

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COURTS

Public Hearing on SB 1128 (PN 1506)

Beaver County Courthouse
April 18, 2008

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Good morning Chairman Walko and members of the House Subcommittee on Courts. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing this opportunity to offer testimony on Senate Bill 1128 (P.N. 1506), which would establish a Criminal Justice and Mental Health Reinvestment Program. Through the proposed program, the Pennsylvania Commission on Crime and Delinquency (PCCD) would provide funding to counties to plan, implement and expand initiatives for at-risk individuals and for offenders with mental illness and substance abuse disorders. But of equal importance, the legislation promotes and supports comprehensive planning at the state and local levels for the development and delivery of evidence-based criminal justice and behavioral health programs and services. The program described in SB1128 would enhance existing efforts by the Sentencing Commission, the PCCD, the Administrative Office of Pennsylvania Courts, the Commission on Justice Initiatives in Pennsylvania and others to develop and expand county criminal justice advisory boards (CJAB's), problem-solving courts, and similar county initiatives intended to improve public safety.

This legislation also provides a framework for the discussion of important implementation issues that are often overlooked. These include: (1) the need to better coordinate efforts across agencies, systems, and levels of government; (2) the need to provide statutory options for the expanded use of community-based treatment and supervision of offenders with behavioral health disorders; and (3) the need to provide a mechanism, such as that described in SB 1128, for the development and implementation of evidence-based programs for offenders with behavioral health disorders.

Coordination of Services for Offenders with Behavioral Disorders

Considering the resource constraints in both the criminal justice and behavioral health systems, and the balanced concerns for public safety and public welfare, there is a need for a broad-based, comprehensive approach to address the behavior health disorders of offenders, with intervention at the earliest point possible. Untreated and inadequately supervised, these offenders pose a substantial risk to public safety. If incarcerated, they contribute to the increasing costs and overcrowding faced by many institutions. Whatever the behavioral health disorder, and whether

conditions are delivered through a problem-solving court or by a more traditional court process, court involvement may occur at several intercepts, including: bail and pretrial release; diversion; sentencing; and re-entry and parole. Key areas to target for enhanced coordination include:

- Development of a full array of substance abuse and mental health treatment options, beginning with the least restrictive, and including case management.
- Development of a full array of criminal justice options, beginning with law enforcement actions to avoid criminal justice involvement, and including supervision, sentencing and correctional programs and facilities, with particular focus on actions at identified intercept points.
- Reduction or elimination of those barriers between behavioral health and criminal justice systems which prevent the delivery of most effective treatment at the earliest intercept possible or result in criminalization of mental illness.

A critical aspect of this coordination is the identification and assessment of offenders. The use of a risk and needs assessment instrument to ‘rapidly, reliably and efficiently’ assess those with drug and alcohol dependency or mental illness is critical for targeting offenders for treatment or other interventions. Because criminal justice and behavioral health treatment activities are resource-intensive, the use of risk and needs assessments at the earliest contact with the system can lead to more effective and cost efficient use of programs. In addition to typical criminal justice expenses, those with mental illness and/or substance abuse disorders often require ongoing support in terms of psychotropic drugs, housing and case management.

Another obstacle to coordination and efficient implementation of programs and services is funding that tends to be categorical, and linked to specific systems or purposes or units of government. This ‘silo effect’ leads to gaps, delays, inefficiencies, and the development of policies and programs to meet funding solicitations rather than identified needs. Efforts should be made to streamline and coordinate funding and resources, so that ‘funding follows the person;’ these funds should pay for the program or service identified during an initial assessment, regardless of which option or which system is providing the program or service.

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

Statutory Options for Expanded Use of Community-Based Treatment and Supervision

As just noted, mechanisms for addressing offenders with behavioral health disorders cannot be confined to problem-solving courts. Drug treatment courts, where they exist, may be most appropriate for 'high risk' offenders with prior offense histories and prior treatment failures. For other offenders with substance abuse disorders, and for those who do not qualify for a drug treatment court, as well as those in jurisdictions without a drug treatment court, there is still a benefit in providing comprehensive, clinically prescribed treatment to address underlying problems that contribute to offenders recycling through the criminal justice system. Efforts during the past decade, in which state funding linked to the sentencing guidelines (RIP/D&A) has promoted the use of comprehensive treatment in lieu of incarceration, has proven to be both cost effective and effective in terms of reduced recidivism. SB1128 would assist counties in with the planning, implementing and/or expanding such programs.

A number of diversion and sentencing options are available to the courts for drug dependent offenders. However, there are substantial limitations on eligibility for program participation. One approach that could be considered for expanded use of the sentencing programs (i.e., county intermediate punishment, state motivational boot camp, and state intermediate punishment) is to reduce or eliminate the list of ineligible offenses in favor of a more general consideration of the dangerousness or violence of the offender.

Even if no changes were made to the eligibility criteria, there would remain a substantial number of drug dependent offenders presently sentenced to total confinement in state and county correctional facilities eligible for state or county intermediate punishment. The under-utilization of these programs, or the reliance on incarceration, may be explained by a combination of reasons: the use of pretrial detention resulting in time-served sentences; the lack of funding for community-based treatment and supervision; the procedures by which offenders are recommended or approved for program participation; and the primary focus of sentencing guidelines and mandatory minimum sentencing provisions on retribution over rehabilitation. Efforts to address these issues, through changes in legislation, changes in local policies and procedures, and/or increased funding for treatment and supervision, could result in significant increases in the use of existing programs. SB1128 would provide substantial assistance to counties to address many of these issues.

Options for offenders with mental health disorders are somewhat more limited in terms of diversion and at sentencing, with eligibility and procedures dependent on the timing and nature of the disorder. Under Pennsylvania statute, a court may find a person who offers a defense of insanity to be *legally insane* (18 Pa.C.S.A. §315) and thereby relieve the person of criminal responsibility, or find the person to be *guilty but mentally ill* (18 Pa.C.S.A. §314) and impose any sentence which may lawfully be imposed on any defendant convicted of the same offense (42 Pa.C.S.A. §9727), including treatment pursuant to the Mental Health Procedures Act. Absent a defense of insanity, mental illness may be a mitigating factor considered throughout the processing of a case, including at sentencing.

While the county intermediate punishment statute provides flexibility for counties to develop specialized programs for offenders with mental illness, and courts and paroling authorities have the ability to order treatment and supervision as conditions of probation and parole, there is limited funding to implement such programs, and there are few formal options for pretrial release or diversion. Like offenders with substance abuse disorders, treatment and supervision for mentally ill offenders may be delivered through a problem-solving court or by more traditional court structure. Similar to the benefits to offenders with substance abuse disorders, SB1128 would provide substantial assistance to counties in developing options for mentally ill offenders.

According to the Bureau of Justice Assistance (2000), "...pressures that have led to the development of the mental health court strategy include crises in community mental health care (the long-term effects of deinstitutionalization), the drug epidemic of the 1980s and 1990s, the dramatic increase in homelessness over the last two decades, and widespread prison overcrowding." Two common problems identified by those jurisdictions with mental health courts are: (1) the increase in the number of mentally ill offenders in overcrowded prisons, and (2) the high co-occurrence of mental illness among the large number of substance abusers in the criminal justice system.

Several steps could be taken to increase the use of community-based treatment and supervision of offenders with mental illness, including the following:

- Release on Nonmonetary Conditions (Pa.R.Crim.P. Rules 524(C)(2)) – increased the use of assessments to expand treatment and supervision as community-based alternatives to pretrial detention.
- Probation without verdict (35 P.S. §780-117) – amend Section 17 which provided for pretrial diversion of drug dependent offenders who plead nolo or guilty to non-violent drug offenses to include those offenders with mental illness.
- Disposition in lieu of trial or criminal punishment (35 P.S. §780-118) – enact provision similar to Section 18 (which provides for pretrial diversion of drug dependant offenders charged with non-violent crimes) to apply to offenders with mental illness.
- County Intermediate Punishment (CIP) – provide funding for community-based treatment and supervision of offenders with mental illness through mental health treatment courts or through direct CIP sentences to clinically prescribed treatment and supervision.

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Since 1991, the Commission has incorporated county intermediate punishments into the sentencing guidelines, and has worked closely with the PCCD and the counties to develop and implement intermediate punishment programs. Through the 1997 revisions to the guidelines, a mechanism was established to provide state funding to counties for the use of comprehensive, clinically prescribed treatment in lieu of incarceration for targeted offenders (RIP/D&A); the

current level of state funding is \$18 million. More recently, in 2005, the Commission incorporated state intermediate punishments into the sentencing guidelines.

In many ways, SB1128 codifies and expands upon the county intermediate punishment efforts of the past 15 years, and consistent with the testimony today, promotes comprehensive, coordinated planning and implementation to address targeted offenders at any and all intercepts.

In supporting this legislation, I would respectfully offer the following suggestions:

- Include the Pennsylvania Commission on Sentencing as a member of the Advisory Committee for Criminal Justice and Mental Health Reinvestment.
 - The Commission is responsible for using sentencing guidelines to identify appropriate offenders for participation in sentencing programs, including county intermediate punishment, state motivational boot camp, and state intermediate punishment program, and to evaluate the outcomes;
 - Through its existing responsibilities in the areas of research, consultation, education, technical assistance, and data collection/dissemination, the Commission can offer substantial assistance to counties as they develop and implement sentencing-related policies;
 - The Commission has the authority to consider modifications to the sentencing guidelines that could incorporate the use of treatment courts and/or promote the use of treatment for offenders with mental illness.
- Require any grant submitted by a county be approved by the county's Criminal Justice Advisory Board (CJAB).

Thank you again for inviting me to testify this morning during this Public Hearing on the Senate Bill 1128. As an agency of the General Assembly, the Commission on Sentencing is available to provide any information and support requested.