

**New Jersey General Assembly
Judiciary and Law and Public Safety Committees
Joint Hearing on Assembly Bill A2750
Testimony of Nancy Fishman, New Jersey Institute for Social Justice
October 21, 2008**

Good afternoon.

I would like to start by thanking Chairpersons Barnes and Greenstein and members of the Judiciary and Law and Public Safety Committees for the opportunity to address you here today on these important issues.

My name is Nancy Fishman and I am the Senior Law And Policy Analyst at the New Jersey Institute for Social Justice, located in Newark. The Institute for Social Justice is a non-partisan urban research and advocacy organization; we work to promote the economic vitality of urban communities, and to challenge policies and practices that prevent urban New Jerseyans from achieving their full potential. As part of this work, the Institute is the convener, along with the New Jersey Public Policy Research Institute at the Bloustein School, of the New Jersey Reentry Roundtable. This is a year-long initiative, chaired by Former Public Defender Stanley Van Ness and former Attorney General John Farmer, gathering policymakers, researchers, service providers and other key stakeholders to assess and develop a strategic response to the challenges posed by prisoner reentry in New Jersey. We are pleased to have the active participation of Devon Brown, Commissioner of the Department of Corrections, Peter Harvey, Deputy Attorney General, Yvonne Segars, State Public Defender, Michael Dowling, Executive Director of the State Parole Board, Howard Beyer, Director of the Juvenile Justice Commission, Theodore Fetter, Deputy Director of the Administrative Office of the Courts, among others. I will talk a little more later about the work that we are doing, as well as attach further information to my submitted testimony.

We are very supportive of the plans outlined in A2750 to take a fresh look at Title 2C of the New Jersey Statutes and assess whether our current sentencing policies, as they have evolved over the past 23 years, are truly serving New Jersey and its residents. I know that there will be a number of speakers here today who will talk about the key issues of pursuing alternatives to incarceration for nonviolent drug offenders and the inconsistencies in the current criminal code. The main point of my testimony here today is to encourage those creating this new "Commission to Review Criminal Sentencing" to examine Title 2C and sentencing policy in the context of reentry. That is, to advance important goals such as promoting public safety and reducing the social and economic costs of crime, this commission will need to look at the role and impact of sentencing beyond incarceration, and include in its recommendations ways to increase the chances that those who have served their time can become productive members of their communities and assets to our state.

Why think about sentencing in the context of reentry? I want to share with you some of the data that were presented at the first session of the New Jersey Reentry Roundtable in October, starting with one basic fact: 96 to 97 percent of all individuals in state prison -- and all of those serving shorter sentences in county jails -- will get out and return to their communities. Virtually everybody comes home. In the years since the criminal code was comprehensively revised, the number of people in the state prison system has almost quintupled, with steady growth from 1980 to 1999 and a slight decline since then. According to the 2000 census, there were about 48,000 people in correctional facilities in the state, including state and federal prisons, county jails and halfway houses. The incarceration rate -- the number of New Jerseyans we incarcerate per 100,000 residents -- has grown fourfold since 1980. With more people going in, more are coming out: the number of people coming home has also increased fourfold. As you are aware, there are significant fiscal implications for the state as well: between 1979 and 2001, a very conservative estimate of state expenditures for corrections and parole shows an increase of 446%, a growth rate more than twice the rate of growth for state expenditures as a whole.

What happens to people when they leave prison? We need to know a lot more to answer this question fully, and the New Jersey Reentry Roundtable is setting out to do just that. We do know that of the over 16,000 individuals released from state prison last year, one third had "maxed out" and were released without any parole supervision, or support. This is above the national average, which is under 25 percent. We don't know whether those who are released without supervision do any worse in terms of successful reintegration or recidivism than those who are supervised. Parole violators, however, make up an increasing share of prison admissions, jumping from 20 percent in 1990 to 40 percent of all admissions in 1998.

In New Jersey, as across the country, those coming out of prison face steep obstacles to successful reintegration. Some of these are personal barriers. The average education level of state prison inmates is below 8th grade, and many do not have stable work histories. We know that a significant number have substance abuse problems which are not being addressed with current DOC resources. A report to Congress released this year on the health status of soon-to-be-released inmates documented disproportionately high prevalence of AIDS and HIV, tuberculosis, asthma, diabetes, hypertension, and mental illness compared to the rest of the population.

Other barriers are legal and structural. As you have already noted in calling this hearing, most convictions in New Jersey, as elsewhere in the nation, carry sanctions beyond a period of incarceration that can serve as barriers to economic stability and community membership, including prohibitions on many kinds of employment, loss of a driver's license, reduced access to public benefits, and loss of right and responsibility to vote. In other areas of the country, research has shown that individuals returning from prison and jail are increasingly concentrated in poor and working class neighborhoods in urban core counties, areas already stretched for resources and in many ways least capable to facilitate the successful reintegration of former prisoners. Similar patterns seem present in New Jersey, and the Institute is working with the State Parole Board and other members of the Reentry Roundtable to map the geographic distribution of our reentry population. Individuals with criminal records also face discrimination by employers, despite the existence of some useful hiring incentives like federal bonding and tax credits.

The Reentry Roundtable will be spending the year assessing these issues and developing recommendations for cost effective, appropriate programmatic and policy responses. We will be happy to make available to both committees and to the new commission, if established,

the research that has been commissioned for this effort, including some statewide public opinion polling being conducted by the Eagleton Institute Center for Public Interest Polling, as well as our final analysis and strategy. At this point, however, we do offer the following recommendations for the Commission to Review Criminal Sentencing, drawing on that basic fact with which I began: almost everybody comes home.

- National policymakers and criminal justice experts are beginning to examine the ways in which sentencing policy, and sentencing courts, can play a role in planning for reentry. Ideas include split sentencing, providing for a mandated period of probation at the end of incarceration, with earlier release to community supervision for good behavior, and with court supervision not only of the sentenced individuals but also of the agencies that are supposed to be assisting them. A number of states are already experimenting with “Reentry Courts,” which is one way of facilitating this supervision. We would be willing to assist the committees in gathering further information about these approaches.
- The new Commission should include in its review of existing sentencing the collateral sanctions that accrue to convicted offenders in addition to terms of probation or incarceration, even though these are often not found in Title 2C. This seems particularly appropriate as the Commission is assigned the task of reviewing the fairness and proportionality of new and enhanced offenses; in most cases, collateral sanctions such as lifelong occupational bars and denial of public benefits including educational loans, housing assistance and food stamps are not mentioned at sentencing or in plea bargain discussions. Such across-the-board sanctions can violate the underlying principle in sentencing that the punishment should fit the crime: those convicted of one low-level drug possession offense receive the same sanction as those with multiple serious felony convictions. Individuals with convictions stemming from substance abuse problems – and the number of inmates convicted of drug offenses has increased 40 percent over the past ten years – can, in fact, fare far worse than those with violent crime convictions, losing access, for example, to public assistance and food stamps. In addition, though, these kinds of sanctions are often counterproductive to the state’s interest in facilitating community reintegration, shutting the kinds of doors to good citizenship – employment, the ability to support a family, the responsibility of voting – that have been shown time and again to reduce recidivism and thereby promote public safety.

The American Bar Association has recently drafted new standards on “Collateral Sanctions and Disqualification of Convicted Persons,” which recommend, among other matters, that collateral sanctions imposed upon conviction be limited to those specifically warranted by conduct constituting the offense; that sanctions which infringe on fundamental rights or will serve to frustrate successful reentry be prohibited, and that information concerning collateral sanctions be separately codified and explained fully to defendants. We recommend that these committees and the new Commission examine these suggested standards as part of an assessment of New Jersey’s current regime of collateral sanctions.

- While I noted at the start of my testimony that I would not focus on the issue of punishment for nonviolent drug offenders, we do want to emphasize our belief in the importance of examining our current approach to dealing with these offenses and exploring alternatives to incarceration in these cases. This is not simply the growing consensus among public policy experts: national public opinion research has shown

that people across the country believe that incarceration is not the best solution for those needing treatment and not the wisest use of public funds. The same holds true for those with mental illness who, because of deinstitutionalization, make up an increasing percentage of our prison population.

Thank you again for the opportunity to speak with you here today. I will be happy to answer any questions.