

COMMONWEALTH OF PENNSYLVANIA

Phone 814.863.2797
Fax 814.863.2129
http://pcs.la.psu.edu



P. O. Box 1200
State College, PA
16804-1200

THE PENNSYLVANIA COMMISSION ON SENTENCING

March 2, 2005

Representative Dennis M. O'Brien, Chairman
House Judiciary Committee
Room 100, Main Capitol Building
House Box 202020
Harrisburg, PA 17120-2020

Re: Informational Hearing

Dear Chairman O'Brien:

Thank you for providing an opportunity recently to testify before the House Judiciary Committee regarding activities of the Commission, and in particular the proposed changes to the sentencing guidelines. I am writing to follow-up on three questions raised following my testimony.

The first question dealt with the average length of stay for inmates released in 2001. *The Corrections Yearbook*, published by the Criminal Justice Institute, Inc., reported that Pennsylvania inmates released in 2001 served the longest average length of stay (69.0 months) of any state, far exceeding the national average of 29.2 months and 13.8 months longer than the next highest state, Texas. However, it should be noted that the data for Pennsylvania contained in the *Yearbook* are limited to inmates in Pennsylvania state prisons, and do not include the thousands of sentences being served in county jails that would be served in state prisons elsewhere. In most jurisdictions reported in the *Yearbook*, any individual with a sentence of one-year or greater is confined to a state facility¹; in Pennsylvania, a county facility can be used to house an inmate with a maximum sentence of less than five years². I have attached copies of the following tables contained in the *Yearbook* for your review:

- Incarcerate Rates Per 100,000 Citizens – Pennsylvania's incarceration rate on 1/1/2002 was 310 per 100,000 citizens, 16th lowest in the nation (or 35th highest). This is far below the state average (382) and the national average (470). However, this is based only on incarceration in PA state facilities, and the broader use of county correctional facilities in Pennsylvania as compared to other states.

¹ The following definitions are provided in the Glossary of *The Corrections Yearbook*: (a) Jail – A facility usually run by a municipality or county to incarcerate detainees, individuals awaiting trial or inmates sentenced to terms of generally less than one year; (b) Prison – A correctional institution operated by a state agency or private company used to incarcerate individuals. In the case of a state-run facility, prisons are generally used to house offenders who have received a sentence of over one year in duration.

² 42 Pa.C.S. §9762 – All persons sentenced to total or partial confinement for: (1) maximum terms of five or more years shall be committed to the Bureau of Corrections for confinement; (2) maximum terms of two years or more but less than five years may be committed to the Bureau of Corrections for confinement or may be committed to a county prison within the jurisdiction of the court; (3) maximum terms of less than two years shall be committed to a county prison within the jurisdiction of the court...

- Inmates in Prison on January 1, 2002 – Pennsylvania’s inmate population of 38,067 reflects only those in state facilities. This state corrections population was used to determine Incarcerate Rate (previous table) and other tables in the *Yearbook*.
- Average Length of Stay in Months for Inmates Release in 2001 – Pennsylvania’s average length of stay is 69.0, the highest in the nation. However, as noted in my response to the Committee, cross-state comparisons are difficult because of inconsistent terminology and practices, and most significantly, because county facilities in Pennsylvania house many offenders otherwise serving sentences in state facilities in other jurisdictions. Since these less-serious offenders are more numerous, and each is by definition given a shorter sentence, excluding them from consideration in Pennsylvania’s average length of stay inflates Pennsylvania’s average relative to other states.

It should be noted that Criminal Justice Institute, Inc. has recently decided to no longer publish the *Yearbook*. As noted in an excerpt from the publisher below³, the concerns regarding cross-state comparisons and inability to effectively capture necessary detail contributed to this decision:

As time has passed, the data reported has taken on more and more significance to the corrections profession vis a vis the media, legislatures and the courts. Jurisdictions have been compared with one another, sometimes unfairly, about their performances with regard to public safety, money and treatment of inmates. Consequently, jurisdictions have made an effort to explain their numbers with many footnotes in the *Yearbook*. Concurrently, we have added more and more specificity to our instructions on how to provide the numbers.

This past data collection cycle we again revised counting instructions to improve comparability of data and moved to a web-based questionnaire to eliminate redundant data entry. However, the results fell short of our expectations, as some state responders were confused with the new method and new instructions, requiring us to engage in an exhaustive call back and data cleaning process. After taking this huge burst of additional labor into consideration, and after considering our support of the Association of State Correctional Administrators project to unify data reporting nationwide, we made the very difficult decision to no longer publish the *Corrections Yearbook*.

The second issue raised following my testimony was the enactment of a good time or earned time credit provision. The Commission has not taken a position on this issue. However, during my response I indicated that the House had previously debated and rejected a good time amendment that had been passed by the Senate. I have attached a copy of the Legislative Journal entry of the House floor debate (Legislative Journal, House, 1988, pp. 359-367). As I noted in my response to the Committee, Pennsylvania’s indeterminate sentencing system, which provides that a state offender may not be released from an incarceration sentence until completing the minimum sentence, and authorizes the Board of Probation and Parole to determine if or when and under what conditions an offender is paroled, in effect provides for ‘bad time.’ At the time of the House debate (1988), the majority of state offenders were paroled at or near the expiration of the minimum sentence, and rejection of parole was de facto the addition of ‘bad time.’ Good time and earned time provisions certainly provide a useful correctional management tool, but perhaps more important for determinate sentencing systems that do not include parole review. As I also noted in my response, if the concern regarding the average length of stay in state correctional facilities is driving re-consideration of good time, and a reduction in average length of stay is a policy goal, this can be achieved by lowering sentence lengths (either through reductions in guideline recommendations or elimination of mandatory sentencing provisions), more presumptive release on parole following expiration of the minimum sentence, and/or expanded alternatives to state incarceration for parole violators. To add good time to the existing system, especially if providing credit off the minimum sentence,

³ E-mail received on February 14, 2005 from George and Camille Camp, Corrections Yearbook Editors and Publishers Criminal Justice Institute, Incorporated.

would seem to add a layer of complexity while undermining a fundamental ‘truth in sentencing’ aspect of Pennsylvania’s sentencing structure.

The third issue raised following my testimony was whether there would be concerns if probation and parole were housed under the courts or under corrections. The Commission has not taken a position on this issue. As I indicated in my response, there are many models in place throughout the nation that can be studied. And even in Pennsylvania, there are two models: state parole under an independent executive agency, and county probation and parole under the courts of common pleas. Regardless of the structure, what is most important is the coordination of supervision and services, to protect public safety and to make the most efficient use of resources.

Thank you for this opportunity to follow-up on these areas of discussion. Please do not hesitate to contact me [(814) 863-4368; mhb105@psu.edu] if I can be of any further assistance.

Sincerely,

Mark H. Bergstrom
Executive Director

Enclosures

cc: Rep. Thomas R. Caltagirone, Democratic Chair, House Judiciary Committee
Rep. Frank Dermody, Chair, PA Commission on Sentencing
District Attorney Ted McKnight, Vice Chair, PA Commission on Sentencing