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**TESTIMONY OF WARREN VAN BUSKIRK**  
**Perry County Commissioner**  
**Chairman, CCAP Courts and Corrections Committee**

**Before the**  
**House of Representatives Judiciary Committee**  
**Thursday November 15, 2007**

**House Bill 4, House Bill 5, House Bill 6**

## **TESTIMONY OF WARREN VAN BUSKIRK BEFORE HOUSE JUDICIARY COMMITTEE**

### **House Bill 4, House Bill 5, House Bill 6**

Good morning Chairman Caltigirone, Chairman Marsico, and members and staff of the House Judiciary Committee. I am Warren Van Buskirk, Perry County Commissioner, and Chairman of the County Commissioners Association (CCAP) Courts and Corrections Committee. CCAP is a nonprofit, nonpartisan association providing legislative, regulatory, insurance, training, research, and similar programs for all of the Commonwealth's 67 counties.

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

We often find that tax payers are unaware that county jails are totally funded by the county, through property tax revenues. There is no state or federal funding handed down to the counties to cover the costs incurred to house inmates. In fact, counties become liable for all medical needs of inmates as soon as they enter the jail for any reason. This is prior to any adjudication, and benefits that the inmate qualifies for under state and federal programs such as Medicaid, Medicare, veterans benefits, and some private health insurance will disappear. The average cost to house an inmate in a county facility is about \$50 per day, and that average is likely to increase as counties are forced to commit more of their already strained revenue sources into expansion or rebuilding their county jails.

Like the Commonwealth, county jails are struggling with overcrowding. Despite significant growth in county jail capacity over the past 20 years, much of it resulting from Act 71 bond financing, many county jails are at capacity, or well over capacity at this time. The problems of overcrowding in county jails have been a point of significant focus for CCAP members over the past two decades, and most recently, CCAP released a report spearheaded by a subcommittee of the Courts and Corrections Committee.

In 2003, the Task Force conducted a study of the population situation at county jails. At that time, the survey confirmed a widespread and often chronic overcrowding situation across the state, and identified numerous counties in which respondents saw no relief from current crowding or projected the onset of overcrowding within the immediate future. A need for action and assistance was

particularly evident in counties reporting actual and/or projected overcrowding and in which no plans or expectations for construction of additional facilities were reported to be on the horizon.

The CCAP Overcrowding Task Force then utilized the results of the survey to conduct a major study of specific facilities with funding through two federal grants. The study included intensive site visits at 16 facilities throughout the state. The counties chosen were those identified as having the most extreme overcrowding problem, as well as counties that have achieved success at population control. At the outset, many CCAP members expected the study would indicate a need for new financing so that larger county jails could be constructed. The Task Force members were somewhat surprised to find that the report suggested that building should not be the first option when faced with overcrowding. Many of the suggestions outlined in the report for policy and procedure changes to be employed in an initial effort to reduce overcrowding are consistent with the policy and procedure changes contained in HB's 4, 5 and 6. Attached to my testimony is a list of each recommendation that the report contains. Anyone interested in viewing the entire report can access it online at [www.pacounties.org](http://www.pacounties.org).

One of the recommendations that is embodied in the legislation is also one of CCAP's priority legislative goals for the past several years, our "Place of Confinement" initiative. This proposal would limit a judge's ability to send an inmate who is sentenced in the two to five year range to a county jail to serve what is a state prison sentence. The struggle for counties in housing inmates who are serving a county sentence has been made more acute when the jail must accept inmates with these state sentences regardless of available capacity or programming. The problems have been made even more serious as a result of two recently enacted laws containing mandatory minimum sentences for those convicted of driving under the influence. As a result of the original DUI legislation was responsible for a 1,400% increase in DUI incarcerations between 1981 and 1989, becoming a primary factor in a \$600 million expansion of county prisons. Other mandatory minimum sentences in the range of two to five years incarceration have placed a strain on county jail resources. House Bill 4 would address this concern by requiring that inmates sentenced in the two to five year range serve those sentences in state facilities unless certain conditions are met. Most importantly, the capacity of the county jail is a primary consideration in that formula. For inmates serving a state sentence who are in the county jail under work release, there would be reimbursement to the county for housing costs.

Although we haven't update our data on the number of state sentences being serve in county jails for several years, at one time we identified as many as 2400 inmates sentenced to county jails in the

range of two to five years. By housing these inmates in the county jail, the benefit of programming designed to correct the underlying cause of the inmates encounter with the justice system may well go unaddressed. County jails have always been considered as short term places of confinement, or a place to house those awaiting a disposition. For that reason, jails often do not offer inmates the types of job training, re-entry, drug and alcohol treatment, or other supports that may be available at state institutions. We are pleased that House Bill 4 will finally address this concern three years after the effective date while allowing for confinement of those sentenced in the two to five year range under specific conditions.

HB 4 also contains requirements for data collection and analysis. Consistent with the CCAP report, the use of data to determine where sentencing practices need tweaking, and to understand where parole policy is not consistent with rational outcomes is a key recommendation. The legislation would require the development of guidelines for sentencing and resentencing that balance the safety and protection of the public. The bill would also require that the guidelines be reviewed by the organizations representing every sector of the justice system.

Finally, we are very pleased to see that HB 4 creates a recidivism risk reduction initiative. Our report indicates a strong need to increase the use of alternative sentencing procedures.

We have a few concerns about the impact of HB 5, although we understand and support the goals it is intended to achieve. The bill allows for temporary transfers of inmates between state facilities, when the inmate's presence is required for proceedings. The bill contains a provision that allows the Department to pass along the costs to transfer the inmate to the requesting county. We understand that utilizing new technologies, such as video conferencing can alleviate the need to move an inmate, and many counties have moved forward to improve their ability to conduct proceedings via video conferencing. There are still issues for counties with this technology, and there must be cooperation from the judiciary to assure that they permit video conferencing in lieu of the inmate's appearance. In addition, we are finding that video conferencing capability can be problematic when the systems of one facility are incompatible with the systems of the other facility. We would strongly recommend that counties be supplied with the financial resources to employ this technology before final guidelines are written so that counties have some control over the costs of moving inmates, and that the effective date is far enough into the future as to avoid undue costs for county tax payers. We would be happy to work with the sponsor on drafting amendments to address these concerns.

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

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

Once again, thank you for the opportunity to offer our comments and for your kind attention. I would be happy to address your questions.

**CONTROLLING COUNTY JAIL POPULATIONS:  
EXPLORING PROBLEMS & PROSPECTS  
Report of the CCAP Prison Overcrowding Task Force**

**Findings and Recommendations:**

- County leaders should establish or strengthen a *strategic management and planning body* in which to explore ways to safely control the size of the county jail population
- Counties should establish or strengthen a *Criminal Justice Advisory Board* as a high status
- CJAB population control activities should be guided by an initial and periodically adjusted *action agenda* – identifying problem areas and potential change options to be explored, and *setting clear priorities* for the order in which they are to be addressed
- The highest priority CJAB capacity agenda items involve the need to address the information system and support staff problems
- CJAB leaders in both county government and the county justice system should take immediate steps to engage agency heads and external and local data systems providers and managers – including IT/MIS personnel and officials from AOPC, the Sentencing Commission and private vendors such as DSI-- in a dialogue to assure that *the kinds of data reports needed to support the monitoring and planning information needs of key decision-makers in the County's CJAB process must be made available on a routine basis as soon as possible.*
- Counties should explore ways to consolidate/coordinate programs of supervised pretrial release, intensive sentence planning/supervision, and graduated alternatives to VOP revocation
- Counties should thoroughly explore the possibility of implementing a system-wide alternative sanctions strategy
- Counties should realign and/or reallocate court and/or correctional staffing resources to find the most locally feasible way of securing the services of a “Jail Population Control Specialist”
- Every county should have a pretrial services agency or similar entity
- Counties should replace the use of money bail whenever possible with non-financial conditions of release, including varying levels of supervised pretrial release where necessary
- Take full advantage of video conferencing technologies to facilitate all aspects of the bail interview and arraignment process via hookups, for example, between the court, the jail, pretrial services offices, and police stations
- Policies and procedures should be developed to promote coordination of public defender efforts with services of a supervised pretrial release program, Jail Population Specialist, and relevant agencies
- Counties should systematically and aggressively target defendants being detained pretrial for *expedited prosecution and disposition* and focus on defendants who are otherwise most likely to be detained for the entire pretrial period
- Assure appearance more aggressively by strengthening policies and processes for staff of pretrial services and public defender offices to remind defendants and their sureties of impending hearings, directions, possible consequences
- Release more defendants to supervised pretrial release at warrant rescission hearings as an alternative to higher money bail or jail commitment
- In cases in which offenders are sentenced to a maximum term of more than 2 years the “place of confinement” should be presumed to be in the SCI system in all but the most exceptional circumstances
- In all cases in which RS/RIP sentences *can* be imposed as alternatives to jail as authorized by state sentencing guidelines, such sentences *should* be imposed unless special circumstances can be stated to indicate why a term of incarceration is uniquely to be preferred



- **CJAB participants and agency/program directors should critically scrutinize *all* major sanctioning options already in use in the county to see whether and how they may be enhanced, refocused, and supplemented to play a more efficient and effective population control role**
- **Probation supervision resources should be realigned and reallocated or supplemented to give priority to implementation and enforcement of intensively supervised alternative sanctioning options for cases otherwise facing high likelihood of a jail sentence (or revocation to such a sentence)**
- **Special attention should be paid to developing and enhancing sanctions most likely to stand as credible jail alternatives, particularly in terms of their value/equivalency**
- **A "population control specialist" and/or the institutional probation/parole office should review all cases at the time of sentence commitment to assure early release planning and timely and well-structured parole at minimum release date**
- **Counties should experiment with early release programs**
- **Sentencing orders in specified categories of cases authorizing automatic release to a transitional period of home confinement/electronic monitoring supervision at a fixed time prior to traditional parole release date**
- **Counties should apply a good-time/earned-time reduction of a specified number of days for every month of sentence served without violation of institutional rules and regulations**
- **When probationers/parolees are arrested for a new offense, any departmental policies favoring the lodging of automatic detainers should be reevaluated**
- **Probation departments should make every effort to use summonses and/or intensified supervision in lieu of arrest/detention to assure appearance at Gagnon hearings for technical VOP charges**
- **Alternative sanctions planning personnel in the PSI unit and/or the public defender's office should be mobilized whenever possible to develop alternative disposition assessments/proposals for cases in which the probation officer is contemplating a jail outcome at the Gagnon II disposition**
- **Counties should prioritize and expedite scheduling for inmates held pending GI and GII hearings to reduce pre-disposition detention time**
- **In cases in which offenders are in willful default on domestic relations *support* and criminal *restitution* orders, courts should experiment with sanctions that are less costly than jail but that may be equally or more effective as a way of inducing offenders to pay**
- **In cases in which offenders are in default on financial obligations to the state rather than to an individual victim, courts should require violators to "work off" unpaid *finer, fees and costs* by performing an equivalent amount of community service work in lieu of being committed to jail**

