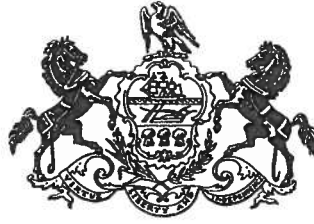


MEMO



DEC 22 2010

Senate of Pennsylvania

December 21, 2010

TO: ALL SENATORS

FROM: Stewart J. Greenleaf *Stewart*

SUBJECT: Cosponsorship – **Criminal Justice Reform Act**

During the 2009-2010 legislative session the Senate Judiciary Committee held a public hearing on prison overcrowding. Witnesses made innovative recommendations for reducing the prison population and bringing down prison costs without jeopardizing public safety. In response to these recommendations, I introduced seven bills to address the prison population crisis. The Senate passed three of the bills. The House of Representatives took concepts from the three bills and combined them into Senate Bill 1161, which was signed into law as 2010 Act 95. While Act 95 contains several provisions that should have some impact on prison costs over the long run, Pennsylvania continues to experience a prison overcrowding crisis. With a Department of Corrections (DOC) budget approaching \$2 billion, there is much more we can do. I am introducing legislation that **combines into one bill** the proposals that were not enacted into law last session. The new bill, which I refer to as the Criminal Justice Reform Act, amends the Judicial Code, Title 42, and the Prisons and Parole Code, Title 61 of the Pennsylvania Consolidated Statutes, to address the following issues:

- The bill allows the DOC to move more quickly those offenders with short minimum sentences to community corrections centers for community-based treatment. Then Secretary of Corrections Jeffrey Beard reported that “Over 3,563 inmates entered our prison system in 2008 with less than a year to serve. The average offender in this group has eight months to minimum, but because of the need for processing and programming, this group will serve an average 143 percent of their minimum. In many ways, it makes little sense to tie up our valuable and costly prison beds for what, in large part, are less serious offenders.” This legislation overturns in part a departmental regulation that an offender may not be transferred to a prerelease center until the offender has served at least nine months in a State correctional institution. These offenders, with short sentences, are the less serious offenders and there is no reason to hold them in secure prison cells when they are otherwise eligible for the pre-release program. While confined at a community corrections center, these offenders could participate in job training, take advantage of educational opportunities, and complete programming requirements. I have revised the proposal that was in Senate Bill 1161 (and removed by the House of Representatives) so that an offender who is committed to the DOC with less than 12 months to serve until he completes his minimum sentence must serve at least three months in State prison before being eligible for the prerelease program. If the offender has at least 12 months but less than 18 months to serve until he completes his minimum sentence, he must serve at least six months in State prison. If the offender has at least 18 months to serve until he completes his minimum sentence, the offender must serve at least nine months in State prison (consistent with the current regulation). By phasing-in eligibility for the prerelease program, it should help alleviate the concern expressed by some that offenders would be immediately released to prerelease centers without serving time in State prison.

- The bill establishes the Safe Community Reentry Program. Drawn from Senate Bill 1198, the legislation requires the DOC to establish a comprehensive program to reduce recidivism and ensure the successful reentry and reintegration of offenders into the community. We should keep in mind that 90% of the offenders who are committed to State prison return to their communities and families. According to U. S. Bureau of Justice Statistics, two out of three returning inmates will be re-arrested for new crimes within three years of their release from prison and more than half will be re-incarcerated. We must stop this cycle. By reducing the recidivism rate, we will make our communities safer and we will reduce the prison population and attending costs. The program will provide offenders with access to a full continuum of services during incarceration and upon release during their transition and reintegration into the community. The DOC shall coordinate the specifics of the offender's reentry plan with the educational, vocational training, and treatment services that will be provided to the offender during the offender's incarceration. The programs in prison should be structured to make it likely that the offender will be successful in becoming a productive member of society. There must be close cooperation and coordination with the Pennsylvania Board of Probation and Parole and local government agencies. The legislation makes specific mention of community and faith-based organizations. There are many such organizations that want to be part of the solution and we must identify those organizations and put them to work.
- The bill will make more nonviolent offenders eligible for Pennsylvania's alternative sentencing programs. These programs include county intermediate punishment (CIP), state intermediate punishment (SIP), state motivational boot camp, and the recidivism risk reduction incentive (RRRI). The Pennsylvania Commission on Sentencing noted that "Many of the sentencing alternatives created by the General Assembly to serve as rehabilitative alternatives to traditional incarceration . . . are presently underutilized. Contributing factors include: prohibitions to use certain programs to satisfy mandatory minimum sentencing provisions; extensive ineligibility criteria, particularly as related to present or past offenses; and/or other restrictions of a sentencing judge's ability to consider the program, such as approval by the prosecutor." Secretary of Corrections Beard commented that "The problem with both SIP and RRRI is that the eligibility criteria limit some offenders who could benefit from these programs from participation. We should look closely at the criteria for both and consider changes that would expand the eligible pool. We also need to give the judge broader discretion to decide who receives SIP." The legislation is based on Senate Bill 1299 which would have expanded the eligibility for these programs by using a different definition of violent offense. There is continuing discussion about how we should determine whether an offender is nonviolent and eligible for these programs. I expect the discussion to continue and further refinement of this legislation as the legislative process proceeds.
- The bill establishes a county probation program providing for swift, predictable and immediate sanctions on offenders who violate their probation. In Hawaii Judge Steven S. Alm developed a program called HOPE (Hawaii's Opportunity Probation with Enforcement) focusing on offenders who have committed drug-related crimes. Through HOPE those offenders who fail a drug test while on probation are subject to immediate, brief incarceration. According to the Institute for Behavior and Health, "An independent evaluation of HOPE shows that it is effective in reducing drug abuse, crime and incarceration in the population of offenders in the community on probation." Drawn from Senate Bill 1193, this legislation is based on the HOPE program. The program will be available as an alternative to the normal probation revocation process. It will be within the discretion of each court of common pleas whether to establish and implement the program.
- The bill amends the powers and duties of the Pennsylvania Commission on Sentencing. 2010 Act 95 directed the sentencing commission to develop a risk assessment tool as part of the sentencing guidelines. In retrospect the legislation should have referenced the risk assessment tool in the provisions of law requiring the sentencing commission to publish the guidelines for review and, once adopted, to monitor compliance with the guidelines. The bill makes these references.

- The foregoing proposals should bring significant costs savings. At the 2009 Senate Appropriations Committee budget hearing, Secretary of Corrections Beard said that Pennsylvania could save \$60 million and 2,000 prison beds by providing alternatives for offenders with short minimum sentencing, revising the eligibility requirements for intermediate punishment programs, and reducing the number of technical parole violators recommitted to prison. By reinvesting half of those savings, Secretary Beard said the Commonwealth could save \$120 million and 4,000 prison beds. If the state prison population continues to increase, Pennsylvania could be building a new prison every year. It costs \$200 million to build a prison and \$50 million annually to operate a prison. *We must spend some money now to avoid these huge additional costs in the future.* For fiscal year 2011-2012 the bill invests money into programs that will help reduce our state and county prison populations and, in the long run, improve public safety and save money for the Commonwealth and counties. I propose investing \$50 million as follows:
  - An appropriation for the sentencing commission in the amount of \$2.3 million. This amount includes the base appropriation to support the commission's long-standing statutory duties and an additional appropriation to support the new duties and responsibilities specified in 2008 Acts 81 and 83, and in 2010 Act 95.
  - An appropriation in the amount of \$2 million to the Administrative Office of Pennsylvania Courts to provide start-up grants to counties for treatment courts. We need to focus on the front end diversion of less serious offenders. Treatment courts (drug, DUI, mental health) have been shown to be effective and less costly.
  - An additional \$30 million for county intermediate punishment bringing the total appropriation to \$50 million, \$7 million for CIP and \$43 million for RIP/D&A. County intermediate punishment (CIP) and restrictive intermediate punishment (RIP) programs have been historically underfunded. However, these programs have a proven track record of diverting jail-bound offenders to community-based alternatives; and the successful completion of clinically appropriate treatment for drug and alcohol dependent offenders (RIP/D&A) has been found to result in lower rates of recidivism.
  - An additional \$15 million to the Pennsylvania Board of Probation and Parole's appropriation to support parole supervision and reentry services. An adequate investment in parole is a far less expensive option than incarceration. In Pennsylvania it costs \$35,000 per year to incarcerate an offender in comparison to \$3,000 to supervise that same offender on parole.

Pennsylvania has more than 51,000 State prison inmates. This number is 8,000 more inmates than the rated capacity for the State prison system. Pennsylvania is building three new prisons and, while they are being built, transferring inmates to counties and to other states (Virginia and Michigan) with excess capacity. We must bring this crisis under control. We must fund programs that will help divert low-level offenders from State prison and support reentry services that lessen the chance that offenders commit new crimes and return to prison. I invite you to join me as we identify ways to reduce our prison costs and move forward with legislative solutions.

*If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at [psnively@pasen.gov](mailto:psnively@pasen.gov).*