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2 COMMONWEALTH OF PENNSYLVANIA  
3 HOUSE OF REPRESENTATIVES  
4 HOUSE JUDICIARY COMMITTEE

5  
6 IRVIS OFFICE BUILDING  
7 ROOM G-50  
8 HARRISBURG, PENNSYLVANIA

9  
10 TUESDAY, JULY 20, 2010  
11 10:00 A.M.

12  
13 PUBLIC HEARING ON  
14 SENATE BILL 1145

15  
16 BEFORE:

17 HONORABLE THOMAS R. CALTAGIRONE, CHAIRMAN

18 HONORABLE DEBERAH KULA  
19 HONORABLE KATHY MANDERINO  
20 HONORABLE JOHN E. PALLONE  
21 HONORABLE JOSEPH A. PETRARCA  
22 HONORABLE JOSEPH F. BRENNAN  
23 HONORABLE RONALD G. WATERS  
24 HONORABLE RICHARD R. STEVENSON  
25 HONORABLE BERNIE O'NEILL

1 ALSO PRESENT:

2 HONORABLE FRANK BURNS  
3 HONORABLE VANESSA LOWERY BROWN  
4 HONORABLE JOHN J. SIPTROTH

5 DAVID D. TYLER, EXECUTIVE DIRECTOR (D)  
6 KAREN COATES, CHIEF COUNSEL (R)  
7 TAMMY FOX, STAFF COUNSEL  
8 KURT BELLMAN, RESEARCH ANALYST  
9 DANIEL ALVAREZ, INTERN

10

11 BRENDA S. HAMILTON, RPR  
12 REPORTER - NOTARY PUBLIC

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## P R O C E E D I N G S

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3 CHAIRMAN CALTAGIRONE: Apologize for the  
4 delay. Taking some testimony on Senate Bill 1145 and, as  
5 always, I'd like the members and staff to introduce  
6 themselves starting to the left, if you would, Rich.

7 REPRESENTATIVE STEVENSON: Dick Stevenson,  
8 representing the 8th District, Mercer and Butler  
9 Counties.

10 MS. FOX: Tammy Fox, staff counsel to the  
11 committee.

12 MS. COATES: Karen Coates, chief counsel to  
13 the committee.

14 CHAIRMAN CALTAGIRONE: Tom Caltagirone,  
15 Berks County.

16 EXEC. DIRECTOR TYLER: David Tyler,  
17 executive director to the committee.

18 REPRESENTATIVE SIPTROTH: John Siptroth,  
19 Monroe and Pike Counties.

20 REPRESENTATIVE MANDERINO: Kathy Manderino,  
21 Philadelphia and Montgomery Counties.

22 MR. BELLMAN: Kurt Bellman, research  
23 analyst for the committee.

24 REPRESENTATIVE BURNS: Frank Burns, Cambria  
25 County.

1                   REPRESENTATIVE KULA:   Deberah Kula, Fayette  
2                   and Westmoreland Counties.

3                   REPRESENTATIVE PETRARCA:   Joe Petrarca,  
4                   Westmoreland and Armstrong.

5                   REPRESENTATIVE BRENNAN:   Joe Brennan,  
6                   Lehigh and Northumberland Counties.

7                   CHAIRMAN CALTAGIRONE:   Thank you.  We'll  
8                   probably have other members joining us as we proceed, but  
9                   I'd like to start off with Mark, the executive director  
10                  of the Pennsylvania Commission on Sentencing.

11                  EXEC. DIRECTOR BERGSTROM:   Good morning.  
12                  Thank you, Mr. Chairman and members of the Judiciary  
13                  Committee.

14                  Thank you for providing -- for providing  
15                  this opportunity to testify about Senate Bill 1145 which  
16                  amends the Commission's enabling legislation, expanding  
17                  the factors to be considered by the Commission in the  
18                  adoption of sentencing guidelines, and requiring the  
19                  Commission to adopt a risk-and-needs assessment  
20                  instrument for consideration at sentencing.

21                  Senate Bill 1145 may be best characterized  
22                  as an extension of the reform legislation enacted in 2008  
23                  in which the Commission was given new duties as far as  
24                  broader efforts to improve public safety and stabilize  
25                  the growth in corrections.

1           The 2008 reforms were intended to promote  
2 better system-wide coordination, improved efficiencies,  
3 more reliable and transparent data, and a greater focus  
4 on the development, implementation and evaluation of  
5 evidence-based programs. Consistent with these goals,  
6 the proposed amendments contained in Senate Bill 1145  
7 require a more comprehensive weighing of relevant factors  
8 at sentencing and an increased focus on reducing risk of  
9 re-offense and threats to public safety as a purpose of  
10 sentencing.

11           As proposed in Senate Bill 1145, the  
12 Commission will be required to consider as part of  
13 sentencing guidelines the same factors courts are  
14 mandated to take into account at sentencing:

15           Confinement that is consistent with  
16 protection of public;

17           Gravity of the offense as it relates to the  
18 impact on the life of the victim and the community;

19           And the rehabilitative needs of the  
20 offender.

21           The Commission is also required to consider  
22 resource utilization by prioritizing the use of criminal  
23 justice resources for offenders posing the greatest risk  
24 to public safety and promoting the consideration of  
25 sentencing alternatives for lower risk offenders.

1           Not only is the consideration of resource  
2 utilization consistent with existing Commission duties  
3 related to adoption of guidelines for sentencing and  
4 parole and the targeting of offenders, resource  
5 utilization also is critical to public safety in order to  
6 assure adequate prison capacity for violent and serious  
7 offenders.

8           When the General Assembly created the  
9 Commission in 1978, prison capacity was not a concern.  
10 In fact, the first edition of the sentencing guidelines  
11 submitted to the General Assembly were rejected in part  
12 because they were not sufficiently severe.

13           Unlike other jurisdictions, the Commission's  
14 current enabling legislation does not require one to  
15 consider correctional capacity or impact when adopting  
16 sentencing guidelines.

17           When the heightened concern -- with the  
18 heightened concern about prison overcrowding and related  
19 costs requiring the Commission to consider resource  
20 utilization, along with other relevant factors when  
21 adopting sentencing guidelines, is warranted. However,  
22 concerns about correctional capacity and correctional  
23 costs cannot be used to drive decisions which would  
24 negatively impact public safety.

25           Senate Bill 1145 also requires the Commission

1 to adopt a risk-and-needs assessment instrument for use  
2 at sentencing. In recent years, a number of states have  
3 incorporated aspects of risk and/or needs assessments in  
4 sentencing guidelines resulting in substantial reductions  
5 in both prison populations and crime rates.

6 In Missouri, a state with an indeterminate  
7 sentencing structure, the court is provided with  
8 information at the time of sentencing on the average  
9 sentence imposed for a conviction -- conviction offense,  
10 a risk/needs category assignment, and information on  
11 parole rates and time served for similar offenders.

12 In Virginia, a state with a determinate  
13 sentencing structure, actuarial risk has been used to  
14 identify non-violent, low -- low risk offenders for  
15 recommended diversion from prison. The Virginia risk  
16 assessment instrument is based on statistical analysis of  
17 the characteristics, criminal histories, and pattern of  
18 recidivism.

19 The factors proving statistically significant  
20 in predicting recidivism were assembled on a risk  
21 assessment worksheet with scores determined by the  
22 relative importance of the factors in the statistical  
23 model. The total score on the risk assessment worksheet  
24 represents the likelihood that an offender will be  
25 reconvicted of a felony within three years.

1           The Virginia Commission also -- was also  
2 required to develop a risk assessment for sex offenses,  
3 which is used to increase the upper limit of the  
4 recommended sentencing guideline range in relation to the  
5 risk of the offender.

6           Following the implementation of Virginia's risk  
7 assessment for sex offenses, an appeal was filed  
8 challenging as a due process violation the upward  
9 adjustment of the sentencing guidelines based on the use  
10 of an empirically-based risk assessment instrument.

11           The Court of Appeals of Virginia affirmed the  
12 use of the risk assessment instrument based on a  
13 determination that sentencing guidelines are not binding  
14 on the trial court but rather a tool to assist the judge  
15 in fixing an appropriate sentence.

16           Pennsylvania's sentencing guidelines are  
17 similar to those in Virginia in that they are advisory  
18 and nonbinding. The Pennsylvania Supreme Court has held  
19 that the Pennsylvania guidelines serve the laudatory role  
20 of aiding and enhancing the judicial exercise of judgment  
21 regarding case specific sentencing may help frame the  
22 exercise of judgment by the court in imposing a sentence  
23 but have no binding effect, create no presumption of --  
24 in sentencing, and do not predominate over other  
25 sentencing factors. They recommend rather than require a

1 particular sentence.

2           The efforts in Missouri, Virginia, and other  
3 states to expand the use of risk assessments has  
4 substantial support from highly regarded national  
5 associations and organizations, including the Pew  
6 Charitable Trust Public Safety Performance Project, the  
7 Vera Institute of Justice Center for Sentencing and  
8 Corrections, the Crime and Justice Institute, and the  
9 National Center for State Courts.

10           The American -- the American Law Institute's  
11 draft revision of the model penal code includes support  
12 of sentencing guidelines which permit low risk felons to  
13 avoid prison and high risk offenders to be assigned  
14 enhanced sentences.

15           The consideration of risks and needs at  
16 sentencing and within the guidelines can be particularly  
17 useful in the sorting offenders for diversion, for  
18 participation in special programs, and, as illustrated in  
19 Virginia, for incapacitation.

20           However, this more prominent consideration of  
21 public safety at sentencing represents a substantial  
22 change in sentencing policy in Pennsylvania. While many  
23 purposes may be considered by the court when sentencing,  
24 the primary purpose of the sentencing guidelines in  
25 Pennsylvania is retribution.

1           The sentencing guidelines provide sanctions  
2 proportionate to the severity of the crime and the  
3 severity of the offender's prior conviction record. This  
4 establishes a system with a primary focus on retribution,  
5 but one in which the recommendations allow for the  
6 fulfillment of sentencing purposes, including  
7 rehabilitation, deterrence, and incapacitation.

8           Under the present "desert" model of sentencing,  
9 uniformity, proportionality, and blameworthiness are key  
10 considerations for setting the boundaries for the  
11 guidelines with more serious offenders receiving longer  
12 periods of incarceration.

13           Within these boundaries, or as a departure from  
14 these guidelines, judges may consider utilitarian  
15 purposes such as rehabilitation. Parole in  
16 Pennsylvania's indeterminate system is a privilege and  
17 not a right. Public safety is the primary consideration  
18 at parole.

19           Under parole's predictive model, factors  
20 related to recidivism are considered, including actuarial  
21 risk to criminogenic needs.

22           When viewing these two decision points  
23 together, sentencing in Pennsylvania has traditionally  
24 focused on punishing or holding offenders accountable for  
25 past conduct, while parole was focused on the likelihood

1 of future behavior.

2 Senate Bill 1145 presents an opportunity for  
3 the development of sentencing guidelines which continue  
4 to be based on the seriousness of the offense but which  
5 more formally consider the risks and needs of the  
6 offender in determining a sentence recommendation.

7 This modified predictive model could  
8 incorporate into the sentencing guidelines an actuarial  
9 risk assessment based on static factors often considered  
10 informally at sentencing, such as: age, age of first  
11 arrest, number of prior arrests, use of a weapon, jail  
12 priors, supervision status at the time of the -- of the  
13 offense and other factors.

14 For those determined to be low risk offenders,  
15 the standard range of the guidelines could be expanded  
16 downward to include the mitigated range, providing an  
17 opportunity for consideration of shorter sentence -- of a  
18 shorter sentence or diversion to an alternative program.

19 For those determined to be a high risk offender  
20 or high risk offenders, the standard range of the  
21 guidelines could be expanded upward to include the  
22 aggravated range with potential for longer sentences.

23 Greater consideration of certain static risk  
24 factors at sentencing could reduce reliance on those  
25 factors at parole.

1           While risk assessment as part of the guidelines  
2 may efficiently screen or effectively screen all  
3 offenders prior to sentencing, a more comprehensive  
4 clinical assessment of risk and needs may be required for  
5 certain offenders to determine eligibility and  
6 appropriateness for alternative programs, or to decide  
7 the duration or structure of a confinement sentence.

8           In Senate Bill 1145, it is recommended that  
9 this more thorough assessment be part -- be prepared as  
10 part of a presentence investigation report, if authorized  
11 under the Rules of Criminal Procedure. This would  
12 require a much more standardized PSI report format, with  
13 greater consideration of dynamic factors and a  
14 recommendation linked to that clinical assessment.

15           I have attached to my testimony an example of a  
16 diagnostic report PSI from Travis County, Texas which  
17 incorporates risks and needs into a PSI report.

18           In order to implement the mandate proposed in  
19 Senate Bill 1145 discussed this morning, the Commission  
20 would need to develop an empirical risk assessment  
21 screening stool that could be incorporated into the -- or  
22 integrated into the sentencing guidelines and a more comp  
23 -- comprehensive risk-and-needs assessment instrument for  
24 use with targeted offenders.

25           Unfortunately, as a result of cuts in the

1 Commission's state appropriation and reductions in  
2 federal grants, the Commission's fiscal -- fiscal year  
3 2010/11 combined operating budget is nearly 25 percent  
4 below that of fiscal year '07/'08, the year before it  
5 assumed the new duties as part of the 2008 reform  
6 legislation.

7           During the past 12 months, the Commission has  
8 eliminated five staff positions, reduced executive --  
9 executive salary by 10 percent, and suspended most travel  
10 and all staff development.

11           As with the recent updates to adopt guidelines  
12 for resentencing, parole and recommitment, any progress  
13 on the adoption of a risk-and-needs assessment instrument  
14 should Senate Bill 1145 be enacted, absent additional  
15 funding, will be very limited.

16           Thank you again for providing this opportunity  
17 to testify. I have provided the staff a journal article  
18 which contains greater detail on the issues highlighted  
19 in this testimony.

20           I also encourage you to visit the Commission's  
21 web site where we've posted recently our 2009 annual  
22 report. And as an agency of the General Assembly, the  
23 Commission is available to provide data and information  
24 in an effort to improve sentencing practices in the  
25 Commonwealth.

1 Thank you.

2 CHAIRMAN CALTAGIRONE: Thank you, Mark.  
3 Questions from the members. We've some new members join  
4 us if they can just --

5 REPRESENTATIVE O'NEILL: Good morning.  
6 Representative O'Neill from Bucks County.

7 REPRESENTATIVE SIPTROTH: I have already.

8 CHAIRMAN CALTAGIRONE: Yeah. Kathy  
9 Manderino, she introduced herself.

10 REPRESENTATIVE LOWERY BROWN: Good morning.  
11 Representative Vanessa Lowery Brown, from west and north  
12 Philadelphia.

13 CHAIRMAN CALTAGIRONE: Okay. Questions  
14 from members? Representative Stevenson.

15 REPRESENTATIVE STEVENSON: Thank you,  
16 Mr. Chairman.

17 Going to your next to last paragraph, in  
18 order to implement the mandates proposed in this  
19 legislation, you indicate the Commission would need to  
20 develop an empirical risk assessment screening tool.  
21 What might that look like?

22 EXEC. DIRECTOR BERGSTROM: Well, I think  
23 there's -- there's actually sort of two different layers  
24 to this. I think the -- I guess the cheapest, the  
25 most -- the easiest part of it would be to -- to build

1 into the sentencing guidelines a consideration of certain  
2 static risk factors.

3 So right now the sentencing guidelines  
4 primarily look at the current conviction offense and a --  
5 a score based on prior conviction offenses.

6 In -- in addition to those factors, or  
7 assuming those factors would provide the basic sentence  
8 recommendation, what the Commission would do is provide a  
9 -- a risk tool that would take into account static  
10 factors, like risk factors such as age, use of a weapon  
11 during the commission of the crime, prior arrests, age of  
12 first offense, factors like that that have been found  
13 over time to be related to recidivism of those  
14 offenders.

15 What's important though when you -- when  
16 you're moving towards developing information and weighing  
17 information and trying to use it to impact sentencing  
18 decisions, is it's important to get it right.

19 And I -- I -- I think about the parole  
20 board where they spent a lot of time over the years in  
21 developing their decisional instrument and it's taken a  
22 lot of work to pull together the appropriate information  
23 and then use that information, weigh that information, to  
24 determine how much weight to give to certain factors over  
25 others.

1                   There's also a policy consideration. When  
2 the Commission is developing guidelines or would be  
3 developing this instrument, what -- the policy decision  
4 that the Commission would make, that the Commission would  
5 -- would hear about during public hearings, and would be  
6 sent to the General Assembly for -- for debate and  
7 consideration, would be where you draw the lines. What's  
8 the difference between a low risk offender and medium  
9 risk? I mean how do we sort of draw that line? Where's  
10 -- where's the cut-off point?

11                   Well, that's much more a policy decision  
12 than a numerical decision. And so those are factors.  
13 That's all part of the process.

14                   And that's why I wanted to make very clear  
15 that -- that, you know, absent funding, this just can't  
16 happen, because it would be a really -- a miscarriage of  
17 justice of trying to develop guidelines or an -- or an  
18 instrument for use that really was not -- could not stand  
19 up.

20                   REPRESENTATIVE STEVENSON: Now, you  
21 mentioned some other states in your testimony. Virginia,  
22 for one.

23                   Are there other states who have gone down  
24 this road and have done it? Is there a model out there  
25 that's working successfully?

1 EXEC. DIRECTOR BERGSTROM: Yeah. I think  
2 that the state I point to and that I talk mostly about  
3 was Virginia. Because I think there's a lot of  
4 similarities. Our -- the structure of our guidelines or  
5 the advisory nature of our guidelines is similar.

6 The -- the Virginia sentencing structure,  
7 even though it's a determinate sentencing structure,  
8 really looked at a way of trying to incorporate into  
9 their sentencing guidelines these risk factors and they  
10 looked at it in both directions, too.

11 They tried -- their legislature, in effect,  
12 told the sentencing commission where the cut off would  
13 be. They said, in effect, we want you to look at  
14 property offenders, drug offenders, and things like  
15 larceny, those are the offenders we want you to look at.  
16 We want you to determine a risk level that would divert  
17 25 percent of those people out -- out of state prison but  
18 not enhance risk of re-offense.

19 REPRESENTATIVE STEVENSON: And has that  
20 been successful?

21 EXEC. DIRECTOR BERGSTROM: It has been.

22 REPRESENTATIVE STEVENSON: Is that the  
23 percentage that has been reached?

24 EXEC. DIRECTOR BERGSTROM: It has been --  
25 it has been very successful. In fact, several years

1 after they did the low risk diversion guidelines, those  
2 -- those risk assessments at the lower end, the General  
3 Assembly came back to them and -- and required them to  
4 expand the pool of people.

5           Because not only did the prison population  
6 drop substantially, but the crime rate went down as  
7 well. It's one of the reasons why we're sending  
8 inmates to Virginia and -- and we don't have space for  
9 inmates here.

10           They made the decision long ago, in the  
11 early -- early 2000, 2002, to consider risk at  
12 sentencing, to think about public safety more than just  
13 retribution.

14           But I think it's important to recognize  
15 that they also looked at the other end, and it was just  
16 with a pool of offenders. It was the sex offenders. But  
17 they said there are certain high risk, dangerous, violent  
18 offenders that probably need to be incapacitated or that  
19 we have to give a lot of thought to when they would age  
20 out in the prison system, when it would be appropriate,  
21 how much time should be -- they should give.

22           And that's why, in the area of sex  
23 offenders, they sort of worked in the other direction.  
24 They identified the high risk offenders and they expanded  
25 or gave courts broader consideration to give longer

1 sentences for those types of offenders.

2 Back in 1995, during the special session on  
3 crime here, there was an effort to create a category  
4 called high risk, dangerous offenders that was sort of  
5 tied in to three strikes.

6 And although it failed on constitutional  
7 issues, the idea of trying to identify offenders that are  
8 high risk and dangerous as the type of individuals that  
9 you would want to target for incarceration and long  
10 periods of incarceration was an approach similar to what  
11 Virginia has done.

12 REPRESENTATIVE STEVENSON: So if we were to  
13 move in this direction, would you recommend that we  
14 follow the guidelines set up in Virginia?

15 EXEC. DIRECTOR BERGSTROM: Well, I would --  
16 I would recommend -- and certainly I have had a lot of  
17 conversations with the folks in Virginia. I'd recommend  
18 that we look at what they're doing and try to adopt some  
19 of their best practices.

20 Virginia is a lot different than  
21 Pennsylvania and whenever you're developing any of these  
22 new -- new instruments or --- or guidelines, you know, we  
23 have to do it for the Pennsylvania population and  
24 Pennsylvania laws.

25 So I think we can -- we can really learn a

1 lot from what -- from what they've done in Virginia, and  
2 some other states; but we have to, you know, work it out  
3 using our laws and our offenders and test it to make sure  
4 it's working right here, and part of that is public  
5 hearings to determine where you do establish those  
6 thresholds and the General Assembly helping to decide  
7 where you have those cut points, because that's part of  
8 the process, too.

9 REPRESENTATIVE STEVENSON: Thank you very  
10 much for your testimony --

11 EXEC. DIRECTOR BERGSTROM: Yes.

12 REPRESENTATIVE STEVENSON: -- and your  
13 answers.

14 Thank you, Mr. Chairman.

15 CHAIRMAN CALTAGIRONE: Representative  
16 Waters has joined us and Representative -- from  
17 Philadelphia.

18 Representative Siptroth.

19 REPRESENTATIVE SIPTROTH: Thank you,  
20 Mr. Chairman.

21 Mark, you had testified that the Commission  
22 has had a 25 percent reduction in their budget since '07  
23 and '08.

24 How much do you anticipate this would cost  
25 the Commonwealth? Even though, according to the new

1 analysis, there would not be any -- you were saying just  
2 a few moments ago the fact it would cost the  
3 Commonwealth, and how much do you anticipate it would?

4 EXEC. DIRECTOR BERGSTROM: Well, sure it  
5 would. And -- and here's the thing. There's sort of  
6 two -- two or three areas of -- of costs.

7 One area is making sure you have reliable,  
8 accurate data that you can use for developing this kind  
9 of actuarial assessment, trying to make sure you have  
10 good quality information that you can rely on.

11 The second thing is looking back far enough  
12 to identify a pool of offenders that you can sort of  
13 track through time, looking at some of the factors we're  
14 talking about, to try to determine in -- in terms of  
15 re-offending what -- what factors are most prominent  
16 in -- in someone re-offending.

17 So is age at first offense the most  
18 relevant factor? You know, what is -- what is the most  
19 relevant factor?

20 All of that takes quite a bit of work  
21 in the -- in the data collection and the analysis. I can  
22 tell you that -- that the -- the cost really is sort of  
23 related to the time frame to some degree.

24 You know, you can spread this out over  
25 several years and -- and keep the cost relatively low

1 year to year. But you're not going to get any kind of  
2 product that you can use for quite a period of time.

3 And -- and as I see it, you know, the --  
4 the correctional population continues to grow. This and  
5 the reform legislations have been viewed as a way of  
6 trying to identify who are those serious, high risk,  
7 violent offenders that we -- that we do need to  
8 incapacitate and who are those low risk offenders that  
9 can safely be considered for alternative sentences.  
10 And -- and we have to get that right.

11 So, just to give you an example of what we  
12 were talking about in terms of the -- of the budget, we  
13 had requested funding to -- to expand our data collection  
14 process. Right now courts are required to use a  
15 web-based application we have to -- to develop sentencing  
16 guidelines but also to report sentences to us.

17 We had asked for funding to help expand  
18 that application, to collect information on risk  
19 factors.

20 Any time you're involved in that kind of IT  
21 development, you're talking in terms of tens of thousands  
22 or hundreds of thousands of dollars. So the commitment  
23 of a hundred thousand dollars or two hundred thousand  
24 dollars is required just to make the changes to the  
25 application, make the changes to the server, collect the

1 data and so forth. So that's -- that's one area.

2           The other area is -- is the evaluation.  
3 Whether it's done in-house by the Commission, having  
4 additional analysts to be able to work through those  
5 issues, or you're contracting out or collaborating with  
6 research partnerships, you're probably talking, again, in  
7 terms of a hundred, two hundred thousand dollars.

8           So -- so what I've generally tried to argue  
9 is if you look at a business model -- and I know we all  
10 talked about, you know, trying to look at, you know,  
11 business models and applying them to government.  
12 Businesses tend to invest a couple percent of their -- of  
13 their revenues, of their money in research and  
14 development.

15           We have a Department of Corrections that's  
16 approaching \$2 billion. If we're talking two percent of  
17 that, are we putting \$40 million each year into research  
18 and development regarding corrections and the  
19 correctional system? I don't think we're doing that.

20           We're asking for -- you know, we were  
21 asking for a total state appropriation of, I think, \$2.25  
22 million and -- and I think our appropriation right now is  
23 1.4.

24           So -- so that's the scale that we're  
25 talking about. It's an investment up-front to avoid

1 another hundred thousand increase next year in the  
2 Department of Corrections' budget.

3 REPRESENTATIVE SIPTROTH: I don't think we  
4 can build a prison for \$500,000 --

5 EXEC. DIRECTOR BERGSTROM: Right.

6 REPRESENTATIVE SIPTROTH: -- to accommodate  
7 the additional prisoners we have across the state.

8 Thank you very much.

9 Thank you, Mr. Chairman.

10 EXEC. DIRECTOR BERGSTROM: Sure.

11 CHAIRMAN CALTAGIRONE: Other members?

12 REPRESENTATIVE WATERS: Yes. Thank you,  
13 Mr. Chairman.

14 Thank you, Mark --

15 EXEC. DIRECTOR BERGSTROM: Sure.

16 REPRESENTATIVE WATERS: -- for -- for being  
17 here today. As always, you are very informed and share  
18 your information with us.

19 The -- going back to the state of Virginia  
20 and the -- what they have done in terms of their  
21 commitment to try to reduce the prison population with  
22 the nonviolent offenders and have they also, in addition  
23 to reducing the prison population for the already  
24 incarcerated, what programs did they put in place to --  
25 as diversionary, alternative sentences that keep people

1 from going in there in the first place?

2 EXEC. DIRECTOR BERGSTROM: Yeah. In -- in  
3 talking about what they've done in Virginia, one thing  
4 that I think is important to recognize is, Virginia has  
5 focused almost exclusively on risk, on risk assessment.

6 They have focused very little, or  
7 relatively little, on needs, on what type of programs do  
8 you have to have in there, what type of alternative  
9 programs and so forth.

10 Pennsylvania has a rich array of  
11 alternative programs at sentencing: County intermediate  
12 punishment, state intermediate punishment, state  
13 motivational boot camp, and certainly a lot of county  
14 specific programs that are -- that are available.

15 One of the problems in recent years has  
16 been the continued funding of those programs.

17 REPRESENTATIVE WATERS: Right.

18 EXEC. DIRECTOR BERGSTROM: That if you  
19 don't -- if you can't sustain those programs, then you  
20 don't have alternatives that you can use.

21 Virginia actually came at it from the other  
22 direction where they focused on risk. They identified  
23 for judges the sort of 25 percent that they were trying  
24 to divert from prison, and it was really up to the  
25 circuits, up to the counties, to determine how to best

1 deal with those.

2 And it was really -- I think they had an  
3 uphill struggle as compared to what we have because they  
4 had fewer programs to -- to use and they had to develop  
5 them sort of on the fly.

6 So -- so their focus was almost exclusively  
7 on risk, not so much on need. This legislation would  
8 have us look at both of those things. Not only look if  
9 you're a high risk but look at what kind of needs do we  
10 have, are you drug dependent, are you a mental health  
11 offender, and so forth, and trying to deal with both of  
12 those.

13 And fortunately we have a broader array of  
14 programs than Virginia does; but we're also -- you know,  
15 we have a lot of unmet -- well, we have a lot of funding  
16 needs for those programs.

17 REPRESENTATIVE WATERS: Right. We call  
18 them mandate -- unfunded mandates.

19 EXEC. DIRECTOR BERGSTROM: You don't have  
20 to tell me about that.

21 REPRESENTATIVE WATERS: Programs that  
22 aren't funded might as well not even be --

23 REPRESENTATIVE SIPTROTH: Considered.

24 REPRESENTATIVE WATERS: A program.

25 Considered. Thank you.

1                   The -- the other question I have is what --  
2 when the people were -- the 25 percent that were  
3 released, what kind of immediate on-street supervision  
4 did they put in place when they let them out?

5                   EXEC. DIRECTOR BERGSTROM: Well, again, it  
6 was -- it was -- under -- under the Virginia guidelines,  
7 the court had a recommendation regarding basically -- you  
8 know, this was a property offender who previously was  
9 targeted or recommended for state prison and for which  
10 the person, because the person's low risk, is being  
11 recommended to the court for any alternative to  
12 incarceration, whatever the court could find.

13                   And so in some cases the court was -- ended  
14 up using just probation supervision for those targeted  
15 offenders.

16                   And -- and that's why I'm saying  
17 considering how weak the alternative programs were in  
18 Virginia and that there was little consideration of need  
19 and just the focus on risk, it is -- it is amazing the  
20 reduction in both incarceration but also in -- in the  
21 crime rate in Virginia.

22                   And that same finding has held up in other  
23 states that have approached this. I think it's more  
24 effective if you're looking at both risk and needs.

25                   But -- but certainly when states are

1 focused on risk as a -- as a component of trying to think  
2 about sorting out offenders and identifying those that  
3 require incarceration and those that might be safe in the  
4 community, it has worked out pretty well.

5 REPRESENTATIVE WATERS: One more question.  
6 The relationship between the Department of Corrections  
7 and Probation and Parole there, I'm sure that that had to  
8 be a great relationship in order for both of those -- for  
9 this to work in terms of trying to make sure that the  
10 people who are released don't come back and -- as well as  
11 people who are given alternative sentences don't  
12 re-offend, too.

13 So that relationship, I'm quite sure -- I  
14 don't know what it was like prior to --

15 EXEC. DIRECTOR BERGSTROM: Yeah.

16 REPRESENTATIVE WATERS: -- the legislature  
17 there taking this action, but can you share with us what  
18 happened there?

19 EXEC. DIRECTOR BERGSTROM: Well, the  
20 Virginia Commission also had developed or was working  
21 on -- on guidelines that were addressing resentencing  
22 or -- or revocation of -- of probation or parole. So --  
23 so there -- well, they don't have parole anymore. But  
24 revocation of probation.

25 So there was at least some focus on trying

1 to retain -- retain those people in the community, if  
2 possible, or halfway-back facilities, things like that.

3 But, again, I have to get back to the point  
4 that compared to Pennsylvania they really do not have a  
5 well-developed network of alternatives to incarceration.

6 So that's the, I guess, surprising outcome  
7 of this, that -- that in tracking these kind of cases  
8 where probation was used, just regular probation was used  
9 in lieu of incarceration, for these lower level low risk  
10 property offenders, they still had a -- a low recidivism  
11 rate and the overall crime rate as well as the  
12 correctional population fell.

13 REPRESENTATIVE WATERS: Well, that's good.  
14 I guess.

15 EXEC. DIRECTOR BERGSTROM: Yeah. It's  
16 good. I'm not -- I'm not saying it's -- you know, that  
17 might not be the best practice there in terms of not  
18 thinking about the needs and not thinking about the  
19 resources you need for these offenders, but one thing I  
20 will note -- note is that -- that, you know, their target  
21 population were property offenders, lower level drug  
22 offenders, and low risk -- the low risk part of that.

23 Now, I'll mention that when they talk about  
24 drug offenders, they're talking less than one ounce of  
25 cocaine. Now, we talk about mandatories in terms of two

1 grams cocaine or five grams or ten grams of cocaine.  
2 They're talking one ounce of cocaine, and I think that's  
3 28 grams, if I recall.

4           So it's their definition of drug offender  
5 that their Assembly adopted, and Virginia is a pretty  
6 conservative state, but they -- they at least took into  
7 account those kind of offenders and those offenders who  
8 are lower risk.

9           I'm not saying that we have to do that, but  
10 I'm saying that's one of the populations they looked at.

11           REPRESENTATIVE WATERS: Well, I don't see  
12 one ounce coming across in --

13           EXEC. DIRECTOR BERGSTROM: Well --

14           REPRESENTATIVE WATERS: -- Pennsylvania any  
15 time soon; but trying to improve -- I mean trying to  
16 change it from where you had recommended before --

17           EXEC. DIRECTOR BERGSTROM: Right.

18           REPRESENTATIVE WATERS: -- from two to  
19 five --

20           EXEC. DIRECTOR BERGSTROM: Right.

21           REPRESENTATIVE WATERS: -- is a -- is a  
22 struggle in and of itself.

23           EXEC. DIRECTOR BERGSTROM: Sure. Sure.

24           REPRESENTATIVE WATERS: But I think we  
25 can't ignore examples that are out there, best practices

1 that have proven to be effective and -- and -- and I -- I  
2 also appreciate your comments about reinvesting some of  
3 the money that has already gone to the department to find  
4 out -- and if you look at it as a business model, I  
5 believe that we could talk to our constituencies,  
6 12-and-a-half million people that make up the state, to  
7 see what the department is doing rather than keep going  
8 down the same path.

9 I think that's a good -- a good -- also a  
10 good comment that you made. Mark, as always, thank you  
11 for sharing with us some common sense on things that we  
12 can consider here.

13 Thank you, Mr. Chairman.

14 CHAIRMAN CALTAGIRONE: Thank you.

15 You know, having spent four years of my  
16 life in Virginia, it kind of does surprise me that they  
17 would be as open as possible to make those kind of  
18 changes.

19 REPRESENTATIVE WATERS: Yes.

20 CHAIRMAN CALTAGIRONE: It's kind of  
21 interesting to reflect on.

22 Also we've said, I think, what, a thousand,  
23 John, inmates to one of their prisons that they've closed  
24 down there and 1,100 -- 1,100 up to Michigan.

25 Michigan, New York, Virginia, Texas is

1 another one, they're closing up prisons and we're  
2 building more and --

3 EXEC. DIRECTOR BERGSTROM: And, again --

4 CHAIRMAN CALTAGIRONE: Taxpayers -- the  
5 bottom line to all of this is all of us are paying for it  
6 and there's got to be a better way.

7 We just came back from touring Graterford,  
8 Camp Hill, county prison. One of them -- I guess the  
9 roughest one in -- in Philadelphia, Number 4, 1,300  
10 inmates in that one, at the county prison, and, of  
11 course, the Dauphin County Prison, the juvenile  
12 facilities.

13 What I'd like to do with the members is  
14 share our handiwork, what will appear and the results  
15 when we get into the facilities, both county level and at  
16 the state level, you know, I just keep thinking to  
17 myself, you know, Mark, we see what we're doing and the  
18 effect it's having on society, and I -- you know, I  
19 understand and the DAs are going to be testifying, we  
20 want to do the right thing with public safety. There's  
21 no question about that.

22 And trying to identify those that are in  
23 our care and in our facilities and institutions, without  
24 making a mistake and allowing somebody to go out and then  
25 they kill someone, especially, say, it's a police officer

1 or anyone, for that sake, you're saying, well, you know,  
2 is there something else we could or should be doing?

3 And that question keeps gnawing away at me,  
4 because I just think throwing people into the system and  
5 locking them up and then tracking them to make sure that  
6 they don't repeat offend, that's the bottom line.

7 And the various programs working with the  
8 judges and all the other groups that we work with to try  
9 to help these people from recommitting and coming back  
10 into the system, there's got to be a better way.

11 And, you know, we have a lot of brilliant  
12 people in this state, and I keep thinking to myself, the  
13 taxpayers are paying for all this, and Ronnie and I talk  
14 about this from time to time about --

15 REPRESENTATIVE WATERS: What's the  
16 results?

17 CHAIRMAN CALTAGIRONE: -- we're going to  
18 build four more prisons and the cost factor associated  
19 with the operation of those prisons and we can't get  
20 enough money up-front for diversionary programs?

21 And I know the DAs have been working with  
22 us to try to develop other systems, especially at  
23 sentencing, you know, to say to the judges, okay, maybe  
24 there's a different way to treat this individual rather  
25 than formal incarceration. And if that behavior can be

1 modified, and it is, then maybe we've succeeded.

2 REPRESENTATIVE WATERS: Mr. Chairman.

3 CHAIRMAN CALTAGIRONE: Go ahead.

4 REPRESENTATIVE WATERS: You know, following  
5 up on what you're saying with the cost factor, building  
6 four more prisons, 200 million apiece to build?

7 CHAIRMAN CALTAGIRONE: Approximately.

8 REPRESENTATIVE WATERS: To hold 2,000  
9 inmates? Yeah. And this public safety thing, et cetera,  
10 as a result of the expansion and everything, that's my  
11 issue and that's your issue, and I'm sure that's the  
12 issue for all the lawmakers to increase the results,  
13 public safety.

14 And being creative and trying to find a way  
15 to do that I think is where the challenge is going to be  
16 that we really face.

17 CHAIRMAN CALTAGIRONE: It was just like the  
18 budget that we just passed. And I sat there in  
19 amazement, all of us, you know, put the votes up there,  
20 get the budget done and all of that.

21 REPRESENTATIVE WATERS: No question.

22 CHAIRMAN CALTAGIRONE: And the amount of  
23 money that we increased in that line for correction, I'm  
24 sitting there and I'm thinking, here we go, you know.

25 What was it, seven, eight percent, John,

1 the increase in the total cost of the budget this year?  
2 And then we're cutting a lot of vital areas that in each  
3 of our areas are needed: Libraries, social programs,  
4 elderly, the kids, the Commission on Sentencing.

5 Okay. All right. You know, it's just so  
6 terribly, terribly frustrating because I think we've got  
7 to do something different. Continuing to do what we're  
8 doing is just -- I don't think it's making much of a  
9 difference.

10 REPRESENTATIVE WATERS: Yeah. I agree.

11 CHAIRMAN CALTAGIRONE: I appreciate your  
12 testimony.

13 EXEC. DIRECTOR BERGSTROM: Sure.

14 CHAIRMAN CALTAGIRONE: It's just a sign of  
15 frustration, John, trying to -- you know, I hope we get  
16 the money you need once this legislation -- I'm going to  
17 see if there's any possible way that we can get this  
18 legislation moving, because I think it's a very good  
19 piece of legislation that's been developed.

20 REPRESENTATIVE WATERS: Yes.

21 CHAIRMAN CALTAGIRONE: And if we can strike  
22 an accord, that we can resolve differences potentially,  
23 we'd like to be able to move that legislation forward,  
24 and with your help and whatever we can do with putting a  
25 pot of money together, if there is money available from

1 different sources like --

2 EXEC. DIRECTOR TYLER: 1161.

3 CHAIRMAN CALTAGIRONE: 1161 or the WAMs or  
4 maybe from Corrections, you know. The little bit of  
5 money that you need to get this thing started, for God's  
6 sakes, I think it's -- it's worth the investment.

7 REPRESENTATIVE WATERS: Absolutely.

8 EXEC. DIRECTOR BERGSTROM: Okay. Thank  
9 you. Appreciate it.

10 REPRESENTATIVE WATERS: Thanks a lot.

11 EXEC. DIRECTOR BERGSTROM: You bet.

12 CHAIRMAN CALTAGIRONE: Thank you. We'll  
13 next hear from Kathleen Gnall, the Director of Research  
14 and Statistics at the Department of Corrections.

15 DIRECTOR GNALL: Good morning, chairman,  
16 members of the committee, and guests. Thank you for  
17 affording the Department of Corrections the opportunity  
18 to testify on Senate Bill 1145 related to risk-and-need  
19 assessment of offenders at sentencing.

20 The Department of Corrections'  
21 responsibility goes beyond the well-established and  
22 recognized mission of operating safe, secure, and humane  
23 institutions.

24 As 90 percent of the offenders incarcerated  
25 in the state prison system will eventually be released

1 into communities across the Commonwealth, the average  
2 offender serves just over three years in the state  
3 system, it is incumbent upon us to prepare these  
4 offenders for crime-free and productive community  
5 living.

6 In short, our job is first to do no harm  
7 and above that to do some good.

8 Fulfilling our mission as a public safety  
9 agency requires that offenders be better prepared for  
10 responsible citizenship when they leave us than when they  
11 entered our gates as correcting offender behavior leads  
12 to fewer victims and safer communities.

13 As is the case in the medical field, the  
14 first step to fixing problems is a correct diagnosis.  
15 Formal actuarial risk-and-needs assessment for offenders  
16 is akin to physicians ordering diagnostic tests before  
17 recommending a course of treatment.

18 The assessments which are used in the  
19 criminal justice field for determining the probabilities  
20 of re-offending, which we refer to as risk, and the  
21 criminogenic or crime-producing needs of offenders are  
22 based on a strong body of scientific evidence.

23 In fact, the statistical correlation  
24 between the use of actuarial risk assessment tools and  
25 subsequent recidivism rates is significantly stronger

1 than correlations among some practices that we accept  
2 almost without question, including taking an aspirin to  
3 reduce the risk of death by heart attack and taking  
4 Ibuprofen to reduce pain.

5           Actuarial tools, however, do not provide  
6 the fullest picture and thus should be coupled with  
7 clinical judgment to obtain the most comprehensive  
8 picture possible.

9           Again, we can learn much from the medical  
10 field where it is standard practice for physicians and  
11 other health care providers to interview patients, asking  
12 well informed questions about the nature of symptoms in  
13 order to narrow the possibilities for diagnoses.

14           In our field, trained clinicians gather  
15 relevant and contextual information which is used not to  
16 replace but to supplement objective and quantified data  
17 which we have gleaned from actuarial instruments.

18           Just as physicians review all relevant  
19 tests and they use the results of their patient  
20 interviews, clinical training, and experience in  
21 recommending a course of action, so, too, is the case in  
22 criminal justice.

23           While there are no guarantees of outcome,  
24 we simply must use the best predictive tools and clinical  
25 expertise possible to determine a corrective treatment

1 and re-entry plan for offenders; not doing so may be  
2 likened to medical malpractice.

3           Research findings demonstrate that clinical  
4 judgment alone provides about the same likelihood of  
5 being correct as flipping a coin. In other words, a  
6 50/50 chance. And while ordering a presentence  
7 investigation is a commendable effort aimed at gathering  
8 important information, relying too heavily on that tool  
9 falls short of what is truly needed in our important work  
10 of enhancing public safety.

11           Judges have the option of ordering a PSI.  
12 Internal studies by department staff show that we receive  
13 PSIs for about 25 percent of the population sentenced to  
14 us.

15           After reviewing ten cases from different  
16 counties where we did receive a PSI, it is evident that  
17 there is no standard for the factors which are  
18 considered. Note that the legislation simply states that  
19 the character of the offender should be examined. And  
20 the quality of the document varies widely.

21           Thus, there are disconnects in our criminal  
22 justice system which is designed to both hold offenders  
23 accountable and to correct individual antisocial behavior  
24 as a means to enhance public safety.

25           Since key risk and need data is not

1 routinely collected prior to incarceration, the  
2 department conducts several assessments designed to get a  
3 better sense of the factors which contributed to an  
4 individual becoming criminally involved, the risk that  
5 offender presents in prison to staff and other inmates,  
6 and the probability that that offender will commit  
7 additional crimes upon release.

8           While correctional agencies routinely  
9 conduct actuarial assessments as part of a comprehensive  
10 strategy to mitigate offender risks, actuarial  
11 assessments can be and are used at other stages in the  
12 criminal justice system.

13           For example, the Philadelphia Adult  
14 Probation Department, among many others, uses the results  
15 of actuarial assessments to inform decisions about who  
16 should be let out on bail and to assign case loads.  
17 Release authorities rely, in part, on the results of  
18 assessments to craft supervision conditions.

19           In order for the criminal justice system to  
20 function optimally, critical static risk factors which  
21 are well established for predicting the probabilities of  
22 re-offending should be measured prior to sentencing.  
23 There is firm agreement among experts on the major static  
24 facts among which are age, criminal history, and failures  
25 under supervision.

1 Collecting these and key need data can help  
2 inform such decisions as whether to place a person in  
3 confinement or maintain the person in the community  
4 setting and the appropriate sentence length for a given  
5 offender.

6 Collecting this information at the outset  
7 moves us in the direction of not only ensuring that  
8 offenders are held accountable for their actions by  
9 receiving just punishment, but also recognizes the  
10 reality that protecting public safety is about preventing  
11 future victimization by using the best information  
12 available to inform a well-designed strategy to mitigate  
13 risk for a given offender.

14 Thank you again for the opportunity to  
15 provide input on this important piece of legislation.  
16 I'll be happy to address any questions or comments that  
17 you may have.

18 CHAIRMAN CALTAGIRONE: Thank you.

19 Ron?

20 REPRESENTATIVE WATERS: Thank you. Thank  
21 you, Mr. Chair.

22 And thank you to Kathleen from the  
23 planning, review [sic] and reentry.

24 I want to go back to the analogy that you  
25 had given us. I want to talk about the hospital

1 settings, for instance.

2 If a person is a danger to society because  
3 of some -- something that they have, that they hurt other  
4 people, like -- I don't know, I'll liken it to something  
5 like leprosy or something where people who have been  
6 removed from -- from socializing with other people  
7 because they have a health issue that would be dangerous  
8 to other people, for instance.

9 We take that person -- this is only an  
10 analogy here. We take them away from society. Take them  
11 to a hospital. Keep them there in quarantine. Separate  
12 them for however long it takes.

13 Let's say they've gotten so bad it might  
14 take a year. They might need a year to be there or one  
15 to two years. The person stays in that hospital and  
16 taxpayers are paying for that person, \$33,000 a year.  
17 Okay?

18 DIRECTOR GNALL: Uh-huh.

19 REPRESENTATIVE GNALL: The person comes out  
20 two years later and they're just -- they're worse than  
21 they were when they went inside. All right. They're  
22 even more dangerous than they were to -- to -- to -- to  
23 society.

24 And this happens quite a bit. I don't know  
25 what the recidivism rate for the Department of

1 Corrections --

2 DIRECTOR GNALL: It's just under 50  
3 percent. About 46 percent return to prison at least once  
4 within three years of release.

5 REPRESENTATIVE WATERS: I guess it depends  
6 on who you ask. We were at Graterford last week and they  
7 gave us a higher number. They say 65 percent.

8 So I don't know who is telling the truth.  
9 But whatever. I'm sure the goal of the department is --  
10 because it's called the Department of Corrections -- is  
11 that it obviously has a mission to change behavior,  
12 rehabilitate and correct. That's why it's called the  
13 Department of Corrections.

14 So okay. 46 percent is probably not even  
15 reaching the goal that it is intending to reach. So when  
16 a person comes out, now how do -- how the taxpayers would  
17 feel about the money that they spent to -- to cure this  
18 person and the person comes out worse, that hospital  
19 would -- that performance of that hospital would be  
20 judged as -- and people do judge hospitals out here.  
21 There was a hospital in Philly, people were like don't go  
22 to that hospital. So the doctors there -- people come  
23 out worse than they were when they went inside or they  
24 die when they go inside of there.

25 So I'm saying just -- so performance, if we

1 want to use the hospital analogy here in terms of  
2 removing a person and securing them and isolating them so  
3 they won't harm people, and then they come back and  
4 they're still harming people, I think the taxpayers who  
5 pay for that would feel they didn't get a good return on  
6 their dollar.

7 DIRECTOR GNALL: May I respond?

8 REPRESENTATIVE WATERS: Oh, yeah you can.  
9 I'm almost done. I'm almost done. But -- and the reason  
10 why -- I just found it interesting that you would use the  
11 hospital analogy in your -- in your -- in the giving of  
12 your message and -- and I wanted to see if I could just  
13 throw out a hospital analogy, too, that would -- that we  
14 should all just think about in terms of outcomes.

15 Okay. So, yes.

16 DIRECTOR GNALL: A couple things. In terms  
17 of recidivism rates, the Bureau of Justice Statistics at  
18 the federal level recently, a couple years ago, did the  
19 second study nationally of recidivism rates in ten  
20 states, which is very representative.

21 What they found is that two-thirds of  
22 inmates released from state prisons across the country  
23 are re-arrested within a three-year period.

24 So the recidivism rate nationally is about  
25 66 percent, and I think all of us consider that abysmal

1 and unacceptable. And I certainly am among those.

2           That being said, in terms of the  
3 incarceration experience in and of itself, there is  
4 plenty of evidence that simply placing a person in a  
5 prison or in a jail, in a -- in a confinement setting, in  
6 and of itself is what we call criminogenic.

7           So the very act of placing someone in  
8 prison by its very nature is increasing the probability  
9 that that person is going to recommit crime.

10           And looking at the literature I think that  
11 that actually makes intuitive sense, because one of the  
12 major risk factors for criminal behavior is antisocial  
13 others. So when your mom said, who are you hanging  
14 around? I want to know your friends. Guess what? Mom  
15 is always right. Because that's a major risk factor.

16           Who is in prison? Antisocial others.

17           So if you are taking a person who has now  
18 been convicted of a criminal offense and taking that  
19 person out of society, my political philosophy professor  
20 in graduate school also used to say he who lives apart  
21 from society is either a beast or a god. And I won't  
22 say. But that was what -- an ancient philosopher  
23 actually said that.

24           Okay. So what we're doing is taking this  
25 person, removing the person from society and placing that

1 person with other like people. That in and of itself is  
2 criminogenic.

3           We make tremendous efforts in the  
4 department to correct behavior. That is why we do  
5 actuarial risks and need assessment at the outset and  
6 develop -- develop plans.

7           Our evaluation work indicates that many of  
8 our programs are successful in improving outcomes. But  
9 even the best treatment programs -- and if you look -- I  
10 don't mean just us -- if you look across the country for  
11 adult offenders, reduced recidivism in single digits, and  
12 that's if you look at the Washington Institute for Public  
13 Policy, the Vera Institute, because one of the best  
14 predictors of future behavior is past behavior.

15           And what I like to say is prevention first,  
16 early intervention second. State prison should be a last  
17 resort. There's no doubt that society needs prisons, but  
18 they should be a last resort. The closer to the cradle  
19 you are the better your chance for out -- for good  
20 outcomes.

21           So we -- the department has been a major  
22 proponent for things like Big Brothers, Big Sisters and  
23 prevention activities that are blueprint programs.

24           But the sad reality is that by the time I  
25 get many of these offenders, which are generally men,

1 average age is 33 years old, they have a significant  
2 criminal history, many of them, and in spite of our  
3 efforts, which is our obligation, to make good efforts,  
4 even the best programs are, again, only going to reduce  
5 recidivism in the single digits.

6 So I totally agree that the front end needs  
7 to be bolstered, and there's no doubt in my mind that  
8 there's a role for prisons. But, unfortunately, I think  
9 some people that are there today could have been handled  
10 more appropriately in the community and because -- many  
11 reasons they were not.

12 REPRESENTATIVE WATERS: Okay. Thank you so  
13 much, and I absolutely agree with you in that -- that  
14 just the very notion, going back to what we said earlier,  
15 this constantly building more prisons, we're not working  
16 on prevention at all.

17 There's a great nature of saying we're  
18 going to build more, I say that's not prevention. So I  
19 just want to say I thank you so much for your comments.

20 DIRECTOR GNALL: You're welcome.

21 CHAIRMAN CALTAGIRONE: Joe?

22 REPRESENTATIVE BRENNAN: Thank you,  
23 Chairman.

24 Question. As you've heard this committee  
25 continues to do a lot of work on sentencing, a lot of

1 work on incarceration, which we've certainly done a lot  
2 of that this summer.

3 A question for you. It seems to me I  
4 continue to hear from folks that at least make the  
5 allegation that the probation and parole system in  
6 Pennsylvania is broken.

7 And I want to know if you have an opinion  
8 on that, and especially as we look at things dealing with  
9 maybe presentencing and some other things that you want  
10 to talk about at the front end, because in my 16 years in  
11 office, obviously the number of folks incarcerated in  
12 Pennsylvania has increased dramatically.

13 So should we be thinking about legislation  
14 like this? Should we be thinking about the numbers of  
15 people incarcerated and where we're going? Or -- or,  
16 again, is it a problem just with probation and parole?

17 If you can give your thoughts on that, I'd  
18 appreciate it.

19 DIRECTOR GNALL: Well, as my friends here  
20 know, I'm not -- I don't have a shortage of opinions.

21 So one of the things I think that we as a  
22 department, and certainly other agencies that we  
23 collaborate with regularly, have been considering is the  
24 criminal justice system as a whole and the extent to  
25 which we are, number one, addressing antisocial behavior

1 appropriately, but also what are we doing to ensure that  
2 there aren't more victims in the future.

3           There are several other states that the  
4 chairman noted, including New York, including Michigan,  
5 including Texas, which most people think of as the  
6 capital punishment capital of the universe, but they  
7 actually have done some things progressively and very  
8 well.

9           The state prison populations in the nation  
10 declined for the first time in 2008. That was the first  
11 time since 1972 there was any decline in state prison  
12 populations nationally. By four-tenths of one percent,  
13 but it's still a decline. Since 1972.

14           So there are places that are able to  
15 decrease the use of the most expensive resource in our  
16 criminal justice system, which is prisons, and at the  
17 same time continue protecting the safety of the public  
18 and even have state -- they even have seen reduced crime  
19 rates, not increased crime rates, reduced crime rates.

20           So we have studied very carefully some of  
21 those states, including the New Yorks and Texas of the  
22 world, and said what are they doing to get a handle on  
23 this? And I think there are a number -- a number of  
24 themes.

25           Certainly this legislation, which, to be

1 honest with you, I feel like I talked about for five or  
2 six years to anybody who would listen and even some  
3 people might not, but I tried to, I think this is an  
4 excellent step in the right direction.

5           Because not only do we have to be concerned  
6 about the size of the prison population and every other  
7 population, you have to be concerned about the right  
8 people getting in the right circumstances.

9           So just because we have 50,000 inmates it  
10 doesn't mean they're the right 50,000 inmates.

11           One of the things that I personally have  
12 found in my review of other states is that those places  
13 that have seemed to really done a very good job on  
14 getting a handle on their growth first get a handle on  
15 their probation system.

16           When we talk about correctional  
17 populations, the vast majority of people under  
18 supervision by any correctional authority are on  
19 probation. Okay? That's -- you're going to see huge  
20 numbers on probation, not only here in Pennsylvania but  
21 also nationally.

22           So in Texas, for example, one of the things  
23 they did was there were -- there was a variety of  
24 practices, because, of course, ours is a county-based  
25 probation system, and you really need to get a handle on

1 the extent to which probation is being used, who it's  
2 being used for, and how is it actually used in practice  
3 on a daily basis, and that is going to be in a variety of  
4 ways depending on where you are.

5           When Tony Fabelo came here -- he's an  
6 expert from Texas, now works for the Council of State  
7 Governments, one of the first questions he asked us was  
8 to what extent are probation failures driving your prison  
9 population?

10           Now, that doesn't mean that a probation  
11 failure goes directly to state prison, but it means that  
12 if you do not deal effectively with an offender at a  
13 lower level, eventually that person is going to come to  
14 state prison.

15           Everybody I have in state prison was in  
16 county jail at one point. Sometimes lots of times. And  
17 I bet you virtually all of them were on probation at one  
18 time. They failed probation and eventually it escalates  
19 to the prison system.

20           So if you want to stop the growth in the  
21 prison system, you have to get a handle at what's  
22 happening at the levels below that. And one of the major  
23 places that I personally believe we should be looking is  
24 probation. Because, again, the other states that have  
25 done this have found some areas that required improvement

1 in their probation systems.

2 I chair a committee at the Commission on  
3 Crime and Delinquency on Research and Evaluation and one  
4 of our major projects right now is to look toward  
5 funding, a very good, solid, comprehensive look at what's  
6 happening in probation in Pennsylvania.

7 Because, really, we don't know. In any  
8 meaningfully comprehensive across-the-state way.

9 I may know anecdotal things from certain  
10 places. I know a little bit more about Philly than I do  
11 some other places, but I think that's a major thing that  
12 as a Commonwealth we need to get a handle on.

13 Certainly I think jail should be looked  
14 at. But to be honest with you, I think probation,  
15 because of the numbers, are more important to do first  
16 than to get a handle on jail. So I think that's one  
17 thing we need to do.

18 I also believe that some of these other  
19 states have done a lot of work with technical violators  
20 of parole. We all know that technical violators can and  
21 do fuel state prison populations. And it's not only  
22 here; it's nationally in systems that have parole and  
23 revoke parole.

24 We have worked very closely with our parole  
25 board and very cooperatively, and we have made -- I

1 believe we've made strides in the right direction. We  
2 are now using parole violator centers as opposed to  
3 reincarcerating all violators.

4           When we did a study a couple months ago,  
5 when a violator is returned to prison, and this is after  
6 they've had intermediate sanctions, multiple times, they  
7 serve an average of 14 months back with us. That's more  
8 than \$33,000 a year.

9           The sad thing is, when they're released,  
10 they recidivate at very high rates. And every single  
11 program I looked at, whether it be what we call halfway  
12 back, secure center placement, statistically had the same  
13 outcome. And it didn't matter if it was three months or  
14 fourteen or eighteen.

15           So I think that that's another part of the  
16 system, and I will say we are working very hard on the  
17 back end to figure out what to do with folks who are not  
18 succeeding in community supervision.

19           Locking them up for 14 months and then  
20 re-releasing, only to have them fail at high rates, is  
21 not good from an effectiveness or efficiency standpoint.

22           So we're looking at that. And if you look  
23 at a neighboring state, New Jersey, they had a  
24 tremendously high parole violator population revocation  
25 rate. They were revoking 3,000 people a year. And, of

1 course, their system is much smaller than ours.

2 That's obscene in our mind. They've got it  
3 down to less than a thousand. And, of course, one of the  
4 things that everyone asks is are you harming public  
5 safety by doing that, by keeping people in the  
6 community?

7 Not only are they not harming, their crime  
8 rate has dropped. And they are not the only state to be  
9 able to say that. So I think that's another area on the  
10 back end we need to look at.

11 CHAIRMAN CALTAGIRONE: What did you find in  
12 your review of that? How were they able to do that? I  
13 mean what programs did they have that we don't have?

14 DIRECTOR GNALL: Well, one of the things  
15 that they do is it's not always a program. And I was the  
16 treatment deputy secretary in the department for a number  
17 of years, and I kind of hate to say, hey, it's not always  
18 treatment. But guess what? It's not.

19 There is a lot in the literature today  
20 about the HOPE strategy. For those of you who may not  
21 know about that, it's a -- it's a program in Hawaii.  
22 It's actually a strategy in Hawaii. It was pioneered by  
23 Judge Alm, and really what started it was Judge Alm was  
24 seeing probationers in Hawaii. Actually Hawaii has a  
25 huge methamphetamine problem.

1                   And he was seeing the same people, the  
2 people -- we call them the frequent fliers or the  
3 churners -- over and over. And he said you know what?  
4 This is not working and we need to do something  
5 differently.

6                   So what he did was he crafted a strategy  
7 that's based on the application of a long-standing  
8 principle in criminal justice, which is that certainty  
9 and swiftness of punishment matter, not severity.

10                  Okay. So he had the strategy. He used  
11 risk assessment, which is not always used in probation,  
12 and he said, okay, let's focus on the people who are at  
13 the highest risk of committing additional offenses.

14                  He called all the probationers together in  
15 a room one day and he said, okay, it's a new day. We are  
16 going to monitor you carefully. We are going to enforce  
17 conditions routinely, and every time that we find that  
18 you are not in compliance you will be punished.

19                  Now, many probationers laughed, because  
20 they know that they can get away with one or two before  
21 anything really happens. Okay?

22                  Well, they actually followed through. The  
23 officers -- the probation officers that were assigned to  
24 the high risk probationers had lower case loads, which  
25 makes sense. That's a part of the risk principle. They

1 did drug testing. They did monitoring.

2 If one of those offenders tested positive,  
3 they were put into jail for two days. Immediately. No  
4 intervention. Jail. And then they let them back out.

5 Part of, I think, what we need to do is to  
6 disrupt offenders' lives. And what I mean by this is if  
7 you know that you have an offender under supervision who  
8 likes to party and get high with his friends on the  
9 weekend, that's how you know what to do. Lock them up in  
10 jail on a weekend and let them out on Monday.

11 And that's what HOPE is. Certainty and  
12 swiftness of punishment.

13 To make a long story a little bit shorter,  
14 Judge Alm agreed to allow random assignment, which is the  
15 gold standard of any research, social science research  
16 and others. That program or strategy has been evaluated  
17 almost to death at this point.

18 Mark Kleiman, who is a professor at UCLA,  
19 public policy professor, was one of the evaluators, he's  
20 actually coming to do a presentation to the Department of  
21 Corrections. And if anyone's interested, let me know.  
22 You're more than welcome to attend on the 26th of July.

23 The results were astounding. There were  
24 differences in a positive direction on every single  
25 indicator, including relapse. Re-arrest, relapse, making

1 appointments with your parole. And I certainly can send  
2 anyone who wants to see the full report, or synopsis,  
3 because the full report is pretty long.

4 So now people are paying attention to this  
5 research, which actually, to be honest with you, the  
6 theory has been around for a long time. It's just we  
7 don't often apply it.

8 In that study -- it pains me to say this  
9 being a treatment person -- only 20 percent of the folks  
10 involved in HOPE ever received any treatment, including  
11 any drug and alcohol treatment. Remarkable.

12 Now, as a reminder, they're all  
13 methamphetamine users. So what Kleiman says is allow  
14 offenders to self-select into that.

15 What they did was they gave you at least  
16 three tries before they even -- they would even think  
17 about treatment.

18 So you messed up the first time. We caught  
19 you. We put you in jail a couple days. We let you out.  
20 Catch you a second time. Maybe you spend four or five  
21 days. The longest I remember anybody spending was two  
22 weeks. Not 14 months. Two weeks.

23 And, again, it is not about the length of  
24 sentence. It's about, my gosh, if I get caught,  
25 something is going to happen. And it's not going to

1 happen a year from now. It's going to happen now.

2 One of the beautiful things about this  
3 study was that the medium and low risk probationers, they  
4 didn't know who they were. They're watching what's  
5 happening to the high risk guys and they're going into  
6 prison, their outcomes improved even though they did  
7 nothing different with them.

8 You know why? Because social learning  
9 theory would tell you, you're watching what's happening,  
10 it scared them because they said I could be next.

11 So, again, and -- and I'm not saying that's  
12 the panacea, because there is no panacea, but there are  
13 other things to do and other ways of handling offender  
14 behavior that we -- and it's not only us -- do not  
15 routinely do in practice.

16 HOPE is an excellent example of how this  
17 can work if you do it consistently. The results, I  
18 think, by anyone's standard are phenomenal. And, again,  
19 I can show them to you. Random assignment is the gold  
20 standard.

21 So there are things we can do. Both on  
22 probation and parole and in corrections.

23 REPRESENTATIVE O'NEILL: Do they use this  
24 HOPE program in Jersey? Is that what you're telling us?

25 DIRECTOR GNALL: Hawaii. What I'm -- what

1 I'm saying is there are other ways that you can actually  
2 get a handle on --

3 REPRESENTATIVE O'NEILL: I appreciate  
4 that. But he had asked you what did they do in New  
5 Jersey.

6 DIRECTOR GNALL: Well, it's not -- I mean  
7 they do do some certainty and swiftness, yes. And they  
8 don't automatically lock people up on -- to do an  
9 intervention. They don't do that.

10 And also -- I mean there are some things  
11 that you can do -- you can do a curfew, and that can be a  
12 swift and certain punishment.

13 So in Jersey they do that part of it. They  
14 say, okay, well, you know what? You seem to have trouble  
15 after ten o'clock. You know, that's when you start  
16 hanging out. Okay? So I'll lock you in. Or I put you  
17 on electronic monitoring. I put you on house arrest.

18 So there are elements of the certainty and  
19 swiftness strategy that they do apply in Jersey. They  
20 don't do it as routinely as they did in Hawaii, but they  
21 do do some of it.

22 CHAIRMAN CALTAGIRONE: Ron.

23 REPRESENTATIVE WATERS: You know what, in  
24 this state -- in this state, I know you talked about the  
25 national average, but that wasn't -- wasn't the

1 Pennsylvania average, it did not go down.

2 DIRECTOR GNALL: In terms of recidivism?

3 I'm sorry?

4 REPRESENTATIVE WATERS: No. No. You said  
5 prison populations --

6 DIRECTOR GNALL: We --

7 REPRESENTATIVE WATERS: -- nationally  
8 have --

9 DIRECTOR GNALL: We led the nation that  
10 year in the absolute increase in inmates. But the  
11 overall population in state prison in the United States  
12 in that year declined for the first year since 1972.

13 REPRESENTATIVE WATERS: What year was that  
14 again?

15 DIRECTOR GNALL: 2008.

16 REPRESENTATIVE WATERS: 2008?

17 DIRECTOR GNALL: Uh-huh.

18 REPRESENTATIVE WATERS: Again, Pennsylvania  
19 still was not a part -- I mean nationally, the  
20 Pennsylvania population --

21 DIRECTOR GNALL: Correct.

22 REPRESENTATIVE WATERS: -- was not going  
23 down.

24 DIRECTOR GNALL: That's correct.

25 REPRESENTATIVE WATERS: It's still going

1 up.

2 DIRECTOR GNALL: You're correct.

3 REPRESENTATIVE WATERS: And it's still  
4 going up.

5 DIRECTOR GNALL: That's correct.

6 REPRESENTATIVE WATERS: And it's predicted  
7 to go up.

8 DIRECTOR GNALL: That's correct.

9 REPRESENTATIVE WATERS: Now, what I wanted  
10 to say is the HOPE that you mentioned, that was great.  
11 I'm sure we would like to learn more about the HOPE so we  
12 could get Pennsylvania's HOPE, not just the inmates,  
13 Pennsylvania's own crossover.

14 The -- the -- and I believe that -- when  
15 you say the certainty, certainly and assurance?

16 DIRECTOR GNALL: Swiftness and certainty of  
17 punishment.

18 REPRESENTATIVE WATERS: Yeah. I mean the  
19 prime sponsor of this legislation is Senator Greenleaf,  
20 had testified once about one of the things that had  
21 really upset him about a person who he personally had  
22 known who had went to jail and did some time and had came  
23 out and was raising his family, he was married, was doing  
24 well and working, and he had one hot urine, that when he  
25 had to go before his parole officer, they threw him back

1 in jail. He lost his job. He was separated from his  
2 family. He -- I forgot how much time he had to do for  
3 that infraction.

4 And I don't know if it was 14 months. I  
5 think it was even longer that he had to do, because he  
6 had back time and many times you could have to face all  
7 your back time the way that the rules are. Or the law  
8 is.

9 So I think that that weekend, learning the  
10 lesson, is a lot cheaper and probably was more  
11 beneficial.

12 DIRECTOR GNALL: And also I think you raise  
13 a really important point that I -- I like to emphasis.

14 The research now is very heavy on what's  
15 called the use of informal social controls. And what  
16 that means is the impact that employment, marriage, or a  
17 stable pro-social relationship, mentoring can have on an  
18 individual.

19 And I think -- again, I think this makes  
20 intuitive sense. I think we know the kinds of things  
21 that have helped us and inmates are people, not an alien  
22 species. They're -- they're no different.

23 So the impact of protective factors of  
24 having a job or a connection to the community that way,  
25 or a -- or marriage or some stabilizing force, really and

1 truly, in most cases, has a -- more of a probability of  
2 positively impacting success than any treatment program.

3 So one of the things I like to think about  
4 is there's no doubt that some people belong in prison.

5 REPRESENTATIVE WATERS: Sure.

6 DIRECTOR GNALL: But especially when you're  
7 considering 90 percent of the people we have in state  
8 prisons are going to be released to the communities. The  
9 average person serves 3.3 years.

10 Establishing those informal social controls  
11 or bolstering those protective factors in the long run is  
12 probably the most important thing we can do as a  
13 society.

14 So when you remove someone from those  
15 circumstances -- and, again, sometimes there's very good  
16 reason to do that -- to try to reconnect that from where  
17 our state prisons located -- I grew up in Frackville.  
18 Schuylkill County is sort of prison central.

19 It's very hard for me to figure out how to  
20 reconnect an inmate who is -- who is committed from  
21 Philadelphia County now in the Frackville State Prison  
22 back to his community in Philadelphia when I don't know  
23 anything about it and I don't live there and I don't know  
24 the people there.

25 So I am the re-entry director and we make a

1 lot of efforts in those connections, but re-entry is  
2 local and re-entry needs to be community based. Inmates  
3 are coming back, and to the extent that we can bolster  
4 those informal social controls, we as a society would be  
5 better off, because not only are you helping the  
6 individual but you're helping prevent victimization.

7 EXEC. DIRECTOR TYLER: Very briefly, as we  
8 are running out of time. As I'm sure you're aware of,  
9 the last couple of weeks the committee has been dealing  
10 with Senate Bill 1161 which deals with the short mins, et  
11 cetera.

12 In the second of those voting meetings we  
13 had several of the members, some of the members, had  
14 discussed the concept or at least their issues with DOC  
15 in determining risk, because there were fears that DOC  
16 would say that someone was a low risk offender just to  
17 open up bed space.

18 I was just hoping that you could comment  
19 really quickly on -- on that -- that statement.

20 DIRECTOR GNALL: I think that Mark made a  
21 really exceptional point, which is where you make the cut  
22 lines more of a policy than a science decision.

23 We developed a tool in-house which is  
24 called the risk screen tool. It is based on seven static  
25 factors. It has been validated and normed, meaning it is

1 predicted for our population. It's also been validated  
2 and normed on a county jail population and is used by  
3 many counties.

4                   It has the same predictability as the LSIR,  
5 which is local service inventory revise, which is the  
6 most widely used tool in the world.

7                   So the factors are really the same. If you  
8 look at any tool, the compass, the Wisconsin, the LSIR,  
9 the factors you're measuring are virtually identical.  
10 You can weight them a little differently.

11                   But the point that really has to be  
12 considered, and I think Mark made this point very well,  
13 where you draw the line is more of a policy decision than  
14 it is a science decision.

15                   So for low risk, if you find it acceptable  
16 as a General Assembly to say low risk will mean a 30  
17 percent probability of recidivating within three years,  
18 then fine.

19                   So I mean could we -- we do make  
20 recommendations, and I made recommendations as Secretary  
21 about where to draw the cut lines for the RST, but that's  
22 a policy decision.

23                   If you look at the literature, there is no  
24 standard, widely accepted definition of what low risk  
25 means. Low risk is always relative to the population

1 you're talking about, and what it means is low is lower  
2 than moderate, moderate is lower than high, moderate is  
3 -- you know, but it's all relative. There is no standard  
4 definition.

5           You also have to look at what's the  
6 follow-up period you base the data on. Normally three  
7 years is the acceptable standard. So that's your at risk  
8 period.

9           And you really need to know what you're  
10 measuring, re-arrest or reincarceration or both.

11           So there's a science behind developing a  
12 risk tool, validating it, norming it. But the decision  
13 about where to cut the line -- and everyone has to be  
14 crystal clear on what the definition is -- is a policy  
15 law.

16           The science informs the policy, but  
17 ultimately we have to have the stomach for it and say,  
18 okay, we're going -- we're going to say that it's a 30  
19 percent chance.

20           The other thing that I think is very  
21 important to note is the science is not quite where any  
22 of us would like it to be about predicting for what.

23           So I can say that you have a 30 percent  
24 probability of committing additional offenses, well,  
25 people want to know. I mean I don't want you to commit

1 anything. But I want to know, are you at risk for  
2 committing a violent crime? Okay. That's what everybody  
3 wants to know.

4 We and the parole board are working with  
5 Richard Burke at the University of Pennsylvania to  
6 identify those at risk for violent re-offense. He is a  
7 pioneer in this area but the false positives and the  
8 false negatives are still high. Because it's human  
9 behavior. But we're getting there.

10 So there is a scientific basis. It is not  
11 perfect. But no other field is perfect either. We  
12 accept in the medical field that if we go into surgery,  
13 you have to sign a form that says I understand the risks  
14 and there's no guarantees. Right? It's the same thing  
15 in criminal justice. It's a risk management business.

16 So you have to know what you can tolerate.

17 EXEC. DIRECTOR TYLER: Thank you.

18 CHAIRMAN CALTAGIRONE: Representative  
19 Pallone.

20 REPRESENTATIVE PALLONE: Thank you,  
21 Mr. Chairman.

22 You know, the whole essence of -- of this  
23 initiative, if you want to call it that, is because we're  
24 seeing exponential growth in the prison system and the  
25 expense that's associated with that and so forth.

1                   And I -- and I may be kind of off the --  
2 today's topic, but you suggested that you're the re-entry  
3 coordinator for Frackville or some prison system anyway.

4                   DIRECTOR GNALL: No. For the whole state  
5 system.

6                   REPRESENTATIVE PALLONE: The whole state.  
7 That's even better. Because I can't speak for any other  
8 office, but I know that in my office I'm getting contacts  
9 from families who have family members who are inmates and  
10 are regretful and remorseful for their acts that have  
11 gotten them there, but there seems to be a issue with the  
12 release.

13                   DIRECTOR GNALL: Uh-huh.

14                   REPRESENTATIVE PALLONE: In terms of the  
15 department and/or the system adding additional criteria  
16 prior to release that are above and beyond what the  
17 original sentence was by the sentencing judge.

18                   They end up getting sent back to either  
19 Camp Hill or some other facility where they've got to  
20 complete domestic counseling or drug and alcohol  
21 counseling or whatever and they -- they don't have enough  
22 time to complete it within the -- within the definition  
23 of their defined sentence. So then they're held over for  
24 additional time, because they can't be released because  
25 they didn't complete all of their conditions to be

1 released. In fact, they weren't conditions of the  
2 original sentence. They were conditions imposed by the  
3 department.

4                   Therefore, we as an entity, the  
5 Commonwealth of Pennsylvania are now paying for  
6 additional bed days in whatever facility.

7                   REPRESENTATIVE WATERS: That's right.

8                   REPRESENTATIVE PALLONE: Because we have  
9 imposed, A, additional criteria for release, A; and, B,  
10 haven't provided adequate time or resources for the  
11 inmate to be able to timely complete those so that they  
12 can be released on time.

13                   Can you maybe give me some thoughts on  
14 that?

15                   DIRECTOR GNALL: Certainly. In terms of  
16 sentencing, as we all know, Pennsylvania is an  
17 indeterminate sentencing state. We have a min and a  
18 max. Inmates are eligible for parole at the minimum  
19 sentence date; but as Mark Bergstrom stated, parole is a  
20 privilege and not a right.

21                   The sentencing judge does not impose  
22 conditions. The sentencing judge imposes a sentence.  
23 When all offenders come to the Department of Corrections,  
24 they go through a diagnostic and classification process.

25                   Our job is to correct. So the first thing

1 that we do is a comprehensive assessment and then we  
2 develop what's called a correctional plan for that  
3 offender.

4           So if it says that, you know, you are a  
5 drug and alcohol dependent offender or you have a history  
6 of domestic violence, we would recommend evidence-based  
7 treatment, which is all cognitive behavioral, in order to  
8 address those needs.

9           At the outset, in the diagnostic center the  
10 parole board representatives sign off on that  
11 correctional plan. So at the beginning of incarceration,  
12 we agree this is the profile of this offender. This is  
13 what we're recommending in terms of a corrective course  
14 of action. And we and the board sign.

15           We have agreement in 90 percent of the  
16 cases, and the cases we don't we go to a committee called  
17 joint resolution and resolve it 99 percent of the time.

18           That offender then is prioritized for  
19 treatment and other programs based on his time to minimum  
20 sentence. There is a phenomenon, and we know we're  
21 dealing with this on the short minimum cases, a third of  
22 our new court commitments are what we call short mins.  
23 Those are inmates that come to us with less than twelve  
24 months to serve until the expiration of their min.

25           The average short min comes in with 7.3

1 months, and the reality is that 78 percent of them are  
2 medium to high risk need, meaning that they require  
3 treatment.

4           Honestly, having run treatment, there --  
5 there is no possible way for those short mins that you  
6 can correct effectively in the time you have to min. You  
7 can't do it. It's impossible. You just can't do it.

8           But at the end of incarceration, again, we  
9 prioritize all our programs according to minimum date.  
10 We do our best to -- to treat offenders effectively.

11           The parole board makes a decision on to --  
12 as to whether that offender has a -- has met the  
13 conditions that we described at the outset and whether  
14 they're ready for release.

15           And, again, it's a privilege. We do not  
16 hold offenders ever past their maximum sentence. That's  
17 illegal. But offenders do serve past their minimum  
18 sentence, sometimes and there are often reasons for  
19 that.

20           And John Tuttle can address those in terms  
21 of parole. But that's the way it works.

22           REPRESENTATIVE PALLONE: It seems to me --  
23 and that's the company line, and I'll accept that for  
24 today.

25           But it seems to me that -- that by your own

1 statement that the average inmate's stay is a minimum of  
2 three-and-a-half years, not seven-and-a-half months, that  
3 that's kind of the exception not the rule.

4 DIRECTOR GNALL: No. No. I think that  
5 I -- I misspoke then.

6 What I'm saying is that there's a third of  
7 our new court commitments who have a minimum sentence,  
8 when they get to us, they are less than twelve months  
9 prior to their minimum sentence.

10 REPRESENTATIVE PALLONE: Because of time  
11 served?

12 DIRECTOR GNALL: No. Because that's their  
13 sentence. They have -- most of those offenders have a  
14 one to three. When they get to the state system, they  
15 come in the front door and on average I have seven months  
16 from the day they walk in the front door to get them  
17 ready for parole release.

18 Given that 75 percent of them are medium to  
19 high risk and require intervention, even if I rush them  
20 to intervention, there is no possible way that they'll be  
21 finished with their treatment program prior to minimum.

22 Therefore, the parole board is reluctant to  
23 release them at minimum, because they haven't corrected  
24 their behavior. And personally I have to tend to agree  
25 with that.



1 release of prisoners that have violent tendencies and  
2 putting the general citizenry at risk.

3 I'm looking, quite seriously, at, you know,  
4 where are we dedicating our resources in the criminal  
5 justice system. Because we keep seeing the prison system  
6 just -- their budget is bloated. It is obnoxious how  
7 much money we spend on prisons.

8 And now there's a request to build at least  
9 two more and maybe more prison facilities, which come to  
10 the -- to the citizens of Pennsylvania at millions and  
11 millions of dollars.

12 If there's a way that we can address that  
13 issue more cost effectively, we should be looking at  
14 that. And if that means that we need to introduce the  
15 eligible and proper inmates that are in the system to  
16 these intervention systems more timely so that we can  
17 have them released on time or at a timely time, then we  
18 should be looking at that as well.

19 Not just reducing sentences and, you know,  
20 making it easier, if you want to call it that, on the  
21 violators. I think we need to be looking at what our  
22 intervention programs are, too, in terms of whether or  
23 not we're punishing in prison or whether we're trying to  
24 cure and correct in prison.

25 And that -- that seems to be -- it's been

1 the ongoing debate since I was a first-year law student  
2 22 years ago. So that's always been the issue.

3 CHAIRMAN CALTAGIRONE: If I might add,  
4 Senate Bill 1161, Senator Greenleaf's bill, I think,  
5 addresses, and we will be getting to that bill. We have  
6 a workshop scheduled to deal with that issue which  
7 directly impacts on a lot of the discussion that we're  
8 having today, and hopefully we can get the agreements and  
9 -- and the wording worked out with that, I think that  
10 would go a long way towards dealing with a lot of the  
11 issues that you raise, John.

12 REPRESENTATIVE PALLONE: With that, I don't  
13 mean to put you on the spot. So I'll waive off at this  
14 point and we'll move on.

15 Thank you, Mr. Chairman.

16 CHAIRMAN CALTAGIRONE: Representative  
17 Siptroth, did you want to comment?

18 REPRESENTATIVE SIPTROTH: Yeah. Just --  
19 just a little pickup on Representative Pallone. How do  
20 we address expungement? That's another issue that, you  
21 know, an individual's did the crime, did the time, paid  
22 the time, and now they're -- have a record, that they've  
23 turned their life around and yet they can't find  
24 sustainable employment simply based on this -- this past  
25 conviction.

1                   How do we address that? Could that --  
2 could that have also be addressed through this risk --  
3 risk factor program?

4                   DIRECTOR GNALL: Well, I think certainly  
5 other jurisdictions and ours as well has recognized the  
6 importance of that re-integration process and the role  
7 that employment plays in success for any offender and  
8 success for the community.

9                   I mentioned yesterday at the American Bar  
10 Association -- or the PA Bar Association event that I've  
11 been really kind of looking at the literature on this  
12 very issue.

13                   Al Blumstein, who is a professor at  
14 Carnegie Mellon, just published work that indicates that  
15 anywhere between five and seven years after someone has  
16 been at risk and remains arrest free, their risk of  
17 committing additional offenses is the same as if they  
18 never committed a crime.

19                   So no -- nobody is really no risk, but  
20 after a certain point -- it's called redemption  
21 literature. After a certain point, you're pretty much  
22 back to where you would be if you never committed a  
23 crime.

24                   I can send anyone a copy of his paper and a  
25 review that we did of that paper. He's certainly not the

1 only one to have done that.

2           So, you know, the longer you're arrest  
3 free, the more your probability of any -- of any crime  
4 goes down.

5           So I think to address your question more  
6 directly. I think that scientific literature which is  
7 out there now can be used as a basis to look at the  
8 possibilities of expungement.

9           Because, again, I agree with you, people  
10 are sent to prison as their punishment, but prison in and  
11 of itself shouldn't be punishing. It should be  
12 corrective. And after they've demonstrated for a period  
13 of time that they are arrest free, we don't often talk  
14 about our successes, but more than 50 percent of the  
15 people who are released don't come back. Then they're  
16 really at no more risk than anyone else.

17           So I think that's a way to kind of take an  
18 angle at it and to make the case for it.

19           CHAIRMAN CALTAGIRONE: If you could pull  
20 this information and I'll make sure that copies and your  
21 synopsis on the other issue --

22           DIRECTOR GNALL: Sure.

23           CHAIRMAN CALTAGIRONE: -- and I'll make  
24 sure that we get it to all the members.

25           DIRECTOR GNALL: Sure.

1                   CHAIRMAN CALTAGIRONE: We appreciate your  
2 testimony, and thank you very, very much.

3                   DIRECTOR GNALL: Thank you for your time.

4                   CHAIRMAN CALTAGIRONE: Good job.

5                   We're next going to hear -- and I must tell  
6 the next two testifiers, we're going to get bumped out of  
7 here at twelve o'clock. So, members, the testifiers, if  
8 you could succinctly give us your overview. And my dear  
9 friend, David Freed, District Attorney from Cumberland  
10 County is batter up.

11                  MR. FREED: Thank you. Good morning.

12                  You can't ask an elected politician to  
13 limit to 15 minutes, Mr. Chairman.

14                  CHAIRMAN CALTAGIRONE: We're all in that.  
15 I agree.

16                  MR. FREED: Mr. Chairman, I have to say, I  
17 bring greetings from President Marsico who is at an  
18 undisclosed location somewhere north of Wildwood and  
19 south of Atlantic City. You can do the math.

20                  Mark Bergstrom and Kathleen Gnall are --  
21 are tough acts to follow and I don't say that because  
22 Kathleen is one of my constituents.

23                  DIRECTOR GNALL: You better.

24                  MR. FREED: We've had some great back and  
25 forth. And -- and all the knowledge that you need to

1 tackle this issue I think is contained in those two  
2 people and probably Mr. Tuttle, who will follow me.

3 A couple points. And I'll just hit the  
4 highlights, Mr. Chairman, but a couple points to start  
5 with.

6 We have to remember when we're talking  
7 about state prisoners that state prisoners are people who  
8 have ended up in state prison probably after probation,  
9 somebody made that point, and probably after diversion,  
10 then probation, and then county prison. So a little bit  
11 of a different issue than essentially what we're dealing  
12 with in the counties.

13 But I think the county programs are  
14 instructive. I thought Mark Bergstrom made a great point  
15 of that. Counties have everything from -- of course,  
16 probation is a diversionary program essentially, ARD,  
17 non-DUI ARD, intermediate punishment, day reporting,  
18 treatment court, which is -- Kathleen talks about HOPE,  
19 the HOPE program in Hawaii.

20 I met that judge. What a fascinating guy.  
21 That's a treatment court model. That's -- that's --  
22 that's spending a lot of time on these issues, specific  
23 with the people, and having immediate sanctions when they  
24 screw up, and also rewards when they do what they're  
25 supposed to do.

1           So those models are out there, and they're  
2 clearly things we need to be considering.

3           But to the matter of hand, I thank you for  
4 allowing us to testify today; and if I had to sum up the  
5 position of the -- of the DA Association, it's that we  
6 believe that risk factors are appropriate to be  
7 considered.

8           We don't necessarily believe that a bill  
9 that just tells the Sentencing Commission to include risk  
10 factors goes far enough, and I think that goes to the  
11 point of -- of listening to people, like Probation and  
12 Parole, Mark Bergstrom, Kathleen Gnall, so that we can  
13 really get a handle on how -- how are we going to assess  
14 risk and how are we going to use that assessment when  
15 we're talking about the sentencing process.

16           Knowing potential future dangerousness of  
17 convicted offenders can only help judges fashion  
18 appropriate sentences, some offenders who have been  
19 convicted of less violent crimes who pose a serious risk  
20 and, on the other hand, some offenders who commit one  
21 violent crime but really aren't a higher risk to  
22 re-offend.

23           That's a very difficult alchemy to try to  
24 engage in to try to figure out who is who.

25           Risk can't be the only or the primary

1 factor, and we've talked a lot about the purpose of  
2 sentencing today.

3 Some offenders can only be rehabilitated if  
4 their terms of incarceration are long enough to complete  
5 good, comprehensive programming, and I think Kathleen hit  
6 the nail on the head there.

7 We always seem to have examples every time  
8 that we show up here to testify of recent things that  
9 have happened. There was one that was just in Saturday's  
10 Post Gazette, Tushon Brown, half of his 15-year sentence  
11 for rape, completed his programming, had a good conduct  
12 record, was low risk, assessed as low risk, a year after  
13 his release he's charged with rape and fatal stabbing of  
14 a fourteen-year-old girl.

15 And we don't take any issue with the use of  
16 risk assessment tools. More counties should be working  
17 with DOC to learn how to use risk assessment tools.

18 We're doing that in Cumberland County, as  
19 one example, but these cases issue -- illustrate a larger  
20 point. Risk assessment tools aren't always accurate. In  
21 conjunction with other tools they can be useful.

22 And I think it's important to note, we  
23 can't legislate by anecdote, but anecdotes require us to  
24 dig further into what's going on.

25 You'll recall that there are several other

1 issues that need to be put forward for further direction  
2 as it relates specifically to the bill. According to the  
3 legislation, the risk-and-needs assessment instrument  
4 shall also be for the purposes of identifying  
5 rehabilitative needs of an offender.

6 I would be interested in knowing how the  
7 tools, in addition to predicting risk, have identified  
8 the appropriate programming for offenders. Given that  
9 the tools are not designed with Pennsylvania programs in  
10 mind, we're concerned about the broad mandate.

11 The separate concern we have is that the  
12 legislation as written would have the effect of  
13 permitting the Sentencing Commission to take into account  
14 the size of the prison population.

15 I think Mark Bergstrom said very clearly  
16 that -- that there's some danger there. And everyone  
17 would agree it's not the Sentencing Commission -- the  
18 Sentencing Commission's role to make decisions based on  
19 the number of available beds. They have far more  
20 important duties.

21 The bill, as written, would permit the  
22 sentencing court to use risk-and-needs assessment to  
23 determine whether a more thorough assessment is necessary  
24 and to order a presentence.

25 I have concerns that this provision may

1 result in delays in the sentencing process, meaning the  
2 offenders may end up spending more time in county prison  
3 awaiting their sentence.

4                   And that's a key point to make here.  
5 The -- the short mins are a combination. I think  
6 Kathleen, of course, has the numbers better. But the  
7 short mins are a combination of sentence, but from a  
8 place like Cumberland County, there are people that have  
9 done a significant amount of time before they ever get to  
10 corrections.

11                   And -- and my eyes have been opened on  
12 this. I never knew this before this year, about the  
13 short mins and their inability to complete programming  
14 when they arrive at state prison.

15                   And that's an issue that we really need to  
16 draw into, and I think 1161, Mr. Chairman, does address  
17 some of those issues.

18                   CHAIRMAN CALTAGIRONE: I think you will be  
19 working with us on that.

20                   MR. FREED: We have been and will continue  
21 to work with you on that.

22                   CHAIRMAN CALTAGIRONE: Yes.

23                   MR. FREED: The -- the bill is less than  
24 clear on the process of coming up with the risk  
25 assessments and that's, I think, exactly what Mark

1 Bergstrom was testifying about.

2           You say risk assessment tool. Okay. Well,  
3 what instrument are we going to use? And how are we  
4 going to develop that? There's value in coming up with a  
5 -- with a comprehensive tool that we can use and that  
6 won't put further burdens on the county level. Because  
7 really the initial assessment will be done prior to  
8 sentence in a county court.

9           How are we going to do that? Is probation  
10 going to do it before somebody is sentenced? What tool  
11 are we going to use? How should the courts consider  
12 that?

13           These are all very important questions that  
14 need to be answered.

15           We always have a concern, of course, about  
16 the appeals process. In cases where judges rely on a  
17 risk instrument in imposing a sentence, the defendant  
18 will challenge the court's reliance upon it, meaning that  
19 our court will have to undertake rigorous examination of  
20 any instrument that's relied upon. They'd have to  
21 revisit the issues any time new research comes up or --  
22 or we change the tool.

23           I think as we work together on this bill we  
24 should work to -- to limit such appeals based on the  
25 merit of the claims.

1           One of the greatest concerns that we have  
2 about the bill is that it's being sold as a potential  
3 million dollar cost saver. One of the stated goals of  
4 the sponsor and DOC is to identify more individuals to be  
5 diverted into IP and other alternatives. And -- and I  
6 think we've discussed that at length here today.

7           What we've done, because of the recent  
8 budget situation, is cut funding for things like the  
9 Sentencing Commission, drug and alcohol, and county  
10 intermediate punishment. That took a million dollars hit  
11 this year.

12           Courts which administer treatment courts  
13 have been flat funded, just a quick example from -- from  
14 my county. We have a treatment court that we believe is  
15 very successful. And our treatment court is focused on  
16 people who would otherwise be in state prison.

17           It's not as broadly based as some of the  
18 other treatment courts that are around. It's still  
19 fairly new. It's five years old.

20           But our treatment court people are people  
21 that would otherwise be in state prison. And they're not  
22 only not in county prison, they're on the street.

23           But we still get questioned, rightly so, as  
24 we should with every program, about the value of the  
25 program when it's based on the number of people that

1 we're handling, which is 30 at any given time, and the  
2 cost and time that goes into that.

3 I have an attorney dedicated to that. I  
4 have an attorney essentially dedicated to diversion, but  
5 a big part of what he does is treatment court. They're  
6 time consuming, and they're expensive.

7 On the other hand, they work. I'm a firm  
8 believer in diversion. I guess you could tell. We  
9 devote significant resources within our office to all  
10 sorts of programs. DAs throughout the Commonwealth  
11 remain at the forefront. We actively supported county  
12 IP, state IP, drug courts, RRRI.

13 But we have to divert for the right  
14 reasons, and as both Mark and Kathleen have testified,  
15 we're the focus on public safety. We have to be willing  
16 to invest in evidence-based programs in the annual  
17 Commonwealth budget.

18 Enacting this legislation doesn't make any  
19 sense if there's not sufficient funding to implement and  
20 sustain it.

21 Texas has been able to reduce their prison  
22 population and maintain safety, not by letting offenders  
23 out early, but by having invested in public safety.

24 I wish Representative Waters was here  
25 because he stood up with me many times to talk about one

1 of my pet issues, which is early intervention, early  
2 childhood programs, PreK, nurse/family partnership. I'd  
3 liken these investment to -- to -- to the PreK and early  
4 childhood investments. We need to invest at the front  
5 end. We need to invest in these programs closer to the  
6 cradle, as Kathleen Gnall said, than closer to them being  
7 in state prison.

8           And -- and we've done the opposite. We  
9 understand that those are budget issues, but we can come  
10 up with all the best ideas in the world, if we don't  
11 invest in the programs that -- that work, we're never  
12 going to come out ahead.

13           Now, 1145 passed the Senate 47 to nothing  
14 without an appropriation. Sentencing Commission would  
15 require significant infusion of funding in order to  
16 comply. Sentencing Commission has been required to lay  
17 people off, as has been discussed.

18           Mr. Chairman, you and the members of the  
19 committee, you get this. You've been an advocate for the  
20 courts. The courts have you to thank, frankly, for only  
21 being flat funded, not having their budgets cut.

22           We believe that we can work together to  
23 make this a better bill and address our specific  
24 concerns, just as we've done with -- with other prison  
25 legislation and many things that have come before this

1 committee.

2 The critical discussion to have is about  
3 justice investment and reinvestment, and the interests of  
4 all of us here would be better met and public safety  
5 enhanced if we focused on those issues.

6 We appreciate your continued commitment to  
7 these issues and your assistance that all the  
8 stakeholders have input. We thoroughly enjoy working  
9 with you and Chairman Marsico. Not even going to  
10 speculate on where he might be. And look forward to  
11 discussing these issues further.

12 So I thank you, and I'd be happy to take  
13 questions. That's not bad. I think it was under 15  
14 minutes. Although I did go pretty quickly. The court  
15 reporter is glaring at me which happens when you talk  
16 that fast. I know.

17 And if you want to talk about expungement,  
18 I have some comments on that, too, but...

19 CHAIRMAN CALTAGIRONE: Let me just --

20 REPRESENTATIVE SIPTROTH: Thank you.

21 CHAIRMAN CALTAGIRONE: -- mention that  
22 tomorrow's -- as a matter of fact, now, I've been working  
23 very closely with the Chief Justice on the court funding  
24 issue, and we have a workshop scheduled, as a matter of  
25 fact, tomorrow with the committee, and the MBJs looking

1 at fees and costs and I -- I think there's some wiggle  
2 room there if we can get some agreement to make some  
3 adjustments that haven't been made in a number of years,  
4 which would help the counties, I might add, with their  
5 programs, and there's some possibilities that I think  
6 there's a way we might be able to get some additional  
7 money hopefully to Mark through various areas that could  
8 help with what we've talked about here this morning.

9 We're going to be working on that. As a  
10 matter of fact, I stepped out to meet with one of the  
11 judges just now, and I think it's a good piece of  
12 legislation, and I -- I think we can work together. And  
13 I know we're going to be doing that also on 1161.

14 I think it's in all of our best  
15 interests to try to come up with a solution to these  
16 problems. I mean I know it's always money, money, money  
17 that drives a lot of this stuff.

18 But I made a commitment to Senator  
19 Greenleaf, who I worked very closely with. I have the  
20 highest respect for him. And I know Brigg's here, and he  
21 will bring it back to him.

22 I'd like to get both of these bills out of  
23 this committee and on the floor so that we can get action  
24 on them before we wrap it up this year. Because I think  
25 they're two vitally, critically important pieces of

1 legislation that can help all of us.

2 Go ahead. John, did you --

3 REPRESENTATIVE SIPTROTH: No, I didn't.

4 EXEC. DIRECTOR TYLER: Real quickly, you  
5 mentioned that this committee helped to flat fund the  
6 courts. This committee also helped to fund -- to fund  
7 DAs. I just wanted to bring that up.

8 MR. FREED: Oh, right. Of course. That  
9 goes without saying.

10 EXEC. DIRECTOR TYLER: Real quickly, just a  
11 real quick answer, and I think it comes best from your  
12 association.

13 Do you guys care at all who develops risk?  
14 Who does risk? Obviously we understand we need to do a  
15 lot more to determine risk, et cetera and I think we're  
16 doing a pretty good job now. But do you guys care  
17 whether it's DOC, whether it's Mark, or whether it's any  
18 other organization? Does that matter to you guys?

19 MR. FREED: I think it should be a  
20 collaborative effort and that's because of the respect  
21 that I have for everybody sitting in the room.

22 If you had to -- you can't discount the  
23 experience that DOC has with this, and Kathleen in  
24 particular. I'm not volunteering you, but I think  
25 it's -- if we are going to tie it to sentencing, I think

1 the Sentencing Commission has to lead it.

2 EXEC. DIRECTOR TYLER: Thank you.

3 CHAIRMAN CALTAGIRONE: Very good. And I --  
4 I just might pull you in, because you're always so good  
5 to work with in your -- your association, along with  
6 Kathleen and John and some of the other members that do a  
7 workshop, to get some of the details ironed out. Because  
8 I think it's in the Senator's best interests, my best  
9 interests, to try to get this piece of legislation ready  
10 for the fall session.

11 MR. FREED: If I could point to one more  
12 thing on the record that's in our testimony.

13 CHAIRMAN CALTAGIRONE: Yes, sir.

14 MR. FREED: There's a -- there's a few  
15 lines about the courts still coming to grips with  
16 everything that was in the prison package. RRRI, I'd  
17 like everybody to consider that as we're looking at doing  
18 more.

19 I'm not sure the courts have come to grips  
20 with that yet. So we need to understand everything that  
21 we're sort of pushing down to that level.

22 CHAIRMAN CALTAGIRONE: I agree. Good  
23 point. Thank you, sir.

24 REPRESENTATIVE SIPTROTH: Mr. Chairman, if  
25 I could?

1                   CHAIRMAN CALTAGIRONE: Sure.

2                   REPRESENTATIVE SIPTROTH: I look forward to  
3 meeting with you sometime, David, on the expungement  
4 issue.

5                   MR. FREED: I'd love to. I've been here  
6 talking about that before. So we can do that.

7                   CHAIRMAN CALTAGIRONE: You know what I was  
8 thinking? Not to interrupt you, but maybe we ought to  
9 have a little workshop session dealing with that very  
10 issue, because that's something near and dear to many of  
11 us as to how we help people get their records clean so  
12 that they can get on with their lives.

13                   MR. FREED: We're getting the same calls as  
14 elected DAs as you get as the elected representatives,  
15 saying, I have this or my son had this or my daughter had  
16 this and why can't this get -- get expunged. So it's in  
17 all of our interests to have a more reasonable process in  
18 order to make that happen.

19                   MR. SIPTROTH: Okay.

20                   MR. FREED: There are others in law  
21 enforcement who would disagree with me on that.

22                   REPRESENTATIVE SIPTROTH: Well, some of  
23 these sentencing judges would also disagree with it, but,  
24 nonetheless, I think that it's -- it has value to it and  
25 merit. Thank you.

1 MR. FREED: Thank you.

2 REPRESENTATIVE SIPTROTH: Thank you,  
3 Mr. Chairman.

4 CHAIRMAN CALTAGIRONE: We'll next hear from  
5 John Tuttle, a board member of the Pennsylvania Probation  
6 and Parole.

7 Welcome, John.

8 MR. TUTTLE: Thank you, Chairman, and  
9 members of the committee.

10 I just wanted -- we kind of covered the  
11 waterfront on these issues, the legislation and some  
12 surrounding issues. So I just wanted to make a couple  
13 points before I get into my formal comments.

14 When the transition came for -- this  
15 Governor came in, I was sitting in a meeting and one of  
16 the first things they said, I was the statewide  
17 operations director for the parole agents at that point  
18 and the institutional staff, they said, you know, you  
19 people are the problem in the front end and you people  
20 are the problem at the back end. You don't parole enough  
21 people and you lock too many of them up on the back end.  
22 Okay. And what good are you? Why should you even  
23 exist? Okay?

24 So I kind of took that to heart. And he  
25 said -- and another thing he said was if you still want a

1 job, turn a resume in by Monday.

2 So I, you know, I took that pretty  
3 seriously, and, you know, I just want to point out for  
4 people who want to take a look at what we do, that we  
5 have one of the highest parole rates in the country, not  
6 very well known fact to a lot of people, and we've cut  
7 our technical violator between -- violator rate between  
8 20 and 25 percent in recent years, and we're working  
9 better with the DOC than we ever have and the people  
10 we're sending back we're sending back for shorter terms,  
11 as you heard Kathy say, in terms of PC centers.

12 The other thing I wanted to offer is in  
13 terms of experience in positions and answering questions  
14 relative to the county, I was a county officer for ten  
15 years. I was a supervisor for nine. I was a county  
16 chief for three. I was a state regional director for  
17 year and a half. I was statewide operations director for  
18 eight years, and now I'm on the parole board.

19 So I'll be more than happy to entertain any  
20 county issues that -- that people may want to ask or  
21 questions that they may want to entertain or I'll  
22 volunteer for anything that you would like to -- to have  
23 done.

24 Having said all that, I'm going to limit my  
25 testimony really to the risk-and-needs issues. As Kathy

1 pointed out, actuarial tools, plus professional judgment,  
2 that's the best combination for offender management as  
3 critical public safety decisions are made.

4           The board supports 1145 in the  
5 consideration of offender risk and need at sentencing.  
6 Many of the facts -- many of the factors outlined in the  
7 bill for adoption in the sentencing guidelines are  
8 factors that we, the parole board, address. For example,  
9 protection of the public, impact to the victims and the  
10 community, and the offender's criminal history and  
11 rehabilitative needs.

12           The board -- and when I say that, the  
13 parole board members have been using a risk-and-need  
14 assessment for more than ten years, assessing whether or  
15 not someone's risk has been reduced and if that risk can  
16 be safely and effectively managed in the community is a  
17 key factor in our decision making.

18           As far as the supervision of offenders, we  
19 also use a validated need-and-risks assessment and it's a  
20 continuation of the assessment we use on the inside. So  
21 we take that assessment and, as parole board members, we  
22 establish conditions based on that assessment, the risks  
23 and needs, and then the parole agents then carry out  
24 those assessments.

25           And also we reassess offenders on an annual

1 basis or as needed to determine what they continue to do  
2 on parole.

3           Assessing risk, it's a complex endeavor.  
4 Every offender carries some degree of risk. We need to  
5 know what each risk level means and be mindful that with  
6 human behavior any level of identified risk is based on  
7 probability, without guaranteed results relative to  
8 individual offender outcomes.

9           One also needs to understand what is being  
10 measured when the term risk is -- is used. It is risk to  
11 re-offend -- it is risk to re-offend criminally and, if  
12 so, for general recidivism or to commit violent crime.  
13 And I think we've heard about that this morning.

14           Or is the yardstick whether an offender  
15 will be returned to prison for a technical violation or a  
16 new crime, which tends to be our definition that we use  
17 with the DOC.

18           Another important consideration when  
19 prioritizing public safety and considering the risk and  
20 needs of offenders is the quality of programs and  
21 services available in prison and in the communities.

22           For example, if appropriate community  
23 interventions are not available for the risk level posed  
24 by the offender, then the judge and parole board may more  
25 often make decisions resulting in confinement.



1 know, I'll use a DA analogy. I went to a DA one time and  
2 I said, you know, you don't have a guilty plea unless you  
3 have a restitution figure. I'm -- I'm concerned about  
4 victims. So if a victim in a case is going to get  
5 reimbursed, if you will, you need to know what that  
6 restitution figure is at the time of sentencing or you  
7 shouldn't accept the guilty plea and sentence the  
8 person.

9                   And he looked at me and he said, you know  
10 we'll never get that done prior to accepting a guilty  
11 plea. There's just too much work to do on the front end  
12 to get that kind of information.

13                   So what I, you know, mirror that to is how  
14 are we going to get these assessments done at that early  
15 enough level, either for a DA or for a judge, and whether  
16 it's probation who does it or whoever does it, we have to  
17 have the staff resources and the time at the front end to  
18 get that done and obviously, that means, as you know,  
19 funding.

20                   And I'm not suggesting more funding, but  
21 possibly reallocation of existing resources because we  
22 don't have more money.

23                   So I'll leave it at that for now. If you  
24 have any questions, I'm, you know, more than happy to  
25 answer.



1 have, if they're lucky, have a hundred cases, and several  
2 counties have hundreds of cases. And to try to have an  
3 impact on those individual cases, regardless of risk  
4 level at that point, is difficult.

5 CHAIRMAN CALTAGIRONE: Questions from the  
6 members?

7 MR. TUTTLE: Okay.

8 CHAIRMAN CALTAGIRONE: You did excellent.  
9 You got down right on the money.

10 MR. TUTTLE: I know you want to go.

11 CHAIRMAN CALTAGIRONE: And for the record,  
12 I do want to submit a letter from the -- the Attorney  
13 General, Annmarie Kaiser, the acting chief of Staff,  
14 Director of Legislative Affairs to be made part of the  
15 testimony we have had here today.

16 With that, we'll adjourn the hearing.  
17 Thank you all.

18 (The proceedings were concluded at  
19 11:59 a.m.)

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1  
2 I hereby certify that the proceedings and  
3 evidence are contained fully and accurately in the notes  
4 taken by me on the within proceedings and that this is a  
5 correct transcript of the same.

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8 Brenda S. Hamilton, RPR  
9 Reporter - Notary Public  
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