUCUS ROOM
ROOM 140
HARRISBURG, PENNSYLVANIA

THURSDAY, NOVEMBER 15, 2007, 10:00 A.M.

PRESENTATION ON PRISON REFORM

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, CHAIRMAN
HONORABLE THOMAS C. CREIGHTON
HONORABLE WILLIAM I. GABIG
HONORABLE HAROLD JAMES
HONORABLE KATHY M. MANDERINO
HONORABLE CARL W. MANTZ
HONORABLE RONALD S. MARSICO
HONORABLE BERNARD T. O'NEILL
HONORABLE JOHN E. PALLONE
HONORABLE SEAN M. RAMALEY
HONORABLE KATIE TRUE
HONORABLE DON WALKO
HONORABLE JEWELL WILLIAMS

ALSO PRESENT:

LAURA EVANS
WILLIAM ANDRING

JEAN M. DAVIS, REPORTER
NOTARY PUBLIC

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1 CHAIRMAN CALTAGIRONE: Good morning.

2 If the members of the panel would please
3 identify themselves, we are going to start at the left
4 with Chairman Marsico here, and then we are going to
5 start off with our lead witness, Speaker O'Brien,
6 Dennis O'Brien.

7 I'm Chairman Tom Caltagirone, and to my left
8 is---

9 REPRESENTATIVE MARSICO: Well, good morning,
10 everyone. Representative Ron Marsico, Dauphin County.

11 MS. EVANS: Laura Evans, Judiciary staff.

12 REPRESENTATIVE O'NEILL: Good morning,
13 everyone. I'm Representative Bernie O'Neill from
14 Bucks County.

15 REPRESENTATIVE CREIGHTON: Tom Creighton from
16 Lancaster County.

17 REPRESENTATIVE GABIG: Will Gabig, Cumberland
18 County.

19 REPRESENTATIVE WILLIAMS: Jewell Williams,
20 Philadelphia County.

21 REPRESENTATIVE MANDERINO: Kathy Manderino,
22 representing Philadelphia and Montgomery Counties.

23 MR. ANDRING: Bill Andring, legal counsel.

24 CHAIRMAN CALTAGIRONE: And we'll get started.
25 Mr. Speaker.

1 SPEAKER O'BRIEN: Thank you, Mr. Chairman and
2 members of the committee.

3 I appreciate the opportunity to come here and
4 talk about these important issues, specifically in
5 House Bills 4, 5, and 6, and what I would call a plan
6 to protect the public. This is a long-range,
7 comprehensive approach and something that I would like
8 to refer to as "closing the justice gap."

9 We in the Legislature, and specifically in
10 this committee, are charged with a great
11 responsibility in dealing with the criminal justice
12 system and in all the ancillary parts, and often we
13 are engaged in discussions where we look at these
14 issues in separate silos, and I think what we have to
15 do is create a comprehensive approach.

16 And this is only the first step. I think
17 there has to be significant followup to this
18 conversation so that we can have more inclusive
19 conversations and look at statistical information in a
20 context that makes sense, that matches outnumbers, and
21 assesses the existing laws, whether they are being
22 used or whether they are not being used and whether
23 the component parts all make sense.

24 There is no silver bullet. There is no one
25 piece of legislation that is going to make a

1 difference or solve the problem. In fact, legislation
2 is only one part of the larger solution. We need
3 communities as a whole to get involved, and that
4 includes the schools.

5 And in some of my other conversations, we
6 have looked at challenges that children have. We have
7 a one-size-fits-all educational system where the kids,
8 if they are not able to learn, they are not
9 successful, and if you can't learn to read, you can't
10 read to learn. If you feel bad about yourself when
11 you are in third grade, by the time you are in fifth
12 grade you quit, and you walk out the door when you are
13 in high school.

14 Drug and alcohol specialists. We have had
15 conversations with people around those paradigms,
16 where we have to get the right protocols to make a
17 difference. And this committee has done extraordinary
18 work, and it restricted intermediate and crunched the
19 carrot with Secretary Beard and his staff, and we are
20 going to build on that success, hopefully in this
21 legislation.

22 Law enforcement, prisons and the probation
23 system, employers and community groups: HB 4 is the
24 cornerstone of this approach. We have to remove most
25 dangerous offenders from county jails. Those county

1 jails were never designed to house this level of
2 serious offender, and we have to free up needed space
3 in Philadelphia to pretrial retention and parole
4 violators. We also have to put dangerous criminals in
5 State prisons where they can get help with literacy,
6 drug and alcohol, and GED programs. But this becomes
7 not only a policy issue, but it is an opportunity to
8 save money so we can reinvest in the criminal justice
9 system, whether that is hiring more cops, giving
10 police officers the tools they need to make their job
11 safer and to more efficient in disposition on court
12 cases.

13 Other incentives for inmates to gain skills
14 while they are in prisons: They result in
15 ex-offenders who are less likely to re-offend. They
16 need intensive followup after release. Public safety
17 is paramount, and we have to invest resources in
18 preventing repeat offenses.

19 Successful outcomes are only going to be
20 achieved if we have agencies working together across
21 boundaries. As many of you know, we had four, I
22 think, very comprehensive discussions -- around the
23 criminal justice system, around behavior, around
24 education, and community outreach. The energy that
25 surrounds those conversations is absolutely

1 extraordinary. We have to, as part of this dialogue,
2 celebrate the best practices and what we are doing
3 well in Pennsylvania.

4 I often say that in Philadelphia, we have a
5 homicide number that's very high, and it is very
6 challenging and it is very important to recognize
7 that. But we also have to recognize that we have some
8 of the best programs in Pennsylvania that exist
9 anywhere in the country, and people that are making
10 those programs successful are the infrastructure that
11 we need to continue to make an important part of this
12 dialogue going forward and recognize across those
13 agencies that we have value, and then from that flows
14 the creativity we need to drive these solutions in the
15 future.

16 Resources are precious, and we have to get
17 out of the box in the way that we approach these
18 criminal justice solutions, and I thank this committee
19 for their thoughtful consideration of these pieces of
20 legislation. And rather than take up all your time,
21 because I know I can be a conversationalist and I can
22 go on and on and on, so the best thing I can do with
23 these three pieces of legislation is let the experts
24 that we have consulted tell you how we have gotten to
25 the language and the words that are in these

1 documents.

2 Thank you very much.

3 CHAIRMAN CALTAGIRONE: Are there any
4 questions from the committee?

5 Chairman Marsico.

6 REPRESENTATIVE MARSICO: I just want to make
7 a comment that I thank the Speaker for his leadership
8 with these issues and with these bills. I know that
9 you and I and Chairman Caltagirone met with regard to
10 this package, and I just want to thank you for your
11 direction and your leadership.

12 SPEAKER O'BRIEN: Well, I thank both Chairmen
13 for your willingness to take it out of the box and
14 look at these issues. This is the most comprehensive
15 approach, I think, that we have had in a long time,
16 and it's not because of me; it is because of the
17 people that you are going to hear from in short order.

18 And frankly, this State is totally out of
19 whack with what is going on in other cities, and what
20 this legislation does is bring us up to speed and then
21 draw on the resources and the creativity and the
22 infrastructure, which is the people that can make a
23 difference in this conversation going forward.

24 REPRESENTATIVE MARSICO: Thank you.

25 CHAIRMAN CALTAGIRONE: Representative Gabig.

1 REPRESENTATIVE GABIG: Thank you, Mr.
2 Chairman, and I want to thank you, Mr. Chairman, and
3 Chairman Marsico for your leadership on this committee
4 on this very important issue.

5 The Speaker was the Chairman of this
6 committee for many years. I served as a member, and
7 he has taken a passionate lead on this. I just want
8 to put out the marker, though, that I heard about
9 silos, and we are going to hear more from the experts,
10 but I know the Speaker knows this and we have talked
11 about it, and I know the two Chairmen do. When I
12 first got up here -- I was elected in 2000-2001 -- I
13 used to talk about the importance, and when I still
14 get the chance, and this is an opportunity, of the
15 vital importance that we as a Commonwealth and as a
16 country need to do in restoring strong families --
17 restoring strong families. There's been a destruction
18 in both the urban and the rural areas of the family,
19 and when we hear from Secretary Beard, who will
20 confirm the numbers of the sentenced prisoners in our
21 Commonwealth that come from what are called fatherless
22 families, it's astronomical. I don't know, it's got
23 to be near 80 percent. We will hear from the
24 Secretary on that. So we need to address these
25 issues, and this is a great approach.

1 But the one thing I didn't hear about from
2 the Speaker during his initial remarks, and I know he
3 is committed to this, we can do all this and it will
4 just be putting the fingers in the dike if we turn our
5 back on the underlying issue, which is the need for us
6 to work on maintaining strong families in the
7 different communities throughout Pennsylvania.

8 So I want to thank you very much, Mr.
9 Speaker, for bringing these issues forward.

10 SPEAKER O'BRIEN: Thank you, Representative.

11 I'm going to excuse myself. I just got a
12 message that I have an emergency; I have to go back to
13 Philadelphia. So if there--- I don't want to
14 preclude anybody else from asking questions.

15 CHAIRMAN CALTAGIRONE: Thank you, Mr.
16 Speaker. Thank you for your time.

17 SPEAKER O'BRIEN: Thank you, members of the
18 committee, and Chairman Caltagirone and Chairman
19 Marsico for your willingness to bring these issues to
20 the forefront, and I applaud the other witnesses that
21 you are going to hear from today. This has been a
22 5-year journey to get to this conversation, and the
23 willingness to take down those barriers and to look
24 into and across agency discussion at a multilevel
25 conversation from the Federal government and the State

1 government and the local government is absolutely
2 extraordinary and they should be applauded.

3 Thank you.

4 CHAIRMAN CALTAGIRONE: Thank you.

5 Secretary Beard, from the Department of
6 Corrections.

7 SECRETARY BEARD: Good morning, Mr.

8 Chairman---

9 CHAIRMAN CALTAGIRONE: Good morning.

10 SECRETARY BEARD: ---and members of the
11 Judiciary.

12 I'm very pleased to be here today and to have
13 an opportunity to discuss some proposed legislation
14 which I believe will make Pennsylvania safer, and it
15 will also aid in the slowing of the rapidly rising
16 costs of our prison system.

17 This legislation, or at least parts of this
18 legislation, grew out of an analysis of the growth of
19 our inmate population. Prior to 2005, the growth was
20 relatively flat, and we thought it was going to stay
21 flat, but in 2005, we grew by about 123 inmates a
22 month. In 2006, that accelerated to 160 inmates a
23 month, and for the first 6 months of this year, we
24 grew at the rate of 186 inmates a month. Projections
25 currently indicate that the average monthly growth for

1 the next 4 years will be 170 a month, which means that
2 we will be adding approximately 2,000 inmates to the
3 prison system each and every year, and that is on top
4 of, we are just about 50 inmates this morning short of
5 46,000.

6 So with that, in fact I do want to call your
7 attention to a chart that was in the handout that I
8 had here that shows the dramatic growth of the inmate
9 population and the costs, and the one thing that is
10 most dramatic -- it's behind the testimony -- the one
11 thing that is most dramatic on there is if you look
12 back in 1980, the cost to run our prison system was
13 less than \$100 million, and then last year it was \$1.4
14 billion. So over 14 times growth in the cost of
15 running the prison system in Pennsylvania.

16 So what is the consequences of what is going
17 on right now? Well, to maintain safe operating
18 capacity, we are going to have to add up to 12,000 new
19 beds through 2012. The cost of those 12,000 beds will
20 be over \$672 million in capital expenditure and an
21 increase in the annual operating costs of about \$180
22 million, and that, of course, is in today's dollars,
23 and this year, actually, we are spending \$1.6 billion,
24 so over 16 times what we were in 1980. And that
25 additional \$180 million that we will add over the next

1 5 years doesn't include contractual increases and all
2 those other things that you get, so you can see that
3 by the time we get to 2012, we will be spending
4 probably well over \$2 billion to run the prison
5 system.

6 But despite all of this expenditure, if the
7 projections are accurate, we are going to be out of
8 debt by 2012, and we are going to need to construct a
9 prison a year from 2012 on at a cost of \$200 million
10 in capital money and an additional \$50 million in
11 operating costs each and every year for each prison.
12 This is money that could obviously be best spent
13 better elsewhere -- education, the elderly, health
14 care for children. I'm sure that each of you know
15 better than I, because you go through the challenges
16 of deciding our budget each year and have to make some
17 really tough choices.

18 So who is driving the growth of the prison
19 population? Well, it's the less serious offender;
20 it's the property and drug offender that is driving
21 the growth and has been driving the growth now for
22 quite some time. Over the last 6 years, we have seen
23 a 55-percent increase in admissions for the part 2
24 offenders, the less-than-serious property and drug
25 offenders, but for the part 1 offenders -- the

1 murderers, the rapists, the people we traditionally
2 think about when we think about our prison system --
3 we have only seen a 2-percent increase. So they
4 clearly are not driving the growth.

5 We have also found that from a public safety
6 perspective, we are not being effective with these
7 less serious offenders because they have some of the
8 highest rates of return to our prison system, and this
9 shouldn't really surprise us, because the research
10 tells us a number of things in this regard. One of
11 the things it tells us is that it is the certainty of
12 the punishment that is important, not so much the
13 severity. So it is not so much how long we keep
14 somebody locked up but the fact that something occurs
15 to them.

16 The second thing it tells us is that
17 confinement alone is not effective in reducing
18 recidivism, so if we just lock people up and don't do
19 anything with them, they are going to be coming back.
20 And then in fact what we have to do while we have them
21 with us is address what we call the criminogenic
22 factors that brought them to the prison, and the
23 biggest ones are drug and alcohol abuse, and some 70
24 percent of our inmates have problems with drug or
25 alcohol abuse. And if those things aren't addressed

1 while they are with us, they are going to come back to
2 us.

3 We also learned over the years that
4 treatment, if done correctly, can be effective, and
5 some programs, some good programs, have reduced
6 recidivism by as much as 25 to 40 percent, and in fact
7 the State Intermediate Punishment Program was
8 developed on programs around the country that in fact
9 do that.

10 So what have we done to take a look at maybe
11 something different that we could do here is we began
12 looking at what other States were doing to address
13 some of their growing populations, and New York is an
14 excellent example. In 1997, they made several changes
15 for less serious offenders. They had something they
16 called merit time. It's a little bit like an earned
17 time kind of thing. You can get out, if you behave
18 yourself and do your programs, you can get out of
19 prison a little bit early. They had a presumptive
20 release through their Parole Board and also looked at
21 the length of supervision for how long people were
22 supervised on parole. And then in 2004, 7 years
23 later, they did a study on the merit time, and they
24 found that just with the people who were going out
25 under merit time, they had a 12-percent lower

1 recidivism rate than people who went out under the
2 traditional, who went out with their full sentence,
3 which means when you leave them out a little bit
4 early, they actually did better, and they did better
5 because they got involved in and completed their
6 programs. They also found in the merit time program
7 that it saved the State a quarter of a billion dollars
8 over that 7 years.

9 So when you look at the merit time, the
10 presumptive release, and the length of supervision,
11 everything wrapped together over the years, New York
12 took down 8,000 beds. You know, they closed down
13 8,000 prison beds, and they are in the position in New
14 York right now where their Governor is talking about
15 closing prisons, and, you know, we in Pennsylvania are
16 talking about building, that, you know, we really do
17 have to move ahead and build several prisons no matter
18 what we do.

19 And they did that, you know, with lower
20 recidivism rates, and also if you look at the crime
21 rate in New York, it was coming down from 1997 to
22 today and continued to come down, and it is at one of
23 the lowest points in 40 years. So what they did, it
24 did not adversely affect the crime rate in New York.

25 The proposed package that is being talked

1 about here is very similar to New York. Some pieces
2 of it are with some other different pieces, but some
3 of it is very similar. It deals only with the less
4 serious offender, those people who would have been
5 eligible for State Intermediate Punishment, and there
6 are even a few additional restrictions over and above
7 that, and of course the State Intermediate Punishment
8 bill is the bill that was passed by, you know, the
9 House unanimously back in 2004 and then to the Senate
10 and signed into law by the Governor.

11 There are those State and county initiatives
12 included in this legislation, things that will help
13 the State system as well as things that will help the
14 counties. Probably one of the biggest single thing
15 that would help the State is what is called a risk
16 reduction initiative, which is very similar to New
17 York's merit time. People have to, you know, if they
18 come into the system, they have to behave themselves
19 and they have to complete their programs, and then
20 they would be eligible for a release that is somewhat
21 earlier than their normal date would be.

22 The two big differences between our risk
23 reduction initiative and the merit time is, first of
24 all, our focus is on program completion. The inmates
25 get nothing unless they actually complete the program,

1 because we found, again, from the research, that that
2 is where you get the biggest bang for the buck. It is
3 the people that complete the programs that really make
4 the biggest changes, and you get your highest success
5 rates from those people. And the other big difference
6 is the actual risk reduction date. The earlier date
7 that they could be considered for release will be
8 given at time of sentencing so that everybody will
9 know what the date is and that you won't know later
10 down the road that, oh, gee, somebody got out of
11 prison earlier. People will know that at the time of
12 sentencing.

13 The second big piece is to allow an expansion
14 for the State Intermediate Punishment. It is a
15 program, and as I said, it was passed in 2004 and
16 became effective in 2005, and it is currently being
17 underutilized. We are not seeing the numbers, even
18 though we are seeing some slow increases. And a lot
19 of it has to do with education, and I know Mark
20 Bergstrom and myself have been going around to a
21 number of counties and trying to educate people about
22 it, and we have seen some increases, but we are still
23 getting in a considerable number of individuals that
24 we think would be good candidates for State
25 Intermediate Punishment and who have already been

1 sentenced and it is too late. What this bill would
2 allow, if it is passed, is if we find a person like
3 that, we would be able to go back to the judge and to
4 the district attorney, and with both of their
5 concurrences, then that sentence could be converted to
6 a State Intermediate Punishment sentence.

7 There are also a few parole initiatives and
8 some changes to the Sentencing Commission for better
9 continuity of sentencing and parole processes. The
10 chairman, who will be next, will be discussing those,
11 so I am not going to get into the specifics of those
12 initiatives.

13 Some of the county initiatives include,
14 probably the biggest one there is to require inmates
15 who are sentenced between 2 and 5 years, their maximum
16 sentence, who today are State-sentenced inmates but
17 can be retained in the county, it would require those
18 inmates to come to the State if the county jail is
19 over 110-percent capacity. Now, this also, I believe,
20 and I believe the Speaker made some mention of this,
21 this makes some good sense from a public safety
22 perspective as well, because these people with these
23 longer sentences, many of the counties don't have the
24 resources to provide the program to them. So what are
25 they doing is they are just being confined, and as I

1 said earlier, just confining somebody and then letting
2 them out isn't effective in reducing recidivism, so
3 they end up coming back in again. If they come to the
4 State system, we have the resources to better deal
5 with them and make sure that they get the programs
6 that they need.

7 Also, the bill will allow judges to retain
8 discretion to keep some of those 2 to 5 inmates in the
9 counties as long as they divert them to a
10 nonincarceration alternative. So if they have people
11 they want to keep in the counties, they can do that,
12 but they have to send them to work release or they
13 have to send them to Restrictive Intermediate
14 Punishment, which is typically drug and alcohol
15 treatment, and they still don't have that option to do
16 that. But then if they were to fail and come back to
17 the county jail, then they would be required to come
18 to us if they don't meet the capacity requirements.

19 There is a piece of the legislation that
20 deals with an aggregation issue that has been out
21 there, you know, how long the State and county and
22 county sentences are aggregated, and this will help
23 clarify that in the law, because that's not clear
24 right now. And then there's another piece on paroling
25 authority, which I'm sure the chairman will talk

1 about.

2 Another piece of legislation will encourage
3 use of video conferencing in lieu of inmates being
4 brought back to the counties for court, which is
5 another public safety thing. If we don't have to put
6 them out on the road and move them, you know, I think
7 that's better. And it will also allow the counties to
8 have us transfer those inmates for them. We will be
9 able to charge the counties for that transport, but it
10 will save them money, you know, by us doing it than
11 them having to do it. So they will have that ability
12 as well, if they choose to do that. And then we will
13 also keep those inmates in the closest prison, which
14 will help from, you know, again, from ever filling up
15 those county jails. So I think there's a number of
16 things here that will help our county jail system in
17 the bill.

18 Now, we believe the impact of this is that we
19 are going to get lower recidivism rates, we are going
20 to have improved public safety. I wouldn't be sitting
21 here today and endorsing these if I didn't think that
22 we were going to have improved public safety. If I
23 thought that just keeping these people locked up was
24 the way to go to reduce recidivism, then I wouldn't be
25 supporting it. I would be saying let's keep them

1 locked up, but I don't believe that, and I don't
2 believe the research points to that.

3 And also, it will help us better prioritize
4 our criminal justice resources on offenders who pose
5 the greatest risk to public safety. And assuming
6 other things don't change, in other words, if we don't
7 have more mandatory sentences or other new bills that
8 occur in the intervening years, we believe that it
9 will help lower the growth rate we are seeing to at
10 least in half, to instead of maybe 170 a month growth,
11 maybe 80 or 90 a month growth on just these bills
12 alone. We believe certainly it will save over \$100
13 million between now and 2012, and it will delay the
14 need for those new prisons I talked about from 2012
15 on. And so each year we don't have to build a prison,
16 we save \$200 million in capital and \$50 million in
17 operating money.

18 I really thank you for your time and I'm glad
19 to be here today, and I would be happy to address any
20 questions that you may have.

21 CHAIRMAN CALTAGIRONE: Thank you, Mr.
22 Secretary.

23 We have had a couple members join us. If
24 everyone could just introduce themselves.

25 REPRESENTATIVE PALLONE: Thank you, Mr.

1 Chairman. I'm John Pallone, northern Westmoreland
2 County and southern Armstrong County.

3 REPRESENTATIVE RAMALEY: I'm Sean Ramaley,
4 16th District, Beaver and Allegheny Counties.

5 CHAIRMAN CALTAGIRONE: Kathy.

6 REPRESENTATIVE MANDERINO: Thank you, and
7 thank you, Secretary Beard.

8 I wanted to ask you a few questions
9 specifically about the proposed change with regard to
10 inmates that have the 2 to 5 sentence and are in the
11 county prisons. Now, I'm sure this affects counties
12 other than Philadelphia, but I also know that this was
13 designed, at least in part, to specifically address
14 concerns about prison capacity in the county of
15 Philadelphia.

16 One of the things that you talked about was
17 even if, the way the legislation is written, even if a
18 county gets to 110-percent capacity, if there are
19 certain reasons to keep them at the county level, that
20 could happen, and one of the things you mentioned was
21 work release. Here is what I'm looking for, because
22 one of the criticisms that I heard back in
23 Philadelphia about this proposed change of making
24 everyone come to the State is that our county prisons
25 aren't filled with lots of people with 2- to 5-year

1 sentences that are just being housed there. Everyone
2 that is there with a 2 to 5 sentence in a county
3 prison is there because they have a job and we don't
4 want to disconnect them from their job. They have
5 those kinds of work release issues. Now, do you know
6 that for a fact? Who would know that for a fact? Can
7 I either go to you or to the warden in Philadelphia
8 County, and can we get real numbers to know what the
9 real issue is: In Philadelphia, there are 250 people
10 over capacity, and of those 250 people, 200 of them
11 have jobs and are working? I mean, do you have---

12 SECRETARY BEARD: I don't know how many of
13 them are working. I can't really address that. I
14 believe there are about 700 of those inmates that are
15 in the 2 to 5 range out of about 2,000 total that are
16 out there in the county jails. About 700 of them are
17 from Philadelphia. That's the number I heard. How
18 many of them have jobs and whether or not they are
19 allowed to keep those jobs, I think when we talk about
20 nonincarceration alternatives, there are places that
21 we use home arrest and other things like that to let
22 the persons continue working and things rather than
23 sending them, you know, to the State or putting them
24 in the prison. I think what we are looking at here is
25 a relief to some of the pressures on all of the county

1 jails. I know that, you know, Philadelphia obviously
2 has a real problem. They have been in the newspapers.
3 There are lawsuits. But this has been, and I know you
4 are a member of the County Commissioners Association
5 who will be testifying today, it has been one of their
6 big initiatives, and it goes beyond Philadelphia
7 County. Many counties have overcrowding problems that
8 this will help address.

9 REPRESENTATIVE MANDERINO: Okay. When you
10 say you currently have identified or we currently have
11 a population of 2,000 folks who meet this criteria,
12 what do you anticipate--- Let's say these bills
13 became law next week. How many of those 2,000 people
14 come into our State system?

15 SECRETARY BEARD: None of them.

16 REPRESENTATIVE MANDERINO: Okay.

17 SECRETARY BEARD: And the reason is that that
18 particular portion of the bill does not become
19 effective for 3 years. Part of the reason for that is
20 I am overcrowded today. I do not have room to put
21 2,000 inmates in the system unless you build me a new
22 prison. That's the only way I can do it. But these
23 bills, if they are passed in total, would help begin
24 to relieve some of the pressure on the State system
25 and free up some space so that in 3 years, when people

1 then are sentenced to the 2 to 5's and are required
2 then to come to the State, we would have the capacity
3 to handle that.

4 REPRESENTATIVE MANDERINO: Explain this in
5 conjunction with the bill that deals with the -- I
6 don't know if I'm using the term right -- the
7 presumptive release, the one that basically says, you
8 know, here is your 2-year sentence but, you know, here
9 are all these programs that in essence you may end up
10 being physically taking up bed space for less than
11 those 2 years. I don't know if you were calling that
12 presumptive release or the earned time---

13 SECRETARY BEARD: The risk reduction? The
14 risk reduction?

15 REPRESENTATIVE MANDERINO: Yes.

16 SECRETARY BEARD: Yes. Well, how the risk
17 reduction would work is at the time of sentencing, if
18 a person was eligible, one of the less serious
19 offenders, and would normally get a 2- to 4-year
20 sentence, if the sentence is less than 3 years, they
21 could get up to a 25-percent credit. They would get a
22 second minimum sentence of 18 months. So at the time
23 of sentencing, they would get an 18-month minimum and
24 a 24-month minimum, and if they behave themselves and
25 if they completed all of their programs, they would

1 then be eligible to be considered for presumptive
2 release by the Parole Board, what actually is being
3 called the entitled parole by the Parole Board. They
4 would be eligible to be considered for that at any
5 point they complete that between the 18 and 24 months.
6 Traditionally, they would have had to wait to the 24
7 months to be considered.

8 REPRESENTATIVE MANDERINO: And does that
9 presume all those folks within our State system as
10 compared to being kept at the county?

11 SECRETARY BEARD: Yes. This only is for
12 people that would be coming to the State system for
13 this reduction initiative. That's correct, because
14 all of those other people would be coming to us anyway
15 eventually.

16 REPRESENTATIVE MANDERINO: Okay. Is there
17 thought that by the design of that, there may
18 actually, and again putting aside folks that have
19 other reasons with the higher sentences to stay local,
20 like jobs or other things like that, is there a
21 presumption built in there with regard to capacity or
22 sentencing of where people get kept that that would be
23 an incentive for more folks to not be kept at the
24 county level, because they wouldn't have that, and if
25 they wouldn't have that sentencing option, which seems

1 to be something that---

2 SECRETARY BEARD: Well, actually, one of the
3 other things is, you know, you may actually see more
4 inmates diverted under this legislation into
5 alternative things like the Restrictive Intermediate
6 Punishment programs, because right now, if a judge
7 sentences somebody to Restrictive Intermediate
8 Punishment who has a 2- to 5-year sentence, and if
9 they fail, they come back to the county jail and you
10 are stuck with them. This legislation would allow the
11 judge to divert them into that Restrictive
12 Intermediate Punishment, and if they fail, then send
13 them back to us rather than having to keep them in the
14 county, and that would actually begin, you know,
15 within a few months of the bill passing rather than
16 having to wait for 3 years. So I anticipate, I have
17 had judges tell me that we have not sent people to
18 drug and alcohol treatment at a level that low,
19 because once we make the decision to keep them at the
20 county, we are stuck with them, and if we had this
21 change there, we would actually keep more people and
22 make an attempt to get them into the appropriate
23 treatment program. So I think that's another very
24 important piece there that, you know, may actually
25 keep more people but get them into programs that they

1 need.

2 REPRESENTATIVE MANDERINO: Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN CALTAGIRONE: Representative Pallone
5 and then Representative Carl Mantz.

6 REPRESENTATIVE PALLONE: Thank you, Mr.
7 Chairman, and thank you, Mr. Secretary.

8 The data that you are sharing with us today
9 is a little frightening, to tell you the truth, and
10 where we are targeting for 2012 would be for almost \$2
11 billion in prison costs.

12 SECRETARY BEARD: I imagine we could be over
13 \$2 billion by then.

14 REPRESENTATIVE PALLONE: That is even worse.
15 And, you know, as a law student, I studied under a
16 criminal law professor that always struggled with the
17 issue of punitive reform versus rehabilitative reform.
18 It seems to me you are trying to steer the prison
19 system in a rehabilitative-type direction with the
20 cost savings, and we know that the general public will
21 not say rehabilitation, they almost frown on it and
22 say that it is not effective, although statistics
23 oftentimes support that. And we have had special
24 sessions on crime, and what we do traditionally is
25 increase the minimums and maximums. It is a

1 sentencing change other than any other real reform
2 relative to crime and punishment.

3 I think we are looking at some innovative
4 ideas. I'm concerned about some of the practical
5 applications of what would happen should all this
6 become enabling legislation, and I'm looking at, the
7 prospective application is not a problem. They may
8 come through the system post-lobbying effective. All
9 of these new rules and regulations are now in place.
10 They are going to be able to do the 18 months special
11 program, or whatever the deal is. But what about the
12 inmates who are in the system now and, because of the
13 new rules, would be eligible for all these programs?
14 What does that do to the system now, coming back into
15 the criminal justice system, in terms of public
16 defenders, district attorneys, judicial staff, you
17 know, to transport prisoners as well and all that kind
18 of thing? Has anybody looked at what the kind of
19 retroactive application is going to be, particularly
20 when you look at the county budgets that absorb public
21 defenders, district attorneys, and court costs and so
22 forth? I have an inmate who is in jail now or in
23 prison now. He is eligible for some of this new
24 programming, but his court order doesn't say that.
25 His court order is from 2 years ago, and these

1 provisions weren't in place. Are we looking at or do
2 you know if anyone has looked at what the hindsight is
3 going to be and the impact it is going to have on the
4 criminal justice system at the county levels and the
5 financial burden that it may create at that point?

6 SECRETARY BEARD: Well, first of all, the
7 risk reduction initiative, the State Intermediate
8 Punishment changes, they do not apply retroactively.
9 It only applies from the date of sentencing on once
10 the bill is effective.

11 REPRESENTATIVE PALLONE: So I wouldn't be
12 eligible---

13 SECRETARY BEARD: No.

14 REPRESENTATIVE PALLONE: ---under the same
15 circumstances had I been convicted a year ago?

16 SECRETARY BEARD: That's correct.

17 REPRESENTATIVE PALLONE: Okay.

18 SECRETARY BEARD: Those people would not be
19 eligible, and part of the reason, I think, is that I
20 think we want to retain truth in sentencing. I mean,
21 certainly you would get a bigger bang for the buck if
22 you went back and did that, but you don't have truth
23 in sentencing then, because now you are changing the
24 rules. Somebody was sentenced to 2 to 4, now you are
25 letting them out 6 months early, and I think that is

1 part of the reason that we are not doing that.

2 One of the other things I want to address is
3 that on rehabilitation, you know, back in the 1970s,
4 that that was a big thing. People were doing that.
5 It wasn't being done very well. Some of the studies
6 came out and said relocation didn't work so we are
7 killing the whole thing off, but things have changed.
8 We have a large body now of research out there saying
9 rehabilitation does work, and I think the public is
10 starting to understand that. I know I have seen some
11 surveys done and everything else out there showing
12 that the public is slowly starting to see that if you
13 do these programs correctly, if you do them the way
14 that they are supposed to be done, you meet what we
15 call the principles of effective intervention, you can
16 make a difference and you can lower recidivism rates
17 and rehabilitation does work. And so, you know, I
18 think 20 years ago we couldn't have done this, 15
19 years ago we couldn't, but today we can do it and we
20 can say this will work and this will make a
21 difference, and I'm confident when we look back, if we
22 pass this 3, 4 years from now, we will see that
23 difference.

24 REPRESENTATIVE PALLONE: I hope you are
25 right, and I hope the learning curve to the general

1 public comes into fruition then for us, because
2 apparently when we look at the bills that come through
3 this committee relevant to crime and punishment,
4 generally to increase the degree of the crime to make
5 it more severe and most likely to increase the term of
6 sentencing to make it more punitive in nature, and
7 quite frankly, when you get law enforcement bringing
8 in and telling us they support increasing the degree
9 and increasing the term of sentence, we get, you know,
10 all the support from the District Attorneys
11 Association, the District Attorney's Office, on crime
12 and punishment. The general public and the special
13 interest groups support increased punishment for
14 crime, increased sentencing, et cetera, et cetera.
15 But we don't get the feedback, maybe even from the
16 administration and the prison system, to tell us maybe
17 increasing these sentences isn't a good idea, maybe
18 increasing the punitive nature of this crime isn't a
19 good idea, and the general public, in my opinion,
20 quite frankly, doesn't necessarily agree with that.
21 They think that we need to be tough on crime, we need
22 to have stiffer penalties, whatever, until they sit
23 and look at the numbers in excess of \$2 billion to
24 just manage our State prison system, and that number
25 doesn't include the 67 county prison systems that we

1 have.

2 SECRETARY BEARD: No, nor does it include
3 parole and other associated things.

4 REPRESENTATIVE PALLONE: So when you look at
5 the dollars that are being expended, and there are all
6 kinds of dollars. I mean, there is no revenue being
7 generated in the prison, very little anyway. When you
8 look at the billions and billions and billions of
9 dollars, I am hopeful that the learning curve comes
10 into play, but I don't want to put the public at risk,
11 and I think that we are on the right track, and I am
12 hopeful that we will be able to find, you know, a fair
13 compromise between the prison system and the criminal
14 justice law enforcement system to balance it out and
15 to maximize the public safety levels.

16 SECRETARY BEARD: Well, you know, as I said,
17 I wouldn't be sitting here today if I didn't believe
18 that this would help improve public safety, and I look
19 at any cost savings or benefit space savings as a
20 consequence rather than a reason. The reason to do
21 this is for public safety.

22 REPRESENTATIVE PALLONE: Thank you, Mr.
23 Secretary.

24 Thank you, Mr. Chairman.

25 CHAIRMAN CALTAGIRONE: Representative

1 O'Neill.

2 REPRESENTATIVE O'NEILL: Thank you, Mr.
3 Chairman.

4 Thank you, Mr. Secretary, for being here
5 today.

6 I have a question concerning the counties---

7 SECRETARY BEARD: Yes.

8 REPRESENTATIVE O'NEILL: ---the county jails.
9 This is something that I have been dealing with with
10 Speaker O'Brien when he was Chairman of this committee
11 before, and that's the cost. Can you explain, you had
12 hit on a little bit about the 110 percent, reaching
13 110-percent capacity. Am I correct in understanding
14 you were saying anybody 2 to 5 would automatically
15 come to the State?

16 SECRETARY BEARD: Yeah. I think, you know,
17 unless a whole bunch of people in the county agree to
18 it, the county commissioners and everybody else, if a
19 prison goes over 110-percent capacity, a county
20 prison, then they would be required to send anybody
21 who was serving a 2- to 5-year sentence, maximum
22 sentence, to the State, and that would take effect 3
23 years from the passage of the bill.

24 REPRESENTATIVE O'NEILL: Okay. And the
25 reason why I asked that is I guess my concern is then,

1 from 110 percent down, those who were serving 2 to 5,
2 it is the cost, who is actually paying for it, and
3 that's always been the issue with Bucks County. And I
4 represent them, because most of the, I would say by
5 law the inmates who are serving 2 to 5 years are there
6 because the judge placed them there for a variety of
7 reasons, but in reality they are really State inmates
8 and the county hasn't been getting, you know,
9 reimbursed for that housing, you know, and the
10 programs for the State inmate. So I like this idea,
11 but I guess my question is, what happens if the judge
12 orders that somebody has to serve that in a county
13 jail because their needs can be better served, the
14 individual or the family or whatever, by being there?
15 How will that be dealt with? Would they be allowed to
16 do that?

17 SECRETARY BEARD: They won't be allowed to do
18 that.

19 REPRESENTATIVE O'NEILL: So it will be taking
20 it out of the judge's hands.

21 SECRETARY BEARD: Right. It will be taking
22 it out of the judge's hands, and the alternative they
23 would have would be to look for a nonincarceration
24 alternative---

25 REPRESENTATIVE O'NEILL: Right.

1 SECRETARY BEARD: ---rather than putting them
2 into the county jail, yes.

3 REPRESENTATIVE O'NEILL: Great.

4 SECRETARY BEARD: Unless they could get the
5 warden and the county commissioners and everybody else
6 to agree, and if everybody agreed, then they could.
7 But short of that, the judge would not be able to.

8 REPRESENTATIVE O'NEILL: And that really
9 would have to be on a case-by-case basis.

10 SECRETARY BEARD: I would assume so, yes.

11 REPRESENTATIVE O'NEILL: Okay; great. Thank
12 you, Mr. Secretary.

13 Thank you.

14 CHAIRMAN CALTAGIRONE: Representative Gabig,
15 and then Representative Pallone and Chairman Marsico
16 following him.

17 REPRESENTATIVE GABIG: I will yield to
18 Representative Pallone, Mr. Chairman.

19 REPRESENTATIVE PALLONE: Thank you. I just
20 have one quick question, to follow this up.

21 With the changes that we have seen over the
22 last decade in terms of changing gradings of crimes
23 and minimum and maximum sentences, structures, and so
24 forth, would you say -- a simple yes-or-no answer --
25 would you say that that's because of the wild growth

1 in our inmate population, or is it because we just
2 have more criminals?

3 SECRETARY BEARD: I think there's a whole
4 bunch of reasons. You know, I don't know that that's
5 a yes-or-no kind of answer. I mean, certainly there's
6 been over a hundred bills passed in the last 10 years
7 that have enhanced sentences that we were able to
8 find. There might be other things we couldn't even
9 find. Certainly the sentencing guidelines from the
10 Sentencing Commission have gotten progressively tough
11 -- '94, '97, 2005. Certainly there have been more
12 mandatory sentences that have been put out there, and
13 they have not only had a direct impact, which is
14 great, but an indirect impact, so the mandatories have
15 helped to drive this to some degree. I think the
16 enhanced DUI thing has done it, because that has
17 taken, in some counties fully 30 percent of the bed
18 space in counties is being taken up by these DUI
19 cases, and, you know, then that forces them to push
20 more people off to the State. So, you know, I think
21 there's a whole bunch of things there.

22 And I also think that there may be the
23 cohorts, the younger groups where most crime comes
24 from, is larger than what was projected back 10 years
25 ago, and so if that cohort of people who commit crimes

1 is larger, then you are going to get more crime as
2 well.

3 So I think there's a whole bunch of things
4 wrapped up. Partially, it is maybe more people being
5 prosecuted for some of these crimes, and part of it is
6 all these other things.

7 REPRESENTATIVE PALLONE: Do you think the age
8 group has changed?

9 SECRETARY BEARD: Well, it was projected back
10 in, and if you look at the 1990 census, that these
11 cohorts were going to be so big, and you look at what
12 they are today and they are bigger. So there are more
13 people than what they thought was going to be here.

14 REPRESENTATIVE PALLONE: Thank you. I
15 appreciate it.

16 Thank you, Mr. Chairman.

17 CHAIRMAN CALTAGIRONE: Representative Gabig.

18 REPRESENTATIVE GABIG: Thank you, Mr.
19 Chairman.

20 Mr. Secretary, thank you for being here. I
21 just wanted to say a couple of things and then ask you
22 a couple of things, if I could.

23 SECRETARY BEARD: Sure.

24 REPRESENTATIVE GABIG: I guess it was a few
25 years ago or a couple years ago, we went over the

1 45,000 mark for State inmates. The only reason I
2 recall that is because I was asked by our local public
3 TV station to come on and do a call-in show with
4 different members and sit around and talk about the
5 significance of that, and I think that's when Speaker
6 O'Brien and others started to look at some of these
7 issues. And that is a significant number, but as I
8 recall, and you mentioned New York's crime rate has
9 come down, the Pennsylvania crime rate has come down,
10 too, during that period of time. So I know why you
11 are here, and I am in full agreement and support of
12 why you are here, but I don't think we should leave it
13 out there that some of these measures have not already
14 made Pennsylvania safer. The good job that you are
15 doing and that the judicial system is doing by taking
16 criminals off the streets and protecting law-abiding
17 citizens, the crime rate has come down. I think the
18 concern that you have expressed, and I remember when I
19 was on the Sentencing Commission, Doctor, you would
20 come and give us a lot of these background statistics,
21 and your concern has been what you, I think what you
22 term "nonviolent drug offenses," and that's when we
23 hear these terms 2 to 5. Those are the kinds of
24 cases, sentenced prisoners, that I think you are
25 talking about, that the quote, unquote, "nonviolent

1 drug offenders" has become an increasing percentage of
2 the State population, and I want to get to that.

3 Then you have this chart that you referenced,
4 a tremendous chart. Thank you very much for
5 referencing that and giving us that information. I
6 found it extremely helpful. But it has on there "2007
7 YTD," that final column, and that's where that 45,000,
8 almost 46,000 now, number is, 27 correctional
9 institutions. One is Muncy, which is the all-women
10 institution.

11 SECRETARY BEARD: Correct.

12 REPRESENTATIVE GABIG: Another one is the
13 boot camp, they have some serious juvenile offenses at
14 the boot camp. So that leaves, if I understand
15 correctly, 25 male adult State prisons, so to speak,
16 throughout the Commonwealth.

17 SECRETARY BEARD: Well, we have another
18 female prison, Cambridge Springs.

19 REPRESENTATIVE GABIG: So there's two---

20 SECRETARY BEARD: There's two female prisons,
21 and then there would be the boot camp. So if you took
22 those off, it would be 24 other male prisons; that's
23 correct.

24 REPRESENTATIVE GABIG: Twenty-four housing
25 all of the adult male prisoners.

1 And you just used the term "cohort group,"
2 and I guess to go back to my original comment with the
3 Speaker, a good cohort group is called the family, and
4 I think what you are referring to, in essence, in a
5 sort of social sciencey way, is what a lot of people
6 call gangs, criminal gangs, when you talk about cohort
7 groups, and that would be a bad cohort group that's
8 getting us in here.

9 So with that, what I want to know, why can't
10 we, for example, SCI Camp Hill, the prison in my
11 county. It is not in my district; it is in my county.
12 You have been down there, given us tours. A lot of
13 those people that are housed there aren't Cumberland
14 County citizens, in fact, they are not even central
15 Pennsylvania citizens that went in there, and they are
16 coming from areas that have these gangs and no fathers
17 and no families. So the ones they have had the
18 chance, in my opinion, for rehabilitation, to get out
19 there and get it together are some of the drug ones.
20 If they can get out of the drug culture, they have a
21 chance to be a productive citizen, and if they can't
22 get out, they are going to be dead when they are 25 or
23 30, shot on the street or, you know, whatever. Can't
24 we take some of these prisons, some of these 24, and
25 rather than just having a section, a hallway, or, you

1 know, I forget the term that is used in the prisons,
2 that is geared toward it, just make it a drug-rehab
3 prison, because there's no way you are going to have
4 drug rehab, as you know. I mean, you have told me
5 this, and I'm just--- If you don't have that hammer
6 over their head, they are just going to go back and
7 they will go through this rehab, oh, 30 days, 60 days,
8 6 months, whatever it is going to be, and they are
9 going to be right back out on the street doing what
10 they were doing before, which is destroying families,
11 destroying neighborhoods, you know, doing the things
12 that the drug culture is doing. So is it possible
13 that we can sort of focus the prison resources to---
14 I know we are getting drug courts. I think Philly has
15 drug courts, and other areas, Cumberland County, I
16 think started drug courts. Can we have drug prisons,
17 sort of focus that whole institution on this
18 population that you have been telling us for a number
19 of years -- you have been in the desert sort of
20 raising your hand saying, hey, this is coming -- that
21 focuses on them and tries to get, whatever, 10, 20
22 percent, or 30, I'm not sure of the number you used---

23 SECRETARY BEARD: 70.

24 REPRESENTATIVE GABIG: ---would you get up---

25 SECRETARY BEARD: 70 percent of the inmates

1 have a drug or alcohol problem.

2 REPRESENTATIVE GABIG: No, no, that have a
3 shot at being rehabilitated.

4 SECRETARY BEARD: Okay.

5 REPRESENTATIVE GABIG: Didn't you say 30
6 percent have a---

7 SECRETARY BEARD: No, what I said is, what I
8 said is, you put these 70 percent in a good program---

9 REPRESENTATIVE GABIG: Right.

10 SECRETARY BEARD: ---that some of the good
11 programs are showing reductions in recidivism from 25
12 to 40 percent.

13 REPRESENTATIVE GABIG: Right; all right. So
14 if we could get those institutions, and then we know,
15 because otherwise what you are having is people
16 saying, you know, I don't want those murderers out, as
17 the public perception is. We don't have time to share
18 with our constituents policy, you know, analysis, and
19 so if we said, hey, look, that drug prisoner over
20 there is working, and we will get 20, 30, up to 40
21 percent of those inmates when they get done that
22 aren't coming back again, that's a very good result.
23 That is, with these numbers, that is what I think we
24 need to do, and again, the public would get it, it
25 would be targeted, they would understand it, and it is

1 something that we, many of us, could push out there
2 and say, see, these are working, versus, oh, we have a
3 program in the overall, a very bad place. It is so
4 unfair, if you are following me.

5 SECRETARY BEARD: Right.

6 REPRESENTATIVE GABIG: So I mentioned this
7 before, and formally I just want to take this chance
8 to ask if, while we are moving down this road, if we
9 could consider, you know, focusing on the whole
10 institution or two or three institutions on that.

11 SECRETARY BEARD: Again, let me respond to
12 that and say a couple things. Number one, we do have
13 drug and alcohol programs in all of our institutions,
14 and we have done research on our therapeutic
15 communities and found that they were reducing
16 recidivism rates by 30 percent. So we are getting
17 those kinds of success rates from our therapeutic
18 communities that we are doing. That's number one.

19 Number two, quite a number of years ago, you
20 know, maybe almost 10, 7, 8 years ago, we did open an
21 all-drug institution in Chester. So the State
22 Correctional Institution at Chester is for drug
23 treatment, all the inmates who are there are getting
24 drug treatment, and because I felt we needed more
25 capacity to do that in our system and because I agree

1 with you that putting them in one place we can better
2 focus the resources to deal with them, when I reopened
3 SCI Pittsburgh, I made SCI Pittsburgh the drug
4 treatment facility of the west. So that right now has
5 about 700 inmates -- we will probably be going to
6 1,500 inmates there -- Chester has over a thousand,
7 and both of those facilities will be dedicated to do
8 drug and alcohol treatment.

9 REPRESENTATIVE GABIG: The issue, for
10 example, with staffing, I mean, you have to have a
11 large number of staff to secure these prisons. We
12 want that, and I imagine or at least my thought is
13 that to aggravated assault, people have shooters,
14 killers, rapists, you want to watch them with a lot of
15 people, and then some of these nonviolent drug
16 offenders, we could put more of those resources into
17 the kinds of programs you are talking, unless, you
18 know, guards, so to speak, to allocate, and I think
19 that's what you are saying here. If we are up to 50
20 percent or more, it just makes sense to do it that
21 way.

22 And one other. To say that there has been no
23 rehabilitation in the State prison system over the
24 last 10 or 20 years, I don't think that's what you are
25 here to say either. I mean, the GED rates that you

1 come out with, the drug programs, I think, are
2 invested in the State certainly, and they have these
3 other programs, but they are all the way down there.
4 So rehabilitation has been part of the Pennsylvania
5 penal system since Ben Franklin, and I know it's been
6 part of your priority since you have been in there,
7 over two administrations since I have been up here.
8 So I didn't want to leave that on the table either, as
9 if we just bought that today, or--

10 SECRETARY BEARD: Well, you know, I think
11 what I was trying to say is that 15 or 20 years ago,
12 we didn't do a very good job of what we were doing.
13 For the last 5 to 10 years---

14 REPRESENTATIVE GABIG: Well, let's focus on
15 the drug---

16 SECRETARY BEARD: The last 5 to 10 years, we
17 have been doing, I think, a much, much better job in
18 getting the kinds of reductions in recidivism that we
19 would like to see, and we hope over the next few years
20 we can even further improve that. In fact, last year
21 as part of our budget or part of this year's budget,
22 we got some additional positions, treatment positions
23 to do even more drug and alcohol treatment. So we
24 will be moving ahead on that as well.

25 REPRESENTATIVE GABIG: And now I congratulate

1 you on that. Thank you for your indulgence. We have
2 to go; we just have another committee meeting. Sorry;
3 I don't schedule these committee meetings. I don't
4 know who does all that. We had one on the floor and
5 we had one after; it's brutal on you.

6 But the last thing that I wanted to ask --
7 after I got a stare from my Chairman there; he took me
8 off track -- you said we are doing better with
9 rehabilitation, is that right, with the trust?

10 SECRETARY BEARD: Yes.

11 REPRESENTATIVE GABIG: So if we had half the
12 prisons sort of drug prisons, does that make sense to
13 you, with the population that you have identified out
14 there?

15 SECRETARY BEARD: I don't know how far we
16 have to go with that. You know, we were starting
17 Pittsburgh and we will keep looking at it and do as
18 much as we need to do, and maybe there will be some
19 additional ones after that. I don't know that we need
20 half, because you have to remember, a lot of those
21 inmates are with us for a period of time and they
22 don't need the treatment the whole time that they are
23 with us.

24 REPRESENTATIVE GABIG: Right.

25 SECRETARY BEARD: So we are building our

1 capacity to the point where we can get everybody the
2 programming they need before they are ready to leave
3 the system.

4 REPRESENTATIVE GABIG: Somebody talked about
5 the 2 to 5. I mean, I thought a State sentence was a
6 1 to 2. Wasn't it the maximum of 2 in the State?

7 SECRETARY BEARD: Well, what it is, anything
8 under 2 years is a county sentence, so 1 1/2 to 23
9 months is a county sentence. A 1 to 2, as soon as you
10 have a 2-year maximum on, 2 years or more becomes a
11 State sentence, and then between there and 5 years
12 maximum, it's a State sentence which can be served in
13 the county jail at the option of the judge. So over 5
14 years, then they got to come to me.

15 REPRESENTATIVE GABIG: So those between the 2
16 maximum and the 5 maximum is the population that we
17 are referring to, that Representative O'Neill is
18 concerned with.

19 SECRETARY BEARD: Yes, that's correct.

20 REPRESENTATIVE GABIG: Thank you very much.

21 SECRETARY BEARD: Thank you.

22 CHAIRMAN CALTAGIRONE: Just for the benefit
23 of the members and the public, just to let you know --
24 I think this is the appropriate time, because I know
25 some of the right players are here -- at the request

1 of the Governor, and let me reemphasize that, at the
2 request of the Governor, on Tuesday we are going to be
3 running the gun package bill. So I just want to put
4 everybody on alert that we are going to be making sure
5 to all the members that the bills that are planned to
6 be run are going to be on that schedule. So I thought
7 I'd throw that little publicity out there for those
8 that are watching, listening, and those that are here
9 today before the members have to leave for other
10 meetings.

11 Chairman Marsico, and then Counsel Andring.

12 REPRESENTATIVE MARSICO: Thank you, Mr.
13 Chairman.

14 Good morning, Mr. Secretary.

15 SECRETARY BEARD: Good morning.

16 REPRESENTATIVE MARSICO: Thanks for being
17 here.

18 SECRETARY BEARD: Thank you.

19 REPRESENTATIVE MARSICO: The bad news is that
20 we have four more, for the benefit of the members,
21 four more people to testify and we want to get done by
22 noon, and the good news is, Representative Gabig is
23 leaving. Seriously, I think he had some real good
24 questions and good points.

25 A quick question: The comprehensive research

1 on this major public policy change by your staff and
2 your agency, have you done any kind of polling or
3 survey with regard to how the public might feel about
4 some of these major public policy changes? Have you
5 seen any?

6 SECRETARY BEARD: Yes, I have seen some.
7 There has been some, there was something done a year
8 or two ago, and I forget exactly who did it, whether
9 it was a Penn State study or the Pew Charitable
10 Foundation, but some of more recent studies have shown
11 that or some of those polls that were done have shown
12 that the public is beginning to support that kind and
13 understand that treatment can work with some of the
14 less serious offenders, and they are becoming more
15 supportive of that.

16 REPRESENTATIVE MARSICO: Would you be able to
17 share those surveys?

18 SECRETARY BEARD: I will try to find that,
19 yes. We will try to find something and get it to you.

20 REPRESENTATIVE MARSICO: Thank you. Thanks
21 again.

22 SECRETARY BEARD: Sure thing.

23 MR. ANDRING: Just very quickly, on pages 10
24 to 11 of the bill, there is language relating to the
25 certification on the 110-percent capacity in county

1 prisons, and as I read this, it says that the chief
2 administrator of the county prison may certify that
3 they are willing to accept the 2- to 5-year prisoners
4 if their capacity is under 110 percent.

5 SECRETARY BEARD: Right.

6 MR. ANDRING: But it is not a requirement, so
7 that even if a county prison were only at 80 percent
8 capacity, they could still exclude all those 2 to 5's.
9 Is that correct?

10 SECRETARY BEARD: That's correct. That is my
11 understanding, too, yes.

12 MR. ANDRING: Okay. Thank you.

13 And the only other question, further down on
14 page 11, there's a provision for, I think it's \$2.5
15 million to be paid to counties to reimburse them for
16 prisoners who participate in an approved work release
17 program, that there's really no detail here other than
18 that particular provision that the county---

19 SECRETARY BEARD: I think---

20 MR. ANDRING: Is there something you are
21 intending to achieve there specifically?

22 SECRETARY BEARD: Well, I think it is to, in
23 those cases where the judge wants to try to divert
24 people, there would be some potential reimbursement
25 for the cost of those people, much as what we do with

1 Restrictive Intermediate Punishment right now. You
2 know, I think this year it went to about \$18 million
3 with the State funds, which it goes through PCCD, and
4 some 22 counties, I think, draw down on that money to
5 send people to drug and alcohol treatment, and some of
6 those people are those 2 to 5's. This would be a
7 similar thing to that where they could divert them to
8 work release and could get them reimbursed to whatever
9 cost it was, as long as they weren't getting any other
10 reimbursement.

11 MR. ANDRING: That's the intent, though, as
12 opposed to somebody getting a 6-month sentence and is
13 out?

14 SECRETARY BEARD: Yes. It is only for those
15 people who would be in the 2 to 5, yes.

16 MR. ANDRING: Thank you.

17 CHAIRMAN CALTAGIRONE: Thank you, Mr.
18 Secretary. We appreciate your time.

19 SECRETARY BEARD: Thank you.

20 CHAIRMAN CALTAGIRONE: We will next hear from
21 the Pennsylvania Board of Probation and Parole,
22 Catherine McVey, and the Governor does plan to be at
23 our meeting on Tuesday.

24 MS. McVEY: Good morning, Chairman
25 Caltagirone, Chairman Marsico, and members of the

1 Judiciary. Thank for letting me have an opportunity
2 to share my comments regarding this proposed
3 legislative package.

4 Secretary Beard has already done a really
5 good job in providing a comprehensive overview of all
6 the major components of the bill and specifically how
7 it impacts institutional corrections. I'm going to
8 share a few comments with you on those provisions of
9 the bill that relate to parole and impact parole.

10 First of all, I believe that this bill
11 successfully targets the interventions, it provides
12 incentives for offenders to make meaningful behavioral
13 changes, and it encourages successful and effective
14 parole supervision which will result in more positive
15 outcomes for our offender population. It also
16 encourages, I think, a closer collaboration and work
17 and interface between our criminal justice agencies
18 and our important stakeholders.

19 The goal of the legislation, as I said, is to
20 improve public safety by reducing recidivism and
21 preventing future victimization. Many States have
22 already adopted very similar measures. I can list for
23 you Ohio, Michigan, Secretary Beard talked about New
24 York, we have New Jersey, we have Delaware, Maryland,
25 and Kansas, to name a few, who have many of these same

1 provisions. They have sought to implement within
2 their systems those evidence-based strategies that
3 work.

4 Two provisions of the proposed legislation
5 will allow our Pennsylvania parole system to implement
6 similar provisions. The first is something that was
7 mentioned before, and that is called rebuttable
8 parole. It is a presumptive parole model, and it is
9 very common in many parole systems.

10 Presumptive parole and rebuttable parole as
11 outlined in this proposed legislation would allow us
12 to have an offender have a targeted date for parole if
13 the offender meets all of the requirements within the
14 statute. The Parole Board would still have full
15 discretionary authority to make the decision for
16 release, and we would consider certain factors. For
17 example, we would consider if the person has completed
18 successfully all of the targeted programs, if the
19 person has maintained a good conduct and behavior
20 while incarcerated, and if the offender has now
21 developed a meaningful reentry plan. We will look at
22 those factors, and very importantly, we will also look
23 at any other factors that are associated with the
24 offender still having a threat to public safety. In
25 those instances, we will not parole the offender.

1 The results, I believe, are that we will have
2 a better prepared offender who has completed all the
3 required programs. What I am looking for as the
4 Chairman of the Parole Board is a product that is
5 different when he walks out of the prison than when he
6 comes into prison. I want a person who has had
7 assessments, who has completed the programs, who has
8 begun to embrace behavioral changes, so when that
9 offender comes out under my jurisdiction under parole,
10 I have somebody who is willing to engage our agents
11 and work successfully to continue on their journey for
12 rehabilitation.

13 A second provision of the proposed
14 legislation is called administrative parole. Again,
15 this is a very common tool used by many parole
16 systems. Administrative parole would allow us, after
17 the offender has completed 1 year successfully on
18 parole, in other words, that person is completely
19 stabilized -- they stabilized in their work; they
20 stabilized in their living situation; they have
21 continued in their treatment; they are not having drug
22 relapses -- these are offenders who will work with us,
23 and 1 year after successful stabilization, we would
24 want to move them to a reduced level of parole
25 supervision. They would have to report at least

1 annually to give us their address and their
2 employment. If we deem it important for them to
3 report more frequently than that, then that's what we
4 will impose.

5 It's also, I think, important for the
6 committee to understand that this is not only a
7 nationally research-based finding but also locally
8 here at home in Pennsylvania. Offenders who are going
9 to recidivate, over 50 percent who recidivate in a
10 3-year period will recidivate during that first year.
11 The transitional period is a very difficult time for
12 offenders, because it is here, once released from
13 prison, that they are now faced with all of the
14 opportunities for drug abuse, crime, hanging out with
15 their old cronies, and so what we want to do is focus
16 our attention, have safe supervision coupled with
17 effective case management, to successfully transition
18 that person after the first year. It also allows us
19 to use then our finite resources of our agents and
20 direct them where we really need them. We need them
21 to be working with our violent offenders and our mid-
22 to high-risk offenders.

23 The proposed legislation, and one of the
24 Representatives, I think it was Pallone, had inferred
25 this and he was absolutely correct, we know that

1 effectively changing behavior challenges us to look at
2 how research has demonstrated in other States that
3 offender behavior can be changed. To have a purely
4 punitive approach is not an effective change agent.
5 We want to couple good supervision. We want to couple
6 a period of incarceration with effective case
7 management and with programs.

8 This legislation allows both the Department
9 of Corrections and the Parole Board to follow three
10 cardinal rules that we have to follow when working
11 with offenders. Number one, it encourages us to
12 assess offenders and target the services and the
13 programs to address the criminogenic factors. Number
14 two, it allows us to have programming that focuses
15 specifically on those crime-producing factors in a
16 person's life, the fact that they have criminal
17 thinking errors, the fact that they are substance
18 abusers, the fact that they have poor employment
19 history. The third principle that this legislation
20 facilitates is, it helps us approach overall offender
21 management from a cognitive behavioral approach.
22 Whether we like it or not, human beings -- that is
23 you, that is me, and that is the offenders -- behave
24 and respond more favorably for four positive rewards
25 for every one negative. So as we approach the

1 important task of changing the inside of offenders'
2 heads, we have to adhere to that cognitive behavioral
3 approach. This bill allows us to respond
4 appropriately to offenders and to begin to change
5 their behavior.

6 There is another provision in the bill that's
7 important, and it is a provision that I look forward
8 to working with the Sentencing Commission on. That is
9 the provision that is in House Bill 4 that amends
10 Title 42, and it requires the Sentencing Commission to
11 establish new presumptive ranges for recommitment.
12 Now, what presumptive range is, it is called back
13 time. It is the period of time that when we revoke an
14 offender and return him to the custody of the
15 Department of Corrections, it's that time period we
16 say they must stay.

17 Quite frankly, the current presumptive ranges
18 which were established in regulations in 1988 are very
19 dated. We find ourselves as decisionmakers on the
20 board quite frankly constantly overruling those
21 presumptive ranges. The goal for us of a recommitment
22 time period is to have a sufficient amount of time to
23 address whatever the violation activity is. For
24 example, if you have an offender who is repeatedly
25 relapsing on drugs and community-based treatment, he

1 has not been responsive to that, then we are going to
2 want to recommit that offender. We want to charge him
3 with a violation, we want to recommit him, but we want
4 to recommit him for a period of time that is
5 sufficient to address that criminogenic need. In that
6 case, we would want this offender probably to be
7 reincarcerated for about 9 months, which is the length
8 of time needed for the person to successfully complete
9 an inpatient drug treatment program within the
10 Department of Corrections. We don't want the person
11 to be incarcerated for 18 months or 24 months or 36
12 months. It's not necessary, and it doesn't facilitate
13 long-lasting behavioral change.

14 The last provision of the bill that's
15 important for parole is the provision, again with the
16 Sentencing Commission, and it empowers the Sentencing
17 Commission to establish certain offender factors, to
18 assess those, and to provide an advisory guideline to
19 the Parole Board on individual cases to determine or
20 to guide us in the suitability for the person's
21 potential parole. We intend to use that guideline
22 provided by the Sentencing Commission in conjunction
23 with our own internal decisional instrument to make
24 and finalize our discretionary parole decision.

25 In closing, what I would like to say is that

1 the features of this proposed legislation are all
2 those that have already been road tested in many
3 States and very successfully. Pennsylvania, I think
4 Speaker O'Brien said that we are kind of behind the
5 eight ball. Indeed we are. This is not about being
6 easy on offenders. It's about being effective, it's
7 about being smart, it's about targeting the treatment
8 they need, it's about providing safe and secure
9 supervision, and letting these less serious offenders
10 then become successfully integrated in the community
11 and get on with their life. And it is about
12 preserving bed space and parole supervision elongated
13 for those offenders who are violent and who are
14 serious and who are high-risk offenders.

15 Thank you.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 Questions? Kathy.

18 REPRESENTATIVE MANDERINO: Thank you, and
19 thank you very much for your testimony.

20 I want to call to your attention, and you
21 don't have to feel like you need to respond right away
22 if you need some time to look into it, but I would ask
23 the following question, if you would look at it, and
24 also the Department of Corrections.

25 In House Bill 6, which is the one that I

1 prime-sponsored, which deals with the whole issue of
2 the presumptive release, one of the criticisms or
3 comments that we received on this bill deals with
4 language that is on page 5 of the bill, predominantly
5 in lines 13 to 23 -- if everyone just wants to write
6 that down, and then you can get back to me -- but on
7 page 5, lines 13 to 23, there is language, which it
8 was my understanding was kind of precursor language to
9 set up the presumption or to kind of set the stage so
10 that we would then get this presumptive relief, but
11 one of the criticisms is that what it also does, and I
12 don't know if it is inadvertently or deliberately, and
13 this is what I'm trying to understand, because if it's
14 deliberately, that is not my intent, and maybe, I
15 didn't think it was our intent at all, but it affects
16 those sentences that only deal at the county level 2
17 years and under, and the criticism is that it is
18 basically taking away current authority that judges
19 have when they are dealing with county-level sentences
20 to grant early parole. So can we look at that
21 language again and see if that is what it's doing
22 inadvertently, and I do not believe that was our
23 intent. So maybe if everyone could just look at that
24 language again and get back to me.

25 MS. McVEY: We certainly will do that.

1 REPRESENTATIVE MANDERINO: Thank you.

2 CHAIRMAN CALTAGIRONE: We just had
3 Representative Katie True from Lancaster join the
4 panel.

5 Are there any other questions?

6 We appreciate your time. Thank you.

7 MS. McVEY: Thank you.

8 CHAIRMAN CALTAGIRONE: We will next hear from
9 the Honorable James B. Martin, District Attorney of
10 Lehigh County and the Immediate Past-President of the
11 District Attorneys Association.

12 MR. MARTIN: Good morning.

13 Thank you, Chairman Caltagirone and Chairman
14 Marsico and members of the Judiciary Committee. It's
15 a privilege to appear before you.

16 As was indicated, I am the elected District
17 Attorney of Lehigh County and the Immediate
18 Past-President of the Pennsylvania District Attorneys
19 Association. Seated next to me is Sarah Hart, who is
20 the former Chief Counsel to the Department of
21 Corrections and has acted as an advisor to the
22 District Attorneys Association with respect to this
23 legislative package.

24 Bruce Castor, who is the current President of
25 PDAA, could not be here today and sends his regrets.

1 I think most of you know that the Pennsylvania
2 District Attorneys Association is comprised of all 67
3 District Attorneys throughout the Commonwealth. As
4 was mentioned by Representative Pallone, I believe,
5 ordinarily we are here thumping the table for stiffer
6 maximum sentences and increased terms of imprisonment.

7 Today I'm here to tell you that the District
8 Attorneys Association of Pennsylvania wholeheartedly
9 supports this legislative package. We think that it
10 comports with our obligation to, really our first
11 obligation, which is to ensure public safety. We do
12 believe that this has strong public safety initiatives
13 within it. It will improve treatment programs for
14 offenders. Hopefully, it will reduce recidivism. It
15 will save tax dollars through system efficiencies, it
16 will prevent mass release of prisoners, and I believe
17 on the whole it will improve our criminal justice and
18 our prison system.

19 The Pennsylvania District Attorneys
20 Association in considering this legislation has worked
21 closely with key criminal justice stakeholders,
22 legislative staff, and bill sponsors to provide input
23 into the package. We did a 50-State search. We
24 looked at, and as the chairwoman of the Board of
25 Pardons and Parole indicated, we looked at similar

1 regulations in adjoining States throughout the
2 country, and we, too, came to the conclusion that
3 Pennsylvania lags behind in this area.

4 Our full membership reviewed this package of
5 legislation. The Executive Committee reviewed it a
6 number of times. There's a resolution in the package,
7 which includes, by the way, some written testimony
8 that was prepared for me, that indicates that this has
9 the backing of the District Attorneys Association.

10 I come from Lehigh County. We have a rather
11 new jail in Lehigh County, and it has capacity which,
12 unfortunately, gets reached rather quickly despite the
13 fact that we thought we built a jail that would last
14 us into at least several decades from now. But we
15 have had an epiphany of sorts, at least I had an
16 epiphany of sorts when I recognized that the treatment
17 programs that the Commonwealth provides and which the
18 Department of Corrections provides are so much more
19 substantive and so much better than what we are able
20 to provide on the county level but really no longer
21 make sense to keep people who are sentenced within
22 that 2- to 5-year range that you have heard about in a
23 county prison system where they can't get the
24 treatment, they can't get the programs the
25 Commonwealth is able to provide. So from my

1 perspective, in Lehigh County, I think that's a
2 terribly important point and a good reason to support
3 these measures, and I think that that is probably
4 pretty generally true throughout the Commonwealth.

5 You know, I've learned through my own
6 experience that the recidivism factor can be reduced
7 if the people who are offenders can get, first of all,
8 good treatment, and secondly, can be involved in
9 programs that will lead to their rehabilitation.

10 I believe that this bill will or these
11 packages of bills will reduce jail overcrowding in
12 counties. It will shift the burden for incarceration
13 and treatment of serious offenders from the county
14 jails to the State prison. It will improve offender
15 treatment, and it will ensure truth in sentencing,
16 which from the perspective of a prosecutor is very
17 important. We deal with victims of crime every day,
18 and it is important that those victims have assurances
19 that when they hear what sentence is imposed on the
20 offender, they can rely on the fact that that offender
21 will serve that sentence, either in its entirety, or
22 if he is paroled or she is paroled will only be
23 paroled for good reason, and after having completed
24 the treatment programs. I think that is key here.
25 You heard Secretary Beard indicate that these early

1 release initiatives are dependent upon completion of
2 programs, and that, from the perspective, again, of
3 myself and my colleagues, I think was terribly
4 important.

5 I believe that, you know, you have heard a
6 great deal from people more skilled than me in terms
7 of corrections law and programs that are available out
8 there and the impact that they have had. I am
9 concerned about, one of the Representatives raised the
10 issue of drug and alcohol treatment and the fact that
11 there are two prisons that are primarily dedicated to
12 drug treatment plans in the Commonwealth. This is an
13 increasing problem, and we really need to deal with
14 it. I think that is self-evident. Drugs and alcohol
15 account for, as the Chairman indicated, I think he
16 said 70 percent of the 45,000 inmates or 46,000
17 inmates in the Commonwealth in the Department of
18 Corrections system have drug or alcohol problems.

19 The same thing, I am sure, is true on the
20 county level, and we are not doing enough to meet
21 those problems, and those people come into the
22 criminal justice system because they have no place
23 else. There is no other system that can take care of
24 them in any fashion at all. So I view the provisions
25 of this bill that deal with the State Intermediate

1 Punishment provisions, which I agree are being
2 underutilized at the moment, as being important.

3 Transportation of prisoners, and Chairman
4 Marsico, I think you are a sponsor of that aspect of
5 it. Again, this will enhance public safety. I think
6 it will save counties ultimately. Even though they
7 are being charged for it or will be charged for it, I
8 believe that it will be a cost savings to the counties
9 generally, and I believe that it will ensure public
10 safety.

11 Recently we had the experience of a public
12 deputy in Florida who was killed while transporting a
13 prisoner. I think when you get a State system
14 involved, you get better trained people transporting
15 these prisoners. You get more uniformity. You get
16 just a better overall result with that kind of
17 approach, and I am much more comfortable with that
18 than I am in having some of the older and some of the
19 younger deputies who are presently transporting out
20 there doing that.

21 I am comfortable with regard to the early
22 release provisions, the good-time provisions if you
23 want to refer to them as that, because the district
24 attorneys will have the opportunity to argue at the
25 time of sentencing that a particular offender should

1 or should not be eligible for that type of sentence.
2 So I don't think that that's really a major concern,
3 at least from the standpoint of the prosecutors.

4 To sum up, I think that it is fair to say, I
5 know that it is fair to say that the District
6 Attorneys Association strongly supports this package.
7 I know that there are some technical amendments which
8 are presently being considered, one of which is of
9 concern to me. It is the fact that firearms offenders
10 won't be eligible for early-release consideration. I
11 think that is key, and I think that I understand that
12 is being negotiated, and I believe that's probably
13 going to be incorporated. I would urge that it be so.

14 But I think overall, this is a good package
15 of bills, a package which should be supported in the
16 Legislature and to the extent that we kindly look
17 forward to working with your committee in any way that
18 we can.

19 I would be happy to entertain any questions
20 that there are.

21 CHAIRMAN CALTAGIRONE: I want to first
22 sincerely thank you and the District Attorneys
23 Association for coming up in support of a package,
24 because I think that is so very, very critical to get
25 that kind of support to get the legislation moving.

1 MR. MARTIN: You are welcome.

2 CHAIRMAN CALTAGIRONE: Members, questions?

3 MR. MARTIN: Thank you very much.

4 CHAIRMAN CALTAGIRONE: Thank you very much.

5 We will next hear from Warren Van Buskirk,
6 the Chairman of the Courts and Corrections Committee,
7 County Commissioners Association, and if you don't
8 mind, the Governor wants me to check in with him.

9 If you will, Ron.

10 REPRESENTATIVE MARSICO: Thank you, Mr.
11 Chairman.

12 Good to see you.

13 MR. VAN BUSKIRK: Thank you.

14 Good morning, Chairman Caltagirone, Chairman
15 Marsico, and members and staff of the House Judiciary
16 Committee.

17 I am Warren Van Buskirk. I am a Perry County
18 Commissioner and currently Chairman of the County
19 Commissioners Association Courts and Corrections
20 Committee.

21 CCAP is a nonprofit, nonpartisan association
22 providing legislative, regulatory, insurance,
23 training, research, and similar programs for all the
24 Commonwealth's 67 counties.

25 I would like to thank you, first, for the

1 opportunity to appear before you today to present the
2 counties' perspective on House Bills 4, 5, and 6.
3 CCAP supports the concepts contained in these bills
4 and urges the committee to move them expeditiously to
5 the full House for consideration.

6 We often find that taxpayers are unaware that
7 county jails are totally funded by the various
8 counties through only property tax revenues. There is
9 no State or Federal funding handed down to the
10 counties to cover the costs incurred to house these
11 inmates. In fact, counties become liable for all
12 medical needs of the inmates as soon as they enter the
13 jail for any reason. This is prior to any
14 adjudication and benefits that the inmates qualify for
15 under State and Federal programs such as Medicare,
16 Medicaid, veterans benefits, and some private health
17 insurance disappears as soon as they cross the
18 threshold.

19 The average cost to house an inmate in county
20 facilities is about \$50 a day, and that average is
21 likely to increase as counties are forced to commit
22 more of their already strained revenue sources into
23 expansion or rebuilding our county jails.

24 Like the Commonwealth, county jails are
25 struggling with overcrowding. Despite significant

1 growth in county jail capacity over the past 20 years,
2 much of it resulting from Act 71 bond financing, many
3 counties are at or well over their capacity at this
4 time.

5 The problem of overcrowding in county jails
6 has been a point of significant focus for CCAP members
7 over the past two decades, and most recently, CCAP
8 produced a report spearheaded by a subcommittee of the
9 Courts and Corrections Committee. In 2003, the task
10 force conducted a study of the population situation at
11 county jails. At that time, the survey confirmed a
12 widespread and often chronic overcrowding condition
13 across the State and identified numerous counties in
14 which respondents saw no relief from current crowding
15 or projected the onset of overcrowding within the
16 immediate future. A need for action and assistance
17 was particularly evident in counties reporting actual
18 or projected overcrowding and in which no plans or
19 expectations for construction of additional facilities
20 are expected to be on the horizon.

21 The CCAP Overcrowding Task Force then
22 utilized the results of the survey to conduct a major
23 study of specific facilities with funding through the
24 use of two Federal grants. The study included
25 intensive site visits at 16 different facilities

1 throughout the State. Counties chosen were those
2 identified as having the most extreme overcrowding
3 problem as well as counties that had achieved success
4 at population control.

5 At the onset, many of the CCAP members
6 expected this study would indicate the need for new
7 financing to build even larger county jails. The task
8 force members were somewhat surprised to find that the
9 report suggested that building should not be the first
10 option when facing overcrowding. Many of the
11 suggestions outlined in the report for policy and
12 procedure changes to be employed in an initial effort
13 to reduce overcrowding are consistent with the policy
14 and procedure changes contained in House Bills 4, 5,
15 and 6.

16 Attached to my testimony is a list of each
17 recommendation that report contains. Anyone who is
18 interested in viewing the entire report can access it
19 on line at the CCAP Web site "www.pacounties.org."

20 One of the recommendations that is embodied
21 in the legislation is also one of CCAP's legislative
22 priority goals for the past several years, what we
23 call "place of confinement" initiative. This proposal
24 would limit the judge's ability to send an inmate who
25 is sentenced to the 2- to 5-year range to a county

1 jail to serve what is a State prison sentence. The
2 struggle for counties in housing inmates who are
3 serving a county sentence has been made even more
4 acute when the jail must accept inmates assigned to
5 these State sentences regardless of available capacity
6 or program.

7 The problems have become even more serious as
8 a result of two recently enacted laws that both
9 contain mandatory minimum sentences for those
10 convicted of driving under the influence. As a result
11 of the original DUI legislation, there has been a
12 1,400 percent increase in DUI incarcerations between
13 1981 and 1989, becoming a major factor in the \$600
14 million expansion of county prisons. Other mandatory
15 minimum sentences in the range of 2- to 5-years
16 incarceration have placed additional strain on county
17 jail resources.

18 House Bill 4 would address this concern by
19 requiring that inmates sentenced in the 2- to 5-year
20 range serve those sentences in county facilities
21 unless certain conditions are met. Most importantly,
22 the capacity of the county jail is the primary
23 consideration in that formula. For inmates serving a
24 State sentence who are in the county jail under work
25 release, there would be reimbursement to the county

1 for housing costs.

2 Although we haven't updated our data on the
3 number of State sentences being served at county jails
4 for several years, at one time we identified as many
5 as 2,400 inmates sentenced to county jails that were
6 serving the range of 2- to 5-year sentences. By
7 housing these inmates in county jail, the benefit of
8 programming designed to correct the underlying causes
9 of the inmates' encounter with the justice system may
10 well go unaddressed.

11 County jails have always been considered a
12 short term place of confinement or a place to house
13 those awaiting a disposition. For that reason, jails
14 often do not offer inmates the type of job training,
15 re-entry, drug and alcohol treatment, or other
16 supports that may be available at State institutions.
17 We are pleased that House Bill 4 will finally address
18 this concern 3 years after the effective date while
19 allowing for confinement of those sentenced in the 2-
20 to 5-year range under specific conditions.

21 House bill 4 also contains the requirements
22 for data collection and analysis. Consistent with the
23 CCAP report, the use of data to determine where
24 sentencing practices need review and adjustment and to
25 understand where parole policy is not consistent with

1 rational outcomes is a key recommendation. The
2 legislation would require the development of
3 guidelines for sentencing and resentencing to balance
4 the safety and protection of the public. The bill
5 would also require that the guidelines be reviewed by
6 the organizations representing each sector of the
7 justice system.

8 Finally, we are very frankly pleased to see
9 that House Bill 4 creates a recidivism risk reduction
10 initiative. Our report indicates a strong need to
11 increase the use of alternate sentencing procedures.

12 We have a few concerns about the impact of
13 House Bill 5, although we understand and support the
14 goals it is intended to achieve. The bill allows for
15 temporary transfers of inmates between State
16 facilities when the inmate's presence is required for
17 proceedings. The bill contains a provision that
18 allows the department to pass along the cost to
19 transfer the inmate to the requesting county. We
20 understand that utilizing new technologies such as
21 video conferencing can alleviate the need to move some
22 inmates, and in many cases, counties have moved
23 forward to improve their ability to conduct
24 proceedings via video conferencing.

25 And I would just like to mention here that we

1 have had excellent success in that in our two counties
2 that are comprised of the 41st Judicial District.
3 Both counties, Perry and Juniata, are very rural.
4 District justices are far-flung to the edges, and all
5 of the police officers that have been involved as well
6 as court personnel have been very pleased with being
7 able to conduct video arraignments and that type of
8 thing. It saves a tremendous amount of time for our
9 officers and inmates, you know, the defendants being
10 transported, and it has worked very well just within
11 those few counties.

12 There are still issues for counties with this
13 technology, and there must be cooperation from the
14 judiciary to assure that they permit video
15 conferencing in lieu of the inmate's actual
16 appearance. In addition, we are finding that video
17 conferencing capability can be problematic when the
18 systems of one facility are incompatible with the
19 systems of the other. We would strongly recommend
20 that counties be supplied with the financial resources
21 to employ this technology before final guidelines are
22 written so that counties have some control over the
23 cost of moving inmates and that the effective dates
24 are far enough into the future as to avoid undue costs
25 to the county taxpayers. We would be happy to work

1 with the sponsor on drafting amendments to address
2 these particular concerns.

3 Finally, House Bill 6 will provide for
4 improvements after release by concentrating on
5 probation and parole practice. County judges would
6 maintain parole authority over inmates who are serving
7 State sentences in county jails. This is consistent
8 with CCAP's platform and a provision that we support.
9 There would be greater consideration given to the need
10 to have an inmate serve a sentence of confinement and
11 promotion of the use of alternatives.

12 Taken together, these bills cover a great
13 deal more ground, but my intent has been to
14 concentrate on the main points of concern for
15 counties. We clearly understand that the system must
16 be reformed in all aspects and tackled simultaneously.
17 If only one problem area is addressed, the underlying
18 issues will create pressure on another part of the
19 system. We understand that the Commonwealth is
20 struggling with capacity issues, too. We are
21 committed to working together to streamline the
22 justice system in a way that accounts for the
23 pressures that are unique to each sector.

24 Once again, thank you for the opportunity to
25 offer our comments and for your kind attention. I

1 would be happy to address any of your questions.

2 Thank you.

3 CHAIRMAN CALTAGIRONE: Any questions?

4 If the members have no questions, I assume
5 you are in favor of it, that's what I've been told---

6 MR. VAN BUSKIRK: Yes.

7 CHAIRMAN CALTAGIRONE: ---and that you are
8 going to be on board.

9 MR. VAN BUSKIRK: Yes. You got the long and
10 the short of it here in about 10 seconds.

11 CHAIRMAN CALTAGIRONE: Well, we appreciate
12 that support, though, because it's going to be helpful
13 in getting this package moving.

14 MR. VAN BUSKIRK: Absolutely. This has
15 addressed many issues that we have been talking about
16 for several years now.

17 CHAIRMAN CALTAGIRONE: Thank you.

18 MR. VAN BUSKIRK: I believe we can have the
19 whole package.

20 REPRESENTATIVE MARSICO: As the prime sponsor
21 of House Bill 5, I would be so willing to sit down
22 with the counties to discuss those recommendations
23 that you brought to us, and once again, thank you for
24 the counties' perspective on these bills and your
25 support for those.

1 MR. VAN BUSKIRK: Okay. Thank you very much.

2 CHAIRMAN CALTAGIRONE: Thank you, sir.

3 We will next hear from Mark Bergstrom, the
4 Executive Director of the Pennsylvania Commission on
5 Sentencing.

6 MR. BERGSTROM: Good morning. I will make
7 this brief.

8 I have submitted some testimony in writing,
9 so I will just highlight some of the issues and then
10 answer any questions.

11 To start with, I think the benefits of the
12 program or the legislative package are probably
13 four-fold. They increase accountability,
14 transparency, efficient use of correctional resources,
15 and systemwide coordination, and the reason I think
16 that's very important is that Pennsylvania has an
17 indeterminate sentencing system, so in effect we have
18 a two-part process. We have two separate decisions
19 being made -- a decision of sentencing and a decision
20 of parole.

21 And there are often different purposes at
22 sentencing versus parole. At sentencing, based on our
23 legislation, the sentencing guidelines have as a
24 primary purpose retribution, but we have secondary
25 purposes like victim restoration or rehabilitation.

1 And parole focuses much more on public safety and
2 looking at risk and need and trying to figure out when
3 is an appropriate time to release the person or is it
4 appropriate to release the person. So there are
5 different purposes, and that can lead to a little bit
6 of a lack of communication, a lack of coordination
7 between those two parts of the system, and I think
8 this legislation attempts to overcome some of those
9 problems.

10 The issues in the legislation that
11 specifically apply to the commission include, first,
12 adding the Secretary of Corrections and the Chairman
13 of the Parole Board to the commission as ex-officio
14 nonvoting members, and I think that is very important
15 to help, both at the policy level and at a practical
16 level, to foster that kind of coordination. There has
17 also been discussion of including the Victim Advocate
18 as an ex-officio nonvoting member. So I think those
19 are some issues that, as the legislation moves
20 through, may be worth considering.

21 The commission certainly would have new
22 duties under this legislation, new duties in at least
23 three areas in developing guidelines, guidelines for
24 revocation of probation, county IP, and State IP,
25 areas where courts presently can resentence on

1 revocation. So these would be guidelines that would
2 at least provide some structure or some advice to the
3 courts on resentencing those offenders.

4 There would also be, as Chairman McVey
5 mentioned, guidelines for parole, and we would
6 anticipate working very closely with the Parole Board
7 because they would be experts in that area to develop
8 those guidelines. But as we see it, those guidelines
9 would be public guidelines. They would be a public
10 instrument that would be used for the court to
11 consider parole decisionmaking. We would be using the
12 standards in the legislation to craft those and work
13 closely with the Parole Board. It doesn't take away
14 in any way the Parole Board's ability to use internal
15 instruments as well, and certainly we would be working
16 with them coordinating on that. But I think it does
17 provide a public process for developing parole
18 guidelines and for the collection of information
19 related to those guidelines.

20 And then the other area of guidelines would
21 be the recommitment ranges that the Chairman talked
22 about, and those would be, and as the Chairman said,
23 addressing both technical violations and criminal
24 violations for parole revocations before the Parole
25 Board.

1 In all these cases, these guidelines, like
2 sentencing guidelines, are advisory guidelines. The
3 court or the Parole Board retains discretion and can
4 depart from the guidelines. It's a matter of just
5 documenting the process.

6 There are a couple of things that are, I
7 think, necessary and could require some amendments in
8 the legislation to make sure that any of these
9 guidelines are established, developed, promulgated
10 through the existing procedures that we have for
11 sentencing guidelines. What we find after 25 or 30
12 years of sentencing guidelines is it is really
13 important to sort of connect all the dots to make sure
14 that we have legislation that is linked to the
15 policies, that are linked to the guidelines, that are
16 linked to the instrument for collecting information on
17 sentences or decisions made to those guidelines, and
18 then that that information is used to sort of feed
19 back to the system, to review the guidelines, to
20 provide information to the public or the policymakers.
21 So I think it's very important that any of the
22 legislation that moves forward with guidelines or
23 requirements that a commission have guidelines or
24 develop guidelines, I think it is important that the
25 same kinds of provisions that we have in the statute

1 for sentencing guidelines would apply to all other
2 guidelines, and that is most importantly the
3 information collection process.

4 The final responsibility under the
5 legislation is the responsibility of the commission to
6 evaluate the new program, the recidivism risk
7 reduction incentive program. It's going to be hard to
8 get used to saying, I guess. But one of the things I
9 will point out about that program that I think is
10 important is that we have probably four correctional
11 programs that target, to some degree, the same
12 population, and it is the 2 to 5 population we have
13 been talking about. The same individuals that
14 certainly are on the cuff between serving their
15 sentences in county jail or in State prison are, to
16 some degree, the same individuals eligible who are
17 being considered for County Intermediate Punishment,
18 for the same motivational boot camp, and for State
19 Intermediate Punishment, and now for this program.

20 And fortunately, we are evaluating a lot of
21 those other programs, so I think it really does
22 provide an opportunity to first look at those programs
23 and try to make judgments about whether they actually
24 are working or not. And then if they are working, it
25 provides a nice opportunity to look at the programs

1 and try to identify which programs work best for which
2 offenders, and I think it is wise to include in this
3 legislation the evaluation of a new program and trying
4 to figure out where it fits into the mix.

5 So with that, I thank you for providing this
6 opportunity, and I'm certainly open to take any
7 questions.

8 CHAIRMAN CALTAGIRONE: Thank you, Mark.

9 I certainly again want to thank you for all
10 the work and help that you have given us in developing
11 this package, and I just hope that whatever tweaking
12 we have to do with the amendments or any corrections,
13 that if you want to meet with counsel on any of the
14 suggestions that you have made to us this morning, I'm
15 sure Bill would be available to do that.

16 MR. BERGSTROM: My sense is it's a delicate
17 balance, but just a little tweaking.

18 CHAIRMAN CALTAGIRONE: I think these are
19 major breakthroughs that many of us have advocated for
20 for years, but with the main thrust toward mandatory
21 sentencing and, you know, incarcerating everybody
22 under the sun, and I just kept saying, this is sheer
23 folly; at some point we are going to be paying for it.
24 And being around here for 31 years and seeing this
25 monster grow, grow, grow and you can't feed it enough

1 cash, this State is going to be cash-strapped at some
2 point, and where in God's name are we going to
3 continue to get all the money that is needed to, you
4 know, deal with this problem?

5 I just think the resources of this State
6 could be better well spent in many other areas. It
7 was very encouraging what the Secretary of Corrections
8 had to say. I've seen that spark just grow by leaps
9 and bounds, and I do think that we deserve some of the
10 blame at this end, maybe a lot of the blame, because
11 of legislation and policies that we have developed.
12 It put us where we are at.

13 I just think that we need to take a very,
14 very hard look at how we are handling our finances.
15 We have a fiduciary responsibility to the taxpayers of
16 this State, and changing that kind of behavior is
17 something I think we are all looking, hopefully, to
18 accomplish.

19 Do we have any questions from the members?
20 Well, we did it on time.

21 Thank you, Mark. God bless. Have a good
22 weekend, and this hearing is adjourned.

23 And by the way, this package of bills will be
24 considered at the very next meeting. Next Tuesday, it
25 would have been considered Tuesday, but the Governor

1 wanted gun legislation considered Tuesday, so with due
2 respect to the Governor, we will do that first at the
3 very next meeting. This whole package is going to be
4 moving forward now.

5 Thank you.

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7 (The hearing adjourned at 11:55 a.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Jean M. Davis, Reporter
Notary Public

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