

United Methodist Advocacy in Pennsylvania

December 29, 2019

The Pennsylvania General Assembly was much more active this month than is typical for December. A significant amount of criminal justice bills were under consideration—as is evident in this report.

I was questioned regarding much of this criminal justice legislation by the Democratic caucus of the House Judiciary Committee, as to the position of United Methodist Advocacy on these matters. For several of these bills, I was able to cite the *Book of Resolutions*. (Let it be known that I never claim a position of the UMC that cannot be documented.)

I also visited with Rep. Seth Grove (R-York) to discuss Senate Bill 60, regarding human trafficking. The bill needs to be reworked in the House. The bill deals with users of human trafficking for sex. The Senate previously amended the wording in the bill, making SB60 vague and out of sync with federal language.

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JRI2 Criminal Justice Reform

On Dec. 18, the state Senate approved two bills of a three-bill package called the Justice Reinvestment Initiative 2 (JRI2). The approved bills were Senate Bills 500 and 501. The third bill, Senate Bill 502, is still pending in the House.

SB500 and SB501 were signed into law by Gov. Tom Wolf on the same day on which he received them. At a bill-signing event in the Capitol Rotunda, Wolf observed, “These important pieces of legislation are going to do a lot of things.”

He continued, “First, they’ll cut red tape, reducing bureaucracy, resulting in savings of time and money. We will reinvest those savings in the criminal justice programs that further reduce recidivism, increase public safety and better serve the victims of crime. JRI2 makes key reforms that include providing new sentencing guidelines to judges to reduce unnecessarily lengthy sentences. It also establishes automatic release upon the completion of most short sentences of two years or less... JRI2 makes other key changes to our probation system to reduce unnecessary, ineffective incarceration... JRI2 also streamlines the process for getting people into our drug treatment programs... This increasing participation in our drug treatment programs, we are confident, will reduce recidivism while saving taxpayers more than \$33,000 a year per participant.”

SB500, sponsored by Sen. Lisa Baker (R-Luzerne), among other things, creates the independent County Adult Probation and Parole Advisory Committee, that will advise on adult county probation practices, as well as review and award grant applications for county intermediate punishment programs.

SB501, sponsored by Sen. Tom Killion (D-Delaware), provides presumptive parole for offenders with short-term minimum sentences in state correctional institutions. It also provides new mandatory minimum sentences for certain crimes against minors.

Both bills returned to the Senate for final approval because of amendments added by the House.

SB502, sponsored by Sen. Camera Bartolotta (R-Washington) remains in the House awaiting possible amendments. The bill is intended to update the Crime Victims Act, to improve information and compensation for crime victims.

A Lot of Criminal Justice Legislation

On Dec. 16-18, the state House approved the following criminal justice-related bills, sending them to the Senate:

House Bill 1477 would set new standards for occupational licensing boards to use when considering licenses for applicants with criminal records. Sponsored by Reps. Sheryl Delozier (R-Dauphin) and Jordan Harris (D-Philadelphia), the bill limits the boards to considering only convictions directly related to the license when evaluating whether to approve or deny a license application. Rep. Harris said, “We know the number one way to lower recidivism and stop people from falling into the pitfall of crime is to give them a chance at secure employment and a better life, and that’s exactly what House Bill 1477 accomplishes.”

House Bill 440, sponsored by Rep. Ted Nesbit (R-Mercer), would mandate expungement of an individual's record if he or she has been unconditionally pardoned or fully acquitted of all charges.

House Bill 256, sponsored by Rep. Carl Metzgar (R-Somerset), would redefine assault on a prison staff member to reflect there is a lower threshold for an assault to occur when committed by an inmate on staff. And **House Bill 257**, would impose a mandatory five-year sentence for those convicted of staff assault, served consecutive to a prior sentence, and a \$5,000 fine against the inmate’s commissary account.

House Bill 1855, sponsored by Rep. Aaron Bernstine (R-Lawrence), seeks to preclude the parole board from prematurely releasing an inmate at the expiration of a minimum sentence if the inmate was convicted of a violent offense while incarcerated.

House Bill 1879, sponsored by Rep. Keith Gillespie (R-York), would insert into the state’s Crimes Code “health care practitioners” as a protected class in the event of assault. The bill would raise the penalty from a misdemeanor to a second degree felony for an assault on a health care practitioner, while in the performance of duty, where there is bodily injury. The bill was amended earlier to also include “an individual whose principal duties are the management or operation of a public recreation center, playground, park or library” and “a local code enforcement official.”

House Bill 137, sponsored by Rep. Chris Quinn (R-Delaware), allows for persons experiencing a drug overdose to not be criminally charged and to be immune from prosecution under certain circumstances. Furthermore, immunity is extended to individuals who transport, report or remain with the person experiencing the drug overdose.

House Bill 1781 would enable counties to allow their county correctional officers the right to carry their personal firearms to work for personal protection.

House Bill 1855, sponsored by Rep. Aaron Bernstine (R-Lawrence), would prevent the parole board from prematurely releasing an inmate at the expiration of a minimum sentence if the inmate was convicted of a violent offense while incarcerated.

State law does not require Pennsylvania Child Protective Services (CPS) to identify military families in cases of child abuse and neglect by military personnel, nor are they required to report cases to the appropriate military authorities. **House Bill 1290**, sponsored by Rep. Todd Polinchock (R-Bucks), would require CPS to immediately give notice to military authorities in cases where a service member is the subject of a report due to an investigation.

On Dec. 17, the House also voted in favor of two resolutions to commission studies:

House Resolution 619, sponsored by Rep. Joanna McClinton (D-Philadelphia), directs the Legislative Budget and Finance Committee to study funding and caseloads in all counties relating to indigent criminal defense. It is recognized that all defendants have a right to counsel. Pennsylvania has not historically funded indigent defense counsel. This study would begin a process of improving indigent criminal defense in the Commonwealth.

House Resolution 620, sponsored by Rep. Barry Jozwiak (R-Berks), directs the Joint State Government Commission to identify and evaluate all categories of individuals authorized to exercise arrest and policing powers. This study would begin a process of improving police standards, training and professionalism in the Commonwealth.

Juvenile Justice Task Force

On Dec. 16, Gov. Tom Wolf, House Majority Leader Bryan Cutler (R-Lancaster), lawmakers of both parties, and members of the judiciary gathered in the main Capitol Rotunda for a press conference to announce the formation of the Juvenile Justice Task Force. The three branches of government—executive, legislative and judicial—joined to create this new committee. Its purpose is to reform the juvenile justice system.

The Pew Charitable Trusts and the Crime and Justice Institute are providing support for this initiative. The task force is charged with reviewing the juvenile justice system. It will produce a report by November 20, 2020, and provide recommendations to address legal, budgetary and administrative changes that can be enacted during the ensuing legislative session.

Pennsylvania has one of the highest rates of juvenile detention in the nation. The goal of the task force is to initiate more positive outcomes for juvenile offenders, better protect public safety, make the system more accountable and provide adequate financial support for juvenile justice.

Proposed Stiffer Sentences for Gun Offenders

On Dec. 16, state Rep. Todd Stephens (R-Montgomery) said that information from the Pennsylvania Commission on Sentencing indicates that too many criminals convicted of gun possession-offenses are given lesser sentences than they could have received.

Rep. Stephens said, “With all the focus on gun violence today, it’s shocking that so many sentences would be below the guidelines established for these serious offenses.” Data from the commission indicates that statewide in 2018, 67 percent of criminals who faced a potential first or second degree felony for illegally possessing a firearm received a sentence below state sentencing guidelines.

Stephens is the prime sponsor of three gun bills seeking to impose mandatory minimum sentences upon violent criminal offenders who use a gun, as well as those who are convicted of illegally possessing a gun.

House Bill 1850 would reinstate Pennsylvania’s mandatory minimum sentences for violent offenders. **House Bill 1851** would impose a mandatory minimum sentence of five years in prison for felons who illegally possess firearms, with additional mandatory sentences for repeat offenders. **House Bill 1852** would require separate sentences to be served consecutively for each victim targeted—eliminating the possibility for a judge to order concurrent sentences.

All three of the bills have been reported out of the House Judiciary Committee and are currently under consideration.

Gov. Tom Wolf’s spokesman J.J. Abbott indicated that the governor would veto these bills if they reached his desk. “These policies have not worked, caused many of the flaws with our current system, and would undo nearly all of our efforts to curb costs and facilitate actual rehabilitation,” said Abbott.

80-Percent-Receivers Classified as Firearms

On Dec. 16, Gov. Tom Wolf and Attorney General Josh Shapiro announced a new opinion from the Attorney General’s Office classifying “80 percent receivers” as firearms under the Pennsylvania Uniform Firearms Act.

The receiver is the external part of a firearm that houses the firing components. 80 percent receiver guns are incomplete firearms that require additional parts to become functional.

Of course adding the missing parts produces a working firearm. These become unserialized “ghost guns.”

The governor and attorney general said the new legal opinion was issued in accordance with the Commonwealth Attorneys Act. The Commonwealth Attorneys Act allows any state agency to formally request the Office of Attorney General to interpret state law. In this case, the request came from the state police. Shapiro explained that after examination of a statute, the expressed legal opinion is binding on the agency requesting it. Thus, he said the Office of Attorney General will work together with the Pennsylvania State Police to develop an implementation strategy to ensure that these newly-classified firearms do not end up in the hands of criminals, convicted felons or prohibited purchasers.

Not surprisingly, within a week of the announcement, a lawsuit was filed in Commonwealth Court by producers of 80 percent receivers to prevent the enforcement of this policy. The manufacturers argue that their products are unable to fire ammunition and should not be subject to background checks before being purchased.

First Step in Change to Appellate Courts

On Dec. 18, the House approved **House Bill 196**, sponsored by Rep. Russ Diamond (R-Lebanon). The bill would amend the Pennsylvania Constitution to create judicial districts in which appellate court judges would be elected and from which those judges would need to reside in order to run for a judicial seat.

The measure would divide Pennsylvania into nine Commonwealth Court districts, fifteen Superior Court districts and seven Supreme Court districts.

Opponents of the bill argued that this is an attempt to “gerrymander” appellate court judge elections.

Supporters argued that the present system fails to reflect regional diversity, because 60 percent of the state’s appellate court seats are presently held by residents of only two counties, Allegheny and Philadelphia.

Because this measure would require a state Constitutional amendment, it must be passed again in the next 2-year legislative session (2021-2022) and then approved as a ballot referendum.

Changes for the Office of Lt. Governor

On Dec. 18, two state Senate bills related to the Office of the Lieutenant Governor were approved by the House:

Senate Bill 750, sponsored by Senate President Pro Tem Joe Scarnati (R-Jefferson) would permit the sale of the Lt. Governor’s residence located at Fort Indiantown Gap in Lebanon County. On Dec. 18, the bill was sent to the governor’s desk, where Tom Wolf signed it into law.

Senate Bill 133, sponsored by Sen. Dave Argall (R-Schuylkill), would amend the Pennsylvania Constitution to change the process by which a candidate for Lieutenant Governor is selected, requiring gubernatorial candidates to select their running mates. Currently, in primary elections, the governor and lieutenant governor are chosen separately by popular vote. This action in the House is the first step in the process for Constitutional amendment.

Rep. Johnson-Harrell Resigns

Dec. 13 was the last day in office for state Rep. Movita Johnson-Harrell (D-Philadelphia). Johnson-Harrell resigned after being indicted on charges of stealing from a non-profit she founded.

House Speaker Mike Turzai (R-Allegheny) announced that February 25 would be the date for a special election to fill her seat in the 190th Legislative District. Johnson-Harrell herself was elected in a special election to replace Rep. Vanessa Lowery Brown, who resigned in 2018 after being charged with bribery and other counts.

Johnson-Harrell was the first Muslim woman elected to the Pennsylvania House of Representatives. She was known for her advocacy for gun violence prevention. She unabashedly associated with organizations leaning toward radical Islam.

Johnson-Harrell pleaded guilty to perjury, record-tampering and embezzling over \$500,000. State Attorney General Shapiro said, "Johnson-Harrell used MECA (her non-profit) finances for years to buy expensive trips, clothing, to pay overdue utilities and to fund past-due car payments... Her theft knew no bounds."

Proposal to Halt State Care Center Closures

On Dec. 17, the state House Health Committee narrowly voted, 13-12, to move **Senate Bill 906** to the full House. SB906 would place an indefinite halt on the closure of two Department of Human Services (DHS) facilities for individuals with intellectual disabilities, White Haven State Center in Luzerne County and Polk State Center in Venango County.

Furthermore, the bill would prohibit the closures until 13,000 other individuals waiting for Medicare-waiver services are authorized to receive home and community-based services.

SB906 is a reaction to the Wolf administration's decision to shut down the two facilities within three years. To maintain care for the residents of the centers, DHS intends to transition them to group homes or other local community settings and to implement individual care plans.

Supporters of the bill argue that the transition will be traumatic for many of the residents and that the centers are best equipped to provide the needed care. Sen. John Yudichak (I-Luzerne), the sponsor of SB906, criticized the planned closures and said his bill will give residents of White Haven and Polk a choice to remain in the place they call home.

But in opposition to the bill, Rep. Brad Roae (R-Crawford) cited the example of Hamburg State Center in Berks County. When the state closed that facility, staff and family expressed concern. However, Roae said that it was a smooth transition and he received no complaints about the replacement services.

The Wolf administration believes that closing the facilities will cut costs without diminishing services. The governor is unlikely to sign the bill if it should be approved in the House.

Wolf Proposes Overtime Pay Regulations

On Dec. 6, Gov. Tom Wolf called on the state House of Representatives to pass legislation to raise Pennsylvania's minimum wage. He asked that this be done before the end of December.

If they cannot do it, the governor said he will let a rule-making board, the Independent Regulatory Review Commission, vote on a regulatory measure to extend overtime pay eligibility to tens of thousands of workers. Wolf asked the commission to vote on this regulation at its January 30 meeting. The five-member commission has a 3-2 Democratic majority.

If the commission votes to approve the overtime pay regulation, the attorney general's office will take up to 30 days to review the legality of the regulation. To take effect, it must then be published in the *Pennsylvania Bulletin*.

In November 20, the state Senate, by a vote of 42-7, approved Senate Bill 79 to raise the state minimum wage, by increments, to \$9.50-an-hour in 2022. This passage was a compromise with Gov. Wolf, who has been calling for higher increases.

But, the Republican majority in the state House has opposed raising the minimum wage and, true to form, have not supported the Senate bill—that sits dormant in the House Labor and Industry Committee.

In addition to compromising with the Senate Republicans on the size of SB79's minimum wage increase, the administration also agreed to forego increasing overtime pay eligibility.

But now, Wolf's alternative to the House passing minimum wage legislation is his proposed overtime pay extension by regulation. The measure would expand overtime pay eligibility to 82,000 workers. It would phase in over two years.

Contract to Continue iLottery

In mid-December, Scientific Games Corporation announced it was awarded a new contract from the Commonwealth of Pennsylvania to continue to provide digital and internet services for the Pennsylvania Lottery's iLottery offerings.

The iLottery program started in May 2018, with Scientific Games providing the technology. The new contract grants them continuation of the service for seven more years, with three additional one-year renewal options.

According to the Department of General Services, as revealed two months before it was awarded, the contract is worth \$49.8 million. Pennsylvania Lottery Executive Director Drew Svitko said that total sales for the iLottery has been \$642 million, as of December 2019.

Supreme Court Ends Challenge to Elimination of General Assistance

On December 18, the Pennsylvania Supreme Court, by a ruling of 6-1, upheld a Commonwealth Court decision to reject a hold on the cessation of the state's General Assistance program (GA), based on procedural grounds.

Last June, the General Assembly voted to discontinue the General Assistance program. Gov. Tom Wolf reluctantly signed the legislation (House Bill 33, now Act 12 of 2019).

Welfare advocates, the appellants, criticized termination of the program, arguing that the bill contained components unrelated to the termination of GA, violating a provision of the Pennsylvania Constitution.

Last July, Community Legal Services (CLS) of Philadelphia and Disability Rights Pennsylvania (DRP) filed a class action lawsuit in Commonwealth Court to prevent the program from ending. The legal action included a request for a preliminary injunction to prevent the cessation of the benefits. Commonwealth Court rejected the injunction request. In August, the case was appealed to the state Supreme Court. In October, oral arguments were presented to the Supreme Court.

In explanation of the Supreme Court's December decision, Justice Thomas G. Saylor wrote, "...Act 12 does not include provisions that are so far removed from each other that they are 'unrelated'... Rather, the act as a whole relates to the provision of benefits pertaining to the basic necessities of life to certain low-income individuals... such a topic is, in our view, both unifying and sufficiently narrow to fit within the single-subject rubric as that concept has been spelled out in the reported decisions of Pennsylvania appellate courts."

I have been reporting on the progress of this legislation since it was in the proposal stage. This would appear to be the final word.

Auditor General Recommends Berks Closure

On Dec. 11, Pennsylvania Auditor General Eugene DePasquale released a report on the Berks County Residential Center and urged federal authorities to stop holding immigrating and asylum-seeking families there.

The Berks Center has been a recurring topic in my monthly reports for several years. The county-owned 96-bed facility is leased by the U.S. Immigration and Customs Enforcement agency (ICE). It is one of three such facilities in the country. It is the only one owned by a government entity. Families are detained at Berks while awaiting the outcome of administrative immigration proceedings.

DePasquale said, "Most (of the detainees at Berks) are, in fact, taking the legally defined steps for asylum because of dangerous conditions in their home countries. Why these families are forced to stay in this facility while other families in identical legal situations are free to reside in the community is puzzling." He noted further, "Although no one being held there has been charged with a crime, the center still essentially functions as a jail in which adults and children are housed together."

The state Department of Human Services (DHS), which revoked the center's license as a child residential facility in 2016, performs monthly inspections. DHS has found no violations of state regulations since June 2018. The status of the center's license is pending before the DHS Bureau of Hearings and Appeals after several years of litigation.

The Auditor General's report notes that no one knows how ICE determines which families are detained and which are released into communities with oversight and support. Research indicates that 96 percent of asylum-seeking families who are placed into the community with supports attend their immigration hearings.

DePasquale also said the center appears to be routinely violating the Flores Agreement, a 1997 federal legal settlement that says immigrant children may not be detained for more than 20 days.

Voter Registration System Audited

On Dec. 19, state Auditor General Eugene DePasquale announced, based on an audit by his office, that the Pennsylvania Department of State (DOS) and the state's counties need to work to improve voter registration records.

The audit was performed at the request of the DOS, regarding the Statewide Uniform Registry of Electors system (SURE).

DePasquale's report states that his office found examples of bad data and sloppy record-keeping in the counties. Pennsylvania counties control their own voter registration records, but federal law requires the state to ensure that the system is accurate and secure.

DePasquale said that his office found more than 50,000 cases of potentially inaccurate records and that the DOS does not adequately monitor each county's record system. The auditor general's data analysis found thousands of potentially duplicate and inaccurate voter records, as well as about 3,000 records for possibly deceased voters.

The DOS challenged the claim of 50,000 inaccurate records, which the agency said was the result of auditor errors that "incorrectly flagged thousands of records as potential concerns" that further investigation would have shown did not need to be flagged.

DePasquale provided 50 recommendations to strengthen the Department of State's policies and management controls. He noted that some of the issues his auditors found will be addressed by a new system that will replace the SURE system by the end of 2021.

Furthermore, the auditor general encourages all Pennsylvania voters to check their own voter registration data online using the "Check Your Registration" link at www.VotesPA.com

Proposed Rules to Reduce VOC and Methane Emissions

In mid-December, Gov. Tom Wolf's administration submitted a draft of regulations for the Environmental Quality Board of the state Department of Environmental Protection (DEP). The regulations would attempt to limit volatile organic compound (VOC) emissions—including methane—from gas and oil well sites, pipelines and other infrastructure.

According to the DEP the proposed rules would require oil and gas operators that produce emissions above a certain threshold to detect, identify and repair leaks. Equipment used to reduce emissions would also need to be introduced.

It is expected that VOC emissions would be reduced by more than 4,400 tons per year, and methane emissions would be reduced by more than 75,000 tons per year.

A public comment period on the proposed regulations will open in 2020, beginning a long bureaucratic process that will lead to the regulations becoming law.

The proposed regulations by the Wolf administration conform to federal methane rules created by the Obama administration—that the Trump administration is attempting to replace.

Dai Morgan