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PENNSYLVANIA COALITION AGAINST RAPE
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Testimony on House Bill 239, PN 247
House Judiciary Committee
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The Pennsylvania Coalition Against Rape (PCAR) is the state organization responsible for the administration of state contract funds to 45 rape crisis centers in Pennsylvania. Last year, these centers provided service to more than 25,000 persons who have been directly affected by sexual violence.

PCAR also provides advocacy and educational services on behalf of victims of sexual violence. It is in this capacity, as an advocate on behalf of victims, that I present testimony before you today.

Historically, PCAR has played a vital role in the victim rights movement in Pennsylvania. Our intent is to vigorously assert the rights and role of the victim in all parts of the criminal justice system. Through the efforts of PCAR and many other victim advocacy organizations, it is no longer assumed that the only role of the victim is to serve the needs of police and prosecution in achieving an offender's conviction. Today, we recognize that part of "the system's" responsibility is to recognize and provide for the needs of individual victims and their families.

PCAR supports efforts to reduce the prison population of Pennsylvania that now exceeds 150% of capacity. We understand that it is difficult, if not impossible, to conduct even minimal treatment in institutions that are woefully overcrowded.

submitting impact statements are informed of the Board of Probation and Parole's decision. Any statements filed with the Board are considered confidential if they contain information that may jeopardize the safety of the victim.

Rape crisis centers who have assisted victims with filing impact statements with the Board consistently say that their concerns are treated with respect and consideration. They recognize that the Board is concerned with public safety generally, and victim safety specifically. The Board has been responsive to and respective of the needs of victims.

HB 239 provides only that victims may "submit a statement expressing concerns or recommendations regarding parole supervision." Any consideration of the continuing psychological, physical or emotional impact of a crime, not known or underestimated at time of prosecution and sentencing, are precluded in HB 239. No assurances of confidentiality are included to protect information provided by the victim as part of their statements.

This is what Corrections Commissioner Lehman in a letter to the Harrisburg Patriot News asked us to accept as provisions that "aggressively addresses victims' rights". PCAR does not agree.

Because on their face, Sections 506 and 507 do not address victim participation issues as adequately as does current law or HB 90, PCAR looked to other sections of the bill and to the overall concept of "just desserts" to gain reassurance that victims' rights have, in fact been aggressively addressed. We looked to the experience of other states who have moved to the "just desserts"

criteria are an assessment of the risk of recidivism and the risk of violent or assaultive behavior. Using these criteria, the Board has consistently paroled between 70% - 75% of inmates at the time of their first parole consideration. Given that approximately 12% of offenders are sentenced for sex offenses and that in excess of 50% of inmates are sentenced for violent offenses, this 3 of 4 parole rate requires the parole of some inmates on first consideration who present some identifiable risk to the community. Even with the use of these criteria, release of 3 of 4 carries with it the potential for both recidivism and violent behavior.

When asked how the provisions of HB 239 would change this 3 out of 4 release at first consideration ratio, Commissioner Lehman responded that more rather than less inmates would by released at minimum. Obviously, the assessment of risk of recidivism and violent behavior would assume lesser rather than greater importance in the decision to delay release beyond the minimum sentence. For victim advocates, this represents a significant change in emphasis from the present system and a significant cause for concern.

HB 239 limits the factors that are considered <u>to deny</u> parole to only institutional behavior in all but a limited number of cases. Many prisoners who have committed the most heinous crimes may adjust well to prison, this is especially true of sex offenders. Statistically, they are among the offenders with the fewest rule infraction and misconduct violations while incarcerated. (PBPP, 1987) Learned behaviors that help sex offenders, particularly child molesters, fit into the community as "model citizens" serve offenders well in prison. According to Richard Laws of the Atascadero State Hospital in California, "Sex offenders, if you give

However, it is possible to predict the probability of future behavior and then make a considered judgement as to the acceptability of this likelihood. We use such probabilities all the time - when deciding who is admitted to college based on SAT scores and high school grades, when deciding who to hire based on job interviews and aptitude tests. In all of these instances, we make judgments about individuals based on information derived from group behavior and probability determinations.

HB 239 requires that we reject similar information that may directly affect both individual and community safety when making decisions about offenders. To reject these probabilities because the certainty of individual behavior cannot be known is to plead ignorance in the face of knowledge. This is what the presumption of release at minimum or the detention beyond minimum based only on institutional behavior requires. In large measure, this is what HB 239 requires.

In response to the concern that this new "just desserts" model may represent an increased level of risk to the individual and/or the community, the drafters of this bill and Commissioner Lehman respond that new sentencing guidelines will require longer minimum sentences, particularly for violent offenses. But, no where in the language of HB 239 is this intent alluded to or addressed specifically.

If, new sentencing guidelines establish more lengthy minimum sentences, then PCAR is at a loss to understand how the provisions of HB 239 will have any impact on reducing prison population. The state of Washington adopted a more radical form of determinate sentencing in 1984 in the hope of reducing prison population. Five years later, in 1989, Commissioner Lehman, then working in Washington, testified before a Senate Subcommittee on Corrections that, "At first,

presently exists under the Sentencing Reform Act [of 1984]."

Washington is not the only state to have tried a "just desserts" model. In 1980, Connecticut abolished parole and gave the Commissioner of Corrections great power to release at almost any time during a sentence. Ten years later, in October 1990, Connecticut reinstituted discretionary release authority to the Parole Board. In a Letter to the Editor of the Hartford Courant, October 8, 1990, Larry Meacham, Commissioner of the Connecticut Department of Corrections wrote, "Parole was abolished in 1980 and determinate sentencing was established to make sentencing more straightforward....However, the pressure of overcrowding in the correctional system forced the program to become a release valve, a means to control numbers."

Apparently, Connecticut has tried a system of "just desserts" and 10 years later, has found it not to its taste.

In Florida, prison overcrowding is an immense and continuing problem. In response to court orders, Florida has instituted a system of controlled release different from parole and instituted when overcrowding occurs. Significantly, this Control Release Program is operated, not by the Department of Corrections, but by the Florida Parole Commission. Certain classes of sentenced offenders are not eligible to participate, each offender eligible for participation is individually considered, victim participation is encouraged and all victim information is confidential. Florida has responded to the problem of prison overcrowding by maintaining the integrity and independence of the parole authority. The decision for early release is made by the Parole Commission. The weighing of any increased

programming that we know to be not nearly enough in number or content. The Department may make additonal programming available, but it is not required to do so. The Department has full discretion to determine inmate eligibility as well as the size, type and number of programs available at any given institution. We must assume that the same discretion also applies to programs in the community. In fact, language specifically includes a section headed "Participation not guaranteed." (Section 901 (b))

These provisions do not give us great confidence that an increased emphasis on treatment programs will result. If the experience of other states is any guide, prison populations will not be reduced. Operational and security costs will absorb any funds for treatment. The first and last correctional dollar will be spent on housing, operations and security at the expense of treatment.

Theoretically then, although the need for treatment may be recognized for individual offenders while incarcerated, if such treatment is not available, they will still be paroled at minimum. Although the need for community treatment upon parole may be known, programs may not be available.

With a lack of institutional treatment programs and no clear commitment to community programs, the number of parole violations will certainly increase. Again, the experience of other states is helpful. In 1978, California was one of the first states to implement the "just desserts" model. According to the California Blue Ribbon Commission Report on Inmate Population Management issued in January 1990, the number of parole violators increased dramatically after implementation of the "just desserts" model. In 1978, there were 1,011 parole violators. By 1988,