DEFENDER ASSOCIATION OF PHILADELPHIA

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November 14, 2007

Honorable Thomas Caltagirone
Chair, House Judiciary Committee
106 Irvis Building
P.O. Box 202127
Harrisburg, PA 17120-2127

Sent by fax to: (717) 772-5401

Sub-mitted for Record only

Dear Representative Caltagirone:

Please accept this letter from the Defender Association of Philadelphia as our written testimony for the November 15, 2007 hearing on House Bills 4, 5 and 6. We submit this testimony in lieu of appearing in person.

Each of House Bills 4, 5 and 6 include numerous provisions – some that we believe are good and others that cause us concern. However we understand that in order to reach this stage of the legislative process that there must be substantial support for the major components of the legislation, so we will not comment on these major components. Rather, we will make specific suggestions aimed at making some of the proposed enactments more fair and effective.

House Bill 4

House Bill 4 includes an amendment to 42 Pa.C.S. 9762, which designates the place of confinement (state prison versus county prison) for sentences of incarceration. Under the amendment, the law remains as it now exists for the next three years, but thereafter inmates sentenced to a maximum term of "two years or more but less than five years" must be committed to a state prison unless all three of the following conditions exist: (1) there is space available for the inmate in the county prison; (2) the sentencing judges approves of confinement in the county prison, and (3) "[t]he attorney for the Commonwealth [and we presume that this means the District Attorney] has consented to the confinement of the person in the county prison".

The requirement for prosecutorial consent is bad policy, and should be deleted from the proposed amendment. The prosecutor should not have veto power over this important matter, where the sentencing judge believes that incarceration in a county prison is appropriate and the county prison has available space.

Place of confinement is properly considered a component of the sentence (to which the judicial branch should have authority) and a prison administrative concern (to which prison

administrators should have authority). The prosecutor – having neither judicial nor administrative authority – should not have veto power over this important decision. Sure, the prosecutor should be able to argue his or her position to the court, but beyond this nothing more. This requirement for prosecutorial consent should be deleted.

House Bill 5

House Bill 5 includes a provision allowing for temporary transfer of state prisoners to other state prisons or to county prisons in order for the inmate to attend county judicial proceedings. Of course, we support this. However the present proposal is unduly limited in its scope. There are many legitimate bases for allowing a criminal defendant to be physically present at his or her judicial proceeding – not just that the Constitution requires it, and this proposed amendment should not exclude any of them. Proper bases for a defendant's presence include rights conferred under Constitutional protections, Rules of Criminal Procedure, and statutes, as well as case specific considerations that for any number of reasons are necessary to enhance fairness and reliability.

As such, proposed 61 P.S. 72(b) should completely omit paragraph (b)(2)(iii). In the alternative, paragraph (b)(2)(iii) should be changed to read as follows:

> (iii) The Constitution of the United States or the Constitution of Pennsylvania, or the Rules of Criminal Procedure, or other statutory law do not permit the inmate's testimony or participation in the proceeding by videoconferencing technology; or the court has found that the inmate's presence at the judicial proceeding is necessary to insure fairness or reliability.

House Bill 6

House Bill 6 **changes existing law** by prohibiting sentencing judges who impose jail sentences with a maximum term of less than two years from granting early parole, i.e. parole prior to expiration of the minimum term of imprisonment. See proposed 61 P.S. 331.17(b). This is bad policy. Existing law permitting early parole for jail sentences with maximum terms of less than two years being served in county prisons, should remain.

Sentences with a maximum incarcerative term of less than two years ordered to be served in the county prison typically arise from non-violent offenses, and many are drug related. The opportunity for early parole for this type of offender has many benefits – not the least of which are relieving prison overcrowding, saving money because the cost of incarceration is more than the cost of parole (even if parole includes treatment programs), and offering an informal mechanism for rewarding (by early release) exemplary prison adjustment. Early parole for a non-violent offender into a drug treatment program is a win-win situation, and the law should not be changed to prevent this.

Thank you for considering our comments on this proposed legislation.

Sincerely yours,

Ellen T. Greenlee

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TO: Honorable Thomas Caltagirone

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DATE: 11/14/07

FROM: DEFENDER ASSOCIATION OF PHILADELPHIA

SENT BY: Ellen T. Greenlee

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Please call Christine Adler at 267-765-6857 if there is trouble with this fax.

Thank you.