

TESTIMONY BEFORE THE
JUDICIARY COMMITTEE OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
ON PROPOSED PRISON REFORM LEGISLATION
HOUSE BILL NOS. 4, 5 & 6



PRESENTED ON NOVEMBER 15, 2007 BY
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Good morning Chairman Caltagirone, Chairman Marsico, and the distinguished members of the House Judiciary Committee. I am James Martin, District Attorney of Lehigh County and Immediate Past President of the Pennsylvania District Attorneys Association (PDAA). Unfortunately, Bruce Castor, the current President of PDAA could not be here today. He asked that I convey his regrets to the Committee.

The PDAA is very grateful to the Committee for allowing us the opportunity to offer testimony concerning House Bills 4, 5 & 6. PDAA supports the important goals of this legislative package. While I was President of PDAA, we worked closely with other criminal justice stakeholders and legislative staff who were providing substantial assistance to the Bills' sponsors. Throughout this process, the PDAA Executive Committee was apprised of various proposals and provided extensive substantive feedback on them. Given this involvement, we are please with the final package developed here. The PDAA membership as a whole has voted overwhelming to support this package. The PDAA resolution relating to this legislative package is attached to this testimony.

Background

Our members strongly believe that these Bills, as a whole, support important criminal justice and public safety goals. As prosecutors, we know one of the primary duties of government is to ensure that the criminal justice system protects the public from crime and especially violent crime. Prosecutors throughout this Commonwealth work hard to pursue just convictions that will help protect the public and bring justice

to crime victims. As a result of prosecutor efforts, there are now over 45,000 prisoners committed to the custody of the Department of Corrections.

In addition, over 30,000 inmates are detained in our county jails. Although these jails house pretrial detainees, and probation and parole violators, they also house sentenced prisoners in need of treatment. While county jails traditionally hold persons serving short sentences, our county jails have the additional burden of housing long-term serious offenders. Specifically, on any given day, our county jails hold between 2000 and 2500 serious offenders serving sentences of two or more years.

Pennsylvania's current statutory scheme contributes greatly to the number of serious offenders confined in our county jail system. Under current Pennsylvania law, prisoners must do their time in the county prison system if they are sentenced to a term of less than 2 years or if they are awaiting trial, regardless of whether the charges are serious or minor. In addition, if the trial judge sentences a defendant to a prison term of less than 5 years, the judge is free to send the prisoner to the state prison system or to place him in the county system. Unfortunately, too many judges choose the county option. This has created a serious problem for our criminal justice system. Our 67 counties lack the financial and staff resources to provide appropriate treatment for these offenders.

Pennsylvania's current scheme--that places this heavy burden on our counties-- is not consistent with sound criminal justice policy. Attached to this written testimony is a summary of the statutory schemes around the country. Based on our state survey, we found that no state—other than Pennsylvania-- allows persons

serving sentences of up to five years to be incarcerated in the county system at county expense. The vast majority of states limit county sentences to under one year.

There are good reasons for such limitations. County jails are designed to house prisoners for short periods of time. County governments lack the money and staff needed to provide the wide array of rehabilitative services needed for long-term sentenced offenders. The state system, however, is in a better position to deliver these essential services in a centralized, cost-effective manner.

As prosecutors, we recognize that over 90% of state prisoners will eventually be returned to the community. Nationally, over 50% of prisoners released from incarceration will be in some form of legal trouble within 3 years. Violent crimes committed by released prisoners can result in physical injuries, death, emotional harms, and severe economic consequences to individual crime victims. New crimes committed by released prisoners lead to increased criminal justice system costs (such as law enforcement investigations, criminal prosecutions, new criminal sentences and victims compensation awards). Thus, we strongly oppose short-sighted efforts to reduce prison populations through prisoner releases. Rather, we strongly encourage the legislature to invest in appropriate prison reforms that are designed to make our communities safer and improve the cost-effectiveness of our prison system.

Goals

Based on our review of these House Bills we found that they supported these important criminal justice goals. Specifically, this package would

- Reduce county jail overcrowding and the systemic pressure to release jail inmates;

- Shift the burden for incarceration and treatment of serious offenders from the county jails to the state system;
- Improve offender treatment through centralized programs, administrative support, and specialized expertise;
- Ensure truth-in-sentencing for crime victims, the public and the offender;
- Encourage evidence-based rehabilitative programs proven to reduce the recidivism risk;
- Improve inmate safety through the improved exchange of information between the county and state system;
- Improve county and state parole practices through parole guidelines that ensure consistency and fairness;
- Encourage parole resources to focus on higher risk offenders; and
- Reduce taxpayer costs and protect the public through the centralization of prisoner transportation and increased reliance on video-conferencing technology.

Proposed Amendments

Because House Bill 4, 5, and 6 complement each other and are part of a comprehensive approach, the following is a summary of the key provisions.

I. Place of Confinement Amendments.

In summary, the proposed amendments found in HB 4, at pages 9-12, would do the following. They would require the state to house prisoners serving sentences of 2 or more years. At the same time, they would allow prisoners, under very limited

circumstances, to serve 2-5 year sentences in the county system provided the prosecutor and judge consent to the placement and the county jail administrator agrees there is room and the jail population is less than 110% of the rated capacity. These amendments would also require the aggregation of sentences for determining place of confinement. The amendments would also allow judges to send previously sentenced prisoners to the state system if they violate the County Restrictive Intermediate Punishment (RIP) sentence and provide for the state to reimburse counties for long-term work release (but with a state-wide cap of \$2.5 million). Finally, to allow for the state and county systems to adjust to these changes, the proposed place-of-confinement amendments would have an effective date of 3 years after enactment.

These proposals, if adopted, would bring Pennsylvania more in line with accepted correctional practices and ensure that long-term sentenced prisoners receive the treatment programs that are essential to protect the public upon their return to our communities.

II. Temporary Transfer of Prisoners for Judicial Proceedings.

These proposed amendments, found in H.B. 5, at pages 2-4, would require the Department of Corrections (DOC) to transport state prisoners to state prisons near the courthouse. This proposal is designed to reduce the costly and inefficient practice of 67 different counties transporting prisoners to local courthouses for trials and post-convictions proceedings. These provisions also encourage counties to use video-conferencing whenever possible to reduce prisoner transports.

We believe that this is an important public safety issue. Just last week, Broward County Sheriff's Deputy, Paul Rein, 76, a 20 year police veteran, was shot and killed by a convicted robber he was transporting to a courthouse for trial. We simply cannot afford to be complacent about the transportation of serious offenders who often have nothing to lose by attacking transportations officers in an attempt to escape. We believe strongly that our officers and the public will be safer if we reduce the overall number of prisoner transports through video-conferencing technology. In addition, these provisions are fiscally sound because they provide for the centralization of much of the prisoner transportation. Counties electing to use this transportation system would reimburse the DOC for the cost of transportation, but not the cost of confinement.

III. Parole Guidelines.

In summary, the Sentencing Commission would promulgate parole guidelines. The proposed Sentencing Commission guidelines would apply to initial paroles, recommitments, backtime, reparoles, and resentencings. The county judges, like the Pennsylvania Board of Probation and Parole (PBPP), would be covered by the statutory requirements and parole guidelines. Thus, like sentencing guidelines, there would be new constraints on judicial discretion. These parole guidelines would help promote fairness, consistency and transparency in parole procedures. (The amendments designed to accomplish this are found in the HB 6 at pp. 1-8 and HB 4)

There would also be significant changes in parole jurisdiction. Currently, PBPP has parole jurisdiction for any prisoner serving an aggregated sentence of two or more years in a county jail. This means that PBPP must conduct parole reviews in

all of these physical locations as well as every state correctional facility. At the same time, judges parole prisoners from every county prison when their sentence is less than two years. Quite simply, we believe it makes more sense to divide parole jurisdiction based on place of confinement.

Under the proposed amendments, judges would be responsible for paroles of inmates serving 2-5 year sentences in the county prison, under the new place of confinement provisions that will take effect in 3 years. Importantly, no inmate would be subject to this parole jurisdiction change unless the D.A., county jail administrator, and judge agree to the county prison placement. This sensible division of parole responsibility would allow PBPP to devote its resources to the serious offenders in the state system without stretching itself thin by trying to conduct parole reviews for inmates from 67 county jails.

IV. "Rebuttable" Parole at the Minimum.

These proposed amendments, found at H.B. 6, pages 9-11, would allow for the presumptive parole of prisoners who essentially meet the State Intermediate Punishment (SIP) eligibility standards but were not referred or accepted to the program. These prisoners would be eligible for automatic release at their minimum sentences if they have maintained a good conduct record in prison, they don't pose a public safety risk, and there is an adequate parole plan. The proposed language also adds substantial checks and balances.

V. Department of Corrections Requests for SIP Referral.

Proposed Title 42 amendments found in H.B. 4, pages 19-20, would allow the Department of Corrections (DOC) to request that an eligible prisoner be considered

for State Intermediate Punishment (SIP.) These amendments retain the requirement of the prosecutor's consent before entry into the program. This would allow DOC to identify good candidates for this program and allow the sentencing court and lawyers to review this sentencing option, even if it had not been considered previously.

VI. Recidivism Risk Reduction Incentives

The proposed program would amend 42 Pa.C.S.A. § 9756 (HB4, pages 8-9) and add a new chapter in Title 44 (HB4, pages 20-32). This comprehensive proposal (known as the "Recidivism Risk Reduction Incentive Program" or "Triple-R Eye") is designed to ensure that nonviolent prisoners participate in evidence-based programs proven to reduce recidivism. In addition to revisions to 42 Pa.C.S.A. § 9756 (sentencing provisions), there are definitional provisions, limits on eligibility, limits on the types of programs that can be approved, additional public safety protections, requirements for published guidelines and regulations, reports, evaluations, and an educational plan (targeted for prosecutors, the defense bar, and judges).

To our knowledge, this is the first time that Pennsylvania has proposed such an explicit evidence-based approach to rehabilitative programs. Prosecutors support legislation that encourages correctional officials to focus specifically on programs that have been proven to reduce recidivism. Because 90% of Pennsylvania prisoners will return to our streets, we support efforts to invest tax dollars in treatment programs that have been demonstrated to reduce the public safety risk of released prisoners.

VII. Prisoner Information Provisions.

The Department of Corrections (DOC) has requested amendments to 42 Pa.C.S.A. § 9764 that deal with information accompanying prisoners admitted to the

state system. These proposed amendments (HB4, pp. 13-16) are designed to ensure that the DOC has medical information, escape history, prison infraction records, sentencing credit information, and other information necessary for the safe management of prisoners. The bill includes language that would minimize the burden on the county system and encourage the use of electronic records.

Comments from Criminal Justice Stakeholders.

For the last year, representatives from the Governor's Office, the Department of Corrections, the Pennsylvania Board of Probation and Parole, the County Commissioners Association of Pennsylvania and the PDAA have worked with the Legislature to craft a consensus package that would address these critical issues. Following the introduction of these Bills, various criminal justice stakeholders have provided comments and suggestions. Most of these suggestions are technical in nature. We believe that these technical suggestions are easily addressed and we look forward to working with the Committee and Bill sponsors to address them.

Conclusion

Thank you for allowing me to speak to you today on the very important issue of prison system reform. I appreciate that you are taking the time to gather information about the way that existing laws impact the criminal justice system and public safety. I commend your efforts to ensure that the laws that govern the place of confinement, parole jurisdiction, and rehabilitation services are not only well written, but are also thoughtful, smart and cost-effective criminal justice

policy. We look forward to working with this Committee on this important legislative package.

County/State Sentencing Guidelines
50 State Search

State	Statute/Source of Information Obtained	Term of Imprisonment/ Classification	Place of Imprisonment
Alabama	Code of Ala. §15-18-1 (2005)	12 months or less 12 mos.- Not more than 3 years More than 3 years	County Jail County jail or Penitentiary Penitentiary
Alaska		All Sentences	State Uniform Correction System
Arkansas	A.C.A. §5-4-401 (2006)	Misdemeanor (up to 1 year) Felony (1+ years)	County State
Arizona	A.R.S. §13-105 (2006)	Misdemeanor Felony	County Department of Corrections
California	Cal Penal Code §19.2 (2006)	Misdemeanor (less than 1 year) Felony (1+ years)	County State
Colorado		Pre-trial and up to 2 years More than 2 years	County State
Connecticut		All Sentences	State Uniform Correction System
Delaware		All Sentences	State Uniform Correction System
District of Columbia	D.C. Code §24-201.01 (2006)	More than 1 year	Penitentiary
Florida	Fla.Stat. §775.08 (2006)	More than 1 year	Penitentiary
Georgia	O.C.G.A. §17-10-3 (2006)	Less than 1 year	County Jail
Hawaii		All Sentences	State Uniform Correction System
Idaho	Idaho Code §18-111 (2006)	Misdemeanor Felony	County State
Illinois	720 ILCS 5/2-11 (2006) 720 ILCS 5/2-7 (2006)	Less than 1 year 1 year or more	County Jail Penitentiary
Indiana	Burns Ind.Code Ann. 35-38-3-3 (2006)	Misdemeanor (with minor exceptions listed in statute) Felony	County Jail Dept. of Corrections
Iowa	Iowa Code §901.7 (2005)	More than 1 year	Penitentiary
Kansas	K.S.A. §21-4603d (2006)	Misdemeanor Felony	County State (exception – DUI felony sent to County)
Kentucky	KRS §532.090 (2006) KRS §532.100 (2006)	Misdemeanor (less than 1 year) Felony – Class C & D	County County or DOC (DOC pays County per diem)

		Felony-All Others	Dept. of Corrections
Louisiana		Misdemeanor Felony w/o hard labor Felony with hard labor	Parish Jail Parish Jail State (if housed temporarily in cty, state pays cty-currently 18,000 inmates)
Maine	17-A.M.R.S. §1252 (2005)	9 months or less More than 9 months	County Dept. of Corrections
Maryland	Md. Correctional Services Code Ann. §9-105 (2006) Md. Correctional Services Code Ann. §9-104 (2006)	Up to 12 months 12 months – less than 18 months 18 months or more	County County or State State
Massachusetts	ALM GL ch.279 §23 (2006) ALM GL ch.274 §1 (2006)	Misdemeanor (up to 2 ½ years) Felony (more than 2 ½ years)	County State
Michigan		Less than 1 year 1 year or more	County State
Minnesota	Minn.Stat. §609.02 (2005)	Up to 1 year More than 1 year	County State
Mississippi	Miss.Code Ann. §21-13-19 (2006) Miss.Code Ann. §1-3-11 (2006)	Misdemeanor (up to 1 year) Felony (1+ years)	County Penitentiary
Missouri	556.016 R.S.Mo. (2006)	More than 1 year	Penitentiary
Montana	Mont.Code Ann. §45-2-101 (2005)	Misdemeanor (Less than 1 year) Felony (1+ years)	County State
Nebraska	R.R.S. Neb. §29-3901 (2006)	1 year or more	Dept. of Corrections
Nevada	Nev.Rev.Stat.Ann.§193.140 (2006) Nev.Rev.Stat.Ann. §193.130 (2006)	Misdemeanor (not more than 1 year) Felony (1+ years)	County State
New Hampshire	RSA 651:17 (2006) RSA 21-H:10 (2006)	Less than 1 year 1+ years	County Custody of commissioner
New Jersey	N.J.Stat. §2C:43-10 (2006)	1+ years	Dept. of Corrections
New Mexico	N.M.Stat.Ann. §30-1-6 (2006)	More than 1 year	Penitentiary
New York	NY CLS CPL §430.20 (2006)	Misdemeanor (Up	County

New York, continued		to 1 year) Felony- in some instances up to 2yrs Felony- 1+ years	County or DOC Dept. of Corrections
North Carolina	N.C.Gen.Stat. §15A-1352 (2006)	91 days or more	Dept. of Corrections
North Dakota	N.D.Cent.Code §12.1-32-02 (2006)	Misdemeanor (less than 1 year) Felony (1+ years)	County Dept. of Corrections
Ohio	ORC Ann. 1.05 (2006)	More than 1 year	Penitentiary
Oklahoma	21 Okl.St. §10 (2005)	Less than 1 year	County Jail
Oregon		Less than 1 year 1+ years	County Jail State
Pennsylvania	42 Pa.C.S. §9762 (2006)	Less than 2 years 2 to 5 years 5 years or more	County County or State Dept. of Corrections State Dept. of Corrections
Rhode Island		All Sentences	State Uniform Correction System
South Carolina	S.C.Code Ann. §24-3-20 (2005)	91 days or more	Dept. of Corrections
South Dakota	S.D. Codified Laws §22-6-2 (2006) S.D. Codified Laws §22-6-1 (2006)	Misdemeanor (1 year or less) Felony	County State Penitentiary
Tennessee	Tenn.Code Ann. §40-20-103 (2006)	More than 1 year Small counties (less than 600,000)-any term of confinement	Penitentiary County jail or Penitentiary
Texas		Less than 1 year (misdemeanors) 6 mos.- 2 years (4 th degree felony) Over 2 years	County State Jail State Penitentiary
Utah	http://corrections.utah.gov	Less than 1 year 1 year or more	County Dept. of Corrections
Vermont		All Sentences	State Uniform Correction System
Virginia	Va.Code Ann. §18.2-11 (2006) Va. Code Ann. §53.1-20 (2006)	Misdemeanor (Less than 1 year) Felony (1 Year+)	County Jail County or DOC (State pays per diem for felony inmates in county jails)
Washington	http://www.doc.wa.gov/general/crimjusticeprocess.htm	1 year or more	Dept. of Corrections
West Virginia	W.Va.Code §61-11-1 (2006)	Misdemeanor	County

		Felony	Penitentiary
Wisconsin	Wis.Stat. §939.60 (2006)	Misdemeanor Felony	County State
Wyoming	Wyo.Stat. §6-10-101 (2006) Wyo.Stat. §7-13-107 (2006)	Less than 1 year (misdemeanor and felony split sentence and some protective custody) Felony – 1+ years	County (DOC pays per diem to county for felony and protective custody inmates) State

September 18, 2006

**Pennsylvania District Attorneys Association
Resolution**

**Comprehensive Sentencing, Confinement, Treatment and Parole Reform
Legislation**

WHEREAS, the Pennsylvania District Attorneys Association supports criminal justice system reforms that would improve public and victim safety; and

WHEREAS, the Pennsylvania District Attorneys Association supports criminal justice system improvements that would ensure centralized treatment services for serious offenders, and increase offender access to evidence-based programs designed to reduce cost-effectively offender recidivism; and

WHEREAS, the Pennsylvania District Attorneys Association seeks to reduce unnecessary duplication of government efforts, revise outdated criminal justice practices that inadvertently waste financial and staff resources, increase reliance on cost-effective system improvement technologies, and reduce the financial burden placed on county taxpayers to fund prison costs for serious offenders; and

WHEREAS, the Pennsylvania District Attorneys Association supports compassionate treatment of seriously ill and terminally ill prisoners, reducing the risks of harm to prisoners, and improving information available to correctional officials to safely manage prisoners; and

WHEREAS, the Pennsylvania District Attorneys Association supports efforts to improve the fairness, consistency, and decision-making of parole entities in the Commonwealth; and

WHEREAS, the members of the Pennsylvania General Assembly have stated their intent to introduce and consider a comprehensive legislative package that addresses these goals of the Pennsylvania District Attorneys Association; and

WHEREAS, this proposed comprehensive legislative package is presently contained in H.B. 5 (proposed Title 61 Amendments relating to prisoner transfers), Pennsylvania Legislative Reference Bureau Draft #2007D05804 (proposed Title 42 amendments providing for parole guidelines, sentencing practices, place of confinement, prisoner information, state intermediate punishment placement; and proposed Title 44 amendments relating to recidivism risk reduction incentives), Pennsylvania Legislative Reference Bureau Draft # 2007D5809 (proposed Title 61 amendments relating parole and parole guidelines), and Pennsylvania Legislative Reference Bureau Draft #2007D05804 (proposed Title 61 amendments relating to treatment for seriously ill and terminally ill prisoners); and

WHEREAS, the Pennsylvania District Attorney's Association believes that this comprehensive legislative package, as a whole, supports the aforementioned goals of the Association; and

NOW, THEREFORE BE IT RESOLVED, that the Pennsylvania District Attorneys Association supports the statutory goals set forth in the proposed comprehensive legislative package relating to sentencing, confinement, treatment, and parole currently set forth in H.B. 5 (proposed Title 61 Amendments relating to prisoner transfers), Pennsylvania Legislative Reference Bureau Draft #2007D05804 (proposed Title 42 amendments providing for parole guidelines, sentencing practices, place of confinement, prisoner information, state intermediate punishment placement; and proposed Title 44 amendments relating to recidivism risk reduction incentives), Pennsylvania Legislative Reference Bureau Draft # 2007D5809 (proposed Title 61 amendments relating parole and parole guidelines), and Pennsylvania Legislative Reference Bureau Draft #2007D05804 (proposed Title 61 amendments relating to treatment for seriously ill and terminally ill prisoners), and urges the Pennsylvania General Assembly to pass legislation in substantial accordance with the provisions of this proposed comprehensive legislative package.

Resolution Passed July 17, 2007