

**Statement to the Criminal Justice Council
at its Sussex County Hearing – October 22, 2015**

**Presented by Charlotte King on behalf of
The Southern Delaware Alliance for Racial Justice and
The League of Women Voters of Delaware**

Good Evening. My name is Charlotte King. I am Chair of the Southern Delaware Alliance for Racial Justice (SDARJ), Immediate Past President of the League of Women Voters of Delaware (LWVDE) and a current member of the League of Women Voters of Sussex County.

SDARJ grew out of a study group co-sponsored by the League of Women Voters and the Lewes-Rehoboth Association of Churches that wanted to act after reading *The New Jim Crow* by Michele Alexander. Our Mission states: *The Southern Delaware Alliance for Racial Justice is a non-partisan organization educating, informing, and advocating for racial justice, equality, and fair opportunity.*

One of the fundamental principles of the League of Women Voters set forth in our national public policy document called *Impact on Issues* is that “no person or group should suffer legal, economic or administrative discrimination.” At both the national and state level we have worked actively for years to implement that principle. In particular, at both levels, we have called for judicial independence and have opposed mandatory sentencing and its resulting inequities as well as other means to ensure justice for all.

Our overarching concern. The *News Journal* on Tuesday (October 19) reported that “More than 200 children are locked behind bars in Delaware – and 76 percent of them are black. In Delaware’s prisons, African-Americans make up 56 percent of inmates. Yet only 22 percent of the state’s population is black.”

Delaware is not alone. For example, the U.S. Justice Department’s Bureau of Justice (BOJ) reports that in 2014, 6% of all black males ages 30 to 39 nationally were in prison, compared to 2% of Hispanic and 1% of white males in the same age group.¹

We believe that our leadership at both the national and state levels wants to change that and we want to help make change happen. To that end, we ask that along with other issues we will address this evening, the report coming out of these hearings will include the numbers and percentages of prisoners in Delaware, broken down by age, race, ethnicity, and gender for each of our prisons.

Our priorities. Just last week, SDARJ adopted three priorities that we wish to address tonight. The following day, the LWVDE Advocacy Corps adopted those same priorities for the coming legislative session. There are significant issues outside the criminal justice system that contribute to the racial disparity in our prisons, not the least of which are poverty and institutional racism in our society. However, we believe that addressing the issues we will outline will help reduce that disparity.

Part A of our first priority is advocacy for major bipartisan federal legislation that has been introduced to address a wide range of criminal justice issues that concern us. The “Sentencing Reform and Corrections Act of 2015” (S. 2123), was introduced on October 1 by Sen. Grassley (R-IA) with bipartisan co-sponsors: Senators Durbin (D-IL), Cornyn (R-TX), Whitehouse (D-RI), Lee (R-UT),

¹ U.S. Department of Justice, Bureau of Justice (BOJ) Statistics, September 2015, report entitled *Prisoners in 2014* (NCJ 248955), page 1.

Schumer (D-NY), Graham (R-FL), Leahy (D-VT), Booker (D-NJ) and Scott (R-SC). Broad support was expressed at the Justice Committee hearing on the bill earlier this week. But Delaware's Senators were missing from the bill's list of sponsors. We will be seeking support from them to ensure enactment of this legislation.

Key provisions of S. 2123 address a wide range of issues that concern us. They include:

- Reduces length of mandatory minimum sentences,
- Reserves mandatory minimum sentences for serious drug felonies and violent crimes,
- Bolsters re-entry programs especially aimed at reducing recidivism such as GED and academic classes, cognitive behavioral treatment, mentoring, occupational and vocational training and certifications, and substance abuse recovery,
- Bans solitary confinement for juveniles,
- Provides for sealing juvenile records and easing expungement of those records,
- Makes parole possible after twenty years for juveniles sentenced to life imprisonment,
- Provides more judicial flexibility.

Part B of that priority is to urge the introduction of and to advocate for Delaware legislation to mirror what is in the federal bill. The federal legislation applies only to federal prisons and prisoners. However, the vast majority of prisoners in the U.S. are in state and local prisons. On December 31, 2014, there were 210,567 individuals in federal prisons, while there were 1,350,958 in state prisons.² Therefore, we believe it is critical that we enact state legislation to adopt the type of approaches in the federal bill to enhance our ability to reduce the incarceration rate and the racial disparity in Delaware.

A particular focus should address minimum mandatory sentences that many students of our criminal justice system believe is a major cause of mass incarceration in America. See the League of Women Voters' position paper on minimum mandatory in Attachment A.

We note that the number of prisoners in Delaware was reduced by 49 individuals between 2013 and 2014. According to the *Prisoners in 2014* report, total prisoners in Delaware went from 7,004 in 2013 to 6,955 in 2014. The number of women inmates went from 599 in 2013, to 594 in 2014.³ We urge the state to focus on increasing the rate of reduction moving forward.

We did want to note a bar chart in the *Prisoners* report showing that Mississippi had reduced its inmate population much more dramatically than any other state. That state held 3,200 fewer prison inmates at yearend 2014 (down 15% from 2013). This resulted from new policies that encourage supervision of nonviolent offenders in the community instead of in prison. We suggest that you investigate how Mississippi did it to determine what we might learn from their experience.

When compared to the number of prisoners per 100,000 population, Delaware ranked eighth in the nation with a total of 861 residents age 18 or older in 2013 and 863 in 2014. Since prisons form one integrated system in Delaware, our ranking is probably higher than it would be if data for other states included local jails. Nevertheless, the First State can and should do better.

² BOJ report, *Prisoners in 2014*, Table 1, page 2.

³ BOJ report, *Prisoners in 2014*, Table 2, page 3.

As our second priority, we will actively monitor progress of the solitary confinement study required by a joint resolution of the General Assembly and advocate for implementation of its recommendations.

As you know, Amendment VIII to the U.S. Constitution prohibits cruel and unusual punishment. We believe that solitary confinement, in most situations, is cruel and could even rise to the level of “torture.” This is particularly true when applied to children and the mentally ill.

Many studies support the view that mentally ill inmates and juveniles are more severely affected by solitary confinement than other prisoners. As such, the solitary confinement of mentally ill inmates and juveniles has been upheld as cruel and unusual in both international and US courts. For example:

Anna Conley, in *Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law*⁴, states that the UN has “expressly prohibit[ed] solitary confinement of juveniles and individuals with mental illness.” Within the US legal system, courts have held that the solitary confinement of the mentally ill is, in fact, “cruel and unusual” https://en.wikipedia.org/wiki/Solitary_confinement_-_cite_note-hayley1-65 According to Shira E. Gordon in "*Solitary Confinement, Public Safety, and Recidivism*,"⁵ “every federal court that has considered claims by severely mentally ill prisoners held in solitary confinement has found this treatment unconstitutional.”

It is commendable that Delaware has begun to address this issue. House Joint Resolution 5 was passed in June and was signed by the Governor on September 3. This resolution replaced HB 36 that was tabled by the House Corrections Committee in January. The synopsis of HB 36 stated that:

This bill would place limits on the use of solitary confinement, a topic which is largely unaddressed in current Delaware law. A growing body of research shows that long-term solitary confinement may contribute to significant mental health issues and reentry problems. Of particular concern is the impact of the practice on juveniles and the mentally ill. Therefore, this Act would limit the amount of time that a person may be ordered into solitary confinement as part of their sentence to 4 weeks, rather than 3 months. Additionally, the bill would not allow the Department of Correction to use solitary confinement as a punishment for disciplinary violations for more than 15 consecutive days or 20 days out of any 60 day period. Finally, this legislation would prohibit the use of solitary confinement as a disciplinary tool for the mentally ill or juveniles.

The synopsis of HJR 5 stated that:

Delaware law is largely silent on the appropriate use of restrictive housing, or “solitary confinement,” and little information is publicly available regarding its use in corrections facilities. There is growing concern about the effects of solitary confinement on mental health and reentry. Therefore, this joint resolution authorizes the House Corrections Committee and the Department of Correction to commission an examiner to study and make findings and recommendations concerning the use of restrictive housing in Delaware correctional facilities.

⁴ Anna Conley, "Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law" published in the *International Constitutional Law Journal* 7.4 (2013)

⁵ Shira E. Gordon, "Solitary Confinement, Public Safety, and Recidivism," published in the *University of Michigan Journal of Law Reform* (2013)

An amendment clarified that the engagement of an expert is subject to the availability of funds specifically appropriated for that purpose and the word “Expert” was substituted for “Examiner.”

We plan to monitor implementation of this study and will expect that interim and final recommendations will be made public as soon as they become available.

With regard to problems that led to the substitution of HJR 5 for HB 36, we heard that prison design and capacity are significant factors in our ability to reduce solitary confinement. According to the *Prisons in 2014* report mentioned above, Delaware’s “rated capacity”, based on the number of beds assigned by a rating official to each facility, is 5,649. Our “operational capacity”, based on the ability of the staff, programs, and services to accommodate a certain size population, is 5,210. The original capacity that our facilities were designed to hold is 4,161. But the number of prisoners held in these facilities as of December 31, 2014, was 6,730. This is 161.7% higher than the design capacity and 119.1% of the lowest “rated” capacity.⁶

Here are some questions that we believe need to be considered in the study and an effort to eliminate solitary confinement except in the most egregious situations:

1. What violations are committed that warrant solitary confinement?
2. Who and what determines when a prisoner goes to solitary confinement?
3. How many inmates are being held in solitary confinement and what is the percentage of prisoners, by prison?
4. Are any suspects in pre-trial detention held in solitary confinement? If so, why should they be punished in this manner before being found guilty of a crime.
5. What are the specific conditions of solitary confinement? (Hours per day or week in darkness, restrictions on physical activity, etc.)
6. What is the average and what is the longest time that prisoners spend in isolation?
7. What is the breakdown of prisoners in solitary confinement by prison, age, race, ethnicity, and gender?
8. What percentage of those in solitary confinement are known to be mentally ill?
9. How many juveniles are in solitary confinement?
10. What are the three measures of prison capacity (rated, operational and by design, as mentioned above) and the actual numbers for each prison in Delaware?
11. Is one, or more, of our prisons more significantly over capacity than the others and is that where the most prisoners are in solitary confinement?
12. What is the status of the study being undertaken in response to HJR 5? What is the timeline for completion and the report being made available to the public?

⁶*Prisoners in 2014*, Table 8, page 12.

Our third priority is to advocate for the reduction in the number of inmates held in pre-trial detention.

According to an article in the Columbia University *Human Rights Law Review*,⁷ “pretrial detention is the time period that you are incarcerated between being arrested and your trial. Detention is only supposed to be used to ensure that the person will not flee prior to trial or pose a danger to other people. It is not supposed to be used to punish or rehabilitate that person.”

Department of Correction Commissioner Robert Coupe told three of us in June that 25% of male prisoners and 40% of the women are in pre-trial detention. A young man on our Alliance committee who has experienced prison in Delaware has told us that inmates call pre-trial detention “pre-plead” detention. He described treatment in the prison where he was held was so awful that many plead guilty when they are innocent, just to get out.

This raises the question of whether available resources are so stretched that poor suspects who must depend on overworked, under-paid public defenders and backlogged courts lead to pressure on the system to encourage plea deals rather than give defendants a fair trial.

To address the issue of pre-trial detention, we raise the following questions:

- What percentage of the accused are held because the judge determines that they might flee prior to trial? Please break down by age, race, ethnicity and gender.
- What percentage are held because the judge determines that they pose a danger to other people/the community? Please break down by age, race, ethnicity and gender.
- What percentage are held because they cannot meet bail? Please break down by age, race, ethnicity and gender.
- What percentages are held for other reasons and what are those reasons? Please break down by age, race, ethnicity and gender.
- What efforts are being made to identify ways to reduce the number of the accused who are held in pre-trial detention? If so, what are they and who is undertaking this work?
- Has there ever been a study of the percentage of suspects that are held in pre-trial detention, analyzed by sentencing judge? To what extent are judges understandably influenced by the attitude and demeanor of suspects whose experience with the institutional racism in our society has given them no hope of escaping prison?
- To what extent are individuals counseled on how a plea deal will affect (ruin?) the rest of their lives? By whom? When in the process?

Finally, let me say that we have begun our research on these issues fairly recently and we expect that additional issues will rise to the top of our priorities as we gain an understanding of the overall criminal justice system in Delaware. Attachment A is a list of questions not addressed in the text of our statement. The answers will contribute to our education and, we hope, the final report on these hearings. Thank you for your consideration of our concerns.

⁷ A *JAILHOUSE LAWYER'S MANUAL*, Chapter 34: *The Rights of Pretrial Detainees*, published in the Columbia University Human Rights Law Review



ATTACHMENT A

MINIMUM MANDATORY SENTENCING POSITION PAPER

The League of Women Voters of Delaware Supports Abolition of Minimum Mandatory Sentencing and other Improvements in our Criminal Justice System

The top priority for the Justice portfolio of the League of Women Voters of Delaware is the abolition of minimum mandatory sentencing and support for the adjustment of drug sentencing laws to fit the seriousness of the crime. We believe that mandatory sentencing rules handcuff judges and fill prisons with too many nonviolent drug offenders.

The LWVDE position is supported by a national position adopted by the 2012 Convention: **The LWVUS believes alternatives to imprisonment should be explored and utilized, taking into consideration the circumstances and nature of the crime. The LWVUS opposes mandatory minimum sentences for drug offenses.**

Even earlier, as part of an ongoing study of the state's criminal justice system initiated in 1977, LWV of Delaware, in 2003, adopted a position to **Support judicial discretion in making sentencing decisions rather than mandatory sentences imposed in statute.**

Since Congress created mandatory minimum sentences in the "War on Drugs" in the 1980s, our nation's prison population has grown to 2.3 million people behind bars -- more than any other country in the world, according to the International Centre for Prison Studies.

Delaware currently has 6,000 prisoners in Level V and 1,100 in Level IV, at a cost of \$36,232 per year as of the end of FY 2014. In addition, another 15,000 individuals are under the supervision of Probation and Parole officers.

Delaware's judicial selection process is regarded as a model: Delaware judges, in all courts in the state, are chosen through a merit selection process. A unique feature of our system is the requirement for partisan balance within the Delaware judiciary. These features suggest that Delaware's courts are among the best in the nation. Therefore, we should be able to trust in our judges' discretion to make reasonable decisions regarding the severity of sentences they impose.

A recent (March 2015) report from the Brennan Center for Justice suggests that "the idea that someone will choose not to commit a crime because of a specific penalty — is one justification often touted in support of harsh sentences....However, all such punitive policies have proved unlikely to deter, because potential offenders typically underestimate the risks of getting caught and the possible punishments. "

Furthermore, "more incarceration can increase crime. When defendants are sentenced to prison instead of pro-rehabilitation alternatives or longer instead of shorter terms, prison has detrimental effects. For example, incarceration strains relationships with families and communities and diminishes economic prospects, which in turn increases the likelihood of recidivism."

In October 2015, comprehensive bipartisan legislation was introduced in the U.S. Senate to roll back America's punitive criminal justice policies. Among its provisions are reductions in some mandatory minimum sentences.

Criminal justice reform is an idea whose time has come! Let's keep Delaware in the forefront. Let's eliminate minimum mandatory sentences and adjust drug sentencing laws to fit the seriousness of the crime.

**Questions for the Criminal Justice Council submitted jointly by
The Southern Delaware Alliance for Racial Justice and
The League of Women Voters of Delaware**

1. Does the Criminal Justice Council or the Legal system in Delaware have a mission statement that briefly states its focus?
2. Is the mission of the State to punish and/or to rehabilitate?
3. How much is spent on the Criminal Justice system here in Delaware, including the courts, prisons, police, etc.?
4. What percentage of criminal justice system funds come from the federal government?
5. How much comes from charges to prisoners to cover their medical care, etc.?
6. What is the breakdown of how these funds are spent for such categories as medical care, mental health care, basic education such as preparation for GED, any other education purposes, re-entry?
7. What is the percentage with substance abuse issues? (Is a breakdown available on alcohol, drugs, and gambling?) What services are available to them?
8. What is the percentage with mental health issues and what services are available for them?
9. What is the percentage of people in prison on non-violent drug related convictions?
10. Where are young people under the age of 18 held?
11. What are the rates the private contractor charges prisoners for phone calls to family or others? What company has the contract for this service?
12. What other expenses do prisoners incur while in prison?
13. Please provide information on the amount of debt prisoners incur from child support payments built up while the inmate has little or no income during his time in prison?
14. Do the State Prisons all have GED opportunities, how many, and what percentage of inmates take advantage of the GED? How many, and what percentage, graduate? Please break down data by prison, race, ethnicity and gender.
15. Are there any efforts to provide for college-level education in our prisons?
16. What job training opportunities are available to prisoners in each prison and how many prisoners are enrolled in them by prison? Do any of them result in certification or other proof of qualifications required for the jobs for which the prisoner is trained?
17. Is any help given to inmates prior to release to obtain a birth certificate, ID, and Social Security Number?
18. What other services are available to assist in ensuring a smooth re-entry upon release?
19. How many half way houses are there in the State, by County? Please list.
20. What is the recidivism rate, by prison, race, ethnicity, and gender?