



## **Testimony**

### **Senate Judiciary Committee**

### **Public Hearing on Probation Reform**

### **(Senate Bill 14)**

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**Presented by:**

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Good morning Senator Baker, Senator Farnese and members of the Senate Judiciary Committee.

I am April Billet-Barclay, Director of Probation Services in York County. I am also the current Vice President of the County Chief Adult Probation and Parole Officers Association of Pennsylvania. My remarks today are on behalf of the County Chiefs Association. Thank you for providing this opportunity to testify before this committee on the subject of probation reform, specifically components of Senate Bill 14.

My testimony will focus on specific provisions included in SB 14 that will directly impact county adult probation. Therefore, my remarks will address four general areas:

- 1) Background of county adult probation and parole and current challenges;
- 2) Components of SB 14 that our Association supports;
- 3) Components of SB 14 we oppose; and
- 4) County adult probation implementation of evidence-based practices.

### **Background on County Adult Probation and Parole Departments and Major Challenges**

County adult probation and parole departments are under the jurisdiction of the President Judge in each county. Sixty-five of the 67 counties in Pennsylvania operate county adult probation and parole departments. The Pennsylvania Board of Probation and Parole (PBPP) provides all adult probation and parole services in Mercer and Venango Counties.

County adult probation departments supervise 86% of offenders in the community on probation or parole (over 258,000 individuals). The PBPP supervises 14% of offenders in the community (approximately 41,946 individuals).

There are numerous challenges that county probation departments face around the state but I will limit my comments to just a few.

First, the structure of county adult departments is decentralized. The 65 adult probation departments are under the direction of 60 president judges. The probation departments have different levels of resources and stakeholder support. Currently, there is no oversight agency or advisory commission in the adult probation system providing standards and consistency throughout the 65 county adult probation departments. This is in contrast to the juvenile probation system, where the Juvenile Court Judges Commission (JCJC) provides an oversight role by establishing standards in juvenile courts; establishes personnel practices and employment standards used in probation offices; collects, compiles and publishes juvenile court statistics; and administers a grant-in-aid program to improve county juvenile probation. Such a body for adult probation and parole would be a valuable tool for improving and strengthening the county adult probation and parole system.

A second challenge is caseloads are high and continue to grow (see Appendix A). Based on the Pennsylvania Board of Probation and Parole's 2017 County Adult Probation and Parole Report, county adult probation average active caseloads range from a high of 261 offenders to a low of 14 offenders. The statewide average is 108 offenders per officer. This is more than double the recommendation of the American Probation and Parole Association (APPA), which suggests caseloads of 50 offenders to one officer for moderate to high risk population. The PBPP average caseload for State agents is currently at 50. Studies show that reduced caseloads, in combination with evidence-based practices, can lead to improved recidivism outcomes.

A third challenge is a lack of funding. County adult probation funds come primarily from the county and raising revenue is limited. The county adult probation departments carry the largest share of the Commonwealth's correctional workload, but the state provides only a fraction of the funding – an amount that is not adequate to support the provision of effective probation and parole services. The Grant-in-aid program, established in the Improvement of Probation Services Act of 1965, was amended in 1986 to include the goal of covering 80% of eligible county salary costs (see 61 Pa.C.S.A §6133) . GIA funding came close to meeting the 80% goal in the late 1980s (78% of eligible costs in FY 1988-89). Since then, GIA as a percentage of eligible salaries had declined steadily. Based on a 2015 Legislative Budget and Finance Committee Report on "*Funding of County Adult Probation Services*", GIA in recent years has been less than 18% of eligible county salary costs.

There are many more challenges that face county probation departments but in the interest of time, I will limit my remarks to the ones just noted.

#### **Components Supported in Senate Bill 14**

The consensus of our Association would support the idea of general caps on probation sentences of three years for a misdemeanor offense and five years for a felony offense. But there needs to clarification how this would impact the current maximum sentences for certain misdemeanor offenses. Currently, an unclassified misdemeanor carries a 12-month maximum, an M3 carries a 12-month maximum, and an M2 carries a 24-month maximum. How would this new provision play out if a court were imposing sentence on an M3 offense? If the judge were to impose a term of probation, they would be limited to three years. But if imposing a term of confinement, are they still limited to 12 months? This is also in conflict with current DUI maximum penalties (75 Pa.C.S.A §3804(d)). There is a requirement that if the individual is determined to be in need of additional treatment pursuant to a drug and alcohol assessment, the court is required to impose the statutory maximum of 5 years for an M1 DUI. These are some nuances that need to be clarified.

Another area our Association would support is the prohibition to extend supervision due to nonpayment of fines, costs or restitution unless the court can make a finding that the offender

is financially able to pay and has refused to do so. Many county probation departments already have policies in place that mirror this concept. They can track payment of fines and costs through a civil compliance court proceeding, but still terminate supervision. Or the collection of court ordered money can be turned over to a designated agency (e.g. clerk of court, prothonotary, private collection agency). We need to stop extending probation supervision for unpaid costs and fines which results in individuals getting hopelessly caught in the criminal justice system with little or no chance of success.

The third provision in SB 14 our Association supports is early termination of probation or CIP supervision. But rather than 18 months as the current language stated in SB 14, our members would support a presumptive early termination at 24 months or at 50% of the supervision; whichever is earlier if there have been no violations during the term of supervision and all conditions of their supervision have been met (similar language is included in HB 1555).

Early termination of probation or CIP is already provided in statute (42 Pa.C.S.A. §9771(d) and §9773(a)). It is common practice in many counties to incentivize good behavior with a reduction in their term of supervision as long as the individual has no violations and completes all conditions of their supervision. The shortened sentence still provides an opportunity for the supervising officer to assist the individual with addressing their criminogenic risk factors resulting in behavior change which in turn lessens the likelihood of future criminal behavior.

#### **Components Opposed in Senate Bill 14**

The first component in SB 14 our Association opposes is the proposal requiring the Sentencing Commission to adopt guidelines for graduated responses to technical violations as well as setting a 30-day limit of incarceration on technical violations. There does not appear to be any analysis of current county data or county practices regarding technical violations. For example, how many technical violations, and type of technical violations, resulted in the current sentence being revoked and resentenced? What was the result of the violation: continued on probation, revocation, or a resentence? If the individual was resentenced, what was the sentence imposed: a new term of probation, incarceration in county jail or state prison? Technical violations vary in gravity. Every case is different and a cookie cutter approach is not the solution.

One example is when an individual is under supervision for a sexual offense that involves a minor. If the individual continues to have contact with minors, this is contrary to the conditions of supervision and would be considered a technical violation. The court should have discretion to impose more than 30 days of incarceration if they believe the violation justifies more incarceration time.

Additionally, this proposal does not take into consideration any negotiation that may have occurred at the front end of the criminal justice system. The prosecutor may have agreed to reduce a charge or a judge may have given a break at sentencing and imposed a term of probation when the individual should have been facing a term of confinement. These are all factors that a court must consider at the time of a violation proceeding.

Sentencing is individualized and so should any subsequent revocation proceeding regarding violations of supervision. Our Association has faith in our courts and allowing judicial discretion at time of sentencing and violation proceedings. We know that sentencing and resentencing practices vary county by county. There can be significant differences within the same county among the judiciary. This information (and many other important factors) should be analyzed prior to the development of any legislation. There has been no emphasis on collecting and analyzing data to develop good criminal just policy so Pennsylvania should not rush into enacting statutes that have no data to support the proposal.

A second provision our Association opposes is language that the county probation department is responsible for the early termination of successful supervision. Currently, early termination of probation or CIP supervision requires a court order. This process should continue. The probation department can provide a recommendation to the court, but ultimately, the discretion lies with the judge whether or not to terminate supervision early.

A final provision in SB 14 regarding the elimination of consecutive probation sentences to any other sentence results in our Association split on this issue. Some members support the elimination of consecutive probation sentences because it contributes to unnecessarily lengthy terms of probation. Research shows that lengthy terms of probation do not enhance public safety. A recent Council of State Government analysis shows the average length of probation terms exceeds the period during which most recidivism occurs, stretching supervision and program resources. The average time to failure occurs just prior to the 24-month range. Therefore, probation terms exceeding the 24-month threshold is not necessary for the majority of offenders and puts a burden on the already overwhelmed county probation caseloads.

But the other half of our members oppose the elimination of consecutive probation sentences for several reasons. In some cases, it would give a 'bulk discount' for individuals who commit multiple crimes. For example, the individual who is convicted of 20 counts of bad checks when there are multiple victims. It diminishes the punishment for each individual crime and the individual victims. It also impacts when an individual commits crimes across several counties. This provision would prohibit a judge to run his/her probation term to probation term imposed previously in another county. Once again, it gives a 'bulk discount' for individuals who commit multiple crimes across county lines.

An option to discuss further would be the elimination of split sentences (e.g. confinement sentence followed by a consecutive term of probation). This concept would significantly reduce the lengthy and unnecessary terms of supervision once an individual completes their parole supervision.

### **Implementation of Evidence-Based Practices**

In 2016, the County Chiefs Adult Probation and Parole Officers Association released its strategic plan for advancing adult probation and parole within the Commonwealth. The goal of our strategic plan is to enhance public safety, reduce recidivism, and provide for a more effective use of public funds through the implementation of evidence-based practices (EBPs) in the adult county probation system.

Evidence-based practices are the application of science into operational practice for services and programs for offenders. The goal is to use practices that have been empirically tested and have been shown to reduce recidivism among offenders. Our juvenile probation system has already undergone statewide implementation of EBP under the direction and leadership of JCJC.

The evidence-based principles for effective services and interventions with offenders include:

- Conduct an assessment of offender risk and needs using an actuarial instrument and determine the drivers of criminal behavior;
- Enhance intrinsic motivation through use of constructive communication techniques, such as motivational interviewing and goal setting;
- Apply risk, need, and responsivity principles (i.e., target high-risk offenders, focus on changing criminogenic factors, provide services that match needs.) provide the appropriate dosage of services; and, deliver treatment and other services as part of the sentencing and sanctioning process;
- Employ programs and practices grounded in scientific evidence (i.e., cognitive behavioral therapy) and delivered by trained staff
- Utilize community support networks to reinforce pro-social behaviors and help offenders establish prosocial contacts in the community
- Routinely monitor and assess offender and staff performance.

The Chief's Association is in the beginning stages of a multi-year effort to achieve better outcomes in community-based offender recidivism rates. We believe the strength of our strategic plan lies in the support and collaboration of county adult probation and parole partners and key state stakeholders. The Chief Adult Probation and Parole Officers Association of Pennsylvania has collaborated with several state agencies and created a Statewide EBP leadership team comprised of the following: the Pennsylvania Commission on Crime and

Delinquency, County Commissioners Association of Pennsylvania, Administrative Office of Pennsylvania Courts, Pennsylvania Department of Corrections, Pennsylvania Board of Probation and Parole, Office of the Victim Advocate, and the Pennsylvania Commission on Sentencing.

Implementation of EBP in all counties adult probation departments will be a daunting challenge. But once implemented, county criminal justice systems should see results including:

- Improved supervision outcomes;
- Reduced offender risk;
- Reduced recidivism;
- Reduced use of county jail and state prison for probation and parole violators; and
- Better utilization of public resources.

In order to more uniformly, efficiently and consistently implement EBP, our Association requests the Legislature approve SB 500 which would create the County Adult Probation and Parole Advisory Committee within the Pennsylvania Commission on Crime and Delinquency. This new committee would advise on all matters pertaining to the administration of county adult probation and parole. Such a body for adult probation and parole would be a valuable tool for improving and strengthening the county adult probation and parole system.

As Pennsylvania's county adult probation departments continue to move toward statewide implementation of EBPs, we have been moving away from the old mindset of "trail 'em, nail 'em, and jail 'em" philosophy. The goal of county probation is not only to ensure public safety, but also to provide the support necessary to change offender behavior.

There are many ways to improve the county criminal justice system and sentencing practices in Pennsylvania but much of the efforts will have to be at the county level with county stakeholders, particularly the judiciary and prosecutors. As stated previously, our Association has faith in our judges and utilizing their judicial discretion at time of sentencing and any potential subsequent proceeding.

Finally, we hope the Legislature will continue to support county adult probation and parole. One area that is greatly needed is for the Legislature to restore Grant-in-aid funding to the amount established in the Probation Services Act and fund 80% of the eligible county salary costs as the statute requires (61 Pa.C.S.A §6133). This would go a long way to support effective probation and parole services in our communities.

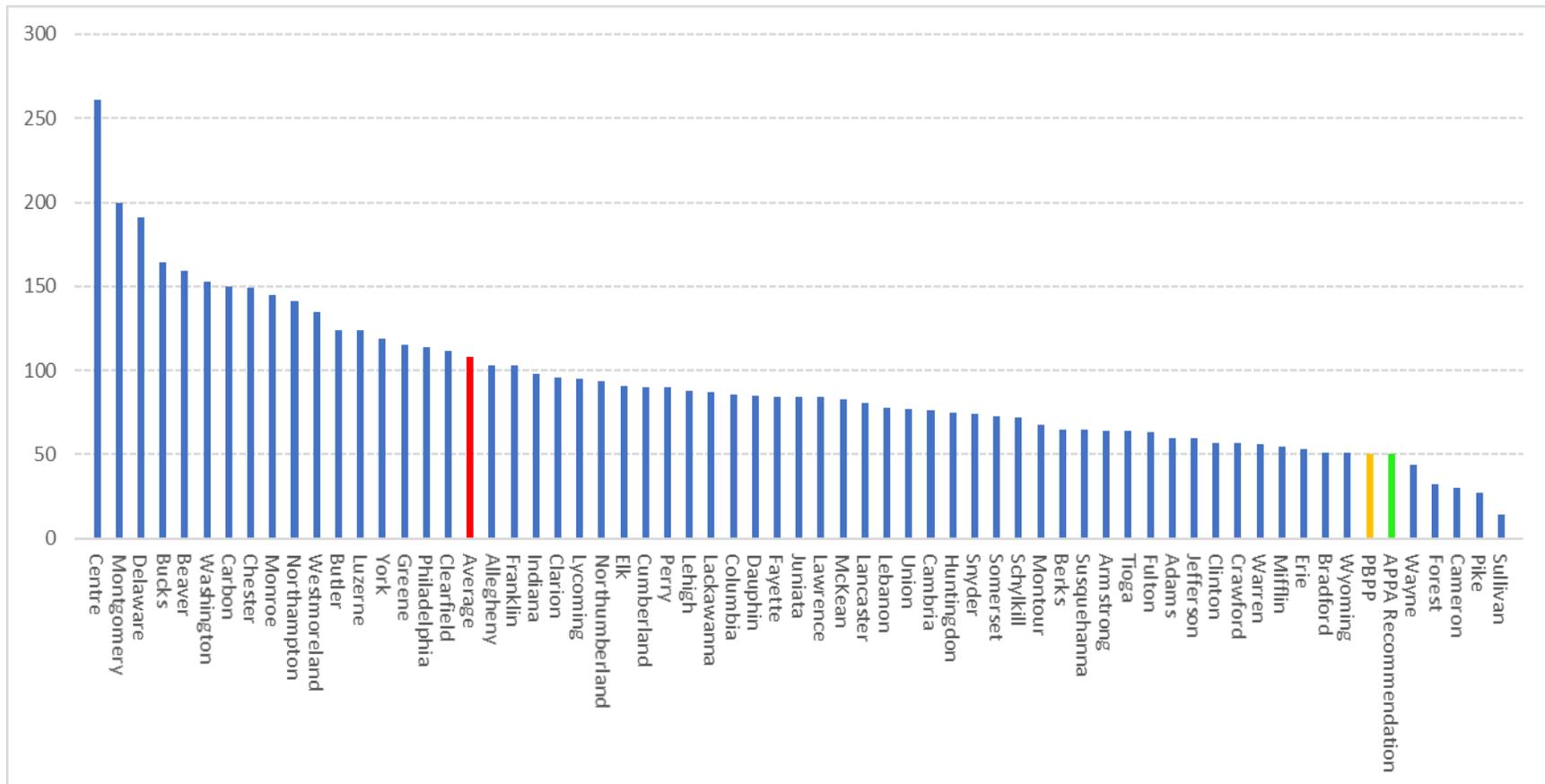
Thank you again for this opportunity to provide remarks. I would be happy to answer any questions.



## Appendix A

### 2017 County Adult Probation and Parole Average Active Caseloads

- 108 = Average Active Caseload in County Adult Probation/Parole Departments \*
- 50 = Average Caseload for PBPP \*\*
- 50 = Recommended caseload per American Probation and Parole Association (APPA) \*\*\*



\* PBPP 2017 County Adult Probation and Parole Report (data not available: Bedford, Blair, Potter, Venango Counties)  
 \*\* 2019-2020 Department of Corrections Budget Testimony  
 \*\*\* Legislative Budget and Finance Committee Report "Funding of County Adult Probation Services" February 2015