

**Criminal Justice Oversight Committee
Working Group
Minutes of the December 19, 2007 Meeting
State Room
State House**

Chairman's Welcome

Chairman Jackvony welcomed everyone and opened the meeting at 3:07 PM. Introductions were made.

Attendance

Those attending the meeting included Governor Donald Carcieri; CJOC Chairman Bernard Jackvony; DOC Director A.T. Wall; Presiding Justice Joseph Rodgers, Superior Court; Colonel Brendan Doherty, RISP; Senator Charles Levesque; Rick Corley, RI Senate Legal Counsel; Rep. J. Patrick O'Neill; Kerry King, Esq, Governor's Legal Counsel; Chief Judge Albert DeRobbio, District Court; Magistrate Joseph Ippolito, District Court; Patrick Burke, Speaker's Office; Alan Goulart representing Attorney General Lynch; Public Defender John Hardiman; Joseph Baxter, Supreme Court; Stephen King, Supreme Court; Tim Costa, Governor's Policy Office; Christopher Long, Governor's Policy Office; Peg Langhammer, Day One; Lisa Holley, RI Parole Board; Erin Boyar, DOC; Richard Frechette, DOC; Thomas Mongeau, RIJC, Kathleen Loiselle RIJC.

Chairman Jackvony advised that the purpose of today's meeting is to discuss options relating to reducing the state's inmate population. He added that the Governor and legislators are interested in helping to pass legislation which will help in this regard. Chairman Jackvony stated that today's meeting is the beginning of that process.

Governor Carcieri thanked everyone for their participation and for their work on the Criminal Justice Oversight Committee (CJOC). He noted that the population at the DOC has continued to rise. The Governor advised that a working group had been put together last spring to discuss the overcrowding and received input related to earned "good time." He noted that the working group developed legislation which was introduced to the General Assembly. The Governor pointed out that the legislation passed the Senate but stalled in the House. He indicated that perhaps it was introduced too late in the session. Governor Carcieri stated that DOC's budget keeps rising, and there is still a need to submit "good time" legislation when the General Assembly convenes again.

The Governor referred to Attorney Alvin Bronstein, the Attorney from the Palmigiano case, helping the DOC by agreeing to double bunk 75% of the prison population at the Moran Medium Security facility. Per the original agreement only 50% of the population could be double bunked. The Governor noted that Attorney Bronstein's message was

clear that the overcrowding problem needs to be addressed. Based on this situation, the Governor stated that he sent a letter to Chairman Jackvony suggesting that a working committee be put together to work on this problem. The Governor pointed out that there is a sense of urgency to come up with solutions. He added that the sooner work begins on the problem to move forward and gain a consensus the better because the problem is not going away.

Governor Carcieri thanked Chairman Jackvony for bringing the working group together. He added that this proposed legislation will not solve the prison overcrowding problem, but it will provide groundwork for the future.

Population Update

Erin Boyar referred the group to a packet of information on the status of the inmate population as of December 19, 2007. She advised that the average monthly population for FY08 is higher than it was in FY07. Ms. Boyar stated that the population has decreased over the past couple of months which is usually the case at this time of year. She noted that the population's general trend is moving up. The DOC recorded a record number of 4,000 inmates on September 16, 2007. There has been a 2.5% decrease since October. Ms. Boyar noted that the prison population is driven up or down because of the number of commitments and the length of stay. With more inmates coming in than released the population is going up. Ms. Boyar pointed out that in November 2007 more inmates were released than were coming into the sentenced population resulting in a population decrease of 38 inmates. Also, the Pre-Trial population has gone down since September 2006 and currently the Pre-Trial population is in the low 600s.

Possible Contributors to the Population Increase

Ms. Boyar noted that possible contributors to the population increase relate to a larger number of violent and sex offenders in the prison population. These crimes generally carry higher prison sentences. Ms. Boyar also advised that there has been an increase in Drug Law Violators. Probation Violators also contribute to the population increase. With respect to the length of sentence received, Ms. Boyar stated that there have been only minimal increases from FY08 to FY07 for all offense groups combined.

Average Population vs. Federal Capacity

Ms. Boyar stated that DOC has had a little breathing room for December because of less Pre-Trial inmates coming in and also because the Bronstein agreement allowed for more beds. However, DOC still remains close to capacity and the Medium Moran facility is filling quickly. Ms. Boyar noted that JFA Associates projects that the DOC will reach federal capacity of 4265 by FY 2011. Ms. Boyar advised that the CJOC monitors the DOC and will need to take action when the population reaches 95% of federal capacity for thirty days running. She noted that the DOC's population is now averaging 3891 for FY08 and according to projections could reach capacity in FY09.

Chairman Jackvony commented that the Council of State Governments has made a commitment to help.

Discussion of Options for Reducing the Inmate Population

Richard Frechette stated that he is the DOC's Re-Entry Policy Coordinator and the contact person as it relates to correction options. He stated that today's meeting is a follow-up to a process that began last year but was perhaps too late for last year's legislative process. He referred to a previously distributed packet of information entitled *Options for Rhode Island Policymakers – 2008 Legislative Session*. Mr. Frechette pointed out that legislation would need to be passed before any of the options could be implemented. He noted that passage of legislation would help to reduce the prison population. He further noted that the reduction in population would have two financial impacts: reduction in food, linens, and other marginal costs; reduction in staffing costs when the collective bed reductions reached a critical mass i.e. allowed for closing of housing units. Mr. Frechette noted that the packet provided represents the best information currently available. He provided an overview of the following 4 different options all of which have legislative aspects to them:

Option 1

Standardize the amount of "earned time" available at 10 days for every 30 days served to encourage good behavior by all offenders sentenced to more than 1 month (the rate of earned time currently available to offenders serving 10 years or more in prison). Mr. Frechette explained that this option would also drop the eligibility threshold for earned time to 1 month instead of 6 months. He noted that this option is projected to decrease the average daily population by 112 in FY09 to 200 in FY10 and 288 in FY18. In order to address the community safety needs, this option would provide for the hiring of 3 Probation Officers and an additional Probation Aide, and would establish a "release triage" process. Mr. Frechette noted that other resources that would be required include a one-time expense of modifications to calculations in appropriate database programs (approximately \$150,000 in FY08).

Option 2

Create a "risk reduction program credit" for people who would who participate in and successfully complete treatment, job training, educational and other programs in prison that can reduce their risk to public safety: a 5 day credit for every month of participation in programs, and a 30 day credit upon successful completion of the program. A prerequisite offsetting cost would be an increase in inside rehabilitative programming (\$125,000 in FY08; \$500,000 in FY09).

Option 3

Mr. Frechette stated that Option 3 would simply take the changes in good behavior time calculation in option 1, and apply them retroactively to the date the each inmate first started serving on the sentence.

Option 4

Ensure that the parole decision-making process is both data-driven and science-based. Lisa Holley, Parole Board Chair, noted that the Parole Board has already been experimenting with the use of these tools; but that this revised decision making process does not align to the statute as currently written. Decisions are currently based on a low risk to re-offend in combination with a substance abuse matrix. She pointed out that it is better to parole a low risk offender to community substance abuse treatment rather than continue to house them in a cell. She added that the Parole Board is moving some of the population out based on this risk instrument. This instrument has been in place for one year and JFA has validated this risk tool to DOC's population. Ms Holley noted that although there had been some problems with the automation process it has been working for the last 3 months. The Board is paralleling this automation-assisted process with the Parole Board decisions based on the risk tool. There has been a rise in parole decisions from 28 to 32% as a result of this risk tool. Mr. Frechette stated that when it comes to parole decisions it is better to use a scientific tool rather than a gut decision. He explained that the risk tool was created for the DOC's population by Jim Austin from JFA Associates, which is considered to be premier organization in this area. Mr. Frechette noted that the risk tool can query an individual and provides an ability to look at an offender's criminal history.

Mr. Frechette pointed out that the preliminary net savings in FY09 based on all of the options together is \$1,567,323 with a cumulative effect to be seen over the next 4 to 5 years.

Discussion on the Options

Colonel Doherty inquired what percentage of those inmates that would be released early under would be violent and/or sexual predators.

Lisa Holley responded that, with respect to the current policy vs. the proposed policy, she does not think the numbers would be substantial

Alan Goulart commented that he took part in previous Working Group discussions. He noted that the group addressed the offenders with shorter sentences and least likely to offend.

Colonel Doherty stated that his concern is with the "Career Criminal" being released.

Public Defender Hardiman inquired about what exactly the numbers took into consideration.

Richard Frechette responded that he took into consideration JFA's inmate projections for the last few years.

Senator Levesque stated that if a judge wants to hold an offender for a period of time that should be his decision and this process needs the collaboration of all involved.

Peg Langhammer noted that offenders are not sentenced for much more than 5 years. She commented that it depends on who is incarcerated and their length of sentence. Ms. Langhammer added that we would not want sex offenders gaining more good time off their sentence.

Governor Carcieri stated that when he previously met with the last Working Group he understood that prisoners with longer sentences received more "good time." He inquired what the difference was with the new proposed options.

Rick Corley pointed out that previously that referred to additional program credit in addition to the earned good time. Mr. Corley inquired if the database shows for what reason the inmate was sentenced, and if it was possible to exclude sexual predators from the increased good time earning option.

Mr. Frechette answered that he would check with the Information Technology unit on that question. He believed that the database could pinpoint a sexual offender.

Director Wall asked if the database could discern those predators serving less than 10 years.

Mr. Frechette answered that he believed that information could be acquired. He noted that the "risk reduction program credit" would give 5 days credit for every month of participation in programs and a 30 day credit upon successful completion upon examination of a prisoner's educational background.

A question arose relative to there not being enough programs. Mr. Frechette noted that currently there are not enough programs, but noted that the DOC has the ability to increase Substance Abuse programs, Behavior Modification programs, etc. with additional funds.

Colonel Doherty inquired how many offenders are imprisoned for failure to pay fines.

Erin Boyar responded that with respect to failure to pay fines, the number of commitments a year is about 3 to 4%. She added that more individuals are in the Intake Facility for failure to appear at hearings to pay costly fines. Ms. Boyar stated that if those inmates who fail to appear to pay court fines were included the figure could be about 22%.

Responding to a question from Colonel Doherty, Ms. Boyar stated that the general recidivism rate is about 30% for 1 year.

Conclusions

Chairman Jackvony stated that with the Governor and legislative representatives present this meeting provides a good opportunity to put forth these observations, suggestions, and conclusions in order to make recommendations to put forth legislation at the beginning of the next legislative session.

Rick Corley stated his concern about housing 18 and 19 year olds and others at a facility that is outdated, highly labor intensive and focuses on a small population. He added that if this High Security facility could be closed there could be an opportunity for greater savings. Mr. Corley noted that this issue was discussed previously at the last working group meeting but the facility is still open and using taxpayer dollars to stay operational.

Director Wall responded that he agrees with Mr. Corley and the High Security Center is a small labor intensive facility. However, Director Wall pointed out that there is a need for this facility in DOC's system. He likened the situation to schools wherein some students must be segregated out of the classroom in order for the classroom to function. Director Wall noted that this facility represents a very small segment of the inmate population. He went on to say that if DOC reduces the population elsewhere in the system they may be able to retrofit another place to accommodate these inmates and operate in a more cost effective manner. Director Wall concluded that as long as there is a capacity to do this somewhere else in the system it may be possible to close High Security.

Rick Corley suggested that those convicted of white collar crimes could be held in a minimum security facility that would require less labor and personnel to supervise inmates. He added that this would save the state millions of dollars in the future and negate the need to build a new prison in the future.

Senator Levesque stated that provided the program is responsible he believed his colleagues can support passage of the legislation.

Representative O'Neill stated that he is comfortable with the proposals presented at the meeting. He added that as a prosecutor he looks at the length of sentence and not the actual crime.

Governor Carcieri pointed out that in some states where overcrowding exists prisoners are just turned loose into the community. He noted that this is not the case here in Rhode Island. Governor Carcieri stressed that these options have been well thought out. He emphasized that he is also concerned about releasing violent offenders into the community, but he is comfortable with these options and realizes that they have been considerably thought out.

Judge DeRobbio stated that he is unsure what affect the passage of legislation will have on the system. With respect to the subject of DOC facilities, Judge DeRobbio stated that a sub-committee of this group should be established to properly address this question.

Judge DeRobbio advised that years ago he projected that there would be 3,000-4,000 inmates housed at the DOC. He noted that this has now come to pass because of sentencing guidelines, public pressure, and length of sentences. Judge DeRobbio noted that legislation is subjected to these pressures because of public demands. He added that there should be a general consensus and the whole prison structure should be reviewed. Judge DeRobbio stated that the CJOC needs to look at this situation from a larger perspective.

Chairman Jackvony stated that the CJOC's working group is meeting not only to discuss "good time" legislation, but also because the options that were presented could have an impact in the near term. He added that perhaps other topics should be discussed in the future, but these options should be addressed now. Chairman Jackvony agreed that the larger picture for DOC should be focused on in the future.

Public Defender Hardiman stated that other states are passing similar legislation already. He stated that there must be data from other states that can be obtained and reviewed.

Governor Carcieri responded that the Council of State Governments reviews this type of information.

Schedule of Future Meetings

Chairman Jackvony scheduled the next meeting for January 10, 2008 at which time legislation will be developed to present to legislators. He indicated that a memo would be sent to the Working Group noting a meeting time and location.

There being no other business to discuss, the meeting was adjourned at 4:25 PM.

Respectfully submitted,

Kathleen M. Loiselle
Recording Secretary