

**Testimony of  
The Honorable Jack Markell  
Governor of Delaware**

**Submitted to the United States House of Representatives  
Committee on Oversight and Government Reform  
July 14, 2015**

- Chairman Chaffetz and Representative Cummings, thank you for inviting me to be part of today's discussion about one of the most important areas in which our laws must change to maximize opportunity for all of our citizens and for our country.
- Thank you Governor Bentley for speaking out about these issues.
- Before I tell you about our corrections system today and about the policies we must pursue in Delaware and across the country, it's helpful to start with a few key facts.
- First, less than 25 years ago, fewer than 700,000 people populated the entire state and federal prison system in our country. By the end of the last decade, 700,000 was the number of people we were releasing from that system in one year.
- In Delaware, our incarceration rate is higher than the national average in a country whose incarceration rate is the highest in the world. And our prisons are over capacity.
- Second: 97 percent of the people in our prisons are coming out. Spiking prison populations have resulted in unprecedented waves of offenders leaving prison when their sentences end. As they reenter our communities, the reality of stubbornly high rates of recidivism amongst them has set in.
- The impact is most severe in our minority communities.
- The number of African-American men with a criminal record approaches 80 percent in some major cities across the country. About 6 out of 10 inmates in Delaware are persons of color, and our non-white young people are disproportionately affected.
- And once we've sent them to prison for the first time – often for a non-violent offense – many of them are locked out from meaningful employment for the rest of their lives. Consider the impact of that on their families and communities.

- And third, corrections costs have skyrocketed across the country. In Delaware we spend more than \$270 million annually, including more than \$36,000 per year for each and every incarcerated adult.

Keeping people safe must be a top priority of any government. There are those who belong behind bars and it is worth every penny we spend to keep them there. But the most expensive solution is not always the smartest solution. This is particularly the case for non-violent offenders and for individuals challenged with addictions who need treatment more than they need a prison cell.

- It's especially the case for defendants and probationers whose infractions, like missing appearances and appointments, mark them as irresponsible, but not dangerous.
- During sentencing, we rarely consider what will happen when those sentences end, even though penalties result in long-term detention.
- We have a choice. We can ignore the mounting evidence of diminishing, and possibly negative, returns from building prisons and we can simply address overcrowding by building another one.
- Or we can do the hard work of being smarter about how we use the corrections resources we have. We must choose to be smarter.
- Before making decisions about criminal justice investments, we must ask ourselves: will this make our communities safer and is this the best investment in our prosperity?
- We have an opportunity, but also a moral and economic imperative, to implement practical solutions to our corrections challenges. I believe the changes we have begun to make in our state can be a model for the nation, while we must also learn from other leaders, like those testifying in this hearing, about ways to build on our recent progress.

## **Delaware policy changes**

- In Delaware, we have begun to shift to a new approach driven by the complementary goals of making better use of our corrections resources and making it more likely that ex-offenders will contribute to society rather than reoffend.

It starts with the Justice Reinvestment Act I signed in 2012 which was designed to help ensure that we treat those who enter our criminal justice system in the most effective way. For example, our courts now use a risk assessment tool to identify defendants who are good candidates for pre-trial release or community-based supervision by the Department of Correction or community based organizations. As we know, remaining in the community enhances a defendant's chances of success in the long term. Over the last twelve months, Delaware's population in custody has dropped 3%, mostly among pre-trial detainees.

- More offenders in Delaware are being assessed for both risk and need upon entering custody. In cooperation with George Mason University, we are implementing a Risk Needs Responsivity Tool to leverage technology in case planning. The tool assesses the offender's risk and need level and matches the offender with an appropriate level of intervention. We already assess every sentenced offender for both risk and need so that they receive the most appropriate level of supervision and services. Our goal is to extend this assessment to every person in detention so that services, particularly mental health and substance use services, are available immediately, even before trial.
- In addition, the law allows judges to use a risk and needs assessment as a factor in sentencing. And it allows offenders to reduce their sentences up to 60 days by completing programs proven to reduce recidivism, providing an incentive for successful completion and placing offenders back in the community when they are prepared for re-entry.

One of the first steps I took upon entering office in 2009 was to create I-ADAPT, (Individual – Assessment, Discharge And Planning Team) a multi-agency re-entry program. Five executive branch agencies – Correction, Labor, Education, Health and Social Services and Housing – came together to share information on offenders to create an individualized reentry plan that includes employment support, health care, and housing. The help offenders receive is highly practical. They are enrolled in Medicaid if eligible, provided with identification documents, transportation vouchers and connected to people they can rely on for support as they seek housing and employment.

- And because we know that employment status is one of the best indicators of whether someone will reoffend, we must also give ex-offenders a fair opportunity to earn and keep a job.
- Even seemingly small steps make a huge difference. For example, in Delaware, we passed bipartisan legislation to eliminate mandates that cause non-violent offenders to lose their driver's license even when their crime isn't related to driving. We wanted to ensure they can travel to and from work. As a result, nearly 800 non-violent offenders per year are having their driver's licenses returned after being released, and we've eliminated the automatic suspension of driver's licenses for Delawareans who fail to pay fines for minor traffic offenses and don't pose a traffic safety hazard. Everybody should work to pay back what they owe, but it's in everyone's interest to keep people safely on the road with a valid license, registration and insurance as they work to put their lives on track.
- In addition, our Department of Correction hires ex-offenders into a Department of Correction job training program so that they can have paid job experience while they seek permanent employment after release. In a time of historically tight budgets, Delaware has invested in a Culinary Arts Program and an Automotive Service Program, two areas

where we know that jobs are available for trained individuals and the industry is welcoming to ex-offenders.

- And we banned the box on state job applications so the more than two thousand ex-offenders who apply for state jobs have a better shot at employment. State hiring can and should still involve background checks, but it's important that these individuals no longer have to check a box on job applications because that practice too often denies them a fair chance to interview.

### **Addictions**

- Embracing the future of our criminal justice system means recognizing that many offenders suffer from addiction. Seventy-one percent of men arrested in 10 U.S. cities in 2011 tested positive for an illegal substance.
- No one should be behind bars because of a lack of services in their community. We need to examine the adequacy of community-based treatments, particularly for addictions. I'm proud that even in a time of limited revenues, our state has made significant new investments in treatment for the substance use epidemic.
- That means expanding services for those struggling with substance use disorders and no longer relying on 'one size fits all' treatment model. Rather we will better address individual needs by expanding sober living residential beds and increasing services geared toward young people, while also focusing on education and prevention.
- One innovative Delaware program is New Expectations, which serves pregnant women who need substance use disorder treatment. We realized that too many pregnant and addicted women were in correctional custody because of a lack of community services. Working with our corrections health provider, we created a community-based group home where pregnant and new mothers can receive treatment, gain parenting skills, and most important, form strong bonds with their babies. For these mothers and their babies,

the opportunity to remain together in a supportive and sober environment may make all the difference. And we were able to build the program without spending additional money. This is truly a Justice Reinvestment.

## **Closing**

- We should be under no illusion about the difficulty of this task. The individuals who will be directly impacted by these policy changes have made very poor choices and their situations aren't usually at the forefront of the public's consciousness.
- They do not have powerful interests lobbying on their behalf. Until very recently, no one was walking the corridors of Congress and state legislative halls explaining why the punishments for their crimes are ineffective or why their plights deserve the kind of attention I'm proposing.
- These issues will fade into the background, unless we realize the difference we can make in the lives of offenders and the benefits we can achieve for society as a whole.
- Like any effort to achieve meaningful change, this will not come to pass without hard work, but we cannot afford – and cannot tolerate - the status quo any longer.
- I'm hopeful that with an increased bipartisan and national commitment to addressing the inequities, inefficiencies, and unproductive policies of our criminal justice system, we can look forward to much progress ahead.
- Thank you for the focus you are putting on these issues and for the opportunity to join you today. I look forward to answering any questions.