

Criminal Justice Oversight Committee
December 13, 2011
Rhode Island Department of Labor and Training
Cranston, Rhode Island

1. Chairman's Welcome & Introductions:

Chairman Bernard Jackvony welcomed everyone and opened the meeting at 8:32 a.m. Committee members introduced themselves.

Present:

Bernard J. Jackvony, Esq., Chair
The Honorable Peter Kilmartin, Attorney General
The Honorable Teresa Tanzi, Rhode Island House of Representatives
Presiding Justice Alice B. Gibney, Rhode Island Superior Court
Chief Judge Jeanne E. LaFazia, Rhode Island District Court
A.T. Wall, Director, Rhode Island Department of Corrections
Kenneth R. Walker, Ed.D., Rhode Island Parole Board
Barbara Hurst, Esq., Office of the Rhode Island Public Defender
Captain Wilfred K. Hill, representing Colonel Steven G. O'Donnell, Rhode Island State Police
Ms. Peg Langhammer, Executive Director, Day One
Mr. Thomas Mongeau, Administrative Manager, Public Safety Grants Administration Office
Lisa S. Holley, Esq., Legal Counsel, Rhode Island Department of Public Safety
Mr. Joseph V. Conley, Administrator, Rhode Island Superior Court
Mr. Ken Alston, Governor's Office
Ms. Joe Lindbeck, Rhode Island Office of Attorney General
Ms. Erin Boyar, Rhode Island Department of Corrections
Mr. Jeffrey Renzi, Rhode Island Department of Corrections
Ms. Caitlin O'Connor, Rhode Island Department of Corrections
Mr. Michael DiLauro, Esq., Assistant Public Defender
Ms. Ellen Evans Alexander, Assistant Director, Rhode Island Department of Corrections
Ms. Kathleen Kelly, Esq., Rhode Island Department of Corrections
Ms. Patricia Coyne-Fague, Esq., Rhode Island Department of Corrections
Mr. John W. Foreman
Ms. Melanie Foreman

2. Approval of the November 9, 2011 Minutes:

Dr. Walker moved:

**TO ACCEPT THE MINUTES OF THE NOVEMBER 9, 2011 MEETING
AS PRESENTED.**

Chief Judge LaFazia seconded the motion.

THE MOTION PASSED UNANIMOUSLY IN THE AFFIRMATIVE.

3. Discussion of the House Resolution (H-6265, Substitute A) and Proposals for Consideration and Vote:

Chairman Jackvony said now that the committee has had an opportunity to review all information from the last meeting, he would like to turn the floor over to Attorney General Peter Kilmartin for his input.

Attorney General Kilmartin stated that the committee is meeting specifically for the purpose of discussing good time legislation and H-6265, Sub A. He reported that his office looked at the entire good time statute and suggested coming to this committee for recommendations. This is an extremely complicated process that has many issues. He said some early recommendations that were suggested, the committee could hopefully vote on, and other issues the committee may need to deal with later. Attorney General Kilmartin moved:

TO RECOMMEND TO THE HOUSE AND SENATE TO EXEMPT INMATES, WHO HAVE BEEN SENTENCED FOR MURDER, FIRST-DEGREE SEXUAL ASSAULT, FIRST- AND SECOND-DEGREE CHILD MOLESTATION, AND KIDNAPPING OF A MINOR FROM EARNING GOOD TIME CREDIT.

Chief Judge LaFazia seconded the motion.

Public Defender Hurst asked if Attorney General Kilmartin had this proposal available in writing. Attorney General Kilmartin responded that he can provide copies of the list of most heinous crimes that would be excluded from earning good time credit, based on his motion.

Public Defender Hurst talked about a recommendation based on merit and one on making social policy. She said she recognizes that she has come in late to the work of this committee and that a great deal of work has already been done. She expressed concern that one of the reasons the issue is being driven is because of a highly publicized case. She stated that she believes that this committee should not consider the issue, as it is not within the purview of the committee. She further stated that this should not be a review by public opinion; that should be the General Assembly's responsibility. She urged that this committee not play a part in voting on this issue if it is based on public opinion. If it is from merit, then it makes sense, is good, needed, and legitimate. She further stated that persons incarcerated for committing these crimes are not the worst behaved in prison. She said she would like to see this committee vote down this issue and debate it in the General Assembly.

Public Defender Hurst added that on merit there are two goals: One is truth in sentencing. She said that everyone knows about good time, and that bad cases make bad law and bad social policy. She stated that the Woodmasee case should not be the driving force in this decision. Sentences in Rhode Island have gotten measurably longer since the Woodmansee case. She said we bargain in Rhode Island for numbers not crimes. We know that with a sentence of 12 years, that if the client is well behaved, they would serve 9, 10 or 11 years or a range of 9-12 years, depending on behavior. If you take away good time, she said they would factor that in. Instead of a 12-year sentence, she would agree to 10 years, because there would be no early release regardless of the client's behavior. The criminal justice system would respond with downward sentence years, and there is no room for good behavior in this sentence. She stated that if the committee votes this down and the General Assembly deals with it, and public policy and opinion are discussed there, that would be appropriate. She said that this is not the place for this decision.

Attorney General Kilmartin stated that the committee is not responding to this issue based on public opinion; that the driving factor is public policy. He said his office tries to work with the Public Defender's Office and others to make the system better, as a matter of public policy. When he discusses a plea deal, he talks to the prosecutors. They do not factor in good time, because it is an unknown. They still have to deal with the Parole Board as well. There has been a great deal of debate in the Attorney General's office regarding which crimes best fit the exemption. They came back with this list, because they are the most offensive and have the most life-long impact on victims and their families. We did not go into this lightly or as a reaction to public opinion. It is a matter of public policy. This statute was created years ago, and the office regularly looks at various statues. He gave an example of their newly created Child Molestation Unit. Years ago no one talked about this, but now they have a full-time person in that unit. It is not as a reaction to public opinion, but this was done as policy to protect Rhode Islanders and protect victims of these crimes.

Chief Judge LaFazia stated that she previously served on the Parole Board, and the Department of Corrections deals with difficult populations. Good time is not a reward but incentive, which is important to have. The public is not as aware of good time as this committee is. She said she would meet with victims' families and was shocked when they were not aware of good time and asked why inmates were going before the Parole Board so early. The changes to the good time statute have been good. Short-term/long-term sentences were skewed, and these were positive changes. The question is what to do with the worst offenders. Clearly public risk needs to be looked at regarding these offenders. Someone also needs to look at sentencing.

Attorney General Kilmartin said that last year's bill dealt with parole and good time credits. He proposes this committee go to the Legislature to say there may be additional issues in the future to look at; but this specifically is a place for a discussion to start on one of the less complex issues in the legislation. He is asking that the charge of this committee be to look at the proposal. Final public policy decisions will be within the General Assembly—no matter what this committee recommends. The General Assembly is looking for guidance from this committee. Even if the committee does not agree, the public policy issues will be in dealt with in the General Assembly. The committee's charge is to recognize the nature of these crimes, its impact on society and victims, and do they have the right to earn this benefit.

Presiding Justice Gibney stated that this is an important and sensitive topic, and there must be long-standing decisions made. She said it is premature for this committee to make recommendations; that the issues have not been properly discussed.

Ms. Langhammer stated that she would argue that public policy is influenced by what happens in our community. It should not drive policy, but it helps to crystallize our focus and think beyond the letter of the law. Many times policy is driven by horrific cases, but if we discuss the issues in a body such as this, there are benefits. However, this needs to be discussed in more of a public forum. The committee also needs more time and more research to properly address this issue.

Attorney General Kilmartin said he is getting a sense that this committee is seeking more public input on this issue. He stated that he does not object to this; more public input is good. He has no exception to withdrawing the motion and asking the General Assembly to hold a public forum on this issue in order to obtain public input from victims; public vetting with public hearings is good. He said his office has been in contact with the General Assembly about this issue, so they are already aware of it. He will still pursue this in the General Assembly regardless of a vote in this committee.

Attorney General Kilmartin said he would rescind his motion and then bring this issue to the General Assembly for further vetting and public hearings, if that is what the committee would like to do. After that then it may be brought back to this committee.

Public Defender Hurst suggested making a recommendation, not based on public policy, but on criminal justice efficacy, corrections expertise, etc., and then bring that recommendation to the General Assembly. She recommended doing what the

General Assembly asked this committee to do and then they could hold public hearings on the matter.

Attorney General Kilmartin said he is open to either process. Chief Judge LaFazia asked if this committee was charged with making recommendations to be forwarded to the General Assembly. Chairman Jackvony clarified that the House Resolution was to request that the Criminal Justice Oversight Committee evaluate good time and make recommendations to the House by January 3, 2012. He said the committee can ask for more time if needed. He said this committee would not be writing the legislation per se. Does the committee want to hold public hearings or should the General Assembly do so.

Director Wall stated that this issue has been very volatile over the past legislative session. The House passed this resolution looking for the collective expertise of this committee, because of its experience, and that the Legislature wants to hear from this committee. The committee is not enacting any changes, it is heeding a request from House to provide recommendations and wisdom about what should be done. If the committee feels it is not in position to make a recommendation at this time, he suggested possibly asking for an extension of the deadline. He thinks the Legislature would be disappointed if the committee came back and said it has no recommendations. He further suggested that either the committee vote on a limited motion today, or if the committee is not ready to make decision, then to ask for more time. The committee may not want to hold public hearings, but it is important to hear from the public. We want our decision to be informed by the public, but then this committee would apply its expertise to the issues and make that decision. He said the Chair is correct that the committee needs to decide if it wants to make a recommendation or ask for more time.

Attorney General Kilmartin stated that a comprehensive bill was submitted last year that affected all areas of the criminal justice system. They have taken that package and streamlined it. As a starting point he is providing the committee with individual pieces of legislation. He recommended working with each agency to see what is good policy and bad policy, discuss, and then the committee could do the vetting. He suggested that today may be the time to ask the General Assembly for an extension. Bill deadline is about mid-February. He recommended that this date be established as the deadline to get recommendations in. This puts the committee on a timeline, and the committee would have to meet more often than once a month.

Chairman Jackvony stated that if the committee needs more time, we have to notify the General Assembly. There may be a deadline for submitting bills, but we may still be able to get the bill in after the deadline. The committee does not want to

duplicate the General Assembly's charge of conducting public hearings, and we are not submitting legislation, but rather recommendations.

Attorney General Kilmartin said the committee would be submitting concepts in the bill, and not the bill itself. It is this committee's duty to move forward and provide comment to the Legislature. He said he would defer to the Chair's wisdom.

Chairman Jackvony stated that we do not want to put the committee under pressure and deadlines. We are not submitting the bill; just recommendations. He asked Attorney General Kilmartin to withdraw his motion, and the committee would discuss a timeframe. This is an unusual charge for this committee, because the committee was created to deal with prison overcrowding; however, we have a good committee and the expertise to develop recommendations.

Attorney General Kilmartin withdrew his motion.

Chairman Jackvony asked the Superior and District Courts and the Public Defender to recommend a timeframe. Chief Judge LaFazia said it is unrealistic to be able to complete everything by mid-February. However, she agreed that the committee needs a deadline, and she recommended early April.

Director Wall asked if the Attorney General is contemplating a broader piece of legislation that would have effects for this committee to consider. The charge from the House is to make recommendations on the existing good time credit policy. He asked if this committee is now expanding on this charge and taking on something the Legislature has not asked us to do. Both the Legislature and the committee have opportunities to look at other aspects of criminal justice policy as they affect the criminal justice system. We should not take on a charge that is bigger when their charge is to look at the good time policy. We may not need that much time to look at this single issue.

Ms. Holley stated that the good time law was not revised without thought. The committee met at least eight times, looked at all sections of the law as well as the impact it had. She said she is fearful that, in an attempt to meet a mandate, the committee will not be as thoughtful as the first time the legislation was reviewed. The committee may not have had an opportunity to vet all the information out so quickly, and a great deal of work went into the original good time law. She recommended not making a quick decision just to meet a timeline mandate. She agreed that January is too short a time, but April may be too long.

Chief Judge LaFazia said the committee will not be able to do much during December. She recommended keeping the focus of the discussions to the specific

purpose outlined by the House. The committee would need two months, but three months not unreasonable, i.e., by April 1st.

Ms. Langhammer said that part of the decision is what does the committee needs to consider. She said she would like to leave here knowing what the committee is going to look at. She said we need a scope of work in front of us, or what that scope will be so we can do our research. That will tell us how much time we need. Chief Judge LaFazia agreed. She asked what documentation and work went into the earlier discussions, so the committee will know. She recommended bringing the applicable statutes to the committee, so the committee can review the elements of the statutes.

Director Wall said that Chief Judge LaFazia's point is well taken. A few people were very involved in the reforms of 2008. This is a good place to start, e.g., how that came to be and the process that followed that led to those changes. The sense is that the major changes in 2008 were specifically to RIGL 42-56-24, good behavior and good program time and RIGL 42-56-26, good time for sex offenders. Those are the governing statutes for time off for program participation and good behavior. Maybe we should make those two statutes the focus of this committee.

Attorney General Kilmartin said that he was part of that committee then, and the General Assembly took the recommendation of the committee, and made changes regarding sex offenders. This committee needs to be mindful going forward that our recommendations may then be changed by the Legislature.

Public Defender Hurst asked if there is a package available based on the 2008 recommendations; the benefit of having that information would be helpful. Director Wall stated that there was a lot of work done leading to the 2008 amendments. The Department of Corrections can look at its files.

Attorney General Kilmartin said that CSG provided some of that information. They may be best repository for this, relative to what they did here in Rhode Island as well as other states.

Chairman Jackbony asked the committee if it could agree on asking the General Assembly for an extension to April 3, 2012. He asked for a motion.

Chief Judge LaFazia moved:

**TO ASK THE RHODE ISLAND GENERAL ASSEMBLY FOR AN
EXTENSION TO APRIL 3, 2012 TO MAKE RECOMMENDATIONS
AS REQUESTED IN H-6265, SUBSTITUTE A.**

Ms. Langhammer seconded the motion.

Chairman Jackvony asked Attorney General Kilmartin if he would notify the House to ask them to pass a new resolution to extend the deadline. Director Wall said that he will draft the submission.

THE MOTION PASSED UNANIMOUSLY IN THE AFFIRMATIVE.

Chairman Jackvony asked the Public Defender's Office, the Department of Corrections, and the Attorney General to share any information with this committee. All parties will be asked to provide information from past work that has been done. He stated that the committee would probably need two meetings. This is not a public hearing, but the committee can agree on a process and a time and place to meet. Chief Judge LaFazia discussed public meetings vs. public hearings. Does the committee need to post the meeting and solicit the public for input. The Legislature should do this preferably; not this committee. Chief Judge LaFazia asked if the documents that are gathered could be disseminated to the entire committee prior to the next meeting. Ms. Langhammer also asked for an agenda prior to the meeting, so the committee's work could be more focused.

Director Wall recommended that if agencies have pertinent documents, that they be forwarded to Mr. Mongeau for dissemination to the committee. Also, if committee members have proposed agenda items for the first meeting that the Department of Corrections, assisted by Ms. Holley, Ms. Langhammer, or those who were part of the original process, talk about what led the state to enact the 2008 amendments. There is no one place that all those notes and reports exist, but he feels that the committee can be given a fair representation of what happened without burying everyone in paper. He said he will provide relevant documents that Corrections has. Chief Judge LaFazia said she has fairly good package available and will check her records.

Chief Judge LaFazia said she is in favor of the committee defining concerns that members have ahead of time so they can be thought out prior to the next meeting. Attorney General Kilmartin said he would disseminate the applicable statutes. He asked if the Department of Corrections could provide the status of the population for those who are incarcerated for the five crimes mentioned above. He asked what is the population we are dealing with now and possibly look to the future as well. Chief Judge LaFazia said it may be helpful to know what portion of the population is at the ACI as a result of trials vs. pleas. Director Wall said the Attorney General's Office may have that information. He said Corrections is only provided with the sentence, and they do not know whether the sentence came about as a result of trial or plea. Public Defender Hurst said it would also be helpful to know what the original term to serve was.

Representative Tanzi said that the public is looking for input and the benefit of the expertise of this committee as well as the impact on the individual as well as the community. She asked the committee to weigh in on impact. The Legislature will take care of conducting public hearings. Chairman Jackvony stated that he appreciates the support of the General Assembly. Representative Tanzi said she will sponsor the bill. Chairman Jackvony asked victims' families for their comment. The Forman family thanked the Chair for including them. Mr. Foreman asked for the information from the last meeting regarding the Department of Corrections' statistics. Director Wall clarified that the information requested is for the specific five crimes and how many inmates are repeat offenders in that grouping. He said that Corrections will do its best to provide details regarding inmates incarcerated for the five crimes, time to serve, and who falls into which category by numbers.

Chairman Jackvony stated that the committee would stay focused on its mandate in the House resolution regarding good time policy and the two statutes governing good time. There being no further business, Mr. Alston moved:

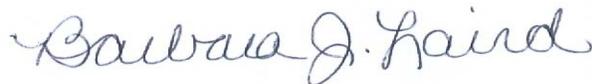
TO ADJOURN THE MEETING.

Chief Judge LaFazia seconded the motion.

THE MOTION PASSED UNANIMOUSLY IN THE AFFIRMATIVE.

The meeting was adjourned at 9:35 a.m.

Respectfully submitted,



Barbara J. Laird
Recorder

Approved by:

Thomas H. Mongeau
Administrative Manager
Public Safety Grants Administration Office