

**New Jersey General Assembly
Law & Public Safety Committee
Hearing on Assembly Bill A2951
Testimony of Nancy Fishman, New Jersey Institute for Social Justice
October 21, 2008**

Good afternoon.

I would like to thank Chairman Barnes and Vice Chairman Johnson and the members of the Law & Public Safety Committee for the invitation to address you here today.

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. We are here today to express some concerns about Assembly Bill A2951. We understand that this bill is intended to advance the principle that high-wealth individuals should pay the cost of their incarceration, and we are supportive of this goal. However, we believe that the current bill is flawed, most significantly because the “exemption” level in the bill is not appropriate. As we discuss below, this can be adjusted to accomplish what we understand is the intent. As drafted, however, this bill would undermine very important efforts in the state, led by the state government and including members of this legislature, to promote public safety and individual responsibility as the state addresses the unprecedented number of individuals leaving state prison over the next five years.

Background

The New Jersey 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. The Institute is chaired by former United States Attorney General Nicholas Katzenbach and includes among its trustees former Attorney General John Farmer, former Public Advocate Zulima Farber, United States District Judge Dickinson Debevoise, and the former First Assistant Attorney General Douglas Eakeley.

Over the past three years, the Institute has focused substantial attention on research and support for efforts to address how the state should respond to the more than 70,000 individuals who will be released from state prison over the next five years. Among other activities, the Institute co-convened the New Jersey Reentry Roundtable co-chaired by John Farmer and former Public Advocate Stanley Van Ness, which commissioned substantial original research about the make-up of the state’s criminal justice population. The Roundtable, which included participation from state policy leaders, including the Commissioner of Corrections, the Attorney General, and the Chairman of the State Parole Board, as well as researchers and community leaders, released its

findings and recommendations last December (copy attached). These recommendations formed the basis of a state action plan on prisoner reentry that has been developed by a collaborative team of state agencies as part of New Jersey's participation in the National Governor's Association Prisoner Reentry Policy Academy. The Institute served as consultant to the Governor's office and the Department of Law and Public Safety on that effort.

The challenge posed by prisoner reentry is a critical one for New Jersey, as it is for other states. Due to unprecedented growth in the state prison population over the past 25 years, an expected 70,000 individuals will be released to their communities over the next five years. One third come from and are expected to return to two cities, Camden and Newark, and 80% of them are minority. Historically, two thirds of those released are rearrested within three years of their release, at great cost to the state and to the families and communities from which they come. Our efforts, in collaboration with public agencies, community and faith based groups in the state, have been designed to figure out how we can keep that from happening.

Concerns about A2951 and Possible Solutions

As noted above, we agree with goal of ensuring that individuals of high wealth who are incarcerated should pay for the cost of that incarceration. Our concern is about the exemption level, which, according to this statute, is set at the federal poverty level. Aside from the complication that the statute speaks of assets, and the federal poverty guidelines pertain only to income, the federal levels, which are set national and apply equally to states as different as Mississippi and New Jersey, are very low indeed. An individual, for example, earning the minimum wage is considered above the poverty level according to this standard. This means that the statute would sweep a much broader population than those of high wealth and significant assets who could potentially afford to pay these costs. This would require much more frequent and ultimately more costly application of the Commissioner's waiver procedure, which will probably need to include basic due process protections.

Based on what we know at present, two alternatives to the federal poverty level might make more sense, either separately or in combination. First, 85 to 90% of those going through the criminal justice system are represented by the Office of the Public Defender. In order to qualify, they must fill out a "Form 5A" and be certified as indigent. One option would simply be to alter the statute to make anyone who qualifies for representation by the Public Defender's office under the Form 5A standard presumptively exempt. This is a simple and straightforward measure, and would begin to target the appropriate population. Individuals who were not represented by the Public Defender could also qualify for presumptive exemption if they met the Form 5A standard. Others could be given an opportunity to rebut the presumption that they are eligible.

A second approach would be to base the exemption level on the mean individual net worth for the state of New Jersey. Net worth is the sum of assets less any liabilities, and the mean provides a basic indicator of the average level of worth in the state. The mean, rather than the median, is generally presented because so many individuals have zero net worth and this skews median figures. For example, the mean household net worth for New Jersey, according to a report by the Corporation for Enterprise Development, is \$145,243.¹ We would suggest using individual rather than household net worth because a) this is the

¹ "State Asset Development Report Card, Corporation for Enterprise Development (2002)(see attached).

information included on the pre-sentence investigation report; and b) it is clearly the intent of this statute that family members not bear the cost of the offender's incarceration.

We would also note that we are not aware of any empirical evidence that clarifies how many high wealth individuals are currently in the custody of the Department of Corrections, and would suggest that before this bill or any substitute goes further that this kind of information be gathered, such that a cost/benefit analysis of this initiative might be estimated. It is worth examining as well what the administrative cost to the DOC and to the Administrative Office of the Courts would be of implementing this procedure, combined with the likelihood of recovering any money.

Reasons for Concern

Without these changes, we believe this bill will undermine important and very promising efforts in this state to promote public safety and individual responsibility, and, in the long term, reduce the high cost of incarceration and recidivism faced by New Jersey.

Most importantly, this bill will provide a significant disincentive to legitimate work. One of the best ways to promote public safety and personal responsibility and keep individuals from ending up back in prison is a job. Research confirms this common sense notion: people who are employed are much less likely to recidivate. It is extremely difficult, however, for individuals leaving prison to find employment. As noted above, the average education level of state inmates is 6th grade, and most have limited work histories. The types of jobs most frequently obtained by those leaving prison are low skilled, entry-level, low paying positions in areas such as warehousing, cleaning and maintenance, and the service industry. Many employers remain reluctant to hire individuals with criminal records, and certain areas of labor market are off limits by law. Under the scheme laid out in this bill, an individual facing this challenge after serving three years in prison could also be responsible for a money judgment of approximately \$84,000. It is important to note as well that these individuals in most cases are responsible for paying victim restitution and other fines, child support arrears and driver's license fines such as insurance surcharges. Confronting the option of a low paying job, 65% of which will be garnisheed in perpetuity, anyone who works in this field will tell you that most will opt out into the underground economy or worse. Not only will the DOC costs not be paid, but funds to the victims and their families and child support will also be lost.

Much of the work being done by state agencies and community and faith based groups has focused on how to get people working, paying taxes, taking responsibility for their lives and their communities. This proposal, as written, would undermine that.

Secondly, this effect will also be cumulative for communities. Research conducted for the New Jersey Reentry Roundtable by the Urban Institute and others indicates that the incarcerate population is highly concentrated in New Jersey. As noted above, 30% come from Newark and Camden alone, and even within those communities, certain neighborhoods are dense with those currently in prison or on parole. If you look at the demographics of these neighborhoods, you'll see that they are primarily poor and working class minority neighborhoods, already under considerable social and economic strain. The cumulative debt burden that would be added to these communities by this measure as written would be substantial, and would further hinder local and state efforts to revitalize urban centers and increase their contributions to the state's economic vitality.

The state, through various initiatives including the National Governor's Association Reentry Policy Academy and the federally funded Serious and Violent Offender Initiative has taken exemplary steps to engage and support community leaders and faith based groups that are working in these highly impacted neighborhoods, and provide them with some resources to help reintegrate individuals leaving prison and provide support for their families and for victims in these areas. This measure would send the opposite message, and hinder this valuable work.

In conclusion, let me say the New Jersey Institute for Social Justice is willing to provide whatever technical assistance might be required to craft a more appropriate bill, and ask that, at a minimum, this bill be held for further revision and investigation or modified as suggested.

Thank you very much.