

**TESTIMONY BEFORE THE
JUDICIARY COMMITTEE OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
ON PROBATION AND PAROLE FOR REPEAT VIOLENT OFFENDERS**

PRESENTED ON MARCH 19, 2009 BY

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Good morning Chairman Caltagirone, Chairman Marsico, Representative Lentz, Representative Boyle, and the distinguished members of the House Judiciary Committee. I am Sarah Vandenbraak Hart, Chief Assistant District Attorney of the Philadelphia District Attorney's Office, on behalf of the Pennsylvania District Attorney's Association (PDAA). The PDAA is very grateful to the Committee for the opportunity to testify here today on the important public safety issues that arise when prisons release violent offenders back in to the community.

The PDAA has asked that I testify on their behalf given my background on these issues. I am the former Senate-confirmed Director of the National Institute of Justice, the research and evaluation arm of the United States Department of Justice where I directed social science research on a wide array of criminal justice issues, including prisoner reentry. I also previously served for six years as the Chief Counsel of the Pennsylvania Department of Corrections. I have almost 20 years of experience as a prosecutor. As a prosecutor, I represented the Philadelphia District Attorney in Federal litigation challenging the number of prisoners held in the Philadelphia Prisons System.

During the nine years where the District Attorney opposed the mass release of Philadelphia prisoners under a prison cap order, I had the privilege to work with Pat Boyle who testified earlier this morning. All of us in Philadelphia owe a tremendous debt of gratitude to Pat Boyle for his tireless work here in Pennsylvania and in Washington D.C. He successfully urged Congress to adopt legislative reforms to prevent the type of prisoner releases that led to the murder of his son,

Officer Danny Boyle. Pat Boyle, as a former detective with decades of law enforcement experience, continues to convey a vital message—that ill-advised prison releases can adversely affect all components of the criminal justice system and they can lead to the most tragic results. Pat lost his only son.

Unfortunately, this Committee has also just heard similar tragedies where prisoners with serious records of violence were released on parole and later committed murders of police officers and home invasion murders. The murders highlighted here today vividly demonstrate the horrendous consequences that can result from such parole decisions. We are very grateful to the other witnesses who testified here today about these important issues. We know it is so personally difficult for them and we are grateful for their selfless courage in trying to prevent others from suffering similar losses.

PDAA is also very appreciative of the men and women who work in the corrections and parole. As criminal justice partners we understand just how difficult their jobs can be and the enormous responsibility that society places on them. We know that they strive through treatment programs to reduce the risk that the public faces when these large numbers of prisoners return to the community. We also recognize that even the best corrections and parole policies and practices cannot predict with *certainty* whether a particular parolee will commit future serious crimes or murders.

However, these cases vividly demonstrate that all of us involved in this process must strive to do better. The risks posed by repeat violent offenders are just

so great that they demand our full attention and commitment to do all we can to make the public safer.

So, what can we do better? First, we must recognize that there are a very small number of prisoners who are so violent that no treatment program—no matter how well-designed, how well-taught, or how well-attended—will reduce their risk of future violence. These worst-of-the-worst—who are so small in number that John Goldkamp estimated them to be less than ½ of one percent of our state prison population—need to be locked up. We, as criminal justice professionals, need to be honest with ourselves—there are some criminals that are so violent that we can not realistically expect prison treatment programs to change their behavior. Simply because they have learned how to game the system to obtain a release does not change that fact.

Most criminals are not like this. For them, prison programs—such as drug and alcohol treatment and cognitive behavioral therapy—are essential. Scientific research has proven that certain programs will substantially reduce the likelihood that moderate risk inmates will commit future crimes. For the vast majority of prisoners who will inevitably return to our communities, good treatment programs are a wise investment of our precious tax dollars—they make us all safer and save us money in the long run.

The million dollar question then is: How do we reliably figure out who fits within this select group of the worst-of-the-worst and who does not? Thankfully, there are many credible scientific studies that do just that. For example, a recent

study by the University of Pennsylvania examined 66,000 Philadelphia cases and found that the top five indicators an offender will commit a murder are:

- offender's current age,
- age of first criminal justice contact,
- gun priors,
- male, and
- violent priors.¹

Notably, Daniel Giddings, who murdered Sergeant McDonald, met every one of these factors.

For this reason, it is essential that scientific risk assessments be used at the various stages when criminal justice professionals make the critical decisions about how long a repeat violent offender should remain in prison or whether he should be released. We need the right information and an understanding of its importance in order to make good decisions. These critical stages of the criminal justice process include bail decisions, sentencing, community corrections placements, parole recommendations, parole decisions, and parole violation recommitments. The recent Prison Reform Package (Acts 81-84 of 2008) addressed many of these issues for various stages of the parole process. However, this approach, which relies heavily on scientific research and evidence-based practices, needs to be expanded into sentencing practices.

¹ See *Forecasting Murder within a Population of Probationers and Parolees: A High Stakes Application of Statistical Learning*, R. Berk, L. Sherman, G. Barnes, E. Kurtz and L. Ahlman, 172 J.R. Statist. Soc. A pp. 191-211 (2009).

For those of us who thought the Pennsylvania's two-strikes and three-strikes laws would address this issue, these cases have demonstrated that these sentencing provisions are not, by themselves, sufficient. Frequently, violent offenders are not subject to the full sanctions of the two-strike or three-strike laws. These laws do not consider juvenile adjudications. Given that the early onset of violent criminal behavior is one of the biggest indicators of a future risk of violence, these laws usually do not apply to the most serious violent offenders who are in the prime of their violent criminal careers.

PDAA does not, however, propose today that we address this problem simply by tinkering with the two-strikes and three-strikes laws. Rather, PDAA proposes a comprehensive approach to ensure that state resources identify and focus on this small group of high-risk violent offenders to achieve the maximum public safety benefits. We want to ensure that our approach is carefully targeted.

With this in mind, PDAA has specifically endorsed the following proposals:

1. Direct the Sentencing Commission to make public safety the top priority in sentencing guidelines and use credible scientific research to identify defendants who pose the greatest risk of committing future violent crimes.
2. Change the current requirement that the minimum sentence cannot exceed 50% of the maximum sentence so that judges would have the discretion to increase the minimum sentence for Repeat Violent Offenders (RVOs) to 85% of the maximum sentence.
3. Require a mandatory 5 year probation tail for Repeat Violent Offenders that would be supervised by the Parole Board.
4. Require the Pennsylvania Commission on Crime and Delinquency to publish research relating to risk factors for future violent crime.

5. Require that state or local corrections officials making parole recommendations for violent offenders consider research relating to risk factors before making parole recommendations and prohibit the use of parole recommendations solely to reward good prison behavior.
6. Authorize the Pennsylvania Board of Probation and Parole to provide post-supervision services requested by repeat violent offenders even if they are not currently under state parole supervision.
7. Ensure that local law enforcement agencies are notified when repeat violent offenders are released into their jurisdiction (through Megan's Law registration or other notification mechanisms).

While PDAA supports these proposals, we look forward to working with the Committee to develop a comprehensive and bi-partisan bill that carefully addresses these critical issues. We believe that these important issues can best be addressed if all stakeholders, including prosecutors, are included in this process.

Meanwhile, we note that the PDAA does not support some of the proposals that have been suggested in response to the recent murders committed by state parolees. Specifically, PDAA opposes the use of flat sentences. Flat sentences, while sounding tough on crime, essentially require our system to make final release decisions at the time of sentencing. This can lead to overall shorter terms of incarceration and reduced supervision. In addition, flat sentences don't permit release decisions to be based on the most current information about the offender. It is for this reason that Pennsylvania is an indeterminate sentencing state. It should remain so with Repeat Violent Offenders.

Historically, PDAA has strongly opposed granting the Department of Corrections the power to reduce sentences through the use of an earned-time

program. Allowing correctional officials to reduce previously imposed sentences violates the fundamental ideals of truth-in-sentencing and fairness to victims. It is also the wrong approach. Prison releases of the most violent prisoners should never be based on prison behavior as it is not a good predictor of future risk. The fact that a serial pedophile can behave in prison does not mean he should be released to the streets.

Finally PDAA does not support the concept of a mandatory *parole* term as this is, in effect, a form of a mandatory *parole release*. Rather, the use of a mandatory *probation* term gives the sentencing judge the ability to revoke a future probation term for assaults and other misbehavior in prison. A mandatory *parole* term lacks this flexibility which is essential for these high-risk offenders.

Mr. Chairman and members of the Judiciary Committee, the District Attorneys are very grateful to you for giving us the opportunity to discuss these important issues and identify potential solutions. As you know, we have previously provided you with specific proposed statutory changes that we believe would accomplish the important public safety goals discussed today. We look forward to working with you and other stakeholders in this joint effort to review these proposals and work toward appropriate legislative solutions.

I would, of course, be happy to answer any questions. Thank you.