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2 HOUSE OF REPRESENTATIVES
3 JUDICIARY COMMITTEE
4 SUBCOMMITTEE ON COURTS
5 HEARING ON SENATE BILL 1128
6

7 MEMBERS PRESENT

8 Rep. Don Wal ko, Chai rman
9 Rep. Sean Ramal ey
10 Rep. John Evans
11 Rep. Vince Bi ancucci (short period)

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17 TRANSCRIPT OF PROCEEDINGS
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22 Friday, April 18, 2008
23 10:37 o'clock, a.m.
24 Beaver County Courthouse
25 Beaver, PA

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(no exhibits)

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REP. RAMALEY:

I appreciate the opportunity to have this conversation here in Beaver County. We have as the Subcommittee on Courts gone to places like Philadelphia County and Allegheny County to talk about these problem-solving courts and I suggested to the Chairman that the logical extension of that is to go from the large counties to the medium-size counties, that Beaver County would be a perfect fit to start that conversation, so I appreciate the opportunity for the Subcommittee to come here and the testifiers that we have for giving a little bit of their time to share some knowledge and expertise here with us. Thank you, Mr. Chairman.

REP. WALKO:

Thank you, and I would also

1 I like to welcome Representative
2 John Evans from Erie County.
3 Thank you for coming down
4 here, and I know this
5 Subcommittee will be going
6 there in the near future.
7 Thank you so much for being
8 here, and the people who are
9 going to testify, I know how
10 busy you are, so I deeply
11 appreciate your taking time
12 out from your schedules.

13 The Bill that is the subject of this hearing, and
14 the hearing doesn't have to be restricted to Senate Bill
15 1128, which would provide some funding to counties that
16 want to plan, implement, and expand initiatives that we
17 refer to generally as problem-solving courts.
18 Problem-solving courts are generally designed to go to the
19 underlying cause of the crime that might have been
20 committed.

21 For example, there are drug treatment courts that
22 in addition to, there might be a diversionary court where
23 the person comes in, and rather than entering a plea of
24 guilt or having a trial, they agree to participate in a
25 drug treatment program. They diverted into it, and if

1 they successfully complete it, they are treated, they are
2 no longer addicted, and hence, the problem is solved and
3 we can get into more detail on those kinds of things.

4 Now whether or not these apply to Beaver County
5 with a population of 181,000 and 7 Court of Common Pleas
6 Judges, I'm not sure, and that is one of the reasons we
7 have the Subcommittee here to take testimony from
8 important parts of the community, including the District
9 Attorney and the others on the agenda, so without -- I see
10 there's another Rep out there in the hall -- we'll get
11 another chair for Representative Bianucci. Thank you for
12 stopping by. We know how busy you are as well.

13 REP. WALKO: I would like to call Anthony
14 Berosh, Beaver County District
15 Attorney. Thanks for being
16 here.

17 MR. BEROSH: First, I want to thank you for
18 the opportunity and thank you
19 for coming to Beaver County.
20 I know you indicated you're
21 going to Philadelphia and
22 probably Pittsburgh so it's
23 always nice to see some input
24 from some of the smaller
25 counties.

1 REP. WALKO: Absolutely.

2 MR. BEROSH: And I also want to thank your

3 staff for the advanced

4 preparations. I have to

5 confess that your staff asked

6 me whether or not I had any

7 written remarks, and I

8 indicated to her that I have a

9 Cell phone and I don't know

10 how to work it, I don't have

11 an e-mail, and I use the

12 Internet to find out what the

13 weather is going to be!

14 REP. WALKO: I might go back to that policy

15 as well!

16 MR. BEROSH: But in any event, I want to

17 thank you for this

18 opportunity. I did review the

19 proposed statute and I thought

20 that at this point, it would

21 be incumbent to kind of relate

22 the things that we are doing

23 here in Beaver County, things

24 that we plan on doing and some

25 of the costs that we incur.

1 Currently, we have been averaging this year an
2 inmate population in the Beaver County Jail about 330
3 people a month. Of that 330 currently there, 15 percent
4 of that required direct mental health intervention.

5 What we have done here in the County -- and I also
6 sit here with an additional hat of being on the Prison
7 Board -- and we have entered a mental health contract so
8 to speak, which provides us with a registered psychiatric
9 nurse with 20 hours a week, and we also have a
10 psychiatrist on call as well as medication.

11 The cost to the County per year for the jail on
12 this mental health intervention is anywhere from \$75,000
13 to \$85,000 a year. It's become quite apparent to us that
14 the one cost control factor that we have no ability to
15 control in our situation probably isn't any different than
16 any other medical facility or medical program is the
17 medication itself. The so-called Meds cost is
18 skyrocketing and there doesn't seem to be any way that
19 that can be controlled, so the number that I gave you, the
20 approximately \$75,000 to \$85,000, is subject to immediate
21 change based on the medication costs alone.

22 In the jail, we also have several in-house
23 programs. We have Gateway Rehabilitation, which is known
24 State wide, and we have them coming in approximately 10
25 hours a week. We also have the Mental Health and Mental

1 Rehabilitation folks who devote about 40 hours a week.

2 The one thing that I really like about the Bill is
3 to talk about practicalities. I have been in the DA's
4 Office for 30 years, and that will make anybody's eyes
5 roll, but in any event, when they had nobody in the County
6 to present Civil commitments, I represented the County at
7 that time, so I go back almost to the point at the
8 beginning, and it's become apparent over the years in my
9 experience as a DA, which you have addressed here, was all
10 too often, we would have a mental health problem and we'd
11 send them over to the mental health people. They would
12 discover that the underlying charge is either alcohol or
13 drugs and say, no, that's not a mental health problem, and
14 it's either a drug or an alcohol problem.

15 When they would go to those people, they would
16 conclude that he had a mental health problem and say it's
17 not our problem, so the fact that you're addressing those
18 co-occurrences or co-conditions, I think is a real step in
19 the right direction. That it will show direction that we
20 attack the problems on a multi-level basis rather than one
21 authority or one jurisdiction isolating somebody that has
22 a multitude of problems.

23 Sixty per cent -- according to our Warden, it's a
24 guesstimate -- sixty per cent of our jail population does
25 fall into that category; namely, their primary problem may

1 be alcohol or drugs, but there is an underlying mental
2 health problem, and obviously, the number that I gave you
3 as far as direct intervention being 15 percent, the
4 services that are provided or can be afforded to be
5 provided, it is just not reasonable to do that, so we have
6 a population that goes through our local prison system,
7 our local jail, whose problems are really not addressed
8 when they are in confinement.

9 In addition to that, of our jail population, we
10 average about 12 a year whose mental health problem is so
11 severe that we use what is commonly referred to as a 304,
12 and we use facilities like Mayview and the forensics and
13 things like that.

14 What we have attempted to do at least in
15 conjunction, which is kind of interesting because it kind
16 of falls into what the proposal is, we have decided in
17 Beaver County to take a different approach, and we
18 certainly, if the statute passes, we'll be one of the
19 first in line to see if we can get some funding for it,
20 and the approach that we are attempting to undertake, and
21 that's in coordination with my office, the President Judge
22 McBride, and the Adult Probation Office, as well as our
23 MH/MR people, and that is intervention on those cases that
24 do not require or are not mandated to jail so to speak, a
25 lesser offense.

1 Now the way it currently is, and my understanding
2 is you'll find no difference in other counties as well,
3 but what happens is an individual either goes into a
4 diversion program already or pleads guilty and is going to
5 get probation. That the Judge at sentencing orders them,
6 if there's a need that arises or somebody brings to their
7 attention that they need mental health evaluation, but
8 keep in mind, they've already been sentenced. The burden
9 of trying to get them to get some sort of help falls on
10 the Probation Office, and I'm from the old school. In
11 other words, that the proverbial cow is already out of the
12 barn at that point. Where you really want the club is
13 before the sentence.

14 So what we are attempting to do is we have a
15 Central Court system, and I think there's only 5 or 6
16 counties across the Commonwealth that have them, and what
17 I mean by that is if you went upstairs now to the second
18 floor, all of our preliminary hearings are here. They're
19 not at the Magistrate's Office, number one, and number
20 two, because of that, every case is represented by a DA,
21 Public Defender or private counsel.

22 What we have decided is when we have the victim
23 here, and we're talking about not necessarily jailable
24 offenses, but we're talking about all offenses. We have
25 the victim here. We have the police officer. We have the

1 DA. If we arrive at a conclusion that there's a mental
2 health component to this, we will direct them once we get
3 the program off the ground directly downstairs to the
4 Adult Probation Office to be evaluated.

5 The advantage of that is you intercept them as
6 early as possible in the system, so when they come for
7 sentencing, the Judge will not say, just get an
8 evaluation. He'll already have that. The Judge will know
9 and be able to order what type of treatment he's to enter
10 into.

11 Now I cannot emphasize enough that when you are
12 dealing with the jail population as in the Beaver County
13 Jail, they have already, unfortunately, already been in
14 the system before. The question is is will early
15 intervention hopefully reduce their recidivism as regards
16 to a mental health component, and if you look at what the
17 Warden is saying, that 15 per cent need direct
18 intervention and 60 per cent need some sort of
19 intervention, what we're attempting to do is to start from
20 the beginning in trying to get first-time offenders, minor
21 offenders, get their problem addressed as early as
22 possible. That's what we're attempting to do.

23 Now conversely, that requires funding, and I'm
24 already tipping off the kind of program that we would be
25 presenting for funding under this Bill.

1 Let me give you an example. Right now, the case
2 load of the Beaver County Adult Probation Office is 3,000
3 cases. Of that 3,000, 500 of them are getting some sort
4 of mental health evaluation and/or treatment, but again,
5 I emphasize that all of this is occurring after the
6 sentencing. It's not as sufficient in my opinion and it's
7 not as effective as when you have a program that can be
8 outlined when in fact that individual is sentenced.

9 Ninety per cent of that 500, ninety per cent has a
10 co-occurrence. In other words, there's also a drug
11 component or an alcohol component involved with that.

12 The other efficiency, if we in fact can make an
13 impact, and I think that we can -- can I give you a number
14 of what I think it is going to be, absolutely not, and
15 anybody that pretends to do so is blowing smoke so to
16 speak. However, I think we have to make the effort. You
17 know, it's almost like a prevention program in a funny
18 kind of way, but it is, and it's an attempt to intercept
19 so to speak at the point of the beginning.

20 Right now, we do that with our alcohol, with our
21 DUIs. The DUI defendant does not walk out of this
22 Courthouse getting an evaluation. He is sent immediately
23 downstairs to get an evaluation, and that's whether it's
24 guilty plea or ARD, it matters not, so what we're
25 attempting to do is use the model that we developed for

1 DUIs to use the same model for the mental health
2 component.

3 I would also as DA emphasize that we are all too
4 familiar with the public safety component here. There is
5 a strong concern not only on my part but law enforcement's
6 part, and particularly, when you have 12 people that
7 really need something over and above that can be provided
8 at the jail, there's a very strong safety component.

9 Let me give you some examples. Commonwealth vs.
10 Baumhammer, that was the fellow who rampaged through
11 Allegheny County, wound up here in Beaver County, and in
12 fact I went down to Allegheny County and tried our one
13 case along with Judge Burkowski on the other four. He was
14 under treatment at the time. I don't know if a lot of
15 people are aware of that. It was private. Interestingly
16 enough, he had very little or no criminal involvement
17 prior to that incident.

18 In addition to that, on a local basis, I can't
19 comment on the specifics, but right now we have two cases
20 pending, both of which prior to the events -- they're both
21 charged with murder -- and they were under treatment as
22 well.

23 I had a case of Commonwealth vs. Scrutchins that I
24 tried who murdered his wife. He was under treatment at
25 the time.

1 And probably the most dramatic example that I have
2 is one they had in another case that I had where the
3 psychiatrist, Dr. Yee, was killed in his office treating
4 another patient, and the defendant was a patient of his as
5 well.

6 So that we have to be very careful, number one.
7 Number two, if you ask police officers, they will tell you
8 that the two most dangerous calls they respond to are
9 domestic and someone who has a mental health problem, and
10 there's no question in the public eye, and obviously,
11 robberies are and things like that, but unfortunately,
12 these two calls are all too common, so that there is a
13 safety component.

14 I know that there has been a lot of talk about
15 mental health courts comparable as you had mentioned.
16 Quite frankly, while that may have some merit to it, it's
17 after the fact. Really, as far as law enforcement is
18 concerned, I believe that some effort or some thought --
19 and I understand you're setting the ground work for people
20 to work on projects like that -- is almost crisis
21 intervention teams, and what I mean by that is when you
22 have a homeless person or you have someone, you know, that
23 is threatening either himself or someone else,
24 particularly, if he is threatening himself, or if you have
25 a situation where someone is barricaded in his house and

1 threatening to do serious injury to himself.

2 Law enforcement as a general rule needs the kind of
3 training to deal with those kinds of problems, which are
4 immediate risks not only to the general public, not only
5 to the individual himself, but to the law enforcement
6 officer himself, and I see that you have built that
7 component of possible funding in that type of program, so
8 like I say, I see many components in here that needed to
9 be addressed, that needed to be funded, and really are
10 needed, I'm sure, not only in Beaver County but everywhere
11 else as well.

12 The only objection I have to the entire Bill, but
13 it's really a pet peeve of mine, I see you involved the
14 State Court Administration Office, and I just have a pet
15 peeve personal to myself, but other than that, I want to
16 thank you for the opportunity.

17 Those are a few thoughts that I have gathered
18 talking to law enforcement and the staff, but I think that
19 you are to be complimented for trying to address this
20 problem and addressing it in a more objective manner, I
21 believe, than it's been addressed before.

22 REP. WALKO: Thank you, Mr. Berosh.

23 MR. BEROSH: Thank you.

24

25

1 EXAMINATION OF MR. BEROSH BY REP. WALKO:

2 Q. So right now, we don't have the diversionary
3 program?

4 A. No. We are not really talking about diversionary
5 programs. What we're talking about is what they normally
6 would go into. What we're asking is to get a program
7 developed before they're sentenced because that is the
8 ultimate club.

9 After they're sentenced, it's very hard to get
10 control of them. Also, you're expecting a few good people
11 -- but I'm sure our County is not an exception -- Adult
12 Probation Officers who have case loads that are virtually
13 gigantic, and they're trying to develop a program for all
14 of these people.

15 If you do it up front, then the Adult Probation
16 Officer knows in what direction "A" is going to go and
17 what direction "B" should go in, and that's why I'm kind
18 of anxious to get that kind of program off the ground.

19 Q. And what kind of crime would you classify as minor,
20 property?

21 A. Property, yes, and obviously, violent crimes
22 wouldn't be in that category, but you know, your thefts.
23 Maybe minor was a bad term.

24 A lot of your domestic violence have a strong mental
25 health component to it. It's either that or alcohol or a

1 combination of both, but maybe minor was a bad term to
2 use, but those are the kinds of crimes that we would try
3 to get that early planning done for.

4 Q. Back to some of your numbers that you were using,
5 90 per cent of cases were co-occurrences, I believe you
6 said?

7 A. Yes.

8 Q. Was that 90 percent of what, 500?

9 A. Well, we are talking about the Adult Probation.
10 This is what we're talking about. We are not talking
11 about incarcerated.

12 Ninety per cent of the 500, there's 500 that need
13 some sort of mental health intervention. Of that 500, 90
14 per cent have a co-occurrence, either alcohol or drugs.

15 Q. And in your estimation, would all of the team mates
16 who would need to be involved like the court, the
17 commissioners, the District Attorney, yourself, the Public
18 Defender, would all of these people, is there a feeling in
19 Beaver County that they would want to come together and
20 work on this kind of initiative?

21 A. I don't think there is any question. Of course,
22 you have the Public Defender after me, so I will find out
23 about that, but we have always traditionally worked hand
24 in hand. We don't have those kinds of problems on those
25 kinds of issues.

1 REP. WALKO: Well, thank you very much. No
2 one else has a question. Mr.
3 Giles is next.

4 MR. GILES: Yes.

5 REP. WALKO: This is Mr. Joseph Giles, Erie
6 County Council Chairman,
7 Second Vice President of the
8 County Commissioners
9 Association of Pennsylvania.
10 Thank you for coming on down
11 here.

12 MR. GILES: They indicated to me that also
13 one of the presenters along
14 with myself was going to be
15 the Human Services Director,
16 but because of medical
17 reasons, he couldn't make it.

18 (Discussion held off the record)

19 REP. WALKO: Thank you for coming. I'm
20 sure your schedule is as busy
21 as anyone's and we appreciate
22 your testimony on this
23 legislation and in general on
24 the topic of problem solving
25 courts if you have any

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MR. GILES:

thoughts.
I would like to precede the normal comments with the idea that it's nice to hear that there's a possibility that the Subcommittee would have a meeting at some point in Erie County, and when I get to the extemporaneous comments at the back end of this, you'll understand why and what the motive would be that should charge that idea and almost make it exciting.

REP. WALKO:

Well, we would like to come to Erie County, and Rep. Evans has already talked to me. It warms up in late July!

(Discussion held off the record)

MR. GILES:

My name is Joseph Giles and I am currently the Erie County Council President. I am also the County Commissioners' Association of PA Second Vice President, former Chair and

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now member of the CCAP Courts and Corrections Committee as well as a long-term member of the National Association of Counties Justice and Public Safety Steering Committee. I sit on the National Association of Counties Board of Directors representing both CCAP and counties throughout Pennsylvania. In those capacities, I have been involved with the issues surrounding mentally ill inmates at the County, State and National level for many years. I am in my 27th year as an elected official from Erie County on County Council.

I am very pleased to see that this is getting attention in Pennsylvania and that the proposal you have under review is directed at finding solutions to the crisis of mentally ill inmates in county jails. Thank you for the opportunity to offer testimony on behalf of the County Commissioners Association of PA on the Criminal

1 Justice and Mental Health Reinvestment Act contained
2 in SB1128.

3 As you know, CCAP is a nonpartisan, nonprofit
4 association providing legislative, regulatory, insurance,
5 training, research, and similar programs for all of
6 the Commonwealth's 67 counties.

7 We often find that lawmakers are unaware that
8 county jails are totally funded by the county through
9 property tax revenues. There is no State or Federal
10 funding handed down to the counties to cover the costs
11 incurred to house inmates. In fact, counties become
12 liable for all medical needs of inmates as soon as they
13 enter the jail for any reason. This is prior to any
14 adjudication and benefits that the inmate qualifies for
15 under State and Federal programs such as Medicaid,
16 Medicare, Veterans' benefits, and some private health
17 insurance will disappear. The average cost to house an
18 inmate in a county facility is about \$50 per day and that
19 average is likely to increase as counties are forced to
20 commit more of their already strained revenue sources into
21 expansion or rebuilding their county jails.

22 Like the Commonwealth, county jails are struggling
23 with overcrowding. Despite significant growth in county
24 jail capacity over the past 20 years, much of it resulting
25 from Act 71 bond financing, many county jails are at

1 capacity or well over capacity at this time. The problems
2 of overcrowding in county jails have been a point of
3 significant focus for CCAP members over the past two
4 decades. There is a need for counties to examine the
5 reasons for overcrowding including the reasons that cause
6 a jail admission in the first place.

7 Counties are experiencing an increase in admissions
8 of inmates with mental health issues, and many of those
9 problems are far outside the ability of counties to deal
10 with, and these issues affect counties in every State of
11 our nation.

12 As you know, county jails are generally designed to
13 hold pre-trial inmates or those whose incarceration is
14 expected to be short term. Programming that would be
15 available to inmates in a State correctional facility such
16 as substance abuse counseling and assistance with
17 education, employment, and mental health issues are
18 outside of the normal services expected in the county
19 jail setting.

20 Few counties possess the resources to deal with
21 these problems and oftentimes county jail personnel are
22 unable to respond to the specialized needs of mentally ill
23 inmates. To give you an idea of the impact, estimates
24 show that a county jail housing a mentally ill inmate will
25 spend twice as much per day in housing, medical and

1 medication costs than they will for an inmate who is not
2 mentally ill. Estimates show that as many as 76 per cent
3 of those county jail inmates with mental illnesses are
4 also substance abusers.

5 Counties are strongly in support of mechanisms to
6 divert mentally ill inmates with mental illness to
7 settings and services that can address their mental health
8 and substance abuse problems that may be the primary cause
9 of their admission or readmission to a jail facility.

10 I am sure that you will hear a lot of statistics
11 today, and I think it is important for you to know that of
12 the nine million people who will enter our nation's county
13 jails each year, estimates show that 24 per cent will
14 display symptoms of psychotic behavior. Many of these
15 individuals will be entering the county jail as a result
16 of their committing some minor infraction. Oftentimes,
17 the individual's mental health is the cause of the
18 behavior and not criminal intent.

19 Our members, along with the National Association of
20 Counties, have been advocating for programs that promote
21 the implementation of a wide range of community-based
22 services that address the many issues affecting this
23 population. We believe that the county human services
24 system is better equipped to monitor an individual's
25 mental health concerns and provide for medication

1 management and supports that will improve their condition
2 provided that the required resources are available to
3 those crucial community programs.

4 National research has shown that placing a mentally
5 ill individual in jail can intensify the behaviors that
6 result from their illness, leading to increased costs to
7 stabilize the inmate and result in counties placing
8 extraordinarily shy resources into the management of a few
9 inmates.

10 We applaud Senator Greenleaf for the sponsorship of
11 Senate Bill 1128 and are very encouraged that the
12 Committee is closely reviewing this Bill. We support this
13 legislation and are pleased that Pennsylvania will be
14 taking steps to address this growing problem by providing
15 resources in the form of a grant program.

16 We are also in support of the Bill's provisions
17 requiring a broad based, local approach involving criminal
18 and civil justice systems, mental health and substance
19 abuse providers as well as transportation and housing
20 assistance programs. The involvement of this combination
21 of supports assures that the system will be in place to
22 address all of the likely issues that a diverted inmate
23 will find challenging and will lead to a comprehensive
24 approach that is more likely to keep the mentally ill out
25 of jail in the future.

1 For counties that currently have some programming
2 in place, the inclusion of expansion grants is another
3 concept we strongly support. The Center for Excellence
4 where counties can go for technical assistance may lead to
5 programs getting off the ground.

6 We do note, however, that the Advisory Committee
7 created in the Bill includes only State agencies. We
8 would caution the Committee against moving forward without
9 assuring county involvement at the planning and oversight
10 stages. Counties know best what their limitations are and
11 what their abilities are, and our Statewide organization
12 acting on behalf of all 67 counties should be included at
13 the earliest stages of planning to assure that we do not
14 create programs that fail to consider the challenges that
15 counties are facing. We would urge the Committee to
16 require consultation with CCAP on behalf of the counties
17 and to assure that the expertise of county jail
18 administrators is tapped into at the planning stages.

19 Once again, I offer thanks to the Committee and
20 will be happy to take your questions.

21 I'd like to do a quick little background piece, and
22 this is usually the part that staff gets worried when I
23 veer from the text, but Erie County, to give an example --
24 to back up for a second, CCAP got a grant through the
25 Department of Justice in Washington to do a study of over

1 crowding, and this has been maybe about 6 or 7 years that
2 this happened, and Senator Specter was largely helpful for
3 us to get this year this grant. The grant took multiple
4 years and involved Temple University and Dr. Allen Harlan.

5 The report is now complete in terms of what do
6 county jails look like across the Commonwealth, where do
7 we have significant overcrowding, and why do we have
8 significant overcrowding?

9 What motivated us to get into that was that
10 simplistically we thought, well, let's go back and we'll
11 press the State to do another Act 71 and we'll build our
12 way again. What happened in that period of maybe 6 years
13 of studying and working with Dr. Harlan and a focus
14 committee on the part of CCAP was that we found that there
15 are better things that we can do than simply bill.

16 There are system things that we need to do such as
17 efficiencies, programming changes, and what counties need
18 to do, so in part, what we're talking about today is
19 almost like an unintended consequence of that study.

20 We found that in a trending pattern and we're
21 seeing this pattern all the way from Bucks to the Delaware
22 River to Lake Erie Shores of a growing number of SMI
23 individuals with each year progressively more and more
24 people coming into county jails with seriously mentally
25 ill labels, and what we've done just as a quick -- that's

1 the reason I'm excited about this in Erie -- what we've
2 done is we have secured a grant in Erie County.

3 We're one of five counties in the country through
4 the Eli Lilly Foundation to do a root cause analysis to
5 find out what's happening at least in our back yard and
6 why is it you could have somebody with an SMI who never at
7 all enters the criminal justice system, whereas, a similar
8 person with an SMI with significant mental illness winding
9 up incarcerated and so to speak getting stuck in the
10 criminal justice system without the proper resources to
11 care for that.

12 We're still engaged in that process and it requires
13 by the way a county match along with the Eli Lilly
14 Foundation to do this and we're moving forward with it.

15 How we got the grant initially was we have a team
16 resulting from the Harlan study that we set up about a
17 year ago involving provider agencies, drug and alcohol,
18 mental health programs within the county, the courts,
19 probation, wardens and corrections, and attorneys both for
20 the prosecution and defense bar involved as well, so that
21 committee has been working for about a year.

22 Eli Lilly was so excited about two things: One,
23 that we've been spending a year trying to get our arms
24 around this issue as far as what's happening in Erie
25 County with this; and then in particular that we went with

1 the model called a root cause analysis, which is as I
2 said, oh, great, let's move ahead with this, only to find
3 out that perhaps it was scientifically the most difficult
4 product to work with because you're not doing the standard
5 statistical and that you're doing something much more in
6 depth to get to.

7 What are the tipping points? What are the decision
8 things? What happened to people, you know, individuals
9 within our jurisdiction that causes them although two
10 populations, one with mental illness without any criminal
11 justice involvement and another population that is
12 permeated throughout the probation and parole system and
13 the county jail system itself?

14 So that is in process right now as we speak. In
15 fact, in order to come to this, I had to forego chairing
16 that meeting back home, and for that meeting, I left the
17 clerk with a shopping list of things to do with the
18 committee that's working on it as we go forward.

19 But just to give some sense that the counties are
20 diligently trying to get their arms around this issue and
21 develop some real understanding of what's happening at our
22 level, but we're absolutely excited about the idea that
23 the State is also looking at the same thing because the
24 same data patterns, the same statistical trends, and I
25 don't necessarily have charts and everything in front of

1 me now, but I know that you can go to a variety of
2 different resources and you'll find that same trend
3 pattern occurring, and I don't think we should be in the
4 spot to say, well, that's because we did community and
5 deinstitutionalization and all of that.

6 I don't think we should blame anything. I think we
7 should say, here's what we have. This is what's happening
8 and it's happening at the County, State, and Federal level
9 as well, and the sooner we get our arms around this, the
10 better it is for all of us.

11 I'll give a quick example of one of the issues that
12 NACO is promoting, National Association of Counties, of
13 late, and we've met with Senators Casey and Specter as
14 well as the congressman from our area, Congressman
15 English, as to the loss of veterans' benefits.

16 Now our argument on the legal/technical point is
17 that until someone is convicted of something so that we
18 wind up with half our population in a pre-trial setting,
19 the system is set up so that once you enter the door,
20 everything is lost immediately, and in order to recapture
21 those, everyone here is familiar with how government
22 bureaucracies work, that it doesn't happen instantly.

23 You could be not convicted of anything and you
24 could wind up going through the system and then back out
25 and then you'd have to spend all that time to recapture,

1 and in this case something as important as veterans'
2 benefits and given the climate and where we are right now
3 in regard to that issue, it's something that you'll hear
4 more and more about as NACO begins to push this thing for
5 veterans, and in many cases as you're familiar, lots of
6 post traumatic, lots of serious mental illness issues
7 starting to roll forward, and then to wind up and stuck in
8 a County or State facility without the proper treatment
9 systems in place is just absolutely insulting, so that's a
10 quick background.

11 And the third piece I wanted to mention is we have
12 a Drug Court. We've had a Drug Court for about 10 years.
13 We have a Juvenile Drug Court, and we have a Mental
14 Health Court as well, and our graduations, I know that
15 Philly does them almost monthly because of the population
16 numbers.

17 We do a graduation every 6 months, and in that
18 process, you get to see, and if you haven't, I would
19 encourage you in your own jurisdictions or counties if
20 there is a Drug Court available and there's a Drug Court
21 graduation, and the message that I would like to convey is
22 that we oftentimes have a stereotypical and naive image of
23 addiction, and we think it's this poor urban kid with no
24 background and is either selling or using drugs and that's
25 it.

1
2 When you go to a Drug Court graduation, you see the
3 grandmother graduating, and you think grandmother, you
4 know, or you see the suburban housewife because of
5 prescription drugs. You see a variety of things, so my
6 argument is that addiction crosses all economic
7 boundaries. It crosses all ethnic boundaries. It crosses
8 all urban and rural issues, so that it's the idea of
9 discussing both specialty courts and how do we deal with
10 successfully and partnering with the State mentally ill
11 offenders along with the addiction issues?

12 Specialty courts are really an excellent example of
13 where that's beginning to show results. We do an annual
14 report through Mercyhurst College every year, a
15 statistical analysis, of how our treatment courts are
16 working or aren't working, and obviously, they're in
17 statistical format.

18 There's some anecdotal information in there, but
19 again, I would reiterate that if you have the opportunity
20 to go, whether it's Philly clear at the other end of the
21 State or in Erie County to see a Drug Court graduation is
22 a real eye opener just in terms of perceptions and where
23 reality is regarding addiction issues, so that are my
24 offerings.

25 Any questions?

1 REP. WALKO: Thank you. That was very
2 good. I just want to note for
3 the record that Senate Bill
4 1128 is in the Appropriations
5 Committee in the Senate, so
6 any senator, whether it's
7 Senator Earl up in Erie, I
8 would suggest you urging them
9 to move that Bill.

10 MR. GILES: I certainly will.

11 REP. WALKO: It does have broad-based,
12 bipartisan support, and again,
13 I'm not sure what the price
14 tag on it is. I'm not sure if
15 there's a price, but I'd like
16 to see this in the mix for
17 this year's budget, so that
18 kind of advocacy could help.

19 MR. GILES: Certainly, we will approach
20 that and take that action.

21

22 EXAMINATION OF MR. GILES BY REP. WALKO:

23 Q. I was wondering if your Drug Court in Erie is
24 diversionary or is it after post conviction?

25 A. It's sort of a quasi. Your record is expunged, so

1 there's the motivator to get into it, but then the
2 motivator to get out of it and then you wind up with an
3 ARD or a clear record or clean record afterwards, and it
4 is much more challenging, too, on the motivational side
5 for people to get into it. It might be easier just to go
6 in and put in your time and leave because it takes almost
7 on the average two years and it's intensive, and the first
8 6 months, you're there every week and the Judge is there
9 every week with you, so it's a much more intensive
10 program, much more challenging, so that when people do
11 graduate from it, I think that's why you see the
12 successful stats and you see the rate of recidivism and
13 repeat offenders, and in the area of addiction, I would
14 say that from working with the Justice Department and the
15 research people in that regard, to me, that is the most
16 challenging arena for folks to have an addiction and to be
17 clean and free and sober, and you know, X number of years
18 out is an extremely hard and difficult challenge.

19 Q. I thought it was interesting when you noted --
20 well, you were talking about the cost of the medical needs
21 to the inmates who might be in pre-trial detention and
22 those after trial, of course, but when you talked with the
23 U. S. Senators, was that issue of why Federal benefits
24 ceased once you go into detention, was that brought up or
25 --

1 A. Yes, we have focused on that for several years now
2 and I think that the first piece that will capture their
3 attention is the one I had spoken to you about in terms of
4 veterans' benefits when suddenly you realize, it's one
5 thing when you are arguing between Federal, State, and
6 County, and we are all different jerseys and different
7 teams but on the same field, but when you suddenly say
8 veterans' benefits, it frames the issue and filters it in
9 a way that everybody is, oh, wait a minute, and given the
10 climate that we're in right now, I think that's a very
11 tender, very sensitive issue, so I think if we capture any
12 ground so to speak in this battle, it will be first in
13 that area.

14 Secondly, the legal argument that a pre-conviction
15 from a technical/legal point of view, saying, well, no one
16 has actually been convicted of anything yet and you've
17 removed all those things, so there are some bureaucratic
18 things that we're attempting to work with with the idea of
19 maybe not totaling eliminating benefits, and maybe
20 suspending them makes it from a government system's point
21 of view easier to recapture sooner than having to reapply
22 and then forms and then wait and correct the form that you
23 didn't do at first and on and on and on and finally
24 getting back to the benefit thing.

25

1 Now you can see that if you've got that level of
2 bureaucratic stuff in terms of how we function
3 governmentally and then you go into a facility and you
4 have mental health issues and you have a seriously
5 mentally ill diagnosis, then suddenly it's up to the
6 facility but yet you've lost your benefits card so to
7 speak and now you're released, but you don't have the
8 ability to continue simply to even get your medication, so
9 you apply again and on and on and on and eventually do so,
10 so that window, reverse window almost, of opportunity
11 comes back upon us in which then the person offends again
12 in the public square and does something silly and stupid
13 and then winds up being arrested and back into the county
14 jail, and once again, it's both an expense thing for us
15 and it's an improper setting for this person, and they
16 wind up staying longer within our facility and we do not
17 have the kind of abilities and resources to intensively
18 deal with this population, and again, the trend is more
19 and more both at the County, State, and Federal level, and
20 it's happening at all levels of government in serious
21 numbers to where everyone is beginning to realize that we
22 need to do something about this in a partnership way and
23 in a collective way, so thank you for the opportunity to
24 discuss this with you today.

25 REP. WALKO: Representative Evans?

1 REP. EVANS: Yes, thank you. I have a
2 couple of observations and
3 then a brief question. I want
4 to thank you, Chairman Giles
5 for your testimony today.

6 There are some very key points here, and I must say
7 that I enjoyed working with you very closely over the
8 last 8 years in your position on County Council and we
9 appreciate your leadership on some of these very important
10 issues that we are facing both at the local level and at
11 the State level. I think we will follow up and I'll be
12 working closely with Chairman Walcko's office to eventually
13 schedule some type of a hearing to further investigate
14 what's happening in Erie County.

15 It is a very progressive situation, and the fact
16 that you are one of the few counties nationwide to receive
17 the grant, I think it illustrates the good work that
18 you're doing in the northwestern part of Pennsylvania, and
19 as we move forward here, I want to mention that the
20 overcrowding situation which was referenced in your
21 testimony, in the House of Representatives, we are taking
22 some positive steps in the last two weeks where we
23 actually moved the Bill out of the House, which will allow
24 for some of the more violent criminals incarcerated in
25 county prisons to be transferred to State Correctional

1 Institutions, which we really feel will be a cost savings
2 to the counties all across Pennsylvania.

3 We're hopeful that the Senate takes up on that
4 Bill, and that's another item possibly to speak with
5 Senator Earl about in the near future. It is obviously
6 very expensive to house inmates, whether it be in the
7 county prisons or in the State Correctional facilities,
8 and I think your point is well taken that if we can move
9 some of the transition into health and human services at
10 the lower level as far as monitoring some of those
11 individuals and taking care of their medication needs and
12 whatnot, at the end of the day, it will be more cost
13 efficient.

14

15 EXAMINATION OF MR. GILES BY REP. EVANS:

16 Q. However, currently, in your structure in Erie
17 County, is there a shortage of manpower in health and
18 human services to accomplish those goals and what would
19 you foresee as the needs being from a budgetary standpoint
20 to realistically make that happen if this were to come to
21 pass?

22 A. One of the things that I've seen at least within
23 our county is that the partnering between providers and
24 agency folks and government people collectively has been a
25 good process, so that I don't think anyone's hoping that

1 all of the wish list is going to be covered, but at least
2 within the prioritization of in order to do this housing,
3 it's become a critical issue both from agency folks
4 saying, you know, when somebody gets out and they end up
5 either returning to what is essentially a very bad setting
6 or a bad environment in which they're inevitably going to
7 be either responsive to that environment or they're going
8 to be right back again.

9 So working with that issue of housing is probably
10 one of the key focus points, but when you've got the
11 partnership together with all the local providers as well
12 as the government resource people, you can kind of get
13 there, but there are some critical areas that need to be
14 addressed first and that's what we're hoping is a result
15 of this Eli Lilly thing, which will leave us with that kind
16 of prioritization list of let's do this first and then
17 we'll have a much more detailed ability to respond to your
18 questions by saying, well, this is what we know we have,
19 and we're short, and we don't think we're an anomaly or an
20 exception. We think this will truly be a larger picture
21 of what we are or Allegheny County will be a larger
22 picture, but the issues cross over all our jurisdictions
23 and all sizes, but when we get to that, there is an
24 opportunity, an advertisement, and it's a pretty short
25 time, but May 6th, the Department of Justice has a grant

1 for planning and implementation regarding the mentally ill
2 and diversion piece with criminal justice dollars and the
3 Department of Justice behind it so that we're in the
4 process of applying for that as well.

5 We turn over every rock we can to find resources to
6 meet our needs.

7 REP. EVANS: We would like to thank you
8 very much for coming down here
9 today and making the trip down
10 to provide the testimony and
11 look forward to working with
12 you in the future on this.

13 (Discussion held off the record)

14 A. And if you do, I am willing to work with you in
15 terms of who would be good from our jurisdiction in terms
16 of hearing on any topic, whether it's the specialty court
17 issue or the mentally ill offender piece or the Lily grant
18 of where we are statistically on any of these things.
19 We certainly have a good team in place, and any success
20 that we've had, I would say on record it's because of the
21 quality of all the players on the team and it's been a
22 team effort and will continue to remain that. Thank you,
23 and I thank you for your partnership as well.

24 REP. WALKO: Thank you, Councilman.
25 Representative Evans and I

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will work on scheduling a good time to visit Erie perhaps for a couple days and bring the Subcommittee up. I want to also mention for the record that the Subcommittee on Courts did go to the recent Drug Treatment Court graduation as Councilman Giles referred to it in Philadelphia, and not only was it inspirational, but it was uplifting where you literally saw people whose lives had been saved by their participation in a rather rigorous treatment program that is not being soft on crime at all; it's hitting it, facing the issue head on, so Councilman Giles had some great ideas and comments regarding that. Now on to Mr. Thomas Phillips, Beaver County Public Defender's Office,

1 wel come.
2 MR. PHILLIS: Thank you. Mr. Chairman, my
3 name is Thomas C. Phillis and
4 I'm employed by the Beaver
5 County Public Defender's
6 Office currently in the
7 capacity as a Deputy Chief
8 Public Defender. I'd like to
9 begin by thanking the
10 Committee for inviting the
11 Public Defender to testify in
12 regard to the Criminal Justice
13 and Mental Health Reinvestment
14 Bill. Too often Public
15 Defenders feel left out when
16 it comes to funding and input
17 into new programs, so we
18 appreciate being asked for
19 input at this early stage.

20 How to deal with those individuals who are
21 affected by mental illness and become involved in the
22 criminal justice system has been an ongoing problem. Here
23 in Beaver County, we have seen an upswing in the number of
24 persons with mental health conditions who have become
25 involved with the criminal justice system; additionally,

1 and of more concern to me, there is an increase in the
2 number of repeat offenders with mental health conditions
3 as major components of their criminal activity. Locally,
4 this increase seems to coincide with the slow down at
5 Mayview State Hospital and the decision of another local
6 mental health facility to not take new patients.

7 It has become increasingly difficult to obtain an
8 early mental health evaluation for clients in all but the
9 most serious cases. It is important that persons with
10 mental health components to their cases be identified
11 early as proper evaluation and treatment can both prevent
12 their being repeat offenders and guide their instant cases
13 into treatment resources, thus relieving some of the
14 burden on the more traditional incarceration and
15 supervision resources.

16 Because the Public Defender's staff has early
17 contact with these individuals as they proceed through the
18 system, they are in a good position to identify potential
19 mental health concerns. I would note here that in about
20 60 per cent of the counties in the Commonwealth of
21 Pennsylvania, the Public Defenders are the attorneys who
22 are appointed to represent persons at involuntary
23 commitment proceedings also, so there is some familiarity
24 with mental health problems in that office.

25

1 A standardized method for evaluating and
2 identifying these persons is needed. The Criminal Justice
3 and Mental Health Reinvestment Act would provide moneys to
4 local programs designed to identify and seek treatment for
5 individuals who have become involved with the criminal
6 justice system in part or in whole because of a mental
7 illness.

8 The earlier such persons can be identified and
9 treated, the less of a burden they are to the criminal
10 justice system. The programs this Bill could fund would
11 mean less incarceration, and supervision resources would
12 be needed to be used to process the matters created by
13 mental health problems.

14 If these programs can steer individuals affected
15 with mental illness away from criminal activity, it is a
16 benefit not only to them but to the criminal system as
17 well in that it lessens the use of costly portions of that
18 system such as incarceration and can prevent the need to
19 deal with additional cases of repeat offenders.

20 Again, I would like to thank the Committee for its
21 time and to summarize by stating that the programs that
22 this Bill could provide for would be of great benefit to
23 the criminal justice system, and more importantly of great
24 benefit to those citizens of the Commonwealth who have
25 mental health issues and who would receive the care and

1 treatment they need.

2 I would like to also add that after hearing prior
3 individuals testify, particularly Mr. Berosh's testimony
4 who you heard first, that in Beaver County, we have a
5 couple of very good programs as he designed for people at
6 the Beaver County Jail, but the Beaver County Jail is too
7 late to have these people identified and their treatments
8 begin.

9 By the time they get to that jail and into
10 identification, and one of the programs there is called
11 MISA, which is a program for dual diagnosis of individuals
12 that have drug and alcohol problems and a mental health
13 problem, it's a very good program, but we need to identify
14 those individuals earlier in the system, not the third or
15 fourth time that they have offended and ended up in jail,
16 but the first time that they're through the system so they
17 can be diverted into a treatment program so there is not a
18 need for the incarceration and the expensive supervision
19 that the Probation Office would need to provide.

20 REP. WALKO: Thank you, Mr. Phillips.
21 With regard to your
22 involvement or the involvement
23 of Public Defenders generally
24 in this whole process, I think
25 it is vital. It's vitally

1 important that they be
2 involved since they're such an
3 integral, key part of the
4 whole system, especially when
5 it comes to the kinds of
6 inmates we're talking about in
7 many cases.

8

9 EXAMINATION OF MR. PHILLIS BY REP. WALKO:

10 Q. And I was wondering along those lines, the team
11 that is outlined on page 3 of the Bill, Public
12 Defender/District Attorney, do you think that's a good
13 team?

14 A. When I was going over the Bill, yes.

15 Q. Any additions or subtractions? And just by a side
16 note, we were in Philadelphia this week as well, and the
17 Mayview situation was brought up as a contributing problem
18 in this whole issue.

19 A. I think that covers it pretty well. I don't think
20 that there would need to be an addition to that team
21 identified in the proposal for consulting on whatever the
22 counties would be developing.

23 Again, like I said, the most important thing is to
24 identify these cases as early as possible and to prevent
25 the need for incarceration and to prevent the repeat

1 offenses in this.

2 REP. WALKO:

Thank you for your concise and
3 pointed testimony, and it
4 appears very helpful, and we
5 look forward to hearing from
6 you again as this legislation
7 moves to the House, from the
8 Senate to the House. Thank
9 you. Have a great day.

10 The next testifier and last
11 testifier is Mr. Mark
12 Bergstrom, Executive Director
13 of the Pennsylvania Commission
14 on Sentencing. Welcome and
15 thank you for traveling here
16 from State College.

17 MR. BERGSTROM:

Thank you, I appreciate it.
18 Good morning and thank you for
19 providing this opportunity to
20 testify on Senate Bill 1128,
21 which would establish the
22 Criminal Justice and Mental
23 Health Reinvestment Program.

24 Through this proposed program, the Pennsylvania
25 Commission on Crime and Delinquency would provide funding

1 to counties to plan, implement, and expand initiatives for
2 at-risk individuals and for offenders with mental illness
3 and substance abuse disorders. But of equal importance,
4 the legislation promotes and supports comprehensive
5 planning at the State and local levels for the development
6 and delivery of evidence-based criminal justice and
7 behavioral health programs and services.

8 The program described in Senate Bill 1128 would
9 enhance existing efforts by the Sentencing Commission, the
10 PCCD, the Administrative Office of Pennsylvania Courts,
11 and the Commission on Justice Initiatives in Pennsylvania
12 and others to develop and expand county criminal justice
13 advisory boards, problem-solving courts, and similar
14 county initiatives intended to improve public safety.

15 This legislation also provides a framework for the
16 discussion of important implementation issues that are
17 often overlooked. These include: (1) the need to better
18 coordinate efforts across agencies, systems, and levels of
19 government; (2) the need to provide statutory options for
20 the expanded use of community-based treatment and
21 supervision of offenders with behavioral health disorders;
22 and the need to provide a mechanism such as that described
23 in Senate Bill 1128 for the development and implementation
24 of evidence-based programs for offenders with behavioral
25 health disorders.

1 What I'd like to do is just for the sake of time
2 just highlight some of the information I have in the rest
3 of the testimony.

4 In the first area of Coordination, I think there
5 are probably three key areas that have to be considered:

6 The first is the development of a full array of
7 substance abuse and mental health treatment options
8 beginning with the least restrictive and including case
9 management;

10 Also, the development of a full array of criminal
11 justice options, beginning with law enforcement actions to
12 avoid criminal justice involvement, and including
13 supervision, sentencing and correctional programs and
14 facilities with a particular focus on actions at
15 identified intercept points, points at which that offender
16 comes into the system or where decisions are being made.

17 And third, a reduction or elimination of those
18 barriers between behavioral health and criminal
19 justice systems which prevent the delivery of the most
20 effective treatment at the earliest intercept possible or
21 results in the criminalization of mental illness.

22 There seems to be a need for better identification
23 and assessment of offenders so that you can sort out these
24 offenders and determine what the best cause and course of
25 action is. One of the ways to do that is through a risk -

1 needs assessment and to use that assessment when offenders
2 first touch the system.

3 There is also a need to streamline and coordinate
4 funding and resources so that the funding follows the
5 person. All too often, you'll have funding that's very
6 categorical, and if the offender doesn't fit into that
7 box, the funding isn't available, so trying to develop a
8 funding stream that's broader, I believe, can overcome
9 some of those issues.

10 In recent years, there has been a growth in the
11 number and types of problem-solving courts operating
12 across the country and here in the Commonwealth. These
13 specialized courts, which require ongoing, judicial
14 monitoring of cases, have been found to be quite
15 successful in effectively dealing with offenders with
16 special needs such as substance abuse and mental illness.
17 However, a separate problem-solving court may not be
18 practical in a county due to any number of reasons
19 including the size of the county and the lack of necessary
20 resources. Therefore, general information related to
21 mental illness and substance abuse, the resources
22 available at the County and State levels, and evidence on
23 best practices must be made available to all courts in
24 order to promote more effective management of these cases.

25

1 Regarding statutory options, it sort of falls into
2 two categories: The first is that there are a number of
3 diversion and sentencing options that are available to
4 courts for drug dependent offenders. However, there are
5 substantial limitations on eligibility or access to these
6 programs. For instance, with the county intermediate
7 punishment program, there's a fairly substantial list of
8 ineligible offenses, and so there are times when offenders
9 that may be appropriate for programming through county
10 intermediate punishment sentences are ineligible because
11 of a prior offense or a current offense.

12 There's also a similar level of ineligibility for
13 State intermediate punishment, and even if ineligibility
14 wasn't an issue with State intermediate punishment, the
15 process is a pretty complicated process and we find a high
16 under utilization of the program. Now it's a fairly new
17 program, so with education, we expect higher utilization.

18 But with one of the things in the legislation that
19 was referenced early this morning, the reform legislation,
20 House Bills 4, 5, 6, and 7, there would be a mechanism if
21 that passed to allow the Department of Corrections to go
22 back to the District Attorney and the sentencing court and
23 ask them to reconsider a case where State intermediate
24 punishment was not used and sort of reconsider whether it
25 might be appropriate in a case.

1 Now kind of thinking outside of the box solutions
2 really do help to identify programs that are good programs
3 and give sort of a second shot or second look at the case
4 to see if it fits the profile because it might have just
5 been overlooked, so I don't think there needs to be a rush
6 to making changes in eligibility, but I think there should
7 be an effort to try to make sure that when there's
8 something that's just outside of the mandated legislation,
9 there is a provision that allows the review of that.

10 And then the other thing related to drug and
11 alcohol treatment has always been the funding issue. The
12 State has put 18 million dollars a year now into what we
13 call the restrictive intermediate punishment drug and
14 alcohol treatment program, and that's been great and we've
15 done evaluations and have had very good outcomes in the
16 counties that are using it, but what we do find is that
17 the utilization is driven by money. If you have the
18 funding, you'll use the program.

19 And one of the problems at the county level is in
20 only a handful of counties do you see a direct
21 relationship to taking someone out of jail and being able
22 to use that money to put them into treatment. For
23 instance, in Delaware County where they in effect have
24 contracted their county jail, they pay a per day fee for
25 each inmate in that jail, \$45 or \$50 a day. For every

1 inmate they remove from that jail, they are saving money
2 and they can convert that into money for treatment or
3 other things like that.

4 But in most county jails, in order to really recoup
5 the savings, you have to move a lot of people out so you
6 can close down a wing at the prison or a pod in order to
7 have enough savings to then use somewhere else, and that's
8 where the State funding for drug treatment when used
9 appropriately can be really helpful because it can help
10 counties to build a different way of processing cases that
11 over the long run will manage that prison population and
12 get them through that short term sort of transfer over to
13 the use of treatment.

14 So on the drug treatment side, I think those three
15 things, ineligibility, selection, and funding are key
16 issues.

17 Moving to the mental health offenders though, I
18 think there's somewhat more limited diversion in
19 sentencing options, and I don't want to go into too much
20 detail, but on page 5 of my testimony, I outline some of
21 the restrictions, and I notice that the District Attorney
22 and others, the Council Chairman, and the Public Defender
23 all sort of talk about trying to look at mental illness
24 and mentally ill offenders and trying to really intervene
25 as early as possible in the system. Once they're in jail

1 or once they're before the court for sentencing may be too
2 late, and so we have developed a pretty rich array of
3 formal and informal diversion programs for a lot of
4 offenders, especially drug dependent offenders, but that
5 doesn't translate so easily to mentally ill offenders, and
6 so I have some suggestions about either broadening
7 existing statutes or creating statutes that would provide
8 those kind of alternatives for mental health offenders.

9 And finally turning specifically to Senate Bill
10 1128. Since 1991, the Commission has incorporated county
11 intermediate punishments into the sentencing guidelines
12 and has worked closely with PCCD and counties to develop
13 and implement these intermediate punishment programs.

14 In 1997 when we revised the guidelines, we
15 incorporated RIP/D&A into the guidelines, and as I said,
16 the current funding level for that is a little over 18
17 million dollars.

18 Senate Bill 1128 in some ways codifies and expands
19 on that county intermediate punishment effort that has
20 been sustained over the past 15 years and consistent with
21 the testimony today promotes comprehensive, coordinated
22 planning and implementation to address targeted offenders
23 at any and all intercepts.

24 One of the things that I think is important about
25 the legislation in addition to codifying and promoting

1 planning and coordination is that it also provides or
2 anticipates a funding stream from the State, and I think
3 this is particularly important because in the last year or
4 two, the Federal funding that has been used by the
5 Commission on crime, delinquency, and others to help
6 counties do planning and implementation of programs, sort
7 of a seed money for that kind of stuff, has been reduced
8 substantially, and so to some degree any State money would
9 help at first to fill gaps in what was Federal funding,
10 but secondly, I think it would promote a really positive
11 effort that moves towards better coordination.

12 Some specific recommendations related to the
13 legislation, I encourage the Committee to consider when
14 having the opportunity to include the Pennsylvania
15 Commission on Sentencing as a member of the Advisory
16 Committee. The Commission is responsible for using
17 guidelines to identify appropriate offenders for
18 participation in sentencing programs, including county IP,
19 State motivational boot camp, and State IP, and to
20 evaluate the outcomes of those programs.

21 The Commission is also through its existing
22 responsibilities in the areas of research, consultation,
23 education, technical assistance, data collection and
24 dissemination, and we can offer assistance to counties as
25 they develop and implement these sentencing-related

1 policies.

2 And the Commission has the authority to consider
3 modifications to the sentencing guidelines that could
4 incorporate the use of treatment courts and/or promote the
5 use of treatment for offenders with mental illness along
6 the lines of efforts the counties might have in mind, so I
7 think it's important for there to be consideration of
8 having the Sentencing Commission on that Advisory
9 Committee.

10 I would support Council Chairman Giles'
11 recommendation of adding CCAP to it as well because I
12 think county representation is important even though there
13 is going to be a parallel level of county efforts at the
14 county level, but having CCAP as an entity to sort of
15 channel some county concerns or interest to the State
16 agency, I think, is an important aspect of that.

17 And finally, relating to counties as well, I would
18 suggest that any grants that are submitted by the county
19 be approved, be required to be approved by the county's
20 Criminal Justice Advisory Board. There has been a real
21 effort in the last couple of years to enhance those Boards
22 to really encourage coordinated efforts at the county
23 level between the courts and the executive branch and
24 between probation and parole and between Counties and the
25 State, and I think empowering the CJAB as part of this

1 effort would be helpful.

2 So thank you again for allowing me to testify. As
3 an agency of the General Assembly, the Commission is
4 available to provide any information and support
5 requested.

6 REP. WALKO: Thank you.

7

8 EXAMINATION OF MR. BERGSTROM BY REP. WALKO:

9 Q. I believe Senator Greenleaf had the hearing last
10 summer.

11 A. Yes, he did. One of the agencies that I mentioned
12 or associations is the Commission on Justice Initiatives
13 in Pennsylvania, which was appointed or requested by the
14 Supreme Court and I believe is empaneled, I believe,
15 through the Pennsylvania Bar Association, and they have
16 several task forces.

17 One of the task forces has been looking at mentally
18 ill offenders and problem-solving courts, and sort of
19 under that umbrella, there was a hearing before the Senate
20 Judiciary Committee, and one of the issues that was on
21 that agenda was Senate Bill 1128 and there was broad base
22 support for it as I recall.

23 Q. I think Justice Elliott or Kate Ford Elliott, she's
24 Commonwealth Court, is that correct?

25 A. She is Superior Court, I believe.

1 Q. She had talked to me about that organization and I
2 will have to take a look at that, but regarding the
3 intermediate punishment, you made some good observations
4 about that and we are trying to make, provide more options
5 for prosecutors and House Bill 4, 5, 6 or 7. I forget
6 which Bill it was.

7 A. Yes, there's a lot in there.

8 Q. We have 4 different Bills that are a package. How
9 under utilized are the county intermediate punishment
10 programs?

11 A. I think county intermediate punishment has a higher
12 utilization than State and part of that is that they've
13 been around longer and they've been there since the early
14 90s. Part of it is that there is State funding that goes
15 into it, and probably the biggest part of it is that in
16 county intermediate punishment, certain programs may be
17 used in lieu of the DUI mandatories, so when we look at
18 the utilization of County IP, the greatest utilization is
19 in lieu of the DUI mandatories, which certainly does have
20 a direct impact on county jails, so that's where we see
21 it.

22 The second level of utilization is for this
23 comprehensive drug and alcohol treatment, a program that
24 was supported in a big way by the DAs both in terms of the
25 policies and in terms of the funding, so I think that's

1 only successful because of the DA's support and their
2 participation and that's the area where I think we found
3 some really positive outcomes, but we do see that there's
4 limitations when there's not funding for that treatment.

5 Q. As far as the State intermediate punishment --

6 A. On that area, it's much slower coming. It was only
7 enacted, I think, in 2005, so Secretary Beard and I had a
8 little dog and pony show that we take on the road, and
9 we've been meeting with county judges and criminal justice
10 advisory boards and others. In fact, we were just in
11 Lackawannock County on Monday. We meet just to sort of
12 explain the program, explain State IP and County IP and
13 diversion programs for substance abuse offenders and try
14 to answer any questions and also provide them with some
15 data from the Sentencing Commission about utilization of
16 programs now and where there might be some opportunities,
17 and I think we've seen some real payoffs from those
18 presentations in terms of a substantial increase in year
19 two of the use of that program.

20 But I think the legislation, the sentencing reform
21 legislation, where if cases sort of at a volume and
22 everything else, if cases sort of get through the system,
23 the persons in prison, the DOC looks at the case and says,
24 you know, this case looks perfect for State IP. It
25 provides an opportunity to go back to the DA and to the

1 Court and say, would you take a second look at this, and
2 it's still the decision of the DA first and the court
3 second, secondly, to decide whether to do it or not, but
4 sometimes cases can slide through.

5 One of the things we found in our efforts is really
6 the engagement of Public Defenders is important, too,
7 because they're really -- the defense bar is really the
8 ones that are going to take the case to the DA and say,
9 hey, how about this one, so if we really start very early
10 as the PD and DA said earlier, you know, if we can really
11 try to identify these people early, have a screening tool
12 in place, you know, sort them out a little bit and say,
13 how about these cases and think about them so they're not
14 just sitting in jail and they're not just flowing through
15 the system, you know, I think that's all the better, so
16 both on the mental health side and the substance abuse
17 side.

18 Q. I think it would be great for the Subcommittee on
19 Courts to have an opportunity to sit in one of those,
20 observe one of those sessions that you're discussing with
21 Secretary Beard.

22 A. We take it on the road, so we could take it to the
23 Capitol, too, but whatever would work for you and we can
24 certainly provide you with dates when we're doing future
25 ones. I don't think we have any scheduled at this point,

1 but we can always pass it on.

2 REP. WALKO: Thank you. Do you have any
3 questions?

4 REP. RAMALEY: No.

5 REP. EVANS: No.

6 REP. WALKO: Thank you for the extremely
7 thorough and well thought out
8 testimony and we look
9 forward to continuing to work
10 with you.

11 MR. BERGSTROM: Same here, thank you.

12 REP. WALKO: I'd like to conclude this
13 hearing. I think we've
14 received some really
15 interesting and different
16 insights into the broad issues
17 of problem solving in the
18 courts and the mental health
19 challenges we face, and I look
20 forward continuing to work
21 with my fellow members of the
22 Subcommittee on Courts on
23 these issues. Thank you very
24 much for your attendance today
25 and best wishes.

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MR. BERGSTROM: You' re wel come.

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CERTIFICATION

I HEREBY CERTIFY that the within proceedings are a true and correct transcription of the notes reported by me to the best of my knowledge, information, and belief.

Evelyn S. Perry
Court & Deposition Reporter

Dated: April 21, 2008