

TESTIMONY IN SUPPORT OF HB 80
PRESENTED TO THE HOUSE JUDICIARY COMMITTEE

By

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Good Morning and thank you Chairman Caltagirone and the Judiciary Committee for holding this hearing and taking the time to discuss this extremely important topic and helpful piece of legislation.

My name is Stephen Pennington, and I am the Executive Director of the Center for Disability Law & Policy. The Center administers the Pennsylvania Client Assistance Program which is the state-wide advocate for people with disabilities seeking services from the Pennsylvania Office of Vocational Rehabilitation and Bureau of Blindness and Visual Services. I am on the Governor's Cabinet and Advisory Committee for People with Disabilities and have served on the Pennsylvania Office of Mental Health and Substance Abuse Services Forensic Workgroup dealing with issues facing people with mental illness in their interaction with the criminal justice system.

In addition to being an advocate, I am an attorney who has represented people with mental illness in the criminal justice system throughout my career. I have dealt with issues involving police training and testified years past in front of this committee with regard to a bill I believe was introduced by Chairman Caltagirone to enhance and improve police training regarding people with mental illness.

When I looked at HB 80, I asked myself if there was a real problem in the county criminal court system addressing the needs of people with mental illness. I believe, as I am sure you have come to realize, the overwhelming answer to this question is yes. The President's New Freedom Commission on Mental Health did a study and found that about 5 to 7 percent of adults in this country suffer from chronic mental illness as compared to 17 to 38 percent of our jail or prison population. This is a remarkable disparity and there are some current studies which show that this percentage of prisoners is increasing.

This disparity occurs because prisoners with mental illness tend to receive longer sentences and are more vulnerable to assaults and suicide while in prison. Many are also in jail often for relatively minor offences and have a much greater chance of committing additional criminal acts while in prison due to their mental health illness.

Another problem is that jails and prisons are not equipped to adequately deal with offenders with mental illness and yet, and I think everybody will

agree, they have assumed a de facto role as today's psychiatric institution. It is also clear that criminal sanctions do not work as a way of deterring an individual with mental illness from committing a crime.

Beyond the criminal justice system, other problems account for the high percentage of prisoners with mental illness. The Rand Corporation did a study for the Counsel of State and Local Government years back and showed that people with mental illness were often overlooked, turned away or intimidated by the mental health system and end up disconnected from community supports. This is aggravated by chronically under-funded and ineffective community mental health systems. In the Office of Mental Health and Substance Abuse Services Forensic Workgroup I mentioned earlier we also found that the Mental Health Procedures Act in Pennsylvania is limited in scope and not really set up to divert defendants with mental illness to mental health programs. The Mental Health Procedures Act only deals with defendants who are charged with a crime or are incarcerated and have issues surrounding competency and to the extent that it is related to conduct, the alternatives of either voluntarily or involuntarily commitment are limited.

When I look at my experience over the past 28 years, I have found these problems in almost every case I have handled involving a defendant with mental illness, especially in counties without mental health courts. While I have found good and dedicated people at the district justice level, pre-trial services, the courts, and probation or parole, many county criminal court divisions are not set up to address the needs of persons with mental illness. In my opinion, many counties suffer from the lack of a comprehensive strategy and this makes it very difficult for the court system to be open and receptive to developing workable solutions to meet the needs of defendants with mental illness and also deal with issues surrounding sentencing. Some courts will not consider diversion programs or alternative sentences because of stereotypes about mental illness such as the erroneous belief that people with mental illness are more dangerous than others or the lack of information about how these defendants can be treated.

I routinely run into issues involving high bail, a reluctance to consider residential treatment at the front-end of the process, and jails and prisons that are unable to provide adequate treatment. Once a prisoner enters a jail or prison, medical assistance ends. Even when medical assistance can be renewed, there is often a shortage of beds which means the inmate is kept in prison, often without meds, until a bed becomes available. No real options

exist in the criminal process for these defendants. There are some options at the end in terms of sentencing, whether it's in intermediate sentencing or house arrest, but these work only to the extent that probation/parole has the capacity to closely supervise the defendant.

Is there a real solution to this problem? The answer is yes. We do not have to look much further than Allegheny County to see that a mental health court is not only a wise decision, but can really achieve some practical real results. Studies have shown that where a county has a mental health court, there is a sharp decline in re-arrest, it saves taxpayers money and, among stakeholders, from the police to probation and parole, it is a strategy that works.

In Pennsylvania, I believe there are roughly 13 mental health courts. It's good to see that Chester, Delaware and Montgomery County have received grants from the Office of Mental Health to develop mental health courts. I believe Philadelphia and Bucks County have either received grants or are about to receive grants and that Franklin and Blair County are studying the issue. Unfortunately, these only add up to about 1/3 of the counties in Pennsylvania. The point is that there is a real practical solution to meeting the needs of defendants with mental illness and I think Representative Leach's bill, which gives a county the option to apply for a grant, is a good first step to give the other 47 or so counties an opportunity to deal with this issue. What we have seen is that there are a number of essential elements which must exist within a mental health court system to ensure its success. These include a mental health court that:

- 1) coordinates the delivery of services;
- 2) provides for voluntary treatment and is not coercive;
- 3) involves all stakeholders from the police to probation and parole and is a collaborative process; and
- 4) does not create a greater burden on the defendant in the sense that the options available for treatment do not significantly increase the court's supervision of the individual as opposed to the sentence that he or she may have received outside a mental health court.

H.B. 80 incorporates each of these essential elements and does more. Section 954 that Representative Leach referred to does require cooperation between the criminal justice and the mental health systems. It calls for improved access to necessary services and support. It calls for increased services for offenders with mental illness. It requires continued supervision and it also calls for coordination of services, including the specialized training of law enforcement and judicial personnel and, as I mentioned earlier Mr. Chairman, that's something we would agree is absolutely essential. And last, the voluntary out-patient or in-patient treatment in the least restrictive environment guarantees that the process is not coercive. What is important in this bill is that the mental health court really becomes the focal point for dealing with a defendant with mental illness. This is critical because the creation of a mental health court is by and large a necessary response to a shift away from using state hospitals and even residential treatment facilities to manage offenders with mental illness.

Now, is there more work to do? Certainly. Mental health courts are only one part of the solution and not a panacea for addressing the needs of persons with mental illness who come into contact with the criminal justice system. These courts are only as good as the treatment and services available in the county. We must pay attention to the deficiencies in community treatment resources. When you add up the closing of state hospitals, the lack of the availability of hospital beds in residential treatment facilities, the lack of county infrastructure, and the obvious funding and budget issues, there is a real problem in Pennsylvania when it comes to treating persons with mental illness. Unless the courts have the ability to create service linkages and ensure appropriate services and programs that are actually available and provided to offenders with mental illness, a mental health court will fail. There is also a concern that mental health courts may become overwhelmed. There is a need beyond the mental health court to create diversion programs at the front end stage of the criminal process. This will require the active participation of the police, district justices, and pre-trial services. Lastly, we have to understand that defendants with mental illness will often go to the head of the line in terms of county services and treatment. This will undoubtedly create tremendous stress on the availability of county mental health services to the rest of the population with mental illness.

In closing I support HB 80. It is a necessary first step to adequately meet the needs of people with mental illness in the criminal justice system across the Commonwealth. It has shown to be a cost effective alternative to

the incarceration of offenders with mental illness and is supported by stakeholders within the criminal justice system from the police to probation and parole. It is workable, practical and serves the best interest of the entire community.

Thank you.

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