

Testimony of
Pat Nolan

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Vice President, Prison Fellowship
Before the Senate Judiciary Committee, Subcommittee on Crime and Drugs

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Mr. Chairman and members, I am grateful for this opportunity to testify in support of Senator Webb's proposal to establish a national commission on criminal justice. My name is Pat Nolan, and I am a Vice President of Prison Fellowship and lead their efforts to reform the criminal justice system. I bring a unique background to Prison Fellowship. I served for 15 years as a member of the California State Assembly, four of those as the Assembly Republican Leader. I led the fight on crime issues, particularly on behalf of victims' rights. I was one of the original sponsors of the Victims' Bill of Rights (Proposition 15) and was awarded the "Victims Advocate Award" by Parents of Murdered Children.

Then my life took an unexpected turn. I was prosecuted for a campaign contribution I accepted, which turned out to be part of an FBI sting. I pleaded guilty to one count of racketeering and became #06833-097 and was held in the custody of the Federal Bureau of Prisons for 29 months. What I saw inside prison troubled me because I observed that little was being done to prepare the inmates for their release. And, I also saw that the skills the inmates learned to survive inside prison made them more dangerous when they were released.

My role at Prison Fellowship is to work with government officials to improve our criminal justice system. Our prison reform efforts have taken me to 35 states, where I have worked with Governors, Attorneys General, Judges, Secretaries and Directors of Corrections and legislative leaders. I have seen what works and what isn't working. I serve on the National Prison Rape Elimination Commission and was also a member of the Commission on Safety and Abuse in America's Prisons. I was appointed by Governor Schwarzenegger to his Rehabilitation Strike Team and am currently a member of Virginia's Task Force on Alternatives to Incarceration.

I tell you all this because my work has given me a close up view of our criminal justice system across the country, and I must tell you our prisons are in crisis. There are three important points I want to emphasize from the outset. First, our top priority must always be a justice system that keeps our communities safe with fewer victims. Second, we need prisons. There are some offenders that are so dangerous to the public that they need to be quarantined, some for the rest of their lives. Third, the crisis in our prisons was not created by the dedicated corrections and law enforcement professionals; they are merely trying to cope with policies they didn't choose.

The report of the Commission on Safety and Abuse in America's Prisons put it well, "...many of the biggest so-called prison problems are created outside the gates of any correctional facility.

Congress and state legislatures have passed laws that dramatically increased prisoner populations without providing the funding or even the encouragement to confine individuals in safe and productive environments where they can be appropriately punished and, for the vast majority who are released, emerge better citizens than when they entered."

Our current crime policies have resulted in overcrowded prisons where inmates are exposed to the horrors of violence including rape, infectious disease, separation from family and friends, and despair. Most offenders are idle in prison, warehoused with little preparation to make better choices when they return to the free world. When they leave prison they will have great difficulty finding employment, and the odds are great that their first incarceration will not be their last.

The Pew Public Center on the States has chronicled the magnitude of our prison systems and the challenges they face. Over 2.3 million Americans are behind bars at this very moment - that is one out of every 100 adults in the US. In addition, another 5 million are on probation and parole, meaning that one out of every 31 adult Americans is under some form of corrections supervision. The cost to the taxpayer is a whopping \$78 billion. On average, corrections are eating up 15% of state discretionary dollars, and last year corrections was the fastest growing item in state budgets.

We just can't sustain the continued expansion of prisons because corrections budgets are literally eating up state budgets, siphoning off money that could be going to schools, roads and hospitals. The dilemma we face is how to keep the public safe while spending less on corrections.

My work in the states and at the federal level has convinced me that we desperately need a complete review of the criminal justice system as called for in Senator Webb's legislation.

We incarcerate more people than any nation on earth, and I don't think we are getting our money's worth in public safety. Many commentators look at the drop in crime rates and conclude the massive increase in incarceration has worked. But most social scientists, even the conservatives, think that at most one-fourth of the drop in crime is the result of incapacitation of repeat offenders. As I said before, we need prisons, but not for everyone who commits a crime. Prisons are meant for people we are afraid of, but we have filled them with people that we're just mad at.

A check kiter can safely be punished in the community, while holding down a real job, repaying their victims, supporting their families and paying taxes. A drug addict who supports his habit with petty offenses needs to have his addiction treated. Sending him to prison where less than 20% of the addicts get any treatment doesn't change the inmate. When he is released he'll still be an addict. Our object should be to get him off drugs. Spending \$30,000 a year to hold him in prison without any drug treatment is just plain wasteful.

We can learn a lot from the experience of New York City under the strong leadership of Chief Bratton. Most people are aware that crime has dropped dramatically in New York; a much larger drop than other large cities. For instance, murders in New York City dropped from 2,605 in 1990 to 801 in 2007. What isn't as well known is that this drop in crime occurred while New York was cutting its prison population. Officials were more selective in who they put in prison and for how long. They examined the tipping point where longer sentences don't buy more public safety. Those folks were released. Why keep them behind bars if it isn't making the community safer?

Some sentences were cut significantly, and the savings from those shorter stays behind bars were put into medical care, education, and more police on the streets.

Several states have succeeded in separating the dangerous from the low-risk offenders. And the results are impressive. They have shown that it is possible to cut the costs of prisons while keeping the public safe. Last year, Texas enacted sweeping reforms of its prison system, reserving costly prison capacity for truly dangerous criminals, while punishing low-risk offenders in community facilities. As a result, Texas was able to scrap plans to build three more prisons. Maryland, Massachusetts, Nevada, New Jersey, North Carolina, and South Carolina have also reduced their prison population while reducing their crime rates.

These states are saving hundreds of millions of dollars by reserving costly prison beds for truly dangerous criminals, while punishing low-risk offenders in community facilities. They use new technologies to monitor parolees' whereabouts and behavior, and more effective supervision and treatment programs to help them stay on the straight and narrow.

That is why the commission can play a very important role. Corrections officials are so busy coping with the flow of new bodies being sentenced that most don't have the time or resources to examine how they might be doing better. The commission can evaluate the evidence of what works and share their findings with state and federal corrections leaders. The crisis in our criminal justice system is national in scope, and only a national commission can conduct the type of review that will help guide us into better policies and safer communities.

Because the states cannot afford to build the prisons necessary to house the increasing number of offenders that are the result of more numerous crimes and longer sentences, they are crowding offenders into facilities that were never designed to hold that many prisoners. Our prisons are literally bursting at the seams. The commission can review the policies that swelled the prison population so dramatically and recommend changes that will reduce the number of people we incarcerate.

Governor Schwarzenegger's Deputy Chief of Staff described their dilemma starkly. He told me that every available space in their prisons is used for housing - every classroom, chapel, gym, classroom and closet. He asked, "How can we have education classes, drug treatment, or Bible studies when there is no place to hold them?"

Overcrowding also puts the inmates at terrible risk. The incidence of rape in our prisons is scandalous. In 2007, the Bureau of Justice Statistics released a survey based on prisoner self-reporting. The results are shocking. An estimated that 60,500 federal and state prisoners had been sexually abused by staff and other inmates in a twelve-month period - a number that likely understates the actual incidence. That averages 166 sexual assaults per day! A BJS pilot study of juveniles in detention found that nearly one out of every five inmates in juvenile facilities had been sexually abused. How can we expect these young people to live normal lives after they are released when they have been victimized so horribly while in the custody of the government? No crime, no matter how horrible, includes rape as part of the sentence.

Fortunately, Congress with strong support from the leadership of both parties, passed the Prison Rape Elimination Act, which established the National Prison Rape Elimination Commission.

Later this month the Commission will release its report and recommended standards. These will give a roadmap to corrections officials on how to fight prison rape and to assist the victims when it does occur.

I should note that shortly as soon as the commission releases its report, we will begin the process of shutting down the office and will go out of existence within three weeks. As a conservative, I have always been suspicious of government commissions that seem to go on forever- the closest thing to eternal life here on earth. But the Prison Rape Commission is proof that a federal commission can do its work and then close up shop. As a member of that commission, I can tell you that having a drop dead date forced us to grapple with the issues and reach a conclusion. Without it, a lot more would have been said than done. Fortunately Congress didn't give us that option. The commission proposed by Senator Webb has the same "self-destruct" mechanism, and I think that is very good thing.

Offering proven ways for the states to make better use of their prison beds would be a major accomplishment for the commission. Here are four specific reforms I hope the commission will consider:

Treat the non-dangerous mentally ill in community facilities. Obviously, some people with mental illness are very dangerous. But thousands are merely sick, and pose no threat. They end up in our jails and prisons as a result of "mercy bookings." The police would much rather take them to a civilian facility for proper treatment, but few beds are available. Holding the mentally ill behind bars is very costly. Taxpayers spend \$65 a day to jail the mentally ill; community treatment costs only \$29. Money spent on new community mental health facilities would be far cheaper than building more prisons.

Apply swift and certain sanctions for parole violations. In many states a large number of new admissions to prison are parole violations, but most did not commit a new crime, but instead committed a "technical violation" such as failure to turn in paperwork, a missed appointment with a parole officer, or a dirty drug test. Many offenders are knuckleheads who just don't follow the rules. One judge summed up the situation well when he said, "Please give me more options. Right now I can send them to prison or let them go to the beach."

The Pew Center studied Project HOPE, a program in the Hawaiian courts established by Judge Stephen Alm, a former federal prosecutor. This program enforces the rules of probation with immediate consequences. If offenders have a dirty urinalysis they are immediately jailed - but not for years, just 24 or 48 hours. If they have a paying job, their incarceration is postponed until the weekend - but there is no exception to serving it then. Drug treatment is provided for those who have difficulty staying clean.

The results are impressive for those offenders who have been in HOPE the longest: 92 percent fewer missed appointments and 96 percent fewer positive drug tests. This program accomplishes what we want - teaching offenders to follow the rules and keeping addicts in drug treatment - without filling our prisons.

Tailor the level of supervision for parolees to the risk they pose to the public. Some states place virtually every inmate on parole, a very costly and burdensome process. As the Chairman of

California's Little Hoover Commission put it, "These laws have not been tough on crime, but they have been tough on taxpayers."

Instead, these policies need to be changed so that the most dangerous offenders receive the greatest attention of parole officers.

Revoke the perverse policy that stops in-prison mentors from continuing to help inmates after they are released. Returning offenders need healthy relationships. Having a good, moral person to help think through the decisions that confront them as they leave prison makes a huge difference in whether they can stay out of trouble and become contributing members of the community. A study of a Prison Fellowship program by Dr. Byron Johnson of the University of Pennsylvania found that graduates of the program had a significantly lower reincarceration rate, and that mentors were "absolutely critical" to the success. Yet, many states and the Federal BOP prohibit mentors who have worked with prisoners inside prison from staying in touch with them after they are released. This prevents inmates from having access to the very people that can help them succeed. No wonder our recidivism rate is so high. It's time to stop turning away the helping hands of mentors.

In conclusion, for years state and federal leaders have been trying to fix our criminal justice system a bit at a time. It hasn't worked, and the public has suffered. It is time to look at the system as a whole and revamp it so it protects public safety and does it at a sustainable cost to the taxpayers. I applaud Senator Webb and the cosponsors of the legislation in taking this timely and very important step toward safer communities.