ACLU TESTIMONY BEFORE THE SENTENCING REFORM COMMISSION

THURSDAY APRIL 2, 2009

Senator Malloy and members of the Commission, thank you for allowing me to address you today. My name is Victoria Middleton, and I am the Executive Director of ACLU South Carolina’s National Office.

Your mission is critically important, and we commend your effort to seek a broad range of expert opinions, including researchers such as those from the Pew Center. We need more South Carolina-specific analysis of the impact of corrections and of laws that were intended to “get tough on crime.” We need to know if the trend in corrections has truly resulted in communities that are safer and less violent.

For example: The DOC has provided your Commission evidence that the SC prison population increased three-fold in the last 30 years. Do we have evidence that violent crime has increased proportionately? Is there any statistical evidence that the 5-year firearm enhancement enacted in 1986 reduced the number of crimes involving firearms? Is there any statistical evidence that the no-parole for drug trafficking enacted in 1988 has reduced the number of drug trafficking offenses? If answering these questions is beyond the scope of this Commission, we hope that our elected officials will see the need for sentencing laws and policies that are based on facts, not anecdotes and exceptions.

 Both those who are sentenced and our communities would greatly benefit if we returned our corrections system to the job of correcting, not just punishing, those found guilty of committing crimes. According to the Constitution of South Carolina, the state has an obligation “to provide for the custody, maintenance, health, welfare, education, and rehabilitation of inmates” (Article 12, section 2). As presently constituted and funded, the corrections system cannot fulfill that mission.

 More and more states are recognizing that prison space needs to be primarily used to protect the public from physically dangerous offenders. Like the SC DJJ, which has had proven success in identifying and rehabilitating juvenile offenders who are capable of turning their lives around, the adult corrections system needs to do more, not less, to rehabilitate the prisoners who are able to return as productive members of our society. All the evidence shows that this would reduce recidivism and lower crime in vulnerable neighborhoods and result in cost savings to the state.

Simply increasing the length of sentences and warehousing prisoners backfires, as demonstrated by the DOC’s review of the impact of so-called Truth in Sentencing. That practice has resulted in an increase in the number of repeat offenders and more discipline problems in the prisons.

 Our prison overcrowding problems and the high cost of incarceration are the direct result of too many mandatory minimum sentences that have led to over-incarceration of non-violent offenders.

We should consider early release on humanitarian grounds for elderly and sick prisoners who have served much of their sentences. They are, like youthful non-violent offenders, vulnerable to more hardened and violent inmates. They pose no threat to society. They should be restored to their families and communities. We should also identify and appropriately treat inmates who have mental illness. Does the state of SC know how many chronically sick or mentally ill inmates it has in its custody? We should. Truth-in-Sentencing and mandatory minimum sentences take away the Department of Corrections’ capacity to respond to these kinds of challenges in a humane and fair way.

Based on the available evidence, the Attorney General’s pending proposal to abolish probation and parole would be both extremely costly and programmatically ill-advised. People who work in corrections consistently report that the possibility of parole is a valuable incentive. We should not cut but increase incentives inside the prisons so that those who show good behavior can hope to earn an earlier release. We should preserve programs that address substance abuse, illiteracy and lack of job skills; inmates who successfully take part in those programs will reintegrate better into communities and keep from repeating offenses. We should expand work-release programs, for example, for non-violent HIV-positive inmates, who are currently discriminated against and segregated in SC facilities. The return on the investment for work release and other programs is proven.

 Abolishing parole will mean that inmates will leave prison without any level of supervision or support after they are released. Hoping for the best does not guarantee public safety. We need to adequately fund probation and parole to reduce caseloads of those who supervise parolees and permit more face-to-face visits. We need to reduce our reliance on incarceration as a response to technical parole and probation violations so officers can focus on those whose re-entry issues prove more challenging. This would enable probation and parole professionals to provide the kind of supervision that will guide former prisoners into a successful reintegration into society outside of the prison walls. We should also sustain funding for employment services, substance abuse programs and other community-based activities that assist former prisoners reenter their communities and encourage community partners to give them a chance to succeed.

A little more on reforming our drug laws. Minor drug offenses should not be classified as “violent.” That is not Truth in Legislating. America's bursting prisons paired with the ongoing economic crisis demand a fresh approach to nonviolent drug offenses. Unfair and ineffective laws that require lengthy incarceration of nonviolent drug offenders have squandered precious taxpayer dollars and pushed our corrections system to the brink of dangerous overcrowding.

As the SC DOC has demonstrated, South Carolina’s prisons now warehouse 10 times the number of drug offenders as in 1980. The so-called “War on Drugs,” which commenced almost 40 years ago, is really a war on low-level drug offenders and addicts. It does not get at the drug kingpins, who post the real threat to public safety. Instead of using our limited resources to incarcerate drug abusers, we should invest our time and taxpayer dollars in going after bigger fish.

There is evidence that excessive punishment of drug offenders has had a devastating and disproportionate impact on communities of color. Whites, Blacks and Latinos use drugs at virtually identical rates, according to the government's National Survey on Drug Use and Health — well-regarded as the largest and most credible research available on this issue. Yet, even though Blacks comprise just 14 percent of regular drug users nationally and just 15 percent of drug sellers, they represent 37 percent of those arrested for drug offenses and 56 percent of persons in state prison for drug offenses. The reality is that over half of all Americans have admitted to using an illegal drug, and Whites comprise the vast majority of drug users. Police have significant discretion over the enforcement of drug laws and normally focus on less powerful communities – often communities of color. We would benefit from an objective analysis of the facts in our state to determine whether sentencing for these crimes is proportionate and consistent among all communities.

Current drug laws also fail to pass the test of our shared sense of justice and humanity when we make the effort to see how they are applied to real people. Mandatory minimum laws prevent judges from determining appropriate punishment on a case-by-case basis by requiring overly harsh, one-size-fits-all sentences for all people convicted of drug offenses. Under mandatory minimum laws, judges are required to sentence low-level drug offenders to lengthy prison terms based solely on the type and quantity of drug in question — frequently a small amount. In South Carolina, we need a different system for possession charges and forgery charges of less than $5000, as those offenders do not need the level of services that hardened criminals need. A more measured approach to those who have committed nonviolent drug offenses – such as freeing judges to impose treatment in place of prison or deferring prosecution until an accused is given the opportunity to seek treatment or education – would save countless taxpayer dollars and improve public health and safety.

"Lock 'em up and throw away the key" policies fail to recognize and resolve the root causes of drug use and abuse, and they undermine the health and safety of us all. For the sake of public safety and our state’s fiscal solvency, a new approach is needed and soon. Nationwide, many states are recognizing the failure of purely punitive responses to nonviolent drug offenses in favor of proven treatment alternatives, which save money and lives by limiting unnecessary prison time and increasing access to critical health services and professionals. In the interest of public safety and fairness for all, we hope that the Sentencing Reform Commission in South Carolina will exercise the leadership needed to get our corrections system on the right track.