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TESTIMONY OF WARDEN ARTHUR M. WALLENSTEIN

PENNSYLVANIA PRISON WARDENS ASSOCIATION

House Judiciary Committee
Hearing on Prison & Jail Overcrowding
July 17, 1989
Main Capitol Building

INTRODUCTION

I wish to express my appreciation to Chairman Thomas R. Caltagirone and the House Judiciary Committee for this opportunity to appear before you today. My presentation before this Committee is in my capacity as a member of the Legislative Committee of the Pennsylvania Prison Wardens Association. I serve as Director of Corrections and Warden of the Bucks County Correctional Facility and while many of my thoughts may parallel those of the County Commissioners and Prison Board in Bucks County, my comments should not be taken as representative of county policy, but rather as legislative positions formulated and approved by the Pennsylvania Prison Wardens Association. Our Association includes within its membership all county prison wardens in Pennsylvania, as well the superintendents of all state correctional institutions, senior central office administrators from the Pennsylvania Department of Corrections, as well as deputy superintendents, deputy county prison wardens, members of the Pennsylvania Board of Probation and Parole, and senior administrative staff from that agency.

I would like to extend our thanks to Representative Kevin Blaum and Representative Lois Hagerty of the Crime and Corrections Subcommittee for their support in introducing House Bills 1106 and 1107 that relate directly to the subject of your current inquiry. I also wish to thank Representative Jeff Picolla who met with us last Fall when these proposals were developed and noted his support when he still served as the ranking minority member of the Crime and Corrections Subcommittee.

The subject of your inquiry, especially as it relates to the practice of local corrections in Pennsylvania, is long overdue and this Committee is to be commended for initiating public discussions of a portion of criminal justice policy that has been virtually ignored by many sectors of government.

County corrections represents issues with enormous implications of a human and fiscal nature. Senator Stewart Greenleaf, Chairman of the Senate Judiciary Committee, and his colleagues on that Committee have initiated a parallel inquiry with hearings held in April under the general subject of funding for community corrections in Pennsylvania. I commend those efforts for they are certainly groundbreaking in this state and also demonstrate an interest to explore the impact of county prison population growth as it relates to local government.

My testimony concerns the following areas of inquiry:

- A. County Government, County Corrections and Public Policy
- B. Local Incarceration as Social Policy
- C. House Bill 1107 (Inmate Payment for Weekend or Partial Confinement)
- D. House Bill 1106 (Recreation for Inmates in Disciplinary Status)
- E. House Bill 1706 (Financial Assistance to Counties for Various Offenders)
- F. Earned Time Legislation

A. COUNTY GOVERNMENT, COUNTY CORRECTIONS AND PUBLIC POLICY

In 1980, Pennsylvania county prisons incarcerated 8,000 individuals. On May 31, 1989, that number had grown to 16,078. The quiet and reserved world of county corrections has been exploded as population levels have transformed the nature of correctional operations at the local level. Virtually no initiatives have been forthcoming from the General Assembly to respond to the enormous financial burden that has been imposed upon county government as new state laws have brought about enormously expanded population levels. Population growth has far exceeded any projections that were offered at the time that new legislation was studied, introduced, approved, and implemented.

The 1980's and especially the 1990's are bringing corrections at the local level into a new world and the county prison as it has been known in the past is now a museum relic not likely to ever reassert itself in a fast

paced environment of criminal justice growth and the enormous use of incarceration that continues to break population records on a monthly basis.

The Pennsylvania General Assembly attempted to take a positive and responsible attitude toward the issue of state correctional institutions as new criminal justice legislation was passed in the early 1980's. The legislature authorized the expansion of over 2,500 additional bedspaces to meet housing needs that were projected and documented by the Sentencing Commission at the time that new legislation went into effect. It was in the early 1980's a matter of significant importance to me that the Governor and General Assembly recognized that there was a strong and responsive interdependence between tough new criminal justice legislation that has been demanded by the public and supported by the General Assembly and a corresponding need for additional capacity in our state institutions to assist in providing a sense of safety and security both for inmates and the staff who operate these facilities.

While we know that population growth has far outstripped both the increased bedspace and additional appropriations that were targeted to respond to state prison growth, there was at least a commitment to relate the new legislation to capacity needs and the corresponding fiscal resources to implement same. None of the above has been available to local jurisdictions - specifically county government, which never realized what the impact would be as politically popular penalties became law and were implemented with vigor in the great majority of Pennsylvania counties.

Population impact studies of the new legislation upon county government were deficient or non-existent for we have learned how difficult it is to project the impact and relationship of new legislation to specific percentages of population growth at the local level. Political support for

tougher sentencing often develops in isolation to the costs that would flow from this form of legislative action.

As a person who watched the new legislation unfold from DUI initiatives to sentencing guidelines and mandatory sentencing to the new drug laws of 1988-89, I recall our earlier testimony before the House Judiciary Committee's Sub-Committee on Crime and Corrections in 1983 when we urged that any new legislation be accompanied by rigorous population projections and corresponding financial allocations for county government. The enormous rush to pass tough new legislation in 1983 and further developments that continue to the present day have rarely given adequate consideration to the impact that implementation would have upon county government and the availability of resources to respond to increased incarceration at the local level.

County government has been respectfully silent far too long as uncontrolled population growth has forced the imposition of enormous new expenditures upon local taxpayers. In many respects local elected officials, who certainly support tough sentencing initiatives, never anticipated nor did legislative committees provide accurate projections to them of the impact of this legislation upon local government infrastructure, the availability of resources, and the organizational tools that would be necessary to cope with the greatest population increase in the history of Pennsylvania county prisons.

B. LOCAL INCARCERATION AS SOCIAL POLICY

Throughout most of the United States, county government plays a minor role in the implementation of the overall state correctional program. Local counties provide incarceration for pretrial detainees and a small number of sentenced inmates with maximum sentences set at one (1) year. Pennsylvania is unique for laws approved several years ago provide enormous sentencing

options with maximum sentences of one day less than five years that may be served in many Pennsylvania county prisons. Therefore, the word jail has always been an irrelevancy in Pennsylvania for corrections at the local level has been far more expansive and the potential has existed for much greater utilization and population growth at that level.

Sentencing data developed by the Commission on Crime and Delinquency has presented a graphic portrayal of the enormous increase in institutional sentencing patterns between 1980 and 1985. By 1985, fully 43.9% of all convicted offenders receive county prison sentences which constituted a 100% increase over 1980. This reflects both the imposition of mandatory sentences for drunk driving, the infinitely tougher dispositions incumbent upon Courts of Common Pleas under sentencing guidelines, and the general toughening of attitudes regarding all dispositions in criminal court.

County correctional institutions throughout Pennsylvania are the first line in our correctional system and local correctional issues must no longer be seen as secondary with priority given to the Commonwealth's mega institutions which house offenders for extended terms of stay. The House Judiciary Committee should not think that county correctional institutions are holding less dangerous individuals or that the problem is reduced because the terms of stay are shorter. You must remember that all those individuals who eventually find their ways to state institutions begin their incarceration in county correctional facilities and often remain there for extended periods of stay as they move through the pretrial and sentencing stages of case dispositions. In addition, approximately 50% of all individuals in county prisons are sentenced prisoners.

County corrections will see a new wave of offenders as a function of tough new drug legislation. Some will say this is not true for the new drug

legislation imposes sentences under the supervision of the Pennsylvania Board of Probation and Parole with terms to be served in state correctional facilities. This is accurate to a point, but the county sentencing window does exist for existing legislation permits sentences of 1-2 years, such sentences may be served within county correctional institutions. This further exacerbates levels of overcrowding both at the time the sentence is being served and then later when parole violations take place and significant amounts of parole backtime are imposed upon individuals to be served in county institutions from which they were originally paroled.

The traditional position of local corrections at the bottom of public priorities simply cannot continue if we are going to respond to increased criminal justice populations in a responsible, humane, and safe manner. Legislative committees and the General Assembly as a whole must cease to think of county government and county corrections as a minor part of the criminal justice process in this Commonwealth. County corrections has come of age as a function of professionalization within this discipline and most powerfully as a result of population growth that has destroyed forever traditional methods and traditional conceptions of corrections as practiced at the local level.

While I have dwelled far too long on these matters, I do believe that neither the executive nor legislative branches of government ever anticipated that county prison populations would grow so large when these issues were debated in the early and mid-1980's. No population projections of any kind were close in predicting current population growth and eventually, if alternatives are not developed, we will either bankrupt local government or see population levels rise to a point where violence will become commonplace

and then federal courts and public conscience will demand the type of programs that are in part the focus of your deliberations.

While few counties have been the subject of population caps imposed by federal court orders or consent decrees, the time may not be far away when local jurisdictions will welcome federal court intervention as a means of reducing the need for continued additional resource allocation by local taxpayers in a seemingly uncontrolled spiral of population growth.

C. HOUSE BILL 1107 (INMATE PAYMENT FOR WEEKEND OR PARTIAL CONFINEMENT)

STATEMENT OF THE PROBLEM:

1. County prison populations have grown enormously in the past five years and continue to grow at an alarming rate;
2. Appropriate and tough new sentencing legislation has generated an extremely large burden upon county government with no corresponding reimbursement mechanism to assist in the housing and care of all the new prisoners incarcerated at the county level as a result of state sentencing initiatives;
3. Many counties have noted an interest in collecting a modest per diem from prisoners who are permitted to serve their sentences on weekends or period of partial confinement during the week, but county solicitors and presiding judges have highlighted the need for statutory authorization prior to initiating said collections or their inclusion in sentencing orders;
4. Current legislation, most notably in the work release law and in other relevant statutory guidelines for county corrections, does not provide authorization for such per diem collections.

PROPOSED LEGISLATION:

1. Propose an amendment to the work release law (Public Law 774, No. 390 - August 13, 1963) to permit county prison boards or where applicable the county commissioners to authorize the sheriff, warden, or other person in

charge of the county prison to collect a reasonable fee for prisoners incarcerated only on weekends or for other short periods each week.

PAST LEGISLATIVE HISTORY:

1. Upon request of the Pennsylvania Prison Wardens Association, this concept was translated into legislation and was introduced before the Senate in the session of 1987. Bill No. 251 was introduced with bipartisan support and passed the Senate in May, 1987 without dissent;

2. The bill was then sent to the Crime and Corrections Subcommittee of the Judiciary Committee - House of Representatives where no action was taken on the bill;

3. This bill was reintroduced by Senator Lewis in January, 1989. The bill passed the Senate in January of 1989 and is now before the House of Representatives;

4. We can find no negative comments from any party regarding this legislation or at least none that were ever brought to our attention, and we would hope that this bill can swiftly move to passage.

POLITICAL CONSIDERATIONS THAT MIGHT AFFECT THIS LEGISLATION;

1. There would appear to be no partisan political issues that would impact upon this legislation, nor anyother special interest group that could not support this proposal.

CONCLUSION:

This proposed legislation is a very small matter that certainly will not hae a significant impact on the need for resources at the count level to respond to sentencing initiatives from the General Assembly. Yet it notes a desire on the part of counties to generate more revenue as a result of this vast wave of new prisoners entering the correctional system. Weekend and partial confinement prisoners generally hold fulltime jobs in the community

and are well able to pay a small per diem - generally the same amount charged to inmates on fulltime work release status.

When all the new criminal justice legislation was being developed in 1982-1983 and significant funding was provided to the Pennsylvania Department of Corrections for new cell capacity, the counties did not receive any additional resources yet county prison populations have grown at a most significant rate. The small initiative reflects one suggestion that can be implemented quickly and efficiently and it should have considerable support as we require inmates to pay a portion of their incarceration.

D. HOUSE BILL 1106 - RECREATION FOR INMATES IN DISCIPLINARY STATUS

STATEMENT OF THE PROBLEM:

1. Currently inmates in county and state prisons who have physically assaulted correctional officers, physically assaulted other inmates, participated in illegal drug activities, have refused to obey direct orders, have thrown body excrement upon staff members, or have violated other significant institutional rules and are placed in disciplinary status are entitled to the same recreational privileges as well behaved prisoners in general population;

2. County and state correctional institutions are required by an antiquated state statute to provide two (2) hours of outdoor recreation every day (seven days a week) to the worse behaved and most troublesome inmates in these correctional systems;

3. This places an enormous financial burden upon correctional institutions for additional staff must be utilized to supervist the most troublesome inmates in our correctional systems when in reality correctional officer supervision is needed for more important institutional functions and those that relate to well-behaved inmates;

4. This antiquated state law - 61 P.S. 101, Physical Exercise for Prisoners - establishes a very negative tone for it virtually promotes poor adjustment on the part of some inmates who recognize that there will be no restriction of their outdoor recreational activities. As responsibility for the supervision of prisoners grows dramatically at the county and state levels, it makes little sense and indeed creates a most negative environment when staff members and inmates recognize that the most dangerous, troublesome, and most assaultive prisoners receive no restriction regarding recreation and in fact demand greater institutional supervision relating to staff who must supervise this daily recreational activity.

RECOMMENDED LEGISLATIVE ACTION:

Amend P.L. 775, No. 306, Physical Welfare of Prisoners.

PAST LEGISLATIVE HISTORY:

House Bill 1106 was introduced by Representatives Blaum and Hagerty on April 10, 1989.

RELATED ISSUES THAT IMPACT UPON THIS LEGISLATIVE REQUEST:

1. Amendment of this law does not abolish recreation for prisoners for federal constitutional minima still apply and recreation is considered a right within appropriate boundaries for inmates in state and county correctional institutions;

2. Prevailing constitutional minima are far superceded by the antiquated Pennsylvania statute mentioned above and no existing requirement of any national correctional organization nor any past decision by the Supreme Court or federal appellate courts begins to approach the excessive requirement noted in the above-mentioned statute;

3. The Pennsylvania Code can be amended through appropriate channels to reflect prevailing national standards regarding recreation so they can be

implemented and are already being implemented within Pennsylvania correctional institutions;

4. As long as ongoing correctional practices still provide for recreation for inmates in general population and constitutionally accepted levels of recreation for inmates in disciplinary status (as evidenced through the American Correctional Association standards for sentenced institutions and local detention facilities of one (1) hour per day - five (5) days per week), no citizens' group or other organization should have any quarrel with the repeal of this law;

5. A recent incident which serves to highlight the outdated nature of the act which in reality was most likely never intended to apply to inmates in disciplinary status when it was drafted in 1923 - Recently in a state correctional facility, an inmate with AIDS threw excrement upon a staff member. Under the antiquated state law that inmate is entitled to two (2) hours of outdoor recreation seven (7) days per week and must be escorted to the recreation area and supervised by correctional staff members. There is simply no justification for such an expansive view of recreation for the most difficult, dangerous, and troublesome inmates in our correctional institutions.

E. HOUSE BILL 1706 - FINANCIAL ASSISTANCE TO COUNTIES FOR VARIOUS OFFENDERS

From my best recollection this type of legislation was initially introduced by Representative David Sweet of Washington County when he served as a member of this Committee in the General Assembly. I will devote little space to discuss the DUI issue in Pennsylvania for the Pennsylvania Commission on Crime and Delinquency has provided excellent data regarding the impact of this law on county prison populations and the expenditure of resources at the local level. The Pennsylvania Prison Wardens Association voted to support

Representative Sweet's initial legislative proposal and we continue to support the concept of reimbursing county government for the cost of correction operations concerning DUI offenders. The impact of DUI offenders has been significant upon many counties in the Commonwealth and local government has borne an enormous financial burden relating thereto. We urge the General Assembly to consider some form of reimbursement formula to assist in financing the implementation of this law which received such wide support in the General Assembly when it was introduced and became law in the early 1980's.

F. EARNED TIME LEGISLATION

The Pennsylvania Prison Wardens Association supports the concept of earned time in Pennsylvania. It is a tool that has been missing for many years to assist correctional administrators in operating their facilities with special interest toward staff safety, institutional management, creating some positive expectations on the part of well-behaved prisoners, and in general creating an environment that is conducive to safe and efficient institutional operation. As you certainly are aware, Pennsylvania is one of the few states in the nation that has not enacted some form of earned time legislation and the time has certainly come now to develop what has been accepted throughout this nation for many years.

The Pennsylvania Prison Wardens Association approaches the issue of earned time as might be expected from the perspective of those who are responsible for the safety and security of the Commonwealth's state and county correctional institutions. Correctional administrators have known for many years that providing some impetus for good behavior, namely some formula for earned time, helps bring about a positive institutional environment. Most inmates will respond to the potential for reasonable sentence reduction

as a result of good behavior and positive program involvement. This situation creates a significantly improved institutional climate and this improved climate is definitely related to reduced levels of violence as it affects both staff and inmates.

One must never forget the thousands of state residents working in our correctional institutions. They should not have to be subjected to environments without hope or where a sense of violence and desperation prevails. A reasonable and moderate earned time formula gives hope to individuals who have chosen to behave within the correctional environment and have chosen to either work or participate in treatment and self-growth programs. It does not guarantee that there shall be no criminality in the future, but it certainly recognizes that positive performance is a step in the right direction and that there is some positive gain to be earned from following institutional regulations and from participating in appropriate programs.

Our overcrowded institutions always carry the potential for violence and even the potential loss of life for staff and inmates alike. Some reasonable and appropriate methodology for generating earned time offers most inmates a good reason to cooperate and to avoid those inmates who would undermine institutional safety and security by organizing their fellow prisoners in some form of insurrection or day to day misconducts. It is a simple concept and obviously this is why it has been so widely accepted from one end of this nation to the other. Correctional administration, namely the wardens and superintendents of Pennsylvania institutions, need some tool to help them especially during this period of substantial and dangerous overcrowding.

We leave to the General Assembly the choice of an appropriate methodology and formula. What is important is that some earned time legislation be passed and that it be passed soon for the problem in our state and county

institutions is dramatic and it has only been thorough extraordinarily good management, coupled with a great deal of luck, that significant problems have not developed in Pennsylvania prisons and jails as a result of the gross overcrowding that has characterized the criminal justice system in this state.

REVOCATION OF EARNED TIME

The Pennsylvania Prison Wardens Association certainly supports a method for removal of good time already earned as a result of misconduct and misbehavior. This should be instituted at the institutional level, not through some higher authority for the inmate must respect those who operate the institution in which he/she is incarcerated. Therefore, the removal of earned time already awarded and any restoration of earned time must rest solely at the institutional level. The Wardens Association would not support methodologies that remove this function from the institution in which the individual is being housed for that would create a system where those who work most closely with the inmate feel removed from the process. Due process guarantees are already a part of institutional operations as a result of a long constitutional history for conducting disciplinary hearings. Inmates would quickly come to understand the basic policies to be followed and the types of infractions and behaviors that would lead to a revocation of earned time.

SUPPORT FOR THE DEVELOPMENT OF EARNED TIME AT THE COUNTY LEVEL

The Pennsylvania Prison Wardens Association supports the concept of earned time in Pennsylvania.

SUMMARY AND CONCLUSION

This type of legislation is long overdue and from our perspective it will have an impact, not only on overcrowding but on the absolutely issue of

life safety that affects the men and women who work within our institutions and those who reside there as a result of court commitment. Speaking for the Pennsylvania Prison Wardens Association, as their spokesperson in this matter, I want to let you know that we are available to assist in any way you deem appropriate to move this issue forward or to discuss any concerns you may have regarding earned time legislation.

CONCLUDING COMMENT

The House Judiciary Committee, as noted above, is to be commended for your willingness to open for review the matter of prison overcrowding at the local level of government. County corrections has come of age and the Pennsylvania Prison Wardens Association is available at any time to assist this Committee in seeking improvements in the criminal justice system as they relate to corrections at the local level.