

**New York State Commission
on Sentencing Reform**

Albany Public Hearing

**Roosevelt Hearing Room C
Legislative Office Building**

November 15, 2007

Compilation of Written Testimony

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ROBERT M. MACCARONE
State Director

**New York State
Commission on Sentencing Reform**

**Public Hearing
Albany, New York**

November 15, 2007

Good Morning: My name is Robert Maccarone and I am testifying today as the State Director of the State Division of Probation and Correctional Alternatives (DPCA). I also serve as the Chair of the Subcommittee on Supervision in the Community, which rendered its report to the Honorable Members of this Commission on August 22nd of this year.

In this very brief time this morning, I want to accomplish two objectives. The first is to recognize the extraordinary efforts of the Commission Chair, Commissioner and Assistant Deputy Secretary Denise O'Donnell, all of the members of the Commission on Sentencing Reform and its four Subcommittees, the Executive Director and the Commission's knowledgeable and professional staff. Producing the Commission Report "The Future of Sentencing in New York State: A Preliminary Proposal for Reform" was an enormous undertaking that resulted in an important blueprint for shaping future sentencing reform and practices in New York State. As Chair of the Subcommittee on Supervision in the Community, I can say that representatives from probation, alternatives to incarceration, parole and victim services were very pleased to participate in this worthy endeavor.

Of course, I also want to take this important opportunity today to provide additional information for the Commission to consider. I do so, fully understanding the broad scope of the work undertaken by the Commission and its four subcommittees, Sentencing Policy, Sentencing Simplification, Incarceration and Re-entry and Supervision in the Community and the limitations imposed by time constraints.

"In the Preliminary Report, the Commission concludes that while New York has made commendable progress in enhancing public safety through the combined use of limited correctional resources and a broad reliance on community-based alternatives to incarceration, there is tremendous opportunity for improvement." The Report then focuses on six major areas for review and reform. Included among them is the need to develop more efficient and cost-

effective ways to use limited correctional and community supervision resources by examining alternatives for dealing with the thousands of parole violators who are returned to the Department of Correctional Services (DOCS) annually, re-allocating correctional resources from low-risk to high-risk offenders, and adopting targeted reforms to improve the likelihood of successful re-entry for the approximately 26,000 felony offenders who return from prison to New York's communities each year.

Today, I want to highlight the work of probation and community correction agencies in New York State. I urge the Commission to carefully examine the importance of New York State maintaining a strong probation and community corrections system to early identify both the risk and needs of offenders and address them in the community as an effective alternative to costly incarceration in local jails and state prison. I say this emphasizing the fact that the goal of probation and community correction agencies is to reduce recidivism and enhance public safety by holding offenders accountable and providing them the services to assist them in changing their behavior to become law-abiding residents of New York State.

Probation and Alternatives to Incarceration

Probation is the original alternative to incarceration. The State's 58 local probation departments supervise 125,000 adult offenders—twice the number of offenders incarcerated in state prison and a population that is greater than both the state prison and parole populations combined. Fifty percent of the probationers are felons, 11% are violent felony offenders and 6,000 are sex offenders who are intensively managed in their respective communities. In addition to the community supervision function, probation departments complete 130,000 pre-sentence investigation reports each year for the Courts. As you know, the pre-sentence investigation report is an important document for sentencing courts as well as state prison and parole authorities. While it is not within the purview of this Commission to address the needs of the Juvenile Justice System in New York State, I do want to take this opportunity to advise you that probation departments perform a very critical function in the Family Court, managing some 50,000 intakes annually, completing 30,000 pre-dispositional investigations and reports and supervising 17,000 Juvenile Delinquents and Persons in Need of Supervision (PINS). Indeed, the importance of the Family Court cannot be over-emphasized for it is there that the needs of troubled youths and their families are first identified.

In addition to regulating and providing state aid to local probation departments, DPCA also sets standards and provides funding to the State's nearly 200 alternative to incarceration programs, over half of which are operated by probation departments, including pre-trial and community services programs. Other ATI Program Models include TASC (Treatment Alternatives for a Safer Community), Defender-Based Advocacy, and Drug/Alcohol Treatment Programs. During 2006, in New York State, nearly 5,000 offenders completed their community service, 4,364 Client Specific Plans were accepted by the Courts and participated in alternative to incarceration programs, 21,299 offenders were released through pre-trial services (this does not include the New York City Pre-Trial Services Program which receives no state funding), 9,517 offenders completed their drug/alcohol, mental health treatment program, and 2,467 completed their participation in TASC. In all, the ATI Programs managed 42,599 offenders in varying capacities.

In a letter dated August 28, 2007, I wrote to Commissioner and Assistant Deputy Secretary O'Donnell as Chair of the Commission on Sentencing Reform, a copy of which I have attached to my remarks today. I outlined the important work of probation and the challenges posed by high-caseloads and disparate service levels throughout the State. I also reiterated the importance of the pre-sentence investigation and report and the problems caused by the common practice of waiving this report as part of the sentence process. I cited the February 2007 Report of the Task Force on the Future of Probation commissioned by Chief Judge Judith Kaye and the importance of probation's role in providing the foundation for the State's community corrections system.

Today, I am submitting for your information and consideration, a copy of a report entitled "Probation Staffing & Caseload Survey 2006: Detailed Report" that was produced by DPCA in early August of this year, 2007. This report reflects a detailed survey of probation departments and how they allocate resources to the Adult and Family Court Systems and Investigation and Supervision Functions. In this report, current caseloads in New York State are compared with national standards set forth by the American Probation and Parole Association (APPA).

While the primary focus of the Commission is sentence reform, the results of sentence reform and potential for increased dependence on community corrections must, I would argue, cause us to ensure that programs are available, accessible and effective. Apart from the outcome of the work of the Commission, the current reality is that the probation system is over-burdened.

One of the strengths of probation in New York State is the system of state regulation. The State Regulation and Leadership Model does not exist in all states and in many states with very high state prison populations. State regulation has provided a system of differential supervision, albeit this is impacted by probation funding and varying caseload sizes. Notwithstanding these limitations, probation cases are classified as Level 1, 2, 3 or 4 Administrative and supervised under a system of varying personal and collateral contacts, including job and home visits with the offender. The current system of classification is based on a rather simple and dated classification system (the DP 70).

Risk and Need Assessment

Probation recognizes the importance of differential supervision and importance of resource allocation. DPCA, in collaboration with local departments, is quickly moving probation practice in New York State toward a system that is evidence-based. During the last year, DPCA has implemented the use of the "New York COMPAS"—an evidence-based risk and need actuarial assessment tool for use with adult probationers. It already has implemented a fully validated risk and need assessment tool (YASI-Youth Assessment Screening Instrument) in 55 counties in New York State. The COMPAS Adult Risk and Need Actuarial Assessment Tool was written by probation officers for probation officers in New York State. It was also written with the input and assistance of parole authorities to ensure that New York State would build a system of consistent and continual assessment with the intent that information be shared by probation, correction and parole authorities.

Since April of 2007, DPCA has worked intensively with its vendor, Northpointe, Inc. and local probation departments to train probation officers in the use of this new probation assessment

tool. Our goal is to have every probation officer using the "New York COMPAS" by January 1, 2008, when the approval for use of the outdated DP70 classification tool will be terminated by DPCA. I should note that Dutchess County is currently using the LSIR assessment tool—a fully validated instrument, but utilizes the pre-trial services screen of COMPAS and the New York City Department of Probation is commencing the use of "New York COMPAS" with its high-risk probationers. As of this date, the "New York COMPAS" is being utilized by 950 probation officers in 45 probation departments and they have completed 13,500 assessments.

The use of risk and need actuarial assessment tools is indeed the cornerstone of evidence-based practice. The empirical information derived from the use of a fully validated risk and need instrument for assessment, and re-assessment will inform the probation practice on how best to allocate resources to the highest risk populations, provide important information on how best to reshape the supervision regulation from a system of quantitative contacts to qualitative interventions and provide the basis for the development of recommended caseload standards. Lastly, the assessment process will assist probation officers in developing meaningful case plans for offenders and empower them to better assess the effectiveness of community-based drug/alcohol and mental health treatment programs.

Today, I am providing the Commission with two important documents that support probation's use of the "New York COMPAS" tool: 1) COMPAS-Psychometric Report for the DPCA COMPAS Pilot dated October 1, 2006, and 2) COMPAS Reclassification Scale Validation Study dated June 11, 2007.

Offender Accountability and Measurable Outcomes

DPCA is working intensively with probation departments and alternative to incarceration programs to increase offender accountability and ensure a system of measurable outcomes. In probation, ten-year cohort recidivism studies produced by DCJS Staff are shared with probation departments to track performance. These detailed reports by County/City of New York are available through the DPCA website (www.dpca.state.ny.us). One of our growing concerns is the gradual increase in probationer recidivism (as measured by felony rearrest) from 12.7% to 13.1%. Increasingly, the probationer population grows more violent and younger in age. In fact, 28% of the adult probationer population is 16-21 years of age. Fifty percent of adult probationers are convicted of felony offenses; 67% of adult probationers in New York City are convicted felons.

DPCA and local probation departments are also working with the National Institute of Corrections (NIC) to increase probationer employment. Probationer employment rates around the state differ significantly for a variety of reasons including local economic conditions and employment sectors and types of jobs that are available. Employment is a critical factor in assisting offenders to change their behavior and reducing recidivism. Let me repeat that. Employment is a critical factor in assisting offenders to change their behavior and reducing recidivism. While somewhat attenuated from the strict review of sentencing reform, I would hope that the Commission would have the opportunity in the future to look at the laws affecting offender employment.

DPCA is working with NIC to implement the Offender Workforce Development Specialist (OWDS) Employment Model here in New York State. We have trained probation professionals in six counties including most recently, in the New York City Department of Probation to become certified as OWDS Specialists. The NIC OWDS Training is a 180-hour program. Coincidentally, today, NIC is onsite in New York City training our OWDS specialists to become Instructors.

Probationers employment is an outcome that DPCA is measuring with probation departments and early next year, we will begin to distribute a statewide report on probationer employment rates and make this information available on the public website.

Probationer accountability is an important factor in assisting offenders to change their lives. It requires a probation officer's time (smaller caseloads), a probation officer's guidance AND the capacity to respond to violative behavior swiftly and certainly. I know that the members of the Commission recognize this important value in shaping offender behavior. In describing the success of the drug court model, the Preliminary Report notes that it "allows the judge to react quickly to misconduct or non-compliance". And in describing the continuum of sanctions available to parole officers, the Report notes that "parole officers need to have appropriate and effective options to reinforce positive behavior and to quickly address rule violations".

Probation officers too must be able to respond quickly and certainly to offender violative behavior. Probation Officers derive their authority from the Orders and Conditions approved by the Court. Consequently, it is essential that we amend state law to establish a statutory timeframe for the 72-hour judicial review of the request for arrest warrants for probationer absconders. This is particularly important with high-risk offenders including probationers convicted of domestic violence offenses, where delay may affect victim safety. Similarly, we must establish a statutory timeframe wherein initial appearances for all probation violation hearings are calendared within five (5) business days. While probation officers can impose a range of graduated sanctions, there is no substitute for the authority of the court. In a recent program implemented in Hawaii, the use of expedited violation hearings with smaller punishments resulted in increased probationer compliance. Not unexpectedly, it was found that timeliness and certainty of response to violative behavior and not punishment, resulted in dramatic increases in probationer compliance.

I should mention that DPCA has recently developed and distributed a Request for Proposals (RFP) for the establishment of three Probation Violation Residential Centers to provide a graduated sanction and an alternative to state prison.

DPCA is also working with Alternatives to Incarceration Programs to increase offender accountability and establish measurable outcomes. DPCA has completely implemented a system of performance-based contracting with established milestones for payment. It has complemented this with the implementation of timely reporting, random case audits and case tracking that will facilitate recidivism studies. During 2008, it will develop an evidence-based Fundamentals of Community Corrections Curriculum for ATI Programs and study the use of standardized risk and need assessments.

Conclusion

Probation and Alternatives to Incarceration are extremely important to New York State. They are uniquely well-positioned and court authorized to cost-effectively manage large numbers of offenders in the community while they have the supports of family, employment and housing. The challenge of reentry is exacerbated by offender disenfranchisement; offenders lose these essential community supports. Restoring them to offenders is costly and difficult. It is far better from both a cost and public safety perspective that we succeed with offenders at the earliest time and in the community.

In closing, I want to thank you for the opportunity to express the needs of the probation and community corrections. I am very appreciative. I also want to thank Governor Eliot Spitzer for establishing the Commission on Sentencing Reform and Commissioner Denise O'Donnell for asking me to serve as Chair of the Subcommittee on Supervision in the Community. I look forward to continuing to work with you and the members of the Commission.

New York State Commission on Sentencing Reform

“The Future of Sentencing in New York State”

Denise E. O’Donnell

Chair

**Legislative Office Building
Albany, New York**

November 15, 2007

**Testimony of James A. Murphy III
Saratoga County District Attorney and
President**

District Attorneys Association of the State of New York (DAASNY)

Commissioner O'Donnell and Members of the Commission:

On behalf of the 62 New York State District Attorneys, I am pleased to present this testimony to the members of the New York State Commission on Sentencing Reform. As career prosecutors, we know the tremendously important role that sentencing plays within the New York State Criminal Justice System and how it helps to make all New Yorkers safer.

I also want to thank Governor Spitzer and you, Commissioner O'Donnell for having the wisdom and foresight to tackle this important topic in the first year of the new administration. I appreciate your invitation to address Governor Spitzer's New York State Commission on Sentencing.

Every New York State Prosecutor is proud of the incredible accomplishments of New York State, which is now the fifth safest state in the nation. I hope that we can overtake the next state which I believe is Vermont! And, as you have pointed out in your "Preliminary Proposal for Reform" New York State has achieved this ranking at the same time that the state prisons have enjoyed a substantial decrease in inmate population. We are the only large state that achieved this success and one of a handful of states that have simultaneously reduced incarceration and crime. This shows that our criminal justice system is working very well. And, while it is important to continue to aspire to do better, it is equally important not to make changes that could reverse this positive, hard won trend of less crime and fewer inmates.

For the next minute, I will address some of the issues raised in your proposal, specifically their impact upon Prosecutors and the criminal justice system. We all agree on the one goal of making our communities safer for all New Yorkers. To the extent that we can make change that does not adversely affect public safety DAASNY will support some of the progressive concepts of your proposal. Conversely, if we believe that any changes suggested in your proposal might make New York a less safe place, then we will ask for more evaluation, research, and discussion.

DETERMINATE SENTENCING

The movement toward determinate sentencing that began in 1995 has always made good sense to prosecutors. Determinate sentencing allows prosecutors to negotiate sentences with a high degree of certainty as to the time a defendant will serve before release. It also provides Corrections with the ability to formulate inmate programming with the knowledge of when release is most likely. Any further change toward determinate sentences, however, must include sentence ranges that are realistically related to the severity of the crime and do not put prosecutors at a disadvantage during plea negotiations.

I agree with the Commission that the current indeterminate sentences for non-drug Class A-I and Class A-II offenses should continue. These are the most serious crimes in New York State and public safety requires that if these inmates are released at all, they should be supervised for life. This life time supervision allows the Division of Parole to ensure public safety and return these offenders to prison for violation of their terms of release.

Although I have carefully reviewed the analysis of Chairman George B. Alexander of the Division of Parole set forth in the Appendix in support of continuing indeterminate sentencing, I still believe that a determinate sentencing structure is best. There is a great deal of vital work that Parole would still be required to do including crime victim impact hearings, establishing conditions of release for all inmates returning to the community under Parole supervision, and the critical determination as to when Parolees who have violated their conditions of Parole should be returned to prison. Freeing the Parole Board from the workload created by the current indeterminate sentencing scheme would allow the Board Members to spend more time on these critical components of their responsibilities.

FURTHER DRUG SENTENCING REFORM

In the past 15 years, there have been at least 4 substantial modifications of New York's Drug Laws. Some of the changes have eliminated life sentences, reduced the length of sentences, and doubled the minimum quantities of illegal drugs required for conviction. The Sentencing Commission clearly appears to be seeking discussions to further reduce the penalties for some Drug felonies. DAASNY strongly opposes any further change in the Drug Laws that would reduce penalties, and particularly the proposal to eliminate the mandatory incarceration provision upon a conviction for a Class B felony without judicial, prosecutorial and defense consent. Our opposition arises from what we have learned directly from the Drug Court defendants themselves who have consistently told us that treatment works best when it is mandated by a court with a real promise of incarceration for failure to complete the program.

As I previously stated in my Budget letter to Governor Spitzer, prosecutors have always supported the appropriate use of substance abuse treatment in drug cases. DTAP in New York City and STEPS in upstate counties, coupled with the proliferation of Drug Courts throughout the state, have increased both the availability of treatment and the expertise of the Judiciary, Prosecution and Defense in understanding the appropriate use of treatment.

District Attorneys are constantly urged by their communities to eradicate the plague of criminal violence. Drug dealing always brings guns and other violence and provides a fertile breeding ground for violent gangs to start and grow. All District Attorneys know that the elimination of drug dealers means less violence and fewer victims. That is why we reject softening the penalty for drug dealers and will continue to seek prison for those who bring violence to our community.

And despite the mantra of drug reform groups that inaccurately portrays prosecutors as contributing to long sentences for drug addicts, the reality is far different. District Attorneys seek treatment, jobs and a successful return to the community for drug addicts. We strongly support drug treatment and the appropriate use of graduated sanctions for drug addicts.

A recent survey by DCJS of 36 counties representing 80% of our state's population found that over 22,000 defendants have participated in Drug Court, DTAP or STEPS. And although drug reform groups imply that all second felony offenders go to state prison, many if not most of these 22,000 defendants were second felony offenders who were offered drug treatment and not prison through DTAP, STEPS and Drug Courts.

Very simply, removing the "mandatory" prison provision for conviction of a Class B Felony or conviction as a Second Felony Offender would make treatment less successful.

Many upstate DAs would embrace the drug court programs if they had resources available, but resources, personnel and funding are serious impediments for well intentioned prosecutors. We have repeatedly asked for more funding in our annual budget request. Some facts you should consider are that:

37 of 62 counties (more than half) have less than 10 adas.
20 of 62 (nearly 1/3) have less than 5 adas.

The Franklin Co. DA who planned on testifying today has 4 assistant district attorneys to handle 2,800 crimes, 3,000 vehicle and traffic violations, 1200 penal law violations and crime from 5 correctional facilities and the St. Regis Reservation. He wants to expand the very limited drug court program, but needs resources, technical support, personnel and funding. In addition, the simple fact that geography is a major impediment in Franklin and other upstate rural counties is important to remember. The Town of Tupper Lake is 62 miles from the county seat of Malone in Franklin County. A 3 hour round trip drive once per week to attend drug court for participants is prohibitive, expensive and impossible. There are no mass transit services, nor are there programs for participants in their local community.

The Warren County DA, who also planned on testifying today, has 6 assistant district attorneys and a limited drug court program. She couldn't testify because she is presenting an infant homicide case to the grand jury and her assistants were already engaged in other court appearances. While she would like to assign an assistant district attorney to drug treatment court, she also has similar problems as those of the Franklin County DA. She presently has assistants handling murders, rapes, burglaries and other crime and cannot dedicate an assistant district attorney exclusively to treatment court without additional funding, resources, technical support and personnel. She cannot short change a victim of a rape or family of a homicide victim by diverting attention away from

these violent crimes and assign that assistant to also handle drug court as well. Further she cannot properly cover drug court when the assistant district attorney's attention is elsewhere.

Geography, small offices and lack of programs for drug addicts in their own communities will continue to thwart efforts by prosecutors to utilize alternative programs despite their willingness and desire to do so. Fund the programs and they will be implemented in all of our counties. This is what district attorneys want. We want to expand and improve alternatives to incarceration.

My colleague Bridget Brennan, the Special Narcotics Prosecutor, gave in depth testimony to this Commission earlier this week. She provided valuable insight about public safety concerns from further weakening criminal sanctions for convicted drug offenders.

THE USE OF EVIDENCE-BASED PRACTICES

The use of evidenced-based practices outlined in the Commission's proposal presents a concept that could serve to allocate incarcerative and supervision resources in a more effective manner. Using more resources for the most dangerous offenders and increasing our capacity to determine who are the most likely to commit further crimes can only serve to promote public safety.

Risk and Needs Assessment Instruments also present an opportunity to improve the criminal justice system in providing valuable predictive information for sentencing, prison programming, and community supervision. Yet, careful consideration must be given to what instrument is used and the manner in which it is validated. The careful and appropriate use of these practices, however, is only a tool and should not replace but inform prosecution decision making.

PAROLE VIOLATORS

I disagree with the characterization of parole rule violators as "the revolving door of incarceration." The analysis contained in your proposal portrays parole rule violators as "technical violators" and does not give due credit to the fact that crimes are avoided by returning parolees to prison when they are engaged in activities that often lead to serious criminal conduct. Parolees are still serving a sentence and only need to follow clearly delineated rules to avoid being returned to state prison.

Although 40% of "technical violators" are returned to state prison without any known criminal behavior, the great majority of these are absconders. In other words, despite the best efforts of their parole officers, these absconders whereabouts are

unknown. Many of these so called "technical" offenders are sex offenders and violent offenders who should immediately be violated.

Therefore, although the Commission's recommendation to look into alternative sanctions may have limited or some merit, it should only be explored while not forgetting that public safety is the primary duty of our Division of Parole. No changes should be taken here, because the cost to society is so heavy. We should not ever reduce our vigilance because our prior hard work earned lower crime rates.

COMMUNITY SUPERVISION

It certainly makes sense to align the level of supervision with the offender's violence and recidivism risk. All community supervision, however, whether it be pre-trial or post sentence probation or parole, should be the result of a sentence negotiated by prosecutors who in turn, must answer to their communities. To significantly reduce the level of supervision is wrong. Recommendations, such as the increased use of kiosks, undermine both public confidence and safety. When an offender has committed a crime, and is convicted after a plea negotiation with a sentence that includes probation, it is very troublesome to rely on occasional visits to a kiosk to fulfill that sentence.

RE-ENTRY

Employment, housing, and treatment coupled with effective monitoring and supervision, can certainly aid in providing an offender with the opportunity and the incentive not to commit more crimes. New York State treatment and employment programs, both in prison and in the community, are among the best and most available in the United States. The proposal's recommendation to improve both their quality and availability has the potential to improve public safety. Step down facilities operated by DOCS and Parole are promising models that may improve an offender's ability to live a crime free life.

CRIME VICTIMS AND SENTENCING

Although New York has made great strides in developing a more victim oriented criminal justice system, prosecutors agree that more can and must be done.

The recommendation to consolidate all victim statutes, or at the very least, to create a cross-reference chart for all victim related legislation, makes sense, as does payment of restitution by credit card.

Most prosecutors have at least one full-time Victim liaison and all prosecutors scrupulously fulfill their statutory duty in CPL 440.50(1) to inform victims of final

dispositions. Extending this right of notification to all victims where the offender has been sentenced to DOCS custody merits further review.

A PERMANENT SENTENCING COMMISSION FOR NEW YORK?

I believe that a permanent Sentencing Commission for New York is an idea whose time has come. A permanent Commission could be valuable to Prosecutors and the entire Criminal Justice System. The 11 anomalies set forth at the end of the temporary Commission's recommendation could be the first item for resolution. They have long puzzled Judges, Prosecutors and Defense Attorneys who have first sought to understand them and then struggled to find a method to work around them. Other issues, undoubtedly more complicated would follow.

The first question to be resolved, however, would be the composition of the Commission. Prosecutors are rightly concerned that a Commission could devolve into another bureaucracy, or much worse, a vehicle for quick change that could undermine public safety. Based upon these concerns, we prefer the more cautious approach recommended in the Proposal for the creation of a "temporary" commission subject to regular legislative and executive approval. Prosecutors look forward to being part of this negotiation.

ANOMALIES

Each of the 11 anomalies described in the Commission's Proposal have long been identified as matters that would benefit from more carefully written legislation. For instance, anomaly #4 that does not allow a plea reduction from Manslaughter in the First Degree to Manslaughter in the Second Degree, has been identified by some career Prosecutors as an impediment to appropriate plea negotiations. I strongly agree that this and the other 10 anomalies should be carefully examined by this Commission or be on the first duties of any permanent Sentencing Commission.

DNA COLLECTION FOR ALL OFFENDERS

Although this matter was not raised by the sentencing commission, its critical importance to Prosecutors cannot be understated. I want to use my remaining minutes to raise it here.

The law presently requires DNA collection upon conviction of all Felonies and selected Misdemeanors. Collecting samples has been extremely cumbersome in upstate counties when a defendant pleads guilty to a misdemeanor and is not under any form of supervision. Every County outside of New York City, with DCJS's assistance, is required to formulate a plan to collect DNA. Despite best efforts, DNA is not collected from every offender, particularly in the rural Justice Courts. DCJS is continually updating and

distributes reports to Counties, identifying offenders for whom a DNA sample is mandated but has not been submitted. Using these reports, local law enforcement attempts to locate and persuade an offender to give a DNA sample. Very simply, the existing law did not, contemplate, let alone address this issue.

Because of the problems generated by the current law, I strongly urge you to call for legislation mandating collection from all offenders at the time of arrest. In today's world, DNA as a crime solver, is akin to fingerprints. DNA extraction is no longer invasive nor does it require the services of a phlebotomist to draw a blood sample. New York now uses a buccal swab (similar in size and feel to a Q-tip) that the offender inserts into his or her cheek to obtain sufficient DNA for analysis. Thus, DNA should be taken at the time of arrest for every crime in which fingerprints are currently required. Procedures to return DNA samples, in appropriate cases could be developed.

Again, thank you for the opportunity to comment today. I know that New York's District Attorneys are looking forward to working with you and the members of the Commission as we continue our efforts to make New York safer.

Respectfully submitted,

James A. Murphy
Saratoga County District Attorney
President, District Attorneys Association of the State of New York

November 15, 2007

TESTIMONY
OF
THE NYS COUNCIL OF PROBATION ADMINISTRATORS
BEFORE THE
NEW YORK STATE
COMMISSION ON SENTENCING REFORM - *Rocco Rizzi*

NOVEMBER 15, 2007

Thank you for providing me with this opportunity to comment on the preliminary report of the State Commission on Sentencing Reform. I address you today in my dual roles as President of the New York State Council of Probation Administrators and as a member of the Subcommittee on Supervision in the Community to this Commission.

First of all, allow me to express my overall admiration for the work of the Commission thus far. The mandate of Executive Order #10 has presented us with a great opportunity to examine and address, comprehensively a sentencing structure, that Chairwoman O'Donnell has rightfully termed "Byzantine", the reform of which is long overdue. In reviewing the preliminary report, the depth of knowledge, quality of research, and undeniable commitment of the members is clearly on display. Each and every member of the Commission, as well as the members of the four Subcommittees are to be commended.

Significantly, the wisdom of this sentencing reform process lies, in part, with the publication of a "preliminary" report that serves as a "starting point for further analysis, discussion and deliberation" along the road to the development of a "comprehensive blueprint for a dramatic and historic reform" of New York's sentencing laws.

It is with that constructive spirit in mind that I convey some observations.

Although probation services continue to constitute the backbone of both the existing sentencing structure as well as a reformed system based upon the "smarter" allocation of limited correctional and supervision resources" (Preliminary Report, p. IV), to quote my good friend, Warren Greene of Fulton County, probation continues to be treated "like the red-headed step child of the criminal justice system." Indeed, over the past 15 years, the probation system in New York has seen its mandates increase exponentially through a disconnected series of expanded duties and boutique sentences while, at the same time, the State has virtually abdicated its statutory commitment to fund 50% of probations services. As a result, Probation is at something of a crossroads. It finds itself under-funded, under-manned -- hovering in an administrative netherworld somewhere between the judiciary and the executive -- a function of the local government, subject to State mandates, and funded partially by the State (see Executive Law §246) and partly by the County (and City of New York). With more people on probation than

imprisonment and parole combined, we are no longer certain whether we are an alternative to incarceration, or whether incarceration is an alternative to probation.

The members of the Subcommittee on Supervision in the Community accepted its task with enthusiasm and optimism that the Commission's recommendations would include a comprehensive analysis of the manner in which Probation services have become essential to the State's philosophical approach to reducing recidivism through the use of risk and needs assessment and the application of the least restrictive alternative model. Instead of outlining the expansive functions and duties of probation services under the revised sentencing plan, it barely glosses over the data, research, conclusions and recommendations compiled by the Subcommittee.

I cannot stress strongly enough the importance of reconsidering the recommendations of the Subcommittee in the final report and using this historic opportunity to deal with crucial issues affecting the delivery of probation services as an essential component of a comprehensive sentencing reform plan.

Probation has been defined as "a planned program designed to protect the community by reeducating the offender to the acceptance of responsibility for his actions, teaching him to live with others with minimum of friction, and guiding him in his conduct so that he will become a responsible citizen." In Family Court the emphasis is upon trying to preserve family life." That definition, coined in 1964 remains accurate if one is willing to cull through the myriad of complex tasks and responsibilities that have been heaped upon our member departments over the past 20 years and strip those tasks to their bare essence. No one, in 1964 could have envisioned collection of DNA, monitoring of data from ignition interlock devices, verifying the addresses of sex offenders, and increasing the terms of probation for certain misdemeanors and felonies.

Despite the rash of new responsibilities and programs, the historical cornerstones of probation remain: intake, investigation; and supervision. Under the revised sentencing model, these functions are going to be even more essential to its successful implementation. Currently, 31 county probation departments around the State are utilizing a form of a risks and need instrument in the intake and investigations functions (COMPAS) and by the end of this year the COMPAS risks and need assessment will provide probation officers with a preformatted pre-sentence investigation report. One cannot help but think that a uniform risks and need instrument, when combined with a sense that incarceration should be considered something of a last resort for a large portion of the felony population (50% of our caseloads), will only increase the supervision requirements of the probation departments. Indeed, as the felony caseload increases, so will the need for enhanced supervision services.

Surely, the most vexing challenge facing the future of Probation is derived from the dichotomous variables of increased duties (mandates, actually) and a vastly insufficient funding scheme. While there are those who are entertaining the debate as to what State branch of government should oversee the administration of probation services, that debate, while clearly important, does not, in and of itself, address the fissures appearing around the very foundation of the probation concept.

Section 256 of the Executive Law reads as follows: "Each county shall maintain or provide for a probation agency or agencies to perform probation services therein, including intake, investigation, pre-sentence reports, supervision, conciliation, social treatment *and such other functions as are assigned to probation agencies pursuant to law.*" [Emphasis added.] While the first portion of this provision outlines the cornerstones of probation: intake, investigation and supervision, it is the effect of the last clause that circumscribes the challenges that should be addressed by the Commission.

Over the years, the courts have increasingly relied on Probation as the sentence of choice. Indeed, the number of probationers alone now exceeds those incarcerated and on parole combined. And that does not include the duties associated with Family Court, where our job is to "help preserve family life." As a result, *the average caseload per officer has risen to 120 probationers.* Now, add to those extreme caseloads "such other functions as are assigned to probation agencies pursuant to law" and you have a system that is bursting at the seams with unmanageable caseloads and annual expansion in the scope of duties. If the Commission anticipates expanded use of community supervision, why has it failed to consider and address the added strain on that system?

Legislative initiatives over the past 10-15 years have significantly impacted the probation system in a disjointed manner and with next to no consideration of the "real world" effect of these mandates on an already overstrained system. We have set forth some key illustrations.

- **DWI Legislation: Repeat Offenders**

Chapter 691 of the Laws of 2002 established additional requirements for repeat DWI offenders which included extensive community service (as an alternative to jail) and the use and monitoring of the ignition interlock device. In the case of community service, where the average amount of community service for a DWI offender was 80 hours, the new mandate required either 240 or 480 hours, depending on the number of prior offenses. This requires a 34% increase in worksite capacity.

The overall impact of this mandate alone was significant. In addition to the increase in community service caseload, there was an increase in felony DWI pre-sentence investigations and felony supervision cases. Furthermore, to the extent that ignition interlock is available, probation includes the monitoring of the data logs from each device.

Chapter 732 of the Laws of 2006 represents the most sweeping reform of New York's DWI laws in 25 years - - the full impact of which will not be known for several months. However, establishment of the new offense of "Aggravated DWI" alone will move considerably more offenders into the probation system . . . most of whom will be subject to the ignition interlock program.

- **Interim Supervision**

One of the most costly of the recent mandates is Interim Probation Supervision (IPS) - - a temporary disposition which can be imposed when a plea agreement results in an adjournment of sentence to a specified date (not exceeding one year) and the defendant is placed on IPS. This will affect caseloads in several respects. First, there is the additional cost associated with an updated PSI. Second, IPS tends to result in a higher level of supervision. Third, with IPS, Probation may be supervising a misdemeanor defendant for four years instead of three and a felon for six years instead of five. And, the cost savings that result from a successful IPS will accrue to the State if the offender is able, as a result, to avoid incarceration and be placed on standard probation instead.

- **Sex Offender Registry**

This law requires courts to classify offenders as to level of risk and fit them into an appropriate category. The information for this decision is provided by Probation - - which involves much more detailed PSIs. The law further requires offenders to report change of status to the registry on a regular basis and Probation officers are required to facilitate change of status from completion for those under supervision who enter into or change employment or educational status, move, or change vehicles. More recently, Probation has been required to complete quarterly address verifications on Registered Offenders and report this activity to the State. All of these activities add considerably to the per-offender duties imposed on the probation system.

- **Sexual Assault Reform Act**

This law increases the offenses classified as sex offenses; increases the length of probation sentences for specified misdemeanor offenses from 3 to 6 years and the length of probation sentences for felony offenses from 5 to 10 years; and prohibits convicted offenders on Probation from entering any school or other child care facility without the written authorization of the Probation officer and the chief administrator of the school or facility. The time and costs associated with doubling of the probation periods and the extra monitoring and oversight have a dramatic effect on an overall caseload.

- **DNA Collection**

Any offender convicted of an enumerated offense must submit to fingerprinting and produce a buccal swab sample for DNA identification purposes. When the offender is sentenced to Probation, the samples must be taken and paperwork must be completed using precise instructions so as to create a valid specimen for mailing.

The impact of these requirements, in the real world setting, has been significant. First of all, the percentage of crimes requiring DNA is approaching 50% - - so these are not a few isolated cases. Second, tracking down offenders in multiple jurisdictions and the associated paperwork represents a huge time commitment. Third, some courts require probation to collect the \$50 DNA court fee.

- **Reentry & Reintegration (Ch. 98 of 2006)**

This recent measure amends the Penal Law to provide that, in addition to the four traditional goals of sentencing (deterrence, rehabilitation, retribution and incapacitation) the new goal of the promotion of the successful and productive *reentry and reintegration* into society. This law contains the implicit recognition that pre-sentence investigations (defendant's legal history, social circumstances, and victim information) include an assessment of what type of sentence will best achieve the goal of community reintegration for the specific defendant. It is anticipated that this will mean that PSIs will be required to focus on developing an individual plan for a community-based sentence, including such things as: what specific resources, programs, services, accountability and supervisory methods will best accommodate the offender's immediate reintegration into the community.

Specialized populations, boutique courts, discrete sentencing provisions, and expanded supervision requirements, all have overloaded our system. Yet virtually no one in the criminal justice arena, save Judge Kaye, seems to recognize how vital probation services are and will continue to be *vis a vis* the overall direction taken by this Commission. And, yet again, there is barely mention of any of this, or of the expansive and detailed recommendations of the Subcommittee, found anywhere in this report.

To that end, we strongly urge the Commission to re-review the Subcommittee report and rethink how the services that support more than 50% of the criminal justice population - - and which provides, by far, the least costly, least restrictive form of punishment as well as the best opportunity to avoid recidivism - - should be addressed as part of a comprehensive sentencing reform package.

Finally, I would be remiss if I did not take this opportunity to address another issue that some may believe falls outside of the scope of Executive Order #10 - - but which lies at the very heart of any effort to promulgate a comprehensive, cohesive criminal justice reform effort. Adequate funding for probation services. Judge Kaye's initiative on the future of Probation speaks to this issue at length, while the Sentencing Commission fails to even mention, nor apparently recognize, the importance of an adequate probation workforce in the delivery of community supervision services.

Subdivision 2 of §246 of the Executive Law states the terms of the historical funding partnership between State and local governments:

2. State aid shall be granted to the city of New York and the respective counties outside the city of New York only to the extent of reimbursing fifty per centum of the approved expenditures incurred by the county or city in maintaining and improving local probation services.

A plain language reading of this provision makes it clear that the Legislature intended the State to cover a full 50% of approved expenditures as outlined elsewhere in the Executive Law and related rules.

Yet, in 1989-90, the State reimbursement level was reduced to 46.5% and that number has subsequently appeared in subsequent budget documents as a "ceiling". Essentially what has happened over time is the budget now carries the following language:

Notwithstanding any other provisions of law, the reimbursement rate for state aid to counties and the city of New York shall not exceed 46.5% of approved expenditures incurred by said counties and the city of New York. [emphasis added]

This has allowed the State to ignore the provisions of §246 and replace it with whatever reimbursement figure it wants. The effect has been notable. **The State share of reimbursement has dropped to an astounding 17%.** And, by maintaining the same dollar amount, the current budget proposal will drop that percentage even further.

Now, in light of these snapshots of recent expansion of responsibilities and reduced funding, consider the following:

- The number of adult offenders on probation exceeds the combined total of those incarcerated and on parole: 124,000 - 110,000.
- There are approximately 60,000 felons subject to Probation.
- 2005-2006 State funding for probation services comprised 3% of the total funding for DOCS, Parole and Probation services.

- In 2005-2006 the State spent an annual average of \$554 per probationer, while spending \$4,170 per parolee and \$34,546 per inmate.
- The proportion of State Aid reimbursement for probation services has been reduced from more than 45% in 1990 to approximately 17% in 2006.
- New State mandates (over the past 15 years) now consume 25% of the duties of a probation officer.

As you can see, it appears that the State depends on the probation departments to carry out its philosophical approach to criminal justice - - an approach that relies heavily on alternatives to incarceration for all but the most heinous offenses. Yet, at the same time, the State has walked away from its partnership obligation while still churning out mandate upon mandate without the slightest consideration to the cost or affect on caseload. It is almost as if there is a belief that the elves will appear overnight and cobble the new shoes. Yet, as new responsibilities flow from Albany like water from a spout, the probation system is creaking under the weight of added caseloads, expanded responsibilities and dwindling funding. Thus, by far, the most significant challenge facing the probation system is that of inadequate funding and manpower in the face of increased duties, expanded periods of probation, and caseloads bursting at the seams. Average caseloads of 120 adult offenders (up to 200 in some counties) and a notable increase in Family Court matters do not lend themselves to the delivery of quality services.

The costs associated with neglect are already mounting. In many counties, probation officers have been laid off, shifting the additional burden to those remaining. Caseload size continues to increase with no caps. Non-mandated services to Family Court have been cut or reduced. We have been forced to chase grant money, often which is earmarked for specific aspects that are at odds with priorities. And, our mission is continuously changing depending on the Legislature's reaction to political hot buttons. In those counties where the workforce could no longer be reduced, the costs were shifted to the localities and to local property taxpayers. I am hard-pressed to see how the Commission can advance a model that relies more heavily on supervision within the community (to wit: probation services) without addressing the significant consequences associated with the State's abdication of its commitment to fund 50% of the cost of probation services. Indeed - - we speak of state mandates - - and the end-product of the work of this Commission may result in the mother of all mandates - - yet no one wants to raise the point, even as a footnote, that you cannot have a sound system of community supervision (particularly for felons) unless you have a fully funded system.

And, for those who assume that complying with Section 246 would be "too costly", consider the alternative. As we noted above, 60,000 felons are currently on Probation. Imagine, if you will, that just 10% of them are returned to the system for incarceration. The annual cost of incarceration is approximately \$35,000 per inmate. Six thousand new felons, jailed for one year would cost the State \$210 million (not including

the cost of constructing a new State prison)! Compare that with the current State expenditure of \$554 per probationer. In fact, the State can meet its 50% share for the entire Probation system for less than it would cost to incarcerate 4% of the felons currently on Probation.

The Governor has been very clear that he wishes to relieve the burden on local governments and reduce property taxes. He has done so, in part, by reducing the effect of unfunded mandates. He even shifted the tab for incarceration of parole violators to the State, which we applaud. But probation has yet again been treated as someone else's problem.

Thus, we implore this Commission to support a State funding methodology that reflects reality. We believe that State participation of 50% (the maximum allowed by law) will be necessary in order to restore a semblance of rational caseload distribution to the system and position us to be a viable partner in the administration of the final recommendations of this Commission.

Respectfully submitted,

Rocco A. Pozzi
President
NYS Council of Probation Administrators
(914) 231-1054



THE SENATE
STATE OF NEW YORK
ALBANY

THOMAS DUANE
SENATOR, 29TH DISTRICT

ASSISTANT MINORITY LEADER FOR
POLICY AND ADMINISTRATION

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**TESTIMONY OF SENATOR THOMAS K. DUANE TO THE NEW YORK STATE
COMMISSION ON SENTENCING REFORM**

I am New York State Senator Thomas K. Duane and I represent the 29th Senate District. From 2002-2006 I was the Ranking Minority Member of the Senate Codes Committee -- which was the committee directly involved with the issue of criminal sentencing reform in the New York State Senate.

I would like to thank the New York State Commission on Sentencing Reform for allowing me to present testimony today on the urgent need for sentencing reform -- especially on the issue of repealing the Rockefeller Drug Laws. I believe that we have done very little in New York to reform these harsh and unnecessary drug laws.

In 2004, the New York State Legislature was facing incredible pressure by the public to eliminate the Rockefeller Drug Laws. This gave us a real opportunity to completely restructure our drug laws.

Regrettably, the Legislature reached a poor compromise and passed laws in December of 2004 and August of 2005 that did very little in the way of Rockefeller Drug Law reform -- but did have tragic consequences of stopping the momentum for reform, and removing the Legislature's incentive to enact an actual and meaningful repeal of the laws.

The 2004 and 2005 legislation did nothing to eliminate the harsh penalties for low-level first time non-violent class "B" offenses. In 2004 Senate Minority Leader David Paterson and I issued a report showing that we have the harshest laws in the country for low level B offenses. I have been vocal in arguing that until we enact legislation which provides meaningful reform for class "B" drug offenses, we have not done our jobs as legislators in the area of sentencing reform.

In addition, under the recently enacted laws, very few District Attorneys are in the process of resentencing those inmates convicted of class "A" drug felonies. Yet even if the resentencing process was in full force, there is no infrastructure to provide inmates with the legal assistance needed in the resentencing process. Much work needs to be done to improve the current system.

A look at current statistics proves that the legislation enacted in 2004 and 2005 provides little relief to the staggering numbers of people convicted under the Rockefeller drug laws:

- Notwithstanding the recent drug law modifications, more people were sent to state prison for non-violent drug offenses in 2006 (6,039) and in 2005 (5,835) than in 2004 (5,657).
- There are over 13,900 drug offenders locked up in New York State prisons. It costs the State of New York \$1.5 billion to construct the prisons to house the drug offenders. And operating expenses for confining them is over \$510 million per year.
- In 2006, 36% of people sent to prison were drug offenders. In 1980 the figure was 11%.
- About 39% of the drug offenders in New York State prisons, more than 5,400 people were locked up for drug possession, as opposed to drug selling. It costs over \$190 million to keep them in prison.
- Of all drug offenders in New York State prisons in 1999, 80% were never convicted of a felony.
- Nearly 54% of the drug offenders in New York State prisons were convicted of the lowest level drug felonies.

Further, there is no question that these laws are racially biased; studies show that the majority of persons who use and sell drugs in New York State and across the country are white. Yet African Americans and Latinos comprise 91% of drug offenders in New York's prisons. Whites make up only 8%

The most effective tool to fight drug abuse is treatment. Yet New York insists on locking up drug abusers. This is a detriment not only to the offender, but also costs the state's coffers. It costs \$36,835 a year to keep a low level drug offender in prison, while it costs about \$2,700-\$4,500 a year to provide treatment. Yet we insist on continuing to incarcerate instead of treat and provide education opportunities. This makes no sense.

One of the biggest tragedies of the Rockefeller Drug Laws is the plight of women who get caught up in them. In 2005 I held a hearing where we looked at the plight of women and the Rockefeller Drug Laws. The testimony was shocking:

- As of January 2007, 2,859 women were incarcerated in New York State prisons. That's 4.5% of the State's inmate population.
- From 1973 to 2007 the number of women in New York State prisons increased 645%.
- 84% of women sent to New York State prisons in 2006 were for non-violent offenses. As of January 2007, 33% were sent for non-violent drug offenses.

- 82% of women incarcerated in New York State prisons report having an alcohol or drug abuse problem prior to arrest.
- 32% of the women have no prior criminal record. And 60% lack a high school diploma.
- 74% of the women report being mothers. At least 5,600 children have mothers incarcerated in NYS prison system.
- 14% of the women report being HIV positive which is almost double the rate reported by male inmates (6.7%)

I also wish to address one of my biggest concerns and one which often goes unmentioned. The need for solid offender re-entry programs. Many inmates who are sent to prison on low level drug offenses have substance abuse problems yet there is no integrated reentry program for them upon their release from prison. This leads to the natural consequence of recidivism. This is yet another sign that our drug laws are nonsensical.

In the Senate I have proposed legislation (S.2834) which would result in successful re-entry programs. I believe that successful re-entry programs must include:

- Initial judicial identification of the problem and a detail assessment of the offenders needs. A report must be made and issued to the Department of Correctional Services (DOCS) addressing offender needs.
- DOCS must be funded to provide educational skill and treatment programs while the offender is incarcerated.
- Neighborhood-level supervision (parole officers located in the community working hand-in-hand with affected neighborhoods to help released offenders access services
- Utilization of a full service delivery model which will include the following services: employment/vocational training; housing; treatment of substance abuse; mental health counseling and counseling for families and partners.
- Program oversight and revocation authority exercised by re-entry judge whose job it is to maintain offender rehabilitation efforts.

Another serious problem across New York State related to the Rockefeller Drug laws is the lack of uniformity in enforcement. How much time you spend in prison on a low level drug offense, and the treatment you receive, varies wildly across the State. In addition to the incredible racial disparity which I outlined earlier, a low level drug offender's sentence depends a great deal on which county they are sentenced in. This needs to be changed. Geography should not play a role in sentencing.

I again want to thank the Commission for holding these hearings across the state. I believe that my testimony makes clear the urgent need to reform the Rockefeller Drug Laws. As the Legislature wastes time refusing to repeal these laws, more and more low lever drug offenders are being imprisoned. Families are ruined. This is wrong. I urge the Commission to make clear in its recommendations that legislation must be enacted quickly to address these problems.

Finally I want to stress that as we continue the process of enacting meaningful sentencing reform we must always keep in mind that drug addiction should always be treated as a health issue. Treating drug addicts as criminals has been a dismal failure.

New York State Commission on Sentencing Reform

“The Future of Sentencing in New York State”

Denise E. O’Donnell

Chair

**Legislative Office Building
Albany, New York**

November 15, 2007

**Testimony of James W. Tuffey
Chief of Police
Albany Police Department**

Thank you for the opportunity to present this testimony to the New York State Commission on Sentencing Reform.

As a member of the Law Enforcement Community we understand the complexities associated with the Governor's Executive order on Sentencing Reform however I would ask the Commission to give full consideration to the input Law Enforcement Officials throughout the state would give to this Commission. The number one goal of this Commission must be the safety of all New Yorkers. To do anything else would be a great injustice.

We cannot undo the good work of Law Enforcement in reducing crime in the State of New York, which has resulted in fewer crime victims.

I am very concerned with the possibility of the Sentencing Commission discussing further penalty reduction in felony drug cases. Far too often the Law Enforcement community sees the real devastation of the drug dealer's work. Yes we all see the violence but the real silent killer is the addiction fueled by these dealers whose sole motivation is financial. They have absolutely no concern for the community or families they destroy. Walk in our shoes and you will see the underbelly of this devastation. Far too often we forget about those innocent victims. I believe members of the Law Enforcement Community support treatment to prevent further deterioration in our communities. But that treatment needs to be started earlier. I firmly believe any further penalty reduction in felony drug cases will have an impact on the safety of the communities of this great state.

Another area of great concern is the parole rule violator. They must be held to their parole conditions when they commit a violation of law. They have been convicted or pled guilty and have been given a second chance. They have not paid their full debt to society and they should be returned to finish out their sentence for any violation of the conditions of their parole. If they believe they are not going to be violated they will continue to wreak havoc on the community. In the City of Albany since January 1, 2006 there have been over 500 charges (228 felonies and 275 misdemeanors) against parolees who continue once released to violate the innocent citizens of our city. This has to stop. The safety of the law-abiding citizens has to be the number one concern.

In closing let me again thank you for the opportunity to present this testimony. Let us work together to come up with the best possible solutions to these complex issues for the public safety of the citizens of this great state.

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**Testimony Before the
New York State Commission on Sentencing Reform**

**by Alice P. Green, Executive Director
Center for Law and Justice, Inc.**

Thursday, November 15, 2007

First of all, Chairman O'Donnell, thank you for this opportunity to be heard here today.

My name is Alice Green. I am Executive Director of the Center for Law and Justice, Inc., a twenty-two year old non-profit civil rights and criminal justice organization that is community-based in the City of Albany. It is our mission to promote the fair and just treatment of all people throughout our civil and criminal justice systems and to advance public safety by working directly with community people.

For nearly 30 years, I have worked with communities to raise the consciousness of lawmakers, government officials and the general public about the debilitating impact the "criminal justice system" has on poor people and people of color, their families, and communities. The damage done to African Americans is so extensive, hurtful, and destructive that it is reminiscent of the harmful process put into play nearly 400 years ago. Now, almost 150 years following the end of chattel slavery in America, large numbers of our young black males and increasingly black females are disproportionately confined and still enslaved in many respects. They are unable to vote, suffer high unemployment and underemployment, live in substandard housing, attend poorly funded and performing schools, and receive the poorest medical attention and care, and suffer from a litany of other poor conditions. Reports abound at how they are perceived, approached, and treated according to stereotypes that mark them as inferior and less than human by many of our basic institutions. Law enforcement is no exception. It often exacerbates these human conditions by relying heavily upon their arrest and incarceration.

For nearly 30 years we have come to this place, testified about these conditions and the failure of our prison system, and begged for understanding, acknowledgement, and determined action to alleviate the human destruction emanating from our criminal punishment system. Many other research and/or civil rights and civil liberties organizations have clearly documented the seriousness of the problems and the urgent

need for effective change. The Sentencing Project, the Correctional Association of New York, NAACP Legal Defense Fund, and many others have made significant contributions to our understanding of those most directly affected by our criminal punishment system and what we must do about it.. Regrettably, most of our recommendations and pleas were discarded. Over all these years, we have failed to move those with the power and authority to significantly change the horrible conditions I mentioned earlier.

While the Center for Law and Justice believes that structural and sentencing reforms are needed in New York State, the Governor's charge to this Commission may not result in the kind of drastic changes necessary to liberate African Americans, promote true criminal and social justice, and further public safety. To begin that process, we believe that this Commission on Sentencing Reform must seriously entertain and consider the two following recommendations that we hope will be included in the final report to Governor Spitzer.

1. The Abolition of Prisons as the Major Institution of Punishment

Prison sentencing appears to have only a very limited relationship to crime or criminal and social justice. We see prison sentences primarily as political, economic, and racist tools that are too often used to create and maintain a caste system of poor African Americans and Latinos. In addition, they are used to promote a flourishing punishment industry that benefits almost everyone but those incarcerated and their families. This state of affairs must be acknowledged by this Commission and a commitment to abolish prisons as the major institution of punishment must be made. One of the major leaders in a movement to abolish prisons, Angela Davis, asserts that "abolitionism should not be considered an unrealizable utopian dream, but rather the only possible way to halt the further transnational development of prison industries." A strong system of graduated sanctions could be developed and adopted based on the experience and knowledge we now have. It could be substituted and used to rehabilitate and/or empower each individual to become a constructive and contributing member of his or her family and community.

New York State has a glorious history of leadership in proposing and instituting meaningful social change. As early as 1827 it abolished slavery in the state at a time when few believed that the abolition of that deeply embedded economic, political, and social system was possible. Like slavery, prisons are not sacred or natural wonders that must be thought of as permanent fixtures in our society. And also like slavery, prison abolition is a long-range goal that must begin now if we are to prevent the destruction of another generation of people of color and "... further shape social relations in our society." Prisons also need to be abolished because they function as the dominant mode of addressing social problems that are better solved by other institutions and other means. "The call for prison abolition urges us to imagine and strive for a very different social landscape." (Angela Davis)

2. The Development of a Community Justice System

In a number of cities across the country, including Albany, law enforcement officials and community members are starting to work together as a way to stop crime and increase the role of communities in addressing public safety. Their primary goal is to find ways to accomplish their public safety goals without putting more people in prison.

Efforts are underway in cities such as Chicago, Hartford, Huston, and here in Albany to change and increase the role of community people in addressing public safety. In Albany a Community Accountability Board, an alternative citizen-based criminal justice body, was developed through the Albany County District Attorney's Office. It allows citizens to become involved in determining and monitoring sanctions for those who have committed non-violent criminal violations.

According to public safety community organizers Lorenzo Jones and Robert Rooks, community people must have more say as to what happens to people once they are arrested. They contend that:

What's good about placing the community at the center of what happens to people that get into trouble ... is that the community often has a better idea of what people need than police. It shifts the police incentives from making arrests to community satisfaction and involvement. It situates the community in the center of public policy debates for increased treatment, alternatives to incarceration programs and better sentencing practices. As a result communities gain a better understanding of the root causes of crime.

My Center supports the notion that we must shift the goal of public safety/responsibilities to communities. In order to do this, there are 4 things that must happen.

1. Communities must use sound research and advocacy to move away from incarceration-focused strategies and work to bridge the goals of criminal justice and public safety.
2. Communities must effectively organize to force legislators and law enforcement to make a shift in their responses to crime.
3. Communities must advocate at all levels of government for alternative programming.
4. Communities must create volunteer alternatives so that the immediate diversion of people can happen and won't be held up by the slow legislative process.

Our state government must encourage and support the work of local communities to develop community justice systems in partnership with law enforcement. The Center for Law and Justice is currently working to develop a community justice center model that would place community residents at the core of efforts to bring together public and private groups, organizations, and resources to work collaboratively on social justice and public safety issues and focus their energies and resources on crime prevention, treatment, re-entry, and empowerment activities.

While this Commission's charge is primarily sentencing reform and my agency's is prison abolition, a balance can and must be struck between the two. As you review New York's existing sentencing structure and entertain needed reform in the state's drug laws, mandatory sentencing, parole, sentencing alternatives, and other crucial issues, please consider how such changes could be integrated into an "abolitionist context" and "decarceration strategies." Current public discourse on the two goals have already generated calls for *justice reinvestment*, that is, the planned shifting of resources from prison and punishment to community programs such as education, health care, housing, treatment, alternatives to incarceration for drugs and other offenses, and other public services.

What we believe is most important to acknowledge today is that our dependency upon punishment, mass incarceration and the disproportionate incarceration of black people has become so fixed in our societal psyche that we are unable to consider or imagine other, more humane and effective ways of solving the problem of crime. Today, we challenge this Commission to break the chains that enslave us all and recommend a more progressive vision of justice that can truly promote healing, justice, and public safety.

Again, I thank you for this opportunity to speak to you.

SENTENCING COMMISSION HEARING

NOVEMBER 15, 2007

ALBANY, NY

By

**FATHER PETER G. YOUNG, VOLUNTEER CEO
PETER YOUNG HOUSING, INDUSTRIES & TREATMENT (PYHIT)**

FROM THE SUGGESTIONS OF THE REENTRY COORDINATOR I WILL SPEAK ABOUT:

- 1. BARRIERS TO STABLE HOUSING FOR INDIVIDUALS FROM INCARCERATED BACKGROUNDS.**
- 2. BARRIERS TO EMPLOYMENT FOR THOSE WHO ARE FORMALLY INCARCERATED JOB-SEEKERS.**

For over 48 years I've been attempting to provide safe housing for those who are homeless because of their special need for supervision of probation and parole. I was assigned the pastor of a large Green Street parish in Albany with many available school buildings: a gym, large clothing and furniture distribution center, day care and recreation center, a convent, and rectory that were all used with a staff of 53 to assist those coming for their community reintegration into society.

In the rectory I lived for eighteen years with 24 men that were under supervision. It was a wonderful experience with amazing success because of the understanding of the parishioners and the community. We immediately would expand by using these men and women to take over abandoned properties and within one year we had over 10 aftercare houses.

That was in the 1950's. Then the zoning and planning committees put a stop to the development of our efforts. In the rectory now I'm only allowed six residents, not the 24 that I had housed successfully for eighteen years; limited according to the current code restrictions. Now I have to renovate to meet the requirements of historic preservation committees and other "nimby" restrictions.

The result is we have defeated the basic economic rule of supply and demand. It's been a battle for the "pretty and not practical" housing need for the homeless. The current barriers have created the problem for those that are attempting put their lives together. Housing and employment legal changes have prevented their successful return to society.

There are some other changes that have resulted from the de-institutionalization of the mental health facilities in the mid-1970's. Many of those clients are now "churning" on the streets with an inadequate quality of life. Most of them are returning to prison as co-occurring clients or still living on the streets in unbelievably harsh conditions.

On November 8, 2007, the national media reported that over 25% are homeless veterans. We are housing these homeless veterans in many of our statewide locations and here in Albany we have over 60 with the advantage of clean and sober housing and preparation to employment opportunities. All of these sites must have bus lines and health related services close to the

Veteran's Hospital for the best efforts of coordination of success. Many have special needs for transportation to and from their medical appointments.

The majority of released individuals are unable to access affordable housing and many become homeless. Inadequate housing trickles down to impact the offender's other needs such as treatment and employment. Homeless offenders are at a greater risk of re-offending. The role of housing is critical in providing a starting point for reentry and a foundation for engagement in other supportive services. Housing is simply not a place to live, but the most important step in the reentry process.

We believe it is important to concentrate services in the communities where ex-offenders live. Serving people in their neighborhoods increases accessibility of services and enables providers to develop relationships with families and neighbors which allows them to tap into their strengths. Our programs have developed a neighborhood constituency and the advantage is in engaging community residents who are not well-served by mainstream systems. We believe that neighborhood, community, and faith based organizations are more likely to successfully recruit and engage residents.

All of our clients have that hope -- of soon being able to get their own apartment. And we attempt to house as many as we can within our own network of aftercare housing. We ask them to participate with our recovery tenant's association meetings and social events and believe in the positive supports that go with a continued network of services. Building a community serves as a foundation for many medical and social services and fosters fellowship rather than a feeling of being alone without counseling and advisors. Encouraging them to stay connected is one of the most rewarding experiences that they appreciate and when they have the chance to help other new residents to meet and feel relaxed they feel positive about how to become what we call a "wounded healer."

Wounded Healers share with others how they were without supports at one time and now they have the hope and time to pull things together so that they can enjoy the dignity of a paycheck. Our housing rates are at best one-third of their paycheck when they are employed. We assist them with their budget problems and job coach them when needed. They are asked to become part of the tenant's social activities with some commitment of time for community activities, especially with the youth and the seniors where they are living.

"My dad was in prison; mom was busy with my siblings and her job; my thoughts go to the gangs for the guidance that I didn't get at home. Mom's too busy trying to pay the bills." That was a quote from this week's Albany Times Union on local gang life. Our agency, PYHIT, houses thousands of homeless every night and they become caught without the ability to get into a home of their own. Many wait with the hope that they will get into a subsidized HUD housing program with Section 8 or some other funding source to help them. We're stagnating those in shelters at an amazing cost without planning for their transition to the "dignity of the paycheck" that will give them independence and hope.

As a South End pastor in the prime poverty area of Albany for over 20 years, and then working in prisons for over 30 years, I've met folks from every conceivable background who beg for opportunities rather than barriers to a better life.

There are many HUD and state programs that provide assistance for permanent housing, but the homeless that are attempting to get the help to have a place to raise their children just aren't prepared to accept, financially or socially, that responsibility. We need to think of creating a transitional housing structure that will prepare the homeless who are willing to make the necessary sacrifices. There have to be rewards for those that are putting their extended efforts into housing. It would be great to have habitat housing for all of the needy, but we're all living in a real world and many won't maintain their commitment to work hard for the mortgage or rental payments.

There has to be a time that allows the candidates for housing to prove themselves and reach out for the joy of their own place. One example is here in Albany in the Ida Yarbrough Housing at 260 & 270 No. Pearl Street. When the City had only 30% occupancy in those tower buildings they invited our successful residents to move in to help the seniors that were molested by the area drug dealers. We set up a convenience store and added monitoring of all of the residents that has resulted in it now being 100% occupied. This successful experiment with the Albany Housing Authority resulted in many other cities visiting our Ida Yarbrough community and then inviting us to do the same in their cities.

Our recovery tenant's association assists the seniors with all of their needs for transportation and safety. We enjoy picnics and other social events in the projects because of the dedication of those clients that now want to give back. We have a strong relationship with their recovery and have transitional case managers supervise all of those in our program in an attempt to ward off potential relapse.

The majority of upstate New York inmates return to their local city of concentrated disadvantage. These communities, especially in Albany, Syracuse and Buffalo, have large numbers of low skilled residents and a limited number of unskilled jobs, let alone skilled jobs that offer long-term employment stability. Employers are hesitant to hire released inmates. Besides the stigma of a criminal record and disparity between job requirements and the skill level of released individuals, New York State laws prohibit convicted felons from working in certain occupations where opportunities are plentiful.

Our aftercare network, referred to as the "Glidepath To Recovery," effectively addresses the obstacles to a successful recovery by providing professional treatment, a safe place to live, and a meaningful job with a livable wage. Our approach concentrates on appropriate case management planning and staff guidance in assisting the participant to understand the interrelationship between treatment, employment, and other service needs and how their relapse prevention plan prioritizes and addresses their individual needs. Federal and state welfare mandates make it imperative to provide integrated employment and treatment services concurrently. Therefore, our services are flexible and consistent with individual preferences and long-term vocational goals.

We recruit members from the criminal justice system who might otherwise "fall through the cracks" of the one-stop system and offer these entry level workers the emotional and practical support that aids them in successfully retaining jobs through case management activities. We seek employers who are willing to hire people with criminal records; to develop relationships with them, and support them in their efforts.

Case managers work with released offenders to ensure they have the appropriate forms of identification needed to obtain employment. For those who are released without the required documentation, it takes up to 60 days for the offender to obtain it. Great significance is placed on the value of work at the earliest possible stage and recognition of the fact that a job will help the individual develop the motivation to change, provide dignity and self-respect, and instill hope for a productive future.

Setting incremental employment goals and recognizing each and every success is important to help offenders stay motivated. Rather than focusing solely on barriers, we help set realistic employment goals, and work with individuals to develop successful strategies to overcome whatever barriers they may face. The growth process occurs not only through the ability to perform a job, but through success at assimilating and acculturating to the working environment.

Job readiness modules reduce barriers to employment, including individual beliefs, behaviors and attitudes to work; increase job attainment and retention competencies; prepare clients for interviews; develop resumes, cover letters and reference sheets, as well as impart knowledge on dealing with institutional barriers to employment, including legal barriers and employer requirements.

We are certified by the New York State Education Department, Vocational Educational Services for Individuals with Disabilities (VESID) and assist participant's access to vocational training opportunities. Based on our experience, the majority of ex-offenders in need of vocational rehabilitation services meet one of the requirements to access VESID services. These individuals, however, do not possess the skills necessary to understand the eligibility requirements of vocational rehabilitation programs.

Achievement of the primary educational goals of the program enables participants to read at the eighth grade level; the level at which a person can be considered functionally literate. Every participant has the opportunity to pursue a high school equivalency and thereby lay the foundation for further educational growth. We work with local community colleges to promote higher educational opportunities. Our Culinary Arts training program is certified by Schenectady Community College and graduates receive a semester of college credit upon completion.

Our vocational programs combine classroom instruction, theory, and practicum in culinary arts, hotel operations, computer applications, custodial maintenance, and warehouse training and distribution. We were forced to develop an industries division that includes two operating hotels and delis. It gives the offender a taste of the experience they will face when looking for a permanent job. It also gives them the chance to learn and practice both soft skills (such as coming to work on time, following directions, interpersonal relationships, and problem solving) and the main objective which is to assist them to build a résumé and work history.

This supportive work model encourages confidence and allows the offender to experience the benefits of work as it affects quality of life issues, psychological health and improves self-esteem. Our job development strategies are based on an ongoing evaluation of the individual's abilities to ensure both job match and job quality as keys to long-term retention.

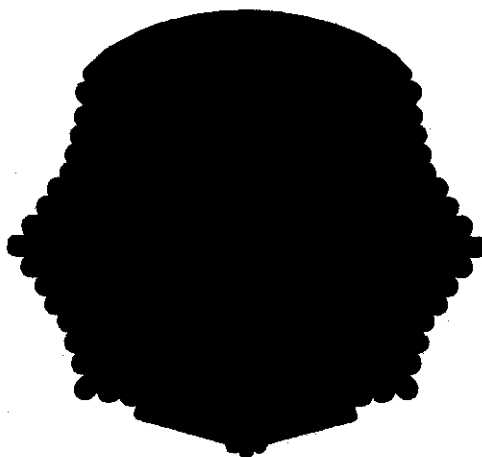
In addition to the job readiness modules, participants in need of employment work with an experienced job developer to assemble portfolios of work samples which will not only demonstrate workplace-specific competencies, but also demonstrate speaking, listening, active thinking, and personal qualities assuming individual responsibility, and self-direction.

We continually seek industries where job and earning advancement can be achieved without an increase in formal education. Employment strategies are based on an ongoing evaluation of individual's abilities to ensure both job match and job quality – the keys to long-term retention. For participants who do not pursue continuing education needs, it is possible for them to increase their earnings through job experience and labor force attachment. The program supports the newly employed person on a weekly basis for 30 days and monthly thereafter for up to a year.

PYHIT serves as a specialized service provider to act as third-party intermediary and influences the decisions of local employers and labor unions to hire ex-offenders. We educate employers about financial incentives, federal bonding, work opportunity tax credits, welfare to work programs, and other means to advance the goal of creating taxpayers and removing barriers to employment.

This coordinated approach is responsive to area employment needs, and contains components of cognitive and affective skills that employers require for successful workers, and represents the first rung of a career ladder for continued growth potential.

**TESTIMONY PRESENTED BY
LAWRENCE FLANAGAN, JR.
PRESIDENT**



NOVEMBER 15, 2007

Good morning.

Commissioner O'Donnell, Commissioner Fisher, members of the Commission, I want to thank you for giving me an opportunity to present testimony today regarding your continuing efforts to review New York State's current sentencing structure and practices. As you can imagine, individuals I represent here today are keenly interested in all aspects of the Corrections system in New York State.

My name is Larry Flanagan Jr, and I am President of the New York State Correctional Officers and Police Benevolent Association, – NYSCOPBA.

NYSCOPBA represents more than 23,000 critical uniformed law enforcement personnel across the state who provide the "care, custody, and control" of the more than 60,000 inmates inside New York's prisons.

To put it bluntly, many of our members deal with the worst of the worst. Our members deal with the murderers, rapists, drug dealers, and child molesters that populate our nation's fourth-largest corrections system. It's because of the professionalism we bring to the job every day that New York's prisons are the safest in the nation.

We proudly represent the Security Hospital Treatment Assistants and Safety and Security Officers who provide the security and maintain the safety of our State mental health institutions.

Our membership also consists of the Security Services Assistants who provide security at State facilities on a multi-agency level and Warrant and Transfer Officers employed by the Division of Parole who travel across the country returning parole violators to New York.

The membership also includes Capital Police Communication Specialists, Security Screening Technicians, Forest Rangers in the Office of Parks &

Recreation, Lifeguards, Correction Community Assistants and Security Officers.

I would like to focus my remarks today to a few crucial areas of concern with respect to any detailed evaluation of sentencing reform.

As I understand it, the goal of this commission is to "conduct a comprehensive review of State laws governing how persons are sentenced to and released from prison, as a close examination of the alternatives to incarceration." While there is no question a comprehensive review of sentencing is long overdue, we might disagree on what the focus of the reform should be.

I read with great interest your preliminary recommendations from a few weeks ago. I fully support a number of your conclusions, including; (1) establishing a permanent sentencing commission to serve as an advisory body to the legislative and executive branches. And, (2)

Enacting new laws, and better enforcing existing statutes, to further protect victims of crime and enhance their right to have a meaningful voice in the criminal justice process.

NYSCOPBA's number one concern is keeping the communities safe!

We believe that history will prove and support that these individuals need to be incarcerated and follow a structured life. We would strongly suggest more shock programs specifically designed to teach an individual about the challenges of dealing with everyday life as they continue outside the prison walls. Treatment Programs are essential in a controlled environment. We certainly feel that Drug Dealers need to be off our streets, even if they have not committed a violent crime. Let us not forget that recently an individual who was released into the community on a furlough under the pretence of a job interview. Almost immediately shot his ex-girlfriend! Keeping in mind his original sentence was, that's right a DRUG conviction!

NYSCOPBA has never opposed a thoughtful, complete assessment of sentencing guidelines in New York. However, what we do strenuously oppose is to using the term "community-based treatment" or, "alternative sentencing," as a cover to pursue privatization.

Many of us come from different backgrounds, have had different experiences, and are involved in corrections at different points; we could probably all agree that one of government's top priorities is the protection of its citizens.

Quite simply, it's something that the public sector provides that is far superior to anything the private sector has to offer.

Clearly the rationale for the privatization is to save the state money, and NYSCOPBA understands the need for smart-budgeting - especially in light of recent forecasts for the upcoming budget year.

While it is certainly good policy to continually pursue ways to save the state dollars, it should not be at the expense of law enforcement & public protection. NYSCOPBA feels that blindly pursuing this initiative would be "penny wise and pound foolish," placing the public in harms way.

In closing, I would once again like to thank you for providing NYSCOPBA the opportunity to discuss these very important issues with you.

NYSCOPBA firmly believes that these proposed changes directly impact the safety and security of our families and their respective communities.

I would be happy to answer any questions you have at this time, or please feel free to call upon me personally to review these matters.

The New York State Commission on Sentencing Reform
Testimony of Alison Coleman, Director
Prison Families of New York, Inc.
40 North Main Avenue
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November 15, 2007

Good Morning:

In 1981, my husband went to prison for 25 years to life for Robbery 3—no weapon and no injury. He came home 2 years ago. During the last few years, federal court rulings have indicated that his sentence, which was the absolute most that could be given to a persistent felony offender, was very likely unconstitutional because the added years were given out by the judge and not the jury. A jury might have sentenced differently after the 2 days of positive testimony of his sentencing hearing. The judge in this case had earlier made a statement that he intended to give out as many hundreds of years possible before his retirement.

So—our family did 25 years.

In 1981, there was no local, regional or state entity that offered prison families **any** help in surviving the prison experience, worked with our children to maintain their emotional and educational health, offered transportation to prison, or explained the complex rules that change from month to month and prison to prison.

The prospect of living 25 years outside of the scope of any available services was terrifying.

So, I created Prison Families of New York to meet my own needs and those of what was eventually thousands of families and children of prisoners. Many families call upon our agency after their loved one has been in prison for months or years. Many tell us they needed us during their loved one's incarceration but they had no idea we were there. Many do not find us. Many families fall apart. This does not have to happen.

Albany County District Attorney David Soares and I and 2 local human services agencies are ready to start a limited program of information and support for the families of those going to prison from Albany County. Being available at the most difficult time, in the courthouse hallways, with relevant information about prison and prison family resources, we will increase the chances of family survival

through an enormous system that has never before been adequately charted and interpreted to families at this stage of incarceration.

This plan can easily be replicated in every county. If New York State truly wants to include prison families in the prison re-entry process and believes that "prison re-entry starts on day one", then this is a first and vital step. If we do not find prison families at the beginning of the process, we will lose many forever. As a state, we must finally recognize the needs of prison families and the important role we families play in progressive criminal justice.

Thank you.

New York State
Commission on Sentencing Reform

Comments on

The Future of Sentencing in
New York State:
A Preliminary Proposal for Reform

Denise E. O'Donnell, Chair

Testimony of Michael D. Ranalli
Chief of Police, Town of Glenville Police Department

November 15, 2007
Legislative Office Building
Albany, New York

Commissioner O'Donnell and Members of the Commission;

It is my pleasure to speak before you as a group today. Most of you on the Commission will not be familiar with me. As a result I would just like you to have some knowledge of my background and experience which may assist you in your consideration of my material. I have been a police officer for over 23 years. The first 22 years of my career were spent with the Colonie Police Department. I retired as a lieutenant to assume the role of Chief of the Glenville Police Department. I have served in that capacity since June of 2006. I am also a graduate of Albany Law School and was admitted to the New York State Bar in 1992. I have lectured police officers since 1992 in areas such as search and seizure, legal aspects of interrogations and confessions, use of force, school violence and a variety of other topics. I have published a book on New York search and seizure law and also teach courses in Legal Issues and School Violence for the Division of Criminal Justice Services.

I was asked by Saratoga County District Attorney James Murphy to present a law enforcement opinion on your preliminary report and am very grateful for his request. Upon beginning my research the first thing that struck me was the absence in the Executive Order of any provision for a police law enforcement official to be a part of the committee. I also reviewed the minutes of some of your initial meetings and once again noticed a lack of significant police input into your hearings. It is my hope that my testimony and the testimony of other police officials who have testified today and at the other two public hearings will be of some value to you and provide you with a different perspective. We are all partners in this problem and appreciate the ability to have input in such an important process.

DNA Collection:

While not outlined in your report or apparently discussed at prior meetings, I would like to reinforce Saratoga County District Attorney James Murphy's stance on the importance of securing as many DNA samples of offenders as possible. This is not just for the obvious reason of increasing the likelihood of apprehensions and convictions. I would rather primarily focus on increasing the likelihood of convicting the right person.

The increase in DNA testing and technology is revealing a fact that no police officer, prosecutor, judge or jury can deny: our system leads to mistakes. The advent of modern DNA technology has led to the realization we have convicted a number of people due to mistaken identification and false confessions, among other reasons. While this number is statistically small, it is alarming nonetheless. I must emphasize that this is typically not a matter of malice, but rather the fact that people are not perfect and we are all capable of making mistakes. It is my experience that strong physical evidence rules over all other forms of evidence, so please give us as much as possible.

Determinate Sentencing, Youthful Offender Status and Evidence Based Practices:

I have been teaching a variety of legal courses to police officers for 16 years and teach a Legal Issues class for the Division of Criminal Justice Services. Despite this background, whenever I am asked a question related to sentencing my answer typically is "I have no idea". Without repeating all of the problems addressed in your preliminary report, it is clear the system needs to be fixed and streamlined. The police frequently have the most contact with the victim of anyone in the criminal justice system. It would be helpful for us to have a more comprehensible system of sentencing to give the victims an idea of what the possibilities are and to help explain the process.

Determinate sentences with a narrow range of flexibility would seem overall to make the most sense. Perhaps my view is a bit simplistic, but there seems to me to be a necessary overlap of several components of your preliminary report. This is reflected in my heading to this section above.

The adoption of a primarily determinate sentencing system would in my opinion make the extension of the Youthful Offender status as proposed all the more necessary. I feel the proposed extension of youthful offender status to 19 and 20 year olds *with* the "spring back" provision for all ages of youthful offenders is an excellent idea. Another class I teach for the Division of Criminal Justice Services is on the causation and prevention of school violence, specifically active shooters. My research during the preparation of this material necessarily included some physiological aspects of the human brain and the impact our society has on the maturing mind. The impact of video games, violent programming and media in general coupled with improper or missing parental supervision is impacting a generation of children. While that material is beyond the scope of this hearing, it is a medical fact that the adolescent brain develops at different rates and frequently continues developing well into a persons' early twenties. The last area of the brain to develop is the frontal lobe, where most of our rational decisions are made. A few examples may be helpful:

From the My Space of a 14 year old:

I am no longer fit to live umongst (sic) society any longer. I am dangerous to myself and others...I fear I am on the course to murder and suicide...If I ignore this any longer and

don't take it seriously, I'm going to kill a vast number of other human beings with lives ahead of them and slaughter the ones I love... I pray that someone will take mercy upon my soulless entrapment of pain and emotional torment I call a body.

From the writings of an 11 year old:

Everyone hates me. Go with Satan. Satan is my ruler. I hate life and life hates me. There is not god only SATAN!... My life is burning away. Now back to my sad little useless life... I am usually sitting and waiting to die. Waiting and hoping."

14 year old Kip Kinkel's response to an essay about love:

I really wouldn't know how to answer this question because my cold black heart has never and never will experience true love. I can tell you one about love. It does more harm than good. I plan to live in a big black hole. My firearms and [illegible] will be the only things to fight my isolation. I would also like to point out Love is a horrible thing. It makes things kill and hate.

From Kip Kinkel's journal, found after he killed his parents and then shot 27 people at his high school, killing two of them:

There is one kid above all others that I want to kill. I want nothing more than to put a hole in his head. The one reason I don't: Hope. That tomorrow will be better. As soon as my hope is gone, people die.

The unfortunate thing is that I could have listed countless such quotes from youths all over the country, some of whom, like Kinkel, went on to commit horrific acts of violence. How young people can develop such deep rooted hate and depression in such a short time is perplexing but there is no shortage of them. Many of these adolescents will eventually mature out of their issues and the youthful offender status may help with some non-violent poor decisions they make. But those with deeper rooted problems will be entering the criminal justice system repeatedly. The use of evidence based practices will be essential to provide them with the programming necessary to address their individual needs.

A static risk assessment instrument such as the one discussed on the preliminary report would clearly not be adequate to meet the needs of proper evidence based programming. The actual question that needs to be answered is "Why did the person do what they did?" The instrument must be capable of providing the myriad of answers that will result from that question. As discussed in the report, the ideal system would commence at arraignment and be relevant in the determination of one or more of the following: whether youthful offender status would or should apply, where in the reduced range of the determinate sentence the judge should apply his or her discretion, and drive the development of the offender programming.

Drug Sentencing Reform – Alternative, Non incarceration dispositions:

I would like too briefly address the issue of drug sentencing reform along with alternative non-incarceratory dispositions and how they should also, in my opinion, be affected by the use of evidence based programming. I will use an actual case example and call it the story of Jack and Jill. Jill was observed by an officer coming out of a big box store pushing a cart with a garbage can in it. She approached a vehicle waiting at the end of the building and got in with the driver. The officer pulled up and began to interview Jill and the driver of the vehicle, Jack. The subsequent investigation revealed that the garbage can was full of stolen merchandise and Jill

was a destitute crack addict and prostitute from a nearby city. Jack would give Jill, and others like her at other times, a list of items to steal in return for crack while he would sit safely outside. Jill was found to be in possession of crack cocaine as was Jack. Both were arrested and appropriately charged: Jack for the possession and sale, Jill for the larceny and possession of a controlled substance. While this fact pattern does not involve the most serious crimes, it is a fair representation of the relevant issues. The risk assessment issue should ask the relevant question – why did each of Jack and Jill do what they did? The answer for Jill would most likely be a substance abuse problem and lack of job skills, among other things. Merely placing Jill in jail, even just at the county level, with no other programming would ensure her return to the criminal justice system in the near future. Attacking the “why” for Jill may give her a chance. Jack, on the other hand, is a different story. Jack is a business man who sells drugs and is also a predator, preying on the weaknesses of others for his personal gain. His motivation is narcissistic, he is in business to make money and better himself at the expense of others. His decisions are rational and are based on a cost benefit analysis. The cost must be made more than the benefit and he belongs in jail, plain and simple. We should have a sentencing system in place to allow for persons like Jack and Jill to be treated separately, and to be able to identify when it is appropriate to do so.

Parole Violators:

Of the entire preliminary report, the section dealing with the topic of parole violators is the one that as a career law enforcement officer I strongly disagree with. Persons on parole are finishing out a sentence of incarceration and are subject to a set of rules in return for their release. As such it is not unreasonable for our society to expect, if not demand, that parolees be expected to adhere to stated rules, upon which their release was conditioned.

Before I continue on with this line of thought it is necessary to step back and understand a fairly simple premise: prisoners serving time in state prison are already recidivists. By the time someone is sentenced to serve time in state prison the majority of them have already committed a significant number of crimes. It would be very rare for a person to commit their first crime ever and end up sentenced to state prison time. Many of them were arrested and many were never caught, or are a combination of both. Over the last 23 years I have seen a number of career “misdemeanants”. These are people who know, or think they know, the law and choose to commit crimes that they know will rarely result in any state time. A good example of that are people who sell marijuana as compared to controlled substances due to the significant differences in degrees of crimes. Along those lines, any sentencing restructuring should also address career misdemeanor criminals.

On page 40 of the preliminary report there is a sentence that reads “This analysis shows that more than 40% of rule violations occur independent of any new criminal behavior.” I feel this sentence is inaccurate and should at least be qualified with “known” new criminal behavior. The ability or inability of a parolee to adhere to clear cut rules is a litmus test of whether they are committing new crimes but are just not being caught. The statements made in this section of the report seemed to be based on the mistaken assumption that all crimes committed will lead to an arrest. This is just not true. According to the Unified Crime Reports (Table 26), in the Northeast region 48% of reported violent crimes were cleared by arrest or other exceptional means and 19% of property crimes. So less than half of all violent crimes lead to an arrest and less than 1/5th of property crimes result in an arrest. These statistics only deal with crimes in which there

was a tangible victim who could report the crime. How many drug sales occur daily in which no arrest is made? How many people are in possession of illegal drugs at any one time? I do not feel it is a stretch of anyone's imagination to state that *some* of those crimes are being committed by parolees, and by probationers for that matter.

These statements are not intended to imply that parole officers are not doing their jobs. That is not even remotely the case. It is recognition that it is statistically easy to commit some crimes without being caught and that parole officers cannot know what everyone is doing at all times. But rule violations are good indications of those that are at risk and should be dealt with. In California the recidivism rate is almost 70%, while the rate in New York is 39%. But in California the law allows police officers as well as parole officers to conduct suspicionless searches of known parolees. This law and the suspicionless search provision was recently upheld by the United States Supreme Court (see *Samson v. California*, 126 S.Ct. 2193 (2006)). While I am not at this time advocating for such a law, my point is that I am sure the additional supervision is a factor in the higher recidivism rate.

The opinions set forth in this section are admittedly not supported by studies and empirical data since much of it is not measurable. You cannot measure something that you are not aware of. Please understand that my opinions are not the product of 23 years of developed cynicism. My glass is always half full and I try to be open minded and innovative in my analysis of issues. What these opinions are based on is 23 years of living it and dealing with all kinds of people under all kinds of circumstances. We police officers see people at their worst and as they really are. Most of the disciplines represented in prior hearings cannot say the same. We see them when they are high and when they are coming down and hear and see what they have to say. We interview suspects and listen to them beyond just documenting the elements of a crime in a statement. We see the parolee who is a suspect in a crime immediately demand an attorney because he knows the system and knows we will have a hard time charging him without his statement. So if you choose to review and revise the manner in which "mere rule violations" are dealt with then so be it, but please give these concepts some consideration and not err on the side of being over lenient.

I would like to thank you again for the opportunity to share my comments and thoughts with you today. I would also encourage you to please consider involving more input from law enforcement professionals in your continuing deliberations.

Respectfully submitted,

Michael D. Ranalli
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**Testimony Submitted to the
Commission on Sentencing Reform**

**November 15, 2007
Albany, NY**

**Submitted by:
Tana Agostini
1066 Glasco Turnpike
Saugerties, NY 12477
Ulster County, New York**

Thank you Madam Chairperson and members of the Sentencing Reform Commission for allowing me to testify before you today. My name is Tana Agostini and I am here to briefly testify as a member of Narcotics Anonymous, and then to bear witness as a private citizen regarding sex offenders.

I am a 23 year veteran of Narcotics Anonymous, a 12 Step program. I volunteered for several years with the DOCS for which I installed and coordinated NA meetings at six correctional facilities. I brought with me approximately three dozen male volunteers and served mostly with A1 violent offenders. Today, I volunteer with the women at my county jail and at community based treatment programs in my area. I am also Chairperson of the Greater New York Region of Narcotics Anonymous overseeing our various services in 14 lower counties from NYC up to the Hudson Valley. Lastly, I employ ex offenders and a level 2 sex offender in the business that I own and operate in Ulster County.

NA as such has no opinion on issues outside of NA so I struggled greatly in what I would be permitted to say as an NA member. I cannot represent NA but can qualify that my experiences with DOCS, incarcerated persons and formerly incarcerated persons result from being both a longtime member and a longtime volunteer for NA.

In my 23 years of recovery, I have known thousands of addicts to recover and reintegrate as productive members of society. A great many of our members are also persons formerly incarcerated. Those of us who succeed in recovery, and I would like to draw a parallel to those who do well in prison and do well upon re-entry, are those who participate in a long term program and who thereby develop a support system of others who have succeeded before them, in essence, to mentor them.

To the hardcore sentencing members on this commission, allow me to point out that our sentencing laws will only merit integrity to the extent that they result in an equal measure of rehabilitation during the punitive time of incarceration. We must not dismiss as unrelated to sentencing reform the effect of reinstating higher education, increased funding for DOCS program development and availability, increased use of volunteers and community based programs in prisons and expanded eligibility of work release and merit time which provide incentives to all classes of felons even though we seem to only reserve it for a few. The product DOCS delivers is directly proportionate to the success of re-entry and therefore the effectiveness of our sentencing laws.

Prison is full of subcultures. Inmates divide themselves amongst one another in any number of ways. NA in particular, and not dissimilar to AA, is a program that helps create subcommunities and cliques within correctional facilities comprised of inmates that wish to stay clean and utilize programs to better themselves and a means to disassociate themselves from inmates who do not. Our fellowship is diverse but our published statistics show that 54% of us are over the age of 40, 82% of us are employed, and 55% of us are clean over six years. In my case, 23 years. We represent an ideal program full of mentors and role models for incarcerated persons and we exist beyond the walls, free of charge, to support them after reentry.

I'll never forget the day I brought a former bank robber to our program at a max A facility. He had served 16 years in a max and had been a heroin addict who had previously been in 32 detoxes and treatment programs. Today he has 18 years clean, a PhD, and owns and operates a licensed psychotherapy clinic dedicated to serving the ex offender community. He told our A1s that he is happier today and making more money helping people than he ever did robbing banks. What changed him? It started with the GED he got in prison, and NA, which he also found in prison.

On another note, but not as an NA member, I recently attended a public hearing in Kingston NY regarding sex offender housing. What I found were 110 city residents who were by far more intimidating than any of the A1 felons I ever volunteered with. The citizens were hostile and angry, heckling and yelling at the county officials who dared to consider allowing the State to house 15 sex offenders at our old county jail that sits empty. They were outraged that sex offenders might live in our county, in spite of the fact that they came from our county in the first place and in spite of the fact that 199 sex offenders already live here with no recidivism in sex offenses that our police department, who was a presenter at the hearing, could report of.

I made several observations I would like to share with you. I noticed that the public has little to no understanding of the difference between types of sex offenses and believes that all of them are pedophiles which apparently they are not, but the generic labeling of sex offenders isn't making that clear.

The requirement of sex offenders to continue registering as such when their parole or probation supervision time has expired is causing the public anxiety and confusion and creating a series of unintended consequences as this commission well knows. The public questioned that if sex offenders still need to register, why aren't they still being supervised? Creating an opportunity for the public to better protect themselves also creates the appearance that the State is not adequately protecting them.

My community also had no understanding of the difference between those on parole or probation and the difference between the misdemeanors crimes that result in jail or the felonies that result in prison. It was evident that the community feels that no sex offense should be merely a misdemeanor, that they should all be felonies and carry greater sentences and supervision than they currently do.

The city residents also complained greatly about the rights of offenders and felt the victims had no rights. I found this surprising knowing that A1 violent offenders can hardly get out of prison, can't get off of parole, and can't ever vote. Furthermore, that the testimony of one victim can keep an A1 felon from his family on my tax dollar for an indeterminate number of years when statistics show the extra years will make no measurable difference. It would be untrue to say that offenders are privileged with too many rights but perhaps the rights we are denying offenders are not so supported by the public.

Residents at the hearing did not refer to the 119 no longer registered sex offenders with the same urgency that they did over the 80 whose addresses and mug shots they knew.

Recidivism rates provided by our County were from Canada's Corrections, and the State was criticized for not releasing our statistics since 2001. Even I have such statistics through 2005, which I found released by the State on the internet, yet my county believes the State has not provided it. I did by the way, get up to the microphone and was the only person to support the State's request of our old jail, and I did speak for the fact that we do have recent statistics, but I alone made no measurable difference.

Only 20 of our county's sex offenders are actually on parole. 60 are on probation and the remaining 119 are unsupervised. 50% of all sex offenses were reported by my county to have been committed by adolescents, which means to me that they were not committed by recidivists released by DOCS. Yet it was clear that the county was not going to allow the State the use of our old jail, not because any of the 10% of our county's sex offenders who are on parole have recidivated but because our current relations with the community leaves them unable to distinguish between the various categories of sex offenses much less the various agencies of the county and State. State agencies, like sex offenders, are one big blur.

I subsequently noticed that sex offenders who live and recidivated elsewhere showed up on my county's registry because the prison they are now in is located in my county. This serves to falsely inflate the number of sex offenders residing in Ulster County lending unmerited increase to their alarm.

Unpopular as this may sound, because we are increasingly adding new crimes and categories of sex offenses that must register, which include misdemeanors, and as we plan to maintain registrations for between 20 and 30 years, we will eventually develop a sex registry larger than the prison population, with a multitude of crimes as confusing as the sentencing laws we are now trying to streamline. To the extent we continue this labeling and registration practice we will continue to find ourselves with an increasing number of unintended consequences.

In summary, I would suggest we work more closely with counties who to some extent symbolize the State but seemingly throw us to the wolves in our absence. We need to educate the public, not only on sex offenders, but on offenders in general and the results of our tax dollars at work in the Dept of Corrections and the Division of Parole which are putting out a lot of good results in spite of the constant criticism. Public relations and cultivated media relations are worth considering. For every statistic that says 1 in three parolees recidivate, there are 2 who are not. This represents success. That the violent offenders on whom we are all so tough about crime and tough in sentencing and tough in parole release, that they have the lowest rates of recidivism there is, confirmed by former Commissioner Dennison himself on Tuesday, that they of all people actually represent the least threat to society upon release. Like any other addict clean over two decades, or a mature A1 felon for that matter, I am nothing like what I was when I got clean 23 years ago and thank God I am not judged for my actions of 23 years ago, or judged by

comments from a judge's sentencing minutes or pre sentence report that was also written over two decades ago but rather I am judged by my attitudes and behaviors today. A1 violent felons should have the same opportunities for release that we give to sex offenders and every other class of felon who statistically would seem to merit it less than the long term A1 violent felons do. There is no logic or measurable gain derived from denying merit time and work release to long term A1 violent felons but there would be measurable gain if we did. Ironically, the people we spend the most money incarcerating, whom we release the least, statistically speaking are our best examples of success. As we seem to be working on re entry for everybody else, please consider developing a pre-board, re-entry program for long term A1 violent felons who have proven themselves more successful in re entry than the other 26,000 inmates we release each year.

Unread Testimony:

Perhaps parolees should be mandated to some form and time of public service to humanize them and help reintegrate the public with their recently returned neighbors. Perhaps presentations, like the Marines do, could be instituted at all levels of schools with appropriate types of parolees, not sex offenders, who could provide presentations a couple times of year informing children and adolescents, and college students, about the consequences of breaking the law, that the life of crime and gangsters is neither glamorous or cool, nor does it pay. Perhaps our media relations department can issue press releases from time to time with good news, and consider cultivating some relationships with the media to counter the negative media that is always waiting to pounce on the exception as if it were the rule. Information, education, and public relations will go a long way to address the fears and concerns of the public, and perhaps not make it so hard on the State when they try to make a change or do something new.

As an addict in recovery, I would be remiss in not stating that addicts do not belong in prison, they belong in treatment. Addiction is a completely treatable disease. Early treatment will preempt the more serious crimes that will ultimately follow. For those addicts who are already in prison, I must advocate for the funding and development of drug treatment programs such as NA, or a program based on the 12 Steps that works everywhere else for every addict who applies them. More programs. More education. More support for the Department of Corrections in their effort to develop and expand program availability for all inmates. I would ask all of you on the commission, especially our esteemed Senator and Assemblyman, to please advocate the Senate Crime and Corrections Committee to place on their agenda and pass Bill # S4085 to reinstate Tuition Assistance Program for incarcerated persons. Incarcerated persons only ever took up 1% of TAP funds but it reduced recidivism and increased public safety in greater measure.

Respectfully submitted,
Tana Agostini
1066 Glasco Turnpike
Saugerties, NY 12477
Ulster County, New York

To the extent that misdemeanor sex offenders outpace felony sex offenders 3:1, at least in Ulster County, should that hold true in the rest of the State, when we do find that the sex offender registry exceeds the size of our State prison population, the State, as represented by DOCS and the Division of Parole, may once again be held responsible for those crimes and recidivist statistics, as they were considered to be in Ulster County. Yet DOCS and Parole, statistically speaking, will not have been responsible for more than one quarter of the offenders on that registry. Unintended consequences.

PARENTS OF MURDERED CHILDREN

& OTHER SURVIVORS OF HOMICIDE VICTIMS

CAPITAL DISTRICT CHAPTER

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November 15, 2007

Denise E. O'Donnell, Chair
New York State Commission on Sentencing Reform

Dear Ms. O'Donnell:

"...the victim, no less than the defendant, has a real and personal interest in seeing the imposition of a just penalty. The goal of victim participation is not to pressure justice, but to aid in its attainment." President's Task Force on Crime, 1982.

This letter is written to express some of the concerns of families of homicide victims as you and the other distinguished members of the Commission on Sentencing Reform consider such a reform in New York State.

We are concerned that a reform of sentencing by adopting a predominately determinate sentencing structure might eventually lead to abolishing parole in many cases. Parole has been – and we sincerely hope it will continue to be – an important part of our advocacy in the name of our loved ones who no longer have a voice. Crime has changed the make-up of our families and has affected us in a myriad of ways. As the Commission considers changes in sentencing, victims' families want to be assured that they will continue to have a voice at a parole hearing when parole of the inmate is being considered.

The Parole Board, which will make the decision on the inmate's release, needs to hear directly from the victim (or family members) how the crime *has continued* to affect their lives since the time of sentencing. Also, the Parole Board members will have the opportunity to learn the true story of the crime from the mouths of the victims (in our case, the families of the deceased victim), which may or may not have been accurately portrayed during the trial. We, therefore, ask that the victims' perspective as to possible release of the offender be continued by such pre-release hearings.

In addition, if a decision of release is contemplated, an accurate picture of restitution payments still owed to the victim should be established, as well as any orders of protection that will need to be enforced upon the inmate's release.

We support the recommendation that the laws governing the rights of crime victims in New York be moved into a single article of law – either the Criminal Procedure Law or the Penal

Page 2.

Denise E. O'Donnell, Chair, New York State Commission on Sentencing Reform

Law. Consolidation of these laws would be beneficial to crime victims as the present hodge-podge placement of our rights and protections often makes proper enforcement difficult.

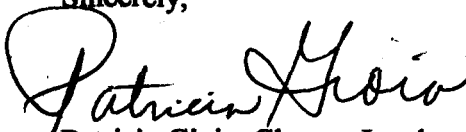
We strongly agree with the Commission's findings that indeterminate sentences should continue for the most egregious offenses that now require maximum life sentences (non-drug Class A-I and Class A-II felonies). A decision contemplating change to determinate sentencing for any crimes must be looked at long and hard to facilitate absolute fairness and justice to the victims of these crimes.

We have become aware that during recent months a number of inmates sentenced to lengthy prison terms for brutal murders of their victims are now being considered for parole. Even though many years may have past since these crimes were committed, parole of the murderer can be very difficult for the aggrieved families to accept. We believe it should occur only after meeting with the victims' families and giving special attention to their concerns.

POMC has always encouraged our members and other families of homicide victims to register with the Department of Correctional Services to receive notice when an inmate is to be released from prison. We also encourage them to register with the Division of Parole to be notified of scheduled parole hearings so that they may have input on the inmate's parole, and when paroled, to be notified of the release date and the name of the parole officer. Over the years, this has continued to be burdensome with the result that families have often registered with one agency and not the other, or in the worst case scenario, neither. Might we suggest that one form be utilized to give notice to both agencies of a desire to be notified of a parole hearing and/or imminent release from the Department of Correctional Services? We believe this would be easier overall on victims and victims' families and hopefully more efficient for the agencies involved.

We realize that your task of reviewing the conundrum of sentencing laws in our State is a mammoth task and we wish you well as you continue. Since crime victims have fought long and hard to have a say – and a role – in the criminal justice system, we wanted to share our input to you and the other Commission members.

Sincerely,


Patricia Gioia, Chapter Leader

Julie McClurkin
164 Benson St.
Albany, NY 12206
518-489-1890

New York State Commission on Sentencing Reform
4 Tower Place 10th floor
Albany, NY 12203-3764

November 15, 2007

My name is Julie McClurkin a long time resident of Albany, NY. If someone had said to me 4 years ago that I would be here I would have laughed and said no way. But I am here and there are reasons why people come and go in our lives. I have always believed in our justice system up until these last couple of years. These last couple of years I have written many letters some which were sent to individuals presently on this committee requesting assistance with what I see and feel as great injustices in our laws of New York.

Deciding to speak today truly has been a challenge for me. I have learned a great deal about the justice system these last few years. I have read a lot of information in regards to public hearings. I have reached out to some organizations for assistance. I believe the issues at hand and the tasks that you are all challenged with are tremendous. However, I am taking the time out today to remind all of you that there are many people that are still lost in the system and need your strength to make the changes that can set them free.

The reasons I am here is because of Kenneth. I met him a few years ago through an acquaintance and we became more than friends, he has become a part of my family. Upon release Kenneth will have the structure and support he will need to succeed. I have been there for him for a few years now. In a way I have given him the hope he needed to want to get out and stay out of prison. Not everyone has this upon release. Ever since he has expressed a desire to clean up his act sort of speak he has met many challenges that have had profound ill effects on us and on him. Without him I would not have had the strength to stand before this committee and advocate for the changes that are long over due.

Kenneth is now 38 years old most of his adult life has been behind bars. He comes from a dysfunctional family. He is not an educated black man he did not complete high school nor in his 14 plus years of being incarcerated has he been given the means or the time to get his GED. He sold drugs as a way to support himself over 15 years ago.

The NYSDOC has failed Kenneth in many ways. The system does not seem uniform in its actions they allow retaliatory actions against the inmates. They state many things that they do but do they actually do them? Do prisoners go to jail and serve the

sentence that that the Judge gave them or are they re sentenced each and everyday by the actions taken against them during incarcerations?

This individual has suffered immensely and has been sentenced well beyond the sentencing that was given to him. He has been incarcerated well over 14 years his sentencing is 15-30. He has requested release every which way and has been denied repeatedly for his past criminal history which he cannot change what happened 15 years ago that will still be there in another 2, 4 or 10 years from now. He can never change what he has done, is it fair that NYSDOC use this as a reason for denial of release? These processes need to stop. His criminal history is just that in his past. He has spent most of his adult life in prison, and is long over due for release.

Originally it was for outstanding warrants from 1993 and 1994 when he asked for assistance he was met with resistance. The matter was resolved when his sentencing Judge issued a court order for the NYSDOC to produce him in Rensselaer court to settle these outstanding warrants. The Judge a few months after those issues were resolved reached out to facility in behalf of Kenneth and suggested that he be given CASAT that too has been denied.

I have many letters that I have written many places including and not limited to the Governor, Senators, Assemblymen and women as well as the Attorney General and the NYS DOC Commissioner, each and everyone has passed me off some where else until I back to where I started at and I start it all over again.

When I visit him I walk in his shoes I am treated with the same disrespect that the inmates are given and live with daily. I had never been exposed to this until Kenneth. This has really opened my eyes to what is really being done in these facilities that I always believed could not be possible. But I know otherwise now.

Kenneth has fallen under a great miscarriage of justice he was sentenced on a class B felon. He sits in prison serving a sentence under the Old Rockefeller Drug laws system where class A's have already had the opportunity to be re sentenced. Where's the logic and where is fairness in the justice system today? Many of the so called kingpins have already had the opportunity to be re sentenced since they were class A's the class B the lower level offenders are still in jail doing time as if they raped or murdered someone. When in fact more often then not they sold to support their own habits; they are far from the kingpin position.

He has been targeted by corrections officers on false disciplinary tickets. He has never used drugs while in prison and now on his 14th year Kenneth has dirty urine. His urine was not labeled, but then after being tested was reported to be Kenneth's. If this is not a set up, then what is? I would like to think this was human error. Why does NYSDOC have a hard time excepting that they too are human and can make a mistake? A request was made within 24 hours to have him retested that too was denied.

Programming and guidance to assist individuals to come home should be taking place. Kenneth has never been counseled nor guided as to what is the expectation in order to get released. He gets the points that are set forth in the guide lines but then

he is denied. Where is the justice? How can one show they have changed if they are not given the chance to leave and prove it?

Kenneth can admit what he did was wrong 15 years ago. He sold a small amount of drugs to an addict an informant who traded his life for hers only to still end up losing her kids a year later because she is a drug addict. He would not be human if he was not angry and bitter at how the system has failed him.

The facilities do not wish to promote release and success for any inmate. Every since Kenneth has truly expressed a true desire to come home he has been hit with retaliatory actions that have had a profound effect on all of us. It is difficult to have faith in a system that allows injustices to continue daily. Were the Officers are given the freedom to destroy lives in the NYS correctional facilities. Were they are enabled to keep the loved ones far from home thus making it impossible to visit. Kenneth is currently 5 plus hours away one way. How is that encouraging to him?

The NYSDOC parole and release needs to be reformed and scrutinized. They are denying people every 2 years, how is that fair? They are discouraging with their actions and day to day interactions with inmates. The NYS employees are not trained to even treat people with compassion and understanding. They treat inmates as a number and not as a human being. The employees need to lead by example not show how they can get away with it. The Officers are the ones that can bring in contraband into facilities or they look the other way. They have the ability to falsify documents and get away with.

The NYSDOC are very inconsistent with their actions. They are quick to tell you what you have done wrong and not give you the tools or resources to prove yourself.

What can be changed? How can these dreams of freedom become reality for these individuals? What can be done to give people back their loved ones? How can individuals be better prepared to rejoin society and be productive law abiding citizens? How can the cycle for families be broken? What changes can you make to restore the trust and faith in the judicial system?

The changes that are needed:

- Allow the sentencing Judge to re sentence all individuals that are still incarcerated under the old Rockefeller Drug laws.
- Due away with the indeterminate sentencing.
- Expand prison education and training for Inmates.
- Hold the DOC accountable.
- In service and educate NYS employees.
- Assist with the housing of individuals upon release.
- Establish outside resources to ensure unbiased decisions to appeals and grievances while incarcerated.
- Alternatives to incarceration rehabilitation and treatment.
- Family support services.
- Keep the inmates close to home.

I am sure you are well aware that the changes you make will have a great effect on many people. There are too any individuals that fit into the profile I live with. As always I have been available to provide insight and information from my point of view. No one has taken the opprotunity to listen to me no matter whom I have called or who I have written too. I have attached a couple of letters Kenneth has sent out pleading for his freedom. Please read this and see that everything is not always at appears to be.

Today I have addressed you on a personal level however my story is pretty much the same as anyone else who has a loved one in the DOC. I am hoping that I have articulated and expressed the many concerns and issues that I am faced with daily as well as many other individuals that have or are walking in my shoes. I am asking you to make the changes that will give back many of us the freedom that is long over due. It will also but money back in the state that can be better used for rehabilitation instead of incarceration.

Respectfully Submitted by,
Julie McClurkin

Kenneth Leigh 94A2742
Gouverneur Correctional Facility
PO Box 480
Gouverneur, NY 13642-0370

October 15, 2007

Prisoners Legal Services
118 Prospect Street
Ithaca, NY 14850

Dear Sir/Madame:

I have written many places for legal assistance throughout these last few years. I have been wrongfully accused of various disciplinary tickets well being incarcerated, my rights have been denied time again. Even when there have been witnesses to testify that the situation did not happen the ticket is still upheld.

NYSDOC has been afforded the opportunity to treat human life as if it is nothing. They have been given the ability to keep inmates from succeeding. They have the power and the control to set up individuals that question or want justice.

I am not new to all this. I am now in my 15 year of incarceration. My sentencing is 15-30 class b. Sentenced under the old Rockefeller Drug laws. Which has already been established as being the harshest laws around, reform has already taken place but is has not afforded individuals such as myself to be re sentenced.

I have been denied every kind of work release, CASAT, furlough that has been available to me. According to laws set forth by NYS indicates I can reapply for these release more frequently than annually, however the facilities upon denial state I cannot reapply for over a year at times. They also acknowledge that I have more than sufficient points to be awarded release however feel my past crimes stop me from being a good candidate. I cannot change what I have done prior to incarceration. Nor can I change what the NYSDOC does to me well I am incarcerated. Even asked for clemency and that was denied a year later.

Enclosed is my most recent appeal to a ticket that should never have been issued. This too has been upheld. I have already attempted to file and Article 78 for my previous ticket which now was denied untimely. My hands are limited and tied when it comes to mail copying, printing and notarizing documents. Combined with the fact that I am under a great deal of stress being confined to SHU for things that I have not done. All to well knowing that when the time comes for parole that too will be denied.

I am fighting to remain sane each and every day. I am given no hope for release. I have not been given even the simplistic task of completing and passing my GED, whose fault is that? I too will be held accountable for that when it is beyond my control what they assign me too. For many years I have been kept far from him that has deteriorated my relations with many of my family members. To basically none existent.

Let me tell you what has kept me going these last couple of years and has me fighting for my freedom each and every day. There is nothing that I won't do for my new family. I have met a women she has 2 sons, she has shown me and taught me what the meaning of a real family is. She is dedicated to her sons and now me. She has taught me many things; I have become an entirely new person that will not return to my previous life. She has taught me that I am better than that. I now know that love can be unconditional. I have taken on many new roles as limited as my time can be with them. I have learned to be the person that I would have wanted as a father. These things motivate me beyond anything that NYSDOC can offer and provide for me. These are the reasons why I am reaching out yet again to find justice for me and my new family.

She has written many places and made many requests that have gotten us not where. She has offered to met and share all her information she has. Every letter she has written and every response we have received she has hundreds of documents fighting for my freedom. There are too many inconsistencies with the many actions portrayed by the NYSDOC she has the paper work to show it. And no one wants to see it or do anything about it all I want is out of hear.

When you ask or need assistance from NYSDOC it is answered with retaliatory actions every step of the way. Situations are fabricated thus holding inmates to accountable for actions that never took place. The employees are believed to always be right and never be wrong. I have been in facilities where the Officers have been arrested for drugs, the very same ones that would chastise me and other individuals when they are actually worse than what we are. Employees of DOC are the worse kind of criminals there are they can get away with the injustices, prejudice, and treat people inhumanely and with great disrespect.

I am hoping that writing to you will afford me some chance of assistance with achieving my freedom. My sentencing Judge even contacted the facility and requested that I be placed in CASAT that request was denied as well. I want my freedom and I need help achieving my freedom.

Thanking you in advance for anything and all you can do for me. I will be looking forward to a time response in the near future.

Respectfully,
Kenneth Leigh

Kenneth Leigh 94A2742
Gouvernuer Correctional Facility
PO BOX 480
Gouvernuer, NY 13642-0370

August 31, 2007

Commissioner Fischer
NYSDOC
Bldg 2
1220 Washington Ave.
Albany, NY 12226-2050

Dear Commissioner:

I am appealing the decision made on August 5, 2007 for an incident on July 25, 2007 that was fabricated and charged with me with multiple violations that I could not have possibly committed. There is no way for me to have been at 2 places at once.

On July 25, 2007 at the 10p (final count and that is an approximate time) was conducted I was outside my cube 25. Mike Delgado was present as well as an older man and I do not know his name. I believe they were outside their cubes 26 and 27. The older man asked Mike something he ignored him, then he addressed me and I as well ignored him. CO Knight requested our ids at that time. We all complied so for him to state I was talking with unknown inmates is a lie, he requested and received ids. This was testified to by Mr. Delgado during the hearing. Why was I the only one charged in this manner? Why aren't the other individuals in the SHU like me?

After count was completed I placed a call at 10:18pm to Ms. McClurkin, enclosed you will find the phone bill indicating the time of the call. I made the request during the hearing for my phone log as well as the time that the count was called in. The hearing Officer decided that the time was approximate therefore not relevant, to me is very relevant, if I had done all he said I had done then I would not have been able to have placed my call and speak for 30 minutes.

And as you can see from the phone-bill I call well before count or right after count so I can have my 30 minutes and I will not be interrupted by count. This day was no different. While on the phone with Ms. McClurkin I had been expressing my concerns with her and the issues that I felt were happening. In the last minute of the phone call is when CO Knight came to me at the phone to advise me I was going to the box.

I requested CO Parker and CO Weston as character witnesses to validate that this type of behavior is out of character for me now. I cannot say that it would not have been out of

character for me many years ago but it is today. That request was denied. I requested Mike Delgado, he did testify to the events of that evening. There was no way for me to have discussed what and how to say what he testified too at the hearing. Since I was on the phone right after count was completed and then CO Knight came to me at the completion of my call to have me removed from the unit and placed in the box there was no opportunity for me to speak to Mike. He spoke of the actual events as they happened, not how the ticket is described to have happened.

According to CO Knight I went to my cube after he received my id, if that is where I was how did I place the phone call at 10:18 pm to Ms. McClurkin? Do I have a phone in my cube? If I had committed the acts as he implies then why was I not detained at the time of the incident? These are the inconsistencies that are so obvious. I did not commit the acts that CO Knight describes but because he is an Officer he is telling the truth how is that fair?

On July 26, 2007 I wrote a letter to Deputy Superintendent of Security requesting that this ticket be looked into including requesting my phone log as well as the log for count that evening. This was responded to with a memo dated August 2, 2008, see enclosures.

I completed 2 Inmate Grievance Complaints one dated July 25, 2007 and the other dated July 31, 2007. I received a response dated August 16, 2007. From this you can tell that there is misinformation or statements being made yet again, one fact is that I did request witnesses and only one out of the three requested were provided at the hearing. They did not indicate that they have reviewed the phone logs either to show that I was not where CO Knight said I was. That is concrete proof that I could not have been where he said I was in the misbehavior report. There is no way for me to fabricate the phone call and where I was. CO and staff are always believed before inmates are believed. Copies of these reports are enclosed as well.

On August 9, 2007 a request was made to the facility for the hearing tape, phone log and when inmate counts are conducted to Cape Vincent C.F. Ms. McClurkin received a response dated August 15, 2007 that her FOIL request was received. She then received another one dated August 22, 2007 requesting payment of \$1.00 to receive the information. On August 27, 2007 she forwarded payment in form of money order to the facility. In her original request for information she requested that if the fee does not exceed \$20 forward the information with an invoice and she would then forward payment. This was to assist with expediting the handling of the requested information. To date she has not received this information therefore I am not able to provide documents from the facility to validate the time of count. I am able to provide the phone bills from Ms. McClurkin they are enclosed.

There are many things that can show that the disciplinary ticket does not represent the true facts of that evening. This incident was fabricated. There appears to be some ill intent by this Officer towards me. He should not be allowed to abuse his authority in this manner to anyone.

There have been many incidents within the Cape Vincent, I believe this ticket was fabricated to help them regain some sort of stability or resemblance of stability and allow them to use this as an intimidation to me and to others. There have been multiple fights and stabbing at that facility in the last few months. I was spoken to on July 26, 2007 by Sgt. Rogers in regards to a stabbing and multiple fights that took place on July 20, 2007, where I had no direct or otherwise involvement with those incidents either. Furthermore, why was I called in almost a week later? The questions come and the answers cannot be provided by me. These are questions that need to be posed to the facility. Why and how is it ok for an employee to fabricate an occurrence and not be held accountable?

The fact that my past was taken into consideration at the hearing is unfair and proof that it was not held from a stand point of actually hearing the hearing without having a predisposed knowledge of my background and using my past disciplinary history as a factor in this case. I am penalized over and over again for the history that I cannot change.

The last few disciplinary tickets I have received have been all retaliatory in nature and this too is another act of a miscarriage of justice and enabling the facilities to continual abuse of ones authority. When will the employees within NYSDOC be held accountable for their actions? Is it because they are who they are they are above and beyond the repercussions for their actions? They too are human and make errors, instead of covering the mistakes, fix and correct the actions. The facts are the facts and the phone log puts me somewhere else other than where the ticket indicates I was at. I could not be at 2 places at once and that is just how simplistic this is and this matter should have been dismissed a long time ago if it was investigated completely and accurately.

It is not too late to undo the wrong the has been done in this case. I am looking forward to a favorable response in the near future. The punishment that has been imposed upon me for something I did not do is cruel and inhumane. The fact that I have been continually fighting for my freedom and I am denied every step of the way and the need to write appeal after appeal for every type of denial is punishing me far beyond the sentencing the courts have given me. When will this stop and change for inmates?

Respectfully Submitted by,
Kenneth Leigh
94A2742

Cc Attorney General
State Capitol
Albany, NY 12224-0341

Kenneth Leigh 94A2742
Gouverneur Correctional Facility
Scotch Settlement Rd.
PO BOX 370
Gouverneur, NY 13642-0370

August 29, 2007

Hon. Thomas J. McNamara
Supreme Court
Albany County Courthouse
Eagle & Columbia St.
Albany, NY 12207

Index # 4445-07

Dear Sir:

This is in response to correspondence I received indicating that I did not file within a timely manner.

What I would like you to consider are the many restrictions poised to me since I am incarcerated. Receiving and sending mail is not an action I can control. As well as when I request to have something notarized it can take days to accomplish that as well.

If you look at the initial Affidavit in Support of Order to Show Cause you will see that it was notarized on May 29, 2007. On that very same day I mailed it to have the information documented and logged. I am sure the facility has a log of when mail is received and mail is sent out.

I have had multiple restrictions through out this process. When copies are needed I send a request and some times it is responded to and other times it is not. I have no log to verify that they have received my requests which puts me at a disadvantage. Once I was able to type and prepare my own papers prior to the facility confiscating the type writer, now I forward my correspondence to Ms. McClurkin she then types and returns to me. If there are corrections or errors we were once able to call now it is all done via mail which is once again beyond my control. The way I receive mail can vary week to week. Mail she has mailed on Monday from her local post office sometimes I receive by Wednesday. However, there are times when I won't receive it till the following week dependent upon the contents.

I utilized that information available in the law library which indicated to me there were allowances made with mailing and time frames. There was reference to allowing 15 days in

addition to the 4 months to file. I feel that since it was notarized on May 29, 2007 and I it mailed the same day that can be verification that the intent to file timely had been followed.

I previously sent a letter to your office dated August 15, 2007 to advise that I had been moved and that there have been retaliatory actions taken against since I have continued to pursue this disciplinary issue and other issues with NYSDOC. Even the letter sent to you by NYSDOC has my previous facility noted. It also indicates a date of June 31, 2007, which does not exist. Therefore, validating that they are human as well and capable of making simple mistakes that can have great repercussions for many individuals such as myself. This type of behavior should not be tolerated or accepted. This is why I have reached out to the Courts to review and determine an unbiased opinion based upon the facts I presented, that were not considered by NYSDOC.

This is their attempt to have this matter not looked into and that they can controlled many of the obstacles that I have had to over come to get this far. There are times that they under estimate what a person can do and how much a person can take. They were able to hold up paper and documents that I felt were pertinent to my original appeal to the Commissioner, you have already been supplied with that information in my Article 78 documents. Now they have been empowered with the right to hold up the processing of my mail in relation the rest of the proceedings.

They have been enabled to set me for one disciplinary issue after another. And making me fight over and over for the freedom I so rightly deserve. NYSDOC is allowed time and time again to punish us far beyond what the courts have imposed as sentencing. The mental, emotional and at times physical abuse is more then what our sentencing is for. I am not a rapist or murderer; I have been sentenced under the old Rockefeller laws, which today if I was sentenced would have been released many years ago. I am in 14 years of a 15-30 years sentence and have been denied every kind of work release available, even when my sentencing Judge McGrath contacted the facility and recommended CASAT for me that too was denied. The Rockefeller Reform has been long over due and I am awaiting the opprotunity to be resentenced under the new laws that chance has not come for class B's yet.

Thank you for taking the time to read and include this with my original motion as this is a response to there request to have this to be considered untimely.

Sincerely,

Kenneth Leigh

Cc Andrew M. Cuomo
Attorney General
The Capitol
Albany, NY 12224

NEW YORK STATE
OFFICE OF ALCOHOLISM AND
SUBSTANCE ABUSE SERVICES

Eliot Spitzer
Governor

Karen M. Carpenter-Palumbo
Commissioner



OASAS

Testimony before the New York State
Commission on Sentencing Reform

November 15, 2007

Good afternoon, Chairwoman O'Donnell and members of the Commission. I would like to congratulate you on the work you have done to bring real reform to the sentencing process in New York State. It is an honor to provide testimony here today, both as OASAS Commissioner and as a member of the subcommittee on Incarceration and Re-Entry.

The report released by the Commission last month stresses the importance of substance abuse treatment within the criminal justice population. It also acknowledges how a lack of coordination between public health agencies, including OASAS, and public safety agencies can adversely affect an individual's course of treatment. We now have a tremendous opportunity to change this course.

Since arriving at OASAS in February, I have met regularly with my colleagues in the criminal justice field, and we are in agreement with the Commission's assessment. We also agree that improving collaboration and communication at all levels will reduce recidivism and save taxpayer dollars.

New collaborations present our agencies with a tremendous opportunity to improve outcomes for both of our populations, while at the same time enhancing both public health and public safety.

OASAS oversees the largest addiction services system in the nation, serving 110,000 people on any given day through a comprehensive network of more than 1,400 prevention and treatment providers. As New York's lead agency for addiction prevention, treatment and recovery services, OASAS is the agency that can best determine the clinical needs of patients with a chemical dependence issue.

At the same time, the field of criminal justice is responsible for issues pertaining to the safety of the public. Sometimes, in the interest of public safety, criminal justice professionals have made clinical determinations in regard to the course of treatment. In addition, clinical professionals have made determinations in what they believe to be in the interest of public safety.

Today, we are working collaboratively to better address our mutual interests – public health and public safety. Our goals are complementary, and it's clear that the need for OASAS to collaborate with our partners in criminal justice is more important now than it's ever been before.

The facts speak for themselves:

- More than half of all prison inmates were under the influence of alcohol or drugs when they were arrested.
- Approximately 26,000 inmates are released from New York State correctional facilities annually, of which about 70 percent are released into parole supervision.

- **This population is also at the highest risk of recidivism.**

Given these statistics, the fields of public health and public safety need to concentrate their efforts to better serve this population.

Collaboration between OASAS and criminal justice supports mutually beneficial goals of improving public safety, reducing criminal recidivism, and improving chances of recovery.

One excellent example of collaboration is a pilot that OASAS, the Department of Correctional Services (DOCS), the Division of Parole and local government are working on at Orleans Correctional Facility in Albion. This community reentry project for chemically dependent parolees at Orleans will better ensure a successful transition back to the community. The essential elements for this pilot program are:

- **Timely access to chemical dependence treatment, meaning access to immediate treatment and a planned and scheduled referral following prison. This will be accomplished by assessing the inmate's needs for treatment while in prison, at least 90 days prior to community release, and ensuring that the individual has a treatment appointment within 48 hours of their actual release.**
- **Intensive and individualized care coordination , or case management, to support the individual's recovery as they gain stability and independence in the community.**
- **Employment-related services, including job training and placement, and post-employment support.**
- **A housing continuum that supports the individual's ongoing recovery with a stable and affordable residence.**
- **Enhanced treatment services, integrating chemical dependence treatment with cognitive behavioral therapy that is focused on criminal thinking.**
- **Wrap-around services supporting the individual's recovery and reentry, which could include transportation costs prior to the receipt of the first paycheck, and a security deposit for an apartment.**

Our fields also need to work collaboratively not only to establish the right modality of treatment, but also to notify each other when the individual has left one of our systems prematurely.

The project has just commenced at Orleans Correctional Facility. Based on its anticipated success, our next step will be to initiate it in other areas, and discussions have already taken place for a potential launch in New York City and Franklin County.

We also need to look at what treatment is happening in prisons, where there is an opportunity for our two fields to jointly decide the best course of treatment to produce the most favorable outcomes.

OASAS has also been in preliminary discussion with the DOCS regarding OASAS certification of chemical dependence treatment services in its facilities. Regarding Willard, the only DOCS facility which is certified by OASAS for chemical dependence treatment, OASAS will be conducting a complete review of the facility next month to determine the caliber of treatment, and recommend steps for improving services to patients. In addition, we could consider adapting the Orleans community reentry approach to Willard and other locations.

We know that treatment is more cost-effective than prison. Now we need to work together to determine whether treatment is needed behind the walls, and if so, it is our responsibility to see that this gets done. Our systems demand it and our commitment to improving the lives of New Yorkers demands it.

The OASAS mission is to improve the lives of all New Yorkers by leading a premiere system of prevention, treatment, recovery services. We accomplish this mission, now and in the future, through an outcome-based approach.

Most importantly, we want the public to know that their state funding is being spent wisely and producing desired outcomes. Based upon an OASAS study, the arrest rates for outpatient clients who remained in treatment for at least 6 months decreased by 70 percent.

Together with our partners in criminal justice, we will continue to operate a premier system of prevention and treatment using evidence-based practices. We will support a recovery movement that allows a person to come out of the shadows of addiction and wear their recovery as a badge of honor, just as cancer survivor would.

Collaboration will be essential as we move forward, and we will always look for new ways to work with our partners in criminal justice to enhance the lives of New Yorkers.

Thank you.

ARISE
Faith-Based Community Organizing in the Capital Region

ARISE Member Groups

In Albany County

Albany United Methodist Society
Altamont Reformed Church
Artists' All Faith Center
Capital District Labor-Religion Coalition
Christ the King RCC
Evangelical Protestant UCC
First Unitarian Universalist Society of Albany
Fourth Branch of America
Holy Family RCC
Interdenominational Ministers Conference
Interfaith Alliance
Islamic Center of the Capital District
Mansion Neighborhood Association
Mt Olive Missionary Baptist Church
Park South Neighborhood Association
Rhema Power Ministries
Trinity United Methodist Church
Westminster Presbyterian

In Schenectady County

Emmanuel Baptist-Friedens UCC
First Unitarian Society, Schenectady
Friendship Baptist Church
Iglesia de Dios
Mt. Olivet Missionary Baptist Church
New Bethel Community Church of God in Christ
Refreshing Spring Church of God in Christ
Sacred Heart/St. Columba RCC
St. John the Baptist Parish
St. Luke's RCC
State Street Presbyterian Church
Vale Community Organization

In Rensselaer County

Holy Spirit RCC
Our Lady of Victory RCC
Sacred Heart/ St. Williams RCC
St. John Francis Regis RCC

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**ARISE/Inter-Faith Alliance
Justice Task Force
NEW YORK STATES WOMEN
Sub Committee
Ms. Calton Pulliam
Ms. Sharon Malloy
(518) 813-4062**

**Testimony-November 15, 2007
Public hearing of the**

**NEW YORK STATE COMMISSION
ON
SENTENCING REFORM**

ARISE

A Regional Initiative Supporting Empowerment

We support your important effort, and thank you for this opportunity.

Our concern is that as the NYS Commission on sentencing reform, makes fair and positive change. What happens if a municipality, for political reasons brings in the Federal Government.

Attached is our testimony to CureNY about this tragic situation.

ARISE

Faith-Based Community Organizing in the Capital Region

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Altamont Reformed Church
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Capital District Labor-Religion Coalition
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New Bethel Community Church of God in Christ
Refreshment Spring Church of God in Christ
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Report for CureNY Sept. 25, 2007

By Calton Pulliam
Sharon Malloy

Members ARISE Justice Task Force

(518) 813-4062

We admire and thank CureNY for the extensive work you are doing and have done.

We respectfully request that you add an additional task to your comprehensive plate.

We submit to you that there is a dangerous experiment, a trial balloon so to speak happening in the invisible and isolated black communities in upstate New York.

This is the racist and comprehensive misapplication of the Rico Act (Racketeer Influenced and Corrupt Organizations Act) by the federal bureau of investigation and the federal attorney generals office, only in economically challenged African American communities. This is happening just as the Rockefeller drug laws are possibly being phased out because NYS voters have made it clear they are unpopular.

A cruel travesty of justice is in motion. Nobody understands these laws including the families or legal aid lawyers assigned to the defendants who are without financial resources

The attempted proving ground has started in Syracuse and Albany NY. If this fallacy is successful it could be applied in other upstate cities, where the poor communities are isolated and unorganized.

In both cities up to 85 young people altogether(30 in Albany & 55 in Syracuse) WHILE IN PRISON OR AFTER SERVING SENTENCES AND ON PAROLE, WORKING OR IN SCHOOL, HAVE BEEN RECHARGED WITH 30 YEARS TO LIFE ON THE BASES THAT THEY GREW UP AND LIVED NEAR EACH OTHER. THEY HAVE BEEN IN SCHOOL TOGETHER STARTING AS LITTLE BOYS.

We are not recognized as a community and what happens to us is unknown except in media headlines that are of the worst racial profiling in nature.

We stand before you as hard working citizens who have contributed to our communities paid taxes as workers and on our homes. We are mother and grandmother.

Let us give you a picture of our community.

In Albany we have 950 vacant & abandoned buildings in our neighborhoods. We are isolated with limited to no bus service.

No mailboxes.

No fresh food or any food stores.

No community centers.

No arts & culture.

No business development. No information on the hope of Tech Valley projects supported by tax payer's money that could be a future for our youth.

No newspaper stands, limited access to communication like the internet.

No police as friends and community partners.

Politics are confrontational and territorial on the ward, council, and county level, adding to the confusion and isolation.

Those with real power ignore us, never venturing into our communities.

We submit that this extreme isolation and hardship, has resulted in at least one member in every one of our large families to be suffering from the illness of chemical dependency (and sometimes Aids). This is seen as the only way to self medicate the pain. This can exhaust the other family members who become caretakers.

Our youth watch our years of pain and struggle. They have no role models of inspiration.

They have been isolated, left alone with their problems without prevention or intervention. Only suppression.

Please help investigate and support our work.

Sharon Malloy

Calton Pulliam

Members ARISE/INTERFAITH ALLIANCE JUSTICE TASK FORCE

**ARISE/INTER-FAITH ALLIANCE
JUSTICE TASK FORCE**

Page -1

Our preliminary response to

**The Future of sentencing in New York State:
A Preliminary Proposal for Reform**

We want to thank you for the opportunity to comment on your important work.

At the onset we would like to support your continued existence as a “temporary State Commission on sentencing” the continuation of which would be subject to legislative review. We would like to include a qualifying condition of this support, to include the seeking of ongoing public input, as accomplished in these important public hearings.

As stated the subject and related issues are complex and broadly encompassing, “good sentencing policy needs continual monitoring” (p. 59). Although you state that “The system is certainly not in a state of crisis” we would like to submit to you, that the people and the communities they live in are in a profound state of crisis.

Our comments are short at this time because of time constraints. We will site only our response and not quote your report. We assume you will make the connections.

We are concerned about the concept of “truth in Sentencing” however this might be accomplished. The experience of incarceration should include the opportunity for motivation. Hard work and new understanding is needed for learning successful life skills. Motivation to achieve good time and an early release is important. We see a benefit to the assistance that parole, has the potential to give to a person returning to difficult circumstances.

We would like to voice our concern about one continued assertion that your report puts forth. That is that alternative sentencing, as an example, is possible if there is an agreement between “The Prosecution, Judges and the Defense Attorneys (defendant).”

Although a good idea, this is not a reality in our current system.

For the following reasons.

This report illustrates the complication and confusion of our sentencing laws. The lawyers for the poor that fill up our prisons are over burdened with too many clients. In their preparation for defense and in the court setting, they have no time. Many are not experienced in defense work, and are not acquainted with the laws. The reality is that the District Attorneys have the influence and power. Judges in most cases are presented with a plea bargain, determined by the District Attorneys. They seldom question this.

We have in numerous situations seen poor uneducated, depressed and frighten people take plea bargain, when they should not.

This imbalance from the beginning puts into question the truth of the sentencing.

We support your work in all aspects of progress and fairness.

We support alternatives to incarceration, such as Drug and Mental Health courts. We submit that these models have to be based on 1) Knowledge of the person, 2) age, 3) The Communities they live in. 4) resources available to the court. More financial resources for all aspects of programming are needed to be diverted to community courts. There is no "Wrong Person" for this experience.

We support more resources to be diverted to all aspects of establishing and improving treatment for chemical dependency. First as an alternative to incarceration, and then in the prison setting.

We support higher education opportunities (college) in prisons. We support this opportunity for education to be available to the alternative to incarceration drug treatment, and the community court experience.

We applaud all work and successful principles at improving "The Science of Crime Reduction: Using evidenced-based Practices" (page34) our concern is there is lack of recognition that our citizens need to be involved. The person being charged with crime, the families and communities need to have these concepts and terms translated into language and practices they understand, and can buy into. We are creating layer upon layer of paid employment for the specialist.

The criminal Justice system is now New York States largest employer. Shame on us. If our every day society can not participate in the recovery of our quality of life and public safety, we are doomed to repeat.

As an example, we wonder how much research has been done on voluntary programs such as the 12 Step, Self Help model. We would submit that this model as applied to drugs in the North East since the early 1980s have helped reduce recidivism.

We support the development and use of a "Needs Assessment" including "Risk Assessment"

We would submit that if basic needs are met particuly in regard to treatment for chemical dependency, Health Care, education, employment and housing, risks are minimized. We would encourage this assessment to be fully understood and developed with the person, their family and the community.

We support the Expanded Use of Pr-Trail Service programs. They should include Pre-Trail Drug Treatment.

We support the issuing before release, of all identification needed for functioning in society. Birth certificates, social security cards.

We support the facilitation of acquiring Medicaid before release.

We support the use of all manner of programs instead of incarceration for Parole violations that do not threaten public safety.

We support the use of Re-entry Courts that facilitate solid assistance through programming and employment.

Attention to employment in re-entry is of utmost importance. We would encourage the New State Department of Labor to be involved in your commission. We believe the discrimination by employers toward people formally incarcerated, needs special and intense examination. We would like to see employment programs that assist the employer. To insure full employment opportunities we are working on state service models that would lead people to solid careers.

We believe the right to vote is essential to participating in the community a person lives in.

We support all upstate economic development that is not based on prison and related industries.

Last comment is that we support repeal of the Rockefeller Drug Laws. We believe that these shameful laws have resulted in 35 years of failure to influence positive change. This includes a healing of the illness of addiction in New York State or a change in the commerce related to this underground economy. The most recent small changes made to the law have only confused caring ethical people, who think the laws are gone. We support the attached statement and position of the Correctional Association of New York State calling on the New York State Commission on Sentencing Reform to recommend Rockefeller Drug Law Repeal.

Thank You for this opportunity.

**Rev Joyce Hartwell, Chair of the Justice Task Force
Bernard Fleishman, Task Force Member and Chair of the Capital District Chapter
of NYS Inter-Faith Alliance
and many task force members.**

Please note that ARISE/Interfaith Alliance Justice Task Force is a member of the THURWAY Alliance a Historic undertaking of 6 congregation-based Community Organizations across upstate NY. This represents more than 50,000 Voters in 120 congregations. This includes Albany and the Capital Region, Syracuse, Buffalo, Rochester, Niagara Falls and Cortland.

The Correctional Association of New York

FOUNDED 1844

135 EAST 15th STREET, NEW YORK, N.Y. 10003 • (212) 254-5700 • Fax (212) 473-2807 • www.correctionalassociation.org

Statement Calling on
New York State Commission on
Sentencing Reform to Recommend
Rockefeller Drug Law Repeal

September 2007

CORRECTIONAL ASSOCIATION STATEMENT

We urge Sentencing Commission members to take advantage of the historic opportunity given them to recommend a long overdue reform of New York's penal code: Repeal of the notorious Rockefeller Drug Laws.

BACKGROUND

Enacted in 1973, when Nelson Rockefeller was Governor of New York, the Rockefeller Drug Laws require harsh prison terms for the possession or sale of relatively small amounts of drugs. The penalties apply without regard to the circumstances of the offense or the individual's character or background. Whether the person is a first-time or repeat offender, for instance, is irrelevant.

It is important to note that changes to the laws passed in December 2004 and August 2005 do not amount to meaningful reform. The severe aspects of these laws are still on the books: Mandatory sentencing provisions remain intact, meaning that judges still do not have discretion in deciding whether to send someone to prison or to an appropriate alternative-to-incarceration program. Prison terms, though reduced, remain unduly long – for example, under the new system, instead of 15 years to life, the most serious provision of the drug laws carries a determinate (or flat) sentence of between eight and 20 years for first-time, non-violent offenders. The main criterion for guilt remains the amount of drugs in a person's possession at arrest and not a person's actual role in the drug transaction. As a result, the major profiteers who rarely carry drugs will continue to escape the laws' sanctions. Finally, the vast majority of drug offenders in prison remain outside the pool of people affected by the retroactivity provisions included in the legislative changes enacted in 2004 and 2005. As of March 2007, of the more than 1,000 inmates eligible for re-sentencing under the drug law reforms, only 296 people had actually been released following their re-sentencing.

Despite the claims made for these laws when they were enacted nearly 35 years ago – that they would break the back of the drug trade and related criminal activities – there is widespread consensus today that these statutes have caused rather than solved problems.

THE PROBLEMS

The Waste

As of January 1st, 2007, there were over 13,900 drug offenders locked up in New York State prisons: 943 were women (33% of the total female prison population) and 12,985 were men (21% of the total male population.) It cost the state about **\$1.5 billion** to construct the prisons to house drug offenders. And the operating expense for confining them comes to over **\$510 million** per year.

Current trends, moreover, indicate that taxpayers will have to continue footing the bill for these high numbers. For example, notwithstanding the recent drug law modifications, more people were sent to state prison for non-violent drug offenses in 2006 – **6,039** – and in 2005 – **5,835** –

than in 2004 – 5,657. And, in 2006, 36% of the people sent to state prison were drug offenders. In 1980, the figure was only 11%.

In addition, many of the state's imprisoned drug offenders cannot be considered, by any applicable standard, either dangerous or predatory. Here are several key facts supporting this analysis:

- About 39% of the drug offenders in New York State prisons, more than 5,400 people, were locked up for drug possession, as opposed to drug selling.
- Of all drug offenders sent to New York State prisons in 1999, nearly 80% were never convicted of a violent felony.
- Nearly 54% of the drug offenders in New York State prisons were convicted of the three lowest level felonies – Class C, D, or E – which involve only small amounts of drugs. For example, only ½ gram of cocaine is required for conviction of Class D felony possession, and 1,316 people are locked up for that offense.

Skewed Law Enforcement

As the above statistics demonstrate, the Rockefeller Drug Laws often result in the arrest, prosecution, and long-term imprisonment of addicts, minor dealers, or persons only marginally involved in the drug trade. Major traffickers usually escape the sanctions of the laws. The problem is that the Rockefeller Drug Laws place the main criterion for culpability on the weight of the drugs sold or in a person's possession when he or she is apprehended, not on the actual role played in the narcotics transaction. Aware of the law's emphasis, drug kingpins are rarely foolish or reckless enough to carry narcotics; whereas teenagers, for example, employed as couriers by those same kingpins, are more likely to be picked up on the street and charged with a serious felony for having a relatively small amount of drugs in their possession.

Major dealers are also often able to take advantage of provisions permitting lifetime probation sentences in exchange for cooperation in turning other drug offenders over to authorities. Less centrally involved persons generally do not possess information that would be useful to prosecutors. They will sometimes decline to plea bargain and insist on a trial instead. If these persons are found guilty, they frequently are sentenced to a lengthy mandatory minimum prison term.

As a principal weapon of the so-called war against drugs, this statute results directly in the following misguided practice: law enforcement agencies focus their efforts on minor offenders who are the most easily arrested, prosecuted, and penalized, rather than on the drug trade's true masterminds and profiteers.

Racial Inequities

The drug laws have a harsh and disproportionate impact on communities of color. Studies have shown that the majority of people who use and sell drugs in New York State and the nation are white. Yet, about 91% of the people doing time in New York State prisons for a drug offense are African-American or Latino. As of January 1, 2007, African-Americans comprised 57.7% of the drug offenders in state prison; Latinos, 33%; whites, 8%.

If larger numbers of whites participate in buying and dealing drugs, why are so many more blacks and Latinos in prison for these crimes? The problem – and it is a problem that is at least partially a function of having the drug laws in place – is that law enforcement efforts focus almost entirely on inner city communities of color. In New York City, for example, police squads carrying out recent anti-drug initiatives have been sent principally into such areas.

Much of the drug activity among white people takes place behind the closed doors of offices and living rooms. By contrast, most of the drug trade in low-income black and Latino neighborhoods is carried out on the streets where it is much easier to make arrests.

In addition, more violence is involved in the drug trade in low-income, inner city communities. The drug trade there is more visible and more disruptive, and the call for a police response is therefore greater. Moreover, because poor communities of color lack political clout, there are also few repercussions when police carry out drug raids and no-knock warrant busts.

Finally, white middle- and upper-class people involved in the drug trade often have the resources and political influence to resist law enforcement attempts to punish them. Well-paid, high-powered attorneys, for example, can successfully derail the effective prosecution of their clients' crimes.

In words that are unfortunately as true today as when he expressed them over 15 years ago, Commander Charles Ramsey, former head of the Chicago Police Department's Narcotics Division, summed up the war on drugs' inequity in this way:

There is as much cocaine in the Stock Exchange as there is in the black community. But those guys are harder to catch. Those deals are done in office buildings, in somebody's home, and there is not the violence associated with it that there is in the black community. But the guy standing on the corner, he's almost got a sign on his back. These guys are just arrestable.¹

The rationale for the policy that produces this outcome might make sense superficially, but the practices are ultimately discriminatory and have a devastating impact on communities of color by uprooting individuals and breaking up families.

¹ Harris, Ron, "Blacks Feel Brunt of Drug War," *Los Angeles Times*, April 22, 1990.

A System Imbalance

Mandatory sentences have a fundamentally negative effect on the administration of justice. These sentencing schemes do not abolish discretion; they remove it from the judge's hands and place it in the prosecutor's office. Whoever sets the charge (the district attorney) determines the outcome of the case. In our adversarial criminal justice system, these laws stack the deck in favor of one side.

As Justice James Yates of the New York County Supreme Court has stated:

If some defendants are to receive lesser sentences than others for the same crime, the question becomes, how do you decide who will receive the benefits of a reduction? Under current law, that determination is made by an assistant district attorney who is not bound by written public guidelines or standards, is not compelled to hear arguments in favor of reduction, is not required to explain or justify the decision, is not held accountable by the public or through judicial processes and the decision is not reviewable by any court

[In contrast], in a system where a judge has authority to set sentences, there are proceedings on a record in public, with advocacy on both sides and a decision by a neutral party who must explain his or her decision and can be held accountable.²

THE REMEDY

Many studies, including several sponsored by the National Institute on Drug Abuse and a 1997 report by RAND'S Drug Policy Research Center, have demonstrated that drug treatment programs are, on the whole, more successful than imprisonment in reducing drug abuse and crime rates and in increasing drug offenders' ability to find and hold jobs. The cost of keeping an inmate in a New York State prison for one year is \$36,835. In comparison, the cost of most drug free outpatient care runs between \$2,700-\$4,500 per person per year; and the cost of residential drug treatment is \$17,000-\$21,000 per participant per year.

Although alternative programs are more effective and less expensive than imprisonment, the imposition of mandatory sentencing laws limits the court's ability to make appropriate use of them. In fact, it is fair to state that as long as the Rockefeller Drug Laws remain on the books, New York's governor and legislature of over three decades ago have more to say about the outcomes of today's narcotics cases than the judges who sit on the bench and hear all the evidence presented.

The Rockefeller Drug Laws are outdated, wasteful, ineffective, unjust, and marked by racial bias. They distort law enforcement practices and foster imbalance in the adjudication of drug cases. It is time to remove the stain of these statutes from New York's penal code. Commission members can achieve this long overdue objective by including in their report the recommendation to

² Interview, James A. Yates, New York Supreme Court Judge, New York City, November 21, 1996, "Cruel and Unusual: Disproportionate Sentences for New York Drug Offenders," Human Rights Watch, March 1997.

eliminate the mandatory minimum provisions of the Rockefeller Drug Laws and return sentencing discretion to judges in all drug cases.

If commission members are wary of the political liabilities that they would incur by adopting such a measure, they can seek insulation and take courage from the widespread support that the public has shown for reforming the Rockefeller Drug Laws. For example, according to an October 2002 *New York Times* poll, 79% of New Yorkers favor restoring sentencing discretion to judges in drug cases.

In addition, this past June the United States Conference of Mayors, a body representing the mayors of America's large cities, unanimously approved a resolution stating that the war on drugs has failed. The resolution also condemned mandatory minimum sentences and the incarceration of drug offenders, and called for more funding for treatment programs. Regarding this issue, Cory Booker, the Mayor of Newark, New Jersey, has said: "The drug war is causing crime. It's chewing up young black men. And it's killing Newark."³

The Commission can take an important step to reverse the destructive course of New York's current drug policy. By proposing Rockefeller repeal, they would join a growing chorus of voices being heard in the mainstream political arena. More significantly, they would, in effect, lend critical support to a constructive policy reform that would likely result in, among other benefits, the substantially expanded use of drug treatment alternatives, the reduction of drug trade-related crime, savings to relevant government agencies, and the restoration of fairness to the administration of justice.

³ Curley, Bob, "U.S. Mayors Declare Drug War a Failure," www.jointogether.org, July 18, 2007.

Testimony to the NYS Commission on Sentencing Reform regarding the issue of; "How can New York's existing policies and procedures for preparing offenders for re-entry from prison to the community be improved?".

The Effects of Faith Based Prison and Re-entry Programs

I am Tom Morrison, from Guilderland, N.Y., and I am testifying as a member of the Arise Criminal Justice Task Force. I am highlighting a faith based initiative in prison called REC, the Residents Encounter Christ prison ministry of the Catholic Diocese of Albany. For the last 22 years, 12 for me, the REC prison ministry has served thousands of inmates, 500 to 1000 a year in the 7 State Correctional Facilities in the diocese. REC provides semiannual retreats, monthly reunions and weekly Bible study. This program is open to men of all faiths and focuses on changing their lives and going forward with God.

We are about to launch a small new initiative for ex-inmates who have been through the REC program. It is designed to assist them spiritually and information-wise upon their re-entry on parole. It is our hope today to inform or remind you that faith based prison and re-entry programs are one of the positive methods that make effective lower minimum sentences and early release initiatives. We believe that many incarcerated men and women can be more quickly prepared to reenter society when they actively and sincerely participate in faith based programs and religious services in prison and upon release.

In a few of the prisons in other states these programs are even more integrated into the prison life, and a few faith based organizations have actually been allowed to operate a small facility except for security functions. A recent article indicated that there was only one physical fight in the prison that was described. While we are not proposing such a radical step we simply hope that there will be more recognition of the value of higher power and faith based programs for many inmates. Several years ago, Billy Graham's organization found that prisoners who participate in religious programs in prison, and, upon their release, attend church and Bible study, and receive mentoring, have a recidivism rate of only 15%. It could be valuable if NYS Corrections, Parole and faith based programs like REC joined to keep statistics on the outcomes of those who attend REC. In addition to REC in the Albany area, we are aware of REC-like programs and inter faith programs in areas across much of the State. We have received verbal comments from administrators in Albany area State Correctional facilities that the atmosphere of the prisons is positively affected, sometimes for months after a retreat.

As I noted, because of continuing high rates of recidivism nationwide and in New York, REC is about to start a small faith based initiative in Albany for recently released prisoners, especially those who have been part of the REC program while in prison. We are sure there is a great need for spiritual support in the

crucial timeframe after release. Our new initiative for a re-entry seems in line with New York State's emphasis on release programs, as cited by Governor Spitzer and Commissioner Fischer in this fall's reinstated DOCS newsletter.

We believe our new faith based re-entry initiative will benefit the ex- inmates, their families, and their communities. We also believe that sentencing should have wider ranges. This would allow facilities and parole boards more discretion in recommending release based on the total progress of inmates toward positive individual, family and community living that are inherently part of our faith based programs and other programs.

Finally, the path of ex-prisoners to becoming productive, caring members of society is too often a rough one. Our Higher Power approach of Bible study and application, mentoring and group support as advocated by Billy Graham's organization will help smooth the path to successful re-entry. We ask you to consider the possibility of lower minimum sentences and the importance of faith based programs. We also ask you to share this testimony with the State's Re-entry Task Force that held a previous public commentary earlier this year.

We commend you for seeking public input and hope that there is room for sensible change in all aspects of sentencing, re-entry, and alternatives to incarceration as recommended here and in other testimony including that of Reverend Joyce Hartwell regarding the value of AA and NA programs on the outside.

Thank you for this opportunity.

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(518) 370-1615
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ARISE/REC
Thomas Morrison
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THE MISSION OF REC

It is the mission of REC to serve the Lord within our diocese by encouraging the prison inmate population to become more active Christians during and after their incarceration. Our service to the Lord is done primarily through an intense three-day program and timely follow-up meetings. The major theme for the experience is to know, love and serve the Lord; and to die to self; to rise again in the Lord; and to go forth together (the Paschal Mystery). The basic techniques used emphasize personal and community growth. A community grows by developing its members (not isolation) and by improving its environment (not avoidance).

The REC Weekend: A three-day retreat experience for 60 to 100 male residents, conducted within a New York State correctional facility by a group of 16 to 20 Catholic volunteers. The weekend usually starts on a Friday morning and ends on Sunday afternoon.

The Lay Director: A volunteer chosen to organize and coordinate a specific REC weekend retreat.

REC Team: A group of Catholic volunteers brought together for 8 to 10 preparation meetings. These meetings are normally conducted weekly within one of the parishes in the diocese. In addition, a number of residents are chosen to form the "inside team." This combined team then presents the REC weekend retreat.

THE REC WEEKEND

Friday: John 12:24 "Unless the grain of wheat falls to the ground and dies, it remains a seed..." This day is devoted to "dying to self" and changing. Talks are given by both the outside team and the inside team. In the evening, there is a Paschal Vigil Service, including the Sacrament of Reconciliation.

Saturday: John 12:24 "...If it dies, it produces much fruit..." This day explains the meaning of rising again with the Lord and how it is rooted in Scriptures. Talks are given by the outside team with a Liturgy, followed by a Hootenanny. During the "Hoot," more outside volunteers arrive. There is singing and a talk given by a female volunteer, and the residents have an opportunity to witness.

Sunday: Matt. 28:18-20 "As the Father has sent me so I send you..." The purpose of this day is to encourage the residents to continue the process they started on Day One and to continue trying, even if they fail. They are also encouraged to make a conscientious effort to bring Christ to others and share by their example.

Follow-up meetings are ongoing at each facility.

TIME INVOLVEMENT

The weekend runs from 8 a.m. to 9 p.m. on Friday and Saturday, and 9 a.m. to 4 p.m. on Sunday. To prepare for the retreat, meetings are held both inside and outside of the prison.

OTHER INVOLVEMENT

Palanca: The act of praying and performing sacrifices for the residents, and writing Palanca Letters, which are given to the residents. Letters start with "Dear Brother in Christ." Your last name is not given, and at least 60 letters are needed so that each resident receives one.

Hootenanny: The Saturday late-afternoon activity where outside volunteers arrive singing. A faith-sharing witness talk is given by a woman. The residents are given a time to witness.

YOU CAN HELP BY:

Volunteering to work as a team member.

Participating in the Hootenanny.

Performing Palanca and writing palanca letters — English and Spanish are needed.

Supporting the REC program with a monetary donation.

WHO TO CONTACT:

Harry Brust.....235-5956
 Don Burner.....877-8721
 Walter Forney.....877-8779
 Bill Mullins.....664-6938
 Tom O'Connor.....765-4959
 Rich Polsinello.....877-0215

Interfaith IMPACT OF NEW YORK STATE

Testimony before the New York State Commission on Sentencing Reform, November 15, 2007

The Future of Sentencing in New York State

Support for Reform of the Rockefeller Era Drug Laws

Interfaith IMPACT of New York State represents faith communities, clergy and individuals across New York State who are concerned about the large number of people incarcerated each year for drug offenses and the negative effect of these mass incarcerations on individuals, on families and on community life.

The discriminatory enforcement of New York's Drug Laws is a moral stain on our state. It is well known that illegal drug use is evenly spread out among all segments of the population; nonetheless, the vast majority of drug offenders imprisoned under the Rockefeller Drug Laws are people of color from seven neighborhoods in New York City and a handful of inner cities in upstate New York. This situation appears on its face to be racist and unacceptable. After more than 30 years, it is clear that these Draconian drug laws have not accomplished their original purpose, which was to eliminate illegal drug use and addiction.

In 2004 and 2005, there was partial reform when the Legislature approved initial steps to reform these dysfunctional drug laws and the former Governor signed them into law, but much work remains to be done.

We urge the Commission on Sentencing Reform, Governor Spitzer, Legislators and Legislative staff to once again take up the issue of reform, and this time to bear in mind that public safety is best served by laws that effectively deter crime in communities that are healthy. The purpose of reform should be to deal with chemical dependency as a public health problem. To address the problems of drug addiction and associated criminal activities, we recommend the following benchmarks for reform:

- **Emphasize treatment and education, not incarceration. We need to end the current revolving-door system of justice created by the Rockefeller Drug Laws. Education, assessment, treatment, and rehabilitation that includes adequate housing and jobs are necessities when dealing with the chemically dependent. This approach heals individuals, families, and communities and it reduces crime.**
- **Make penalties proportional to the crime. Excessive penalties destroy hope and alienate people from our society. New laws should provide retroactive sentencing opportunities for those already serving time in prison for drug offenses and place greater emphasis on sentencing diversion and community-building programs such as restorative justice, community accountability boards, drug courts and mandatory treatment options.**

- Allow greater judicial discretion in drug-related cases. A balance of governmental powers is a cornerstone of democracy. The effect of New York's Drug Laws is to place the power of discretion primarily in the hands of District Attorneys who exercise it in the plea bargaining process, which puts the system out of balance.

We offer this spiritual and ethical guidance in the hope that the Governor and the Legislature will better serve New York by repealing the discriminatory Rockefeller Drug Laws and putting the emphasis where it should be—on community health and well being.

Interfaith Impact of New York State, Inc. is a coalition of congregations and individuals from Protestant, Reform Jewish, Unitarian Universalist and other faith traditions. We advocate from progressive and liberal religious points of view for compassion, reason and justice in New York State public policies.

Respectfully Submitted by
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Interfaith Impact of New York State: A statewide coalition of congregations and individuals from Unitarian Universalist, Protestant, Reform Jewish and other faith traditions advocating from progressive and liberal religious points of view for compassion, reason and justice in New York State public policies.

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Empire Justice Center

Making the law work for all New Yorkers

Albany ♦ Rochester ♦ White Plains ♦ Long Island

Testimony Before the New York State Commission on Sentencing Reform November 15, 2007 Albany NY

Presented by: Susan C. Antos

Good morning. My name is Susan Antos, a staff attorney specializing in public benefits issues, including child support issues affecting low income families, at the Empire Justice Center. We appreciate the opportunity to come before you today to comment on the October 15, 2007 Preliminary Report of the New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State*.

The Empire Justice Center is a multi-issue support center for legal services programs across the state, focusing on the civil legal needs of low income New Yorkers. We provide research and training, act as an informational clearinghouse, and provide litigation backup to local programs. We also undertake impact litigation and engage in legislative and administrative advocacy on behalf of legal services programs and low income individuals. Our staff attorneys specialize in public benefits, including cash assistance, child care, food stamps, Medicaid and other health benefits, Supplemental Security Income (SSI) and Social Security Disability (SSD) benefits, public and subsidized housing, domestic violence, consumer law, immigrant access to benefits,

child support and other legal issues affecting low income New Yorkers. In our Rochester office we represent former felons who, although otherwise qualified, have been refused employment by private employers solely because of their criminal record, in violation of Correction Law Sec. 750 et. seq. These civil rights violations are frequently committed by large, national corporations who fail to comply with New York law when conducting their hiring practices.

Because we provide civil legal services to low income individuals, we will focus our testimony today on the fourth section of Part Three of the Sentencing Report, a small part of your Report, but an area of critical concern - New York's existing policies and procedures for preparing offenders for re-entry to the community.

Access to Public Assistance and Medicaid

We commend you for recommending revised processes so that those being released from prison will have access to public assistance and Medicaid upon their release. We strongly support your recommendation that there be a pre-release determination of eligibility for public benefits so that benefits are available on the first day of re-entry (p. 51). Because New York's needs based programs for single individuals, Safety Net Assistance, has a 45 day waiting period [Social Services Law 153(8)], it is critical that state policy focus on meeting the needs of the indigent before they are released from prison.

There is precedent for state policy which supports pre-release applications for public assistance. In 1993, the New York State Department of Social Services (now the

Office of Temporary and Disability Assistance - OTDA) issued an Informational Letter encouraging local districts to accept public assistance applications from a person in prison 45 days before his release date, so that benefits would begin on the date of release [93 INF 11, question 4 - relevant pages attached]. With the advent of welfare reform and the State's strong preference in favor of county flexibility, OTDA then took the position that the directive in the informational letter was guidance, not a mandate. We urge that OTDA adopt a consistent uniform policy requiring local social services districts to accept public assistance applications from people in jail or prison up to 45 days before their release dates and to provide clear guidance that the period between the application and the release counts toward the 45 day waiting period. In the alternative, the matter could be resolved by amending the Social Services Law.

Your report also recommends that "proper identification" be provided "system wide" and should be accompanied by the back-up documentation need to secure community services and employment, such as social security cards and birth certificates. We note that when New York State prisons fail to provide prisoners with their birth certificate and social security card upon release, the lack of these documents effectively prevents the persons released from qualifying for public benefits. The provision of these documents should be standard procedure.

Child support arrears

The primary focus of our testimony today is to urge you to address the barriers to re-entry caused by child support arrears faced by those leaving prison, and aggressive

enforcement policies that often render low income wage earners with less than half of their income, and loss of driver's and professional licenses. The harm caused by overwhelming child support arrears is increasingly being considered a civil sanction or collateral consequence resulting from incarceration.¹ Child support is a crucial component of any effort to strengthen low-income families. It is also a critical concern for formerly incarcerated parents struggling to obtain employment, rebuild family ties, and reintegrate into New York communities.

A significant barrier that formerly incarcerated parents face in their transition to the world outside of prison is the accrual of child support arrears while in prison. The child support owed is often not owed to the custodial parent, but to the State. This is because federal and state law requires that when children are on public assistance, their right to child support is assigned to the state. All but the first \$50 collected in the month when it is due, is payable to the state. Although the typical child support debtor is a man, women in prison are subject to child support collection policies if their children are on public assistance while they are in prison or if the children are in foster care.

Most incarcerated persons are parents, many of whom have child support obligations that far exceed their capacity to pay. Both federal and state law prohibit retroactive modification of child support orders in most situations, and so it is critical that support orders be modified downward upon incarceration. Without modification, child support arrearages will grow significantly while parents are in prison. Case law in New

¹ A. Cammett, *Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents*, 13 Geo. J. On Poverty L & Pol'y 313 (Summer, 2006).

York, however, currently prohibits those in prison from obtaining modifications of their support orders while they are in prison, creating a situation that assures that upon release, these parents will not only be overwhelmed with penalties for the arrears that have accrued, but these very penalties actually will make it more difficult for them to seek and obtain employment and to support their children.

New York courts have taken the position that support orders may not be modified downward while a person is incarcerated, because the incarcerated parent's "current financial hardship is solely the result of his wrongful conduct."² Moreover, at least one Appellate Court has held that Family Court Act 413(1)(g), which limits arrears to \$500 when a person's income is below the poverty level, does not apply to someone in prison because the incarcerated parent cannot be allowed to "benefit from the conduct that led to his or her incarceration."³ Of course, comparing incarcerated parents to those who reduce their earnings by *choice* fails to acknowledge that one who is incarcerated does not have the choice to *rectify* the situation in prison by increasing his earnings.

This policy means that upon release, most of these parents are faced with overwhelming arrears, which have accrued during a time that they have no ability to make payments. Should the formerly incarcerated parent find a job, up to 65% of his income may be subject to income execution to recover child support arrears. CPLR § 5242(c)(2)(i),(ii). Additionally, arrears of more than four months will likely result in the

² Knights v. Knights, 71 N.Y.2d 865 (1988); Furman v. Barnes, 293 A.D.2d 781 (3d Dep't 2002); Ontario County o/b/o Powers v. Jackson, 212 A.D. 2d 1056 (4th Dep't 1995).

³ Onondaga County Department of Social Services o/b/o Gloria T. v. Timothy S., 294 A.D.2d. 27 (2002).

loss of the parent's driver's license and any occupational licenses. FCA §§ 458-a, 458-b, 458-c. Finally, should the court reduce the amount to a money judgment, any bank accounts or other assets, it will be subject to seizure in their entirety, making re-entry even more difficult. FCA §§ 454, 460; CPLR §§ 5201, 5202, 5203 et. seq.

New York's rule prohibiting modification is called the "no justification" rule, and is shared by Kansas, Indiana, North Dakota, Nebraska, New Hampshire and Louisiana.⁴ Such a rule creates substantial barriers to successful re-entry and increases the pressures leading to recidivism. In the five years between 2000 and 2005, child support owed in New York jumped to \$800 million, and at least 35 percent of that amount was owed by men with income of \$12,500 or less.⁵ Policies like New York's undermine the actual goal of promoting the payment of child support by impeding the acquisition of lawful employment and creating perverse incentives to enter the black market economy.

Other states have taken a more reasoned approach. Some examine the intent of the obligor in committing the act that resulted in incarceration (Oregon), some consider whether the obligor has assets that can be used to satisfy the obligation (Ohio, Idaho), some determine what is in the best interest of the child (Pennsylvania) and some combine these factors, making a case by case determination (New Mexico,

⁴ See Jessica Pearson, *Building Debt While Doing Time: Child Support and Incarceration*, ABA JUDGES' JOURNAL, Vol. 43, No. 1, at 6 (Winter 2004).

⁵ Leslie Kaufman, *When Child Support is Due, Even the Poor Find Little Mercy*, N.Y. Times (February 19, 2005).

Missouri, Colorado).⁶ In at least 14 states, incarceration is a complete justification to eliminate or reduce an existing child support obligation.⁷

We recommend that New York amend the Family Court Act to allow an approach similar to the approach in New Jersey, which applies when a support obligor has been sentenced to a lengthy period of incarceration and has no income or assets. In such a case, New Jersey transfers modification petitions to an inactive calendar, pending the inmate's release. Upon release, the court makes a determination of the appropriate amount of current support and arrears, basing its determination on the parent's ability to pay. Such an amendment would assure that those who are released from prison have orders that are realistic and so that the non-custodial parent is not overwhelmed with debt and forced into the underground economy. Significant steps can be taken in the interim by state agencies to mitigate the effect of these policies. Because many children of incarcerated parents receive public assistance, a substantial percentage of the child support arrears of people returning from jail or prison is owed to the Office of Temporary and Disability Assistance. While federal law currently prevents courts from forgiving child support arrears, it does permit states to forgive or discharge a percentage of arrears or accumulated interest *owed to the state*. In New York, OTDA has the discretion to forgive arrears owed to the state for public assistance payments as an incentive for regular payment of current support. OTDA can forgive these arrears in

⁶ See analysis of state approaches to this issue in Halliwell v. Halliwell, 326 N.J. Super. 442, 454 - 455; 741 A.2d 638, 644-645 (N.J. Super. A.D. 1999).

⁷ See JUDGES' JOURNAL at 6.

exchange for completing an education, job training, or parenting program as well as consistent payment of ongoing child support. Exercise of this discretion would significantly reduce the pressures on low-income, formerly incarcerated parents, promote lawful employment, and increase the payment of ongoing child support.

Other states' experience has shown that child support arrears collection is more successful when a more reasoned approach is taken. The federal Office of Child Support Enforcement has funded demonstration projects with incarcerated obligors in Massachusetts and Texas.⁸ Michigan and Illinois have created ways to compromise when arrears are owed to the state. In Michigan, courts can discharge some state owed arrears if the plans are in the best interest of the parties and the children. Another Michigan initiative will dismiss 75% of the arrears owed to the State if the obligor pays 100% of the arrears owed to the parent and 25% of the arrears owed to the State.⁹ In Illinois the Child Support Agency will reduce state-assigned arrears in exchange for regular payments of support to the family.¹⁰

Low-income parents who are struggling with large amounts of arrears may never be able to satisfy them. Enforcing orders against them without distinguishing between unwillingness and inability to pay will likely result in less support paid overall. Orders and arrears that are beyond a non-custodial parent's ability to pay truly are not in the

⁸ JUDGES' JOURNAL at 9.

⁹ E. Sorenson, L. Sousa and S. Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation*, p. 88, The Urban Institute(7/11/2007).

¹⁰ Id.

best interests of the child.

We urge the Sentencing Commission to recommend the necessary changes in law and policy that would set realistic payment plans upon release from incarceration and forgive state-owed arrears accrued during incarceration.

November 15, 2007



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+-----+
| INFORMATIONAL LETTER |
+-----+

TRANSMITTAL: 93 INF-11

TO: Commissioners of
Social Services

DIVISION: Economic
Security

DATE: March 16, 1993

SUBJECT: PA Cost Containment: Implementation of Certain
Provisions of Chapter 41 of the Laws of 1992 -
Questions and Answers

SUGGESTED

DISTRIBUTION: Income Maintenance Directors
Food Stamps Directors
Medical Assistance Directors
WMS Coordinators
Staff Development Coordinators

CONTACT PERSON: 1-800-342-3715
Public Assistance
Call appropriate person listed for each section

ATTACHMENTS: Questions and Answers - available on-line

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| FILING REFERENCES |
+-----+

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 ADM-26		351	Chapter 41		92 LCM-116
91 ADM-43		352	of the Laws		GIS
91 ADM-38		370	of 1992		IM/DC026
90 ADM-13		385	143-c		(7-25-91)
86 ADM-40					
86 ADM-10					
86 ADM-7					
92 LCM-116					
92 LCM-104					

PA Cost Containment Questions and Answers

A. Application Period of 45 Days for HR Cases

Contact Person: Pat O'Shea, extension 4-9349

1. Q. When does the 45 days begin?
A. The date the completed application is received by the social services district is the date on which the 45 day time period would begin to run. Medical Assistance eligibility is not impacted by this change.
2. Q. Will client booklets be changed to include the HR 45 day wait?
A. Yes. The revised booklets will be available in the spring of 1993. Handouts have been developed and transmitted to districts via 92 LCM-116. These handouts must be provided to all applicants. Posters were mailed to districts in mid-August, 1992.
3. Q. A child is aging out of foster care and knows when it will end. Can the child apply for public assistance 45 days in advance of the foster care case being closed?
A. Yes. However, if the child is under age 19, the child would be applying for PG-ADC and would not be subject to the 45 day time period.
4. Q. A prisoner has been given a release date. Can the prisoner apply 45 days in advance of release?
A. Yes, this should become standard with any kind of pre-release and be arranged so that assistance begins on the release date.
5. Q. There are WMS implications that need to be clarified; e.g., can a future case opening/grant authorization be transacted that would assure a grant reaching the client on the 45th day, even if it were data-entered on the 30th day? Is it possible to open a PA case on WMS in order to issue food stamps (FS) and medical assistance (MA) coverage before the 45th day, and not issue a cash grant?
A. There are system edits in place to prevent the opening of a PA case if there is no PA payment. The system will accept the PA case if an authorization payment line is written, even though the payment period is authorized for a future date. A social services district (SSD) may determine HR eligibility before the 30th day from application date and calculate the HR initial grant to begin on the 45th day. (Payments authorized for periods prior to the 45th day are not State reimbursable unless made to meet emergency

**TESTIMONY OF SCHENECTADY COUNTY DISTRICT
ATTORNEY**

ROBERT M. CARNEY

BEFORE THE

**NEW YORK STATE COMMISSION ON SENTENCING
REFORM**

THURSDAY, NOVEMBER 15, 2007

ALBANY, NEW YORK

Thank you for the opportunity to address you today. I have been the District Attorney of Schenectady County since 1990, the year that crack cocaine was first found on the streets of the City of Schenectady, in the pocket of a young man from the Bronx who came to Schenectady to sell drugs and was found dead, executed in Vale Cemetery after a robbery. I have learned much about the nexus between narcotics and violence since then. In my 17-plus years as District Attorney, my office has convicted 71 people of the crime of murder and 55 percent of those cases were directly or indirectly related to drug crimes. Contrast that to the two people convicted of murder in Schenectady County in the 26 years before crack cocaine arrived on our streets.

As crack permeated our community, our crime rates increased dramatically from 1990 to 1993. In 1993 we received a major commitment of State Police undercover resources in Schenectady which culminated in November with the return of 110 sealed indictments against street level drug dealers. Ultimately 105 were prosecuted. One defendant was acquitted and one received probation. All the others were imprisoned for an average of 3.4 to 8.7 years. In the wake of the incapacitation of those drug offenders in 1994, our crime rate was flat in 1994 and began a 10 year decline thereafter. Most significantly, 1994 was the only year in my county during my tenure without a homicide. This was not a coincidence.

I was President of the New York State District Attorneys Association in 2000 and 2001 when drug law reform proposals began to be heatedly debated, and I traveled throughout the State meeting with newspaper editorial boards and am familiar with the contours of this debate. Proponents of reform have always argued that prosecutors have too much power and judges too little discretion; and that our prisons are filled with low-level non-violent drug offenders who would be better and more inexpensively dealt with in treatment programs. District Attorneys have always countered that unfettered judicial discretion was a disaster historically and that mandatory minimums preserve the ability of prosecutors to protect our communities from violence while at the same time providing the basis for the most effective treatment programs, those in which non-violent addicted offenders are given the option of a program as an alternative to prison. Seven years later these arguments are still being made and the worldview of both sides remains largely irreconcilable.

Yet the sentencing commission has identified common ground. I agree that the law should permit an alternative, non-incarceratory sentence where such disposition is consistent with public safety and all the parties, including the court, agree to that disposition for a non-violent felony offender who is in need of drug, alcohol, mental health or other community-based

treatment and who would otherwise face mandatory prison upon conviction. Improving the quality and accessibility of treatment programs is equally important. In my county we have had a drug court for more than 5 years with approximately 100 participating first-time felons at any given time. For predicate felons we operate a Road to Recovery program using the extended Willard model with approximately 20 participants. For them, 90 days at Willard is followed by 6 months at Daytop Treatment Program. Some defendants are not eligible for Willard because they have a prior B felony drug conviction. I recommend removal of that bar to Willard. Some drug dealers are also drug addicts and a past conviction for drug sale should not be viewed in this context as equivalent to a conviction for a violent felony that would preclude a stay at Willard. These programs rebuild lives and prevent future crimes.

Believing however that drug treatment is appropriate for all drug offenders is both delusional and dangerous. Most drug dealers casually use marijuana but not the narcotics they peddle to people they hold in contempt for their addiction. Put them in a treatment program and they will do well because they suffer from no addiction. But they will of course return much more quickly to the community having learned how to game the system and re-engage in the same predatory behaviors that increase the risks for violence. District Attorneys know that there are

judges who would in the absence of mandatory minimums requiring prosecutorial consent for an alternative sentence move this type of offender through the system with minimal regard to the harm such a sentence would cause to the community.

As this debate has raged, things have changed. Life sentences for Class A drug felonies were repealed with the support of District Attorneys, drug treatment programs have proliferated, judicial attitudes toward drug sentences have shifted toward greater leniency, and both the front and back ends of drug sentences have been reduced. As a result the prison population of drug offenders has decreased 41 percent during the past 10 years. Recent increases in new prison admissions for drug offenders reflect the success of Operation Impact, which provides state resources to upstate communities with urban crime problems so they can implement intelligence based policing to combat violent and gun crime. Not surprisingly incapacitation of drug offenders is often the most effective strategy to reduce violent crime. Yet the changes noted above mean that they are getting out of prison faster and their sentences are shorter than in years past.

Just two days ago in my county a 27 year old pled guilty to a B felony drug possession with intent to sell on the eve of trial. He was arrested in possession of cocaine after public surveillance cameras recorded him engaging in repeated street

level drug sales. The camera shows this man making at least 12 separate drug sales on a busy residential street during a 3 hour period in October of 2006. He appears business-like and doesn't exhibit violence. Yet 6 months later while he was out on bail for those drug charges we believe he murdered a man he suspected of stealing from him. He now stands indicted for that murder and for a separate shooting in which he was the target of a home invasion by someone he had slashed with a knife. This is just one more example of how violence and drugs are intertwined. Those charges remain allegations at this time but for the drug charge he admitted, the judge has promised him a cap of 7 years. This is still a significant sentence, but far less than the 12½ to 25 he would have faced prior to 2004. By contrast, this same judge in 1997 sentenced a drug dealer similarly suspected (and later convicted) of a homicide on a series of drug sales to a sentence (albeit after trial) of 41 2/3 to 125 (reduced by the sentence cap of Penal Law 70.30 to 15 to 30 years).

In conclusion, mandatory minimums for drug dealers and predicate felons are vital tools to protect our communities from the violence associated with drug trafficking. An unintended but real consequence of further reductions in drug sentences will be a weakening of the most effective treatment programs which depend upon the risk of a significant prison exposure to convince a substance abuser to seek treatment. Speaking only

for myself, I would not oppose abolition of mandatory minimums for first-time drug offenders charged only with simple possession and not drug sale or possession with intent to sell. At the same time, drug kingpins and anyone who possesses what appears to be a deadly weapon in connection with a drug enterprise and who is charged with a drug crime arising from that enterprise ought to face enhanced penalties.

Thank you for your commitment to this important issue and for allowing me to speak today.

RAISE THE AGE OF MAJORITY IN OUR JUSTICE SYSTEM TO 18

Imagine you are 16 years old - or maybe even 17. A doctor tells you that you have cancer. Your parents aren't there. Imagine being told that you won't be able to talk with your parents before you make your first decision on what course of action to take for your treatment. You'll be able to talk to them later - maybe once or twice a week, but not privately. Also, your parents will not be allowed to be with you when you meet with your doctor to discuss your treatment. Your cancer may be basil cell carcinoma, or neuroblastoma, or it may be a brain tumor, but is it a glioma? Or some other cancer that has metastasized? And is it Stage 1? Stage 4? Which is better? You are thrown into a world of medical jargon and procedures that you know nothing about. You don't even know what questions to ask, where to even begin. You've had no experience with this. Now imagine that you have to make the choice from the options given, as to what the treatment is to be. Your parents can advise, but cannot dictate the treatment to receive.

I don't imagine there are many here who believe that a decision of that magnitude, with such serious, life-altering consequences should be made by the 16 year old, especially under such conditions. Yet that is exactly the type of situation 16 & 17 years olds ever day in the criminal justice system because New York is one of only 3 states which has 16 as the age of majority for the justice system. This means they can be taken into custody and interrogated by the police without the parents being notified they are even in custody. If they are advised of their rights at all, they are asked to give up a very important right, that of having an attorney present while being questioned. Keep in mind, they cannot even sign a simple contract at this age. If they cannot make bail, they will have no means of having confidential discussions with their parents, and their parents will not be allowed to be there when they are talk with their attorney. And in the end, it is the 16 or 17 year old who is making the decision that will alter his or her life forever.

Some of you may say, "But the justice system is different. If the 16 year old does nothing wrong, he or she won't have to worry about such things. And at 16 they should know right from wrong." However, many of those accused and arrested are, in fact, truly innocent of any wrong doing - it can happen to anyone. Others may actually be guilty as charged. Then there are those who may be guilty of some wrong-doing, but not guilty of all they are charged with, they may be over-indicted. They are the ones who may have the hardest time making decisions. How do you take responsibility for something you did, but not everything for which you are accused? And remember, they are all *innocent until proven guilty*.

Youth with no prior experience with the justice system are at a further disadvantage besides being unfamiliar with the jargon and procedures: In counties with an integrated court system, the family court judge will have no input. Ironically, for those with a juvenile record, the family court judge will be involved. No such help for someone with no criminal record.

I agree that teenagers should know right from wrong. But science now has shown what parents of teenagers have known for centuries: Adolescents don't think the same way adults do, they're more impulsive and don't think long-term. Their brains are still developing, just as the rest of their bodies are.

The US Supreme Court recognized the validity of this evidence, and in 2005, ruled that those under 18 can no longer receive the death penalty. It is cruel and unusual. It found that a minor's "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."

In NY we recognize that those under 18 do not have the maturity to make long range decisions, that they lack the judgment that adults have. We do not allow them to vote, sign contracts, buy tobacco products, marry or enlist in the military. New York recently changed its motor vehicle laws regarding drivers' licenses to limit the driving privileges of 16 & 17 year olds. Anyone over 21 having sex with a 16 year old can be charged with statutory rape or criminal sexual misconduct, felonies, and sent to prison for up to 4 years because a 16 year old cannot legally give consent. Even after 16 or 17 year old is charged and sentenced as an adult and is sent to an adult prison, they cannot buy tobacco products. Supposedly they can understand and weigh the consequences of all the intricacies of the law and the justice system, but they are too young to weigh the consequences of smoking!

Once in adult prisons, minors are at higher risk of suicide than in juvenile facilities. They do not have access to the same level of mental health services or educational services. Despite the fact that the higher the level of education attained, the lower the recidivism rate, NY discontinued TAP awards and college courses for adult inmates in the 1990's. Many of the 16 & 17 year olds were never employed prior to being sentenced. Once out of an adult prison, the youth will then have a criminal record that will follow them the rest of their lives, making it even more difficult to find employment.

Supreme Court Justice Anthony Kennedy wrote, "From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." Most Americans agree, for according to a nationwide Zogby poll this year, 89 % of Americans believe that rehabilitative services and treatment for our youth can help prevent future crime, and studies bear this out. In a NY metropolitan area that straddled the NY/NJ state line, the teens studied came from similar backgrounds & committed similar crimes. Those sentenced as adults had higher recidivism rates and re-offended sooner and more violently than those sentenced under the juvenile courts. So we are not making society safer by sentencing youths as adults.

We should not be sending youth directly to adult courts. A family court judge, a neutral party with experience with adolescents, should make the determination that a case be transferred to adult court. It should not be done by statute, which fails to look at the individual, nor by a prosecutor, whose very role is not one of neutrality. Also, the length of sentences given to those under 18 should be less than that given to adults for the same crimes. For justice to be truly served, consequences must be commensurate with the level of culpability of the defendant, and the Supreme Court has said that a person's culpability is diminished greatly by reason of youth and immaturity, and, I would add, mental health issues. Over half of minors in custody suffer from some sort of mental health problem which further compromises their ability to think clearly.

I have included some fact sheets with my written testimony, as well as the Final Report written by the Connecticut Juvenile Jurisdiction Planning & Implementation Committee. Connecticut is in the process of changing its age of majority back to 18.

Adolescents are not known for thinking long-term. However, adults, especially given time to study an issue, should think long-term. You have that opportunity. Please take that opportunity and change the age of majority in NY's justice system to 18.

Attachments:

"When minors are tried as adults" Christian Science Monitor, November 8, 2007 edition

Fact Sheet: "Youth under Age 18 in the Adult Criminal Justice System" by Christopher Hartney, May 2006

"The Nathaniel Project: An Alternative to Incarceration Program for People with Serious Mental Illness Who Have Committed Felony Offenses," National Gains Center

"Fact Sheet: Trying Youth as Adults." Campaign for Youth Justice

Final Report written by the Connecticut Juvenile Jurisdiction Planning & Implementation Committee, also found at: http://www.housedems.ct.gov/jjpic/070212_JJPIC_report_revised.pdf

from the November 08, 2007 edition - <http://www.csmonitor.com/2007/1108/p08s01-comv.html>

When minors are tried as adults

States must reverse a trend from the 1990s that made it easier to try juveniles in adult court.

Rarely does a state legislature so quickly correct itself. In June, Rhode Island passed a law that sent all 17-year-old defendants straight to adult court. But youth advocates howled at the idea of treating minors as adults. Last week, the legislature overturned the law. May other states follow.

The lawmakers learned that lowering the age in which a youth enters the world of adult courts, sentences, jails, and prisons will not save the state money – as the law originally intended.

But those opposed to the law voiced concerns beyond the cost issue. Since the 1990s, when virtually every state in the country made it easier to try juveniles as adults, research about this practice has revealed dangers: higher percentages of repeat offenses (and more violent ones) than for comparable youths who went through the juvenile justice system with its support and rehabilitation services.

Studies show minors in adult facilities may experience more emotional distress, physical abuse, and suicide. Even if they come away with only probation, their convictions stand as roadblocks to jobs.

In Rhode Island, youth advocates argued successfully that the law has monetary *and* social costs.

Thankfully, some states are beginning to reexamine what can only be described as a craze to get tough on juvenile crime. It was encouraged by the conviction of five teenagers in the rape and beating of a New York Central Park jogger in 1989. The teens were deemed "superpredators," indicative of a new, more dangerous breed of roving, violent youths (their convictions were thrown out in 2002 after DNA evidence snared a serial rapist).

Some states responded with a blunt tool – simply lowering the age at which all youths enter the adult criminal justice system. Thirteen states try under-18 youths as adults, though Connecticut has decided to raise the juvenile cutoff age to 18 beginning in 2010.

Other changes allowed prosecutors, instead of judges in juvenile court, to decide whether to try a minor as an adult. Types of crime and the record of a suspect also pushed juveniles into the adult system.

The result was a 208 percent increase in the number of offenders under 18 in adult jails between 1990 and 2004. Every year, about 200,000 juveniles are prosecuted as adults – the majority of them for nonviolent offenses. In Wisconsin, for instance, all 17-year-olds end up in adult courts even though only 15 percent of them are charged with violent crimes (the state is now reviewing this).

These laws were intended to stop a youth crime wave that peaked in 1993 – and to lower the disproportionate participation of minors in serious violent crime. But states already had the discretion to direct special cases to adult court; these laws were an overreaction.

The Supreme Court gave important weight to this view when it overturned the death penalty in 2005 for youths under 18. The justices found a minor's "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." In other words, young people's thinking and judgment are not as developed as adults', and so the legal system should not treat them as adults.

There's a reason why the juvenile justice system is so named. Not that it's perfect. But states must get back to using it and improving it.

FACT SHEET

Views from the National Council on Crime and Delinquency

Youth Under Age 18 in the Adult Criminal Justice System

Christopher Hartney

Negative Impacts on Youth Processed in the Adult System

- In most states, youth tried as adults are subject to harsher adult penalties, including life without parole, than youth processed in the juvenile system.
- Youth convicted in the adult system receive little or no rehabilitative programming, which is mandated in the juvenile system.
- Youth convicted as adults cannot as easily expunge their criminal record, which affects their future opportunities in education and employment.
- Youth are at greater risk of victimization and death in adult jails and prisons than in juvenile facilities.
- The practice of sentencing youth as adults most seriously impacts African American, Latino, and Native American youth.¹
- Youth convicted in the adult system may be disenfranchised and denied military service.
- Youth held in adult facilities are more likely to recidivate than similar offenders remaining in the juvenile system.²

In abolishing the death penalty for persons under age 18 in 2005, the US Supreme Court noted "...our society views juveniles...as categorically less culpable than the average criminal."³ Research shows that youth under age 18 can benefit from the rehabilitative nature of the juvenile justice system.⁴

This fact sheet presents statistics and issues related to youth under the age of 18 involved in the adult criminal justice system in the US, regardless of whether their state considers them adults or juveniles.



The Nathaniel Project: An Alternative to Incarceration Program for People with Serious Mental Illness Who Have Committed Felony Offenses

Fall 2002/Revised Summer 2005

Background

As growing awareness of the needs of people with co-occurring disorders in the justice system has led to the development of diversion models, the vast majority of efforts have focused on defendants who are charged with nonviolent, low-level misdemeanor offenses. The reasons for this are obvious: releasing low-level offenders to treatment is easier to build consensus around, politically safer, and less likely to lead to outraged headlines if a program participant re-offends. While diversion focused exclusively on people accused of low-level offenses is a critical need of the justice system, it does not address the needs of the many people with serious mental illness charged with felony level offenses. These offenders are often sentenced to lengthy prison or jail terms at considerable cost to the city and state, only to return again to the community even less prepared to lead stable lives. This program brief describes New York City's Nathaniel Project, an innovative two-year alternative to incarceration program for people with serious mental illness who have committed felony offenses.

The Program

Started in January 2000 by the Center for Alternative Sentencing and Employment Services (CASES, Inc.), New York City's oldest and largest alternative to incarceration agency, the Nathaniel Project has received funding from the New York City Council, the van Ameringen Foundation, New York Community Trust, the Schnurmacher Foundation, the Cummings Foundation, and the United Way.

Eligibility Criteria

The Nathaniel Project is exclusively for people with psychiatric disabilities who have been indicted on a felony offense and are facing a lengthy sentence in New York State prison, usually for terms of three to six years. The program will consider any defendant regardless of offense, including violent offenses. Aside from being prison-bound, clients must have seriously impaired functioning due to an Axis I psychiatric disability and motivation to engage in treatment.

Intake Process

Unlike many mental health programs that collect extensive information from referral sources and base intake decisions on this information, Nathaniel Project staff often begin an intake with no information beyond a call from a defense attorney who suspects that a client may have psychiatric problems. Clients are referred any time after arrest and prior to disposition. The majority of referrals come from defense attorneys, but some come from community mental health workers and family members, and a growing

number from judges and prosecutors. Regardless of referral source, the program interviews potential clients only with the permission of the defense attorney.

Virtually everyone screened for the program is incarcerated at the time of referral due to inability to make bail. Nathaniel Project staff interview clients either in the jail or in the holding pens at the courthouse. Screening consists of a semi-structured interview that is about an hour long, where staff not only gather information about the individual's psychiatric, substance abuse, and housing histories and assess risk, but also educate the potential client about what will be expected of them if they choose to be part of the Nathaniel Project. They also talk to the client about what their goals are, who the important people in their lives are, and how they think the program can best work with them and support their recovery. Staff typically make intake decisions after this first interview, and continue to gather information about the client by requesting medical records and reaching out to the client's family and friends, as well as mental health providers (both in the community and the jail) who know the client.

The Nathaniel Project has never rejected a potential client because of the severity of the offense or because the individual has a history of violence. The project is careful to draw the distinction between criminal charges and actual risk to public safety. Each case is closely evaluated, and those that pose a real public safety risk are screened out.

The Project's staff believes that it is by serving clients charged with violent crimes that the program makes the greatest system impact by demonstrating to both the criminal justice system and community mental health providers that these individuals can be treated safely in the community. Moreover, community safety itself is improved by linking to treatment those offenders most likely to commit violent offenses who have previously failed in treatment. Approximately 50 percent of the clients in the program were charged with violent offenses, including burglary, robbery, assault, sexual assault, arson, and bank robbery, and 75 percent have histories of violence. The clients who committed nonviolent offenses were almost all involved in drug sales.

When the program rejects potential clients, the most common reason is that after assessing their legal situation, it appears that they are not actually prison bound. Because the Nathaniel Project is an intrusive, two-year program, as well as a scarce resource, its services are reserved for prison-bound felons. The Nathaniel Project will not accept clients who, although they would benefit from the program's services, would receive non-incarcerative or short jail sentences in the normal "marketplace" of the criminal justice system.

Court Advocacy

Once a defendant is accepted by the Nathaniel Project, program staff advocate for the client with the judge, prosecutor, and defense counsel; educate them about the client's psychiatric needs; and work to convince these decision-makers that releasing the client to the Nathaniel Project would evince a better outcome for the client and the community than sending the person to prison. This can be an easy task or an extremely difficult one, depending on individual attitudes about mental illness, the political climate, and the nature of the client's offense and history. In some cases, staff have gone to court 10 times or more, submitted numerous written reports, and had lengthy meetings with prosecutors, defense counsel, and judges to help them understand how the program works, why the client will benefit from treatment, what the Nathaniel Project plan will be for that client, and to address their concerns about public safety. These efforts are almost always successful in gaining a client's release to the program.

Pre-Release Planning

After there is an agreement that the client will be released to the Nathaniel Project, staff members arrange the components of the agreed-upon treatment plan prior to the client's release. Clients are typically released to the custody of the Nathaniel Project after pleading guilty; their sentencing is adjourned with the understanding that if they successfully complete the program, they will not be sentenced to incarceration, and, if they fail, they will be sentenced to a significant period in state prison.

The Nathaniel Project's plan for offering services to the client and the program's expectations of the client are set forth in a contract that both the client and Nathaniel Project staff sign and that is then shared with the judge, prosecutor, and defense and incorporated into the court record.

In most cases, the treatment plan includes a supervised housing or residential treatment program, not only because courts prefer to see clients in supervised settings, but also because the vast majority of clients are homeless (92 percent at time of intake) and suffer from co-occurring substance use disorders (88 percent). Nathaniel Project staff also advocate on behalf of the client with the jail-based mental health staff to ensure the optimal treatment for the client prior to his/her release and that all other steps for pre-release are taken. At the same time, Nathaniel Project staff advocate with community treatment providers to accept the client for housing and other services.

The greatest challenge the Nathaniel Project faces is locating appropriate treatment services in the community. This has been difficult, both because of a general lack of services in New York City and because of the resistance many providers demonstrate toward working with clients with serious criminal justice involvement and/or histories of violence. A key to overcoming this barrier has been developing strong relationships with a few large providers and "selling" Nathaniel Project clients to providers based on the very intensive services that the program offers, with the promise that if the provider wishes to stop working with the client, Nathaniel Project staff will find an alternate placement immediately.

Post-Release Case Management and Supervision

Once a client is released to the Nathaniel Project, the real work begins. Staff members describe the Nathaniel Project model for working with clients, only half-jokingly, as "intrusive case management." What this means in practice is that workers see the client in the community and at the office up to seven days a week (and a minimum of three days a week in the beginning), if necessary, and are on-call 24 hours a day, seven days a week. By accompanying clients to appointments, staff ensure that clients get all the services they need (including medication and treatment, benefits, and housing). They also escort clients to court dates (generally every one to three months) to report to the judge on the client's progress in the program. Even more importantly, however, the staff member forms a relationship with the client. All staff members are master's-level social service professionals skilled in therapeutic counseling, and their task is not just to meet the survival needs of clients, but to also to provide counseling. The goal of the counseling is to help clients to examine the circumstances and choices that have led them to this point in their lives, help them imagine alternatives, and guide them toward achieving the goals they have chosen.

Essential to the Nathaniel Project is the program's treatment philosophy: staff members have high expectations for every client and will go to any lengths necessary to help each client succeed. This includes not giving up even if a client has multiple failures in treatment. When clients abscond from their treatment programs, Nathaniel Project staff members search for the client in places they are likely to be found, including the streets. If the Nathaniel Project is unable to locate a client, staff members notify counsel and appear before the judge to ask that a bench warrant be issued. Because of the relationship that develops between the client and the worker, however, clients who have absconded almost always get in touch with the program again; at that point, if the client wants another chance, staff escort the

client to court voluntarily, educate the judge about the role of relapse in recovery and any special circumstances that mitigate the client's behavior, and advocate for the client to be released to the program again. These efforts are usually successful.

After two years in the Nathaniel Project, clients return to court to have their charges reduced or dismissed, and their participation in the program ends. The goal of the program is for each client, by the end of the two years, to be connected with housing and mental health services that they will continue to participate in without court supervision.

The table at right presents client characteristics for the 53 individuals accepted and served by the Nathaniel Project since program inception. The majority of clients are male (72%), African-American (56%) or Latino (36%), and older (52% over age 36). The principal psychiatric diagnoses among clients are schizophrenia (33%), schizoaffective disorder (21%), major depression (21%), bipolar disorder (21%), and psychotic disorder (4%). The vast majority (85%) have a co-occurring substance use disorder. Half of the clients have health problems, and three-quarters of these have more than one health problem. By and large, these health problems have gone untreated during years of homelessness. Fifty-seven percent were homeless at arrest. The offenses for which clients are sent to the Nathaniel Project are serious and include drug sales (36%), assault (21%), robbery (13%), burglary (11%), and arson (6%). Most have at least one previous felony conviction (74%).

Results

The Nathaniel Project measures its success by four key indicators: public safety, retention, treatment, and housing. In each of these areas, the program has shown marked success.

Public Safety Participants in the Nathaniel Project demonstrated a dramatic decrease in arrests. The number of arrests dropped from 101 (35 misdemeanor and 66 felony) arrests in the year prior to and including arrest on the charge that brought them into the program down to 7 (5 misdemeanor and 2 felony) arrests in the year since intake.

Retention The Nathaniel Project has tremendous success engaging clients who have previously repeatedly disengaged from treatment. At six months, the program has 88 percent retention of participants and 80 percent retention over the course of two years.

Treatment One hundred percent of participants are engaged in treatment.

Housing At intake, 92 percent of Nathaniel participants were homeless. After only one year, 79 percent of participants had permanent housing.

As a result of the experiences of the Nathaniel Project, a number of principles have emerged that can guide other programs:

- First build the program, then build consensus.
- Assess the need.
- Seek support (financial, political, operational) from the criminal justice and community mental health systems, but be prepared to move forward even if all stakeholders are not on board at the outset.

- Design a program and offer it to the courts.
- Build defendants' rights into program design.
- Hire highly skilled workers.
- Engage only master's-level clinicians as case managers, those experienced in recovery work with high-risk/high-need populations.
- Ensure that staff have combined criminal justice, mental health, and substance abuse expertise and commitment to the population.
- Use simple intake criteria.
- Screen clients for SPMI, willingness to participate, felony-level offense, and prospect of significant prison time.
- Ensure that program requirements are proportionate to risk of prison time.
- Conduct ongoing education and advocacy with courts and service providers.
- Intervene and advocate for clients when system players seek to discharge or remand them.
- Seek out and partner only with community-based programs responsive to the needs of this population.
- Consistently engage clients.
- Maintain appropriate, manageable caseloads (1:10).
- Be accessible 24 hours a day, seven days a week.
- Deliver services wherever the client is.
- Use a harmreduction approach.
- Demonstrate to the client an unwillingness to give up.
- Demonstrate program effectiveness.
- Collect data about criminal justice and community reintegration indicators.

The largest challenge faced by the Nathaniel Project was securing steady funding for the program. The project was initially funded by seed money from the New York City Council and several private philanthropic foundations. This money allowed the project to start operations and begin collecting data about program efficacy. However, it proved difficult to turn this into long-term funding streams. While all of the system players, whether city or state mental health or criminal justice agencies, saw the program as filling an important function, they viewed the responsibility for the program as lying in the others' camps. This conundrum was further exacerbated by limitations on the manner in which existing funding streams could be spent.

Recently, this problem has been resolved. The Nathaniel Project will soon transition into a Forensic ACT (Assertive Community Treatment) Team licensed by the New York State Office of Mental Health, allowing the project to bill Medicaid for services. The Office of Mental Health will provide additional funding for the project. While this development will ensure that these felony-level offenders with serious mental illness will continue to be served, it will also mean a shift in the model that had been proven so successful.

Presently the case management model is a hybrid of court-based diversion and therapeutic case management. With the transition to ACT, the Nathaniel Project will be required to make staffing changes, bill for services, add new internal policies, and will be limited in the variety of programs to which the Project can refer clients. Ultimately, these adaptations will likely alter the culture of the program and may have an impact on the program's overall success. These continuing lessons learned from the Nathaniel Project will help other programs as they also seek to structure an appropriate program with stable funding streams.

About CASES...

CASES is New York's oldest and largest nonprofit that provides sentencing options to the justice system and programs that help offenders reintegrate to the community. Evolving out of two programs created in the 1960s and 70s, CASES' mission is to increase the understanding and use of community sanctions that are fair, affordable, and consistent with public safety. Last year, CASES' alternative sentencing programs served more than 4,500 offenders, including youth felony offenders, adult repeat misdemeanants, adult felony offenders with a mental illness, misdemeanor drug offenders and prostitutes, and parole violators. Recently, CASES has created a school for court-involved youth and school placement services for youth exiting detention and has taken the first steps to build housing for adult offenders with mentally illness. CASES continually seeks opportunities to develop innovative programs that address the justice system's need for a wide array of sentencing options and programs that meet the treatment and service requirements of special offender populations.

Nathaniel Project Profile: Shawn

Shawn, a 26-year-old African-American man, was released to the Nathaniel Project after he was charged with a felony-level drug sale. In August 2002, Shawn completed the Project.

Born in Queens to a 15-year-old mother, Shawn was raised primarily in foster care and group homes. He first received mental health treatment when he became suicidal at age 9. Treated with Ritalin and mood stabilizing medications throughout his childhood and adolescence, Shawn stayed in a total of seven group homes, and had very limited contact with his mother. As a teenager, he abused crack cocaine, alcohol, and other drugs. Later, while living in a residential school, Shawn was arrested for a robbery and was sent to a psychiatric hospital where he was diagnosed with schizophrenia. After he was stabilized on medications, he was returned to a group home.

Shawn became homeless when he was discharged from foster care. He moved between hotels, family, and friends, with no stable place to live and no way to support himself. He was hospitalized several times for acting bizarrely and responding to voices he heard telling him to kill himself; he also continued using drugs. He sometimes took medications, but remained stable only for brief periods of time.

The prosecutor and judge agreed to release Shawn to the Nathaniel Project due to vigorous advocacy on the part of his attorney and Project staff. Staff worked with Shawn on anger management and gave his treatment providers notice that he was working to control his rage. In addition to dealing with the emotional scars left by a childhood in foster care, Shawn had to deal with the physical wounds of gunshots he had suffered as a teenager. Staff willingness to accompany him to the hospital when one of his old wounds became infected demonstrated a level of care and involvement that was unfamiliar to him. The trust Shawn built in staff as a result of this experience soon spread to other areas of his life. He began to think that treatment could help him and willingly met with Project staff and treatment providers to discuss his progress.

Shawn made exceptional progress during his time with the Nathaniel Project. He has been free of illegal drugs and mentally stable, and graduated from a MICA residential treatment program. He lived for a year in a scattered-site supportive housing program and then moved into his own apartment, where he continues to receive services from a mental health housing provider. He has attended the same day treatment program for two years and will soon graduate. Upon completing day treatment, Shawn plans to attend a peer advocacy training program, so he can seek employment as a peer counselor and help other mental health consumers.

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Fact Sheet: Trying Youth as Adults

What does it mean to "try youth as adults"?

Since 1899, when a separate court for young people was created in Chicago, young people who broke the law were brought before the juvenile court. In rare cases, judges decided which youth were "not amenable to treatment" in the juvenile court. In these rare cases, the jurisdiction of the juvenile court was "waived" and the youth were sent or "transferred" to the adult criminal court. In more recent years, states have passed a number of laws to expand the mechanisms in which youth may be prosecuted in adult court.

How are youth "tried" as adults?¹

There are five major ways that youth can be prosecuted in adult court:

Judicial Waiver

45 states allow juvenile court judges the discretion to have a youth's case tried in the adult criminal court.

Direct File or "Prosecutorial Discretion"

15 states allow prosecutors the discretion to have a youth's case tried in the adult criminal court.

Mandatory Waiver

15 states require juvenile court judges to automatically transfer a youth's case to adult criminal court for certain offenses or because of the age or prior record of the offender.

Statutory Exclusion

29 states automatically require a youth's case to be tried in the adult court based on the age of the youth or the alleged crime or both.

Age of Majority Statutes

Three states—Connecticut, New York, and North Carolina—automatically prosecute 16- and 17-year-olds as adults. Ten states—Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas, and Wisconsin—automatically prosecute 17-year-olds as adults.²

How many youth are tried as adults?

Despite the fact that many of these state laws were intended to prosecute the most serious offenders, most children who are tried in adult courts are there *no matter how minor their offense*.

Estimates range on the number of youth prosecuted in adult court nationally. Some researchers believe that as many as 200,000 children are prosecuted every year.

How does "trying youth as adults" affect youth?

Youth tried in the adult criminal court:

- Face the same penalties as adults, including life without parole;
- Will receive little or no education, mental health treatment, or rehabilitative programming;
- Will obtain an adult criminal record that may significantly limit their future education and employment opportunities;
- Are at greater risk of assault and death in adult jails and prisons with adult inmates; and
- Will be more likely to re-offend than youth not exposed to the negative influences and toxic culture of the adult criminal punishment system.

What is the impact on youth of color?

Youth of color are most negatively affected by policies to try youth as adults. For example, in the Building Blocks for Youth report, *Youth Crime/Adult Time: Is Justice Served?*,³ key findings reveal disturbing aspects in the transfer of youth, especially youth of color, to the adult criminal court. The findings show overrepresentation and disparate treatment of youth of color and raise serious questions about the fairness and appropriateness of prosecuting youth in the adult criminal system.

Does trying youth as adults reduce crime and increase public safety?

Study after study has demonstrated that youth transferred to adult court are more likely to re-offend than those sent to the juvenile justice system for the same type of offense and with similar prior records. Of those youth who committed new crimes, those sent to adult court re-offended at approximately twice the rate of those sent to juvenile court.

Re-Arrest Rates Among Youth Sentenced in Adult Court, a 2001 analysis in Florida, found that even after controlling for race, initial charge, and age, youth receiving adult sanctions were 4.90 times more likely to re-offend, including technical violations, and 2.26 times more likely to re-offend, excluding technical violations (meaning that a new case was brought against the youth).⁴

A 2002 study, *Juvenile Transfer to Criminal Court Study: Final Report*, also found that youth receiving juvenile sanctions had lower recidivism rates than youth receiving adult sanctions. While comparing 315 "best-matched" pairs, they found that "49% of the youth transferred to adult court recidivated, compared with 37% of those who remained in the juvenile system."⁵

Another study by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, published in 2006, also found lower recidivism rates while comparing youth in the juvenile justice system in New Jersey with youth transferred to the adult system in New York. "By using the two groups from the same metropolitan area, with similar economic opportunity, access to weapons, drug use, gang influences, and other influences on crime, any differences in re-arrest between the two groups can be assumed to be due to the different court systems. The re-arrest rates were calculated after controlling for time on the street." The results found that youth prosecuted in the adult courts in New York were 1.85 times more likely to be re-arrested for violent crimes than those prosecuted in the New Jersey juvenile courts, and 1.44 times more likely to be re-arrested for felony property crimes.⁶

Trying youth as adults does not reduce crime or increase public safety. In fact, youth tried as adults re-offend more than their counterparts in the juvenile justice system.

Notes

1. Snyder, H. N., & Sickmund, M. (2006). *Juvenile offenders and victims: 2006 national report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
2. Office of Juvenile Justice and Delinquency Prevention. *Upper age of jurisdiction*. Retrieved November 21, 2006, from <http://ojjdp.ncjrs.org/ojstatbb/ezaco/html/upage.html>
3. Juskiewitz, J. (2000). *Youth crime/adult time: Is justice served?* Washington, DC: Building Blocks for Youth Initiative.

4. Miami-Dade County Public Defender's Office. (2001, October 15). *Re-arrest rates among youth sentenced in adult courts: Evaluation report for juvenile sentencing advocacy project*. Retrieved October 12, 2006, from http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf
5. Florida Department of Juvenile Justice. (2002, January 8). *A DJJ success story: Trends in transfer of juveniles to adult criminal court*. p.2.
6. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. (2006). *Issue Brief 5: The changing borders of the juvenile justice: Transfer of adolescents to the adult criminal court*. Retrieved November 21, 2006, from <http://www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/ADJJTRANSFER.PDF>

**CONNECTICUT
JUVENILE JURISDICTION
PLANNING AND IMPLEMENTATION COMMITTEE**

FINAL REPORT

February 12, 2007

EXECUTIVE SUMMARY

Connecticut remains one of only three states—along with North Carolina and New York—that draw the line of adulthood for criminal justice purposes at 16. As a result, Connecticut is out of step with both the vast majority of states in its treatment of youth and the current scientific research demonstrating significant cognitive differences between adults and older adolescents.

In 2006, the Connecticut General Assembly established the Juvenile Jurisdiction Planning and Implementation Committee (the Committee) and charged it with creating a plan to align the state's policies with mainstream practice. State lawmakers took this action with the knowledge that incorporating 16- and 17-year-old youth into the juvenile justice system will not only promote public safety in Connecticut by fostering positive youth development, but it will also, in the long run, cost state taxpayers less than handling this distinct category of youth in the adult criminal justice system.

Since it first convened in August 2006, the Committee has gathered public testimony, considered analyses from studies commissioned by state agencies, and met regularly to weigh this information and evidence. As a result of these efforts, the Committee recommends that the General Assembly take the following actions:

- Pass legislation in the 2007 session to raise the age of juvenile jurisdiction from 16 to 18, effective July 1, 2009;
- Prepare the existing state juvenile justice system for this change by improving court diversion and pre-trial detention practices;
- Establish Regional Youth Courts to accommodate the expected influx of 16- and 17-year-olds;
- Phase in community and residential services and staffing to serve 16- and 17-year-olds effectively;
- Create a Policy and Operations Coordinating Council with a clear mandate to implement these recommendations and to resolve, prior to the effective date, key tasks and outstanding issues identified in this report; and
- Appropriate funds necessary to accomplish these changes prior to the effective date.

These recommendations, ratified and endorsed by the Committee, form the basis of a legislative plan to incorporate 16- and 17-year-olds into Connecticut's juvenile justice system. This plan will be introduced for consideration by the General Assembly during the 2007 legislative session.

INTRODUCTION

This is the final report of the Juvenile Jurisdiction Planning and Implementation Committee (the Committee) established by the Connecticut General Assembly in 2006. While the official product of the Committee's work since its establishment last year, the report represents more broadly the culmination of over five years of reflection, collaboration, and compromise among Connecticut practitioners, legislators, and advocates united around a common purpose: to bring Connecticut justice policy in line with national best practice by incorporating all youth under 18 years of age under the jurisdiction of the Superior Court for Juvenile Matters ("juvenile court").

At the outset of this report, the Committee reaffirms that raising the age of juvenile jurisdiction makes sense from a policy perspective and will align Connecticut with both the vast majority of states in their treatment of youth and the current scientific research demonstrating the significant relevant differences between adults and older adolescents. Furthermore, the Committee is confident that incorporating 16- and 17-year-old youth into the juvenile justice system will not only promote public safety through positive youth development, but will also cost less than handling this distinct category of youth in the adult criminal justice system over the long term.

This report on the Committee's implementation plan and recommendations is presented in two sections, preceded by a background section on broader issues of juvenile justice practice, a summary of Connecticut's work on this topic over the past five years, and a description of the Committee's mandate and methodology. Section A details the Committee's implementation plan and recommendations. This section delineates a timeline and substantive methods to modify operational and system components critical to the successful expansion of juvenile jurisdiction. The recommendations described in Section B are intended to structure an ongoing process and a system of accountability for the transition period. Combined, the recommendations presented in Sections A and B ensure that the juvenile justice system will be ready to accommodate 16- and 17-year-olds by the effective date of July 1, 2009.

The recommendations and implementation plan set out in this report usher in a new era for Connecticut and its youth—one in which the state dedicates itself to focusing on the inherent potential of each of its children while also maintaining the safety of its families and communities. The Committee recognizes that the implementation of this initiative is a complex undertaking that affects a host of agencies, service providers, communities, and ultimately young people themselves. It also realizes that the goal is well within reach. With this plan, the Committee provides realistic and concrete steps to bring 16- and 17-year-olds into the juvenile justice system in a timely, effective, and fiscally prudent manner.

BACKGROUND

A full appreciation of this report and its recommendations must be predicated upon an understanding of their context. Accordingly, this section provides a brief overview of some of the issues associated with raising the age of juvenile jurisdiction, a relevant history of juvenile and criminal justice practice in Connecticut, and a summary of the methodology used by the Juvenile Jurisdiction Planning and Implementation Committee.

Raising the Age: An Overview of the Issue

More than 100 years ago, recognizing the inherent differences between youth and adults, reformers created a separate justice system for juveniles. At the time, youth were thought to lack moral and judgmental maturity and were therefore considered less culpable for deviant behavior than were adults. In more recent years, however, high rates of violence among youth inspired many lawmakers to become more “tough on crime.” In Connecticut, as elsewhere, laws were passed that increasingly brought young people—especially older teenagers—under the jurisdiction of the adult court. An improved understanding of youth development, supported by greater scientific knowledge about brain functioning, has caused lawmakers to reconsider this approach to administering justice to young people.

Many of the factors associated with this trend are reflected in the U.S. Supreme Court’s March 2005 decision outlawing the death penalty for anyone younger than age 18. In *Roper v. Simmons*, the Court noted:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First. . . [a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. . . . The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . The third broad difference is that the character of a juvenile is not as well formed as that of an adult. . . . These differences render suspect any conclusion that a juvenile falls among the worst offenders. . . . From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed. . . . For the reasons we have discussed . . . a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.¹

In addition to these “general differences” noted by the Supreme Court to be associated with youth under age 18—a lack of maturity, heightened susceptibility to external influences, and insufficiently developed character—counting 16- and 17-year-olds as

¹ 543 U.S. 551, 569-70, & 574 (2005).

adults in the criminal justice context is inconsistent with their treatment in almost every other legal context. By law, in most states 16- and 17-year-olds cannot vote, purchase or consume alcohol, gamble, or marry without the written consent of their parents. Neither can they serve on the juries that decide whether a 16- or 17-year-old will go to prison.

Critical both to the Supreme Court's reasoning and to evolving national best practices are recent developments in neuroscience suggesting that teenagers are neither competent to stand trial under the same circumstances as adults nor as blameworthy for their actions. Brain imaging studies comparing adults and adolescents confronted with difficult decisions show, for example, that adolescents, whose brains are not yet fully developed, take longer than adults to judge something to be a bad idea and are slower to respond appropriately. Adults have also been found to have more activity in the parts of the brain that create mental imagery and signal internal distress. This has led researchers to believe that adults who are confronted with a potentially dangerous scenario are more likely to create a mental image of possible outcomes than children are and to have an adverse, preemptive response to those images.² Other studies have confirmed significant age-related differences in cognitive processing affecting adolescents' ability to make sound judgments.³

Incorporating 16- and 17-year-old youth into the juvenile justice system also makes sense from a policy perspective. Studies comparing the recidivism rates of youth processed in the juvenile system with those handled in the adult system indicate that youth processed in the adult system are likely to re-offend more quickly and at higher rates.⁴ The juvenile justice system is typically characterized by higher staff-to-youth ratios, staff who are philosophically oriented toward treatment and rehabilitation, and programming that facilitates the development of social competencies. Youth in adult facilities, meanwhile, are particularly vulnerable to depression, sexual exploitation and physical assault.⁵

² A.A. Baird, J.A. Fugelsang, and C.M. Bennett, "What were you thinking?" available at <http://www.theteenbrain.com/research/projects/goodidea2.php> [last visited February 4, 2007].

³ Studies conducted by the John D. and Catherine T. MacArthur Research Network on Adolescent Development and Juvenile Justice continue to support this conclusion. Analyses have indicated that there are significant age-related changes in individuals' likelihood of considering the future consequences of their actions and in their susceptibility to peer influence. Available at <http://www.mac-adoldev-juvjustice.org/page26.html> [last visited February 4, 2007].

⁴ Most studies comparing the two systems have corroborated this claim. See, e.g., J.A. Fagan, "The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders," *Law and Policy* 18 (1 and 2): 77-113 (1996); D.M. Bishop, C.E. Frazier, L. Lanza-Kaduce, and L. Winner, "The transfer of juveniles to criminal court: Does it make a difference?" *Crime and Delinquency*, 42: 171-191 (1996); L. Winner, L. Lanza-Kaduce, D.M. Bishop, and C.E. Frazier, "The transfer of juveniles to criminal court: Reexamining recidivism over the long term." *Crime and Delinquency* 43(4): 548-563 (1997).

⁵ See, e.g., Coalition for Juvenile Justice, *Childhood on Trial: The Failure of Trying & Sentencing Youth in Adult Criminal Court*, 2005, available at <http://www.appa-net.org/about%20appa/CJJ-report.pdf> [last visited February 4, 2007]; Jason Ziedenberg and Vincent Schiraldi, *The Risks Juveniles Face When They Are Incarcerated with Adults*, Justice Policy Institute, June 1997, available at <http://www.cjcj.org/jpi/risks.html> [last visited February 4, 2007]; Martin Forst et al., "Youth in prisons and training schools: perceptions and consequences of the treatment-custody dichotomy," *Juvenile and Family Court*, vol. 4 (1989) (finding that child offenders who enter adult prison when they are still below the age of 18 are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be attacked with a weapon than are minors in juvenile facilities).

Processing youth in the juvenile justice system, particularly when alternatives to custodial incarceration are utilized, may also cost less than processing youth as adult criminals.⁶ In the 2006 legislative session, researchers from the Urban Institute testified to the Connecticut General Assembly that moving 16- and 17-year-old youth out of the adult system and into the juvenile system, while maintaining all other services for youth as they are, would return approximately \$3 in benefit for every \$1 in cost, assuming no new juvenile detention construction is required. If new construction is required, the transition of juveniles would result in slightly less than a \$1 in benefit for every \$1 in cost in the year the construction occurs, and \$3 in benefit for every \$1 in cost in subsequent years.⁷ Evidence-based programs that have demonstrated positive pro-social outcomes among youth participants—such as Functional Family Therapy, Multidimensional Treatment Foster Care, and Multi-Systemic Therapy—yield dramatic cost savings immediately and, over the long term, each dollar spent on such programs can result in cost savings in the range of \$11,988, \$27,202, and \$38,047 per youth respectively, based on significant reductions in recidivism and in averted incarceration and hospitalization costs.⁸

Historical Context In Connecticut

Connecticut is one of only three states—along with North Carolina and New York—that draw the line of adulthood for criminal justice purposes at age 16.⁹ In keeping with national trends and the evolving understanding of the fundamental differences between youth and adults, however, Connecticut has been considering extending the age of juvenile jurisdiction for some time.

In 2003, the General Assembly created a “Juvenile Justice Implementation Team” to “review all matters, including funding, necessary to implement an increase, by not more than two years, in the age limit for purposes of jurisdiction in juvenile matters.” Consistent with its legislated mandate, after an extensive review the Implementation

⁶ See the forthcoming National Center for State Courts report, “Potential benefits and public savings in changing juvenile jurisdiction in Connecticut Superior Court.” The report details considerable potential cost savings and cost avoidance that Connecticut can achieve through shorter pre-trial detention, lower potential re-arrest rates, and court caseload benefits.

⁷ John Roman, *The Economic Impact of Raising the Age of Juvenile Jurisdiction in Connecticut: Remarks before the Judiciary and Appropriations Committee, Connecticut General Assembly, February 21, 2006*, Urban Institute, 2006; see also Aos, Steve, Robert Barnoski, Roxanne Lieb, and Polly Phipps, *The Comparative Costs and Benefits of Programs to Reduce Crime, v 4.0*. Olympia, WA: Washington State Institute for Public Policy, 2001.

⁸ See Hornby Zeller Associates, “Connecticut service needs study: 16 and 17-year-old court-involved youth: preliminary findings,” Presentation to the Juvenile Jurisdiction Planning and Implementation Committee, January 4, 2007.

⁹ Thirty-seven states and the District of Columbia maintain an upper age limit of 18, while 10 states use an upper age limit of 17. A number of states that draw the line at ages younger than 18 have recently considered raising the age of juvenile jurisdiction. Illinois and Wisconsin introduced legislation in 2006 that would have raised the upper age limit of each state’s juvenile court from 17 to 18. New Hampshire took steps to raise the age to 18 during its 2002 legislative session. Although this effort ultimately did not prevail, the compromise legislation that passed allows youth in the care and custody of the Division for Juvenile Justice Services to remain so until their 18th birthday, if so deemed by the juvenile court. The movement to raise the age of juvenile jurisdiction to 18 is also gaining momentum in North Carolina, where the North Carolina Sentencing and Policy Advisory Study Commission recently recommended that the state should raise the age to 18.

Team presented a report detailing its findings and recommendations in February 2004. The report recommended several changes to the juvenile justice system that would be necessary to incorporate 16- and 17-year-olds without diminishing the services provided to the children already under its purview. While many of the Team's participants favored increasing the age if provided with the appropriate funding, the report estimated that the age change would cost more than \$160 million. This price tag—which assumed the construction of two 150-bed facilities for pre- and post-adjudicatory custody—proved overwhelming and stymied further consideration of the issue during that legislative session.

Approximately two years later, at the close of its 2006 legislative session, Connecticut's General Assembly revisited the issue and established the Juvenile Jurisdiction Planning and Implementation Committee. The Assembly charged the Committee with the following mandate:

“ . . . to plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include sixteen-year-old and seventeen-year-old children within the Superior Court for Juvenile Matters.”¹⁰

The enabling legislation for the Committee further mandated that on or before February 1, 2007, it should submit a report on its findings, together with any recommendations for appropriate legislation, to the joint standing committees of the General Assembly. This report is the fulfillment of that mandate.

The Juvenile Jurisdiction Planning and Implementation Committee

Consistent with its legislated mandate, the Juvenile Jurisdiction Planning and Implementation Committee convened for biweekly sessions beginning in August 2006.¹¹ Over 14 meetings between August 2006 and January 2007, the Committee received presentations by relevant practitioners and other stakeholders regarding the current juvenile justice system and the changes that would be required to raise the age of juvenile jurisdiction.¹²

In September 2006, to further inform its process, the Committee issued requests for proposals for project oversight and management and a service needs study. In October, the Committee selected the Vera Institute of Justice (Vera) and Hornby Zeller Associates, Inc., respectively, as vendors to complete these tasks, with work commencing November 1, 2006.¹³ The Judicial Branch commissioned the National Center for State Courts

¹⁰ Public Act 06-187, section 16. See Appendix A for the enabling legislation.

¹¹ See Appendix B for a list of Committee members.

¹² See Appendix C for a list of presenters and schedule of presentations given to the Committee.

¹³ Specifically, Hornby Zeller was tasked with completing a study of service needs for court-involved youth ages 16 and 17, and with providing recommendations based on that study for the services, programs, and interventions most likely to be effective with prevalent specific profiles of this population. The Vera Institute was hired to oversee and manage all project related activities, including meeting timelines and facilitating successful and timely project completion. The Requests for Proposals issued by the Committee are available at <http://www.cga.ct.gov/hdo/jjpic/>.

(NCSC) to conduct a courts study. Hornby Zeller and NCSC gathered and synthesized data and conducted interviews with system officials and personnel, delivering periodic progress reports to the Committee. Vera managed the biweekly discussions of the Committee in an effort to distill its findings and recommendations for the final report.

As project manager, Vera worked with the co-chairs to identify the principal areas that most required the Committee's attention. The co-chairs then divided the Committee into three workgroups to develop discrete findings and recommendations in each of these areas. The remaining sections of this report present the Committee's findings and recommendations.

THE IMPLEMENTATION PLAN

The Juvenile Jurisdiction Planning and Implementation Committee's work comes to a close on February 8, 2007. In keeping with its mandate, the Committee has articulated a plan, structure, and process for implementing the change in juvenile court jurisdiction effective July 1, 2009. Five recommendations form the core of the Committee's implementation plan. These are:

1. Pass legislation in the 2007 session to raise the age of juvenile jurisdiction from 16 to 18 with an effective date of July 1, 2009;
2. Improve court diversion and pre-trial detention practices;
3. Establish Regional Youth Courts;
4. Phase in services and staffing; and
5. Establish a Policy and Operations Coordinating Council.

These proposals are presented sequentially, beginning with the passage of legislation in the 2007 session to raise the age of juvenile jurisdiction from 16 to 18 effective July 1, 2009. The Committee sees recommendations two, three, and four as necessary steps for preparing the existing state juvenile justice system for the change scheduled for 2009. The rationale and implementation procedures for these steps are described in greater detail in Section A, below.

Recognizing that raising the age of juvenile jurisdiction will require the resolution of various ancillary or unresolved issues and concerns—some immediate, others more long term—the Committee further recommends that legislators establish a Policy and Operations Coordinating Council with a clear mandate to resolve the issues delineated below prior to the effective date. A detailed account of the Committee's rationale and plan for the Policy and Operations Coordinating Council is presented in Section B.

A. Implementation Plan: Central Components

In carrying out its mandate, the Committee formed three workgroups, each focusing on a different aspect of the overall task.¹⁴ The Front-End Workgroup was responsible for developing recommendations to ensure that established systems and stakeholders are

¹⁴ See Appendix D for a list of designated workgroup members.

adequately prepared for a change in jurisdictional age. The Court-Related Issues Workgroup focused on articulating recommendations to ensure that juvenile courts (i.e., dockets, courthouses, attorneys, and staff) will be prepared to manage an influx in population following the change. Finally, the Services Workgroup was charged with developing recommendations to ensure that appropriate services will be available to support the unique needs of an expanded juvenile justice population.

The workgroups used this planning opportunity to think about how to improve the state's juvenile justice system following the age change. All three workgroups rejected the assumption that the state would simply maintain the status quo following the reform. Instead, they sought to incorporate the best parts of the state's existing processes, learn from national best practices, and envision a system that better serves the juvenile justice population in Connecticut at minimal cost.

Recommendations one through four form the central components of the Committee's implementation plan. Recommendation one specifies a reasonable and practicable timeframe for agencies and other stakeholders to prepare for the change in juvenile jurisdiction. Recommendations two, three, and four outline substantive methods to modify, within this timeframe—operational and system components critical to the reform's success.

Recommendation 1: Pass legislation in the 2007 session to raise the age of juvenile jurisdiction from 16 to 18 with an effective date of July 1, 2009. The Committee's first recommendation is that legislation to raise the age of juvenile jurisdiction in Connecticut from 16 to 18 be passed in the 2007 legislative session with an effective date of July 1, 2009. The Committee recommends that the jurisdictional change not be retroactive: only those 16- and 17-year-olds who are arrested on or after July 1, 2009, should be handled in the juvenile court system. Committee members are confident that the 2009 effective date provides agencies with ample time and opportunity for planning, budgeting, and transitioning.

Recommendation 2: Improve court diversion and pre-trial detention practices. The Front-End Workgroup was tasked with developing discrete recommendations to ensure that existing pre-trial systems and stakeholders are adequately prepared for a change in jurisdictional age. Given this mandate, the workgroup endorsed, as a general matter, *the development of programs and policies geared toward prevention and diverting more youth from the juvenile justice system at the point of arrest.* By enhancing existing community-based programs for youth of all ages— such as Juvenile Review Boards and Youth Service Bureaus—the Committee expects that more children and families will be served outside of the juvenile court process and with better outcomes. Further discussion of prevention and diversion follows in Section B.

As one important component of this recommendation, the workgroup considered pre-trial detention practices with an eye toward assessing potential capacity concerns and ensuring the most appropriate use of pre-trial detention for youth of all ages. The workgroup was particularly concerned about the large social and economic costs associated with juvenile detention. The average annual detention bed cost in Connecticut is approximately

\$119,000.¹⁵ Last fiscal year, the costs of managing the state's 206-bed system exceeded \$20 million. Moreover, national literature confirms that detention leads to negative outcomes for youth.¹⁶ Research conducted by the Vera Institute of Justice, for example, has demonstrated that a stay in detention is, by far, the greatest predictor of dispositional placement at sentencing. Of the New York City youth studied who were placed with the New York State Office of Children and Family Services at sentencing, nine out of ten spent some of the previous 30 days in detention. Conversely, of those youth studied who received a community-based disposition at sentencing, nine out of ten were in the community the entire month prior to disposition. And in Connecticut, as in most jurisdictions nationally, the vast majority of juveniles detained are youth of color. A recent study found that youth of color represent 65 percent of the state's juvenile detention population while comprising only 29 percent of the state's total population of youth between ages 10 and 15.¹⁷

In light of this framework, the Front-End Workgroup recognized that some of the youth detained under the current system might be better served in the community. A preliminary examination of detention data provided by the Court Support Services Division (CSSD) confirmed this premise. The workgroup learned that, on any typical day, approximately 30 percent of the juvenile detention population in Connecticut is being held for non-violent, non-Serious Juvenile Offenses (e.g., violations of probation, breach of peace, or violations of Families with Service Needs orders).¹⁸ The workgroup agreed that detention may not be the most appropriate option for this population, and, with the appropriate interventions, juvenile detention use might be reduced to yield significant capacity and cost savings.

In an effort to project pre-trial detention needs for 16- and 17-year-olds after the jurisdictional change, the workgroup determined that the number of pre-adjudicated and committed 16- and 17-year-old youth who will require secure housing after the venue change should be smaller than the number currently housed with the Department of Correction (DOC).¹⁹ On November 1, 2005, DOC held 339 inmates aged 16 or 17, excluding A & B felony offenders. Of those, 101 were sentenced and, under the jurisdictional change, would likely be under the custody of the Department of Children and Families (DCF). Of the 238 remaining, data indicates that at least 23 percent (55)

¹⁵ Annual costs in some jurisdictions well exceed that; in Bridgeport, it costs \$145,000 per year to hold a juvenile in detention.

¹⁶ See, e.g., James Austin, Kelly Dedel Johnson, and Ronald Weitzer, *Alternatives to Secure Detention and Confinement of Juvenile Offenders*, Office of Juvenile Justice and Delinquency Prevention Bulletin, September 2005; Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2006; David L. Marcus "Communities helping kids," *The American Prospect Online*, September 2005, available at <http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=10122> [last visited February 5, 2007].

¹⁷ Connecticut Juvenile Justice Alliance, *Out of Balance: Failures in Addressing Disproportionate Minority Contact within Connecticut's Juvenile Justice System*, available at http://www.ctjja.org/resource_category_9.html [last visited February 4, 2007].

¹⁸ While the average daily population varies, overall capacity in Connecticut's juvenile detention system is approximately 206 beds.

¹⁹ A statutory grant of juvenile status to 16- and 17-year-olds will allow for their detention for reasons other than the pending charge.

were held for non-violent offenses such as misdemeanors and probation violations. Moreover, the comparative frequency of court appearances in the juvenile court expedites case movement, reducing the average length of stay in pre-adjudication status from 40 days in the adult correctional system to 14 days in the juvenile system. The potential incorporation, discussed in Section B, of a bond or bond-like system into the juvenile processing of 16- and 17-year-olds may be explored as an option for reducing any associated increase in pre-trial detention.

With this in mind, the Committee *recommends the introduction of a statewide validated risk assessment instrument to inform juvenile detention admission decisions*. Many jurisdictions across the country use risk assessment instruments to reserve detention beds for kids who pose the greatest risks to public safety—and have saved significant costs by doing so.²⁰ Risk assessment instruments use objective factors to evaluate the risks of re-arrest and failure to appear and to classify arrested youth into three categories: high (appropriate for detention), low (released), and moderate (released with structured supervision). Detention risk assessment instruments typically weigh factors such as a juvenile's present offense, prior history, and propensity toward risk of flight to determine whether detention is the most appropriate response. In addition, by minimizing the impact of subjective racial biases, risk assessment instruments serve as an important strategy for addressing disproportionate minority confinement. Once established, the Committee recommends that the detention risk assessment instrument be reviewed on an annual basis and revised to meet evolving system needs and trends.

The introduction of a statewide detention risk assessment instrument in Connecticut will require the concurrent expansion of pre-trial supervision programs to serve youth who score in the moderate range. The Committee *recommends the establishment of a*

²⁰ See e.g., Annie E. Casey Foundation, "Results: impact of JDAI," available at <http://www.aecf.org/initiatives/jdai/results.htm> [last visited February 5, 2007].

Throughout its deliberations, the Front-End Workgroup considered the experiences of other jurisdictions that have implemented detention risk assessment instruments. In 1997, for example, officials in Santa Cruz, California, developed screening criteria to ensure that the county's detention beds were reserved for the more serious and violent offenders. With the implementation of the new screening instrument, some non-violent offenders (e.g., misdemeanants, property offenders) were screened out of the county's detention facility and placed in alternative programs. As a consequence, the detention population in Santa Cruz decreased by 43 percent between 1996 and 2001 and the percentage of minority youth in detention was reduced from 64 percent in 1997 to 54 percent in 2001. Placing a juvenile in an alternative program costs the county \$64 a day, compared to \$184 a day for detention, and the county avoided spending millions of dollars to staff and build bigger detention facilities. (See Peggy Townsend, "Detention redemption," *The American Prospect Online*, September 2005, available at <http://www.prospect.org/web/page.wv?section=root&name=ViewPrint&articleId=10125> [last visited February 5, 2007]).

Likewise, by implementing detention risk assessment and a continuum of community-based alternatives, Cook County, Illinois (Chicago), has halved its detention population without seeing any increases in failure to appear or re-offense rates. Importantly, as a result of its detention reform efforts, Cook County realized a corresponding decline in the number of youth committed to the Illinois Department of Corrections (DOC). In 1996, 902 youth were committed to DOC; in 2005, that number dropped to 420, for an average annual savings of \$23,000 per bed. (See Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2006). New Mexico is an example of a state where detention risk assessment has been legislatively mandated statewide. Copies of the risk assessment instruments employed in Cook County, Santa Cruz, and New Mexico are included in Appendix E.

spectrum of appropriate services and supervision to ensure that youth who score in the mid-risk category on the risk assessment instrument appear at all court hearings and do not re-offend during the pendency of their petition. In accord with national best practices, the Committee recommends that youth be appropriately matched to pre-trial services and supervision programs that are the least restrictive, while still ensuring public safety.

Taken together, recommendation two promotes the objective, rational and cost-effective use of juvenile detention resources. By introducing a statewide risk-assessment instrument and appropriate pre-trial services, the Committee believes the State of Connecticut can take important steps toward providing sufficient pre-trial detention capacity for an expanded juvenile court population, without requiring the investment of significant financial resources or sacrificing public safety. Based on the experiences of other jurisdictions, the Committee also projects that these types of interventions will yield cost savings over the long term.

Recommendation 3: Establish Regional Youth Courts. The Court-Related Issues Workgroup was tasked with articulating findings regarding how court processes will be affected by raising the age of juvenile jurisdiction to 18 and developing discrete recommendations to ensure that the juvenile courts are prepared for this change.

Working closely with the National Center for State Courts (NCSC), the Court-Related Issues Workgroup focused on how juvenile court facilities and staff could be reorganized and adapted to process the influx of approximately 10,000 16- and 17-year-olds (representing more than 12,000 cases) at the lowest cost to the state while attending to the unique needs of these youth. Members of the group also underlined their concern, shared by the 2004 Implementation Team, that agency resources currently utilized in service of juveniles under age 16 not be diluted by the introduction of older youth to the juvenile system. The group considered courtroom space needs, as well as office space that would be required for new staff. The group was particularly concerned about the need for staff increases across agencies—including, but not limited to, additional probation officers, judges, public defenders, state's attorneys, social workers, parole social workers, and court clerical staff.

The group considered four potential models for organizing the courts: adapting existing juvenile court space to incorporate 16- and 17-year-old youth, constructing new juvenile court facilities, utilizing existing Geographical Area (GA) courthouse space, and developing regional youth courts. After weighing the options, the workgroup ascertained that existing juvenile court space would be physically insufficient to accommodate the number of cases projected by adding 16- and 17-year-olds to the docket. Building new juvenile court facilities would involve heavy costs in terms of bricks and mortar and significant delays due to siting and construction. Processing 16- and 17-year-olds in the GA, the group determined, would be ideologically inconsistent with affording them the full protection of juvenile status. In contrast, establishing Regional Youth Courts would bring 16- and 17-year-olds fully into the juvenile court, significantly reduce the costs and delays associated with constructing new facilities by realigning existing resources, and protect younger juveniles by creating a separate processing sphere for older youth. As a result, the workgroup concluded that the establishment of Regional Youth Courts represents the most efficient, workable, and attractive option.

The Regional Youth Courts Plan, as detailed by the Judicial Branch, makes use of existing and currently unoccupied or underutilized juvenile courthouse facilities to establish a unique court processing sphere for 16- and 17-year-olds in the juvenile court. The Judicial Branch has identified 11 potential regional court locations. Eight of these—Bridgeport, Bristol, Hartford, Rockville, Stamford, Waterbury, Waterford, and Willimantic—will utilize existing space.²¹ Two—Middletown and Torrington—will utilize space available in planned but yet-to-be constructed juvenile courthouses set to be operational in 2010 and 2011, respectively. The site for a New Haven regional youth court is yet to be determined.

The Regional Youth Courts Plan now proposed is expected to cost approximately \$3 to 5 million for space modifications in fiscal year 2008; \$1.5 million for leasing beginning in fiscal year 2009; and \$5.9 million for Judicial Branch staffing costs beginning in fiscal year 2009. The Judicial Branch has estimated that five Superior Court judges along with approximately 100 probation officers, as well as additional judicial marshals, support staff, court interpreters, and victim advocates will be required to administer the Regional Youth Courts.²² The Office of the Chief Public Defender anticipates needing 17 to 20 new staff, including attorneys, investigators, and social workers.²³

The Committee with this report *endorses and recommends the establishment of Regional Youth Courts for 16- and 17-year-olds in accordance with the plan set out by the Judicial Branch*. Legislative authorization of this plan is required to ensure its legitimacy and operational readiness by the effective date of the change in age of jurisdiction of the juvenile court.

Recommendation 4: Phase in an effective system of services and supports for 16- and 17-year-olds. The Services Workgroup was charged with developing recommendations to ensure that appropriate services are available to support the unique needs of 16- and 17-year-olds, a group that cannot be treated simply as either younger adults or older children. The workgroup also had specific instructions to ensure that services for children currently being served in the juvenile justice system not be diluted by the expanded jurisdiction.²⁴

²¹ The Bristol site will incorporate cases from New Britain and Torrington, until the juvenile court in Torrington is completed in 2011. The Stamford site will incorporate cases from Norwalk, and the Waterbury site will incorporate cases from Danbury.

²² See Appendix F for the NCSC study "Implications of changing juvenile jurisdiction for adjudication and case-processing personnel needs in Connecticut Superior Court." See also the forthcoming NCSC report, "Assessing the Judicial Branch's proposed Regional 'Youth Sessions' to implement juvenile jurisdiction change in Connecticut." Committee members recognize that some court staffing enhancements will be necessary irrespective of the jurisdictional change.

²³ The projected impact on staffing in the Chief State's Attorney's Office is forthcoming. Comprehensive fiscal analyses will accompany the legislation introduced to advance the Regional Youth Courts Plan.

²⁴ Approximately 2,256 16- and 17-year-olds are placed on adult probation statewide annually. See the State of Connecticut Judicial Branch Court Support Services Division, "JJPIC: proposed court and service system for 16 & 17 year olds," Presentation to the Juvenile Jurisdiction Planning and Implementation Committee, January 4, 2007, available at <http://www.cga.ct.gov/hdo/jpic/> [last visited February 4, 2007].

At the outset, the workgroup defined the following set of principles or conditions for a system of services for older adolescents:

- Services need to be age and developmentally appropriate;
- A continuum of services, including preventive and lower-end or diversionary services, should be available;
- Services must be tailored to the needs of the individual and provided in the least restrictive manner possible while maintaining the safety of the community;
- Services need to be accessible (i.e., timely, community-based, culturally competent, gender responsive, and trauma informed);
- Services should employ a strengths-based approach to youth, families, and communities;
- Services should support both youth and families;
- Services need to be evaluated for quality in delivery and outcomes;
- Service outcomes should be tied to meeting milestones in healthy adolescent development; and
- Service provision should build upon, expand, and improve the state's current infrastructure.

Guided by these principles, the Committee endorses a four-point plan for expanding services to address the needs of 16- and 17-year-olds and to fill in the gaps—in particular, the dearth of substance abuse and mental health services—that currently exist in the juvenile justice system.

First, the *Court Support Services Division (CSSD)* will expand the probation workforce, relying on veteran probation officers carefully selected and motivated to work with older adolescents to lead and staff the new regional courts. CSSD will train probation officers in tandem with contracted service providers to reinforce a team-oriented case management approach.

Second, *state agencies will expand and adapt their existing array of juvenile programs with special attention to mental health and substance abuse services.* In general, services need to be expanded in order to preserve the existing level of delivery to younger juveniles as well as adapted to the different developmental needs of older adolescents. Specifically, Hornby Zeller's service needs study recommends expanding evidence-based clinical programs to address the behavioral, mental health, and substance abuse needs of 16- and 17-year-old offenders.²⁵ Currently, the Department of Mental Health and Addiction Services' programs are inaccessible to individuals under 18. CSSD and DCF, in response, plan to increase access to evidence-based programs—such as Brief Strategic Family Therapy, Multi-Systemic Therapy, and Functional Family Therapy—which cover both substance abuse and mental health issues, as well as expand in-patient substance abuse detoxification and treatment for juveniles with serious mental health problems. Other services that are targeted for expansion and modification include clinical evaluations; treatment for problem sexual behavior; home-based therapies; social skill

²⁵ See p. 69 of the Hornby Zeller report "Connecticut service needs study: 16 and 17-year-old court-involved youth" in Appendix G.

development, including anger management and impulse control; girls groups; trauma recovery; and juvenile review boards and diversion.

Third, the Committee *supports the creation of new programs for 16- and 17-year-olds, focusing particularly on educational and vocational supports*. Committee members voiced concern about the lack of education and employment services for youth who have been habitually truant; suspended or expelled; or who are returning from incarceration or placement. Hornby Zeller's study cites services related to education and employment as the single most frequent need in the assessments currently done on youth offenders, especially for minority youth.²⁶ As one response to this need, DCF plans to adapt and expand its current educational re-entry program to address the needs of youth, and is working collaboratively with CSSD to make this program available to juveniles with pending delinquency petitions.

The final step of the four-point plan is to *establish an infrastructure that will ensure positive outcomes*. This will include assigning staff to training, implementation, and quality assurance, conducting research on the implementation and measuring outcomes, and applying Results-Based Accountability principles and practices to the state's service delivery system.

The Committee *recommends that services be phased in through the four-point plan in two stages*. The first stage begins in fiscal year 2007, when the state will begin to address the needs of 16- and 17-year-olds by building an experienced, core group of parole, probation, and program providers. For services to be effectively delivered, the expansion of contracted services and the development of a trained workforce must take place well in advance of July 1, 2009. The second stage of implementation will coincide with the implementation date of the raise in jurisdictional age. At that point, as the Regional Youth Courts open, a core group of practitioners will be ready to serve the courts and the 16- and 17-year-olds processed through them.

Based on current DCF and CSSD contracts, Hornby Zeller estimates a net initial cost for new and expanded services of \$19.4 million after the jurisdictional change, with a subsequent \$18.6 million cost net of savings.²⁷ With the full implementation of a continuum of services and evidence-based programs for 16- and 17-year-olds, the Hornby Zeller service needs study projects that the state can reasonably expect to achieve an improvement in recidivism of 10 percent.²⁸ Assuming that the recidivism rate of youth on probation after the jurisdictional change conservatively drops to 32.4 percent, the total annual savings on contracted services alone is estimated at \$819,000. Should the impact of the services be greater than the conservative projection, the total annual savings will increase correspondingly.

To further offset the costs of services, the Committee also *recommends that CSSD, DCF, and other relevant state agencies collaborate to ensure that federal reimbursement is obtained to the maximum extent possible*, particularly for clinical services for youth on

²⁶ Ibid, p. 70.

²⁷ Ibid, pp. vii-viii and pp. 60-64.

²⁸ Ibid, p. 64.

probation. For every 10 percent of clinical services that could be reimbursed under Medicaid, the state stands to recover \$500,000.²⁹ State agencies will need to ensure that all youth are tested for Medicaid eligibility and that service providers' eligibility to provide Medicaid services is a factor in granting contracts.

The Committee concludes that it will be feasible to add community-based services and supports for older adolescents by the effective date of July 1, 2009, without negative impacts to younger juveniles. In addition, an improved network of age-appropriate services and support will benefit not only the 16- and 17-year-olds who will begin entering the juvenile justice system, but also those youth who remain court-involved after their 16th birthday. Consequently, the Committee *recommends adequate appropriations in the 2007-08 budget cycle for agencies to implement this service plan.*³⁰

B. Implementation Plan: A Process Going Forward

Recommendation 5: Establish a Policy and Operations Coordinating Council. To ensure an intelligent, effective implementation process prior to the effective date of the jurisdictional change, the Committee *recommends the establishment of a Policy and Operations Coordinating Council.* Council membership should include one designee from each of the following constituency groups:

- The Legislature,
- A Juvenile Matters judge,
- Superior Court Operations,
- Department of Children and Families,
- Law enforcement,
- Juvenile defense,
- Juvenile prosecution,
- Court Support Services Division,
- Department of Education,
- Department of Mental Health and Addiction Services,
- Department of Correction, and
- The advocacy community.

By legislative mandate, the Policy and Operations Coordinating Council will be charged with advancing the central components set forth in the Committee's implementation plan: development, introduction and validation of a statewide detention risk assessment instrument; roll-out of the Regional Youth Courts Plan; and implementation of a comprehensive system of community-based and residential services for the population served by the juvenile court. Moreover, it will complete these components prior to July 1, 2009, when the jurisdictional change goes into effect.

The Policy and Operations Coordinating Council will submit status reports to the Legislature at quarterly intervals detailing its progress in completing its mandate. The

²⁹ Ibid, p. 65.

³⁰ Comprehensive fiscal analyses related to the service plan are under development.

Policy and Operations Coordinating Council will submit a final report no later than January 1, 2009.

The Committee *recommends that financial support for the efforts of the Policy and Operations Coordinating Council be identified in the 2007 legislative session.* Such resources will support the provision of technical assistance and research services to support an informed planning process, as well as the Council's staffing and analytical requirements. Costs for this effort are estimated to be approximately \$250,000 per year.

Toward the end of its process, the Committee turned its attention toward delineating the nature and scope of several unresolved issues, with the goal of providing a clear blueprint for implementation during the period leading up to the effective date. The Committee *recommends that the Policy and Operations Coordinating Council be legislatively authorized—and required—to resolve these key tasks and outstanding issues,* which are listed below, prior to the effective date of July 1, 2009.

Key Tasks and Outstanding Issues

Diversion Services and Assessments

In the interests of most effectively serving an expanded juvenile court jurisdiction, the Committee recommends that prevention and diversion services—such as Juvenile Review Boards and Youth Service Bureaus—be made more widely available. Prior to implementation of the jurisdictional change, determinations should be made regarding where and how such services should be augmented and how best to channel state and federal funds to that end. Furthermore, as discussed more fully in Hornby Zeller's service needs study, assessment mechanisms for more systematically identifying which populations are appropriate for diversion should be studied and implemented prior to July 1, 2009.³¹

Facility Space for Pre-Trial Detention and Long-Term Placements

The Committee recommends that comprehensive projections be developed during the implementation phase to determine the detention bed capacity that will be required to accommodate an expanded juvenile justice population. Projections should take into account factors such as the adoption of the detention risk assessment instrument, a 14-day average pre-trial length of stay for juveniles, the prohibition of detention for status offenders who violate Families with Service Needs orders,³² an expanded service delivery network, more flexible statutory opportunities for parole and alternative programming in the juvenile court system, and other relevant system changes that may arise during the implementation phase, e.g., the introduction of bonds for juveniles. Based on these factors, preliminary projections from CSSD estimate that within three years of the age change, approximately 150 16- and 17-year-olds who are awaiting trial will require secure accommodation in the juvenile system, a 25 percent reduction from the current number of youth confined pre-trial by DOC. The Committee also recommends that feasible alternative options to provide the requisite pre-trial detention capacity be identified prior to July 1, 2009.

³¹ Ibid, pp. 22-29.

³² Public Act 05-250, effective October 1, 2007.

As is the case with pre-trial detention capacity, although there are likely to be long-term placement savings attributable to the changes in policy and practice recommended in this report, there may also be a need for additional bed space to accommodate the expanded population of delinquency commitments. Current population projections, completed by Hornby Zeller in January 2007, indicate that a range of 78 to 192 additional placement beds may be required to house the expanded committed delinquent population. The Committee recommends a more thorough investigation of this issue. One suggestion is to conduct a review of the case files of 16- and 17-year-old youth who are currently incarcerated to more definitively assess placement impact prior to the effective date of the jurisdictional change.

Agency Jurisdiction: Collateral Impacts of Raising the Age

As juvenile court jurisdiction expands to include 16- and 17-year-old children, the scope of jurisdiction in a number of stakeholder agencies will be collaterally impacted. Some of these collateral effects include:

- Which agency will have the authority and responsibility for providing mental health and substance abuse services to the older adolescent population (*e.g.*, DCF or the Department of Mental Health and Addiction Services)?
- To what age will DCF have authority and control over juveniles committed to it by the court as delinquent? If the agency's jurisdictional age limit is held to be 18, youth who are arrested close to their 18th birthday may only be subject to DCF's authority and receive services for a short period of weeks or months. Alternatively, if the agency's jurisdictional age limit is extended to 21 or 25, we create a more flexible opportunity for long-term service provision for older adolescents.
- Regarding long-term placements, which agency will be responsible for housing 16- and 17-year-old adolescents sentenced to a period of long-term placement after the jurisdictional change (*e.g.*, DOC, DCF)?
- Does raising the age of juvenile court jurisdiction have consequences for state statutes setting the mandatory age of school attendance?

Youth in Crisis

In Connecticut, 16- and 17-year-olds who are beyond their parents control, have run away from home, or who fail to go to school are termed Youth in Crisis (YIC). Effective July 1, 2000, the Juvenile Court was given legislative authority to provide services for these youth. The YIC law clearly allows status offenders to be referred to juvenile court, but such a ruling would be unenforceable; under current law, the court is prohibited from declaring a Youth in Crisis delinquent or imprisoning him or her.³³ With this in mind, following the change in jurisdictional age, issues remain to be resolved regarding YIC jurisdiction and classification. In particular, some Committee members question the necessity of a separate YIC designation after the age is raised.

³³ CGS §46b-150f (c).

Serious Juvenile Offenses

Members of the Committee believe that existing statutory definitions of detainable offenses may be overly expansive. Current law allows a police officer to place a child in detention without a court order for Serious Juvenile Offenses (SJO), as defined in Connecticut General Statutes (CGS) §46b-120(12). While the SJO classification includes Class A and B felonies, gun and weapons charges, and escape, it also includes a number of offenses for which a child or youth might not face detention were the case to be reviewed by a judge. For example, drug possession with intent to sell, burglary, larceny, and risk of injury to a minor are all classified as SJOs.³⁴ These are offenses where the facts of the crime and the level of the child's involvement regularly factor into the decision to detain. Requiring judicial approval before detaining these non-violent offenders would help insure that only those children who need a secure setting are detained. The Committee recommends that the scope of the SJO classification be examined and modified where appropriate.

Importing Process Elements from Adult Criminal Court After the Age Change

Committee members have noted with enthusiasm that the focused attention on juvenile justice policy occasioned by the change in the age threshold presents a rare opportunity to offer innovative visions for the future of juvenile justice practices. As part of the ongoing debate, therefore, members have agreed that the new juvenile court process, following the jurisdictional change, should incorporate the best parts of existing juvenile and adult court processes. Prior to the effective date of the jurisdictional change, the Committee recommends that careful consideration be given to assessing whether and how any of the following elements of the adult criminal court process might be legislatively imported to the juvenile court after the age change:

- *Jury Trials.* There are no jury trials in juvenile court; in adult criminal court, a defendant may request a jury trial if he or she is facing the possibility of incarceration.
- *Bond.* In juvenile court, bond is not available prior to arraignment. At arraignment, however, the court is allowed to release a juvenile to bail. In adult court, a defendant may be released upon posting a cash or surety bond at arrest.
- *Release and Parental Notification.* If a juvenile is arrested and a parent is unavailable, the juvenile will likely be held in a detention center and presented before court on the next business day. In the juvenile system, a youth cannot be released at the point of arrest except to a parent or responsible adult, and the youth is not eligible to be released on bond. In contrast, an arrested adult may be released upon his or her own recognizance or upon posting of a bond; parental notification and release to a responsible adult is not required.
- *Fines.* The imposition of monetary fines as an alternative disposition is not permissible in juvenile court. Fines are allowable dispositional alternatives in adult criminal court pursuant to C.G.A. §53a-41 and §53a-42.³⁵

³⁴ See, e.g., CGS §21a-277; CGS §21a-278; CGS §53a-101; CGS §53a-102a; and CGS §53a-103a. Only the most serious burglary and larceny offenses are classified as SJOs.

³⁵ In a January 3, 2007 memorandum, the Office of Fiscal Affairs estimated that approximately \$800,000 of total revenues can be attributed to 16- and 17-year-olds for criminal fines, bond forfeiture, and various program fees (e.g., Adult Probation; Accelerated Rehabilitation; Alcohol Education Program). Estimates

- **Expungement.** In juvenile court, a youth may apply to expunge a delinquency record two years after completion of a sentence (four years after completion of a sentence if there is a Serious Juvenile Offense) if he or she has remained out of legal trouble. In adult criminal court, the records of a 16- or 17-year-old youth are expunged automatically (no petition for erasure is required) at age 21, so long as the youth has not been subsequently convicted of a felony prior to his or her 21st birthday.
- **Probationary Sentences.** In juvenile court, youth may be placed on probation supervision for as long as the judge deems necessary. In adult court, there are statutory limits on the period of probation that can be imposed on 16- and 17-year-old offenders based on the degree of the offense.

Custodial Interrogation³⁶

Under Connecticut law, any admission, confession, or statement made by a child to a police officer or juvenile court official is inadmissible evidence unless made in the presence of a parent or guardian and after the parent or guardian and child have been advised of the child's constitutional rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).³⁷ During testimony before the Committee, some witnesses expressed concern that extending this obligation to 16- and 17-year-olds would have a substantial impact on law enforcement practices. Any statements or confessions by 16- and 17-year-old offenders are now admissible as evidence in adult criminal court if they have been advised of their *Miranda* rights. After the jurisdictional change these statements would be inadmissible in juvenile court unless they were made in the presence of parents after notice of *Miranda* rights to both child and parent. The Committee acknowledges that this issue will require additional debate and resolution prior to July 1, 2009.

Motor Vehicle Infractions

Issues emerged during the Committee process regarding where contested motor vehicle infractions will be tried after the change in jurisdiction. Currently, for youth under the age of 16, motor vehicle infractions constitute delinquent acts. Alternatively, for youth over the age of 16, infractions can often be resolved without criminal consequences. The Committee recommends that attention be directed to this issue to determine whether the definition of delinquent act should be changed to exclude motor vehicle infractions, which might be handled more efficiently in motor vehicle courts.

School-Related Issues

The connection between school and youth arrest in Connecticut demands further exploration and attention. A significant proportion of Connecticut's court-involved youth arrive at the system due to either an arrest at school or an arrest while suspended from school. As Hornby Zeller identified among its findings, over 90 percent of African-American youth on probation with CSSD have been suspended or expelled from school

suggest that an additional \$1.2 million is generated from this age group for fines, fees, and surcharges imposed for motor vehicle violations and infractions.

³⁶ This paragraph was largely excerpted from a memorandum compiled by the National Center for State Courts, "Exclusion of confessions or statements by 16- and 17-year-olds if juvenile jurisdiction in Connecticut is to be expanded," December 12, 2006.

³⁷ CGS §46b-137(a).

at least once.³⁸ Prior to the effective date of the jurisdictional change, consideration should be paid to assessing, costing out, and developing appropriate interventions for addressing the extensive educational needs of system-involved 16- and 17-year-olds. Committee members also stressed the need to strengthen schooling and build in preventive supports for younger children to reduce the overall level of and need for services before they turn 16.

CONCLUSION

The Juvenile Jurisdiction Planning and Implementation Committee, through a comprehensive and consensus-based process, has identified five recommendations intended to raise the age of juvenile jurisdiction in Connecticut from 16 to 18. While the Committee appreciates that implementation of the age change is a complex undertaking affecting numerous agencies, service providers, and communities, it remains committed to this critical endeavor. With this plan, the Committee provides realistic and concrete steps to bring 16- and 17-year-olds into the juvenile justice system in a timely, feasible, and cost-effective manner.

³⁸ See p. 70 of the Hornby Zeller service needs study in Appendix G.

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APPENDIX A

Juvenile Jurisdiction Planning and Implementation Committee Enabling Legislation

APPENDIX A

House Bill No. 5846 Public Act No. 06-187 9 of 89

Sec. 16. (*Effective from passage*) There is established a juvenile jurisdiction planning and implementation committee that shall consist of the following members:

- (1) Six members of the General Assembly, one of whom shall be appointed by the speaker of the House of Representatives, one of whom shall be appointed by the president pro tempore of the Senate, one of whom shall be appointed by the majority leader of the House of Representatives, one of whom shall be appointed by the majority leader of the Senate, one of whom shall be appointed by the minority leader of the House of Representatives and one of whom shall be appointed by the minority leader of the Senate;
- (2) The chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and human services, or their designees;
- (3) The Chief Court Administrator, or the Chief Court Administrator's designee;
- (4) The Commissioner of Children and Families, or the commissioner's designee;
- (5) The Commissioner of Correction, or the commissioner's designee;
- (6) A judge of the superior court assigned to hear juvenile matters, appointed by the Chief Justice;
- (7) The Chief Public Defender, or the Chief Public Defender's designee;
- (8) The Child Advocate, or the Child Advocate's designee;
- (9) The Chief State's Attorney, or the Chief State's Attorney's designee;
- (10) The Secretary of the Office of Policy and Management, or the secretary's designee; and
- (11) Four members of the advocacy community, two of whom shall be appointed by each of the co-chairs of the Juvenile Court Jurisdiction Committee.

The members of the General Assembly appointed by the speaker of the House of Representatives and the president pro tempore of the Senate shall serve as the co-chairs of the committee. All appointments to the committee shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

The chairpersons of the committee shall schedule the first meeting of the committee to be held not later than sixty days after the effective date of this section. The committee shall plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include sixteen-year-old and seventeen-year-old children within the Superior Court for Juvenile Matters. On or before February 1, 2007, the committee shall submit a report, in accordance with section 11-4a of the general statutes, on the committee's findings, together with any recommendations for appropriate legislation, to the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and human services.

APPENDIX B

**Members of the
Juvenile Jurisdiction Planning and Implementation Committee**

APPENDIX B

CO-CHAIRS

Sen. Toni Harp
10th Senate District
Deputy President Pro Tempore;
Chair, Appropriations

Rep. Toni Walker
93rd House District
Deputy Majority Leader

MEMBERS

Portia Bonner, Ph.D.
Assistant Superintendent
Hamden Public Schools

Joycé Bosco
Executive Director
Southside Family House

Liz Brown
Commission on Children

William Carbone
Executive Director
Court Support Services Division
Judicial Branch

Fran Carino
Supervisory Juvenile Prosecutor for
Statewide Matters
Office of the Chief State's Attorney

Jeff Carr
Parole Services
Department of Children and Families

Donald Devore
Director, Bureau of Juvenile Services
Department of Children and Families

Darlene Dunbar
Commissioner
Department of Children and Families

Rep. Robert Farr
19th House District
Judiciary Committee designee

Sen. Judith Freedman
26th Senate District
Senate Minority Leader designee

Deborah Fuller
External Affairs
Judicial Branch

Rep. Lile R. Gibbons
150th House District
Human Services Committee designee

Hector Glynn
Executive Director
Connecticut Juvenile Justice Alliance

Janice Gruendel
Senior Advisor on Early Childhood
Governor's Office

Susan Hamilton
Undersecretary
Office of Policy and Management

Rep. Gail Hamm
34th House District
House Majority Leader designee

Sen. Mary Ann Handley
4th Senate District
Co-Chair Human Services

Sen. John A. Kissel
7th Senate District
Human Services Committee designee

Lisa Kouzoujian
Juvenile Law Attorney

APPENDIX B

Mickey Kramer
Associate Child Advocate
Office of the Child Advocate

Theresa Lantz
Commissioner
Department of Correction

Hon. William Lavery
Chief Court Administrator
Judicial Branch

Sal Luciano
Executive Director
Council 4 AFSCME

Mary Marcial
Director of Programs and Treatment
Department of Correction

Sen. Edward Meyer
12th Senate District
Senate Majority Leader designee

Jeanne Milstein
Child Advocate
Office of the Child Advocate

Hon. Barbara Quinn
Chief Administrative Judge for Juvenile
Matters
Judicial Branch

Christine Rapillo
Director of Juvenile Delinquency
Defense
Office of the Chief Public Defender

Peter Rockholz
Deputy Commissioner
Department of Mental Health and
Addiction Services

Ellen Scalettar
Senior Policy Fellow
Connecticut Voices for Children

Chief Carl Sferrazza
Enfield Police Department

Deborah DelPrete Sullivan
Legal Counsel
Office of the Chief Public Defender

Rep. Cathy C. Tymniak
133rd House District
House Minority Leader designee

APPENDIX C

Presenting Witnesses and Other Participants

APPENDIX C

August 3, 2006

Hector Glynn, Executive Director,
Connecticut Juvenile Justice Alliance

September 7, 2006

Chief Tom Sweeney, Glastonbury Police
Department
Lt. Keith O'Brien, Glastonbury Police
Department
Chief Thomas Flaherty, Milford Police
Department and Executive Director, Police
Officer Standards and Training Council
Lt. Stan Konesky, Instructor, Police
Officer Standards and Training Council

September 21, 2006

Sherry Haller, Executive Director, The
Justice Education Center
Eleanor Lyon, Lyon & Associates
William Carbone, Executive Director,
Court Support Services Division, Judicial
Branch
Brian Hill, Criminal Sanctions Monitor,
Juvenile Matters, Judicial Branch
Barbara Lanza, Program Manager,
Center for Best Practices, Court Support
Services Division, Judicial Branch
Julie Revaz, Program Manager, Court
Support Services Division, Judicial Branch
Theresa Lantz, Commissioner,
Department of Correction
George Coleman, Interim Commissioner,
State Board of Education
Peter Rockholz, Deputy Commissioner,
Department of Mental Health and
Addiction Services

October 5, 2006

Peter Rockholz, Deputy Commissioner,
Department of Mental Health and
Addiction Services
Christine Rapillo, Director of Juvenile
Delinquency Defense, Office of the Chief
Public Defender
Darlene Dunbar, Commissioner,
Department of Children & Families

Donald Devore, Director of Juvenile
Services, Department of Children &
Families

October 17, 2006

Jeanne Milstein, Child Advocate, Office
of the Child Advocate
Theresa Lantz, Commissioner,
Department of Correction
Mary Marcial, Director of Programs and
Treatment, Department of Correction

November 2, 2006

Dr. Reginald Mayo, Superintendent, New
Haven Public Schools
Winston Johnson, Director of Social
Work & Psychiatric Services, Hartford
Public Schools
James Shannon, Director of Pupil &
Family/Community, Bridgeport Public
Schools
Asst. Chief Herman Badger, New Haven
Police Department
Lt. Achilles Rethis, Hartford Police
Department
Sgt. Matthew Eisele, Hartford Police
Department
Sgt. Jesus Ortiz, Bridgeport Police
Department

November 16, 2006

Darlene Dunbar, Commissioner,
Department of Children & Families
John Dixon, Superintendent, Connecticut
Juvenile Training School, Department of
Children & Families
Susan O'Brien, Director of Parole
Services, Department of Children &
Families
Karen Andersson, Health Management
Administrator, Administrative Service
Organization
Lori B. Szczygiel, Chief Executive
Officer, Connecticut Behavioral Health
Partnership, Administrative Service
Organization

APPENDIX C

November 30, 2006

Dr. Abigail Baird, Assistant Professor of Psychological and Brain Sciences, Dartmouth University

Hon. William Lavery, Chief Court Administrator, Judicial Branch (submitted memorandum)

December 21, 2006

Francis J. Carino, Supervisory Juvenile Prosecutor for Statewide Matters, Office of the Chief State's Attorney

January 4, 2007

Julie Revaz, Program Manager, Court Support Services Division, Judicial Branch

Dennis E. Zeller, President and founder, Hornby Zeller Associates

Helaine Hornby, Vice President, Hornby Zeller Associates

January 18, 2007

Dennis E. Zeller, President and founder, Hornby Zeller Associates

Helaine Hornby, Vice President, Hornby Zeller Associates

Sara Mogulescu, Director, Center on Youth Justice, Vera Institute of Justice

January 25, 2007

Sara Mogulescu, Director, Center on Youth Justice, Vera Institute of Justice

February 8, 2007

Jeanne Milstein, Child Advocate, Office of the Child Advocate

APPENDIX D

Designated Working Group Members

APPENDIX D

Front End Workgroup

Leo Arnone, Court Support Services Division, Judicial Branch (*facilitator*)
Anne Marie DeGraffenreidt, Department of Children and Families
Rep. Robert Farr
Susan Hamilton, Office of Policy and Management
Rep. Gail Hamm
Brian Hill, Court Support Services Division, Judicial Branch
David Iaccarino, Court Operations, Judicial Branch
Sen. John Kissel
Theresa Lantz, Department of Correction
Jeanne Milstein, Office of the Child Advocate
Sue O'Brien, Department of Children and Families
Chief Carl Sferrazza, Enfield Police Department
Rep. Cathy Tymniak

Court-Related Issues Workgroup

Christine Rapillo, Office of the Chief Public Defender (*facilitator*)
Fran Carino, Office of the Chief State's Attorney
Larry D'Orsey, Judicial Branch
Donald Devore, Department of Children and Families
Antonio Donis, Department of Children and Families
Sen. Judith Freedman
Deborah Fuller, External Affairs, Judicial Branch
Sen. Mary Ann Handley
Lisa Kouzoujian, Juvenile Law Attorney
Hon. William Lavery, Judicial Branch
Hon. Barbara Quinn, Judicial Branch
Deborah DelPrete Sullivan, Office of the Chief Public Defender

Services and Disposition Workgroup

Hector Glynn, Connecticut Juvenile Justice Alliance (*facilitator*)
Portia Bonner, Ph.D., Hamden Public Schools
Joyce Bosco, Southside Family House
Liz Brown, Commission on Children
William Carbone, Court Support Services Division, Judicial Branch
Jeff Carr, Department of Children and Families
John Dixon, Connecticut Juvenile Training School, Department of Children and Families
Darlene Dunbar, Department of Children and Families
Rep. Lile R. Gibbons
Janice Gruendel, Governor's Office
Mickey Kramer, Office of the Child Advocate
Hon. Michael Mack, Judicial Branch
Sen. Edward Meyer, Senate Majority Leader designee
Julie Revaz, Court Support Services Division, Judicial Branch
Cindy Rutledge, Department of Children and Families

APPENDIX E

Risk Assessment Instruments

Cook County, IL

State of New Mexico

Santa Cruz County, CA

**COOK COUNTY JUVENILE COURT
JUVENILE JUSTICE DIVISION
JUVENILE PROBATION DEPARTMENT**

SCREEN DATE: _____ SCREEN TIME: _____ SCREENER: _____
 YOUTH OFFICER: _____ DISTRICT: _____
 MINOR RESPONDENT: _____ DOB: _____ AGE: _____

SEX: M / F RACE: WHITE / BLACK / HISPANIC / ASIAN / OTHER P.O.: _____
 RD#: _____ IR#: _____ FAMILY FOLDER NUMBER: _____
 (REQUIRED) (REQUIRED)

FACTOR

1. MOST SERIOUS INSTANT OFFENSE:	SCORE
(Choose only one item indicating the most serious charge)	
Automatic Transfer Cases.....	15
Violent Felonies: Agg Batt - Bodily Harm, Agg Battery with/Firearm, AggCrimSexAsslt, Agg Discharge of a Firearm, Agg Vehicular Invasion, Armed Robbery w/ Handgun, Armed Violence W/Firearm, Home Invasion, Murder, UUV-Gun).....	15
Agg Batt against Police Officer, Agg Domestic Battery, Domestic Battery W/Bodily Harm, Agg Robbery, Agg Stalking, Child Pornography, Hate Crime W/ Bodily Injury, Hate Crime @Place of Worship, Heinous Batt, Residential Arson.....	12
Other Forcible Felonies - (Agg Batt, CrimSexAbuse, Hate Crime, Intimidation, Kidnapping, Robbery, Vehicle Invasion).....	10/12*
Other Offenses	
Felony Sale of Cannabis (Class 1 or 2 felony amount), Arson, DCS.....	10/12*
PCS w/int deliver, Residential Burglary, UUV (not a gun), Possession Explosives.....	7/10*
Felony Possession of Narcotics/Drugs for Sale or Other Felonies.....	5/7*
Misdemeanor Possession of Narcotics/Drugs or Other Weapons Possession.....	3
Other Misdemeanors.....	2
Not Picked up on New Offense (WARRANT).....	0
2. PRIOR AUTHORIZED SECURE DETENTIONS (Choose only one item)	
Prior detention within the last 24 hour period.....	8
Prior detention within the last seven days.....	7
Six or more total detentions within the last 12 months (# _____).....	10
One to five detentions within the last 12 months (# _____).....	6
No detentions within the last 12 months.....	0
3. PAST FINDINGS OF DELINQUENCY - CLOSED PROCEEDINGS (Choose only one item)	
IDOC Discharged.....	8
Past Finding of Delinquency on a violent felony.....	7
Past Finding of Delinquency on a felony.....	5
Past Finding of Delinquency on a misdemeanor (# of findings x 1 up to a total of 3 points).....	1 / 2 / 3
No Past Finding of Delinquency.....	0
4. CURRENT CASE STATUS (Choose only one item)	
Criminal Court Case Pending.....	8
IPS.....	7
Probation (# _____).....	4
Supervision (# _____).....	2
Not an active case.....	0
5. PETITIONS PENDING ADJUDICATION (Choose only one item)	
2 + Petitions Pending (# _____).....	3
1 Petition Pending.....	1
No Petitions Pending.....	0
6. UNDER DETENTION ALTERNATIVE RESTRICTIONS	
Electronic Monitoring.....	10
Shelter Care Facility.....	8
Evening Reporting Center.....	7
Home Confinement.....	5
7. WARRANT CASES (Choose only one item)	
Category 1: Mandatory Detention.....	15
Category 2: Non-Mandatory Detention.....	8

***ALL SUBSEQUENT POLICE REFERRALS FOR THESE OFFENSES**

TOTAL SCORE _____

DECISION SCALE

Score 0-9..... **AUTHORIZE RELEASE** (with notice of prioritized date for 5-12 Conference)
 Score 10-14..... **COMPLETE NON-SECURE DETENTION OPTIONS FORM**
 Score 15+..... **AUTHORIZE DETENTION** (for minors 13 years of age and older)
 (Complete non-secure custody options for minors under 13 years of age before placement into secure detention unless Minor is charged with UUV-Firearm in or on school grounds)

ADMINISTRATIVE OVERRIDE: YES NO REASON: _____
FINAL DECISION: DETAIN RELEASE RELEASE WITH CONDITIONS

MR lives at: _____ Apt. _____ City: CHGO/ _____ IL/ _____ Zip: _____

MR lives with: _____ Relation: _____ Phone: 312 / 830 / 708 / 773 / 847

231	Agg Vehicular Hijacking with F/A	334	Aggravated Firearm Discharge	541	Manslaughter - Voluntary
234	Agg Criminal Sexual Assault	339	Aggravated Battery/ Great Bodily Harm	543	Murder (non A/T)
242	UJW - School Grounds	341	Aggravated Vehicular Invasion	548	Solicitation of Murder
243	Murder	342	Aggravated Vehicular Hijacking	552	Reckless Homicide
256	Robbery - Armed with Firearm A/T	343	Aggravated Battery with Firearm	556	Armed Robbery
257	DCS on school grounds to a minor under to a minor under the age of 17	360	Armed Violence with Firearm	570	Aggravated - Arson
258	Agg Bat with firearm on school grounds or on a conveyance	408	Attempt Murder	572	Home Invasion
		442	UJW - School Grounds (non A/T)	573	Robbery Armed Firearm
		443	UJW Public Housing (non A/T)	589	Armed Violence
		450	UJW - Firearm	777	Interstate Warrant
		520	Criminal Sexual Assault		
		534	Aggravated Criminal Sexual Assault (non A/T)		
		539	Aggravated Kidnapping		

JA 12 POINTS

361	Aggravated Battery against police officer
362	Aggravated Domestic Battery
363	Domestic Battery with Bodily Harm
364	Aggravated Robbery
365	Aggravated Stalking
366	Child Pornography
367	Hate Crime with Bodily Injury
368	Hate Crime at Place of Worship
369	Helmous Battery
370	Residential Arson

JA 10 POINTS

325	Ethnic Intimidation
335	Vehicle Invasion
338	Vehicle Hijacking
345	Vehicular Endangerment
346	Stalking
347	Hate Crime
351	Unlawful Del Cannabls
	Class 1 & 2 Fel Amt
403	Attempt Criminal Sex Assault
411	Attempt Armed Robbery
423	Attempt Aggravated Arson
424	Aggravated Cruelty to Animals

JA 10 POINTS

427	Attempt Agg Crim Sex Assault
503	Arson
507	Aggravated Battery
527	Firearm - Unlawful Sale
533	Criminal Sexual Abuse
535	Intimidation
538	Kidnapping
550	Aggravated Criminal Sex Abuse
555	Robbery
574	Controlled Substance - Del
580	Gang Organization Recruitment

JA 7 POINTS

319	Unlawful Del Cannabls - Misdemeanor Amt
333	Poss Contit Sub w/Int to Del
445	Weapons - Unlawful Sale
524	Explosives Possession
564	Unlawful Use of Weapon
585	Residential Burglary

JA 5 POINTS

322	Bring Contraband into Institution
323	Child Pornography, Sexual
324	Burglary to Auto
326	Compel - Conf by Threat
329	Juvenile Pimping
337	Agg Poss Stolen Vehicle

JA 5 POINTS

352	Possession of Cannabls Fel Amt
406	Attempt Kidnapping
409	Attempt Criminal Sex Abuse
410	Attempt Robbery
412	Attempt Theft of Auto
414	Attempt Theft over \$300

JA 5 POINTS

422	Attempt Residential Burglary
424	Attempt Arson
432	Attempt Aggravated Crime
433	Attempt Aggravated Sexual Abuse
434	Attempt Aggravated Sex with Family
511	Burglary
528	Forgery
544	Controlled Sub Poss - Fel Amt
554	Restraint - Unlawful

JA 5 POINTS

558	Theft of Auto
560	Theft over \$300
566	Sexual Relationship w/Family
577	Possession of Stolen Auto

JA 3 POINTS

312	Unauthorized Storage of Weapon
313	Poss of Cannabls - Mis Amt
328	Poss Conc Dangerous Weapon
348	Misdemeanor Sale Cannabls
350	Theft of Firearm
400	Attempt Burglary
435	Attempt Forgery
446	Attempt Poss of Controlled Sub
504	Aggravated Assault

JA 2 POINTS

302	Ticket Scalping
303	Endangering Life/Health Child
305	Contributing to Neglect of Child
308	Poss/Theft Detection Device
309	Vandalism
310	Aiding a Fugitive
311	Obstructing Service of a Process
314	Alteration Identification of Vehicle
315	Obt Service Defraud Elec Device
316	Unlawful Sale of Fireworks
317	Leaving Motor Vehicle Accident
318	Peddling Merchandise without License
320	Hitchhiking
321	Unlawful Use of a Computer
336	Looting
401	Attempt Crim Damage to Property
404	Attempt Eavesdropping
405	Attempt Retail Theft
413	Attempt Theft Under \$300
415	Attempt Deceptive Practice
416	Attempt Theft from Person
417	Attempt Theft Lost/Mislaid Property

438	Attempted Battery
499	Miscellaneous Attempt
500	Abortion
501	Air Rifle - Carry Discharge
502	Air Rifle - Unlawful Sale
506	Battery
508	Bribe - Accepting
509	Bribe - Offering
510	Bribery
512	Burglary Tool - Possession of
513	Civil Rights - Violated
514	Conspiracy
516	Criminal Damage to Property
517	Criminal Trespass to Vehicle
519	Deception Practice
521	Disorderly Conduct
522	Distribute Abortifacient
523	Eavesdropping
525	False Fire Alarm
526	Defacing Identifying Mark
529	Gambling
530	Gambling - Keeping Place of

547	Prostitution
549	Public Indecency
551	Reckless Conduct
553	Resisting or Obstructing Police
557	Solicitation
559	Theft Under \$300
561	Theft - Deception or Threat
562	Theft from Person
563	Theft - Lost/Mislaid Property
565	Assault
568	Unregistered Gun
569	Unregistered Gun Carrier
575	Crim Damage to Stat Supp Prop
576	Poss of Stolen Property
578	Unlawful Use of Credit Card
579	Unlawful Poss of Ammo/Firearm
581	Escape
582	Theft
583	Criminal Trespass to Land
584	Poss Drug Paraphenalla
586	Retail Theft
587	Tampering with Vehicle



DETENTION SCREENING Statewide Risk Assessment II

FACTS #:		First Name:		Last Name:	
SS#:		DOB:		Gender: Male Female	
Taken into Custody/Arrested:		Date:		Time:	
				Referral County:	
 Screener:			 Screening Date:		
			 Time:		
Primary Reason for Referral/Detention:	<input type="checkbox"/> Delinquent Offense		<input type="checkbox"/> Drug Court or Juvenile Court Hold (post disp)		
	<input type="checkbox"/> Delinquent Offense+VOP, VCO, Other Viol. (delinquent offense while on probation)		<input type="checkbox"/> Disposition -15 day Detention		
	<input type="checkbox"/> Probation/Parole Violation (with warrant)		<input type="checkbox"/> Detained Pending Post-Dispositional Placement		
	<input type="checkbox"/> Viol. of Court Order/Cond Order of Release		<input type="checkbox"/> Committed/Diag - return to court on pending case		
			<input type="checkbox"/> ICJ/INS Hold		
			<input type="checkbox"/> Transfer from Other Center		
		<i>If one of the above is checked, complete entire form</i>		<i>If one of the above is checked, complete:</i>	
				o Special Detention Cases, if applicable	
				o Detention Admission (required)	
Primary (most serious) Referral Offense:					
Enumerated		Fel/Mis:		Degree:	
				Det Category:	
Use or Possession of a Weapon in Commission of Crime: <input type="checkbox"/> Knife or other sharp instrument <input type="checkbox"/> Firearm <input type="checkbox"/> Other					

A. OFFENSE (Score only the most serious instant offense)

0. All enumerated offenses in 31-22-8.....	12
1. Violent Offense Against Person Resulting in Serious Bodily Injury or Death..	12
2. Violent Sexual Felony.....	12
3. Use or Possession of Firearm in Commission of a Crime.....	12
4. Felony Crimes of Violence.....	8
5. Felony Sexual Offenses.....	8
6. Felony Property Crimes including Auto Theft.....	5
7. All Other Felony Crimes and Misdemeanors.....	3
8. All infractions, Petty Misdemeanors and non-criminal probation violations.....	0
Enumerated offense will not be mitigated	+ _____
OFFENSE SCORE	

B. PRIOR OFFENSE HISTORY (Score only one of the following)

Felony petition filed and pending.....	6
Prior felony adjudication/within the last six months, or two or more adjudications including one felony within the last 12 months.....	5
Prior felony adjudication within the last three years.....	3
PRIOR HISTORY SCORE	+ _____

C. RISK OF FTA AND REOFFENSE (Add all that apply up to 3 points)

Previous Escape/abscond from secure facility, or court ordered placement.....	1/ea
Previous failure to appear for court.....	1/ea
Pending citations or referrals.....	1/ea
FTA AND REOFFENSE SCORE	+ _____

D. Aggravating Factors (Add all that apply, up to 3 points)

Multiple Offenses are alleged for this referral.....	1/ea
Two or more adjudicated offenses involving violence in the last year.....	1/ea
Crime or behavior alleged was particularly vicious or violent.....	1/ea
AGGRAVATING FACTORS SCORE	+ _____

E. Mitigating Factors (Subtract all that apply, up to 3 points)

****Do not complete for enumerated offenses****

Involvement in offense was remote, indirect or otherwise mitigated.....	1/ea
Family member or caretaker able to assume responsibility for minor.....	1/ea
No arrests or citations within the last year.....	1/ea
MITIGATING FACTORS SCORE	- _____

TOTAL SCORE (A+ B+ C + D - E)



DETENTION DECISION (Based on score)

- Do Not Detain (0-7 Points)
- Non-Secure Alternative (Home/Community Supervision 8-11)
- Secure Detention (12 Or More Points)

OVERRIDE: (Check one)

- The child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child
- Parents located but not available
- Parents refuse custody
- Protective Services Involvement where charges have been substantiated:
- Override to Release
- Other: (must explain override reason, supervisor authorization to be noted in other internal comments box)

If client is Detained only, complete the following section:

Substance Abuse Issues

Under the Influence:

At time of screening: Does the client appear to be intoxicated

Yes No Unknown

If yes: Alcohol Drugs Marijuana Solvents

Is any associated charges alcohol or drug related

Yes No Unknown

If yes: Alcohol Drugs Marijuana Solvents

Assessment(s) on File: (FACTS; Administrative, Legal, and TCM tab)

Assessment: Date: Type:

Assessment: Date: Type:

Assessment: Date: Type:

Other Data Collection Items:

Intended for analysis purposes only and is not applicable to detention decision

Current referral: Enter FACTS Ref #:

- Current charges are Serious or Youthful Offender
- Previous FTA for court: Enter total number of FTA which occurred on different dates _____
- Previous Escape or Runaway: Enter number of incidents with different dates _____
- Previous Detained (*exclude current detention*): Enter number of detention admissions which occurred on different dates: _____

Runaway Status:

- In-state runaway
- Out-of-state runaway
- Not a runaway

SPECIAL DETENTION CASES (Check one Box then choose type and reason that apply)

Any warrant or parole detention order Type Reason



Violation of home detention/electronic monitoring

Hold for out of state

CYFD

Arrest Bench Parole Det order Magistrate/Municipal Not indicated on warrant Home Detention Electronic Monitoring INS ICJ	Escape from Secure Facility Abscond from out of home placement FTA Probation Violation Runaway
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Non-Secure Detention Placement (at time of decision)

Services: (Check all that apply)

- Home Detention
- Electronic Monitoring
- Community Monitoring (non-electronic monitoring)
- Surveillance
- 24 Hour House Arrest
- Other: (explain) _____

- Community Corrections
- Emergency Shelter Bed
- CCMHC
- Community Custody Program
- Group Home
- Youth Reporting Center

Detention Admission

Admitted Into Secure Detention:

Date:

Time:

Det Center:

**SANTA CRUZ COUNTY JUVENILE DETENTION
SCREENING RISK ASSESSMENT**

AREA 1. MOST SERIOUS INSTANT OFFENSE (choose highest one) (Arrest warrant for a new offense is scored as the offense)

- a. Any 707(b) offense 10 (No Mitigation to apply)
- b. Loaded Firearm 10
- c. Felony Crimes of violence 8
- d. Felony sexual offenses 7
- e. Felony high speed chase (driver only) 7
- f. Sale of drugs 7
- g. Court Identified gang member who committs misdemeanor crime of violence 5
- h. Other felony offenses except drugs 5
- i. Possession drug for sale 5
- j. Violent misdemeanor/possession of weapon 4
- k. Possession of drugs 3
- l. Misdemeanors 2
- m. Probation violations 0

AREA 2. CURRENT ARREST ON WARRANT

- a. Surrendered 0
- b. Apprehended 1
- c. Apprehended with resistance 2

AREA 3. LEGAL STATUS

- a. Pending Court (petition has been filed or case is "off calendar for personal service") 6
- b. Ward – last sustained offense within 3 months 4
- c. Ward – last sustained offense 3 months/1 year 3
- d. Ward – last sustained offense > 1 year 2
- e. 654/725 W&I (informal probation/6 months without wardship) 2
- f. Transfer in-custody (score for sustained offense)
- g. Open deferred entry of judgement 3
- h. None 0

AREA 4. RISK OF FTA AND REOFFENSE

- a. Previous 871 W&I (escape from a Juvenile Hall or Ranch Camp) 2 points each
- b. Previous FTAs1 point each (never to exceed 3 points)
- c. Pending referrals/citations0-3 points each (never to exceed 3 points)

AREA 5. RISK OF NEW OFFENSE

- a. Previously arrested or cited for new offense while pending court.....3 points

AREA 6. MITIGATING FACTORS (Can decrease by 1 to 3 points total – specify)

- a. Family member or caretaker able to assume responsibility for minor
- b. Stability in school and/or employment
- c. First arrest at 16 or older
- d. No arrests or citations within the last year
- e. Other (please specify below)

AREA 7. AGGRAVATING FACTORS (Can increase by 1 to 3 points total – specify)

- a. Runaway behavior from home
- b. Poor or no attendance at school
- c. Two or more sustained offenses involving violence in the last year.
- d. Multiple Offenses
- e. Other (please specify below)

AREA 8. VICTIM/WITNESS FACTORS

- a. Threats of violence against current victim subsequent to offense 3
- b. Threats of violence to witness in current case subsequent to offense..... 3
- c. Previously victimized same person/family member..... 2
- d. Crime appears based on race, gender, sexual orientation, age, homelessness, disability or religion (hate crime)..... 2
- e. Minor has easy access to victim and crime was of a violent nature or a residential burglary..... 2

AREA 9. SUBSTANCE USE FACTORS

- a. Minor currently in treatment for alcohol/drug issues (-2)
- b. No known substance use in the last year..... (-2)

PATTERN OF SUBSTANCE USE - PICK ONE BELOW:

- c. Knowledge of recent, active substance use and/or one or more positive urine test in the past 30 days..... 1
- d. Current IV drug use (within the past 72 hours) 10
- e. Daily use of a narcotic for at least 30 days (not marijuana) 3
- f. Drug or alcohol use 3-6x's week for at least 90 days (must have documentation of this) 2
- g. Daily use of alcohol or marijuana and minor is 14 or under.....3
- h. Daily use of alcohol or marijuana and minor is 15 or older.....2

DETENTION DECISION (CHECK)

- Release without restriction (0-5 points)
- Release without restriction or Home Supervision release (6-9 points)
- Detain (10 or more points)

OVERRIDE: (STATE REASONS)

MANDATORY DETENTION CASES (Current Case)

THESE CASES ARE TO BE AUTOMATICALLY DETAINED BUT STILL SCORED

- a. Escapee from county institution
- b. Home supervision/E.M. arrest/Fresh arrest while on home supervision/E.M.
- c. Abscond from placement
- d. Placement failure
- e. Pickup and Detain
- f. Warrant without Judge previously agreeing to release by P.O.

APPENDICES F & G

**THE 325 PAGE REPORT CAN BE FOUND AT THE
FOLLOWING WEBSITE:**

[http://www.housedems.ct.gov/jpic/appendices F G.pdf](http://www.housedems.ct.gov/jpic/appendices_F_G.pdf)

Imagine a child left alone to fend for himself. No one shows him how to live, how to love. He's got no sense of direction, no guidance from a positive, caring adult. All he sees is poverty...pain...perpetual chaos. What he learns is how to distrust, be angry, and fend for himself. He smokes more than he eats because that's what he sees in those around him. He yells and fights more than he cries, 'cause that's how he's learned to deal with the hurt. His classroom is the streets where he learns what he needs to survive: money's what matter most; without it you have nothing. No power, no control- not even over your own life. He sees that a mother is who gives you life, not necessarily love. He wishes and prays that some day she'll love him even half as much as she loves getting high. He never feels angry for what he's missing 'cause to him this is all there is- all there ever will be. Hope? For what? Maybe an end to all this. What's the point living anyway when you don't even care if you die?

A child grows and his smiling face now wears the frustrations of life. He never laughs- he doesn't even remember how. What the hell is so funny, anyway? The situation is real, as real as it gets. He's not scared. No, never that. Scared of what? Dying? That's the only thing he is certain of.

You really don't have to imagine anymore. That's my story. Let me introduce myself. My name is Yusef Williams, and I live in Syracuse. I am someone who has personally been affected by the Rockefeller drug laws, and want to talk to you today about that experience.

Eight years ago, I was arrested on a drug conspiracy charge based on a telephone conversation with my uncle. I was never caught with any drugs in my possession. Because I was young, and listened to my lawyer I avoided going to trial and plead guilty to a lesser charge of criminal possession of a controlled substance in the second degree. An A-2 felony. At the time, I had no prior felony convictions and believed that this option was a "good one".

While I was awaiting sentencing, out on bail, I was shot four times, twice in the chest and twice in the stomach. I stayed in the hospital two months, and nearly died before I returned to court. I was out of the hospital, but I wore a colostomy bag and had a drainage tube coming out of my stomach. The judge looked at me and my case, and knew my situation, but because of the mandatory drug laws he sentenced me to 4 years to life.

I went to prison immediately and was placed in general population. My condition was so bad after that I had to have additional surgeries while I was upstate. I look at it like this- I'm lucky to even be alive because I didn't just get a life sentence, I was really given a "death sentence" and wasn't really expected to make it out alive.

But I'm not bitter about the situation anymore, now I realize that the judge probably had no choice because of the mandatory drug laws. My personal background, record of no prior criminal convictions, or my health conditions could change the circumstances. The judge had no real discretion, and I know this now. But that is just the problem. As this

commission looks at really reforming the Rockefeller Drug laws, you need to keep these two things in mind: First, judges need to be given back the opportunity to make real decisions in sentencing. Cases need to be looked at individually, because each individual's circumstances are unique and play into who they are and why they've made the choices they have. And secondly, you need to understand that although the reform efforts made up to now have been made in good faith, there are too many people like myself who are still ineligible for re-sentencing. Because I have an A-2 felony conviction, and have already served out my mandatory sentence in prison I still have "life on my back". In speaking to parole, I was told that after an undetermined period of time, which I guess they decide upon, I can apply to have the "life" removed. Sound confusing? Yeah. So imagine how I feel.

But I want to explain something further to you today about why I really want to move on from this lifetime parole situation. Over the past three years, I have returned to prison three times, totalling about 26 months. I did not go back to jail because I committed any crimes, but because of "technical" parole violations. Do you know what makes a "technical violation"? Being a grown man and having to be in the house before 9 pm; not being able to drive a car even though you have a driver's license; not having a cell phone; being unable to associate with immediate family members (because of their criminal pasts); having a dog; and don't think you can ever even have a sip of alcohol.

I understand there needs to be guidelines to ensure public safety but if you live where I live and if you see what I see than you'll now how hard it is to survive out here. It's so

hard. And when a person like me does find the opportunity to work and do right, it's almost impossible to maintain that lifestyle the way that parole is set up. First off, finding a job where a person is willing to hire you with a felony is hard enough; they don't help you at all. They just tell you that if you don't find a job right away, you have report to their office every morning. Then if you do find a job, they show up wearing their bullet proof vests and guns showing to check on you. Now everybody in the work setting looks at you like you're crazy, and that's another barrier to overcome. And if you can secure a good job, they might just make you quit because of the work hours, or the location, or because they don't think a convicted felon should be doing that sort of work.

The money that is spent to send parole violators back up north could be much better spent in community-based programming that might really have an impact on people being more successful on the streets. Things like job training programs, alternatives to incarceration, a system of graduated sanctions, substance abuse treatment, personal and family counseling. And by remaining in the community, people could sustain positive relationships with family, neighbors and employers.

Currently, I am a full-time student at Onondaga Community College, (and I had to battle hard to get parole to approve that). I am majoring in criminal justice, and my goal is to develop effective re-entry strategies and help others who find themselves in similar situations. As a person on lifetime parole, I cannot vote (that is a whole other issue that this commission may need to look at in the future) so I decided to come and talk to you all today because this is probably the only opportunity that someone like me has to have

my voice heard. Know that this voice is not just my own, but there are many people like me who don't even know about this type of forum. Thank you for listening to me today. I hope that you take all this into consideration as you prepare your recommendations for the Governor.

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TESTIMONY OF CARL HATCH, CO-PRESIDENT

Reentry Association of New York

Testimony
before
NYS Commission on Sentencing Reform
November 15, 2007
By
Carl Hatch, Co-President of the
Reentry Association of New York (RANY)

Good Afternoon. I am Carl Hatch, the Co-President of the Reentry Association of New York, which includes representatives of the nine operating County Reentry Task Forces, as well as other interested individuals. I am also a Vice President of Catholic Family Center, which provides the staff support to the Monroe County Reentry Task Force. My background includes 33 years of work in the behavioral health field in community-based treatment settings, with extensive involvement with clients involved in the criminal justice experience. My remarks today grow out of that experience, and have not been endorsed by either Catholic Family Center or RANY.

First, let me begin by commending the Commission on the breadth and depth of your preliminary report. A report made all the more remarkable by the limited amount of time in which it was put together. Such a comprehensive review is long overdue given the ad hoc and often contradictory public policy which has evolved around sentencing and public safety.

My comments today will focus on Part Three of your preliminary report, "The Science of Crime Reduction: Using Evidence-Based Practices to Reduce Recidivism."

Using my own County's experience, I can say with certainty that that the Transition from Prison to Community model that the State has begun implementing in the nine IMPACT Counties has opened the door to a new era in reentry. Prior to the implementation of the County Reentry Task Force, the organizations in the criminal justice community in our County all certainly knew each other and worked well together collaboratively. Similarly, the faith and community-based players also had a long history of close collaboration. But, the creation of the Reentry Task Force marked the first time that those two communities regularly began sitting down with each. The result has been a new level of synergy and optimism that we can make a meaningful difference in public safety.

The eleven mandated partners grew to 19 committed organizations even before our grant application was submitted and has subsequently grown to over 50 active entities over the past year. Our Task Force recently held its second annual recognition and thank you event for participating individuals and invited 109 people who have made specific contributions to the effort. The turnout for our regularly scheduled Task Force meetings now averages close to 50.

We still have a ways to go. Parolees still don't all have photo identification, birth certificates, and social security cards, but the numbers are climbing. Despite an expedited process established by our Department of Social Services for benefit enrollment for Task Force clients, many more still struggle with the routine process of establishing eligibility and must endure the forty-five day wait. Names of upcoming releasees now flow much more smoothly, although the detailed information needed to ensure appropriate program placements still lags much of the time. Housing, especially for sex offenders, is in a state of crisis. (We are currently averaging 66 days post release to find a suitable placement for Task Force clients.)

Your preliminary report appropriately identifies many of the major hurdles yet to be addressed. The limited availability of step down facilities like the Orleans Reentry Prison and work release really hampers the transitional planning related to job readiness, employment, family re-integration, treatment planning, and community preparedness. Education and vocational training, especially programs that provide diplomas or certificates that are nationally recognized. Housing is a huge problem and effectively undermines whatever other good work is being done on treatment and employment.

The probability of being able to successfully address all of those problems, absent a consistent and validated risk assessment tool, is low. We need to focus our efforts on the individuals who pose the greatest risk to public safety. A consistent instrument needs to be applied from sentencing, through incarceration and back to community supervision. As you point out, utilization of resources on low risk offenders actually increases their chances of recidivism and it certainly dilutes what we are able to do for those about whom we should be most concerned.

Similarly, identification and targeting of criminogenic needs must also occur if we are to get the best outcomes.

DCJS has done some promising work in both of these areas, but we need to get a consistent instrument in place across pre-sentence investigation, sentencing, incarceration, and community supervision. We may need to refine the tool as we implement this approach and gather data, but we need to get this most basic mechanism in place now.

Service delivery, whether it is in pre-trial services, alternatives to incarceration, correctional facilities, or in faith and community-based agencies, needs to adopt the same kind of rigor. There is a large and growing evidence base about what works and what doesn't. Program evaluation has matured to the point that it should be included as a routine part of every aspect of service delivery and continuous quality improvement should be guiding the evolution of our public policy.

A word of caution, however. The literature is clear that evidence-based practice only works when the models are fully funded and implemented. The same goes for program evaluation methodologies. These are not processes that can be done cheaply, but when the potential savings from reduced use of incarceration, reduced recidivism and increased

public safety are factored in, they do not need to result in overall increases in public spending.

I also applaud your recommendations about the use of graduated sanctions for Parole violators. I certainly believe that there will always be individuals who should be returned to prison, but the current all or nothing options for dealing with Parole violations is both ineffective and expensive. I have seen parolees who have made a terrific start in reentry, but who have committed a technical violation that has cost them housing, a promising job, as well as all of the pro-social relationships they had begun to establish. The literature is clear that the swiftness and the certainty of penalties, not their severity, is the key to their effectiveness.

I have also seen parolees return to prison for technical violations, complete their sentence, and then get released without supervision. Surely public safety would have been better served, by a graduated sanction and community supervision rather than by warehousing them until they are finally released with no supervision whatsoever.

Finally, I want to end by returning to the Transition from Prison to Community model.

I have gotten to know most, if not all, of my peers working with other County Reentry Task Forces. I cannot help but be struck by how differently the nine original Task Forces have evolved.

They all began with the same foundational training. They have all worked closely with DCJS and Parole in implementing the model. They have all participated freely in sharing best practices, successes and failures. But, they all look and operate differently.

I truly believe that such diversity is a strength, not a weakness. Each has had to pull together the stakeholders in their individual communities. Each has inventoried the resources and the gaps in the area they serve. And, each has developed a unique strategic plan and approach.

I hope that as the Commission wrestles with the best way to formulate a coherent public policy in this area, that it leaves room for some variation in approach so that implementation can be tailored to the needs of each community.

Again, thank you for your hard work and for such a promising start.