

COMMONWEALTH OF PENNSYLVANIA

Phone (814) 863-2797
Fax (814) 863-2129
<http://pcs.la.psu.edu>



P.O. BOX 1200
State College, PA 16804-1200

THE PENNSYLVANIA COMMISSION ON SENTENCING

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

**Public Hearing on Prison Reform
House Bills 4, 5 and 6**

November 15, 2007

**Mark H. Bergstrom
Executive Director**

Good morning Chairman Caltagirone and members of the House Judiciary Committee. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing this opportunity to comment on the topic of Prison Reform, and to discuss more specifically several of the provisions of House Bills 4, 5 and 6 which impact the Commission.

This legislation is a thoughtful, balanced, and comprehensive reform package. It touches on sentencing and parole decision-making, state and county place of confinement, institutional programming and community supervision. And it advances several important public policy goals: accountability, transparency, efficient use of correctional resources and system-wide coordination. Not only do these proposals enjoy the support of key practitioners and stakeholders represented by those who testified this morning, they more importantly are grounded in evidence-based research and reflect national best practices. Many of the concepts and proposals contained in this legislation are not new; what appears to be different this time is the comprehensive 'systems approach' being taken, the effort to include and balance many competing interests, the support and assistance of respected national experts such as those associated with the Council of State Governments, and the recognition that public safety is enhanced through the efficient use of finite correctional resources.

If enacted, this legislation would substantially expand the duties and responsibilities of the Commission on Sentencing to include: the development of parole and revocation guidelines, the establishment of recommitment ranges for parole violators, the collection and dissemination of additional sentencing and parole information, and the evaluation of the recidivism risk reduction incentive program. Since this legislation builds on the existing statutory authority of the Commission, it may be helpful to describe the Commission and its procedures related to sentencing.

The Commission is an agency of the General Assembly, established in 1978 for the primary purpose of creating and maintaining a consistent and rational statewide sentencing policy. The Commission includes eleven members: four legislators representing the four caucuses; four judges appointed by the Chief Justice; and three gubernatorial appointees: a prosecutor, a defense

attorney, and a law professor or criminologist. Similar to other sentencing commissions, the composition of the Commission is intended to be balanced in terms of political affiliation, branches of government, and roles; it should be insulated from the political process, but not isolated from it; its policies should be developed in public and its guidelines and sentencing information should be transparent. In sum, the Commission should be a fair broker when providing information, technical assistance, and recommendations "...necessary and advisable to carry out an effective, humane and rational sentencing policy." (42 Pa.C.S. §2153(a)(12)).

One vehicle for advancing a 'consistent and rational statewide sentencing policy' is the sentencing guidelines, which attempt to promote fairer and more uniform sentencing throughout the Commonwealth by providing every judge with a common reference point for sentencing similar offenders convicted of similar offenses. As required by statute, the sentencing guidelines take into account the gravity of the current offense, the number and severity of previous offenses, and the use of a weapon during the commission of the offense. In addition to a standard recommendation, the guidelines must also provide ranges that take into account aggravating or mitigating circumstances. Based on these statutory requirements, the Commission has developed guidelines with a primary focus on retribution: recommending punishment proportionate to the severity of both the crime and the prior record. However, other legislation provides the Commission with the authority to consider different purposes of sentencing, such as rehabilitation and victim restoration. Specifically, the Commission is required to identify offenders who would be appropriate for county intermediate punishment, state motivational boot camp, and state intermediate punishment, as well as to develop guidelines for fines, economic sanction, and community service.

The sentencing guidelines do not exist in a vacuum; they are developed through a public process, informed by data and linked to the enabling legislation. In order to adopt sentencing guidelines, the Commission is required to publish any proposed guidelines and hold public hearings to afford an opportunity for individuals and organizations to testify. Following the hearings, any guidelines adopted by the Commission must be published, which triggers a 90-day review by the General Assembly. The General Assembly may, by concurrent resolution subject to

gubernatorial review, reject in their entirety the guidelines adopted by the Commission. Absent this disapproval, the guidelines become effective.

Initial sentencing guidelines tend to be descriptive, in that the recommendations generally reflect existing sentencing patterns; by defining a range of sentences around the most common or typical sentence, the guideline recommendations promote greater conformity and/or provide a mechanism to explain outlying sentences. However, sentencing guidelines can be prescriptive, in which they are used to promote changes in sentencing patterns. Although Pennsylvania's sentencing guidelines are advisory, and courts have broad discretion to depart from the guidelines, prescriptive recommendations which have promoted the use of county intermediate punishments, modified the length of the sentences, and changed the place of confinement, have resulted in significant shifts in sentencing practices.

Other means of promoting consistent and rational sentencing policies include: the collection, analysis and dissemination of sentencing information; monitoring of compliance with guidelines and with mandatory sentencing laws; research on the effectiveness of sentencing programs and processes; and serving in a consulting capacity to courts, departments and agencies. Under the sentencing guidelines, for every conviction offense, the court is required to consider the applicable guideline recommendation, and to complete and submit a guideline form electronically to the Commission; if the court imposed a sentence outside of the guidelines, the court is required to report the reason for the sentence. The Commission has developed and deployed in the JNET environment a web-based application, SGS Web, which is used by the courts to prepare and submit the required information. Last year (2006), nearly 135,000 sentences were reported to the Commission through SGS Web. These data are accessible to counties for local planning, are used at the state level for correctional population projections and legislative impact analyses and sentencing research, and are available to the public through the Commission's Release of Information Policy. They also serve as a mechanism for ongoing review of the sentencing guidelines.

Turning to the legislation before the Committee today, some may question why HB 4, 5 and 6 assign duties and responsibilities relating to parole to the Commission on Sentencing, or why the

Secretary of Corrections and the Chair of the Board of Probation and Parole are added to the Sentencing Commission. The short answer is that these changes advance the four public policy goals I identified at the start of my testimony: accountability, transparency, efficient use of correctional resources and system-wide coordination.

Pennsylvania has an indeterminate sentencing system. For confinement sentences, the court generally imposes a minimum and maximum term of incarceration, with a state offender required to serve the minimum term before being eligible for parole. There is no right to parole in Pennsylvania, so absent a grant of parole, an offender would serve the maximum sentence and be released without supervision. While the primary purpose at sentencing is retribution, the decision at parole is much more focused on public safety, with greater consideration of an offender's risk of re-offending.

At times, because of a lack of coordination and/or communication between sentencing and parole, both at the policy level and at the case level, decisions made at these two intercepts can be operating at cross-purposes. And while the Board has developed and uses parole decision making guidelines, there are substantial limitations on the public availability of the instrument and the transparency of decisions. The legislation contains several proposals to improve coordination and transparency.

First, as noted previously, the legislation as introduced adds the Secretary of Corrections and the Chair of the Board of Probation and Parole as *ex officio*, non-voting members of the Commission. While not included in HB 4 (PN 2394), it has been suggested that the State Victim Advocate also be added as an *ex officio*, non-voting member. The addition of these three officials to the Commission, as non-voting members, will promote greater coordination in the development and implementation of sentencing and parole policies, and a greater sensitivity to the impact of these policies on victims, offenders, correctional agencies and institutions.

The legislation also assigns the following new duties and responsibilities to the Commission:

- Research, policy recommendations, and the collection, preparation and dissemination of information on resentencing and parole;

- Adoption of advisory guidelines for resentencing to be considered by the court following revocation of probation, county intermediate punishment and state intermediate punishment, and related reporting;
- Adoption of advisory guidelines for parole to be considered by the court and the Board, and related reporting;
- Adoption of advisory recommitment ranges following revocation of parole to be considered by the Board, and related reporting;
- Monitor, evaluate and report (even-numbered years) on the Recidivism Risk Reduction Incentive Program.

In order to effectively take on these responsibilities relating to guidelines and information management, Commission staff has recommended numerous amendments to HB 4 and HB 6 which would extend all requirements under the existing sentencing guidelines (e.g., public adoption of guidelines, requirement to consider the guidelines, requirement to complete and submit forms electronically to the Commission, requirement to report departure reasons, etc.) to the guidelines for parole and resentencing, as well as to the recommitment ranges. Absent these amendments, the Commission could not develop or implement the proposed guidelines, and would not be in a position to collect, prepare and disseminate information or monitor compliance.

With these amendments, the Commission can provide a public process for the development of new guidelines, and transparency in the use of those guidelines. In effect, the same policies, procedures and practices described earlier relating to sentencing guidelines would serve as a template for the development and implementation of parole and resentencing guidelines, as well as recommitment ranges. By enhancing the existing SGS Web application to include parole and resentencing guidelines and related reporting similar to that found at sentencing, the quality of information available to both the Commission and the Board, and the ability to match offenders and offenses across the system, is substantially improved.

Better information on sentencing, resentencing and parole practices and associated outcomes may also be used to more effectively target offenders for correctional programs. Many offenders

with maximum sentences of two years or more but less than five years, presently eligible to serve a state sentence in a county facility, are also eligible, to varying degrees, for county intermediate punishment (CIP), state motivational boot camp (BC), state intermediate punishment (SIP), and the proposed Recidivism Risk Reduction Incentive Program (RRRIP). The focus of ongoing research by the Commission, and an important aspect of the evaluation proposed in the legislation, is the need to determine if programs work, and if so, which programs are best suited for which offenders.

In closing, I would again like to thank the Committee providing this opportunity to testify. As an agency of the General Assembly, the Commission on Sentencing is available to provide any information and support requested. Thank you.