

**Criminal Justice Oversight Committee
Minutes of the September 13, 2007 Meeting**

Chairman's Welcome

A meeting of the Criminal Justice Oversight Committee (CJOC) was held on this date at the RI Department of Corrections, 40 Howard Avenue, Cranston, RI. The meeting was called to order by Chairman Jackvony at 8:47 AM. The committee agreed to hold all future meetings at the Department of Corrections.

Attendance

Bernard A. Jackvony, Esq., Chair
Director A.T. Wall, RIDOC
Presiding Justice Joseph Rodgers, Superior Court
Colonel Brendan Doherty, RISP
Public Defender John Hardiman
Lisa Holley, DOC, RI Parole Board
Chris Long, Governor's Policy Office representing Jake McGuigan
Erin Boyar, RIDOC
Thomas Mongeau, RIJC
Kathleen Loiselle, RIJC

Approval of June 12, 2007 Minutes

There being no changes, Lisa Holley made a motion:

**TO ACCEPT THE MINUTES OF THE JUNE 12, 2007
MEETING AS SUBMITTED.**

The motion was seconded by Judge Rodgers and was unanimously passed.

Report on Alvin Bronstein's Visit to RI

Director Wall stated that when the CJOC last met it was with a sense of concern about whether or not action was needed by the committee to reduce the prison population. He added that legislative options were introduced to provide strategic reform that would be consistent with public safety. Director Wall thanked Judge Rodgers, Public Defender Hardiman and Lisa Holley as well as DOC staff for participating in that process. He noted that the legislative package was pending when the CJOC last met. The package included the following components: 1) To standardize the earned time formulas so as not to favor prisoners serving long sentences; 2) realigning the program time. Director Wall stated that the Senate passed the legislative package and passed it along to the House, but it did not pass. This legislative package with the same options will most likely be reintroduced at the next legislative session.

Director Wall went on to say that Alvin Bronstein the attorney from the Palmigiano case recently came to Rhode Island to review the prison system. Director Wall noted that it was Mr. Bronstein who entered into the Palmigiano agreement and he thought it was important that he look at the current prison population. Per the original agreement 50% of the population could be double bunked. DOC sought to increase that figure to double bunking 75% of the population. Director Wall distributed a Providence Journal article in which Mr. Bronstein's visit was summarized. He noted that Mr. Bronstein had positive, complimentary remarks regarding RI's prison system wherein previously he had been a critic. Director Wall noted that because the prison is running so well, Mr. Bronstein is in agreement to increase the capacity to double bunk 75%. The agreement to increase the capacity was entered into on August 1, 2007. At peak periods there has not been enough bed space and committed inmates and they have been housed on the floor of the Intake Center sometimes up to 60 inmates per night. The original agreement contains language that the DOC cannot hold inmates in areas that are not designated as bed space. In terms of expansion of bed space, Director Wall noted that this will allow the DOC to move inmates out of the Intake Center freeing up space and not having inmates sleep on mattresses any longer. Director Wall noted that DOC gained 146 beds at Medium Moran where most inmates are housed and 10 beds at the High Security Center. He advised that use of High Security has changed over time, whereas now inmates housed in High Security are not just those classified as Maximum Security. This gives the DOC more flexibility in housing. Director Wall stated that DOC will be opening a specialized unit for mentally ill inmates in High Security and he acknowledged that 17 year olds are also housed at High Security. Additionally, DOC staff found more beds at Maximum Security and at the women's prison.

Director Wall, Mr. Bronstein and the Governor met to discuss this new agreement which represents a short-term fix intended to give the state some breathing room. Both Director Wall and Mr. Bronstein advised the Governor that the legislation should be re-introduced at the next session and Mr. Bronstein indicated he will be watching to see what happens with the legislation. Director Wall noted that the agreement will help Rhode Island now but not in the long term. He added that if legislation is not passed, the work of the CJOC will become very important.

Colonel Doherty inquired if the 17 year olds currently housed in High Security cohabitate with the general population. He also asked if the 17 years old were in the yard with High Security inmates.

Director Wall responded that they are combined in a small protective custody module in a pod within a module arrangement. He noted that sometimes 17 year olds are in the yard with High Security inmates but with additional staff to manage them.

Judge Rodgers inquired how many 17 year olds were incarcerated with High Security inmates.

Erin Boyar responded that currently there are 8 juveniles under the age of 18 in High Security.

Public Defender John Hardiman inquired if the 17 year olds enjoy some of the same liberties that they would have enjoyed at the Intake Facility.

Director Wall stated that DOC runs High Security as a collection of small institutions with different rules for the 17 year olds than regular High Security inmates. The both have the same visiting privileges. Director Wall noted that the Senate HEW Committee has been holding hearings on the decision to hold 17 year olds at the ACI.

Public Defender Hardiman noted that they do not invite the major stake holders to attend the meetings.

Judge Rodgers acknowledged that the Judiciary or those in the Courts had not been invited.

Director Wall stated that he can advise how the 17 year olds are managed, but he cannot speak to public policy. He added that he hopes another meeting will be scheduled to allow the Attorney General and Courts to provide their input.

Population Update

Erin Boyar distributed a packet of information and provided a population update as of September 2007. She advised that the average total population has increased fiscal year upon fiscal year. Ms. Boyar noted that there was an 8% increase from FY06 to FY07. She pointed out that FY07 showed a sharp increase and FY 08 is showing a steady increase into the 3800's with September already averaging over 3900 inmates. On September 9, 2007 a new all time high was reached with 3,969 offenders in custody. An all time high number has already been reached 12 times over the past year. There sentence population has seen a huge increase of 11.2% or 320 inmates from July 06 to August 07. The pre-trial population decreased by 16.35% or -144 inmates from July 06 to August 07. Ms. Boyar commented that commitments from FY97 – 2008 went from 16,000 to 17,000 inmates. From FY97 to FY07 there was an overall increase in commitments of 24.6%. It is projected that there will be 19,000 commitments for 2008.

Ms. Boyar advised that if more people are committed than released the population goes up. With respect to the awaiting trial commitments and releases, Ms. Boyar noted that most of the time the releases exceed the commitments thus the pre-trial population has decreased. She stated that other possible contributors to the population increase include an increase in violent and sex offenders, an increase in drug law violators, and a minimal increase in the length of sentences received. Probation violators account for 41% of the sentenced population and 17% of awaiting trial admissions and that has not changed year after year.

Ms. Boyar pointed out that due to the new Federal Court stipulation agreement to increase the RIDOC Federal Court Ordered prison capacity; there has been an increase in

bed space in High Security, Maximum Security, Medium Moran, and Women's GM facilities.

Director Wall advised that it takes awhile to install new beds; the beds actually have to be built. Inmates are being moved into Medium Moran at about 8 per week. As inmates are moved in, the population at the Intake Center should see some relief.

Ms. Boyar went on to say that the Intake Service Center North exceed federal capacity three times in July 2007. Intake Service Center South exceeded federal capacity 2 days during June, 9 days during July and 8 days during August.

The total Intake Service Center population exceeded Federal Court ordered capacity on various days during June, July & August. At no time during this period did the total Intake Service Center population exceed 100% for 5 consecutive days. The RIDOC total population exceeded 95% of federal capacity once during the month of June and 10 days in July. The RIDOC total population reached a new all time high of 3969 on September 9, 2007. The RIDOC's average total population for the month of August was 3906.

With respect to where RIDOC is now, Ms. Boyar stated that the population has continued to stay at high levels since the end of FY06 and beginning of FY07. Ms. Boyar stated that there are no indications of the population dropping. In fact, DOC has contracted with a Washington agency, JFA Associates, who projects an average population for FY08 at 4,013. At this rate, DOC would exceed federal capacity by 2011. Ms. Boyar pointed out that the CJOC is concerned with 95% capacity which DOC could reach this figure by next winter in FY09 or earlier.

Judge Rodgers asked if the Washington consultant factored in the recent legislative change to accept 17 year olds into the prison system.

Ms. Boyar responded that if the numbers increased it would be factored into next year's projections. Ms. Boyar stated that normal patterns will be checked for FY09 projections and then reviewed to see what happened after the legislative change.

Public Defender Hardiman stated that he had received a number of calls and letters from inmates complaining about the overcrowding situation and conditions in High Security. He noted that we are not far from overcrowding becoming a real problem. Mr. Hardiman stated that at some point the CJOC must do more than evaluate data. He added that legislation may never be adopted and the CJOC must do more to address this situation.

Lisa Holley pointed out that 2009 is not that far away and DOC could be in dire conditions by that time. She agreed that the CJOC is not in a position to just sit and wait. She suggested that the committee begin again with the commitment that was made at the last meeting and use the next few months to make the same point that we made before the last legislative session ended. The CJOC needs to make clear that it supports some of the measure that will reduce the prison population. Ms. Holley suggested that the committee needs to do some proactive work before the hearings begin in January. She noted that

the CJOC and the Justice Re-investment Committee have been meeting with respect to this issue. Ms. Holley stated that if the CJOC agrees that we should move forward, we need to move forward before January.

Conclusions

Director Wall suggested that there is an overlap between the CJOC and the working group. He noted that a consensus had been reached by both groups because of the nature of the prison's problems. Director Wall agreed that it would be helpful if the CJOC were to continue to take the kind of position that it took last spring but do so at an earlier point in time. He commented that another CJOC meeting should be scheduled for December. He stated that at that time it could be discussed how to approach the legislative branch. Director Wall stated that the working group reconvenes at that time as well.

Lisa Holley suggested holding a combined meeting with both groups.

Chairman Jackvony stated that at some point we need to take our message to them and gaining the support of the Governor as well. He stated a few concerns: 1) Is there a need soon for another facility; 2) What's happening with respect to finding alternative facilities closer to where the prisoners live; 3) What's the safety factor to inmates. Additionally, Mr. Jackvony asked how many times the capacity will be increased. He noted that there are not many alternatives and while Mr. Bronstein is fine with increasing the capacity right now eventually he may recommend that we go back to court.

Public Defender Hardiman commented that the working group needs to be more organized.

Director Wall pointed out that all it will take is one case to make the potential situation real. He added that he is hoping that legislation can be passed at an earlier point in time.

Public Defender Hardiman inquired if the Governor was in agreement.

Director Wall responded that the Governor is in agreement and if we get the consensus of both committees we can move forward.

Colonel Doherty inquired how many inmates would have been affected if the legislation change had passed.

Director Wall and Erin Boyar answered that about 300 inmates would have been affected if the legislation had passed.

Chairman Jackvony noted that the largest contributors to the population increase occurred with Violent and Sexual Offenders, and Drug Violators constituting about 500 inmates who will serve a longer sentence. He asked if there were going to be housing issues involved with longer sentencing.

Director Wall agreed that this is a real concern.

The Chairman stated that the CJOC needs to work with the Governor's office and bring this issue to the legislature at the beginning of the session.

Colonel Doherty inquired if Senator Montalbano and Speaker Murphy had seen this presentation.

Director Wall stated that he does not think they have seen a presentation. He added that both Senator Montalbano and Senator Paiva Weed endorse these legislative changes and approve a structural change. Director Wall commented that Speaker Murphy has been supportive in the process, but neither he nor the Majority Leader were directly involved. He added that they were not opposed, but staff had more involvement than the leadership.

Judge Rodgers stated that he did not believe that Speaker Murphy is key to this issue. He suggested that the Representative Costantino, Chairman of the Finance Committee, and Representative Lally, Chairman of the House Judiciary may have more time to give than Speaker Murphy.

Director Wall stated that he did approach the Majority Leader as well as the Chairman of the Finance Committee and they directed him toward their staff. He said that it could be because they were busy with the session coming to an end. Director Wall stated that a more direct approach to them is needed.

Judge Rodgers suggested that the opening wedge could be that everyone is concerned about the consequences of housing 17 year olds at the prison.

Lisa Holley advised that she met previously with Rep. Costantino and Bill Guglietta regarding parolees. She indicated that the Governor's office whole-heartedly supports this legislation.

Chairman Jackvony inquired if another letter should be sent.

Public Defender Hardiman asked if another meeting could be arranged before the CJOC's next scheduled meeting and invite these legislators as our guest as opposed to sending another letter.

Chairman Jackvony inquired if they had ever been to a CJOC meeting.

Director Wall answered no.

Public Defender Hardiman asked if the Governor should also be invited.

Director Wall responded that the Governor is thoroughly invested in this process.

Chairman Jackvony stated that the CJOC has an obligation to keep them informed. We would like to see a letter drafted to invite them to another upcoming scheduled meeting. The letter should be sent to the Governor and Senate President with ccs to others invested in this process.

Director Wall asked if the letter should be sent to the Majority Leaders and Finance and Judiciary Chairs as well.

Judge Rodgers stated that the letter should be send to those who have more of an interest such as Senator Paiva Weed and Chairman Costantino as opposed to leaders of the House and Senate.

In response to a question from Public Defender Hardiman, Erin Boyar noted the projected population figure is a conservative one.

Judge Rodgers stated that the letter should be sent sooner rather than later.

Director Wall stated that the DOC will draft a letter for the Chairman's consideration. He added that he is appreciative of the strategy that has been suggested. Director Wall commented that he worries everyday about the rising population. He added that currently DOC has a record that is the envy of every state in the nation because we have had neither prison homicides nor escapes in years. Additionally, with 20,000 commitments a year there have been only 2 suicides. However, it is now becoming difficult for inmates and staff with overcrowding conditions. Director Wall stated that he would not want to see a fiscal crisis that develops into an operational crisis.

Colonel Doherty inquired if data is available that would show what types of inmates would be released if the legislation were passed. He asked if Sex Offenders would be released.

Director Wall stated that the effect of the standardization would be that some Sex Offenders would receive more good time.

Colonel Doherty inquired if 300 inmates were released would 200 of them be Sex Offenders. That kind of data would be helpful.

After a further discussion, Director Wall inquired if data regarding Sex Offenders could be obtained.

Erin Boyar stated that it could be gathered but it would take some time to get the data together.

Chairman Jackvony pointed out that legislators could ask this question as well.

Judge Rodgers agreed that this would be good information to have to ward off potential criticism.

Ms. Boyar stated that she was uncertain how long it would take to gather this data but she would look into it.

The Chairman asked if the letter should be drafted before data is available.

Public Defender Hardiman asked if this would be discussed at budget hearings. He suggested that Erin Boyar's presentation be given at the next meeting at which time there could be a discussion of status of options, i.e. earned time.

Chairman Jackvony stated that with the CJOC's permission he would call and speak with the Governor and Senate President regarding this issue as well as send a letter.

Following this discussion, Lisa Holley made a motion:

**THAT THE CJOC ACCEPT THE AUGUST 1, 2007
AGREEMENT REGARDING A NEW PALMIGANO
CAPACITY TOTALING 4,265 AT THE DEPARTMENT OF
CORRECTIONS.**

The motion was seconded by Director Wall and passed with one vote cast in the negative by the Public Defender.

Schedule of Future Meetings

The next meeting was scheduled for Tuesday, November 20, 2007 or sooner.

Adjourn

There being no other business to discuss, the meeting was adjourned at 10:15 AM.

Respectfully submitted,

Kathleen M. Loiselle
Recording Secretary

Approved:

Thomas H. Mongeau
RIJC Executive Director