

Pennsylvania Senate Cost Study Commission

Testimony by: Secretary Jeffrey A. Beard, Ph.D.

Pennsylvania Department of Corrections

May 3, 2010

Introduction and Background

Good Morning Senator Argall and members of the Senate Government Management and Cost Study Commission. Thank you for inviting me to testify today. My presentation will focus on the growing inmate population and the casual factors behind this increase. I will also provide some recommendations which can begin to help control this growth while also improving public safety.

First, it is instructive to look at the forty year period from 1940 through 1980 (see chart 1). During this time, the number of incarcerated individuals committed to the Commonwealth's care remained relatively stable, averaging between 5,000 and 8,000 inmates. However, since that time, over the next 30 years the state inmate population began a steady climb, increasing from 8,243 inmates in 1980 to the current population of 51,322 (see chart 2). The cost to operate our prison system has increased more dramatically during this time period from \$94 million in 1980 to what will likely be \$1.9 billion for the 2010/2011 fiscal year.

The increase in the Pennsylvania prison population and its cost is reflective of the ongoing "war on drugs" and concern over violent crime that began in the late 1970's and has resulted in the incarceration of more offenders for lengthier periods of time irrespective of the crime. This "get tough on crime" ideology has driven the growth of our prison population and over the years this ideology has been reinforced with tragic but isolated events. The public response to these events has sent a powerful message to our elected officials. That message is, "if you appear soft on crime, you will lose elections and unfortunately for many, soft on crime is anything that does not result in longer, harsher sentences.

The more recent sudden increase in the inmate population in late 2008 was caused by two very high profile cases when inmates who were granted parole were involved in the murders of Philadelphia police officers. As with previous high profile cases/incidents, (i.e. Willie Horton in 1998, Reginald McFadden in 1994 and "Mudman" Simon in 1995), the public demanded answers and assurances that they were being properly protected.

To ensure proper protocol was being followed and that the offenders were not being inappropriately released, a parole moratorium was issued which lasted from September 30, 2008 through December 2, 2008. That moratorium resulted in a rapid increase in the number of incarcerated individuals.

It was originally believed that the large growth spurt caused by the moratorium would be flushed from the system within six (6) months. However, a rapidly falling parole rate (from 62% to 37.5%) in response to all of the negative attention prevented this

from occurring. The parole rate has rebounded but has not yet reached the levels achieved prior to the issuance of the parole moratorium. The prison system remains about 2000 inmates beyond maximum capacity. We have placed over 500 inmates in county jails and 2100 inmates in out of state placement to deal with this significant overcrowding and to maintain safe and secure prisons.

This is, indeed, unfortunate because prior to these incidents, in mid 2008, we were projecting a flattening of growth (due to legislative and other initiatives) by 2013. We were also projecting that at that time, upon completion of three (3) new prisons, the system would be at operational capacity which has always been our goal (see large chart). However, after the first police officer was killed, our fall 2008 projections reflected an upward trend putting us closer to maximum capacity by 2013. This occurred due to changing parole practices. At that time, we developed strategies (additional modular housing, county placement, re-entry centers) to deal with capacity gaps which would occur from 2010 until our new facilities were constructed.

The second murder of a Philadelphia police officer ultimately resulted in the moratorium and brought further significant change in the parole rate. This event rapidly took us over maximum capacity and created a significant capacity gap (2,000 and growing) which will exist until completion of construction of our new facilities in 2012-2013. If no change occurs, this gap will continue, and even grow larger despite our best efforts to provide for more bed space because of the continued growth of the inmate population. Thus, out of state placement, which has always been our last resort, has become a reality. Even more significant to this short term problem is the fact that after spending over \$800 million to construct 8,000 beds by 2013, current projections would have our inmate population remaining at maximum capacity.

Over the past decade little more than 2% of the increase in admission to our prison system is attributed to Part I or violent offenders; while 55% of the growth is attributed to the admission of the less serious Part II offenders. Adding to the phenomenal growth is the fact that over 3,500 of the inmates we receive each year, have less than a year to serve on their minimum sentence. The average time to minimum for these inmates is eight (8) months, which does not give us time to enter these inmates in to programming prior to their parole review. As a result, they serve an average of 143% of their minimum sentence and they take up considerable resources in our over burdened prison system.

As a direct result of these factors, an ever increasing portion of the costly prison bed space is used for those offenders that are categorized as Part II offenders (those convicted primarily of property and drug crimes). Heavy reliance on incarceration for these less serious offenders has proven to have limited value in maintaining public safety. These "less serious" offenders have the highest recidivism rate. In a recent study conducted by the office of Planning, Research, Statistics and Grants; it was determined that Part II offenders represent the highest number of parole violators, (property crime offenders represent 26.7% of the violators and drug offenders represent 37.7% of the violators). Confinement creates new problems for the offender upon his/her re-entry into the community. There is the stigma of incarceration. The community rejects them and it

becomes harder to obtain family sustaining jobs and appropriate housing. Often times family ties are severed and broken.

The cost to operate our prison system has increased more dramatically during this time period. The cost has escalated from \$94 million in 1980 to what will likely be \$1.9 billion for the 2010/2011 fiscal year. The most significant portion (71%) of the Department of Corrections operating budget is spent on maintaining the level of staff required to safely and securely confine the state inmate population. Any reduction in personnel without a proportionate reduction in the inmate population would threaten institutional security and public safety. Therefore, success in significantly reducing the cost of operating the state prison system cannot be achieved without a reduction in the number of offenders incarcerated.

In order to cut prison cost we must find a better way to deal with those who commit less serious offenses. As we now know, “locking them up and throwing away the key” does not solve the underlying problem. Over 90% of those incarcerated will eventually return to the community. It is not the severity or duration of the sentence that is important rather it is the certainty that there will be consequences for their actions. To effect change we must address the criminogenic needs (substance abuse, education, vocation, thinking errors, etc.), which led to their involvement in the criminal justice system. Treating those needs, if done correctly, has proven to be effective in changing criminal thought and actions. Treatment provided in the community has been shown to be more effective than treatment in prison.

How can we address the cost related to the “get tough on crime” initiatives and not adversely affect public safety? First of all, we need to focus on front end diversion of less serious offenders. It only makes logical sense for many reasons to divert as many of the less serious offenders as possible from our prison system. Treatment courts, (drug, DUI, mental health, etc.), in operation since 1989, have been shown to be effective and less costly, and are one such option. In Pennsylvania, we are behind the curve in using this alternative. New York, a state with a falling inmate population, has widely used treatment courts for years.

Another option for front end diversion is Restrictive Intermediate Punishment (RIP). RIP is a program that pays counties for diverting offenders from jail or prison to drug treatment programs. Studies have shown RIP to be effective and less costly in the long run; however, this program has never been fully funded.

Another alternative to consider would be to create another funding stream and reimburse counties on a formula basis for diverting offenders from state prison to treatment programs. This kind of program, which would be self-supporting once it reached 1,000 inmates, may be particularly attractive to judges when they will soon be required to send all state sentenced inmates to state prisons. This would allow the judges to divert some of these offenders into treatment programs instead of sending them to prison.

Once the individual enters the correctional system, we can use back end diversion. Pennsylvania's paroling agency has been re-evaluating their "technical parole violation" policy. Technical parole violators (TVs) are parolees who are returned to prison for violating a specific condition of their parole (TPVs) accounted for approximately 3,000 offenders in 2008). Technical violators are not incarcerated for a new criminal offense but for such infractions as breaking a curfew or failing to report to their assigned parole agent. TPVs spend an average of 14 months in prison. Their lengthy incarceration provides no real affect on recidivism over those diverted for shorter time period. Alternatives to re-incarcerating technical parole violators could free up a considerable number of institutional beds, which are needed for more serious offenders.

Alternatives to lengthy incarceration have recently been implemented with the help of our state legislature. One of those alternatives is the State Intermediate Punishment (SIP) legislation which took effect in May 2005. This program continues to grow, freeing up beds for more violent offenders. The recent prison reform legislation is also helping to mitigate population growth by allowing for SIP re-sentencing. SIP participants who serve an average of approximately 30 fewer months in prison participate in a high quality drug treatment program. The program is based upon programs that have demonstrated a 20 to 40% reduction in recidivism. Initial results have exceeded expectations by showing an almost 50% reduction in re-arrest rates. While the SIP program is doing what it is supposed to do, currently only about 20% of those eligible receive approval to participate in the SIP program.

Another program approved as part of the prison reform package is the Recidivism Risk Reduction Incentive (RRRI). The RRRI program allows eligible non-violent offender to receive a reduction of their minimum sentence by completing all recommended programs and maintaining positive adjustment. This helps to encourage inmates to receive and complete the treatment they need to address the criminogenic factors that lead to their incarceration in the first place. While it is still too early to provide definite outcome information in Pennsylvania, similar programs in other states have shown to reduce recidivism.

These are proven strategies that have been implemented in different ways in other states. These approaches make sense, given the results. The primary outcome is improved public safety through reduced recidivism and crime. The secondary benefit is reduced cost by allowing us to target resources for more serious cases and use valuable prison beds for offenders who pose the greatest risk to public safety. These initiatives provide a good foundation to begin reversing the trend of ever increasing bed space need and spiraling cost associated with incarceration.

The problem with both SIP and RRRI is that the eligibility criteria limit's some offenders who could benefit from participation in these programs. We should look closely at the criteria for both and consider changes that would expand the eligible pool.

We also need to give the judges broader discretion to decide who receive SIP. In that regard, the administration of a risk assessment instrument prior to sentencing less

serious offenders should be considered. An effective risk assessment instrument can be used to determine the likelihood that an offender will commit additional offenses in the future. This would provide the judge with important information to help determine appropriate placement.

There are some very specific things we can do in Pennsylvania to improve public safety while at the same time controlling the growth of our prison system. First, we must focus on the issues that are driving the growth in incarceration rates. As previously noted, it is the growing number of less serious property and drug offenders who are being sent to our prison, many of these offenders have a short time to serve (3,500 in 2008) and the technical parole violators (3,000 in 2008).

We must stop treating all offenders the same and move away from the “get tough on crime” philosophy of locking up less serious offenders for longer periods of time. We know that many of these offenders need treatment and that treatment if done correctly, can effectively reduce recidivism. As previously mentioned, it is not the duration of punishment that is important but the certainty of that punishment.

Another factor that has driven the growth of our prison system is the tendency to focus on placing blame and overreacting to isolated events. While the rhetoric may sound good in the news, this often makes for bad public policy. We need to shift our focus to the issue at hand and look for solutions that will address the specific issue of inmate population reduction.

In this regard, we need to build in steps that will prevent major changes in operations over short periods of time that have the possibility of drastically impacting our prison population. One or two isolated events do not necessarily mean that everything we have done up to that point has been done wrong. The events previously mentioned (the Mudman Simon case and the murders of the Philadelphia police officers), while truly tragic are good examples of the drastic impact these changes can have on our system. In both cases, there was a substantial adverse impact on the parole rate that affected all parole releases. We need to have controls in place so that the isolated event(s) do not drive sudden change; rather cause us to thoughtfully and in a transparent manner look at what we are doing and make changes, if needed.

There are a number of specific things that can be done today that will help to slow the growth of our prison population without adversely affecting public safety; some of which can be done with no financial outlay.

Recommendations for consideration:

I would now like to outline some recommended changes that I believe will help maintain the safety of our communities while helping to curtail some of the cost associated with incarcerating those offenders sentenced by the courts. First, I will address those changes which could be implemented but would not result in additional cost to the budget. The second group of proposed changes could provide further

reduction in the prison population but would require some initial cost to implement. I will also include projected bed savings for applicable changes. The projected bed savings will include projections extending out three years. As the bed savings are realized over the course of the three year evaluation period we should be able to bring back all of the inmates transferred to other states and those transferred to the county facilities by the end of the second year. By the third year we can factor in savings that are realized as a result of closing some State Correctional Institutions which are not cost efficient to operate.

A. Proposed changes that would not require cost to implement:

1. For RRRI – Require a RRRI sentence even if eligible for a mandatory minimum if the offender otherwise meets the eligibility criteria. (Recommended by the sentencing commission). This plan is projected to increase RRRI cases from 83% to 95% of those eligible to participate. The projections for beds saved as a result of this change are 28 beds in Year 1; 44 beds in Year 2; and 46 beds in year 3.
2. For SIP – Remove the requirement for a motion from the prosecutor and agreement of the defendant for referral to SIP. Also, remove the requirement for the agreement of both the prosecutor and the defendant for the commitment of an eligible offender. This will allow the judge to determine SIP placement, (this is currently the case with the Boot Camp referrals and was also recommended by the sentencing commission). This plan is projected to increase SIP cases form 20% to 40% of those eligible. The projections for beds saved as a result of this change are 129 beds in Year 1; 645 beds in Year 2; and 1,161 beds in year 3.
3. Pre-release (Short Minimum) – Allow the Department of Corrections to place certain short minimum cases (those received with 18 or less months to serve) into pre-release beds prior to serving nine (9) months in a state correctional institution, (which is the current requirement). All of the other pre-release procedures, including the notification of the Judge, District Attorney and the Office of the Victim Advocate as well as the Judges ability to oppose and stop the process would remain in place. The projections for beds saved as a result of this change are 522 beds in Year 1; 522 beds in Year 2; and 522 beds in year 3.
4. Reduce technical parole violator- Divert all technical violators (those with no new charges) from prison, with exception for those who are serious absconder's, possess a deadly weapon, those with mental health/medical issues, sex offenders, arsonist or those who committed an assaultive act. All other parolees with technical violations should receive alternative sanctions up to placement in a secure community corrections center for up to 90 days. Any violator diverted to secure centers will receive programming in accordance with assessed needs. The projections for beds

saved as a result of this change are 831 beds in Year 1; 1,064 beds in Year 2; and 1,140 beds in year 3.

5. Parole eligible inmates on the date of their minimum expiration- All offenders except those who are serving a term of imprisonment for a crime of violence as defined in 42 Pa. C. S. § 9714 (relating to sentences for second and subsequent offenses) or for a crime requiring registration under 42 Pa. C. S. § 9795.1 (relating to registration), will be paroled on their minimum expiration date provided:
 - a. The inmate receives the Department of Corrections recommendation for parole which requires:
 - i. Participation in recommended programming to the extent that time and resources permit
 - ii. The inmate maintains a good adjustment record.
 - iii. The Department has no reason to believe that the inmate represents a serious threat to the safety of the community.
 - b. The Pennsylvania Board of Probation and Parole finds no reason to believe that the offender represents a serious threat to the community.

The release which is to occur on the minimum expiration date will be to an approved parole plan. If the offender is unable to obtain an approved plan in a timely fashion they would be released to a community corrections center provided resources exist for such placement. While in a community corrections center or on parole the offender would be required to participate in all recommended programming. The projections for beds saved as a result of this change are 958 beds in Year 1; 1,357 beds in Year 2; and 1,436 beds in year 3.

6. Review the eligibility criteria and consider removing certain ineligible offenses for the following programs: County Intermediate Punishment (CIP); Boot Camp; RRRI and SIP. (Recommended by the sentencing commission).

B. Proposed changes that will incur additional costs at inception:

1. Expand funding for Restrictive Intermediate Punishment (RIP) – RIP has never been fully funded and as subsequently the maximum potential for diversion has never been realized. To fully realize the potential of this program we would need 2 to 3 times the current funding allocated for this program

2. Diversion of state sentenced inmates – Use a formula to divert state sentenced inmates that require treatment. While initial start up money will be needed to establish community based treatment facilities, after 1,000 state sentence inmates are diverted, funding could come directly from the Department of Corrections budget as diversion to treatment is less costly than assigning the offender to a prison bed.
3. Treatment Courts – Provide funding for the implementation of treatment courts. While Pennsylvania is finally starting to ramp up drug, DUI, and mental health treatment courts, additional funding would expedite the process and help control the prison population by diverting eligible offenders to a less costly proven and effective treatment program.
4. Ensure funding for the Sentencing Commission to rapidly develop parole and recommit guidelines. The guidelines should reduce the wide swings in the parole/recommit rates which can and have dramatically affected prison population. This will make it more likely that we thoughtfully review the issue at hand, and in an open, transparent manner, decide upon appropriate solutions.
5. Implement a risk assessment instrument for use prior to sentencing to help inform appropriate placement. We know that low risk offenders require little or no intervention. This would allow us to focus our limited resources on moderate/high risk offenders.

C. Proposed three (3) year plan of action:

Since the Commonwealth faces serious financial problems over the next 2 to 3 years it is proposed that any initial changes focus on those things that will require no cost to implement, (those proposals noted in section A). If the Commonwealth's financial situation improves, and if substantial savings are realized, eventually a part of the savings should be re-invested in those items which are noted in section B. The only exception is recommendation B4 relative to the sentencing commission, which should be provided for as soon as possible.

This proposal will focus on the first five (5) items noted in section A. Together these five changes would result in a savings of 2,467 beds in year 1; 3,631 beds in year 2; and 4,305 beds in year 3.

When these bed savings are applied to the projected inmate population growth over the next 3 years it would result in a net reduction of 967 inmates at the end of year 1; 2134 inmates at the end of year 2; and 2805 inmates at the end of year 3.

This shift in the inmate population from one that is growing substantially each year to one that is contracting will result in a substantial savings/cost avoidance over time. Year 1 (2010/11 FY) savings would be \$9.6 million; year 2 (2011/12 FY) savings would be \$49.5 million; and year 3 (2012/13) savings would be \$65.5 million. This represents a 3 year savings of \$124.6 million.

The year 1 savings of \$9.6 million, less any monies needed for increased parole agents, is not that significant for two reasons. First, as with any new program things tend to move slowly at first as it takes time to get everything in place. You also do not realize the savings for the saved beds for a full year. However, once you get to the second year things are well under way and you start the second year with the first year savings as the base.

Second, it takes 1,000 or more inmates before you can realize anything more than the fractional daily rate of \$14 per day. This rate is the savings realized if you take one inmate out of the system. Once you reach 1,000 or more inmates then you can start bringing inmates back from out of state placement. Savings start to increase more quickly.

In the second year we can bring all 2100 out of state and 560 county inmates back to our institutions, which results in a savings of \$49,514,000 less any monies required for increased parole agents.

In the third year we can begin closing older prisons which are not cost efficient. This will result in a savings of \$65,515,000 less any monies required for increased parole agents.

The three year savings would be \$124,661,000 and if an estimated \$14,620,000 is diverted to parole for more agents, the Commonwealth would realize a savings of \$110,041,000. If administrative parole was more widely used with low risk offenders, less agents would be required and greater savings realized.

Conclusion:

I remain confident that the proposals presented here are the most fiscally responsible suggestions for reducing cost while maintaining the safety of our communities. The Department of Corrections will continue to partner with the Pennsylvania Board of Probation and Parole to enhance offender management strategies that strive to relieve crowded conditions without compromising public safety. We will continue to maximize diversionary options, improve offender processing efficiencies and employ proven strategies for reducing recidivism.

I can assure you that the Department of Corrections has been and will continue to be a responsible steward of taxpayer dollars. Our agency continually looks for ways to better manage resources. Committees continue to meet regularly at each facility, as well

as in our Central Office to examine the cost effectiveness of Department of Corrections operations and to make recommendations for improving efficiency and saving money. Quarterly submissions from these committees have resulted in a number of changes including complement redeployment, contract cancellations and renegotiations resulting in more than \$55 million in annual savings. One of the examples of the good stewardship in the Department of Corrections is the effort our institution's put forth everyday in recycling materials and composting food waste. As a direct result of those efforts 57 million pounds of trash are recycled every three (3) months, saving \$163,000 in trash disposal cost each year. Another example is SCI-Laurel Highlands' joint venture with the Somerset County Commissioners to develop a cogeneration plant. The plant will burn methane gas from the nearby Mostoller Landfill, providing heat and air conditioning for the institution. Savings to the institution in electric costs, including any sales back to the grid could reach \$2 million dollars per year.

While we are in challenging economic times, the safety of our communities must remain a priority as we move forward. As an agency that works hard daily to remain cost-efficient, the initiatives presented here today will simply provide the Department of Corrections with the basic, vital tools required to safely manage population growth while increasing the prevention of repeat offenses following release.