

Primer

From the House Appropriations Committee

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Justice Reinvestment Initiative

The General Assembly passed two bills in 2012 to help rein in and reform the rising cost of the state's Department of Corrections. Act 122 of 2012 (Senate Bill 100) established sentencing guidelines intended to provide more flexibility for prosecutors and judges to impose the most cost-effective incarceration and rehabilitation options to generate savings by reducing costs. Act 196 of 2012 (House Bill 135) reinvests the savings from Act 122 of 2012 initiatives to establish programs designed to properly prepare inmates for reintroduction to the community. If all of the programs are established, the Justice Reinvestment bills could trim \$142 million from the Department of Corrections' budget through fiscal year 2017/18.

Justice Reinvestment

What is Justice Reinvestment?

Justice Reinvestment is a data driven approach to corrections and probation and parole.

In 2011, a Justice Reinvestment Working Group comprised of stakeholders in the criminal justice system was created under the Pennsylvania Commission of Crime and Delinquency. The bipartisan working group, which included members from all three branches of government, focused on establishing new approaches to criminal justice in Pennsylvania by saving money without compromising public safety.

The Council of State Governments Justice Center and the Pew Foundation assisted the commonwealth with analyzing data and making Pennsylvania-specific suggestions for Justice Reinvestment. The U.S. Department of Justice, Bureau of Justice was also an active participant.

The result of the Justice Reinvestment Working Group was Senate Bill 100, printer's number 2258 (Act 122 of 2012) and House Bill 135, printer's number 1710 (Act 196 of 2012). Both bills were adopted unanimously by the House and Senate.

Act 122 of 2012 is the justice aspect and Act 196 of 2012 is the reinvestment portion of the law. Savings realized from Act 122 are to be reinvested as outlined in Act 196.

The Council of State Governments' Justice Center originally estimated increased efficiencies within the Department of Corrections (DOC) and the Pennsylvania Board of Probation and Parole could save \$253 million by fiscal year 2017/18. However, the savings estimate was reduced to \$142 million because not all of the Justice Reinvestment recommendations were enacted.

The experience in other states that enacted similar changes indicates that Pennsylvania can expect savings in its DOC, and be able to reinvest those savings into other criminal justice areas to help maintain lower inmate populations.

As of March 31, 2013, the PA Department of Corrections (DOC) had 51,331 inmates under its jurisdiction and a General Fund budget approaching \$2 billion.

Misdemeanor Sentences

Under the new law, no person sentenced to total or partial confinement will be committed to the DOC unless the aggregate sentence consists of an offense graded as a misdemeanor two or higher, or the DOC Secretary, or designee, has consented to the commitment.

In 2011, legislation passed that required inmates with sentences of two years or more serve their time in a state correctional institution (SCI). This is expected to save DOC money as it will contract these inmates out to available county prisons at a lesser cost.

Parole Violators

It has been the practice that inmates who were close to completing their minimum sentences (i.e., inmates who served at least half of their minimum sentence and at least nine months in an SCI) were sent to state-owned Community Corrections Centers and Community Correctional Facilities, which are contracted out. However, beginning July 1, 2013, there will no longer be a pre-release program for inmates.

Instead, Community Corrections Centers and Community Correctional Facilities will be used to house technical parole violators. There are approximately 4,400 beds available at these facilities for technical parole violators. Under the new law, Community Corrections Centers and Community Correctional Facilities may be used to house:

- Parolees who have been paroled, but need to transition to the community.
- Parolees detained and waiting for a hearing or have been recommitted for a technical violation.
- Inmates serving community-based State Intermediate Punishment.
- Offenders who have been granted clemency.
- Inmates on pre-release (only until July 1, 2013).

Returning technical parole violators to an SCI can be very costly compared to committing them to a Community Corrections Center or Community Correctional Facility. This new law imposes swift and certain sanctions on technical parole violators, which have been shown to be effective in deterring future parole violations.

The process addresses primarily drug offenders and excludes probationers whose crimes were violent. The program will be established with input from all facets of the criminal justice system and provide for:

- Warning hearings.
- Immediate graduated sanctions.
- Random drug testing.
- Short periods of incarceration for probation violation before revocation of probation and sentencing to incarceration. Offenders guilty of crimes requiring registration for sexual offenses are not eligible.

This does not impact a court's ability to revoke probation in the case of a serious violation or repeated minor violations.

Regarding technical parole violators, Act 122 of 2012 provides for recommitment upon conviction of a new offense and gives the Board discretion to grant credit to a parolee for time at liberty on parole except for:

- Revocations for a crime of violence;
- Commission of a crime requiring registration as a sex offender; or
- Recommitments after early parole of inmates subject to federal removal orders.

Also regarding technical parole violators, the Pennsylvania Board of Probation and Parole has discretion when dealing with an offender who, pending a hearing, may be detained in a Community Corrections Centers and Community Correctional Facilities unless:

- The violation was sexual in nature;
- The violation involved assaultive behavior;
- The violation involved possession of a weapon;
- The parolee has absconded and cannot be safely diverted to such a facility; or
- The parolee poses an identifiable threat to public safety and cannot be housed in such a facility (in these cases, the parolee must be housed in an SCI or a Contracted County Jail).

Commitment is for a maximum six months for the first commitment, nine months for the second commitment, and one year for a third or subsequent commitment.

To save costs, parolees will be permitted to use advanced technology communication (e.g., teleconferencing) to meet the requirement of in-person meetings with parole officers.

Act 122 of 2012

The act made several changes to Pennsylvania's criminal justice system to:

- lower inmate populations;
- reduce recidivism;
- streamline the parole process; and
- save money.

Community Reentry Program

To help alleviate recidivism, Act 122 establishes a safe Community Reentry Program through the DOC and the Pennsylvania Board of Probation and

Parole. The DOC is to assess each offender entering the state correctional system to determine which treatment services, programs, and skills offenders need to develop to be successful in the community upon release.

The DOC or the Pennsylvania Board of Probation and Parole is to assist each offender in developing a reentry plan which will include the offender's educational, employment, housing, and treatment needs for successful reentry into the community.

The DOC and the Pennsylvania Board of Probation and Parole are to coordinate the specifics of the offender's reentry plan with the education, vocational training, and treatment services that will be provided to the offender during incarceration.

The DOC and the Pennsylvania Board of Probation and Parole may use community organizations and other nonprofit and for-profit entities to assist with meeting the needs of offenders reentering the community. These needs include: education, vocational training, treatment services, housing, employment, family issues, and other needs for life after incarceration.

Under the law, the Pennsylvania Commission on Sentencing is charged with establishing a risk assessment checklist that is to be published in the *PA Bulletin* prior to adoption. The General Assembly has the authority to reject the Sentencing Commission's risk assessment checklist.

Alternatives to Traditional Sentencing

Offenders would be eligible for sentencing to the state Boot Camp or the Recidivism Risk Reduction Incentive even if a mandatory minimum sentence would otherwise be required by law. Currently there is no authority for a prosecutor to waive the statutory eligibility requirements for participation in the motivational Boot Camp program.

Boot Camp eligibility is expanded by raising the age limit from 35 to 40. Boot Camp eligibility is negated for an offender who is currently convicted or has a prior conviction within the past 10 years for certain enumerated violations in the Crimes Code or those requiring registrations as a sexual offender. Also, prosecutors may waive eligibility requirements after victim notification and subject to court disapproval after considering victim input.

Under a prosecutor's discretion, there may be a waiver of the eligibility requirements for County Intermediate Punishment and State Intermediate

Punishment after notifying the victim, subject to court approval after considering victim input. Violent offenders and those who need to register under Megan's Law are not eligible for County Intermediate Punishment or State Intermediate Punishment.

Savings

For fiscal years 2013/14 through 2017/18, the Office of the Budget will develop a formula to calculate the amount of savings to the DOC in the prior fiscal year. The calculation may include all of the following:

- The reduction in prison population because of the diversion to counties of mid-minimum and short-minimum offenders, and
- The elimination of pre-release programs and the improved efficiencies in the parole system.

In fiscal year 2013/14, the amounts determined to be savings from the previous year are appropriated to the fund in an amount not to exceed \$21 million.

Justice Reinvestment Fund

Act 196 of 2012 establishes the Justice Reinvestment Fund, within the Pennsylvania Treasury, to support programs and activities to improve the delivery of criminal justice services.

Expenditures

For fiscal years 2013/14 and 2014/15, the money in the fund shall be transferred as follows:

- \$1 million to the Pennsylvania Commission on Crime and Delinquency (PCCD). At least 25 percent of the money is to be used for a statewide automated victim information system and 25 percent is to be used for victim service automated data collection and reporting projects. The balance of the money is for programs for victims of juvenile offenders.
- \$400,000 is to be distributed to the Commission on Sentencing to establish models for risk assessment.

Following the distributions to PCCD and the Commission on Sentencing, the money remaining in the fund is to be distributed as follows:

- 43 percent to PCCD to provide grants for innovative policing.
- 21 percent to DOC to implement contracts with counties for offender diversion for mid-minimum and short-minimum offenders.

Impact on Fiscal Year 2012/13 Budget

According to the House fiscal note for SB 100, *"...as calculated by these agencies, in conjunction with the Governor's Office of the Budget, these changes produce a net savings of \$1,031,000 for fiscal year 2012/13. These savings are projected to increase significantly in future years."*

However, according to an \$18 million waiver request (from fiscal year 2011/12 funds) from the Secretary of Corrections on Aug. 8, 2012, *"...the waiver is necessary due to changed assumptions in inmate reduction initiatives. The inmate reduction numbers in the recently enacted JRI [Justice Reinvestment Initiative] are less than originally anticipated for 2012/13 as the key provisions of the bill require a phased-in approach to obtain maximum savings."*

- 26 percent to PCCD for grants, in consultation with the PBPP, for county probation improvement, including the reduction of offenders on probation who violate the terms of their supervision.
- 6 percent to the Pennsylvania Board of Probation and Parole for costs related to streamlining the parole process.
- 4 percent to the DOC to support the coordinated implementation by the Pennsylvania Board of Probation and Parole and the DOC for safe community reentry.

Beginning in fiscal year 2013/14, if county participation in the various state grant programs exceeds the amount authorized, the General Assembly may appropriate additional money to the Fund for offender diversion for mid-minimum and short-minimum offenders.

For fiscal years 2015/16 and 2016/17, 25 percent of the savings is to be appropriated to the Fund for activities related to sentencing, victim services, contracts for offender diversion, innovative policing, community reentry, probation and county parole improvement.

Grants may not be used to supplant existing funding. This program expires July 15, 2018. According to the Senate fiscal note, \$141.6 million is expected to be saved by DOC for fiscal years 2013/14 through 2017/18.

House Appropriations Committee (D)

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