Criminal Justice Oversight Committee
Working Group
Minutes of the January 10, 2008 Meeting
State Room
State House

Chairman's Welcome

Chairman Jackvony welcomed everyone and opened the meeting at 2:05 PM. Introductions were made.

Attendance

Those attending the meeting included Chairman Bernard Jackvony; Presiding Justice Joseph Rodgers, Superior Court; Director A.T. Wall, DOC; Colonel Brendan Doherty, RISP; Senator Charles Levesque, Senate; Rep. J. Patrick O'Neill, House; Kerry King, Esq., Governor's Legal Counsel; Magistrate Joseph Ippolito, District Court, representing Chief Judge DeRobbio; Alan Goulart representing Attorney General Lynch; Anthony Capraro representing Public Defender Hardiman; Stephen King, Supreme Court; Patrick Burke, Speaker's Office; Joseph Baxter, Supreme Court; Tim Costa, Governor's Policy Office; Christopher Long, Governor's Policy Office; Ericka Atwell, Governor's Office; Senator Charles Levesque, Senate; Rep. Steven Costentino, House; Sharon Reynolds Ferland, House Fiscal Staff; Rep. John Patrick Shanley, House; Kathy Kelly, DOC; Marshall Clement, Council of State Governments; Kathy Gregg, Providence Journal; Steve Whitney, Senate Fiscal; Peg Langhammer, Day One; Lisa Holley, RI Parole Board; Richard Frechette, DOC; Erin Boyar, DOC; Alan Dias, DOIT; Jack Landers, DOIT; Michelle Lanciaux, DOIT; Thomas Mongeau, RIJC, Kathleen Loiselle, RIJC.

Approval of December 19, 2007 Minutes

There being no discussion, Senator Lesvesque made a motion:

> **TO APPROVE THE MINUTES OF THE DECEMBER 19, 2007 AS SUBMITTED.**

The motion was seconded by Alan Goulart and was unanimously passed.

Follow-Up Discussion on Population Reduction Options Presented at December 19th 2007 Meeting

Chairman Jackvony advised that the purpose of the meeting is to address certain issues regarding legislation to reduce the prison population. He added that a consensus will be needed initially on the good time issue. Chairman Jackvony noted that passing legislation will make a difference to the people of Rhode Island. He noted that at the last

meeting discussion took place relative to making the legislation retroactive and exempting certain offenses from the legislation. The Chairman asked Kathy Kelly of the DOC to report on her findings from other states as it relates to retroactivity and exempting certain offenses.

Impact of excluding certain offense categories

Kathy Kelly advised that she had researched both components related to retroactivity and exempting sex offenses from the legislation. She stated that she had read a number of Rhode Island Supreme Court decisions regarding retroactivity all of which affirmed retroactivity to be unconstitutional. Ms. Kelly pointed out that 1960 was the last time there were changes to the good time statute. She cited case after case in which extending new good time provisions to prisoners retroactively would be an "impermissible trampling" upon the Judiciary's powers. Ms. Kelly stated that if the status provides retroactivity there would be a constitutional problem.

Ms. Kelly also researched the exclusion of certain types of offenses, i.e. sex offenses from the legislation. Ms. Kelly indicated that she had researched how other states such as Massachusetts, Washington and New York had handled the exclusion issue. She noted that some states differentiated among classes of offenders. Other states exclude sex offenses completely. Still others give sex offenders a different type of good time. Ms. Kelly stated that as long as there is a rational basis on which to differentiate this class of offenders there is no problem. Therefore, to present the sex offender as a different class would be fine to add to this legislation.

Rep. O'Neill inquired if it would be safer if when a plea is entered and before a sentence is imposed that the offender be notified of this change.

Ms. Kelly replied that the good time statute is a separate component from the plea or sentencing. She added that notification at the time of plea would not present a problem that should be of concern.

Richard Frechette noted that, of the group of persons currently serving time for sexual offenses, over 55% are serving time of 10 years or greater; those serving terms of 8 years or more represent about 85% of the population, hence, a change to across-the-board 10 days per month good behavior time would have little impact on the sex offender group.

Magistrate Ippolito inquired about the liberalization of these statutes as they apply to sex offenders. He stated that it appeared that sex offenders – specifically as to whether the proposed revised legislation would excluded sex offenders from receiving <u>any</u> sentence reduction for good behavior.

Richard Frechette responded that this was not the intention of the legislation. He directed the group's attention to the proposed legislation wherein he pointed out that in terms of good time sex offenders will continue to receive what they are receiving now.

Anthony Capraro noted that sex offenders receive a lot of supervision when leaving Probation and Parole. He added that the Public Defender is concerned about equal protection.

Ms. Kelly responded that here in Rhode Island sex offenders are monitored under Probation and Parole and the court has said they can be treated differently if there is a rational basis to do so.

Mr. Capraro inquired if sex offenders offend more often that any other offender.

Ms. Kelly did not have that data available. She pointed out that in Massachusetts the type of crime is discussed. Ms. Kelly stated that there can be any rational basis on which to differentiate sex offenders and would consequently pass an equal protection argument.

Senator Levesque stated that in terms of public safety certain categories are more offensive. He added that he would prefer that a rational basis for the exclusion of sex offenders be made a part of the proposed legislation for two reasons. The first would be to make it more difficult to come up with another carve out; and the second to make it clear that all inmates are being treated equally and the same. Senator Levesque added that putting in language showing some sort of justification that we are treating sex offenders differently for a reason would be helpful.

Judge Rodgers agreed and added that if there is an expression of legislative intent it would avoid a problem in the future. He added that having something in the legislation recognizing consideration to a standard might resolve some future issues.

Richard Frechette referred the group to the Summary of Corrections Options table. He pointed out that the table was set up differently than it was at the last meeting in two ways

1. The revised table eliminates option #3 regarding retroactive application of the good behavior incentive change;
2. It assumes the elimination of change for those serving time for sex offenses that are subject to the notification laws.

He noted but that the change in population impact from the exclusion of sex offenders is negligible. Mr. Frechette commented that if the legislation is passed two different methodologies would need to apply. With respect to offsetting costs, Mr. Frechette reported that we would have to contract for IT services to modify the inmate tracking system to address the restructuring of the calculation methodology. In addition, we would hire several Probation Officers and related clerical support, and in the process would establish a triage system to better assess the likelihood of these inmates reoffending – hence the necessary level of community supervision. Mr. Frechette noted that with passage of this legislation, the total population impact would be small in FY08, but the impact would increase would increase each year..

Mr. Frechette noted that Option 2 would create a "risk reduction program credit" for inmates who participate in successfully completing treatment, job training, educational and other programs that would reduce their risk to public safety. A 5 day credit would be given for every month of participation in programs and a 30 day credit upon successful completion of a program. Mr. Frechette noted that currently DOC offers a cafeteria-like process with respect to programs i.e. inmates currently signup for programs in which they have an interest, but that the new process would insure that inmates are directed to programs that specifically address the likely causes of their criminal behavior. Also, inmates will sign up for programs because they will have more incentive to do so. Mr. Frechette noted that under this initiative, DOC would be increasing programs in prison, besides making the most effective use of each program. This will impact the recidivism rate and, hopefully further lower the prison population in the future.

Mr. Frechette stated that Option 3 ensures that the parole decision making process is both data-driven and science-based. He added that this will empower the Parole Board to make a decision based on an offender's risk of reoffending. Mr. Frechette stated that DOC and the Parole Board have worked with consultants on development of a risk assessment tool. He noted that legislation is needed to empower the Parole Board to make use of the tool in their decision making. Mr. Frechette stated that there would be a moderate increase in personnel on the community side - two Parole Officers will be hired on a staggered basis. over the first twelve months of the change to address the anticipated increase in parole rate.

Senator Levesque suggested that a fact sheet be created to back up this information. He added that this would be needed to present to his colleagues as well as the public. Senator Levesque noted that savings will not be realized in the short term, but long term there will be a difference.

Chairman Jackvony stated that the CJOC needs to stay informed regarding the prison population cap to ensure compliance with the court's agreement. He also pointed out that everything needs to be done to ensure that an offender does not reoffend. Chairman Jackvony noted that ultimately this will save money.

Rep. Costentino expressed skepticism about the cost savings. He asked whether the cost savings related to what the programs will cost or in terms of the numbers of inmates going into and out of the system. Rep. Costentino asked if the calculations include what is going into the system.

Mr. Frechette answered that the table presented projections of marginal savings (per capita related), as well as savings anticipated as the impact reached levels high enough to close specific housing units within the facilities. It also estimated the offsetting costs of the data system changes and the critical community corrections enhancement. He added that the potential cost avoidance associated with building a new facility was not built into the table.

Director Wall pointed out that these reforms would buy the state 2 years after which time the population would continue to increase but at a slower rate than is projected. He added that it will not cause the population to decline, but is a way to moderate the growth to avert future costs. It will help to stay within the cap and save DOC from building another prison.

Senator Levesque stated that he is unsure if DOC can project an accurate savings right now, but when this new procedure is fully implemented; there may be an ability to save money in the future. He added that if something is not done now prisoners will need to be released or there will be a need to build a new facility.

Responding to a question from Rep. Shanley, Director Wall provided background information on the Palmigiano agreement and the basis for the inmate cap. Director Wall noted that DOC has negotiated 4 times with Alvin Bronstein, the attorney in the Palmigiano case. Each time DOC has succeeded in extending the cap. This past summer the cap was extended again, but Attorney Bronstein made it clear that he wanted to see reforms. Director Wall explained that this most recent agreement was entered into with the explicit indication that the State of RI enter into legislation whose purpose would be not to exceed the cap.

Representative Shanley inquired about alternatives once the cap was reached.

Director Wall explained that there is a provision whereby the CJOC seeks to keep the capacity under control. He added that if DOC exceeded the cap he must advise the Governor's Office, and the CJOC. The CJOC would then meet in an atmosphere of crisis to address the overcrowding problem.

Representative Shanley recalled being a Parole Officer in the 1960s and that numbers of inmates were released only to re-offend and be brought back to prison. He added that that if legislation is not passed now there will be a problem to address in the future. Representative Shanley pointed out that currently there is a critical need for some kind of change or be faced with chaos in the future. He agreed that sex offenders should be considered as a different class of inmate.

Rep. Cosentino inquired about inmates who are sent to prison because of mental illness or drug abuse. He asked if there was any legislation that addressed that population being housed in a different setting negating the need for creating new legislation.

Director Jackvony responded that Director Wall has discretion regarding good time programs. He added that what is needed now is a consensus regarding a good time proposal. Director Jackvony pointed out that the CJOC can only make recommendations, but must come up with a consensus that legislators can agree upon.

Rep. Costentino stated that he believed some changes could be made without the creation of new legislation.

Lisa Holley commented that currently the Parole Board must come up with internal guidelines. She added that new legislation will change the way in which the Parole Board views parole. Ms. Holley pointed out the advantages of using a risk tool as a means to evaluate prisoners who are up for parole. Additionally, the Parole Board is now using a substance abuse needs tool which will result in a net savings to DOC because inmates will be able to get treatment sooner. Ms. Holley noted that when inmates are ready for treatment, MHRH provides an assessment and gives a recommendation to the Parole Board. The Parole Board can then safely parole inmates to a specific treatment facility. Ms. Holley noted that inmates can only be paroled to beds that exist. She noted that if the cap is reached, the Parole Board will not have this available to them.

Rep. Costentino stated that net savings will be realized next year. He asked what could be done this year to help with cost savings.

Director Wall replied that not much can be done this year regarding savings. He pointed out that for savings to be realized next year there needs to be a significant change in legislation.

Colonel Doherty stated that his concern related to the career criminal and violent offenders. He added that there needs to be an agreement as to what specific categories of criminals are being referenced in the legislation.

Chairman Jackvony stated that the impact with respect to the proposed changes to good time is being reviewed. He noted that the legislation is trying to address those offenders with lower sentences not those with lengthier sentences or those serving life sentences.

Senator Levesque stated that current good time standards do not make any sense. He added that every person that is incarcerated should be treated similarly.

Chairman Jackvony referred the group to the last page of the handout which discussed the impact of revised "Earned Time for Good Behavior" rates. He stated that the consensus is that we need to change the current good time standards. The Chairman suggested that the proposed legislation needs tweaking by legislators.

Senator Levesque stated that he would tell his colleagues who participated in the Working Group.

Chairman Jackvony thanked the Governor and legislators for helping to get this legislation enacted. He added that he believes that a consensus had been reached to move forward with the legislation.

Rep. Costentino asked that the person responsible for the preparation of the budget for the corrections options package meet with his budget analyst.

Chairman Jackvony invited the following motion:

> **TO REVISE THE CURRENT GOOD TIME STATUTE BY ACCEPTING THE CORRECTIONS OPTIONS SUMMARY EXCLUDING SEX OFFENDERS PROVIDED THAT THERE IS A RATIONAL BASIS TO DO SO; AND THAT LANGUAGE TO DIFFERENTIATE THIS CATEGORY IS REFLECTED IN THE STATUTE.**

Senator Levesque accepted the motion as presented.

The motion was seconded by Rep. Costentino and was unanimously passed.

Chairman Jackvony stated that he would like to meet again in February to discuss any other options.

There being no further business, Senator Levesque made a motion to adjourn the meeting. The motion was seconded by Rep. Shanley and was unanimously passed.

The meeting was adjourned at 3:15 PM.

Respectfully submitted,

Kathleen M. Loiselle
Recording Secretary