



January 20, 2017

The Senate Judiciary Committee
The Senate Republican Policy Committee
The Senate Democratic Policy Committee

RE: Closure of state prisons

Dear chairs and members,

Thank you for the opportunity to submit written testimony for the committees' hearing on the Department of Corrections' planned closure of two prisons. Founded in 1920, the American Civil Liberties Union is one of the nation's oldest civil rights organizations. I am submitting this statement of behalf of the 27,000 members of the ACLU of Pennsylvania.

The ACLU of Pennsylvania does not believe that the closing of a prison, in and of itself, is either a positive event or a negative one. If prisons are closed for the right reasons and in the right way, it can be an indication that mass incarceration is waning and that smart approaches to criminal justice are taking root. The legislature, three governors, and various state and local agencies have been working for nearly a decade to boost alternatives to incarceration.

Has the inmate population of the Department of Corrections (DOC) decreased enough to warrant the closure of prisons? And can it be done in a way that does not diminish the daily living conditions of inmates and the working conditions of DOC staff? These are questions that all stakeholders in prisons policy and the criminal justice system must answer, and the answers are inevitably subjective, based on each stakeholder's view on smart policy.

At the ACLU of Pennsylvania, we have challenged the practices of the DOC in various ways, including solitary confinement,¹ the mistreatment of a transgender inmate,² the protocol for executions,^{3 4} and the practice of housing inmates in a day room where inmates were not meant be housed.⁵ Prisons are not constitution-free zones. As a government-run facility, a prison has certain constitutional obligations, starting with the Eighth Amendment's ban on cruel and unusual punishment.

In press coverage of the closures, Secretary Wetzel has referred to the DOC's operational bed capacity and its "emergency capacity." With the closures, the department will be at 109 percent capacity and 92 percent emergency capacity, according to the secretary's statements. We are not aware that emergency capacity has been publicly defined and hope that the committees will explore this question during the hearing. It certainly implies placing beds in spaces that were not designed for beds, and that can lead to degradation of

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¹ *Disability Rights Network v. Wetzel*. Available at <https://www.aclupa.org/our-work/legal/legaldocket/disability-rights-network-v-wetzel/>.

² *Burton v. Wetzel*. Available at <https://www.aclupa.org/our-work/legal/legaldocket/burton-v-wetzel/>.

³ *Chester v. Wetzel*. Available at <https://www.aclupa.org/our-work/legal/legaldocket/chester-v-wetzel/>.

⁴ *Inquirer v. Wetzel*. Available at <https://www.aclupa.org/our-work/legal/legaldocket/inquirer-v-wetzel/>.

⁵ Letter from Witold J. Walczak, ACLU of Pennsylvania, to Suzanne Hueston, Chief Counsel, Department of Corrections. Re: SCI-Coal Township inmate access to toilet facilities. March 17, 2009.

conditions for inmates and staff. John Hargreaves of the Pennsylvania Prison Society told Pennlive.com, “When they run out of space, the dayrooms and the gyms are filled up with beds. Those are the places the inmates go to get out and let out steam.”⁶

In collaboration with our allies, the ACLU of Pennsylvania will continue to monitor the conditions of the state prisons as the closures of facilities and the transfer of inmates take place.

This also provides the General Assembly and Governor Wolf with the opportunity to examine an additional issue. Has enough been done to reduce the prison population, reduce the fiscal impact of corrections, and rollback mass incarceration while maintaining public safety? The ACLU of Pennsylvania believes that the commonwealth has not done enough.

The Department of Corrections’ population reached a peak of 51,512 in 2013. As of December 31, 2016, the inmate population stood at 48,767, which is a drop of 5.3 percent in three years. That type of drop is noteworthy and commendable and is certainly preferable to the steep increases in population that occurred from 2000 to 2009.

But the commonwealth can do more. Other states have implemented reforms that have led to much steeper drops in inmate populations without compromising public safety. Mississippi saw a 17 percent drop in inmates two years after implementing parole reform.⁷ North Carolina reformed parole supervision and responses to violations and has closed 11 prisons. These are two examples of numerous states that have done more than Pennsylvania to end the era of mass incarceration.

The General Assembly must quell any effort to reinstate mandatory minimum sentencing. As you may know, Pennsylvania’s mandatory minimum sentencing structure has been rendered unenforceable as a result of a United States Supreme Court decision⁸ and a subsequent ruling by the Supreme Court of Pennsylvania.⁹ Sentencing guidelines remain in place, of course. Because the ruling in *Hopkins* is less than two years old, it is imperative that the legislature allows time for the effects of the ruling to be seen before taking further action on mandatory minimum sentencing.

The General Assembly can also get smarter on sentencing and grading. We urge legislators to resist the urge to increase grading of existing crimes and to create new crimes in response to anecdotes in your districts. As the saying goes, bad facts make bad law. That is how Pennsylvania created a bloated corrections system.

⁶ McKelvey, W. (2017) *Is Pennsylvania creating a ‘recipe for disaster’? Prisons closings revive overcrowding questions*. January 9, 2017. Available at http://www.pennlive.com/news/2017/01/prison_closings_will_have_far-.html.

⁷ Thomson, C. and Harvell, S. (2016) *States spearhead ambitious criminal justice reform policies*. The Urban Institute, December 22, 2016. Available at http://www.urban.org/urban-wire/states-spearhead-ambitious-criminal-justice-reform-policies?utm_source=iContact&utm_medium=email&utm_campaign=Justice%20Policy%20Update&utm_content=Justice+Policy+Update+-+Jan+2017.

⁸ *Alleyne v. United States*, 133 S. Ct. 2151 (2013)

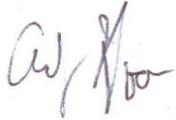
⁹ *Commonwealth v. Hopkins*, _ A.3d_ (Pa. 2015)

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Lastly, the criminal code can be redrawn to reflect common sense. For example, some states tie the property value for felony retail theft to inflation. In Pennsylvania, the legislature and then-Governor Corbett reduced the value to trigger felony retail theft from \$2000 to \$1000 in 2013. Other states have boosted minimum drug quantities before increased grading kicks in and have differentiated burglaries that occur when someone is home and when someone is not. These are merely three of many examples that highlight a common sense approach to grading and sentencing. The commonwealth would benefit from heeding the examples of other states.

The DOC's plan to close two prisons provides all stakeholders with the opportunity to further discuss and debate the layers of issues around corrections policy and criminal law. We hope the Senate will use this moment to reinforce the need for policy that is based on fairness and human rights, not selfish economic interests.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andy Hoover". The signature is stylized and cursive.

Andy Hoover
Communications Director, ACLU of Pennsylvania