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NEW YORK STATE
DIVISION OF CRIMINAL JUSTICE SERVICES
NEW YORK STATE COMMISSION OF SENTENCING REFORM

Commission Meeting

DATE: June 13, 2007
TIME: 9:00 a.m. to 4:50 p.m.
LOCATION: New York State Capital Building
Blue Room
Albany, New York

1 Commission on Sentencing Reform - 6-13-2007
 2 COMMISSION MEMBERS:
 3 Commissioner Denise E. O'Donnell, Co-chair
 4 George B. Alexander
 5 Anthony Annucci, Esq.
 6 Anthony Bergamo, Esq.
 7 Michael C. Green, Esq.
 8 Paul Korotokin
 9 Assemblymember Joseph Lentol
 10 Michael P. McDermott, Esq.
 11 Judge Juanita Bing Newton
 12 Senator Eric T. Schneiderman
 13 Tina Marie Stanford
 14 Cyrus Vance, Jr. Esq.
 15 COMMISSION STAFF:
 16 John Amodeo, Esq.
 17 Michael Barrett, Esq.
 18 Gina L. Bianchi, Esq.
 19 Donna Hall, Ph.D.
 20 Patti Greco
 21 SPEAKERS:
 22 Martin Horn
 23 Robert Maccarone
 24 Rocco Pozzi
 Felix Rosa
 Terry Salo
 Terrence Tracy

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 2 COMMISSIONER O'DONNELL: And I
 3 appreciate -- you all had the benefit of meeting,
 4 and -- and I appreciate Tony's very practical
 5 knowledge and questions and understanding of the
 6 impact that sentencing has on the criminal justice
 7 system. And I think they started to touch on that
 8 with many of our fine speakers at the last meeting.
 9 But it's -- it -- it's -- it's really -- it can
 10 be -- it can't be understated that sentencing has
 11 such an impact on the criminal justice system in so
 12 many respects that anything that we are going to
 13 propose going forward can't be responsibly proposed
 14 unless we really understand the implications it's
 15 going to have on the criminal justice system on,
 16 particularly, jobs, parole, on -- on -- on the --
 17 the courts and -- and -- and so many areas of
 18 criminal justice. And I think Tony will help us
 19 understand and make those links. Thanks, Tony.
 20 MR. ANNUCCI: Good morning.
 21 COMMISSIONER O'DONNELL: We're
 22 back --
 23 MR. ANNUCCI: Thank you, --
 24 COMMISSIONER O'DONNELL: -- on

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 2 the record.
 3 MR. ANNUCCI: -- Ms. Chairwoman,
 4 members of the commission. On behalf of
 5 Commissioner Brian Fischer, it is a privilege and
 6 an honor to be here today and -- and discuss the
 7 big picture of what the Department of Correctional
 8 Services is all about. This commission, Governor's
 9 executive order, is very profound, and we hope to
 10 be able to fulfill -- fulfill the responsibilities
 11 and mandates by taking a lot of time to understand
 12 exactly where we are. And that, in -- in and of
 13 itself, is a complex task. But also understanding,
 14 I think, the how and the why we got to where we are
 15 is important. I want to delve a little bit into
 16 that.
 17 I think, probably, the best point
 18 to start is with the good news. And the good news
 19 is, despite the complexities of the sentencing laws
 20 and -- and despite the intricacies and the apparent
 21 efficiencies that are there, what we've
 22 accomplished in New York State I think is truly
 23 remarkable and the envy of many, many other states.
 24 Practical reality is, bottom line, we are one of

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 2 the safest states in the country. We certainly are
 3 the safest large state in the country. D.C.J.S.
 4 Commission you know all too well. All of the
 5 indicia, all of the feedback that are coming back
 6 indicate that New York State is an extremely safe
 7 state, and we constantly strive to get better. So
 8 that is an extremely positive benchmark.
 9 By the same token, we are also in
 10 a state where our prison system has actually
 11 reduced its population. We reached an all-time
 12 high in December 1999 of seventy-one thousand six
 13 hundred inmates. We are presently down to
 14 sixty-three thousand eight hundred. That is
 15 slightly up from some months ago when we were at
 16 sixty-three thousand three hundred. But that is a
 17 significant decrease in the prison population. So
 18 we were able, while we were achieving milestones in
 19 safety and -- and reduced crime rates, to not
 20 simultaneously increase our prison system, but
 21 decrease it. I think there have been broad trends
 22 that you've seen whereby violent felony offenders
 23 are spending more time in prison, and nonviolent
 24 inmates were being able to be released earlier due

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2 to a -- a number of early release programs.

3 The state of the law that you're
4 seeing now is very much the result of very arduous
5 negotiations that took place between two different
6 houses of legislature that --.

7 COMMISSIONER O'DONNELL: Tony,
8 can I just stop you? Judge, can you hear? Can you
9 hear?

10 Okay. Great. Can you hear?

11 MR. ANNUCCI: Okay. To continue,
12 the -- the -- the -- a lot of the sentencing laws
13 that you see right now are the end result of many,
14 many hours of arduous negotiations between two
15 houses of the legislature. And I think just
16 objectively describing it, without trying to, in
17 any way, describe which side is -- is right or
18 wrong, that there are -- there are very different
19 philosophies in -- in approaching criminal justice.
20 Perhaps the best place to start is in the early
21 '80s, when the bond act was placed before the
22 voters of the state to allow money to be -- to
23 build prisons when there was a clear need to build
24 prisons. And they rejected that bond act. And

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2 then we had to come as -- as a state with a way to
3 fund building of new prisons, because clearly they
4 had to be built in the early '80s. And the Urban
5 Development Corporation, which was originally
6 created to find ways to come up with housing for
7 low-income individuals, was used, actually, as the
8 conduit to float bonds, to raise money that can now
9 be used to build prisons. And so when we needed to
10 get more prisons, that would be placed before the
11 legislature. It was part of the budget process.
12 And that would start the negotiation process in
13 terms of whether or not the money would be there
14 for additional prisons and, by the same token, what
15 types of reform provisions would be part of -- of
16 that type of legislation. So that's one part of
17 the equation.

18 Another part is what was going on
19 in the early '80s and well throughout the '90s. We
20 had a drug -- drug epidemic in this -- in this
21 state, especially in New York City. Crack was a
22 very, very serious problem. And not only just the
23 drugs, but the tangential violence that was going
24 along with crack was a very, very serious problem.

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2 I'm sure everybody remembers that -- all of the
3 drive-by shootings that took place and all of the
4 innocent bystanders that were killed. The drug
5 dealers had a name for those innocents that were
6 killed. They just referred to them as mushrooms.
7 I remember when we had significant numbers of
8 inmates in the work release program in the early
9 '90s. It seemed to me that almost every week, one
10 of our work release participants was a homicide
11 victim. And I think you can only attribute that to
12 the market forces that were driving the drug trade,
13 such that when individuals went back to their
14 communities to try and take up where they left off,
15 they were killed by rivals that had taken over
16 where they had previously had their establishment.
17 There's a tremendous amount of violence associated
18 with it.

19 But just the drug crimes
20 themselves drove significant numbers of individuals
21 to come into state prison. As -- as we all know,
22 sale in the third degree is a Class B drug felony.
23 You sell any amount of a controlled substance, you
24 are guilty of a Class B drug felony offense. And

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2 if you do it a second time, you are a predicate,
3 which means you come to state prison on a
4 four-and-a-half-to-nine sentence the low end, under
5 the law that had been in effect in those days. So
6 that was driving significant numbers of individuals
7 coming to the state prison system, and the end
8 result of all of this -- one other -- I'm sorry.
9 One other aspect of the equation was the legal
10 interpretation by our courts of word "forthwith."
11 There is a statute in criminal procedure law that
12 says when an individual has a sentence of
13 imprisonment pronounced, he is to be delivered to
14 the appropriate public servant forthwith to
15 commence his sentence of imprisonment. And so the
16 counties who were holding all these individuals,
17 after their sentence, when in transfer to state
18 prison, would content that "forthwith" had a
19 certain prescribed period of time. And they'd go
20 to court, and they'd sue, and various judges
21 throughout the state would issue rulings saying,
22 "we interpret that to mean within ten business days
23 of the date you were declared state ready," or
24 fourteen calendar days or what have you.

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 2 So there were court orders in
 3 effect throughout the state in various counties
 4 that basically put a legal obligation on the
 5 Department of Correctional Services. "You have to
 6 accept these inmates within this prescribed period
 7 of time or you're going to be in noncompliance with
 8 this court order." And even if we were operating
 9 at a hundred and twenty-five percent capacity, the
 10 Court of Appeals, in a case called *Airs*, said,
 11 "existing overcrowding is not a legal excuse. You
 12 are required to comply with court orders. And if
 13 not, you can theoretically be held in contempt."
 14 And that is, in fact, what happened. I spent a lot
 15 of time running from court to court, battling
 16 contempt orders. And the measure of damages
 17 typically was for every man day of noncompliance,
 18 whatever the per diem cost was to house that
 19 individual, multiply that times the number of days,
 20 and that would be the contempt fine that would be
 21 imposed upon us to pay. Many, many millions of
 22 dollars -- I remember one time when I was pretty
 23 much in the neighboring county, but it involved
 24 noncompliance covering a number of years. I had to

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 2 prisons, and in particular, we called them
 3 "cookie-cutter facilities." These were
 4 seven-hundred-fifty-bed medium-security prisons
 5 that we could erect in about eleven months' period
 6 of time. We put up a number of them to be able to
 7 deal with all of the drug offenders that were
 8 coming into our system.
 9 But a lot of other changes were
 10 made -- the Shock Incarceration Program, the Earned
 11 Eligibility Program to increase the number of
 12 people being released on parole, case app
 13 facilities, which were prisons that were going to
 14 provide intensive drug treatment and lead to
 15 releases into the community, the Willard Program,
 16 first alternative to second felony offenders, and a
 17 number of others. All of these things were the end
 18 result of a lot of negotiations between both houses
 19 of the legislature, which is why, in a lot of ways,
 20 just looking at it for the first time, you say --
 21 you say to yourself, "why was this written in this
 22 way and that way?" It had the practical result of
 23 building prisons, and yet getting people out of
 24 prison who are nonviolent earlier, so that we

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 2 call up the Division of the Budget, say, "this
 3 judge is basically pressuring us. He's not going
 4 to accept any of our defense -- defenses of latches
 5 or time-barred or anything else. And there's a big
 6 tab here." And they said, "how much is it?" I
 7 said, "I think it's going to be seventeen million."
 8 And the person said, "I think you have the wrong
 9 number," hung up. Many, many millions of dollars
 10 were -- were spent on -- on these contempt
 11 proceedings.
 12 And always, we would go back to
 13 the legislature and say, "we're -- we're kind of
 14 the pawn in this game. We didn't ask for this
 15 situation. We have to accept these state regs. So
 16 we need either the wherewithal to build new prisons
 17 or change sentencing laws or some mix or
 18 combination of the two." And at the end of the
 19 day, what happened with regularity is that you
 20 would see legislation that basically was a
 21 compromise on both sides. And both sides
 22 typically, with -- with any good compromise, would
 23 be unhappy with what they were left with. But we
 24 ended up getting the wherewithal to build a lot of

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 2 currently have -- at least the situation that we're
 3 presently dealing with -- and that is a prison
 4 population that hasn't significantly increased but,
 5 rather, has significantly decreased.
 6 Now, housekeeping, there's
 7 several materials that have been distributed. One
 8 is a very detailed outline that I prepare for the
 9 criminal justice practitioner -- that's the judge,
 10 the D.A., the defense attorney -- to walk them
 11 through all of the different programs that we
 12 operate. What happens when the individual in court
 13 has a sentence pronounced and is let out by the
 14 court officers through the back of the courtroom to
 15 be delivered, ultimately, to the State Department
 16 of Correctional Services? So this is a very
 17 detailed explanation of a lot of the different
 18 programs, some of which I can only touch on
 19 briefly, but you can read about in greater detail
 20 on your own.
 21 Another thing that I've
 22 distributed is a listing that our program planning
 23 and research unit prepares with all of the
 24 different research reports that we put out. And

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 2 they deal with all of our programs, from Merit Time
 3 to Shock Incarceration to Earned Eligibility. If
 4 there is any one report that anybody wishes to have
 5 or any subcommittee wishes to have it, as you do
 6 your work, we'll certainly make them available to
 7 you today. Ultimately, it is our hope to actually
 8 put these reports on our website. We're not there
 9 yet. But ultimately, we plan to do that so that
 10 any member of the public can get them by going
 11 online. Any member of the public can get them now
 12 by just requesting, but we -- we're certainly
 13 consistent with Governor Spitzer's direction to all
 14 government. We want to be more transparent, more
 15 open about what we're doing, what we're -- what
 16 we're about. And the other handout will be the
 17 printouts of -- of the various screens that will be
 18 showing a lot of the statistical information.
 19 So with that, let me just turn to the -- to the
 20 next screen, which shows the Department of
 21 Correctional Services and all sixty-nine of our
 22 correctional facilities, as well as the Willard
 23 Drug Treatment Campus. The Department of
 24 Correctional Services is one of the largest

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 2 travel to all of these different facilities -- some
 3 facilities are a stone's throw from the Canadian
 4 border; some are very close to Lake Erie; some on
 5 the border of Pennsylvania -- Arthur Kill, way in
 6 the south, close to New Jersey -- you realize how
 7 big this state is and how big this -- this
 8 correctional system is. But it is a -- a very huge
 9 system with a lot of responsibilities.
 10 It's also the system with the
 11 least amount of discretion. Regardless of whatever
 12 anyone's background is, whatever their conditions
 13 are, we have to provide for their safe and humane
 14 confinement. If someone, for example, requires
 15 dialysis, we have to care for them. If they're in
 16 a wheelchair, we have to care for them, program for
 17 them, and -- and comply with the Americans With
 18 Disabilities Act. We have a significant percentage
 19 of inmates who are H.I.V.-positive. We may be one
 20 of the largest H.I.V. clinics anywhere. We have to
 21 deal with Hepatitis C. We have to deal with
 22 individuals who have serious mental illness. We
 23 have to deal with individuals who have
 24 developmental disabilities. And then, of course,

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 2 components of the criminal justice system.
 3 Presently, we have a work force of about thirty-one
 4 thousand six hundred employees. We have
 5 under-custody inmate population of sixty-three
 6 thousand eight hundred. We have a combined
 7 operations and capital budget of two point nine
 8 billion dollars. We are the agency that's
 9 responsible for the safe and humane confinement of
 10 every individual who receives either a determinate
 11 or indeterminate sentence of imprisonment, and that
 12 includes youthful offenders. Anyone who receives a
 13 definite sentence of imprisonment is committed to a
 14 local facility.
 15 Now, as you can see, we have
 16 facilities scattered throughout the four corners of
 17 the state. And originally, by the way, I'm from
 18 Brooklyn, New York, like Assemblyman Lentol. And
 19 growing up in the city, I had a rather myopic view
 20 of this state. I thought, okay, if I wanted to go
 21 to upstate New York, I traveled and traveled, and
 22 once I crossed the Tappan Zee Bridge, I'm in
 23 upstate New York. When you work for the Department
 24 of Correctional Services, and you have to actually

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 2 we have people who have violent propensities who
 3 are in -- members of gangs on the streets, and we
 4 have to take all these individuals into our system
 5 and not only provide for their safe and humane
 6 confinement, but we have to try and allow them to
 7 leave the system better than -- than what they came
 8 into the system.
 9 It all starts with our reception
 10 centers. Individuals who are -- are sentenced to
 11 state imprisonment are delivered to reception
 12 centers. The local counties prepare a package of
 13 documents that go together with an inmate. And
 14 when that is ready, they then telegraph to us that
 15 someone is state-ready. That's -- at that point,
 16 the clock starts, by which time we have to accept
 17 them into our reception centers, usually within a
 18 ten-day period. And we schedule movement into the
 19 system.
 20 It's said there are sixty-three
 21 thousand eight hundred inmates in the system. It's
 22 not a stagnant pool. Think of it as a constantly
 23 flowing body of water. Every month, maybe between
 24 fifteen hundred, two thousand inmates are delivered

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 2 into our reception centers. These are new
 3 commitments and returned parole violators. And
 4 about an equal number of individuals are -- are
 5 released from our system. And so the person is
 6 delivered to our reception center, where we do a
 7 number of initial important things. We calculate
 8 their sentence, for example. And you already heard
 9 from the director of my sentencing review unit, who
 10 explained all of the difficulties and the
 11 complications in actually trying to get correct
 12 release dates entered for each individual because
 13 we have a combination. In the system right now, we
 14 have determinate, and we have indeterminate
 15 sentences. And we have various types of release
 16 programs that are in place. So it's a very complex
 17 task. And you really didn't have the opportunity
 18 to explain anything close to the big picture of how
 19 complicated it is to -- just to correctly compute
 20 every inmate's sentence and get the correct release
 21 dates down. That is one important responsibility
 22 that's done at -- at a reception center.
 23 The other is to correctly
 24 determine whether -- what an inmate's initial

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 2 The maximum-security prisons -- the typical housing
 3 format, obviously, is -- is a cell -- an individual
 4 cell, and the format is that you have to have the
 5 capability of locking down various areas of the
 6 facility in the event of disturbances. You lock
 7 down the facility at night so every inmate has the
 8 capability of -- of relieving himself in his cell
 9 with toilet fixtures. And there are very, very
 10 secure perimeters, usually with armed guard tower
 11 posts, as -- as well, for our maximum-security
 12 facilities. As you progress through the -- your --
 13 the system, and you get closer to your release
 14 dates, we will move you from max to potentially
 15 medium security to potentially minimum or
 16 work-release or one of the other types of -- of
 17 less secure institutions.
 18 Just to give you an idea of the
 19 physical plant issues we deal with -- Jason, do we
 20 have the slide that shows the various stages of our
 21 facility? I think the oldest facility we have
 22 right now is -- is Auburn Correctional Facility,
 23 which was built, I think -- first built in the late
 24 1700s, perhaps early 1800s. Most of our

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 2 security classification should be. The inmate
 3 either has to start off in the -- in a maximum or
 4 potentially in a medium- or even a minimum-security
 5 facility. And it depends, in a large part, on your
 6 proximity to your earliest release date. So if you
 7 come into the system, typically, and have six or
 8 more years to your earliest release date, you will
 9 start your sentence of incarceration probably in a
 10 maximum-security facility. I believe we have a
 11 total of sixteen male maximum-security facilities.
 12 We have one maximum-security facility to female
 13 inmates. That's at the Bedford Hills Correctional
 14 Facility. Most of our prison space is medium- or
 15 minimum-security facilities, which means that the
 16 type of housing that inmates are confined in are
 17 rooms like this -- large dormitories, sometimes
 18 with -- with bunk beds, usually housing in -- in
 19 our cookie cutters sixty inmates in a dorm -- a lot
 20 of freedom of movement, a lot of acreage, a lot of
 21 movement to the program buildings. These
 22 facilities look very much like college campuses,
 23 except for the fact that they have secure
 24 perimeters to keep the inmates incarcerated within.

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 2 maximum-security facilities are -- are -- yeah.
 3 Auburn opened -- you can read that -- 1797. No.
 4 I'm sorry. That was Newgate, which -- which is no
 5 longer open. Auburn was opened in 1817. Look at
 6 some of these other large maximum-security
 7 facilities -- when they were built -- Clinton,
 8 Elmira in the 1800s. And it's a real challenge for
 9 us with the infrastructure of these institutions to
 10 keep them current and keep them with the ability to
 11 deal with such diseases as tuberculosis and
 12 circulating the air to avoid diseases that could be
 13 spread in a crowded setting.
 14 We did construct two
 15 maximum-security facilities recently. That one is
 16 at Five Points, and one was at -- at Upstate. So
 17 that just gives you an idea of the listing of the
 18 facilities.
 19 Back to the reception process,
 20 the types of documents we get determine so much of
 21 what happens to the inmate when he's with us and --
 22 and thereafter, when he's released -- or paroled. For
 23 those of you who come from the court end of things,
 24 either as judge, district attorney, or defense

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 2 lawyer, what you're used to seeing is -- is a lot
 3 of detail on the process and the background of the
 4 individual -- what he's accused of. For example,
 5 the indictment spells out in great detail what the
 6 individual is charged with. If you're indicted for
 7 robbery in the first degree, the count in the
 8 indictment says, "the People of the County of Kings
 9 accuses Defendant of the crime of robbery in the
 10 first degree and that, on such-and-such a date, he
 11 forcibly stole property from such-and-such
 12 individual during the course of the commission of a
 13 crime, displayed what appeared to be a deadly
 14 weapon -- to wit, a -- a loaded firearm." You have
 15 all of that detail spelled out in the indictment.
 16 If the individual pleads guilty, then he stands up
 17 in open court, and he says in front of the judge
 18 exactly what he did, physical act-wise, that
 19 constitutes the crime of robbery in the first
 20 degree. We do not see any of that information.
 21 That does not come with the inmate. If there's a
 22 plea of guilty, the plea minutes do not come with
 23 the inmate to the state prison system.
 24 The documents that we get consist

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 2 the inmate comes to prison, that one of your
 3 program needs is that you have to participate in a
 4 sex offender counseling program. And there are
 5 consequences if an inmate will refuse to
 6 participate in the program we've -- we've assigned
 7 to him -- significantly, the potential loss of good
 8 time when the time allowance committee meets in --
 9 in anticipation of the conditional release date,
 10 and also, for the Board of Parole, if he's
 11 appearing before the board, the measure of whether
 12 or not he's complied with and participated in all
 13 the programs that were assigned to him.
 14 Similarly, someone who committed grand larceny, but
 15 it appears that the person is a drug addict who is
 16 stealing to support drugs, we might say, "you need
 17 to participate in an alcohol and substance abuse
 18 treatment program." Again, so much of what we
 19 decide that is appropriate for this inmate is based
 20 upon what is in the presentence report. So I
 21 always advise practitioners, whatever side of the
 22 fence you're on -- D.A., judge, defense lawyer --
 23 take the time at sentencing to read that
 24 presentence report carefully. And if there is

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 2 basically of three things. One is the commitment
 3 itself, which says what the individual was
 4 convicted of and what the sentence imposed was.
 5 The second thing you get is the criminal rap sheet,
 6 which we generate at -- at the reception center so
 7 we can see what the inmate's criminal history
 8 record is. And the third document we get is the
 9 presentence report. And that basically is the
 10 single most important document that tells us
 11 everything we need to know about the inmate. And
 12 we make so many decisions about what's going to
 13 happen with that inmate when he comes to the state
 14 prison system based upon what's described in that
 15 presentence report. And we make many important
 16 decisions -- not just security decisions. But we
 17 decide what programs an inmate will need when he
 18 comes to -- to prison. So, for example, if you
 19 have a -- an individual who's convicted of a
 20 burglary offense, but the description of the
 21 offense, as described in the presentence report,
 22 indicates that misconduct of a sexual nature took
 23 place through the course of -- of the commission of
 24 the burglary, then our staff might determine, when

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 2 something in there that you feel is in error, that
 3 is the time to move and have the judge correct it,
 4 because so much that's in that report drives what
 5 will happen with -- with that inmate. When the
 6 inmate comes into the reception center, he's also
 7 interviewed by a correction counselor, who then
 8 prepares an entry into our computer records of what
 9 this individual's crime and background is, a lot of
 10 which comes from the presentence report. So if I'm
 11 looking up an inmate in my computer, I -- I pull up
 12 a screen that has a description of the offense, and
 13 that is the description, pretty much, that's more
 14 or less parroted from -- from the presentence
 15 report. So that's the snapshot I take of that
 16 inmate, which follows him throughout his entire
 17 period of incarceration, including up to the point
 18 where he's interviewed by the parole board. Also,
 19 his attitude at that time -- if he's defiant, if
 20 he's dismissive of -- of the seriousness of the
 21 offense -- that photograph of that inmate, so to
 22 speak, is what will follow him throughout his
 23 incarceration because that attitude is captured at
 24 that point in time, and that's what we see whenever

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 2 we will look up that inmate's case, five years from
 3 now, ten years from now, what have you. So both
 4 the presentence report and the inmate's attitude
 5 when he's interviewed by a correctional
 6 counselor -- and obviously, when he's interviewed
 7 by the probationer in the preparation of the -- of
 8 the presentence report -- are very critical points
 9 of time in terms of -- of determining what happens
 10 with that inmate.
 11 So that's the reception process.
 12 From the reception process, the inmate then moves
 13 to some general confinement facility. Following
 14 through with the -- with the sentence, my outline
 15 has a little bit of sentence calculation. I'm not
 16 going to reiterate what Rich DiSimola (phonetic
 17 spelling) explained, but there's one point I -- I
 18 wish to emphasize. Both with indeterminate and
 19 determinate sentences of imprisonment, there are
 20 conditional release dates. With an indeterminate,
 21 you can earn as much as one third off your
 22 sentence. With an -- with a -- with a determinate
 23 sentence, you can earn as much as one seventh.
 24 Both of them depend solely upon one thing -- what

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 2 for inmates to behave while in prison.
 3 The other side of the coin is
 4 complying with all of the programs that are created
 5 for the inmates. So as I said up front -- and
 6 there is a statute that specifically says -- and
 7 it's Eight Oh Five -- the Earned Eligibility
 8 Statute created in, I think, '87 under -- under Tom
 9 Coughlin to help with parole releases. But the
 10 very first sentence of that -- of that statute
 11 says, "every inmate who is committed to state
 12 prison shall be assigned a program of work and
 13 treatment as soon as practical." So that is our
 14 authority to assign a program of work and
 15 treatment. We get to decide what the appropriate
 16 program is. And that --
 17 COMMISSIONER O'DONNELL: Tony,
 18 can I ask you a question?
 19 MR. ANNUCCI: Sure.
 20 COMMISSIONER O'DONNELL: I -- I
 21 thought you said that -- that, you know, whether
 22 the -- the inmate gets the good time is based on
 23 the behavior when they come to the state prison.
 24 MR. ANNUCCI: Correct.

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 2 your behavior is when you came to state prison.
 3 Nothing else can affect whether or not you, as an
 4 inmate, will earn or lose your time. If -- if the
 5 judge or the D.A. or the Crime Victim's Board or
 6 anyone want to weigh in and say, "this particular
 7 individual was particular heinous, was
 8 particularly -- was particularly violent," none of
 9 that can affect whether or not an inmate will
 10 remain incarcerated with us beyond his conditional
 11 release date. The only two things that can be
 12 factored in are his behavior. And one is his
 13 disciplinary record, which means, in order to lose
 14 good time because of the disciplinary process, he
 15 will have had to engage in misbehavior where
 16 there's a penalty of recommended loss of good time.
 17 And that could happen early on in an inmate's
 18 sentence, and several years later -- five or six
 19 years later, the time allowance committee looks at
 20 that inmate's record, and that's the only thing the
 21 inmate did early on but has otherwise maintained a
 22 positive record, they might exercise their
 23 discretion to restore the good time. It's very
 24 important for us to maintain positive incentives

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 2 COMMISSIONER O'DONNELL: But --
 3 but is that also based on their behavior in the
 4 state prison? I mean, is there any --?
 5 MR. ANNUCCI: Yeah. That's --
 6 that's --.
 7 COMMISSIONER O'DONNELL: The time
 8 that they're there. So there --
 9 MR. ANNUCCI: Correct.
 10 COMMISSIONER O'DONNELL: --
 11 is --.
 12 MR. ANNUCCI: Once they walk
 13 through our door, if they --.
 14 COMMISSIONER O'DONNELL: Is there
 15 a way you can capture -- besides the -- the
 16 disciplinary or lack of disciplinary record, is
 17 there another way to capture that? Like, is -- is
 18 there a yearly report or some summary on the
 19 inmate's, you know, performance during that year or
 20 anything like that?
 21 MR. ANNUCCI: Well, the -- the
 22 disciplinary record does -- does capture
 23 everything. We can instantly look up any
 24 infractions.

8 (Pages 26 to 29)

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 2 COMMISSIONER O'DONNELL: Uh-huh.
 3 MR. ANNUCCI: We do have ways --
 4 it's -- it's not often used. But we do have ways
 5 where our employees can make a record of something
 6 that the inmate has done that -- that's very
 7 positive. For example, if somebody was a
 8 participant in the program where outsiders were
 9 brought in, and they addressed youth and said
 10 things like, you know, "you want to avoid drugs;
 11 you want to avoid making the mistakes I did," that
 12 could be the basis for making an entry into their
 13 record, which would play into their appearance
 14 before the parole board. It might also help them
 15 in terms of the time allowance committee if they
 16 looked at that as also further amelioration or to
 17 offset the -- the original act of misbehavior. But
 18 basically, it all comes down to what does the
 19 inmate do after he's delivered to our reception
 20 centers. Any acts of misbehavior that took place
 21 in the local jail can't be weighed against them
 22 when -- when they come -- come to state prison.
 23 COMMISSIONER O'DONNELL: Okay.
 24 So --.

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 2 answer to that is -- is -- is that the rates of
 3 assault probably are higher in our maximum-security
 4 facilities because, by their very nature, --
 5 MR. BERGAMO: Of who's there --.
 6 MR. ANNUCCI: -- those are the --
 7 those are the places that have to house the most
 8 disruptive inmates -- not just the inmates that
 9 have the longest sentences, but those inmates who,
 10 for whatever reason, don't function in a
 11 medium-security facility, which is why the system
 12 very much functions on movement. We transfer
 13 inmates all the time who can't make it in
 14 medium-security facilities or act disruptive or
 15 don't get the level of medical care or mental
 16 healthcare that would otherwise -- they otherwise
 17 need that may be available at some of our larger
 18 institutions. There are many, many factors that
 19 enter -- enter into this. But -- but by and large,
 20 the medium-security facilities and the minimums,
 21 you know, your behavior is what gets you there.
 22 And -- and in particular, so many of our inmates
 23 come from New York State, the downstate regions.
 24 The incentive to behave factors into their ability,

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 2 MR. ALEXANDER: Both -- both
 3 with -- with regards to the good time, as well as
 4 the time allowance, you can take time away; you can
 5 restore time, as well, correct?
 6 MR. ANNUCCI: That's correct.
 7 That -- that's correct. So for example, in the --
 8 in the -- where the inmate has refused to -- to
 9 participate in the sex offender counseling program,
 10 but then he changes his mind and then does it, then
 11 the time allowance committee can then come back,
 12 meet, and say, "okay. Now you're entitled to the
 13 rest -- the rest of your good time." So it serves
 14 as -- as a constant incentive for inmates both to
 15 behave and both to participate in the -- in the
 16 programs that -- that -- that we've devised for
 17 them.
 18 MR. BERGAMO: You say the
 19 minimum-security inmate goes to a dormitory
 20 facility. Are there any statistics on an inmate --
 21 an inmate assaults in a dormitory versus cells or,
 22 of course, the maximum -- minimum facility versus
 23 maximum facilities?
 24 MR. ANNUCCI: The -- the -- the

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 2 ultimately, to get a transfer to a facility closer
 3 to home. Most inmates want to be housed closer to
 4 home where their families can visit. So that's
 5 another major incentive for them -- them to behave.
 6 But the system constantly corrects itself.
 7 Somebody -- even with a one-to-three sentence, if
 8 they start out in a -- in a medium, but then they
 9 get assaultive or what have you, then we have to
 10 transfer them to a maximum-security facility where
 11 we have much greater security control. There's
 12 much less freedom of movement and -- and the
 13 ability to --.
 14 MS. BING-NEWTON: May I ask a
 15 question?
 16 COMMISSIONER O'DONNELL: Yes,
 17 Judge.
 18 MS. BING-NEWTON: I want to just
 19 ask a one-second -- if I could just ask you, you
 20 said that the single most important document in
 21 placement is the pre-sentence report.
 22 MR. ANNUCCI: Correct.
 23 MS. BING-NEWTON: And over the
 24 last few years, it seems to me that the

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 2 pre-sentence reports have contained less and less
 3 information. I call them sentence-light reports.
 4 And in seeing the history that the reasoning was an
 5 issue for all of the -- the question of trying to
 6 get data pertinent to the date to meet the problems
 7 of the localities -- are you saying that you'd
 8 recommend that we go back to the old-fashioned,
 9 more comprehensive pre-sentence report? Or are you
 10 satisfied that what you are receiving is adequate
 11 for the important question that the report is
 12 serving?

13 MR. ANNUCCI: That -- that's a
 14 very good question, Judge. The -- the -- the
 15 simple answer is that the -- the better quality
 16 pre-sentence report that we receive, the more
 17 informed decision we can make about the inmate.
 18 And -- and certainly, it is in our interests, as
 19 a -- as an agency, to get as much information as
 20 possible. By the same token, we also have to be
 21 sensitive to the potential costs that are being
 22 borne by the counties presently and -- and whether
 23 or not their county probation departments have the
 24 resources and -- and the support that they need. I

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 2 recent to the investigation report, understanding
 3 that it is an important document, and many
 4 decisions are based on it, we got limited funding,
 5 limited staff. We can't always provide quality.
 6 That needs -- certainly, I think that that needs to
 7 be addressed, but attempted to address a big issue.

8 MR. ANNUCCI: Okay. Let -- let
 9 me move along here, and --.

10 MR. LENTOL: Tony, before you do,
 11 I just --

12 MR. ANNUCCI: Yes.

13 MR. LENTOL: -- I have kind of a
 14 question. I don't -- I don't really know if it's
 15 relevant, but with the advent of civil confinement
 16 and sex offenders who are in prison and the thought
 17 processes now about good time, whether that's
 18 affected sex treatment programs in prison, whether
 19 that's affected anything. Can you tell us what --
 20 since this is so new, I don't know exactly what's
 21 going on inside.

22 MR. ANNUCCI: It -- you're --
 23 you're correct, Assemblyman. It is new, and -- and
 24 we're still just getting out of the starting blocks

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 2 know there was a separate commission that was
 3 created that looked at a number of things and that
 4 there -- there was a sentiment that they don't get
 5 the -- the appropriate resources that they have.
 6 So on the one hand, the -- we do want as much
 7 information in the pre-sentence report as possible.
 8 There have been instances where it was very
 9 skimpy -- individual reports. And it was very
 10 difficult to make any kind of intelligent decisions
 11 on the inmate. But yet, if -- if it qualifies as a
 12 pre-sentence report, we have to accept the inmate
 13 into custody and do the best we can.

14 The other side of the coin is if
 15 we require or mandate a certain minimum quality
 16 to -- to the pre-sentence report, then we'd have to
 17 be prepared to answer the question, are we
 18 providing the county probationary departments with
 19 enough resources for them to fulfill that -- that
 20 mandate?

21 MR. ALEXANDER: You're absolutely
 22 right. That was one of the problems with probation
 23 here in the county because of the lack of
 24 resources. One of the things that certainly was

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 2 in terms of -- of what it's going to mean for our
 3 system and -- and what changes on the inmate
 4 population. We started one form of civil
 5 commitment, the precursor to the current
 6 legislation, in September of '05, I think. And
 7 inmates started to become aware that it -- it would
 8 be in their best interest to participate in the
 9 programs. We did have some sex offenders who
 10 deliberately remained in prison beyond their C.R.
 11 date because they wanted to max out, because they
 12 wanted to go into the community without having to
 13 answer to any supervisory authority. So we had the
 14 individuals who were just -- obviously, were intent
 15 on resuming their old ways, and they felt it was
 16 worth staying in prison for that additional period
 17 rather than go out at the conditional release date
 18 and potentially be subject to supervision.

19 Right now, we're dealing with a
 20 lot of logistical issues with the new law. We're
 21 trying to assemble the requisite records in time,
 22 getting them to O.M.H. to be reviewed. And for the
 23 most part, we're trying to -- to do this in such a
 24 way that we're not disrupting the normal inmate

10 (Pages 34 to 37)

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 2 life, that we're not causing people to seek
 3 protection or -- or be forced into protective
 4 custody, that they're not unfairly being targeted
 5 by other inmates, et cetera.

6 Inmates, years and years ago, got
 7 the message that if they didn't participate in sex
 8 offender counseling, if they raised issues such as
 9 requiring me to talk about my crime could violate
 10 my Fifth Amendment rights because I appealed my
 11 conviction -- they still understood that that would
 12 mean that they will stay in prison beyond the C.R.
 13 date. Most inmates do want to get out as soon as
 14 possible at their C.R. date. So they do -- they --
 15 they do understand that failing to participate in
 16 the program meaningfully to discuss their
 17 background, to discuss their crime, will -- will
 18 potentially lead to -- to additional incarceration.
 19 But I think it's too early to tell whether or not
 20 they're thinking long range in -- in potential
 21 civil commitment. I think, like anybody else, you
 22 want to hope for the best. You want to think that
 23 you would be able to explain to anybody who is
 24 determining dangerousness on your part that you're

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 2 earliest year is about 1970. So that's a dramatic
 3 growth in -- in the inmate under custody
 4 population, starting in -- in 1970 or thereabout
 5 when we had, you know, about twelve thousand
 6 inmates. We, again, peaked at seventy-one thousand
 7 six hundred and are now back down to sixty-three
 8 thousand eight hundred. And a lot of it was the
 9 result of the special release programs that were
 10 created. Probably the biggest and the most
 11 significant and the one I'm most proud of is -- is
 12 the Shock Incarceration Program, which came about
 13 1987.

14 And just a very quick anecdotal
 15 story of how this came about, just so you
 16 understand how a lot of legislation is created, at
 17 the time, John Paclima (phonetic spelling) was the
 18 counsel to Larry Kurlander (phonetic spelling) He
 19 calls me kind of aggravated and says, "Tony,
 20 where's this legislation?" I said, "what
 21 legislation?" He says, "the shock legislation." I
 22 said, "John, I really don't know what you're
 23 talking about."

24 And he said, "your boss,

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 2 no longer dangerous, that you've turned your life
 3 around, and you can safely be released into -- into
 4 the community. But we are really very, very new at
 5 this. And so a lot of these things have yet to
 6 coalesce so that we can really make intelligent
 7 determinations on that.

8 Okay. Moving -- moving along --.

9 COMMISSIONER O'DONNELL: Tony, do
 10 we have a microphone there that can be turned on?
 11 Do we know? Because it is a little -- the
 12 acoustics here are -- well, I -- I was asking more
 13 the technical people, but could you just speak a
 14 little bit louder, Tony, and I'll get somebody --

15 MR. ANNUCCI: Sure.

16 COMMISSIONER O'DONNELL: -- to
 17 work on --

18 MR. ANNUCCI: Okay.

19 COMMISSIONER O'DONNELL: -- a
 20 microphone if we can -- if we have microphones. Do
 21 we still have a tech person here? Okay.

22 MR. ANNUCCI: Continuing along,
 23 on -- on the screen, you can see the -- the curve
 24 on -- on our prison population. I think the

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 2 Commissioner Coughlin sent this proposal to Larry
 3 about this concept for New York, and obviously,
 4 Larry's very interested in it. The Governor's
 5 interested in it, and we want to see the
 6 legislation."

7 So I said, "okay. Let me check
 8 it out, and -- and I'll get working on it." And
 9 I'm thinking Commissioner Coughlin, at the time,
 10 sent this detailed proposal to Larry Kurlander, and
 11 that would tell me exactly what's to go into this
 12 proposed legislation.

13 So I called the Commissioner's
 14 secretary. I said, "could you send me the package
 15 that just went down to Larry Kurlander?" And the
 16 package consisted of a little note about this big,
 17 saying, "Dear Larry, I just returned from
 18 Parchment, Mississippi, where I saw one of their
 19 boot camps in operation. If you think the idea has
 20 promise for New York, I'll study it further." So
 21 that was the blueprint for me to create this
 22 brand-new statute that's going to allow for shock
 23 incarceration in New York.

24 So we brain stormed it, and we

11 (Pages 38 to 41)

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 2 realize that this is going to be a brand-new type
 3 of incarceration. It's going to be difficult, and
 4 it's going to be demanding. And if we're going to
 5 put inmates through it, we have to have a way to
 6 give them an incentive to do this. And we came up
 7 with the idea of time off the minimum sentence.
 8 The rule up until that point in time had been, if
 9 the judge says you have a three-to-nine sentence,
 10 no matter what else, that judge knew you're doing
 11 three years. You can't get out any earlier. And
 12 that had been an ironclad component of our
 13 sentencing scheme for many, many, many years. With
 14 the advent of Shock, now comes an entirely new
 15 twist to the rule, which is that a person who we
 16 select and approve to go into this program, if he
 17 successfully completes it, can be released after
 18 six months -- in effect, buying a significant
 19 amount of time off of the minimum sentence.
 20 And that was created in 1987, and
 21 at that time, it was intended for young felony
 22 offenders, so the cut-off age was twenty-four.
 23 We've since amended the statute about four times to
 24 where the cut-off age was twenty-six, then thirty,

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 2 then thirty-five, and now it currently is at forty.
 3 You cannot have reached your fortieth birthday, and
 4 with progressing medical science and, you know, all
 5 those wonderful instruments, perhaps we should
 6 raise the age again at some point -- something for
 7 the Commissioner to -- commission to consider if --
 8 if we want to go that route. Basic rules are, when
 9 you come into a reception center, you have to be
 10 within three years of your parole eligibility date
 11 or a conditional release date because now we have
 12 determinate sentences, and we have drug offenders
 13 getting determinate sentences. So they're still
 14 eligible for Shock. You can't be convicted of an
 15 'A' One felony, a violent felony, and most sex
 16 offenses.
 17 One of the things I -- I would
 18 suggest when we get to the point where we're
 19 considering drafting legislation is that you -- if
 20 you can, look to models that have already worked
 21 that the legislature has already adopted and is
 22 comfortable with. When we created Shock, we looked
 23 and borrowed from some of the elements were in the
 24 Temporary Release Law, where the inmates signs a

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 2 memorandum of agreement that's right in the
 3 statute. "I understand that nothing herein confers
 4 upon me the right to participate or continue to
 5 participate in." That same language we used in the
 6 Shock statutes -- the memorandum of agreement the
 7 inmate signs. And I think it helps in giving
 8 comfort to the legislature that, even though
 9 they're creating something new, they're borrowing
 10 from elements that they've already accepted and --
 11 and -- and has worked.
 12 Yes.
 13 MR. ALEXANDER: On -- you
 14 mentioned the age to -- current age now is about
 15 age forty. Has that affected the effectiveness of
 16 the program -- of Shock?
 17 MR. ANNUCCI: No. I -- I don't
 18 think it's affected the -- the effectiveness. I
 19 think, even though it's -- it's a physically very
 20 demanding program, the -- they make it flexible
 21 enough. The idea is that we want as many inmates
 22 to participate as possible because we think it --
 23 it is very beneficial. It is modeled on the
 24 military group camp style of existence, but it's --

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 2 it's a lot more. It's very intensive treatment, a
 3 lot of academic education, and it's a very safe
 4 environment -- very demanding for the inmate but
 5 very safe, as well.
 6 I would recommend, if anybody's
 7 interested, to not just tour a Shock facility but
 8 to go on the day we have a graduation. If you come
 9 to one of these facilities during graduation, what
 10 you will see, first of all, are all the family
 11 members gathered on the concourse, and they watch
 12 all of the various platoons come marching in.
 13 They're kind of shocked that their son or daughter,
 14 whomever, is capable of, 'A', looking spic and span
 15 and immaculate and, 'B', are marching with
 16 incredible precision. We once had the commandant
 17 of the marine corps -- at the time, General Grey --
 18 come to one of our graduations and say how
 19 impressed he was that these individuals could do
 20 the military, demanding marches and movements that
 21 we described to them. That is how the ceremony
 22 starts. They're then brought into an auditorium.
 23 There are speeches that are made. And we award to
 24 various individuals recognitions for what they have

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 2 accomplished. For example, we give to one inmate
 3 the leadership award. We give to an inmate the --
 4 the award for having improved the most in his
 5 reading score. We give to another inmate the --
 6 the award for improving the most in his math score.
 7 We give to somebody the award for even losing the
 8 most weight, because there's so much exercise
 9 involved. We know that these individuals really
 10 recapture their attention. We get them to focus.
 11 It's a very, very structured environment. They do
 12 very, very well in it.

13 The cumulative savings to New
 14 York State, as a result of this program, in terms
 15 of incarceration avoidance costs is well over
 16 one -- one billion dollars at this point in time.
 17 So it is a very, very worthwhile program. We
 18 always arrange, for example, for our graduations to
 19 happen on a Thursday so that when the inmates
 20 return home, the very next day, that Friday, they
 21 meet with their parole officer, because we don't
 22 want to have a long hiatus between the structured
 23 environment of the -- of the Shock facility and
 24 being supervised in the community. We want to get

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 2 their attention and keep it as -- as much as -- as
 3 possible.

4 MR. ALEXANDER: How does their
 5 recidivism rate compare to that of standard
 6 incarceration?

7 MR. ANNUCCI: The recidivism
 8 rates, I believe, are about the same. You know,
 9 that doesn't sound like a ringing endorsement. But
 10 by the same token, when you look at it from the
 11 perspective of the candidates that are successful,
 12 if they're back in the community, and they're never
 13 going to come back to us again, and they're back
 14 after six months instead of a full three years,
 15 that person is that much better off; the family is
 16 that much better off; the taxpayers are that much
 17 better off. What we know, Mr. Chairman, is that a
 18 lot of these young offenders do very well in a
 19 very, very structured environment, and that's what
 20 they'll get in a shock facility. It's very tough
 21 to continue that kind of structure into some of the
 22 communities that some of these offenders are -- go
 23 back to, as -- particularly when drugs are involved
 24 in -- in tough neighborhoods. But we have had a

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 2 lot of them do very well -- go on to successful
 3 jobs and careers, and we have had employers come
 4 back and tell us how impressed they are that these
 5 individuals now have the discipline that -- that
 6 they -- they demonstrate from -- from the Shock
 7 experience. There are no magic bullets in -- in
 8 this business at all, with any program. But this
 9 is one program that we in New York are very proud
 10 of, and we want to continue it.

11 And just very quickly, if -- at
 12 some point, if we're looking to potentially expand
 13 who could go into Shock, one of the things we might
 14 look at is repeat 'B' felons. Presently, the
 15 law -- Shock statute says a repeat 'B' drug
 16 offender gets a three-and-a-half year
 17 determinant -- cannot go into Shock. That is
 18 something that -- that's important to the district
 19 attorneys, and there are lot of obvious reasons for
 20 how they -- they prosecute drug crimes. That is
 21 something that -- that was important to them. It's
 22 one of the things, obviously, that we might want to
 23 consider as -- as we go forward.

24 Possibly, one other avenue to

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 2 expand is the restriction against not previously
 3 having been convicted of a felony that puts you in
 4 state prison. The legislative thinking at the time
 5 was, we don't want anyone that's prison-savvy going
 6 into this program.

7 Another potential change to
 8 consider would be allowing someone to come into the
 9 system and spend time now until they reach within
 10 three years of their earliest release date, and
 11 potentially transferring, and then, at that point
 12 in time, to the Shock Program. Right now, the law
 13 says, when you come into a reception center, that
 14 is the point in time when you have to be within
 15 three years of your earliest release date. If
 16 you're not, at that point in time, you have to get
 17 transferred to the general incarceration facility.
 18 So for example, if someone comes in with a
 19 four-to-twelve sentence, and they don't have any
 20 jail time, they would -- they would not be able to
 21 go for Shock. And one of the things to consider
 22 is, do we allow that individual to spend a year in
 23 general confinement and then, for three years or
 24 less, remain and potentially be transferred in --

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 2 into the Shock Program.
 3 COMMISSIONER O'DONNELL: Tony, is
 4 the Shock Program six months for everybody?
 5 MR. ANNUCCI: Yes.
 6 COMMISSIONER O'DONNELL: And have
 7 you played with any variations of that -- whether,
 8 you know, longer period of time would improve
 9 recidivism or whether there could be a longer Shock
 10 Program for some more serious offenders or -- you
 11 know, do you know if any other states are doing
 12 that or if we've experimented with it?
 13 MR. ANNUCCI: Well, I -- I know
 14 we haven't experimented with it, and I know we
 15 haven't really looked to vary it. I think six
 16 months works well for us. It's very carefully
 17 structured -- the different phases that -- that the
 18 inmates go through. It -- it seems to work well.
 19 But I guess that's a fair issue --
 20 COMMISSIONER O'DONNELL:
 21 Question --
 22 MR. ANNUCCI: -- that we can --
 23 COMMISSIONER O'DONNELL: -- as to
 24 what they're doing --.

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 2 MR. ANNUCCI: -- research some
 3 more and -- and see if there's any possibilities.
 4 COMMISSIONER O'DONNELL: And do
 5 you have a formal study? I haven't looked at the
 6 list of reports that you've --.
 7 MR. ANNUCCI: We have annual
 8 reports that are --
 9 COMMISSIONER O'DONNELL: Could
 10 you actually --
 11 MR. ANNUCCI: -- based on
 12 legislation.
 13 COMMISSIONER O'DONNELL: --
 14 produce that or --
 15 MR. ANNUCCI: Yes.
 16 COMMISSIONER O'DONNELL: -- ask
 17 if --
 18 MR. ANNUCCI: Yes. At some --.
 19 COMMISSIONER O'DONNELL: --
 20 somebody can make it available --
 21 MR. ANNUCCI: Absolutely.
 22 COMMISSIONER O'DONNELL: -- for
 23 us? Because I'm sure this is an area that we'll
 24 want to focus on. And I think, before the end of

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 2 the discussion, we should discuss whether we do
 3 want to set up, possibly, a visit to a Shock or a
 4 graduation or whatever. People are interested,
 5 so --.
 6 MR. BERGAMO: How many facilities
 7 have a Shock Program?
 8 MR. ANNUCCI: I think the entire
 9 facility, basically, is -- is a Shock facility for
 10 the ones that we establish because we want to
 11 really separate Shock from -- from general
 12 confinement facilities. So --.
 13 MR. BERGAMO: Let me make sure I
 14 understand you. Every group was in a Shock --?
 15 MR. ANNUCCI: No, no, no, no.
 16 The -- when -- when -- for the facilities that are
 17 Shock facilities, --
 18 MR. BERGAMO: Okay.
 19 MR. ANNUCCI: -- basically,
 20 the -- their -- their entire mode -- mode is -- is
 21 Shock.
 22 MR. BERGAMO: Okay.
 23 MR. ANNUCCI: For example,
 24 Lakeview is -- is a large Shock facility. We also

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 2 have a tangential 'S' block there, unrelated to the
 3 Shock Program. That's a
 4 seven-hundred-and-fifty-bed facility. We have some
 5 smaller Shock facilities that one time were
 6 correctional camps. Monterey is -- is one that --
 7 that comes to mind.
 8 One of the little offshoots of
 9 the Rockefeller Drug Law is that the shorter
 10 sentences that are now being imposed for a lot of
 11 drug offenders takes away the incentive for some of
 12 these individuals to move -- willingly volunteer
 13 for Shock because they don't get enough of a
 14 reduction off their sentence. So we're seeing a
 15 little bit of the numbers, eligibility pool-wise,
 16 for Shock dropping from individuals who -- of
 17 course, they're getting shorter sentences now --
 18 previously would have come in with a slightly
 19 longer sentence and been -- and -- and willingly
 20 gone into Shock. It's a voluntary program. You
 21 can't force anybody in to it. But we -- again, we
 22 try and encourage as much participation. That's
 23 why automatically, anybody who's eligible, when
 24 they come into a normal reception center, we

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 2 transfer them to Lakeview and screen them there so
 3 that they can see the program in operation and get
 4 a firsthand look at what it would be like if
 5 they're selected to participate in that program.
 6 That's my --.

7 MR. BERGAMO: On an annual basis,
 8 what percentage of new inmates end up going to
 9 Shock, as opposed to traditional incarceration?

10 MR. ANNUCCI: I'll ask -- Paul,
 11 do you have any idea? Is that --?

12 MR. KOROTOKIN: It's about two
 13 times a year, and sixteen thousand are coming in
 14 for the Shock -- into the Shock Program.

15 COMMISSIONER O'DONNELL:
 16 Really --

17 MR. ANNUCCI: Yes.

18 COMMISSIONER O'DONNELL: --
 19 quickly, the six months begins when you get to the
 20 facility or the reception center?

21 MR. ANNUCCI: The six months
 22 begins in -- in the Shock Program, when they get to
 23 the Shock facility. You know, even then, you have
 24 to screen. You formally place them into a platoon

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 2 when the next platoon gets established. And that
 3 will actually start the six-month clock running.
 4 But we make sure everybody graduates on a Thursday.
 5 And even then, for the ones that are on -- in
 6 determining a sentence, there's no absolute
 7 guarantee they'll get released there. Still,
 8 there's the appearance before the parole board.
 9 Sometimes, parole will not grant release.
 10 Sometimes, for example, with D.W.I. offenders,
 11 there may be a reluctance to grant parole to the
 12 particular individual, in which case we probably
 13 move them into some other kind of minimum security
 14 situation where they have some freedom, like an
 15 industrial training release program -- kind of
 16 scenario.

17 COMMISSIONER O'DONNELL: I have
 18 two quick questions.

19 MR. ANNUCCI: Sure.

20 COMMISSIONER O'DONNELL: One,
 21 what happens if you don't graduate? You just go
 22 back and serve a --

23 MR. ANNUCCI: General --

24 COMMISSIONER O'DONNELL: --

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 2 regular --
 3 MR. ANNUCCI: -- confinement --
 4 right.

5 COMMISSIONER O'DONNELL: --
 6 sentence?

7 And secondly, do you have them for women --
 8 Shock --

9 MR. ANNUCCI: Yes.

10 COMMISSIONER O'DONNELL: --
 11 facilities?

12 MR. ANNUCCI: Absolutely. Yes.

13 COMMISSIONER O'DONNELL: Are
 14 they -- they're separate facilities for --?

15 MR. ANNUCCI: No. Actually,
 16 we -- we -- we have it at Lakeview, as well -- both
 17 the -- the males and females. But obviously, we
 18 keep the female dorms and -- and areas in the
 19 program separate from where the -- where -- the
 20 males' program. It has -- it has worked out.

21 MR. VANCE: Tony, what is the
 22 recidivism rate for state prisoners? And do you
 23 break it down by offense? And how, generally, do
 24 we compare with other states?

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2 MR. ANNUCCI: We, I think, do
 3 three-year-out studies. Is that correct, Paul?

4 MR. KOROTOKIN: We -- thirty-nine
 5 percent return to DOCS within three years. Not all
 6 states use the same data we do. Not all states
 7 have people go to parole. Twenty-seven percent of
 8 the people who return within three years are
 9 returning for parole violations. Only twelve
 10 percent return initially with a commitment. So
 11 it's hard to compare to other states because of all
 12 the divisions in recidivism.

13 MR. VANCE: But thirty-seven --?

14 MR. KOROTOKIN: Thirty-nine.

15 MR. VANCE: Thirty-nine percent,
 16 so --.

17 MR. ANNUCCI: Thirty-nine percent
 18 come back to us, but the number that comes back to
 19 us as new commitments -- meaning they committed a
 20 new felony -- is how much, Paul? You said twelve?

21 MR. KOROTOKIN: Twelve percent.

22 MR. ANNUCCI: Twelve percent
 23 within three years --.

24 MR. VANCE: And the balance is

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 2 parole --
 3 MR. ANNUCCI: Parole violations.
 4 MR. VANCE: -- parole violations.
 5 MR. LENTOL: Tony, I don't know
 6 if you answered this question. Or if you -- if you
 7 did, I didn't hear it. What's the recidivism rate
 8 comparison in Shock for the older inmates as
 9 opposed to the younger inmates?
 10 MR. ANNUCCI: Paul, did we -- did
 11 we do any studies that compare Shock recidivism
 12 rates by age of offender?
 13 MR. KOROTOKIN: Well, the younger
 14 offender traditionally has a higher recidivism rate
 15 than the older. We -- we didn't necessarily look
 16 at older versus younger. We looked at older versus
 17 older -- people who go to Shock versus people who
 18 were probably ineligible for Shock. And the Shock
 19 Incarceration Program, irrelevant of the age,
 20 improves the recidivism rate at -- at each strata.
 21 And we looked at groups of under thirty, thirty,
 22 thirty to thirty-five, and up to forty.
 23 COMMISSIONER O'DONNELL: Could
 24 you give us that --

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 2 MR. ANNUCCI: No. Clearly, if we
 3 had more applicants than we had Shock spaces, we --
 4 we would convert more space for -- for Shock.
 5 It -- it's that important to us. No one is turned
 6 away who would otherwise be eligible. We see
 7 again, unfortunately, the opposite trend, where
 8 we're losing some people who would otherwise be
 9 good candidates for the program because the amount
 10 of time on their underlying sentence is not long
 11 enough for them to have the incentive to go through
 12 six months of very tough, structured boot
 13 camp-style existence, but getting the benefit of
 14 time off their sentence. For example, if you only
 15 have a year and a half to your C.R. date, you might
 16 say to yourself, "I'd rather do general
 17 confinement. I'd rather apply to work release, you
 18 know, in six months. But I don't want to go into
 19 Shock right now and work very hard and -- and
 20 potentially be, you know, re-released to the
 21 community." A lot of factors play into -- into the
 22 decision by -- by the inmate.
 23 Yes, Mike.
 24 MR. MCDERMOTT: What -- what

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 2 MR. KOROTOKIN: Sure.
 3 COMMISSIONER O'DONNELL: -- data
 4 from that study? I think that's something we'll
 5 want to --
 6 MR. KOROTOKIN: It may have been
 7 part of the --
 8 COMMISSIONER O'DONNELL: -- to
 9 take a look at.
 10 MR. KOROTOKIN: -- annual report
 11 that we --.
 12 COMMISSIONER O'DONNELL: That is
 13 here -- uh-huh. Okay.
 14 MR. ANNUCCI: Sorry. Was there a
 15 question in the back?
 16 UNIDENTIFIED SPEAKER: Yes.
 17 Thank you.
 18 Do you find that there's more
 19 eligible applicants than there are actual spaces in
 20 Shock? And if that is the case, what would you
 21 do --
 22 MR. ANNUCCI: No.
 23 THE WITNESS: -- with the
 24 exception --.

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 2 percentage of inmates that are eligible actually
 3 elect to do the Shock?
 4 MR. ANNUCCI: To volunteer --
 5 Paul, do you have --?
 6 MR. KOROTOKIN: Well, the
 7 volunteer rates are very high. About two thirds
 8 some -- some don't get in for psychological
 9 reasons; some don't get in for health reasons. But
 10 about two thirds, seventy percent of those that are
 11 eligible serve. And then about seventy percent of
 12 those who serve get in.
 13 MR. ANNUCCI: John? Yes.
 14 MS. AMODEO: Tony, I -- I just
 15 wanted to clarify. Is it true that if the
 16 defendant is either in on a violent felony or has a
 17 violent felony history they're not eligible for
 18 Shock?
 19 MR. ANNUCCI: If -- if you're in
 20 on a violent felony, the statute says you're
 21 ineligible. If you have a violent felony history,
 22 the screening committee looks at -- at your history
 23 and exercises its discretion whether or not to let
 24 you in or not. It all depends. I mean, the

16 (Pages 58 to 61)

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 2 legislative intent clearly was targeting the young
 3 offenders that could benefit from this. If you
 4 have a violent history, chances are, you already
 5 got a previous sentence of imprisonment, which
 6 makes you ineligible by the statute. So you would
 7 have to -- if you perhaps had a Burglary Two, which
 8 is, quote, a violent felony offense, and then came
 9 in on a drug offense, you would probably be a good
 10 candidate. I doubt sincerely that the screening
 11 committee would -- would exercise its discretion
 12 not to allow you in. It all depends. I mean,
 13 people -- you know, they don't want to compromise
 14 the program. But by the same token, they want to
 15 encourage incarceration. Even a drug offender --
 16 if you have a large amount of narcotics involved
 17 but still are eligible for Shock, they might
 18 exercise their discretion not to let you in because
 19 they think it would be inconsistent with the basic
 20 goals of the -- of the program.
 21 MS. LEHMAN: Tony, at what point
 22 does the -- does the inmate have to make the -- the
 23 decision to volunteer? And what kind of advice is
 24 he getting when --?

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 2 MR. ANNUCCI: He makes the
 3 decision when he's transferred to Lakeview with --
 4 with the screening process. The screening people
 5 will determine whether or not they're going to
 6 approve him. The approve him, and it's done
 7 very -- very quickly because everything moves
 8 rapidly in the system. It has to basically
 9 function like -- like an assembly line.
 10 I don't know if they formally do
 11 anything other than have staff talk to the inmate
 12 and -- and advice him that, you know, here is the
 13 benefit of this program; here's what it does; it's
 14 the safest type of incarceration. I don't think
 15 they bring in other inmates to talk to them, but I
 16 can check into that to see if anything like that
 17 is -- is done.
 18 COMMISSIONER O'DONNELL: Okay.
 19 Let's -- can we -- one more question --
 20 MR. SCHNEIDERMAN: Just --
 21 COMMISSIONER O'DONNELL: -- and
 22 let's move because I want to keep --
 23 MR. SCHNEIDERMAN: -- just really
 24 an -- an addendum. So -- it would also be

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 2 interesting -- are there written guidelines for
 3 the -- the admission procedure or -- or how they
 4 make a determination?
 5 MR. ANNUCCI: There -- there --
 6 there -- there is -- there are rules and
 7 regulations that provide some criteria for the
 8 medical issues and mental health issues and that
 9 sort of thing. There's no formal, rigid guideline
 10 that says, you know, "here's how we score you, and
 11 if you meet this particular score, you'll -- you'll
 12 be accepted or not accepted." I -- I've basically
 13 given my legal advice to the committee. It's your
 14 judgment, but you have to be consistent. And
 15 sometimes, lawyers will call up, and they'll give
 16 them, you know, informal advice. But they're not
 17 going to give them -- "this would be our final
 18 decision." They have to see the inmate. They have
 19 to look at all the records in making their
 20 decision.
 21 Okay. Moving -- moving on to
 22 some of the other programs, the other important
 23 program -- we have work release, temporary release.
 24 Inmates who enter into work release are permitted

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 2 to leave the institution for a period not exceeding
 3 fourteen hours in one day for the purposes of
 4 employment, on-the-job training, or any matter in
 5 furtherance of such purpose. Inmates are
 6 transferred to work-release facilities. Typically,
 7 they're in large urban areas like New York City.
 8 We have one in Buffalo, but we also have Fishkill
 9 as -- as a work-release facility. And the inmates,
 10 while they're still serving their sentences of
 11 imprisonment, are permitted to leave, to get jobs
 12 like everybody else in the community -- paying jobs
 13 from employers. And they're subject to the same
 14 employment laws that everybody else is. And -- but
 15 they come back to the institution, and they sleep
 16 at night in the institution. But we marry that
 17 with another type of temporary release, which --
 18 which is called a furlough program, so that these
 19 individuals, while they're participants in work
 20 release, can furlough to approved residences on the
 21 weekend. And as they demonstrate positive
 22 adjustment to this program, the furlough can go
 23 three days, can go four days, five days, and
 24 perhaps they're only sleeping at -- at the

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 2 work-release facility for two nights a week,
 3 depending.
 4 There were executive orders under
 5 the former governor, Five Point One and Seventeen,
 6 which greatly restricted the eligibility of who --
 7 who could go into work release. And that executive
 8 order basically said, anybody convicted of a
 9 violent felony offense that involved the use or
 10 threatened use of a deadly weapon, dangerous
 11 instrument, or the infliction of serious physical
 12 injury was ineligible for any program or work
 13 release. The statute, by the way -- also, in
 14 addition to that -- has a blanket restriction
 15 against all homicide offenders. And remember, at
 16 the time, Coughlin was the commissioner, and the
 17 legislature was very upset with the large numbers
 18 of inmates that had been participating in this
 19 program, a number of whom had committed offenses.
 20 And they then enacted that restriction, and we
 21 didn't differentiate violent from nonviolent
 22 because, as you know, we have every degree of
 23 homicide, starting with Murder One, Murder Two, all
 24 the way down to the Class E nonviolent criminally

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 2 COMMISSIONER O'DONNELL: -- in
 3 the state?
 4 MR. ANNUCCI: Yeah. We --
 5 we've -- the populations of our work release
 6 facilities have been significantly reduced. To put
 7 this in perspective, one of the reasons that these
 8 statutes were enacted is because the budget for the
 9 department in the early nineties was crafted on the
 10 principle that, among other things, we would
 11 maintain a population of sixty-three hundred at any
 12 one time in work release, which was a very, very
 13 high number -- very tough to manage and very tough
 14 to keep under control. That led to a lot of crimes
 15 being committed, a lot of incidents, and a lot of
 16 backlash. And that's when the legislature passed
 17 their restriction on homicide. Right now, the
 18 number of participants that we have in work
 19 release, I think -- and it is -- it should be on
 20 the attachment to your handout, the C.L.E. I've
 21 given you the under-custody populations. You'll
 22 see a total for work release. I think the number
 23 is somewhere around five, six, seven hundred. So
 24 one time -- we had to do it by double encumbering

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 2 negligent homicide. They are all ineligible by the
 3 statute, as well as former governor's Executive
 4 Order Seventeen. Governor Spitzer took office. He
 5 did adopt Executive Orders Five Point One and
 6 Seventeen. The issue was new on executive order,
 7 which is attached to your materials -- contains the
 8 identical restrictions but adds additional
 9 exclusionary crimes -- acts of terrorism, for
 10 example, the use of a child in a sex performance in
 11 Article Two Sixty-three. Anybody convicted of that
 12 is ineligible for any program of temporary release.
 13 It means those individuals will remain incarcerated
 14 in a general confinement facility until their
 15 release within accordance with law.
 16 Another major program we have,
 17 alcohol and substance abuse treatment --
 18 COMMISSIONER O'DONNELL: Tony,
 19 before you get there, though, I -- I know there's
 20 at least been some concern or criticism that there
 21 just aren't enough work release facilities. Is
 22 that accurate? Of you have, you know, plenty of
 23 beds for work release --
 24 MR. ANNUCCI: Sure.

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 2 beds. We had sixty-three hundred. We start -- if
 3 the population is there, more people, on their
 4 merits, were approved for the program. We -- we
 5 could -- we could deal with it and provide spots
 6 for them in -- in the facility.
 7 COMMISSIONER O'DONNELL: And now
 8 we think the number is five or six --?
 9 MR. ANNUCCI: Yeah. It should --
 10 it should be on the population sheet.
 11 MR. KOROTOKIN: As of --
 12 MR. ANNUCCI: Paul, do you have
 13 that ready?
 14 MR. KOROTOKIN: As of yesterday,
 15 it was seven seventy-two --
 16 COMMISSIONER O'DONNELL: Only --.
 17 MR. KOROTOKIN: -- seven hundred
 18 and seventy-two.
 19 MR. ANNUCCI: Seven hundred
 20 and --.
 21 COMMISSIONER O'DONNELL:
 22 Throughout the whole state system?
 23 MR. BERGAMO: Why so low? It
 24 seems incredibly low.

18 (Pages 66 to 69)

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 2 MR. ANNUCCI: Well, you have --
 3 you have the restrictions that -- that say who can
 4 and who can't go into work. We lost a lot of
 5 candidates by virtue of -- of violent felony
 6 offenses. Maybe this is -- these are appropriate
 7 questions to -- to ask for subcommittees to work
 8 on -- whether or not there's a way. And we are
 9 looking at ways right now, as an agency, do an
 10 alternative type program for violent felony
 11 offenders that are going to be released under the
 12 rubric of the transitional release facility concept
 13 the Governor put forward. We'll -- we'll be able
 14 to -- to move these individuals into these
 15 facilities in the community. It won't be work
 16 release. It won't be furlough. But there may be
 17 ways that we can bring community representatives
 18 into the facilities to work with them because these
 19 individuals are definitely getting out of prison,
 20 no matter what. So if you have a release date for
 21 this individual two, three, four months down the
 22 road, you know he's definitely getting out. It
 23 makes sense to move them into these types of
 24 facilities and enhance the transitional services

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 2 too.
 3 MR. ANNUCCI: -- which -- which
 4 we do have stats on. We're terrific on that right
 5 now -- the -- the -- the crimes being committed --
 6 because we're so selective of who -- who goes in
 7 are -- are -- are very positive.
 8 Paul, do you know if we have any
 9 recidivism studies on inmates who were released
 10 through the work release program and whether that's
 11 positive or --?
 12 MR. KOROTOKIN: We haven't done a
 13 formal study in twelve, thirteen years. However,
 14 the Commissioner has asked me, knowing that we're
 15 going to be working on -- on his commission, to
 16 take a look at it. And we started looking at the
 17 1994 graduating class and the 2001 graduating
 18 class. And early analysis shows a -- a very, very
 19 positive picture. You would affect self-selection
 20 that you see in work release. Chances are, you're
 21 going to make it into -- in parole conditions as
 22 well. But we don't have the data yet -- hopefully,
 23 within two years.
 24 MR. ANNUCCI: Okay.

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 2 type things that we need to provide for them.
 3 COMMISSIONER O'DONNELL: Okay.
 4 But just so we're clear, it used to be, at one
 5 point, sixty-three thousand.
 6 MR. ANNUCCI: Sixty-three --
 7 COMMISSIONER O'DONNELL: And
 8 now --.
 9 MR. ANNUCCI: -- hundred.
 10 COMMISSIONER O'DONNELL: Oh --
 11 sixty-three hundred. Okay. Sixty-three hundred,
 12 and now it's down to around seven hundred and
 13 seventy-two. Okay.
 14 MR. SCHNEIDERMAN: And Tony, is
 15 it --?
 16 UNIDENTIFIED SPEAKER: Sorry. Go
 17 ahead, Eric.
 18 MR. SCHNEIDERMAN: Just -- and do
 19 you have any stats on recidivism for people
 20 participating in work release?
 21 MR. ANNUCCI: I know we had -- I
 22 think if you're asking me if we have stats on --
 23 on -- on the crimes that occur in the community --
 24 MR. SCHNEIDERMAN: Well, that

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 2 COMMISSIONER O'DONNELL: Okay --
 3 one more thing to address. Okay.
 4 MR. ANNUCCI: Yes.
 5 COMMISSIONER O'DONNELL: One more
 6 question?
 7 MR. LENTOL: Yes. I -- I think
 8 it's fair to say, isn't it, Tony, that programs
 9 like work release and furlough and parole, for that
 10 matter, have been affected by politics, and that
 11 you have -- if you have a crime committed, somebody
 12 who's on parole, somebody who's on work release or
 13 furlough that is going to be a natural trend
 14 towards reducing who's going to be eligible for
 15 that program, both legislative and by the executive
 16 cracking down on whoever the administrator of those
 17 programs are?
 18 MR. ANNUCCI: Yeah. I think
 19 that's a fair assessment, Senator.
 20 Let me -- let me advance some of the screens to --
 21 to give you an idea of the big picture of what's
 22 been happening with admissions, what's been
 23 happening with drug offenders currently in the
 24 system and, at the same time, talk about some of

19 (Pages 70 to 73)

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 2 the programs in the exhibit -- talk about the case
 3 study.
 4 We had twenty-six thousand
 5 individuals, including the two thousand -- closer
 6 to twenty-seven thousand, slightly more than what
 7 happened in 2005. But compare that to 1993, when
 8 we had thirty-five thousand eight hundred.
 9 Sixty-three percent were new commitments.
 10 Thirty-five percent were parole or conditional
 11 release violator returns. And the last column is
 12 just the -- the -- nominally, the return of - the
 13 return of temporary release, et cetera.
 14 Now, we released almost an
 15 identical number -- twenty-six thousand three
 16 hundred and seventy-one. Forty-nine percent were
 17 released by the action of a parole board or
 18 presumptive release, which is another mechanism for
 19 release. One third are conditional releases,
 20 meaning that they were entitled to release as a
 21 matter of law, not by the acts of the parole board.
 22 Two thousand seven hundred and forty-seven were
 23 offenders who reached the maximum expiration date
 24 of their sentence.

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 2 significant -- significant reduction in the number
 3 of drug offenders that are in the system when you
 4 take that snapshot on December 31st.
 5 On number seven, we did not put
 6 up parole, by the way. These individuals were
 7 placed under one charges. We have one last inmate
 8 on death row waiting to see what happens with the
 9 Court of Appeals' decision in his case.
 10 This chart is a little hard to read, but you can
 11 read it on the handout, as it tells you breakdowns
 12 by crimes and comparison percentages since -- from
 13 1997 to 2006. Thirteen thousand nine hundred
 14 twenty-eight is the actual number constituted at
 15 twenty-two percent. And as a proportion, it's the
 16 lowest it's been since 1987. And the Class B's, as
 17 you might guess, are the largest percentage -- five
 18 thousand Class B felons. You know, there are
 19 charts that break it down by first felony versus
 20 second felony, and as we reviewed last week, we
 21 know that first-time 'B' drug offenders have to go
 22 to state prison. We know the second time 'B' drug
 23 felons also have to go to state prison and can't go
 24 into Shock, although all the predicates can go into

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 2 This is a snapshot of who's
 3 actually in our system right now. Again, the
 4 highest -- twenty-one five thirty-eight.
 5 Currently, fifty-seven percent are violent felons.
 6 So we have followed the trend, though, of trying to
 7 increase the number of violent felony offenders in
 8 prison and release nonviolent offenders, drug
 9 offenders -- the groups that want to leave earlier
 10 than would otherwise be the case. So this is a
 11 snapshot. We take our picture. Fifty-seven
 12 percent are serving violent felony offenses. Now
 13 we've increased by over fifty-eight hundred. At
 14 the same time, re-impose has increased by two
 15 hundred compared to 1997. And again, they made up
 16 back then fifty-three point three percent. Now
 17 it's up to fifty-seven point four percent at year
 18 close.
 19 Twenty-two percent of inmates
 20 under custody at December 31st were drug offenders.
 21 So in the big snapshot, the number of drug
 22 offenders in DOCS custody has decreased -- and
 23 these are the last nine years -- a remarkable
 24 thirty-nine percent over that period. That's a

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 2 Shock. We know that the Willard Program -- that
 3 people who are repeat Class D and E drug felons are
 4 able to go to Willard, which is a ninety-day
 5 program comparable to Shock. But we know that if
 6 you previously were convicted of an 'A' or 'B',
 7 including a drug 'B', you were ineligible for
 8 Willard, which might -- the question of whether or
 9 not, as a commission, we should consider whether
 10 that would be one change we'd want to make.
 11 COMMISSIONER O'DONNELL: Tony,
 12 could you just talk about Willard --
 13 MR. ANNUCCI: Sure.
 14 COMMISSIONER O'DONNELL: -- and
 15 put it into perspective here? You were going to go
 16 into drug treatment --
 17 MR. ANNUCCI: Yeah.
 18 COMMISSIONER O'DONNELL: --
 19 programs, and I think it's pretty important that we
 20 cover it, even if we're running over.
 21 MR. ANNUCCI: Willard -- Willard
 22 is -- is a ninety-day drug treatment program,
 23 and -- and it is the -- the first time that the
 24 state bought into an alternative to the

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 2 second-felony offender or to allow a disposition
 3 other than confinement in -- in a state prison. Up
 4 till that point in time, every second-felony
 5 offender had to get a state sentence of
 6 imprisonment, had to come to a conventional
 7 department facility.

8 One of the things we know -- and
 9 this is one of the things that I think the
 10 commission should be mindful of -- is that if
 11 you're going to talk about diverting any inmates
 12 coming to state prison to a different disposition,
 13 you have to be mindful of not creating an additional
 14 burden that the counties will object to. And if
 15 we, for example, said, "we're going to come out
 16 with a rule where predicate felons can now just get
 17 probation," you might have a lot of concerns raised
 18 by counties of, "who's going to pay for it? Where
 19 are we going to get the resources?" When we
 20 created this alternative for repeat 'D's and 'E's,
 21 we deliberately kept it as a state
 22 responsibility -- in effect, allowing a person to
 23 be sentenced to parole. So the way it works is the
 24 judge imposes the underlying sentence of

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 2 their regulation so that certain types of
 3 individuals -- I think Category Two -- it's almost
 4 like a mandatory commitment to Willard. So if they
 5 violate their parole, the -- they're going to
 6 Willard.

7 One of the things that we could
 8 consider is whether or not the statute should
 9 continue to require prosecutorial consent for any
 10 individual convicted of a 'D' and sent to state
 11 prison. D.A.s already have control over
 12 disposition through the plea bargaining, which
 13 would mean if someone was indicted for a 'B', they
 14 would still have veto power against a Class D plea
 15 and sentenced to -- to Willard. But if someone was
 16 just indicted for the 'D' -- for example, the
 17 possession of five hundred milligrams in the fifth
 18 degree, as presently required, perhaps we should
 19 consider whether or not the judge should be able to
 20 sentence that person to Willard without
 21 prosecutorial consent. The other change we could
 22 look at is whether or not having a prior 'B' should
 23 automatically disqualify you from Willard.

24 One of the things we have seen

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 2 imprisonment that's normally required for that
 3 felony -- at the time, with a determinate for a
 4 'D', three and a half to seven. But he says, "I'm
 5 directing that it be exercised as a parole
 6 supervision sentence." The statute kicks in and
 7 says okay. That individual is ticketed for
 8 Willard. He is to go through an expedited
 9 reception process, and then he's going to be
 10 delivered to Willard, and then he's going to under
 11 day -- undergo ninety days of intensive drug
 12 treatment. If he's successful, he's returned to
 13 the community to continue under supervision. If he
 14 violates -- doesn't participate in the program or
 15 engages in misbehavior -- then parole will revoke
 16 his sentence in the normal course. They'll have a
 17 hearing. He'll be violated. He'll continue
 18 serving the underlying sentence of imprisonment
 19 in -- in a regular general-confinement facility.
 20 There are two types of individuals that can go to
 21 Willard. One is the judicially sanctioned, as we
 22 refer to it, where the judge imposes that as a
 23 sentence. The other is technical parole violator.
 24 Parole has massaged their regulation -- changed

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 2 is, some judges, with the D.A. and defense consent,
 3 have deliberately engineered Willard sentences for
 4 individuals who clearly weren't really drug
 5 offenders in a conventional sense. These were
 6 individuals that were extremely ill or debilitated.
 7 They just wanted to get them the shortest
 8 incarcerated time the law would permit. So they
 9 engineered Willard dispositions, which was a little
 10 bit of a challenge for us because we don't have
 11 complex medical facilities at Willard to deal with
 12 complex problems, including, sometimes, women about
 13 to -- to give birth, you know, in the eighth month
 14 of -- of pregnancy, getting Willard sentences. So
 15 clearly, there is a desire, in some parts -- and
 16 all the parties agree -- that they're wanting to
 17 get around the second-felony offender law with the
 18 shortest possible sentence, and the -- and they
 19 would use Willard as an example.

20 COMMISSIONER O'DONNELL: Tony, I
 21 think -- I think Willard is going to be pretty
 22 pivotal to -- to what we do in terms of a model and
 23 how it works and how it doesn't. What kind of good
 24 data do you have on Willard -- if it's working, if

21 (Pages 78 to 81)

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 2 it isn't -- in terms of recidivism? And if not, is
 3 it something that you think we should start right
 4 now and try to do rather intensively over the next
 5 three or four months, six months?

6 MR. ANNUCCI: I -- I don't know
 7 that we have an -- any great data on -- on
 8 recidivism. What -- what I can tell you is this --
 9 that you're dealing with a population that's
 10 addicts. And addicts fail. And sometimes they
 11 fail several times. And so you see, with a lot of
 12 these individuals, that they may end up being
 13 returned to Willard two times, perhaps three times.
 14 But they are in an atmosphere, in effect, that's
 15 coerced abstinence. There are no drugs in Willard.
 16 There's a lot of intensive drug treatment. So to
 17 that extent, it -- it's -- it's a positive outcome,
 18 particularly since, if they're a parole violator,
 19 they're getting a much shorter stay with a
 20 ninety-day stint at Willard than, for example, the
 21 six- or ninth-month hit going to a regular
 22 general-confinement facility. But I --

23 COMMISSIONER O'DONNELL: You
 24 know, I think they're not based on law enforcement.

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 2 program? Wouldn't that increase the successful way
 3 of -- the possibility of leading a clean and sober
 4 life?

5 MR. ANNUCCI: Yeah. I -- I think
 6 your point is very well taken. And -- and I think
 7 if such a program existed, it -- I think it would
 8 increase the likelihood of a successful
 9 reintegration into the community. I know, one
 10 time, I think that -- we may still have it -- an
 11 extended Willard Program where some individuals do
 12 graduate from Willard, are placed in the community
 13 into some kind of structured drug treatment
 14 program.

15 Paul or Terry, do you know the numbers on that?

16 MS. SALO: I do. I -- I've been
 17 told --

18 COMMISSIONER O'DONNELL: You'll
 19 cover them during --

20 MR. ANNUCCI: Okay.

21 COMMISSIONER O'DONNELL: -- your
 22 presentation. Okay.

23 MR. ANNUCCI: Okay. The -- the
 24 next presenter will -- will cover the -- those

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 2 Part of that is, if these are, you know,
 3 significant drug dealers who are selling
 4 substantial quantities of drugs, they're doing it
 5 in a short time. They're coming out. You have to
 6 make a whole other case against them. They go in.
 7 They come out. We sort of have a revolving --

8 MR. ANNUCCI: Yeah.

9 COMMISSIONER O'DONNELL: -- job
 10 in the law enforcement and prosecutorial side of
 11 things that is extremely costly and unproductive
 12 and doesn't really help in terms of drug
 13 interdiction. So, you know, I do think that value
 14 is important.

15 MS. BING-NEWTON: Can -- can I
 16 ask a question? A -- a question is, sensible
 17 amendments to the Willard policy, since these are
 18 really supposed to be people with drug problems,
 19 addiction problems? And we pretty much know from
 20 Drug Court that ninety days is not going to solve
 21 your addiction problems. Has there been any
 22 consideration of consecutively leading the ninety
 23 days' parole -- that we may need ninety days and
 24 then into a long-term non-jail drug treatment

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 2 statistics a little bit more. I -- I think I'm
 3 kind of coming close to the --

4 MR. ALEXANDER: Can I ask a
 5 question?

6 MR. ANNUCCI: Sure.

7 MR. ALEXANDER: The chairlady
 8 brought up a -- an issue of pre-sentencing drug
 9 use. It says drug use hasn't gone down. So
 10 what -- what sentence -- what have we thought about
 11 besides -- besides re-incarceration to address the
 12 issue? It started -- because if I was on the
 13 drugs, he's going to sell them. The drug use
 14 demand has not gone down. Probation -- so we put
 15 the same down as the others -- the use of illicit
 16 drugs. So what alternatives can we think of, as a
 17 group, to that issue?

18 MR. ANNUCCI: The -- these are --
 19 this is -- these are very, very complex --

20 COMMISSIONER O'DONNELL: They're
 21 final --

22 MR. ANNUCCI: -- issues.

23 COMMISSIONER O'DONNELL: --
 24 questions that I'm sure we'll get to discuss.

22 (Pages 82 to 85)

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 2 MR. ANNUCCI: I can show you -- I
 3 can move on to the charts to just show you the
 4 result of the Rockefeller Drug Laws and what has
 5 happened with re-sentencing, what has happened with
 6 supplemental merit time and who's been released
 7 from our custody as a result of that.
 8 I'm just going to skip over this stuff.
 9 Okay. As of May 31st, two hundred and fourteen
 10 Class A One drug felons had been re-sentenced, and
 11 at least six were women. On average, these two
 12 hundred and fourteen inmates were released an
 13 average of forty-nine months before their
 14 previously calculated earliest release dates. In
 15 all, a total of three hundred and fifty-four had
 16 actually been re-sentenced, though some number of
 17 them obviously are still in our custody until
 18 they've reached their release dates.
 19 With respect to the 'A' Twos, a
 20 total of a hundred and fifteen have been
 21 re-sentenced and released. Ten were women. On
 22 average, they served an average -- they stayed, on
 23 average, twelve months before the previously
 24 calculated earliest release dates. And a grand

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 2 total of three hundred and twenty-eight 'A' Two
 3 drug offenders were re-sentenced.
 4 Again, supplemental merit time --
 5 this is kind of a retroactive -- a review to
 6 measure for the Class 'A' Two drug offenses --
 7 earned an additional one sixth off their minimum
 8 sentence for a total reduction of one third. And
 9 two thousand -- as of May 7th, two thousand one
 10 hundred and eighty-one drug offenders were able to
 11 earn the additional one sixth credit. They stayed
 12 an average of six point five months before their
 13 merit eligibility dates. So there's a significant
 14 reduction in the amount of time drug offenders
 15 would have otherwise been required to serve --
 16 serve in state prison.
 17 And the last thing is, merit time
 18 for 'A' One drug offenders -- these are drug
 19 offenders who didn't want to get re-sentenced --
 20 they can get one third off their -- the -- their
 21 minimum sentence if they qualify for merit time.
 22 And Thirty-three 'A', when drug offenders have
 23 earned merit time and been released -- so the
 24 fifteen-to-life individual earned merit time and

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 2 got released after ten years.
 3 COMMISSIONER O'DONNELL: Okay.
 4 Tony, could you just touch very briefly on the
 5 other drug programs?
 6 MR. ANNUCCI: Sure.
 7 COMMISSIONER O'DONNELL: Because
 8 we -- we might come back to it if we can't get it
 9 in here, but I think it's pretty important that we
 10 all have that understanding.
 11 MR. ANNUCCI: The -- the other
 12 major drug program we have is called the CASAT
 13 program -- Comprehensive Alcohol and Substance
 14 Abuse Treatment Facility. Inmates, to get into
 15 this program, have to be otherwise eligible for
 16 temporary release, which means they're subject to
 17 the Governor's executive order in terms of
 18 eligibility. The Rockefeller Drug Law said that
 19 they can get into CASAT when they're within thirty
 20 months of their earliest release date. Prior law
 21 had been two years. So we can get them into this
 22 program earlier. The judges now have the ability
 23 to impose a court order on an individual for us to
 24 enroll them into CASAT. And it's basically

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 2 structured as a three-phase program, phase one
 3 being at one of these facilities where they have
 4 six months of intensive drug treatment in a
 5 therapeutic community. It's a competency-based
 6 program. And they -- if they successfully move on
 7 to phase two, which is in a work release facility
 8 slash residential treatment facility, they can
 9 continue to get drug treatment. They'll go out and
 10 get jobs, hopefully. And ultimately, they --
 11 they'll be released to phase three, which is under
 12 the supervision under the Division of Parole.
 13 At one time, as one of the
 14 compromises to negotiate building more prisons,
 15 there was a cap placed by the legislature on -- on
 16 the number of beds. It's right in the statute --
 17 two thousand five hundred and fifty -- because,
 18 when these people were graduating, they were, in
 19 effect, granted a lot of liberty. They were in the
 20 community. A lot of them were being made very
 21 porous. So one of the -- the tacks was a
 22 negotiated settlement that -- that put a cap on the
 23 total number of beds. In actuality, you know, the
 24 numbers, like the numbers for work release, are

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 2 significantly down because what we're doing with
 3 supplemental merit time, with work release, with
 4 Shock, conventional merit time, Willard -- we
 5 basically have a lot of early-release mechanisms
 6 that more or less affect the same population. So
 7 the numbers that were high in the early years for
 8 CASAT were now being siphoned off, some of which
 9 because they had violent histories, and many others
 10 because of participation in Shock, getting out on
 11 conventional merit time, supplemental merit time,
 12 re-sentencing and -- and various other programs
 13 that are at play.

14 Finally, one last thing on --
 15 on -- on the drug -- we have a significant number
 16 of foreign-born inmates in our population. I think
 17 about eight -- twelve percent, eight thousand of
 18 which -- under eight thousand were foreign-born.
 19 And we do have a program where these individuals
 20 can receive early parole for the purpose of being
 21 deported, if there's an order of deportation on
 22 file against them. A significant number of drug
 23 offenders come from countries such as Columbia,
 24 Jamaica, Cuba, Dominican Republic. And so these

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 2 criminal enterprise -- et cetera, et cetera?
 3 Yes.

4 MR. VANCE: Tony, the statistic
 5 that I thought was powerful was the thirty-nine
 6 percent decrease in the population of drug
 7 offenders over the last nine years. Is that
 8 principally a product of less drug crime or the
 9 effectiveness of the programs that you're -- the
 10 accumulative effectiveness of the programs you're
 11 describing? Or is it, obviously, a combination of
 12 both?

13 MR. ANNUCCI: Let me -- let --
 14 let me check with Paul. Paul, was there a
 15 concomitant decrease in the number of commitments
 16 coming to us or some decrease?

17 MR. KOROTOKIN: Yes. There was a
 18 some decrease on that side, too.

19 MR. ANNUCCI: Okay. So there was
 20 some decrease in the number of commitments, but not
 21 a thirty-nine percent amount. So what we're seeing
 22 is probably a combination of some lesser number of
 23 drug offenders coming to us but, more importantly,
 24 the cumulative effect of all of these early release

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 2 individuals, if they're foreign-born, and there's
 3 an order of deportation, we do allow vice
 4 officials -- formerly the I.N.S. -- to come to our
 5 facilities to conduct the deportation proceedings.
 6 These individuals can be released from our custody
 7 early -- not to liberty. They're handed over to
 8 federal officials and are physical deported to
 9 their country of origin. So that has also siphoned
 10 off some number of particularly drug offenders, but
 11 it's other nonviolent --.

12 MR. BERGAMO: The inmate who was
 13 incarcerated and has an order against him -- could
 14 he go a number of months or does he serve some time

15 MR. ANNUCCI: Technically, the
 16 statute says the individual can -- can go at any
 17 time, but the stages by the Board of Parole, and
 18 the timeline that they've developed -- their
 19 guidelines require that the inmate serve at least
 20 one half the minimum sentence. And there's also a
 21 number of contacts and information that their
 22 guidelines require. They reach out to various
 23 officials to ascertain exactly who this individual
 24 was. Was he part of a sophisticated drug --

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 2 programs getting them out of the system earlier.

3 MR. VANCE: And --.

4 COMMISSIONER O'DONNELL: Those
 5 are the -- the courts that they've, like --

6 MR. ANNUCCI: All drugs --

7 COMMISSIONER O'DONNELL: -- they
 8 keep people out --

9 MR. ANNUCCI: -- the courts we
 10 have --.

11 COMMISSIONER O'DONNELL: --
 12 unless they have to, but --.

13 MR. ANNUCCI: All those things,
 14 also, divert an individual before they're even
 15 considered.

16 MR. VANCE: And presumably
 17 keeping them out because the percentage of drug
 18 offenders still remains this high percentage --
 19 lower, of course, than nine years ago.

20 COMMISSIONER O'DONNELL: Thank
 21 you. And -- and -- uh-huh.

22 MR. MCDERMOTT: When you looked
 23 at the New York State Inmate population and the
 24 statistics on how many are violent, nonviolent,

24 (Pages 90 to 93)

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 2 drugs, is there anything peculiar about New York
 3 when you compare it to the rest of the nation? Or
 4 is it -- is this -- are those numbers pretty much
 5 stable throughout the country? And is there
 6 anything that -- we have more of this, and we have
 7 a --
 8 MR. ANNUCCI: Yeah.
 9 MR. MCDERMOTT: -- a lot less --?
 10 MR. ANNUCCI: Paul, have -- have
 11 we done any kind of studies like that?
 12 MR. KOROTOKIN: We used to have
 13 more drug offenders than -- than most states. And
 14 it all depends on lack of the drug laws. We
 15 reformed drug laws because of that. We're now more
 16 in line with what other states are.
 17 Can I respond, also, to the other
 18 question? We had four hundred and eighty-five
 19 people who came to Willard from courts.
 20 Sixty-eight of them were standard Willard cases in
 21 which they do three months at Willard, followed by
 22 six months of intervention treatment, before a
 23 six-month community program.
 24 COMMISSIONER O'DONNELL: So we

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 2 just try to play devil's advocate because these are
 3 the things that we, in the legislature, heard about
 4 Willard. And of course, you know, some of it --
 5 maybe part of it sometime may not be true. But the
 6 fact of the matter is, I think you -- you mentioned
 7 that -- the way Willard was set up regarding the
 8 offenders requiring the consent of the D.A. in
 9 order to put them there, and that that should be
 10 taken out of the statute in order for a program
 11 like that to work. That's fairly clear. And
 12 the -- the aspect of why technical violators go to
 13 Willard is because you didn't have enough drug
 14 offenders to send to Willard in order to fill up
 15 the place. Is that a fair statement?
 16 MR. ANNUCCI: Well, I don't -- I
 17 don't know if I -- I would characterize it that
 18 way. I think --.
 19 MR. LENTOL: Well, I'd like to
 20 hear it because that's what -- that's what we
 21 heard.
 22 MR. ANNUCCI: Well, I -- I --
 23 I'll certainly defer to -- to my colleagues from
 24 Parole to -- to address who -- parole violators

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 2 already have a program like that.
 3 MR. KOROTOKIN: Yes, ma'am --
 4 actually have it through the years.
 5 COMMISSIONER O'DONNELL: Whether
 6 it's -- it -- do you -- do you think -- do we have
 7 enough capacity to make that available to more
 8 people or is that something that maybe --?
 9 MR. ANNUCCI: Well, right --
 10 right now, we have a lot of demands on -- on
 11 Willard's space because, one, the number of parole
 12 violators that are coming back. In fact, what we
 13 had to do was temporarily put excess Willards at
 14 Monterey, which is a Shock facility, but obviously
 15 to make it extend to Willard, we -- we made it a
 16 three-month program. It's similar because -- boot
 17 camp regimen is -- is -- is the model at that --
 18 Willard, as well. But obviously, you know, we --
 19 we'll adjust as we go along. And to the extent
 20 that some Shock beds have been, you know, empty
 21 because of less demand, we could easily convert
 22 that to a Willard-type program -- a drug treatment
 23 campus if that is, in fact, what we needed to do.
 24 MR. LENTOL: I think I'm going to

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 2 going to Willard. But clearly, parole violators
 3 are going to come back to state prison if they
 4 violate the conditions of the parole. Separate and
 5 aside from Willard, if they are not reporting or
 6 testing positive for drugs or they're not making
 7 curfews, and the parole officer cannot get them
 8 to -- to conform to what's expected of them in the
 9 community. If they're not going to Willard, but
 10 they're otherwise legitimately a violator, they're
 11 going to come back to state prison, and it's going
 12 to be for a lot longer period of time than --
 13 than -- than -- than Willard. So the real question
 14 is, do -- do we need to have more alternatives
 15 between violating somebody's case and continued
 16 supervision in the community, something to get
 17 their attention? For example, someone will speak
 18 to that. Does it make sense to give the -- to give
 19 a parole officer the ability to get somebody's
 20 attention, to lock them up for a weekend but then,
 21 you know, withdraw the warrant so that he knows,
 22 you know, there's a consequence if I'm not going to
 23 respond to supervision; there's a consequence if I
 24 don't report? And the consequence is, I could end

25 (Pages 94 to 97)

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 2 up being back at state prison. So maybe that's
 3 some of the things we need to look at. But
 4 obviously, you know, if you're a violator, you're a
 5 violator. Either you're a violator -- violated
 6 conditions in a significant respect or not. You
 7 can't just artificially create these numbers to go
 8 to work.

9 COMMISSIONER O'DONNELL: Okay.
 10 And we're going to -- just to try to stay on
 11 schedule, I would like to have people -- if you
 12 have it when it's fresh in your mind, suggestions
 13 about issues you want to do research on or want us
 14 to look at further, because I think the -- a number
 15 of things that Tony touched on are part of really
 16 our core mission and responsibilities and -- and
 17 where we're going to look to programs and whether
 18 they're working or whether they should be expanded.

19 But I -- I do -- I came into this
 20 after I looked at -- at various facts and -- and
 21 policies with the notion that we have to look
 22 seriously at Willard and how it's functioning and
 23 how it's working to guide us as a commission. So I
 24 do think that the research project -- I'd like the

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 2 research people to go together, and maybe the
 3 commissioners had some ideas, to get -- get
 4 together and focus on what we should be looking at
 5 at Willard in -- in terms of effectiveness, in
 6 terms of how it operates. And I think that that
 7 would be helpful.

8 MR. MCDERMOTT: Have we invited
 9 somebody from the District Attorneys' Association
 10 to speak to us about their position on whether they
 11 should continue to have veto power over somebody's
 12 participation in Willard?

13 COMMISSIONER O'DONNELL: Well,
 14 not this one precise issue. It's certainly
 15 something we could put on the agenda. But we do
 16 envision that we're -- we are inviting the D.A.'s
 17 Association, D.A.'s Rockefeller Drug Program Reform
 18 advocates to come and to give us their views. And
 19 I -- I know the D.A.'s Association has a very
 20 strong viewpoint on this issue, and -- and I do
 21 think it's important we hear from them, as well.

22 MR. BERGAMO: Thank you very
 23 much.

24 MR. ANNUCCI: Thank you.

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 2 COMMISSIONER O'DONNELL: When we
 3 tried to put together our speakers -- in
 4 particular, speakers that are knowledgeable about
 5 running a local jail, about the impact that
 6 sentencing laws have on local jails, the -- the
 7 important role that probation plays and that kind
 8 of environment in which probation needs to operate
 9 at the local level and county level, the -- the
 10 name that repeatedly came to mind was Rocco Pozzi.
 11 And Rocco frequently lectures on these topics.
 12 He's certainly recognized not only throughout the
 13 state but throughout the country for his
 14 programming and -- and his vision and his
 15 leadership in many of these areas. So we're
 16 delighted to have you, Rocco, and -- and we'd
 17 appreciate it if you would address the commission
 18 on many of these topics.

19 MR. POZZI: Thank you. It is --
 20 it is an honor to be here today, and I put together
 21 some points that I would like to go over, you know,
 22 with the commission. And I -- I feel like the
 23 warm-up act, talking about the jails and probation,
 24 because I know later on this afternoon, Bob

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 2 Maccarone will be here, and he'll probably further
 3 expand on some of the topics that I'm going to hit
 4 you with. And then Marty Horn is coming in this
 5 afternoon, and he is going to really talk about a
 6 lot of the reentry programs that kind of mirror
 7 what's going on in New York City and what we're
 8 doing in -- in -- in Westchester with those
 9 programs. So if I can -- I'll get right in there
 10 because I don't -- I'm going to try to get you back
 11 on schedule because they will elaborate on these
 12 points that I'm going to make.

13 But let -- let me start out with
 14 probably the most controversial statement that I'm
 15 going to make today because it could -- could
 16 require an enormous amount of resources, but it's
 17 something you ought to be thinking about. And we
 18 talk about reentry programs. Ten years ago, when
 19 County Executive Spano asked me to take on the dual
 20 role as Probation Commissioner and the Commissioner
 21 of Corrections, one of the things that I talked
 22 about was doing transitional plans or planning for,
 23 you know, people at the local level who were going
 24 to be released back into our community after doing

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 2 a year or six months or whatever their sentence
 3 was. And as we started down that road, one of the
 4 questions that we started asking ourselves -- okay.
 5 We put this plan together, but who do we give it
 6 to? Do we give it to the inmate who's being
 7 discharged and hope that they follow up on the
 8 recommendations that we're making for them to
 9 continue to do the things that they're starting to
 10 do in the correctional facilities? For instance,
 11 you know, we created a drug treatment program. We
 12 would certainly want them to follow up with
 13 outpatient drug treatment once they get out --
 14 vocational training programs that we started to
 15 develop, educational programs that we started to
 16 develop for the inmates. Who takes on that
 17 responsibility? Because we all know now, under the
 18 statutes of New York State, that once someone
 19 serves their time, they max out, and they're
 20 released back into the community. So my
 21 recommendation is that no one really should be
 22 released back into our communities without some
 23 type of supervision -- without a period of
 24 supervision.

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 2 correctly. But it really didn't mirror all the
 3 good work that was being done in a lot of the local
 4 facilities through conditional release commissions
 5 in dealing with the -- with the inmates that were
 6 housed in our facilities. So I would strongly
 7 recommend that we look at creating in our statutes
 8 some mandatory period of supervision for anyone who
 9 is being released back into our communities so that
 10 we can make sure that the transitional plans that
 11 we are preparing are at least followed up for a
 12 certain period of time, and also the -- taking back
 13 the conditional release function, you know, to the
 14 counties or at least making it optional. I mean,
 15 if some counties really don't want to get back into
 16 that business again, that's fine. If not, you
 17 know, we would -- we would certainly welcome the
 18 opportunity to have conditional release come back
 19 at the local level because I think we did it really
 20 well, and we had one of the best programs, I would
 21 like to say, in the -- in the state in dealing with
 22 conditional discharge.
 23 COMMISSIONER O'DONNELL: Can I
 24 ask --

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 2 Now, we -- we kind of backed into
 3 a period of supervision many years ago when we
 4 transferred conditional release from state parole
 5 almost eighteen years ago to the county -- and I
 6 know it's -- it's back with state parole again --
 7 where we were able to give early discharges for
 8 inmates and then have a one-year period of
 9 supervision for those folks to make sure that they
 10 would follow up on the release plan that was
 11 prepared by the conditional release commission.
 12 But we don't have that right now once, obviously,
 13 conditional release has been moved back to the
 14 state. You know, periodically, we do get some, you
 15 know, early discharges through state parole, but
 16 not very many -- not as many as we used to.
 17 So at -- the other controversial recommendation I'm
 18 going to make is that I really believe -- and I
 19 know my county executive strongly supports having
 20 that conditional release process put back at the
 21 county level again. It worked well in Westchester.
 22 We felt, in Westchester, that, you know, we -- we
 23 had a couple of high-profile cases that really went
 24 the wrong way or maybe things weren't done

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 2 MR. POZZI: Yes.
 3 COMMISSIONER O'DONNELL: -- since
 4 you were -- you're starting out with policy
 5 recommendations, which we appreciate. The
 6 conditional release suggestion -- is that -- is
 7 it -- does it have to be mutually exclusive? In
 8 other words, can Parole exercise it for people on
 9 parole and probation or -- or exercise it for
 10 people on probation?
 11 MR. POZZI: Well, I mean, what --
 12 what we're talking about are people who were
 13 sentenced, you know, to one year or less, you know,
 14 at the correctional facility. So I mean, right
 15 now, parole being spread out all over the place,
 16 you know, and -- and I'm sure, you know -- I'm sure
 17 Tony mentioned something, and George, if he were
 18 here, would talk about, you know, the resources
 19 that are available to them to really be able to,
 20 you know, respond to the request for early
 21 releases, you know, act upon them, and then
 22 actually supervise them, you know, for the one-year
 23 period. We would certainly welcome that -- that
 24 back.

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 2 COMMISSIONER O'DONNELL: I see.
 3 MR. POZZI: You know, I --
 4 COMMISSIONER O'DONNELL: So it
 5 would be --
 6 MR. POZZI: It wouldn't
 7 really --.
 8 COMMISSIONER O'DONNELL: --
 9 taking that function away, --
 10 MR. POZZI: Yes.
 11 COMMISSIONER O'DONNELL: --
 12 essentially, from Parole and giving it --
 13 MR. POZZI: Giving it back to --
 14 COMMISSIONER O'DONNELL: -- to a
 15 probation department.
 16 MR. POZZI: -- to Probation --
 17 yeah.
 18 COMMISSIONER O'DONNELL: And do
 19 you think other probation departments that are more
 20 stressed, less resources -- would they feel the
 21 same way about it or --?
 22 MR. POZZI: Well, that's why I
 23 say they may not. That's why you may want to make
 24 it, you know, a local option. If they don't --

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 2 COMMISSIONER O'DONNELL: Uh-huh.
 3 MR. POZZI: -- want to, you know,
 4 do it, perhaps they can, you know, put the -- the
 5 law might be able to be restructured, --
 6 COMMISSIONER O'DONNELL: Okay.
 7 MR. POZZI: -- you know, --
 8 COMMISSIONER O'DONNELL: And --
 9 MR. POZZI: -- to allow that.
 10 COMMISSIONER O'DONNELL: -- on
 11 the policy issues, we also had a recommendation --
 12 or a thought, anyway -- that maybe the periods of
 13 supervision are too long and sort of testing one's
 14 ability to be able to abide by strict conditions if
 15 it's five years that your term of parole is or your
 16 probationary term. Do you have a view on that?
 17 MR. POZZI: Well, you know, I --
 18 I always --.
 19 COMMISSIONER O'DONNELL: These
 20 terms are too long?
 21 MR. POZZI: I remember having a
 22 conversation with our former governor about that
 23 particular issue, especially when they were
 24 thinking about abolishing parole in the state, and

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 2 it just seemed illogical that we were going down a
 3 path where we were looking for longer prison
 4 sentences, and yet we were looking to shorten the
 5 amount of time that we actually supervise people
 6 that are back in our communities when they can do
 7 the most harm to people. And we want to make sure,
 8 you know, that they are following the plan -- the
 9 release plan that has been developed by Parole. So
 10 it seemed to be illogical. You know, it's -- it --
 11 it didn't -- it didn't make sense. So, you know,
 12 thankfully, you know, we -- we really never did
 13 abolish, you know, parole in New York State, and we
 14 do have a period of supervision. I think what you
 15 need to have is maybe some flexibility in that --
 16 in that period, you know, that if someone is doing
 17 really well, you know, you have the option of doing
 18 an early discharge, which I think is -- you know,
 19 is possible. So you know, length of supervision --
 20 you know, I -- I think it -- it really
 21 determines -- you know, it should really be based
 22 on the individual, you know, themselves, you know,
 23 on how long they should be under a period of
 24 supervision.

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 2 Now, I was talking -- I had a
 3 conversation yesterday, you know, about the --
 4 about sex offenders and the fact that, you know,
 5 someone had -- we have a committee in Westchester
 6 called Protect the Kids. You know, we were talking
 7 about the length of probation sentences for sex
 8 offenders. You know, we've now doubled them in New
 9 York State over the last couple of years, where we
 10 went from three years of supervision to six years
 11 on a misdemeanor, and five years on a felony to ten
 12 years. And someone had brought to the table,
 13 should we be considering lifetime probation for sex
 14 offenders? And when you look at the statutes
 15 throughout the country, lifetime is really not
 16 lifetime in a lot of these jurisdictions. I think
 17 in Arizona, which was one of the first states to
 18 develop lifetime probation, you know, for sex
 19 offenders, I think the average length was about
 20 fourteen years. And then the recommendation was
 21 made to the court for a discharge at that point.
 22 And the question was, you know, if you have a
 23 ten-year period right now, and the -- and -- and
 24 the average has been about fourteen years, you

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 2 know, what do you -- what do you gain in those four
 3 years? You know, for a lot of people, you -- you
 4 may not need those four years. But for other
 5 people, you may really need to keep some of these
 6 folks on lifetime probation supervision. They may
 7 not meet the so-called, you know, confinement
 8 requirements, but yet may -- may need that -- that
 9 supervision in our -- while they remain in our
 10 communities.

11 So what I threw out on the table
 12 was, what about like what we do with civil
 13 confinement, where we can go back into court and
 14 maybe give a consideration for an extension of that
 15 sentence based on what's happening with that
 16 particular probationer, instead of coming up with
 17 lifetime probation for everyone?

18 COMMISSIONER O'DONNELL: For
 19 everybody --

20 MR. POZZI: Yeah. So --

21 COMMISSIONER O'DONNELL: Uh-huh.

22 MR. POZZI: -- that -- that might
 23 be, you know, a thought, you know, for -- for the
 24 length.

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 2 know, citizens of -- of -- of Westchester that
 3 sat -- had some experience, you know, in -- in
 4 criminal justice. Maybe -- you know, we had -- at
 5 one point, we had a professor from John Jay
 6 University on it that was the director of criminal
 7 justice programs. We had former -- former
 8 employees that -- former probation director was on
 9 the commission -- people who had knowledge but
 10 really weren't tied to any agency. And they act as
 11 an independent body. And actually, Probation
 12 prepared the reports, you know, for people who were
 13 applying for the conditional release, and they
 14 looked at it very seriously. And in the very
 15 beginning, they were very reluctant to let people
 16 out because, at that point, when I had taken over
 17 Corrections, there were very few programs available
 18 to inmates. So the conditional release commission
 19 was requesting from the Commissioner of Corrections
 20 more programs so that these folks can at least
 21 demonstrate the willingness to want to correct
 22 their behavior and start dealing with some of the
 23 deficiencies that they -- they had. And at that
 24 point, they might give consideration for early

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 2 Yeah. Tony?

3 MR. ANNUCCI: Quick question --
 4 if -- if I remember correctly, when we first
 5 switched from Parole to local conditional release
 6 commissions, I remember anecdotally people saying
 7 that the numbers went way down because, keeping
 8 locally, the -- the locals were very resistant to
 9 making releases. Apparently, that wasn't your case
 10 in -- in Westchester?

11 MR. POZZI: No, it wasn't.

12 MR. ANNUCCI: Can -- can you
 13 speak to it for the other counties where there's a
 14 lot of -- was there a lot of hesitancy?

15 MR. POZZI: I believe there was
 16 some hesitancy on the part of other counties --
 17 I -- if you want to look at how we developed and we
 18 created. And I think Bob Maccarone, actually, at
 19 that point -- Bob was in Westchester at that point
 20 and should get the kudos for developing, you know,
 21 that concept of how we handled conditional release.
 22 We actually created a conditional release
 23 commission of three to four people who were not
 24 tied to any governmental agency. They were, you

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 2 releases. So when we did put those programs in at
 3 the Department of Corrections, we found that the
 4 release rate went up proportionately. And we found
 5 that a high percentage of people were able to
 6 complete that one-year period of supervision
 7 without violating and were able to really do
 8 something more constructive in the community than
 9 staying in the local correctional facility.

10 Now, when you look at what
 11 happened with a lot of other counties -- you know,
 12 and probably Bob -- Bob Maccarone would be able to
 13 give you, you know, some specifics on some other
 14 counties. They didn't structure it that way. I
 15 mean, in some counties you had a Director of
 16 Probation that was actually part of the conditional
 17 release commission and some other folks. You know,
 18 and perhaps there could have been a charge, you
 19 know, by, you know, the county executive or by
 20 somebody that -- we really don't want to be
 21 considering a whole lot of releases for these type
 22 of folks, where we didn't have that in Westchester.
 23 They actually had an independent body that was able
 24 to -- to function, and we supported it.

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 2 COMMISSIONER O'DONNELL: Okay.
 3 We'll let you get back on track.
 4 MR. POZZI: Okay.
 5 COMMISSIONER O'DONNELL: So --
 6 MR. POZZI: All right. And --
 7 COMMISSIONER O'DONNELL: -- thank
 8 you.
 9 MR. POZZI: -- of course, I'm --
 10 I'm sure you're going to hear from a lot of other
 11 people about parole violators. And I'm talking
 12 about jail concerns. One of the things that we've
 13 been really, you know, looking to get some relief
 14 on are parole violators. At any given -- I'll just
 15 give you an example in -- in -- in Westchester. At
 16 any given time, I have -- well, there's two types
 17 of parole violators that we deal with. We have
 18 those are being held on technical violations. And
 19 when we mean technical violation, we're talking
 20 about people who have not been rearrested on new
 21 offenses -- new criminal offenses. They are there
 22 because they violated the conditions of their
 23 release -- not going -- not reporting, not going to
 24 drug treatment, not doing the things that they

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 2 should be doing. Or a lot of them, unfortunately,
 3 have absconded from supervision. You know, they
 4 have warrants out for their arrest, and eventually,
 5 you know, they're taken into custody or arrested.
 6 And we're housing them in the
 7 local jails. On any given day, I have close to
 8 eighty of those individuals, and the -- and the --
 9 and the numbers in New York City are huge. I think
 10 it's over six hundred that Marty probably has that
 11 are -- six -- six to eight hundred technical
 12 violators that he has in his facility. And we've
 13 been pushing -- you know, and I know this governor
 14 has been very, you know, attune to, you know, some
 15 of the concerns that are being brought to his
 16 attention about these parole violators and trying
 17 to move them out of the local facility into the
 18 state facility because it's really felt that it's
 19 a -- you know, at that point, it's really a -- a --
 20 a state sentence that has been violated, and these
 21 folks should be going back to the state facility to
 22 have these procedures -- these violation procedures
 23 continued.
 24 And we do understand that, at --

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 2 at some point, especially north of Westchester,
 3 that the logistics become very difficult, you know,
 4 for -- for travel if -- if -- if individuals, let's
 5 say, from -- from Albany or someplace else are
 6 housed in a state institution that is, you know,
 7 many, many miles away from them. And the logistics
 8 of getting the violation hearing heard is going to
 9 be extremely burdensome for -- for the attorneys.
 10 I think the recommendation was to try to have these
 11 hearings still occur at the local level by -- you
 12 know, or maybe use of teleconferencing -- you know,
 13 videoconferencing to have the hearings -- actually
 14 have the lawyers in the local facility and have the
 15 inmates, you know, back in the state correctional
 16 facility. So I know that's under -- under review
 17 right now as a possibility. But it really is
 18 costing the counties an enormous amount of money
 19 when you look at forty dollars a day that we get
 20 reimbursed from the state. My actual cost is well
 21 over two hundred dollars a day to keep an
 22 individual in Westchester County Jail. And -- and
 23 I know that, initially, when the legislation was
 24 passed, you know, to house these parole violators

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 2 in the local facilities, there was a -- a huge
 3 problem -- overcrowding problem at the state level.
 4 I don't think -- the good news is I don't think
 5 that that's a problem right now at the state level.
 6 So we really should be looking at -- at taking
 7 those back.
 8 I also made a recommendation
 9 through NYSAC, when we started looking at this
 10 issue, of Parole maybe creating regional revocation
 11 centers. You know, what you -- what you have is
 12 you have, you know, hearing officers running all
 13 over the state to perform these hearings. I had
 14 actually recommended that perhaps -- at
 15 Westchester, as an example, we have a ninth
 16 judicial district, which encompasses Westchester,
 17 Dutchess, Orange, and Rockland -- that Sing Sing --
 18 you might be able to create a hearing center there
 19 where you don't have your hearing officer running
 20 all over to these local facilities and have these
 21 hearings, and you can actually centralize these.
 22 And I really believe there were some efficiencies
 23 for Parole there, that you might actually have some
 24 savings, you know, of time, staff, and things that

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 2 are needed in order to conduct these type of
 3 hearings.
 4 COMMISSIONER O'DONNELL: Well, I
 5 don't know if this even a subject of a separate
 6 discussion because it -- it -- it is a huge issue.
 7 It's a huge issue policy-wise. I don't know if it
 8 impacts directly on sentencing, per se. But you do
 9 have -- I -- I think -- Tony, you may know this
 10 better, but I think the average sentence that
 11 technical parole violators serve in the state
 12 correctional system is something like four months
 13 or six months or something like that --
 14 MR. ANNUCCI: Yeah. I think --
 15 COMMISSIONER O'DONNELL: -- that
 16 is --
 17 MR. ANNUCCI: -- that sounds
 18 right.
 19 COMMISSIONER O'DONNELL: --
 20 relatively brief. And so when you really look at
 21 that from a policy point of view, if people are
 22 repeat technical offenders who kind of go in and
 23 out and at very, you know, high cost, removing them
 24 from the local facilities who are overburdened,

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 2 cost-wise, because they house them, to a state
 3 facility, means moving them away from their homes
 4 and communities. So from a reentry perspective,
 5 you know, very little is -- is being done. And so
 6 it -- it -- it is part of the system that appears
 7 to be broken or not functioning as it should, and
 8 it's burdensome for counties and possibly to the
 9 state, and probably not achieving anything in terms
 10 of reentry of individuals back to society. So
 11 we'll -- we'll try to focus on that and see if
 12 maybe we can have a more lively discussion. But I
 13 appreciate you --
 14 MR. POZZI: Okay.
 15 COMMISSIONER O'DONNELL: --
 16 highlighting it.
 17 MR. POZZI: Okay. And also, let
 18 me -- if I can now put my probation hat on a little
 19 bit, all right, and talk about some of the issues
 20 around probation -- I -- I -- I don't know whether
 21 the -- the -- the Commissioner has had the
 22 opportunity to -- a lot of the things that I will
 23 talk about are -- are highlighted in this report
 24 that we've prepared for the chief justice, which

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 2 was a task force I know John Amodeo had worked
 3 with -- with us and actually drafted a lot of the
 4 language in this report that talks about the future
 5 of probation for New York. And some of the issues
 6 that I'm going to be talking about that -- that are
 7 probation issues are really highlighted in this
 8 report, and if you -- you need a lot more
 9 information, I -- I would suggest that you -- you
 10 know, you -- you read this report. And it
 11 really -- this report only deals with the adult
 12 system at this point. All right. I know the Chief
 13 Justice has now commissioned the task force to now
 14 look at issues in the family court arena, which is
 15 going to be a report that will probably be coming
 16 out at the end of this year, hopefully the
 17 beginning of next year, that will highlight some of
 18 the issues that I'm going to talk a little bit
 19 about, too, in family court.
 20 But let me start out at the very
 21 beginning because I know Tony had mentioned
 22 something about pre-sentence investigations and was
 23 going over pre-sentence investigations. And
 24 actually, take it a step back. You know, in the

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 2 utilization of these reports -- recommendation that
 3 judges should be utilizing, you know, probation and
 4 reports that we can prepare as part of the pre-plea
 5 process, where a lot of sentences or
 6 recommendations for sentences are being created.
 7 And there's a whole lot of information that could
 8 be available, you know, to the judges, to the
 9 defense bar and the district attorney through the
 10 creation of these pre-plea investigations. And a
 11 lot of people have always said, "well, if you do a
 12 pre-plea, then you're going to have to do another
 13 report, which is a pre-sentence report." You know,
 14 so you're kind of duplicating the efforts, but
 15 we're not really doing that because, if we do a
 16 pre-plea investigation, we would just update the
 17 pre-plea investigation and actually add a little
 18 bit more information that might be pertinent to the
 19 sentencing that would take place in -- in -- in the
 20 court, or support the plea that may have been
 21 negotiated by the court. So -- but the problem
 22 with that -- and one of the -- you know, one of the
 23 problems that we're having is actually resources
 24 available to probation departments to really do a

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 2 quality pre-sentence investigation for the court.
 3 I mean, right now, you know, the
 4 numbers of reports that are -- that are being
 5 required to be prepared by -- by the officers, I
 6 mean, on an -- on a -- I mean, like, twenty a
 7 month -- that might be the average, you know, that
 8 a probation officer is being asked to do for the
 9 court. And it really -- you really don't have the
 10 time to do any enhanced type of investigations,
 11 which we would like to do, you know, for the court
 12 because, obviously, everyone knows that one of the
 13 most important functions in a trial is the
 14 imposition of a sentence. And one of the things
 15 that we've been talking about is trying to do a
 16 better report and actually turn the report around a
 17 lot quicker because it's taking a long time for
 18 probation departments to be able to complete these
 19 reports for the judges. And I know Tony talked
 20 about the value that they have, you know, for
 21 classification. I know the value they have at the
 22 local jail, too, you know, as far as classification
 23 is concerned.
 24 And one of the things that I

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 2 can immediately start our supervision strategies.
 3 So I would recommend that --
 4 especially on probation cases -- that judges who
 5 agree to probation should allow for the
 6 pre-sentence investigation to be completed so that
 7 we can give them all the information we need, and
 8 we can hit the ground running. The first day that
 9 that person comes into the probation, we can
 10 actually start working -- doing some meaningful
 11 work with that person instead of trying to gather
 12 information on that person. It's very, very
 13 difficult to have someone show up at the Probation
 14 Department with just the orders and conditions from
 15 the court, and that's the only thing that we have.
 16 So I would recommend that we -- that we -- that we
 17 change that -- that part of the rule and that we
 18 also, like I said, start using pre-plea
 19 investigations a little bit more.
 20 The other issue is -- is
 21 violation hearings -- you know, speedy violation
 22 hearings. We cover that -- we -- we really cover
 23 that extensively in this report -- you know, the
 24 need for violation or probation hearings to be done

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 2 think we -- we should be looking at -- and I know
 3 right now the law allows for the waiver of the
 4 pre-sentence investigation. The pre-sentence
 5 investigation should not be waived, especially on
 6 probation cases, when we are getting people back
 7 into our community, because what I'm finding out is
 8 happening is that we have a judge -- and I think
 9 this was done with good intentions, by the -- by
 10 the assembly and the senate and the governor, to
 11 try to relieve the burden on probation departments
 12 of having to complete as many reports as we were
 13 completing. What we're finding out is that we
 14 still have to gather all that information, anyway,
 15 once someone is -- once someone shows up at
 16 probation. If we don't have the pre-sentence
 17 investigation, what is happening is it kind of puts
 18 us behind being able to do a -- a stratification on
 19 supervision for that person because we've got to
 20 gather all the information and then, you know, look
 21 at it, and then assign a classification to that
 22 person on what should be the supervision level. So
 23 if we get the report immediately -- if it's done
 24 for the court, and it becomes available to us, we

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 2 in a timely manner. We -- we understand that the
 3 court is already burdened with a lot of hearings, a
 4 lot of trials. But one of the things that we're
 5 finding out in probation is that when a violation
 6 does occur, you know, we do create the declaration
 7 of delinquency, and we file for a violation
 8 hearing. It is taking too long for violations. If
 9 a violation is not done speedily, it really loses
 10 its effect. I mean, we -- we have people actually
 11 staying in the communities with violations for
 12 months before violation hearings are occurring.
 13 Yes?
 14 MR. BERGAMO: Are there special
 15 judges that are used for the violations or must go
 16 back to the original court?
 17 MR. POZZI: I'm sorry. I -- I --
 18 I couldn't hear you.
 19 MR. BERGAMO: I'm sorry.
 20 MR. POZZI: That's all right.
 21 MR. BERGAMO: Are there special
 22 hearing officers utilized for this or they must go
 23 back to the original judge?
 24 MR. POZZI: It's got to back to

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 2 the original judge.
 3 MR. BERGAMO: There's no changes?
 4 MR. POZZI: No. No. As a matter
 5 of fact, I know many years ago there was some
 6 thought about creating hearing officers. And I --
 7 it -- it wasn't around violations. And the --
 8 another subject -- and we're -- you're leading me
 9 right into another subject -- is around upward
 10 modifications that need to take place that we've
 11 got to go back to court to get upward
 12 modifications.
 13 MR. BERGAMO: Would you
 14 recommend, based on your experience, that there
 15 should possibly be hearing officers to avoid this
 16 delay -- just on violations, not about whether or
 17 not --?
 18 MR. POZZI: Whether it be a
 19 hearing officer or whether it be --
 20 MR. BERGAMO: What would the
 21 title be?
 22 MR. POZZI: -- you know --.
 23 MR. BERGAMO: What that title
 24 is --.

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 2 staying out there for months before something
 3 happens, and then the violation sometimes loses
 4 its -- its meaning by the time the court gets
 5 around to it. Yeah.
 6 MS. STANFORD: So I take it from
 7 your last comment -- because my question was going
 8 to be, what's your concern in having the hearing
 9 quicker. My experience as -- as a prosecutor was
 10 that, in many instances, it was at the defendant's
 11 request or his counsel -- his or her counsel's
 12 request that there be a delay so that they would
 13 have almost a second or a third bite at the
 14 apple --
 15 MR. POZZI: Uh-huh.
 16 MS. STANFORD: -- to try to get
 17 it right. So they'd extend the date by two, three
 18 months to give them another chance to -- to do all
 19 the things that he or she was supposed to do when
 20 they were on probation. And sometimes they would,
 21 and then they would just go back on probation. And
 22 then, sometimes, they wouldn't, and it would be
 23 revoked. It may be time served for whatever time
 24 they served. But again, it was at their request.

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 2 MR. POZZI: I -- you know, I --
 3 I -- I just think that it's got to be some type of
 4 mechanism that allows the court to address these
 5 things speedily, whether it's hearing officers if
 6 they're willing to delegate that authority to a
 7 hearing officer, or whether they create a
 8 special -- special -- you know, a special type of
 9 court just to deal with violations that would get
 10 them, you know --
 11 MR. BERGAMO: Keep them moving.
 12 MR. POZZI: -- keep them moving,
 13 you know. That -- we did that in Westchester. We
 14 actually, you know, had a violation court. We --
 15 we have that right now.
 16 MR. BERGAMO: Does it work?
 17 MR. POZZI: It works real well.
 18 You know, we're -- we're getting, you know, not as
 19 quickly as I would like for them to be done, but a
 20 lot quicker, certainly, than they were before. But
 21 I think, you know, justice has got to be immediate.
 22 You know, and I think it sends a very bad message
 23 back to the probation community that you can
 24 violate your probation, and you're going to be

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 2 And so I'm wondering how -- how will you -- how
 3 will you speak to that, the fact that, like I said,
 4 in my experience, it was their request that it be
 5 extended, and sometimes they were incarcerated.
 6 But most often, they were not, as -- as you know.
 7 MR. POZZI: Again, you've got to
 8 look at the -- you've got to look at it on a
 9 case-by-case because, most of the time, by the time
 10 a probation officer violates someone, you know, a
 11 lot of things have occurred prior to that. A lot
 12 of efforts have been made. We just don't violate
 13 people at the drop of a dime. You miss a visit or
 14 if you -- you miss a program visit or if you do
 15 something. We just don't file violations
 16 immediately. Obviously, you know, there is -- we
 17 seek upward modifications or we try to do -- we try
 18 to tighten the tourniquet a little bit if we can to
 19 stop the bleeding by doing some additional things
 20 that we can do. So by the time we file a
 21 violation, you know, the fact that the defense may
 22 be -- you know, may be postponing or trying to, you
 23 know, buy some time to see if they can straighten
 24 this person out, I can tell you that Probation's

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 2 already done that. All right. Now, sometimes it
 3 does work. It does work. But I'm just going to
 4 tell you, Tina, by the time we file a violation,
 5 something serious has occurred or, if you check the
 6 record, you'll see many efforts have been made to
 7 try to deal with that behavior before we want to
 8 bring it back to the court. All right. So
 9 we're -- we're not just violating people at the
 10 drop of a dime. If we did that, you know, the
 11 number of violation hearings that would be
 12 scheduled would be just astronomical.
 13 MS. STANFORD: And maybe that
 14 speaks to -- to the issue of the difference,
 15 perhaps, between your county and your department
 16 and other counties because I'm from Erie County,
 17 and I think maybe the difference is the -- the
 18 number of support staff, the -- the quality of the
 19 ability to -- to follow that probationer,
 20 because -- I won't say that they were violating
 21 them at the drop of a hat, but I think that they
 22 had less opportunity to get them to comply. And
 23 because they couldn't get them to comply -- they
 24 didn't have the time to supervise adequately --

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 2 COMMISSIONER O'DONNELL: But --
 3 but --
 4 MR. POZZI: Yes.
 5 COMMISSIONER O'DONNELL: -- you'd
 6 agree, probably, that the best policy, whether it's
 7 probation or -- or parole, is a system of graduated
 8 sanctions that you have the resources to institute
 9 and follow --
 10 MR. POZZI: Absolutely.
 11 COMMISSIONER O'DONNELL: -- so
 12 that you can take things away. You can take
 13 privileges away, you can require more frequent
 14 visits. You can impose a number of other graduated
 15 sanctions before you get to the ultimate one of
 16 violations.
 17 MR. POZZI: That -- that's why I
 18 was kind of suggesting -- you know, even though I
 19 kind of lumped it together, you know, the ability
 20 to be able to get back into the court or get back
 21 to someone that can -- or even allow Probation to
 22 do certain, you know, modifications to the original
 23 sentence that will allow us to continue and really
 24 tighten that tourniquet and add some graduated

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 2 they were violating them. And then, when the judge
 3 would suggest, "well, maybe you give them another
 4 chance," they might have felt that maybe they
 5 really didn't have the chance to do that. So they
 6 were more willing to go along with it. So -- so
 7 those differences between probation departments
 8 might be significant in the equation, too. So we
 9 could just keep someone from --
 10 MR. POZZI: That --
 11 MS. STANFORD: -- actually
 12 getting --
 13 MR. POZZI: -- that -- that --
 14 that --.
 15 MS. STANFORD: -- getting more
 16 support for probation.
 17 MR. POZZI: That's true. I mean,
 18 it could be a reaction to high caseloads. We don't
 19 have time, you know, to do things with people. So
 20 the easy solution is to find violations, and you
 21 don't have them on their -- on your caseloads any
 22 longer. That is atypical to what happens in
 23 Westchester. I -- you -- you're -- you're right,
 24 Tina. You're absolutely right.

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 2 sanctions, you know, to that particular case,
 3 without having the burden of courts, you know, or
 4 have -- have -- you know, have us be able to do
 5 something for a certain period of time and then
 6 have it reviewed by a hearing officer, you know, to
 7 make sure that we're in line with the things that
 8 we're recommending as far as the upward
 9 modification is concerned. If there is a concern
 10 by a defense that maybe probation might be going
 11 too far or maybe they're imposing some, you know,
 12 additional sanctions that are not necessary, there
 13 always should be a review process. But I think
 14 there has to be a mechanism developed that allows
 15 us to do that and really use violation as, you
 16 know, the last alternative. You know, and
 17 unfortunately, that's -- you know, that is the
 18 mindset in some jurisdictions, and it's not -- you
 19 know, it -- it is just not a New York phenomenon.
 20 That happens in a lot of other jurisdictions that
 21 were facing some of the issues that Erie County
 22 might have been facing, and that's exactly what the
 23 reaction is to it, which is -- leads me into the
 24 next -- next point, which is a healthy probation

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 2 system, because when you're talking about
 3 sentencing, you've got to have a healthy probation
 4 system because, really, what is happening is a
 5 contract is being -- is being created between the
 6 court and the probation department for us to be
 7 able to carry out those things that are being
 8 mandated by the court. And if you don't have
 9 probation departments that have the ability to
 10 properly supervise, to properly, you know, make
 11 sure people are adhering to those orders and
 12 conditions that are imposed by the court, then
 13 sentencing itself becomes meaningless because
 14 probation, in a lot of -- in a lot of ways, becomes
 15 what a lot of people think probation is, which is a
 16 slap on the wrist, and you've really gotten away
 17 with something, instead of really being held
 18 accountable -- you know, follow up on what the
 19 court wants you to do, change your life. And for
 20 Probation to be in a position where we can do those
 21 graduated sanctions if you're not adherent to it,
 22 or we're in a position where we can take you back
 23 into court, and you're going to pay the ultimate,
 24 you know, penalty of having your freedom taken away

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 2 since we passed the PINS Eighteen Law, where I have
 3 kids that are under probation supervision at age
 4 sixteen and seventeen and, at the same time, are
 5 acting out and have PINS behavior and are going
 6 into the family court and filing -- and there
 7 are -- there are PINS petitions being filed, and I
 8 have kids that are being supervised into criminal
 9 court, and I have kids that are going through --
 10 the same kid that is going through the family court
 11 now on a PINS petition. And I have two different
 12 judges dealing with that -- with that -- with that
 13 kid. So one of the recommendations that we are
 14 making -- and this was a -- an idea that -- that
 15 really resurrected from our -- our now current
 16 district attorney, Janet DiFiore, who was the
 17 supervisor judge, you know, of the Ninth Judicial
 18 District Criminal Court -- and Judge Cooney, who
 19 was a former, you know, family court judge -- that
 20 we really need to look at creating an integrated
 21 youth court where these -- you know, these kids --
 22 these J.O.s and these, you know, younger offenders
 23 that had the possibility of having actions take
 24 place in the family court be consolidated with one

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 2 from you, and you're going to wind up either in a
 3 local jail or -- or a state prison sentence.
 4 So we -- we need -- and I -- and
 5 I talk, and I like to use Westchester as a model of
 6 a lot of the programs that we've been able to
 7 develop to support the court and support the
 8 sentences that are being imposed by the judges,
 9 especially in the creation of a lot of these
 10 specialty courts that I -- I think are great. I
 11 think, you know, we need to do more of them. I've
 12 got -- want to talk about one that I recommended to
 13 the Chief Justice a couple of months ago that we're
 14 going to be following up on, and that's the
 15 creation of an integrated youth court. We are --
 16 we are now finding, if I can make this simple -- I
 17 mean, you -- you -- you know, New York, I think, is
 18 one of three states now where, at the age of
 19 sixteen, you become an adult offender. Most other
 20 jurisdictions are eighteen or seventeen years old.
 21 And I understand that in Connecticut right now,
 22 which is one of the three states that is -- now has
 23 legislation pending to change that back to
 24 eighteen -- and what we're finding now, especially

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 2 court. But again, you got to have a probation
 3 department that is in a position that can provide
 4 meaningful supervision.
 5 The other thing that we're doing
 6 right now -- and if you -- and -- and it's very
 7 highlighted in the -- in the -- in the past court's
 8 report -- is looking at what we do with
 9 adolescents. I mean, even though we have now --
 10 you know, in New York State, we say sixteen you're
 11 an adult, as far as criminal activity is concerned.
 12 I think everybody in this room knows that the
 13 cognitive development of a sixteen-year-old isn't
 14 quite there yet. You know, and we really don't
 15 cognitively develop until we're about -- fully
 16 developed until age twenty-five. And yet, the
 17 mentality in the state and Probation has been to
 18 treat that sixteen-year-old the same way we treat
 19 the thirty-year-old and the thirty-five-year-old.
 20 I -- an example, you know, a thirty-five-year-old
 21 comes in most of the time convicted, and may not
 22 have a job -- doesn't have a stable residence.
 23 What do we do? Well, we want to get him a
 24 residence, and we want to get him working. It's a

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 2 little bit different with a sixteen-year-old and a
 3 seventeen-year-old. Yet we've applied -- we've
 4 applied that theory to the sixteen-year-old. "We
 5 want you to work." Well, what we're doing in
 6 Westchester now is, you know, instead of creating a
 7 unit that is just based on charge, like sex
 8 offenders or D.W.I. or domestic violence, we're now
 9 looking at this age group -- the sixteen-,
 10 seventeen-, the eighteen-year-olds.
 11 And we're actually going to
 12 supervise them on the family court model. And
 13 we're not going to use adult instruments on them to
 14 determine risk or need. We're actually going to
 15 use juvenile or family court models. And the thing
 16 that we're going to do is reunify these kids with
 17 school. And we know that that's going to be a
 18 tough job right now because most of the schools
 19 were very happy to get rid of these kids because
 20 these kids that are on probation are the ones that
 21 have been causing a lot of problems in the school.
 22 But when it really gets down to it, I mean, what
 23 kind of a job can we get a sixteen-year-old who's
 24 dropped out of school or has been thrown out of

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 2 school? You know, they're going to be working at
 3 McDonald's for the rest of their lives. So the
 4 theory behind this unit now is to try to, you know,
 5 reunify these kids with school or some type of
 6 vocational training program or try to redirect them
 7 and start dealing with those -- these cognitive
 8 deficiencies that they have because they're still
 9 developing. And I think that's something else that
 10 needs to -- we really need to start looking at.
 11 And I think that's a natural flow -- that unit,
 12 perhaps, from an integrated youth program.
 13 And the other -- the other thing
 14 about specialty courts, as far as sentencing is
 15 concerned -- and I -- I've given a packet to
 16 John -- actually, to -- to Gina -- you know, of all
 17 our specialty programs that we run that support the
 18 specialty courts. And in that package, I have put,
 19 you know, a description of those units. And also,
 20 I put in there the orders and conditions that we
 21 recommend to the court so that we can supervise
 22 these individuals properly when they're released
 23 back into the community. And that is extremely,
 24 extremely important, especially when you're dealing

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 2 with sex offender issues, when you're dealing with
 3 domestic violence issues. These orders and
 4 conditions become extremely important to the
 5 probation departments across this state because
 6 without those orders and conditions -- those
 7 special conditions -- we really -- not that we can
 8 ever guarantee anything in this field -- but it
 9 makes our lives a hell of a lot more difficult in
 10 trying to do something meaningful with these people
 11 unless we have those orders and conditions. And I
 12 know, you know, Bob will talk about that, and
 13 Marty's going to talk a little bit about that. But
 14 as far as sentencing is concerned, and when you
 15 look at some uniformity, you know, we really need
 16 to be looking at these orders and conditions and
 17 making them a part of our sentences. Even though
 18 we don't want to take away judicial discretion --
 19 I've always been in favor of a lot of judicial
 20 discretion. But I think our judges really need to
 21 be looking at these orders and conditions that need
 22 to be imposed on these individuals that are going
 23 back into our communities.
 24 COMMISSIONER O'DONNELL: Right

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 2 now, it's entirely voluntary for the judges --
 3 MR. POZZI: Yes.
 4 COMMISSIONER O'DONNELL: -- in
 5 terms of whether they want to impose the orders and
 6 conditions?
 7 MR. POZZI: That's -- that's --
 8 and I hate to use -- I mean, I don't want to come
 9 out and say that we should -- you know, that
 10 there's no discretion, that they must be imposed, I
 11 mean, because I -- obviously, you want to treat
 12 every case individually, and rightfully so. But I
 13 think our judges really have got to become very
 14 aware and understand why the Probation Department
 15 may be recommending a lot of the conditions that
 16 may seem foreign -- you know, why they need to be
 17 imposed at this point because -- I'll give you an
 18 example. Sex offense -- I mean, the -- it's -- we
 19 get a lot of -- a lot of news on sex offenders.
 20 What we've been able to learn,
 21 even conducting an enhanced pre-sentence
 22 investigation and doing all of the psychosexual
 23 reports that we are able to do on people before
 24 sentencing, as part of their pre-sentence, if that

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 2 person is placed on probation, we estimate that we
 3 know about ten to twenty percent about what that
 4 person's behavior is or anything about that person.
 5 So when we order -- you know, when we recommend to
 6 the court a number -- like thirty, thirty-six
 7 different conditions that we would like to have
 8 imposed on that person -- we are asking for those
 9 conditions because we really don't know who we have
 10 under supervision. And how that kind of gets
 11 magnified is, at the time of sentencing, when a sex
 12 offender appears before a judge, we are aware, on
 13 the average -- at least, this is Westchester --
 14 about one point one victims that that particular
 15 sex offender may have had or has reported to have
 16 had. When we get them under supervision -- and
 17 after a couple of months we have them in treatment,
 18 and we actually administer a polygraph to them --
 19 the average has been about fifty-five to sixty
 20 victims each one of these folks have had by the
 21 time we get them under supervision, in therapy, and
 22 have them, you know -- have them questioned with
 23 the polygraph. So it's -- it's kind of
 24 frightening. You know, and then we get some people

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 2 that just have had a couple. And we have people
 3 who have had hundreds of other victims that were
 4 never reported. So that's why I, as an -- it's a
 5 shocking example, but it's an example of why the
 6 Probation Department would want all of these
 7 additional conditions imposed, at least up front.
 8 And then, at some point, maybe six months down the
 9 road or a year down the road, we look at those
 10 conditions after we've learned something about
 11 those -- those folks, and maybe we start striking
 12 some of those conditions, as we may not need them.
 13 Or we may need more conditions on those particular
 14 people. So it's a very -- I would ask that you --
 15 you take a look at those. Those conditions become
 16 very, very important.
 17 COMMISSIONER O'DONNELL: Rocco,
 18 can you talk about electronic monitoring and --
 19 and -- and, you know, G.P.S. monitoring and whether
 20 you use it, how --
 21 MR. POZZI: We --
 22 COMMISSIONER O'DONNELL: --
 23 how --
 24 MR. POZZI: -- we -- we --

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 2 COMMISSIONER O'DONNELL: -- you
 3 know --?
 4 MR. POZZI: -- use it. Yeah. We
 5 use G.P.S. As a matter of fact, we -- we -- I
 6 think I have the only unit in New York State where
 7 I have probation officers that work around the
 8 clock. We -- we are twenty-four-seven. We -- we
 9 do our own --.
 10 COMMISSIONER O'DONNELL: So you
 11 monitor your own --
 12 MR. POZZI: We monitor our --
 13 COMMISSIONER O'DONNELL: --
 14 systems?
 15 MR. POZZI: -- absolutely. You
 16 know, we use global positioning for sex offenders
 17 in Westchester. We do real-time. That means we
 18 can actually see where individuals are at any given
 19 time. And we --.
 20 COMMISSIONER O'DONNELL: Is this
 21 a bracelet or what --?
 22 MR. POZZI: It's a -- yeah. It's
 23 an ankle bracelet.
 24 COMMISSIONER O'DONNELL: Ankle

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 2 bracelet --.
 3 MR. POZZI: It's an ankle
 4 bracelet that we -- that we utilize. And we do
 5 both programs. We do the -- the global
 6 positioning, and we do the traditional electronic
 7 monitoring where it's -- basically, we're
 8 interested in people being at their home at a
 9 certain time -- you know, that they leave in the
 10 morning when they're supposed to be leaving and
 11 they're back at home at a certain time. The G.P.S.
 12 is used primarily for the -- for the sex offenders,
 13 but we also are using it for our domestic violence
 14 cases, you know, to make sure that, you know,
 15 people are not going into areas where spouses may
 16 be and things like that so we can monitor their --
 17 their activities. And actually, the nice thing
 18 about it is that we were able to go back, you know,
 19 and trace people's steps. In other words, if
 20 something happened, and we think this person might
 21 have been there, we can go back into the system and
 22 actually plot that person's activities for the
 23 entire day and find out whether or not they were
 24 really there or not. So -- yeah. So we -- it --

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 2 again, any -- it's a tool. All right. It's one of
 3 many tools that we use -- like I said, polygraph.
 4 You know, G.P.S. is a tool. But
 5 they're only as good as the people who are in those
 6 programs. I can have, you know, polygraph and
 7 G.P.S., but if I have caseloads of a hundred and
 8 twenty-five sex offenders or a hundred and fifty
 9 sex offenders per probation officer, I mean, it's
 10 almost impossible, you know, for us to do anything
 11 really meaningful with those folks. You know,
 12 so --.

13 COMMISSIONER O'DONNELL: One of
 14 the criticisms I frequently hear is, in densely
 15 populated areas in the city -- I don't know how
 16 Westchester plays in there -- that -- that it
 17 becomes extremely difficult to -- to monitor people
 18 because their, you know, chances of passing a
 19 school within, you know, every five-block area can
 20 be, you know, enormous. If you take a subway, you
 21 can pass twenty schools. Is that -- how do you get
 22 around those issues in -- in Westchester?

23 MR. POZZI: Well, you know, it
 24 was kind of -- when we were looking at some of

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 2 getting -- now, in Westchester, we haven't had a
 3 problem. Now, from what I understand in some of
 4 the, you know, large jurisdictions where you have
 5 tall buildings, you know, you could have some
 6 problems, you know, in tracking people when they go
 7 into certain areas. But they're getting better and
 8 better, and they're getting more and more accurate.
 9 But it's an evolving technology.

10 COMMISSIONER O'DONNELL: But it
 11 is something important for us to consider as we're
 12 considering what people have to go to prison and
 13 what people we may now be able to keep out of
 14 prison or jails --

15 MR. POZZI: Absolutely.

16 COMMISSIONER O'DONNELL: --
 17 because of the technology.

18 MR. POZZI: Absolutely. I mean,
 19 we're -- what it really allows us to do is to
 20 create a cell in the community. That is much
 21 cheaper for us and, to some degree, probably more
 22 efficient for us. And we're able to do more things
 23 with people when they're in our communities
 24 because, obviously, there are more programs that

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 2 the -- the restricted areas and a lot of locations
 3 where sex offenders are not allowed to go, and
 4 you -- you really start plotting those points, you
 5 know, we found out that, in certain areas, some
 6 people can never even live in an entire city, you
 7 know, because they would be violating their
 8 probation because they're getting into an area that
 9 they're supposed to be getting into -- not supposed
 10 to be near libraries or schools or nurseries or
 11 things like that. So, you know, he's got to stay
 12 'X' number of feet away from them, and when you
 13 really plotted them, there was no place for them to
 14 really go or even live. All right. So it does
 15 become a problem. It's an evolving technology, as
 16 far as the technology is concerned. You know,
 17 there are some, you know, areas where you just
 18 can't pick up people, you know, that they -- I
 19 mean, it's just like your cell phone service. You
 20 know, you -- you're driving down the road. All of
 21 a sudden, you have a -- you have a dead zone.

22 That -- that is -- that also
 23 happens with -- with the G.P.S. technology. But
 24 it's getting better. I mean, it's -- it's

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 2 are available to people, and we're able to do more
 3 things with them. So if you can kind of create --
 4 you can create a mindset that you can create a cell
 5 within the community by utilizing these
 6 technologies, you know, I -- I -- I think it's a
 7 much better way to go. I think it's -- it's much
 8 wiser sentencing if we can -- if we can utilize
 9 this technology.

10 MR. BERGAMO: A tangential
 11 question --

12 MR. POZZI: Yes.

13 MR. BERGAMO: -- prior to
 14 treatment one point one and treatment fifty-five,
 15 is there any statistics you're aware of -- or
 16 someone is aware there -- is there any cure for
 17 them?

18 MR. POZZI: Cure?

19 MR. BERGAMO: Sex offenders --
 20 any statistics that say for a five-year period,
 21 they're abstinent or stop? Or they're -- they're
 22 sex offenders -- a propensity for life?

23 MR. POZZI: No. Well, the model
 24 that we use -- and there are a number of models out

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 2 there -- is we used the relapsed prevention model.
 3 We treat sex offenders the same way we would treat
 4 alcohol abuse. It's a disease that they have, and
 5 it never goes away. There is always those cravings
 6 or, you know, possibilities of these folks acting
 7 out. And what we try to do through our treatment
 8 programs is to try to get them to learn how to deal
 9 with those issues that cause them to act out that
 10 way. All right.

11 MR. BERGAMO: I guess what I'm
 12 saying is, what is this offender's behavior?

13 MR. POZZI: Well, I -- I'll speak
 14 for Westchester. All right. The recidivism rate
 15 in our sex offender program is -- is about -- is
 16 less -- for new arrests on -- on sex offenders, you
 17 know, knock on wood, you know, for the last two
 18 years, we have not had anyone rearrested on a new
 19 sex offense that's under probation supervision.

20 All right. What we are finding
 21 is that there are technical violations. All right.
 22 Or there could be arrests on charges other than sex
 23 offenses. I mean, that does happen. But the
 24 recidivism rate has been below fourteen percent.

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 2 MR. BERGAMO: Well, what about
 3 after probation?

4 MR. POZZI: With that -- after
 5 probation -- after they leave probation -- well,
 6 we're doing some studies right now -- some
 7 longitudinal time studies on those folks to see,
 8 you know, how long they, you know, stay
 9 arrest-free. But most of the times -- well, again,
 10 you've got to be very careful. You know, just
 11 because they haven't been re-arrested doesn't meant
 12 they're re-offending. You know, sometimes, you
 13 know, we may not find that out. All right. But
 14 the -- but the recidivism for that particular
 15 group, because of the interventions and the
 16 treatment that we've been able to utilize, has been
 17 extremely low. As -- as a matter of fact, it's
 18 much lower than the general probation population.

19 COMMISSIONER O'DONNELL: But you
 20 have the lower-risk sex offenders on probation,
 21 probably, right? Or is that not accurate?

22 MR. POZZI: No, it's not -- I
 23 mean, it's not accurate. I think, you know, the
 24 mindset that most -- most sex offenders wind up in

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 2 a state correction facility is not true. Most of
 3 them wind up on probation. I mean, nationally, you
 4 know, when you look at your sentencing, seventy,
 5 eighty percent of the people who are sentenced in
 6 this country are sentenced to a probation sentence.
 7 And it's -- you know, it may be a little less for
 8 sex offenders. But a majority of them wind up, you
 9 know, on some type of probation. And the reasons
 10 why, you know, vary. I mean, sometimes, you know,
 11 the case that the district attorney may have may
 12 not be strong enough, and they have to plea it to a
 13 probation to get something out of it. Or
 14 sometimes, you might have victims that are so young
 15 that it would be so traumatic for them to have to
 16 testify that, at that point, maybe a district
 17 attorney may have to cut their losses, you know,
 18 and say, "okay, we'll get the probation sentence,
 19 and if anything happens then, at that point, we can
 20 deal with a violation, which wouldn't require a
 21 young victim coming in and going through the --
 22 through the system." So --.

23 COMMISSIONER O'DONNELL: Uh-huh.

24 MR. VANCE: Is there a

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 2 philosophical difference between the approach
 3 Probation takes with a probationer and Parole takes
 4 with a parolee that leads to either a greater
 5 devotion of resources being made -- made available
 6 to the Probation Department as opposed to Parole,
 7 leading to a lower recidivism rate because of your
 8 greater resources? I'm -- it seems as if they are
 9 almost identical functions. One may be a more
 10 risky population but can -- can -- how does one
 11 learn from the other, and what do we learn from
 12 both of your experiences?

13 MR. POZZI: Well, we do -- we do
 14 learn from each other, and we kind of do mirror,
 15 you know. The answer to your question is, it's
 16 very similar. All right. Obviously, the one thing
 17 I would say is, someone who is going away to a
 18 state correctional facility and is being released,
 19 you know, on parole obviously may have committed a
 20 much more, you know, serious type of offense than
 21 what we may have -- someone being released directly
 22 to the community. So I think it's a -- you know,
 23 probably a lot higher risk type of a case, you
 24 know, that parole may have. But as far as the

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 2 supervision strategies, Tony, I -- and -- and I
 3 know George will probably come back a little bit
 4 later. George might be able to speak to this. But
 5 I would think --
 6 COMMISSIONER O'DONNELL:
 7 Felix, --
 8 MR. POZZI: -- that the
 9 strategies --
 10 COMMISSIONER O'DONNELL: --
 11 you've been --
 12 MR. POZZI: -- work.
 13 COMMISSIONER O'DONNELL: -- out
 14 there.
 15 MR. POZZI: Yeah.
 16 MR. ROSA: Absolutely.
 17 MR. POZZI: Yeah. It's -- it's
 18 basically --
 19 MR. ROSA: It's pretty much
 20 the --
 21 MR. POZZI: -- the same, you
 22 know.
 23 MR. ROSA: -- it's the same. The
 24 problems are the same. The lack of housing is the

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 2 same. The splitting -- going to the treatment
 3 provider and saying, "this is what's going on,"
 4 going to the parole officer, going to social
 5 services and getting a different story. It's all
 6 pretty --.
 7 MR. POZZI: Pretty much the
 8 same -- right.
 9 MR. MCDERMOTT: The -- one -- one
 10 major difference, though, is -- correct me if I'm
 11 wrong. You need to -- your probation officers need
 12 to go to a judge to get an arrest warrant to take
 13 them into custody, correct, where a --
 14 MR. POZZI: That's correct.
 15 MR. MCDERMOTT: -- parole officer
 16 can just take them into custody and bring them to
 17 the local jail.
 18 MR. POZZI: And that's --
 19 MR. ROSA: You still need --
 20 MR. POZZI: -- much more --.
 21 MR. ROSA: -- you still need the
 22 warrant, but -- but yes. The parole warrant would
 23 be by a --
 24 MR. POZZI: You get --.

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 2 MR. ROSA: -- senior parole
 3 adviser.
 4 MR. POZZI: And -- and that's
 5 something that we're looking for right now. I
 6 believe the --.
 7 COMMISSIONER O'DONNELL: Trying
 8 to change -- it's --
 9 MR. POZZI: I -- I know.
 10 COMMISSIONER O'DONNELL: -- being
 11 debated right now.
 12 MR. POZZI: Right.
 13 MR. MCDERMOTT: Yeah.
 14 COMMISSIONER O'DONNELL: I don't
 15 know where it's headed, but --.
 16 MR. POZZI: I know P.P.C.A. has
 17 put in a bill. And I've -- and I've worked very
 18 closely with Bob on trying to give Probation the
 19 ability to -- to be able to follow a detainer, you
 20 know, if someone is acting out, that we would
 21 actually have a document that we can have that
 22 person held until the next morning where we can
 23 have an arraignment. Because right, even though we
 24 can do a warrantless arrest, that probation officer

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 2 cannot turn that particular person over to a
 3 correctional facility or to, you know, a police
 4 department to be held pending the arraignment,
 5 unless we can get a -- you know, an emergency
 6 judge, you know, if it's off-hours, you know,
 7 during the middle of the night to do an arraignment
 8 so that we can get a -- you know, a certificate to
 9 have bail set and then get the person held at a
 10 local facility because I'll put my corrections hat
 11 on. I won't take them unless I have a commitment
 12 order --
 13 COMMISSIONER O'DONNELL: Uh-huh.
 14 MR. POZZI: -- from a judge.
 15 So --.
 16 MR. LENTOL: It -- it sounds like
 17 there is a significant difference in the intensive
 18 supervision that goes on in Westchester County as
 19 opposed to the state, as well, with regard to sex
 20 offenders, whether they're low level or high level.
 21 And what significance do you think that plays into
 22 the recidivism rate or their re-arrest rate?
 23 MR. POZZI: It -- it -- it plays
 24 a significant -- it really -- it would play

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 2 significantly. Our probation officers, you know,
 3 not only provide the -- we keep the caseloads --
 4 right now, the average caseload is about
 5 twenty-eight per officer. And I'd prefer it to be
 6 at twenty-five. But anywhere between twenty-five
 7 to thirty is the workload. Our officers also, you
 8 know, work -- we -- we do the treatment program
 9 right on site at the probation department. They
 10 come to probation and are -- the -- the treatment
 11 groups that are run are run at the Probation
 12 Department, and our probation officers are
 13 co-facilitators of those treatment groups. So we
 14 know immediately if someone who was scheduled to be
 15 in treatment on a particular night doesn't show up.
 16 You know, our probation officers will react to that
 17 right away. We'll be making phone calls, you know,
 18 right then and there to find out why that person is
 19 not there. All right. But they have developed the
 20 expertise that they can actually be
 21 co-facilitators, that they understand the treatment
 22 issues that well, that the treatment providers want
 23 them there, not only to provide security but also
 24 to participate in the treatment. It's an -- I

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 2 question --.
 3 COMMISSIONER O'DONNELL: We're
 4 going to have to move on.
 5 MR. SCHNEIDERMAN: I -- and this
 6 may be -- not be something you can answer, but it'd
 7 be very interesting to look at the different
 8 caseloads that are spread around the state because,
 9 twenty-eight -- frankly, it sounds high to you, but
 10 it sounds low as compared to what I'm used to
 11 hearing about. And obviously, the -- what you're
 12 saying, what we know intuitively, the size of the
 13 caseload has got to be directly related to your
 14 ability to provide the kind of supervision and
 15 treatment you're talking about.
 16 MR. POZZI: Absolutely -- not
 17 only for sex offenders, but for the domestic
 18 violence cases. You know, we've got -- you know,
 19 we try to keep small caseloads for the felony
 20 D.W.I. cases, too.
 21 COMMISSIONER O'DONNELL: Well,
 22 I -- I will say that we struggled with our
 23 invitation to Rocco because we invited him because
 24 he really is forward-thinking and runs an

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 2 mean, it's unusual to hear that, that therapists
 3 would welcome a probation officer being, you know,
 4 in the same room when the group is going on. All
 5 right. That's the kind of expertise that our
 6 people have been able to develop. So again, I -- I
 7 must reemphasize that the strength of that program,
 8 you know, is the treatment. You know, we use a
 9 polygraph as part of the treatment regimen. We use
 10 G.P.S. But it's really the ability to have a
 11 reasonable caseload, and we can do the intensive
 12 supervision and to make, you know, the contacts
 13 that we need to make in the community. Go to the
 14 residents. Do collateral contacts. Talk to people
 15 in the community about what's going on so we have a
 16 real pulse about what's happening with that
 17 particular individual and be in the position that
 18 if we think that that person is ready to act out
 19 again, we can get them back into court, get a
 20 warrant, do whatever we need to do so that we can
 21 prevent any future victimization.
 22 COMMISSIONER O'DONNELL: Eric?
 23 This is the last question.
 24 MR. SCHNEIDERMAN: Last

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 2 extraordinarily well functioning probation
 3 department and facility. But he's not typical of
 4 the state in --
 5 MR. POZZI: Right.
 6 COMMISSIONER O'DONNELL: -- terms
 7 of the resources and the programs and what you've
 8 been able to accomplish. And it's important that
 9 everyone recognize that. Maybe Bob Maccarone can
 10 address some of that globally throughout the state.
 11 MR. POZZI: But there are a lot
 12 of -- I mean, there are a lot of good programs, you
 13 know, --
 14 COMMISSIONER O'DONNELL: Right.
 15 MR. POZZI: -- in -- in a lot of
 16 our other counties -- you know, the Nassau and
 17 Suffolk. And, you know, it -- it -- we've been
 18 very fortunate. I'm glad that he said that. We --
 19 we've been very fortunate to have a county
 20 government, a county executive -- both my county
 21 executives, you know -- you know, Judge O'Rourke,
 22 who was the former county executive, and now, you
 23 know, Andy Spano -- and having a board of
 24 legislators that were willing to make that

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 2 investment and to understand that making an
 3 investment in probation and making sure that we
 4 have a probation department that can actually
 5 support the judiciary and do the things that the
 6 judges need to have done in order to give them a
 7 comfort level. That's where it comes in. If
 8 judges have a comfort level that they can release
 9 someone back into the community, and something's
 10 going to be done with them, then I think even some
 11 of those marginal cases where a judge may be, you
 12 know, having doubts on whether or not that person
 13 should be released, whether it's a sex offender or
 14 a D.B. case that's very volatile, you know, if
 15 there's a good probation department, then the judge
 16 might be more likely and inclined to -- to release
 17 that person to that probation department because
 18 they know something's going to be done. Not only
 19 something's going to be done, but they know we're
 20 in a position that if something happens, we can do
 21 something about it.

22 COMMISSIONER O'DONNELL: Thank
 23 you very much. We really appreciate it.

24 COMMISSIONER O'DONNELL: Not only

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 2 I'll just turn it over to you. Thank you --
 3 MR. HORN: Thank you very --
 4 COMMISSIONER O'DONNELL: -- for
 5 joining us.
 6 MR. HORN: -- much, Commissioner
 7 O'Donnell. It's a pleasure to be here, pleasure to
 8 see old friends -- or friends of long duration. I
 9 don't want to suggest that anybody's old -- and --
 10 and former -- former proteges. And I'm delighted
 11 to -- to be able to say that I've worked with Tony,
 12 with Felix, with -- with Terry. And there is
 13 nobody finer -- and I think what you've heard --
 14 what I've listened to already this afternoon, for
 15 the short time I've been here, is just how
 16 passionate and how committed the individuals who
 17 work in parole and corrections and certainly in
 18 probation in New York are.
 19 And -- and one of the things that
 20 comes through very clearly is just how complex this
 21 all is. You've heard so much about the various
 22 varieties of ways in which people can be
 23 sentenced -- the various permutations of how people
 24 get released and all of the challenges that they

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 2 in the state but in the country -- on probation, on
 3 programming, and -- and for incarcerated
 4 individuals, on -- on -- and I -- I'm glad to say
 5 that we're joined by Roger Horn and, after Roger,
 6 by Bob Maccarone, two people that's on the
 7 commission. But -- but I hope that we can persuade
 8 them to serve as -- as enforcers for us, as helpers
 9 for us as we work in our subcommittees.

10 If you want to just go out to
 11 the -- he actually has held many different
 12 positions, both in the State of Florida and the
 13 State of New York. He has served as the Executive
 14 Director of the Division of Parole here in New
 15 York, facility -- correctional facility here in New
 16 York State. Now, he serves as the Commission --
 17 Commissioner for Corrections as the Director of the
 18 Probation Department for the City of New York and
 19 has a very long and distinguished bio that is --
 20 you can read it in the materials. We're really
 21 listening for valid and concrete suggestions --
 22 things that we should consider. We have a broad
 23 mandate, that includes a lot of things, including
 24 alternatives to incarceration and reentry. And so

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 2 face. And if anyone can discuss how many angels
 3 can dance on the head of a pin, it's people who
 4 deal in the arcane area of sentencing computation
 5 in New York State. And I think that's one of
 6 the -- one of the issues I want to address a little
 7 bit, which is the complexity and the lack of
 8 transparency that our sentencing system has. And
 9 as Commissioner O'Donnell said, I -- I -- I -- I --
 10 I will endeavor to be a little bit provocative and
 11 fairly concrete, as well, and -- and try and keep
 12 within the -- the allotted time.

13 But I want to say that I'm going
 14 to challenge some of what has been said. In the
 15 interest of perhaps pushing you to think outside
 16 the box and -- and -- and -- and doing some things
 17 that are a little bit more bold than have been done
 18 in the past. But I don't say it out of any
 19 disrespect for the work -- the -- the -- the
 20 quality of the work and the devotion to the work
 21 that my colleagues do. I began my career as a New
 22 York State parole officer thirty-eight years ago.
 23 July 3rd, it will be thirty-eight years I've worked
 24 in this field, and I'm very proud of my work in

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 2 that area and proud of the people that I work with.
 3 That said, I've learned a few lessons along the
 4 way, and I'd like to share some of that with you.
 5 And I want to make three -- kind of three points.
 6 First of all, I'll talk a little bit about
 7 discharge planning and reentry. And let me suggest
 8 to you that it's very complex, in that how we do it
 9 has a lot to do with sentencing, and sentencing has
 10 a lot to do with our ability to do discharge
 11 planning, and that when we talk about discharge
 12 planning, we talk about supervision. Whether it be
 13 probation supervision or parole supervision, we're
 14 talking about two things, I think, and we always
 15 have to keep those two things in mind. One of
 16 them, obviously, is justice. Obviously, our goal
 17 is to do justice. The other is public safety. And
 18 that is the challenge. How do we simultaneously
 19 achieve a just outcome in a just fashion and also
 20 provide for public safety?
 21 I want to also suggest to you
 22 that sentencing and the decisions that are made by
 23 the legislature ultimately -- probably, I guess,
 24 upon recommendation of this commission -- about

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 2 ten thousand people in prison. In 1981, we tried
 3 to get the state to adopt a bond issue. Right? We
 4 were going to build enough prisons for a
 5 generation -- twenty-five thousand beds. And
 6 today, you've got -- what -- sixty-five thousand
 7 people in custody? It's been as high as seventy
 8 thousand. All of those things that you were
 9 talking about -- merit time, supplemental. The
 10 walls have doors. They were all MacGuffins that
 11 had been created to allow us to keep the basic
 12 structure of sentencing. I will say that I think
 13 the best thing that the state has done is Jenna's
 14 law and the determinate sentence. So we can talk
 15 about that a little bit, because I think that if
 16 sentencing is to be just -- and it has to be just
 17 not only to the offender, but it has to be just
 18 from the point of view of the public. It has to
 19 be, first of all, transparent, and second of all,
 20 it has to be explicit. And I think it has a
 21 bearing on district planning, and in my opinion, it
 22 has a bearing upon how well a person will do, both
 23 in prison and upon release.
 24 And finally, I want to talk to

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 2 sentencing are essentially taxation decisions.
 3 Sentencing is -- is -- is a decision to spend the
 4 state's money on imprisonment. And you can even
 5 choose to spend more money on imprisonment or less
 6 money on imprisonment. There are only two
 7 things -- and I'm sure Paul Korotokin will agree
 8 with me -- only two things that determine how many
 9 people are in prison: how many people come in and
 10 how long they stay. And that's what sentencing is
 11 all about. And so you have to bear that in mind.
 12 And I -- I -- so there are some choices to be made.
 13 And all of the discussion that -- that we heard,
 14 that Terry was talking about -- merit time,
 15 supplemental merit time, presumptive sentencing,
 16 Shock incarceration, early parole for deportation
 17 only -- why has the state gotten itself into this
 18 crazy quilt of different ways of sentencing and
 19 ways of determining who to release and when to
 20 release them. The state comported itself in this
 21 way, quite simply -- and I'm free to say it --
 22 because the cost of imprisonment was rising. The
 23 number of people in the state's prisons was -- when
 24 I started in this business, there were fewer than

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 2 you a little bit about the issue of capacity. And
 3 Felix, I think, gave you a wonderful exposition on
 4 what the work of a parole officer does. It is, in
 5 fact, very similar to what the work of a probation
 6 officer is. And I have nine hundred probation
 7 officers who work for me in New York City. And
 8 taking nothing away from them, I submit to you that
 9 the capacity of a parole officer or a probation
 10 officer to affect the outcome, to affect public
 11 safety, in reality, is de minimis. So let me talk
 12 about that a little bit.
 13 As I said, sentencing has a very
 14 direct effect on prison population, and it is
 15 essentially a taxation decision -- how many people
 16 we imprison. There's a question of public policy,
 17 more so than any other barrier. Also, keep in
 18 mind, the decisions that you make about sentencing
 19 have a state and local effect. And you may make
 20 decisions to reduce the potential penalty for a
 21 certain class of offender, to move it from a --
 22 a -- a 'C' to a 'D', to -- to change the allowable
 23 sentence. Would you be, in fact -- only making --
 24 doing a shifting of the cost burden and creating an

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 2 unfunded mandate for the counties? So if you take
 3 an offense for which state imprisonment -- if
 4 you -- if you change the Rockefeller Drug Laws, and
 5 you take an offense for which state imprisonment is
 6 now mandatory, and you make it a -- a crime for
 7 which an alternative sentence to a local jail for a
 8 sentence of probation is now permissible, you are,
 9 in effect, creating a cost shift and an unfunded
 10 mandate.
 11 I also want to, by the way,
 12 commend you -- and John Amodeo can speak to you and
 13 certainly share with you -- but Chief Judge Kaye
 14 last year commissioned a task force on the future
 15 of probation in New York. It has a -- a great deal
 16 of discussion about sentencing, about the use of
 17 probation, and about the importance of pre-sentence
 18 investigations. And I commend it to you, and --
 19 and certainly, the committee should give it some
 20 consideration.
 21 But again, the issue of probation
 22 is a cost issue. How long an individual stays in
 23 prison is obviously a matter that this commission
 24 has to consider. But I want you to consider the

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 2 marginal utility of three or four months of
 3 imprisonment. Right. What difference does it make
 4 if a person spends forty-four months in prison
 5 instead of forty months in prison, thirty-six
 6 months instead of forty months, thirty-six months
 7 instead of forty-six months? And what are the
 8 potential savings if the average length of time
 9 that each of the twenty-four, twenty-five thousand
 10 people who leave prison each year -- if the average
 11 person serves six months less? Would there be a
 12 substantial diminution of public safety if the
 13 average was reduced by six months? And yet, what
 14 would be the potential cost savings? And let me
 15 further suggest to you that imprisonment is not the
 16 only way in which we purchase public safety.
 17 Purchase -- public safety is something we purchase.
 18 And could we use that money in better ways and --
 19 and -- and purchase more public safety thereby?
 20 Imprisonment, let me suggest, is only one of a
 21 variety of options that are available to us as a
 22 response to criminal conduct. It is the most
 23 expensive. It incurs huge opportunity costs and is
 24 potentially the most damaging of community

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 2 vitality. It is destructive of communities.
 3 Through the use of mass incarceration in this
 4 country, the -- the -- we are not, as a society,
 5 very creative in our response to crime. I
 6 sometimes wish we could go back to the age of the
 7 scarlet letter, and I think one of the reasons we
 8 rely on imprisonment so much is because of social
 9 disaggregation. The shame of having committed a
 10 crime no longer has the moral effect on behavior
 11 that it once did in an agrarian community. So
 12 consider other choices with respect to how you
 13 provide for public safety, other than imprisonment.
 14 And the discussion I've heard here today has really
 15 focused on imprisonment and parole, and I urge you
 16 to consider other choices, probation among them.
 17 But there's certainly many others.
 18 I also want to suggest to you
 19 that, in my experience after thirty-eight years,
 20 most attorneys -- no offense -- the public and the
 21 press poorly understand the sentencing process and
 22 post-sentencing options. People don't understand
 23 work release. People don't understand Shock.
 24 Attorneys don't. I -- I have -- I have lectured to

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 2 district attorneys and to defense attorneys who
 3 don't understand that when a person gets a sentence
 4 of whatever -- two to six -- if they go into Shock,
 5 they can get out in six months, and they don't
 6 understand why they see them on line at the
 7 shopping center. I have had violent arguments with
 8 district attorneys who will accept a plea for a
 9 minimum sentence less than the minimum authorized
 10 by law, agree to that plea, and then, when the
 11 Parole Board writes a letter saying, "we're
 12 considering Joe for parole; what do you have to say
 13 about it?" the D.A. says, "what? You're
 14 considering parole? Keep it to the absolute, you
 15 know, maximum." Well, D.A., you agreed to
 16 something less than the statutorily allowable
 17 minimum. So there's a whole lot of pockets that
 18 are going on in the system -- a lack of
 19 transparency, a lack of explicitness. I believe it
 20 leads to a loss of confidence in the criminal
 21 justice system on the part of the public.
 22 The adjudicatory process has
 23 meaning and implications for the operation of
 24 probation for jail and for prison. Apart from the

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 2 workload issue, the perception of fairness and the
 3 appropriateness of the sentence imposed bear on the
 4 ability of corrections organizations to fulfill its
 5 assigned task. Prisons and jails operate on the
 6 perception on the part of the inmates that we are
 7 fair. If they perceive us as unfair, we lose
 8 legitimacy. If they come to us feeling they have
 9 been treated fairly, they accept the sentence that
 10 has been imposed. If, on the other hand, they feel
 11 they have been treated unfairly, it compromises
 12 legitimacy. It compromises our ability to manage
 13 our facility in a safe way.

14 Bear this in mind, as well. In
 15 New York State, most sentences -- ninety-eight
 16 percent -- are the result of pleas. There aren't
 17 very many criminal trials. In New York City, in a
 18 year, there are probably fewer than two hundred
 19 criminal trials. Ninety-eight percent of the
 20 sentences that are imposed in the City of New York
 21 are imposed as a result of pleas.

22 We have to ask, in that context,
 23 to what extent judges actually are imposing a
 24 sentence with due regard to the requirements of

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 2 investigation as the result of a plea, often at
 3 time of arraignment, there is no way that that
 4 could have been a knowing determination. And the
 5 capacity of Probation to provide the kind of
 6 supervision that Felix was talking about in
 7 Parole -- and it's very similar -- is compromised
 8 if the wrong people are getting probation. I -- I
 9 have with me examples, and I can give you chapter
 10 and verse of individuals who have been to state
 11 prison, failed on parole, committed new crimes --
 12 this time a misdemeanor -- and received probation.
 13 Individuals who were sentenced as youthful
 14 offenders went to state prison, came out, violated
 15 their parole, went back to prison, were re-paroled,
 16 violated their parole again, have lengthy arrest
 17 histories, get arrested now as an adult for a
 18 felony, take a plea, and get probation. It
 19 compromises public safety. It undermines public
 20 confidence in the system. And quite frankly, it
 21 sets Probation up for failure. So if you -- you
 22 end up talking about how we make probation more
 23 effective, you have to talk about who gets
 24 probation. Probation in New York is a default

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 2 Penal Law One Point Oh Five, which was changed last
 3 year to say that among the purposes of the Penal
 4 Law is to ensure the public's safety by preventing
 5 the commission of offenses through the deterrent
 6 influence of the sentences authorized, the
 7 rehabilitation of those convicted, the promotion of
 8 their successful and productive reentry and
 9 reintegration into society, and their confinement,
 10 when required, in the interest of public
 11 protection. Judges pretty much are rubber stamping
 12 plea agreements. And that's how most sentences are
 13 imposed. So sentences are not imposed in a knowing
 14 way.

15 A sentence that's agreed upon
 16 without the preparation of a pre-sentence
 17 investigation cannot be deemed to meet the legal
 18 requirements of Penal Law One Point Oh Five or the
 19 requirements of Penal Law Sixty-five Ten, which
 20 says that a person shall only be placed on
 21 probation when there's reasonable expectation that
 22 they will succeed and that it is not injurious to
 23 public safety. If a judge places a person on
 24 probation without the benefit of pre-sentence

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 2 sentence. It's a default sentence and a sentence
 3 that is entered into primarily because the
 4 prosecution assesses the strength of their case.
 5 And if they are not confident in
 6 the strength of their case, to dispose of the case,
 7 they'll basically offer probation and j'accuse --
 8 j'accuse the defense law because they agree. They
 9 should fight the case and win the case.
 10 Secondly, with respect to
 11 probation, at least in New York City -- and Bob can
 12 tell you whether this is true elsewhere -- but I
 13 believe in New York City there is this notion that,
 14 "well, we -- you know, okay." By the way, most
 15 people who get probation in New York -- you know,
 16 in New York, we have a -- a statute that says if
 17 you commit a crime with a firearm, if you're caught
 18 illegally in possession with a firearm, you must
 19 receive a jail term, unless the judge finds, on the
 20 record, that probation is called for. There were
 21 two thousand felony weapons violators on probation
 22 in New York City. When I asked the D.A.s why, they
 23 giggled, and they said "bad stops." They knew that
 24 the gun itself was going to be suppressed. Right?

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 2 But they said, "look. We know the guy had the
 3 gun." It happens with drug cases also -- bad stop
 4 "We know -- but at least we got the conviction.
 5 He's got the first felony on his record. Next
 6 time, he'll be a second felony offender, and now
 7 you've got the hook of probation. You can revoke
 8 it."

9 But here's the reality. The
 10 reality is, you can't revoke probation in New York
 11 City. Judges, by and large, will not revoke
 12 probation. It is an almost insurmountable hurdle.
 13 Moreover, judges impose conditions on probation
 14 that they have no intention of enforcing. And when
 15 someone asked Felix to contrast the power of parole
 16 and probation, I think that is exactly where the
 17 contrast is most stark. The Parole Board is
 18 administrative body. The conditions are their own.
 19 And they take those conditions seriously. When a
 20 parolee is found to have violated the conditions of
 21 their parole in a serious manner, the Parole Board
 22 acts to revoke the parole. Judges impose
 23 conditions that they have no intention of
 24 enforcing. Conditions to pay restitution -- and

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 2 maybe there is a good reason, based in justice, not
 3 to lock somebody up for not paying restitution.
 4 But from a probation officer's point of view, if an
 5 individual is not paying the restitution, from the
 6 victim's point of view, there's not a whole lot we
 7 can do. We can't shoot them in the kneecaps. And
 8 the judge will not revoke the probation for failure
 9 to pay restitution. They will not revoke probation
 10 for failure to attend treatment. Judges in New
 11 York City simply -- simply will not revoke
 12 probation for those reasons.

13 Most often, when felony probation
 14 is revoked and results in a sentence of local
 15 incarceration -- this is a -- a -- a matter of
 16 particular concern to me -- despite the fact that
 17 the underlying crime is a felony for which the
 18 sentence that was finally imposed, was not an
 19 authorized disposition. Let me explain. An
 20 individual takes a plea to a 'C', 'B' or 'A' felony
 21 for which the sentence requires a term of more than
 22 one year to state prison. They are placed on
 23 probation. Subsequently, we manage to prove they
 24 violated their probation. Probation is -- is --

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 2 actually, probation is rarely revoked. Usually,
 3 it's plea bargained. They agree to plead guilty to
 4 the probation violation, and the judge now
 5 sentences them to a year in local jail. So wholly
 6 apart from the economics of this, the state's
 7 gotten a terrific deal here, right? It's a cost
 8 shift to the city, but one year was better than
 9 authorize the sentence for that 'A', 'B' or 'C'
 10 felony. And it's something that's worth looking
 11 at.

12 Let me give you another --
 13 another example. And presently, there's
 14 legislation pending to fix it. An individual
 15 placed on probation for a felony subsequently
 16 commits a new felony and is convicted of that new
 17 felony and sentenced to state prison. In most
 18 cases, the underlying probation term is either not
 19 revoked at all or, if it is revoked, the probation
 20 is terminated. And no sentence of imprisonment is
 21 ever imposed for it. And the new felony term is
 22 all there is. I call it the free felony provision.
 23 The person has committed the 'B' felony, received
 24 probation, never did a day in jail, goes out,

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 2 commits a new 'B' felony, gets whatever the
 3 sentence is for the -- for the second 'B' felony
 4 and has done no time for the first 'B' felony,
 5 unlike the situation with parole. If a person is
 6 paroled from prison for that 'B' felony and is on
 7 parole, commits a new felony, is convicted of that
 8 new felony and is sentenced to a term of
 9 imprisonment for that new felony, on operation of
 10 law, the underlying probation sentence is revoked,
 11 and the time remaining on the sentence is added to
 12 the computation of the new sentence for the second
 13 felony -- something worth looking at.

14 Going back to -- to the issue of
 15 fairness, with respect to the use of imprisonment,
 16 I think it's important for prison administration
 17 that inmates perceive the system to be fair. It's
 18 equally important that the public, victims, and the
 19 press view the system as fair. To that end, as I
 20 said before, I think sentences need to be
 21 transparent, and they need to be explicit. That is
 22 to say, they should be explicit insofar as all
 23 elements of the sentence are clear at the time the
 24 sentence is imposed, and transparent insofar as the

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 2 elements are clearly understood by all the parties.
 3 And I'll speak more about this in a moment. But my
 4 point is that there should be no surprises. We
 5 should not have a situation where a district
 6 attorney or a reporter calls the parole board
 7 outraged that I gave this guy five to ten, and here
 8 he is back on the street. "Well, you know, he got
 9 merit time. You know, he got supplemental merit
 10 time." They don't understand that. That's not
 11 transparent, and it's not explicit.
 12 I think the indeterminate
 13 sentence is adverse to this goal. Inmates feel
 14 betrayed when they are held beyond their minimum,
 15 absent bad behavior. And that does happen.
 16 Inmates are held beyond their minimum because the
 17 opinion of the Board of Parole to release you at
 18 this time would deprecate the seriousness of the
 19 offense -- depreciate the seriousness of the
 20 offense. In effect, the Parole Board is
 21 re-sentencing. Now, we may want to keep the
 22 indeterminate sentence. I submit to you, why is
 23 the judge and the D.A. imposing a sentence based on
 24 one set of assumptions, leading the offender to

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 2 say, "gee, I took the plea; they told me I -- if I
 3 behaved, I'd be out at my minimum"? We used to
 4 say, at Parole Board, "we weren't in the room when
 5 that deal got made. We're not part of the deal."
 6 Why not use the same set of guidelines? Why not
 7 have guidelines so that the sentence that the judge
 8 imposes and the way in which the Parole Board views
 9 the offense are the same, that they value the
 10 seriousness of the offense the same way? It --
 11 it -- it offends my sense of fairness, and I know,
 12 from having spoken to inmates as a prison warden,
 13 as a parole officer, as a parole administrator, as
 14 an agency head, it -- it -- it -- it makes them
 15 feel they've been treated unfairly. Everything
 16 that we need to impose a sentence is known at the
 17 time of sentencing. We know his prior record. We
 18 know what he did. There is no need for the Parole
 19 Board to re-sentence an -- an individual based on
 20 the Board's evaluation of the time that that
 21 offense deserves. Why can't the Board and the
 22 court agree?
 23 The discretionary parole of an
 24 individual by the Parole Board -- no offense -- is

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 2 an anachronistic process. It might have made sense
 3 when there were ten thousand inmates and twelve
 4 Parole Board members who could see every inmate and
 5 spend a lot of time with them. But with over
 6 sixty-five thousand inmates, it no longer makes
 7 sense. There is no way for the Board to know an
 8 individual sufficiently to substitute its judgment
 9 for the court's judgment, which was made in open
 10 court, in full view of the public, with an
 11 opportunity for all concerned parties to have been
 12 heard. The evidence suggests the Board does no
 13 better than chance. The failure rate on parole
 14 after three years is over forty-five percent.
 15 MR. KOROTOKIN: Thirty-nine.
 16 MR. HORN: Forty percent -- it's
 17 a little better than chance. Flip a coin; you'll
 18 do as well. One third of the admissions --
 19 thirty-five percent, Paul tells me, of the
 20 admissions to state prison are technical parole
 21 violators. That being the case, what value is
 22 added by having a discretionary parole release
 23 program?
 24 I think that the considerations

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 2 that should be taken into at the time of sentencing
 3 are incapacitation. Is this person dangerous to
 4 us? And then we should lock him up for as long as
 5 it takes for him to no longer be dangerous to us.
 6 The public has a right to be safe. And deserts --
 7 what does this individual deserve for the crime
 8 that he or she committed? And that, too, is known
 9 at the time of sentencing, and everybody has an
 10 opportunity to argue about -- the defense, the
 11 prosecutor, the victim. And the judge can render a
 12 decision. The judge could spell out in open court
 13 the actual time to be served and the timeframes for
 14 work release, for supervised release in the
 15 community, in open court, on the record, in full
 16 view.
 17 We know that most offenders --
 18 just about all of them come home. They all return
 19 to the community. We know, too, that the penal law
 20 now requires consideration of their successful and
 21 productive reintegration into the society. I
 22 believe that accomplishing that requires that, at
 23 the time of sentence, we have to give thought. The
 24 judge, when he imposed the sentence, has to think

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 2 about that return. The prosecutor has to think
 3 about that return. Joe Hines in New York -- in --
 4 in Brooklyn is doing that with his collar program.
 5 I think it's the responsibility of a judge on --
 6 acting on behalf of the community, in the name of
 7 the community, to take into consideration -- "I'm
 8 imposing the sentence, but, you know, that's not
 9 the end of -- this guy's coming back, and he's
 10 coming back into my county."
 11 What's the process by which he's
 12 coming back? If the goal is successful
 13 reintegration back into the community, then the
 14 time spent in prison has to bear some relationship
 15 to that goal. I think, in my experience, that --
 16 for an offender to succeed after he's released,
 17 there are three things that we have to address:
 18 sobriety, employment, and housing. I'm not a
 19 teetotaler. I'm not a prude. But I believe that
 20 sobriety is critically important, and there is too
 21 little discussion. Eighty percent of the inmates
 22 in our prisons and jails have a problem with
 23 alcohol and other drugs. Prisons must be drug- and
 24 alcohol-free environments. If we're going to talk

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 2 fail. An inmate without a home, as Felix said,
 3 living on the street or in a public shelter, is
 4 going to have a hard time staying sober. When I
 5 have spoken to employment organizations, like the
 6 Center for Economic -- for Employment Opportunities
 7 or Wildcat or Osbourne, they say, "look, the guy
 8 comes out of prison; he takes the bus home; he
 9 reports to the parole officer; and he doesn't know
 10 where he's going to sleep tonight. He's going to a
 11 homeless shelter. He's sleeping with one eye open
 12 because he's afraid somebody is going to steal his
 13 sneakers, and they kick him out at six in the
 14 morning. He's in no condition to work. He's just
 15 hanging out with the same people who are going to
 16 help him get high again. And if he gets high" --
 17 we did a study in New York of individuals who've
 18 been released from our jails and who fail. And we
 19 said, "well, what -- what happened?" What we found
 20 was, most individuals, on the day of their release
 21 from prison -- they intend to succeed; they want to
 22 succeed. Their plan is to succeed. "Oh, yeah.
 23 I'm going to go live with my
 24 sister. I'm going to get a job. I'm going to do

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 2 about reentry, we have to talk about how inmates
 3 experience imprisonment. You can't talk about
 4 reentry simply in terms of parole. It's unfair to
 5 Parole, and it's not going to succeed. If an
 6 inmate has been getting high while in prison, the
 7 inmate's going to fail when we release. It is the
 8 correction of our system to countenance prisons and
 9 jails that are drug-free. Nobody does it by
 10 design. Nobody does it intentionally. But we have
 11 to pay attention to that. Moreover, we have to use
 12 the time that we have available to us while the
 13 individual is in our custody to address their
 14 addiction, and we have to do it more aggressively
 15 than we do today. Inmates have to be taught how to
 16 get sober and how to remain sober. Substantial
 17 investments must be made in this effort and in
 18 helping inmates stay sober upon release. If you're
 19 not making that investment -- the state is not
 20 making that investment, as far as I'm concerned --
 21 the state's not really interested in reentry. I'm
 22 past my pension date, so I can say these -- an
 23 inmate who can't stay sober won't hold a job, and
 24 an inmate without a job is an inmate who's bound to

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 2 fine this time." Well, they go, and they live with
 3 their sister. And for the first week or two, they
 4 go out, and they start looking for work, but they
 5 don't find work. As a state, the amount of money
 6 that we spend helping offenders find jobs is
 7 negligible -- negligible. A parole officer without
 8 the ability to help an offender find jobs is a
 9 parole officer who cannot make a difference. So
 10 what happens? After a week or two weeks, the
 11 sister says, "hey, buddy. You know, you're
 12 sleeping on my couch. You're eating into my
 13 privacy. You're not bringing any money in. I'm
 14 doing your dirty laundry." So what does he do? He
 15 starts hanging out on the street. He gets drunk;
 16 he gets high. Sister kicks him out. Or maybe he
 17 gets a job. He doesn't stay sober, and he loses
 18 the job. He's got to stay sober. We've got to
 19 invest in sobriety; we've got to invest in jobs.
 20 The work of imprisonment and the work of
 21 post-release supervision, whatever else it means,
 22 has to mean those three things: sobriety,
 23 employment, and housing. If the state is serious,
 24 it must make investments in keeping prisoners drug

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 2 and alcohol free, teaching inmates how to remain
 3 sober, and helping them remain sober upon release.
 4 If we are serious about successful and productive
 5 reentry -- the -- the -- the statutory language --
 6 we have to invest in helping inmates learn how to
 7 work. We can't teach inmates in prison to be brain
 8 surgeons. We shouldn't pretend. But we -- every
 9 job in prison -- every task in prison has meaning,
 10 whether you are a state legislator, whether you are
 11 an attorney, whether you are a judge, whether you
 12 are a bureaucrat. And you have to get up in the
 13 morning and go to work. You have to work
 14 cooperatively with other people. You have to
 15 accept criticism. You have to take pride in your
 16 work. You can take pride in your work if you're
 17 cleaning up the cell block. You can take pride in
 18 your work if you're working in the kitchen. You
 19 can take pride in your work if you're helping to
 20 paint the prison. It is the work ethic. It is how
 21 to work that we can teach inmates in prison.
 22 We can also teach inmates how to
 23 read and write. It is unconscionable to steal
 24 thirty-six or forty-two months of a person's life

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 2 who doesn't have a high school diploma and not have
 3 advanced their educational level. We should set as
 4 a goal for ourselves that our inmates leave prison
 5 with an improved educational attainment level than
 6 they had when they came in. If we -- if we don't,
 7 then we will be setting them up for failure.
 8 Felix said this very well. I
 9 agree. Catching released offenders who violate the
 10 conditions of their release is easy. Finding them
 11 jobs, housing, and keeping them sober is hard and
 12 costly.
 13 Let me talk a little bit about
 14 capacity. We talk in our criminal justice system
 15 about responsibility. We talk about the individual
 16 being responsible. And in fact, we don't allow the
 17 system to punish a person who's not responsible by
 18 virtue of age or mental defect. Why, then, do we
 19 perpetuate a system that implicitly places the
 20 responsibility for the success or failure of the
 21 released inmate on the state? And Mr. Lentol spoke
 22 about that when he talked about why, when you try
 23 to get away from the social -- "it's Parole's fault
 24 that they failed. Parole didn't prevent the crime

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 2 from happening." Parole can't prevent crimes from
 3 happening. Why don't we hold the inmate
 4 responsible for good behavior? We reward good
 5 behavior as if it's a gift that the inmate has
 6 given us, when, in fact, it's an expectation that
 7 we're entitled to have of the inmate. It
 8 ill-serves the victim if good behavior vitiates the
 9 deserved term of imprisonment. If a person has
 10 committed a crime for which five years of
 11 punishment is what is just and what is deserved,
 12 then to vitiate because the inmate has behaved, it
 13 seems to me, undermines justice. It seems to me we
 14 accept five years of good behavior. I think it
 15 should be more like bad behavior. I liken it to
 16 the movie "Groundhog Day." If you don't do the day
 17 right, you have to do it over. So subject to some
 18 sort of a multidisciplinary hearing, add time --
 19 some proportion of -- of the imposed sentence for
 20 bad behavior. But don't reward good behavior. We
 21 should hold the inmate to the expectation of good
 22 behavior and extend the term of social control if
 23 he or she misbehaves, subject, of course, to
 24 constitutionally acceptable due process.

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 2 Upon release, the individual's
 3 behavior is his or her responsibility, not the
 4 state's. Yet the state is blamed if the parolee
 5 commits some serious crime. Why? Because we
 6 behave in a way to suggest that we really can
 7 control parolee behavior upon release. The reality
 8 is, we can't. If we have equipped an inmate with
 9 the tools he needs to succeed upon release, and if
 10 we provided him help to stay sober, find and keep a
 11 job and find a place to live, then the
 12 responsibility to succeed is the parolee's. A
 13 parole or probation officer in New York State works
 14 thirty-seven and a half hours a week --
 15 thirty-seven and a half hours a week. Think about
 16 that for a minute. How much time can he or she
 17 spend with an individual, even with the mixed
 18 caseload or weighted caseload of forty cases? That
 19 is less than an hour a week, and that is if that
 20 parole officer never takes a vacation, never does
 21 any paperwork, never has to appear at a hearing,
 22 never has to write a report, never has to go to
 23 training. And we knew the -- know they do all
 24 those things -- less than a half an hour a week per

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 2 individual. It can't be done. Let's be honest.
 3 It has to be done by the
 4 offender, and that's true on probation or on
 5 parole.
 6 The issue of capacity -- this is
 7 what I mean by capacity -- limits the expectations
 8 we can have of probation and parole. In order to
 9 maintain a probation and parole system, we have to
 10 have housekeeping rules. What are those
 11 housekeeping rules? Well, if we say that I'm a
 12 parole officer, and I'm going to have some
 13 interaction with the parolee. I'm going to counsel
 14 him, and I have to have a rule that requires him to
 15 come see me. If he doesn't come see me, what do I
 16 do, Felix? I get a warrant. Right? He has to
 17 tell me where he lives so I can go visit him at his
 18 home. If he moves, and he doesn't tell me where he
 19 lives, what am I going to do, Terry? I'm going to
 20 go get a warrant. I'm going to arrest him. Give
 21 him one or two chances, but ultimately, that's what
 22 I'm going to do. The rules that result in
 23 thirty-five percent of the returns to state prison
 24 are rules that exist simply because we need them to

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 2 have a probation or parole system. They have
 3 little demonstrable relationship to the successful
 4 reentry or success of the offender. And I differ
 5 with my friend Felix on this issue. Jill Austin a
 6 very, very well known researcher, Christy -- is it
 7 Christy -- no. Who's the woman at the Urban
 8 Institute? There are several studies that are
 9 coming out that show that this notion that
 10 technical parole violations, intervening before
 11 they have an opportunity to commit a new crime, is
 12 simply not true. There is no evidence that
 13 technical violations prevent new crimes. In fact,
 14 there is some evidence to show that individuals who
 15 are released without supervision, at the maximum
 16 expiration of their sentence, do just as well as
 17 parolees who are subject to intervention by a
 18 parole officer. My point is that there's no
 19 evidence that enforcement of these housekeeping
 20 rules bears any relationship to crime reduction.
 21 Yet, it imposes an enormous burden on the state.
 22 The -- the -- the state spends an
 23 awful lot of money -- I don't know how much -- but
 24 several hundred million dollars, probably, paying

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 2 the counties for the re-incarceration of parole
 3 violators, as well as the incarceration of the
 4 thirty-five percent of the new admissions to the
 5 state prisons, who are technical parole violators.
 6 Imagine if that money was freed up for teen
 7 pregnancy prevention. Imagine if that money was
 8 freed up for juvenile delinquency or truancy
 9 prevention programs. Could we not -- perhaps not
 10 immediately, but ten years from now -- have
 11 affected a substantially greater crime reduction
 12 with those dollars?
 13 Let me suggest a different model.
 14 Maybe there's an opportunity here. You asked for
 15 some concrete examples. And I say this -- you
 16 know, I'm sure there's law. I'm sure there are
 17 many things that are wrong with it. But just for
 18 the purposes of moving your discussion along, is
 19 there a possibility to improve the likelihood of
 20 success on the part of the offender, change the
 21 locus of responsibility, and perhaps create more
 22 transparency and explicitness in sentencing? I
 23 think that a -- a -- a sentence has to be
 24 appropriate to its purpose, right? A dangerous,

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 2 violent offender would require an incapacitative
 3 sentence to protect the public. This sentence
 4 would be long, and I don't think it would be
 5 diminished by good behavior or programming. The
 6 offender would be educated. Again, it's
 7 unconscionable to hold an offender for years if
 8 you're unable to educate all but the most disabled.
 9 And let's -- let me digress for a moment and say
 10 that if you discuss sentencing, and you don't
 11 discuss the fact that twenty percent -- twenty-five
 12 percent of the inmates in New York City, let me
 13 say, are mentally ill -- diagnosable mentally ill.
 14 In the state prisons, what is it -- fifteen
 15 percent? In -- in 1969, when I became a parole
 16 officer, there were ten thousands inmates in prison
 17 and eighty thousand patients in the state's mental
 18 hospitals. Today, there are fewer than five
 19 thousand patients in the state's mental hospitals
 20 and sixty-five thousand inmates. Just think about
 21 that for a minute. Something happened. We've got
 22 to think about that when we think about sentencing.
 23 I think -- quite frankly, I'll tell you I think the
 24 most -- the most important development in -- in

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 2 sentencing and in criminal justice in the last ten
 3 years is the advent of mental health courts. And I
 4 think they should be promoted and grown. Anything
 5 that can -- the mentally ill don't belong in
 6 prison. The state's getting beat up over it.

7 They -- it -- it -- it makes the
 8 lives of other inmates impossible. It makes other
 9 people unsafe. The people who are mentally ill are
 10 themselves unsafe. It makes it impossible to
 11 succeed on parole. It's very difficult on parole
 12 or on probation. We have to think about what we
 13 are doing with mentally ill in this society, and we
 14 never created a substantial safety net for the
 15 mentally ill when we deinstitutionalized. That's
 16 not to say that the mentally ill are criminal.
 17 They're not. But some end up committing crimes by
 18 virtue of the symptoms that they have. They get
 19 into fights. They -- they make the rest of us
 20 uncomfortable. They use drugs to self-medicate.
 21 It's not because they're criminal. And let's
 22 recognize that they don't belong in prison.

23 On the other hand, as compared to
 24 that dangerous offender that we want to

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 2 treatment program and would be given guidance and
 3 assistance in finding private sector housing. The
 4 stay at the halfway house could for a fixed period
 5 of time -- not less than six months, say, with
 6 release subsequent to that dependent upon some
 7 concrete and measurable objectives. Let's say, for
 8 example, you have to have been living in the
 9 halfway house for six months and have been drug and
 10 alcohol free for the last ninety days. How about,
 11 you have to have been in the halfway house for at
 12 least six months and have held a steady job for
 13 at -- at least the last ninety days? How about,
 14 you have been in the halfway house for six months,
 15 and you have a lease on an apartment and enough
 16 money in the bank account to pay your first three
 17 months' rent? When you achieve those very three
 18 concrete measurable goals, you go out the door.
 19 Whether we supervise with a parole officer or not,
 20 as far as I'm concerned, is irrelevant. And as
 21 I've said, I don't think a parole officer's ability
 22 to add much value at that point exists. Instead of
 23 discretionary release upon attainment of the
 24 objectives and the requisite time, the offender is

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 2 incapacitate, the non-dangerous, nonviolent young
 3 offender with a lesser record doesn't need to be
 4 held as long. But the structure of the prison
 5 sentence could be the same. In both cases, they're
 6 coming home. Let's ask ourselves. How should this
 7 occur? Perhaps the judge could specify that the
 8 last year of the sentence shall be served in the
 9 community. The violent offender would be in prison
 10 longer than the nonviolent, but each would spend
 11 some portion at the end of their sentence in a
 12 reentry phase. The victim, the press, the public
 13 would all know the date the offender would be
 14 released into the community -- no surprises. If
 15 the inmate misbehaves and is found to have violated
 16 prison rules, pursuant to a multidisciplinary
 17 hearing, the time before the community supervision
 18 commences could be extended, perhaps by some
 19 fraction of the underlying sentence -- bad time
 20 instead of good time.

21 Upon transfer to some halfway
 22 house, the offender would receive help finding a
 23 job, perhaps by a parole officer. They would be
 24 enrolled in a community-based drug and alcohol

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 2 free to live on his or her own. The only thing we
 3 want of this offender is that he or she not commit
 4 a new crime. That's all we want. We can enhance
 5 the chances of his success by giving him the means
 6 to obtain help, counseling, treatment, job search
 7 training, and, in fact, we can continue to pay for
 8 it. You know, when you buy a car, you get a
 9 warranty. An individual goes to state prison four
 10 years. They get out. We don't get a warranty.
 11 Right? We don't get a service contract. Why not
 12 establish a service account for every person at the
 13 end of their sentence? Put aside a sum of money,
 14 say twenty-five hundred dollars -- that they can
 15 draw against to obtain counseling, to obtain help
 16 with job search, to obtain drug treatments, pay for
 17 their drug treatment if they're not otherwise
 18 Medicaid-eligible, to pay for increased education
 19 so that they can improve their job skills in the
 20 community. Make that investment against the four
 21 years that you've invested to incarcerate them.
 22 And spend that money instead of a parole officer.
 23 Instead of looking to see whether they came in to
 24 see the parole officer, say to them, "look,

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 2 we've -- we've made you sober. We taught you how
 3 to stay sober. We helped you find a job. We
 4 improved your educational attainment. We helped
 5 you find an apartment. And now we've given you
 6 this service account -- this voucher for
 7 twenty-five hundred dollars for each of the next
 8 two years. Whether you succeed or not, fellow, is
 9 up to you." And when they appear on the front page
 10 of the New York Post, it's not because Parole
 11 failed. It's not because the state failed. It's
 12 because they failed. The potential savings are
 13 large. The ability to focus the time of the parole
 14 officer on the offender at the critical first
 15 post-release phase, during that halfway house
 16 period, is enhanced. The housekeeping rules go
 17 away. The use of short-term imprisonment of parole
 18 violators becomes a thing of the past. The
 19 potential savings come to several billion dollars
 20 over two or three years. This money could be
 21 reinvested, as I say, into initiatives that are far
 22 more likely to be productive of public safety than
 23 the way we do business now. And more importantly,
 24 the system is more just, transparent, and explicit.

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 2 Thank you.
 3 COMMISSIONER O'DONNELL: Wow.
 4 Any questions?
 5 MR. LENTOL: Yeah. Why don't you
 6 tell us what you really think?
 7 MR. VANCE: The question is,
 8 is -- is there any state that's doing it right?
 9 MR. HORN: There are states, you
 10 know, that are tapering, that have elements of it.
 11 I think Washington State is -- is -- is working.
 12 Look at Pennsylvania. We started going this
 13 direction when I was Secretary of Corrections at
 14 Pennsylvania. And my -- my successor has built it
 15 up. I -- I -- last time I checked, sixty-five
 16 percent of all the people who were being released
 17 in Pennsylvania were being released through halfway
 18 houses. I -- I believe very strongly that the
 19 state has to build up its reliance on work release
 20 and halfway houses as a way out. Everyone should
 21 leave in that way. I don't think people should
 22 just walk out of the S.H.U., right, as -- as
 23 someone said earlier because Terry said prison --
 24 you know, I don't -- someone should go from the

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 2 S.H.U. to a halfway house. Pennsylvania -- as I
 3 said, sixty-five percent of all the releases were
 4 going that way. The state was paying for it. They
 5 were receiving intensive help with drug treatment
 6 in the community, job search, and -- and house
 7 finding. And in fact, I think they were bringing
 8 down the recidivism rate.
 9 MR. VANCE: Connecticut appears
 10 to be, in its sentencing commission, doing new and
 11 different things. I actually don't know what they
 12 are, but I just read that they are.
 13 MR. HORN: I -- I -- I'm not
 14 familiar enough. We're familiar with New York;
 15 we're familiar with Pennsylvania.
 16 MR. BERGAMO: So how do we grant
 17 probation?
 18 MR. HORN: Excuse me?
 19 MR. BERGAMO: What would you do
 20 about probation? How would you help probation?
 21 MR. HORN: I think -- with
 22 respect to probation, I -- I -- I -- I think there
 23 are a -- a couple of things. Probation has a very
 24 important role. First of all, whether or not a

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 2 probation officer can be effective in affecting the
 3 outcome, there always needs to be an -- as I said,
 4 we have to be more creative with respect to how we
 5 impose sanctions. So probation isn't so much just
 6 a status degradation. It's a status. And judges
 7 always have to have the ability to place a person
 8 on probation for whom the use of imprisonment is
 9 inappropriate. The crime is de minimis. Their
 10 record is de minimis. It's the appropriate and
 11 just thing to do. There is no immediate threat to
 12 public safety. So there has to be probation.
 13 I think the right people have to get on probation,
 14 and I think we create a problem -- and -- and this
 15 is what we're doing now very, very differently. In
 16 New York, sixty-five percent of the people, you
 17 know, on probation in New York are -- in New York
 18 City, are on probation for felonies. And when you
 19 look at their records, you scratch your head and
 20 wonder why they're on probation to begin with. And
 21 as I say, I have examples here of individuals who
 22 are placed on probation without the benefit of
 23 pre-sentence investigation. And quite frankly,
 24 it -- it makes my hair curl. And -- and -- and

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2 they all -- they all get rearrested. Right? And I
3 can share some of these cases with you -- horror
4 stories.

5 So the right people have to get
6 on probation, and then finally, probation has to be
7 adequately funded. Right now, the state law
8 provides that the state may reimburse counties for
9 up to fifty percent of the cost of probation. At
10 one time, the state reimbursed the counties for
11 fifty percent. Today, they only reimburse
12 seventeen percent, eighteen percent of the cost of
13 probation. If probation is going to be meaningful,
14 probation has to be adequately funded by the state.

15 MR. BERGAMO: Would it be of any
16 benefit to make a state agency and blend it with
17 Parole, make it one? I don't want to walk away
18 from the local, make a state agency?

19 MR. HORN: I think because the
20 way in which the statutory structure -- because
21 Probation is answerable to judges, rather than to
22 the administrative board, I think there is
23 something to be said for keeping the county
24 function. I think, however, it does belong under

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2 O.C.A. rather than under the Executive Department,
3 as the -- the Chief Justice Task force recommended.

4 COMMISSIONER O'DONNELL: Marty,
5 could you just touch on the numbers that Terry was
6 pointing to in terms of crime reduction in New York
7 City and decreases in the population at Rikers
8 Island and everything?

9 MR. HORN: Yeah. At -- at one
10 time, Rikers Island held twenty-three thousand
11 inmates, and at one time, there were lots of --
12 there was lots of crime in New York City. Crime is
13 down. I think the answer that -- I guess what
14 Terry gave was the right one. There are lots of
15 reasons why crime is down. Certainly, you know, if
16 you ask Commissioner Kelly, if you ask Bill
17 Bratton, they would tell you that policing and
18 Comstat had a lot to do with it. I think it did.

19 I think, also, the improvement in
20 the economy had something to do with it. I think,
21 perhaps more than either of those, there was a
22 change in the demographics. The data is fairly
23 clear that the amount of crime in a community is
24 the result of how many -- what percentage of the

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2 people in that community are in the
3 eighteen-to-twenty-five-year age range. And there
4 was a -- a -- a sharp drop in the, you know,
5 post-Baby Boom generation. And it -- you know, I
6 mean, it may be coming back. We're all having
7 children. Our children are reaching their
8 crime-prone years. So there's that sort of echo
9 boom that's coming. But I think it was the -- it
10 was the coming together of all those factors -- an
11 improving economy, smart policing, aggressive
12 policing. Look. There's no question. If you lock
13 up seventy-five thousand people, you locked up
14 some -- probably some predatory criminals and some
15 high-volume criminals. It's got to have an effect.

16 You can't lock up two million
17 people in this country and not have an effect on
18 crime. It has to have an effect. You combine that
19 with a drop in the eighteen-to-twenty-five-year age
20 group, you combine that with an improving economy,
21 and you combine that with smart policing, and
22 that's why crime is down. And that's why the jail
23 population is down.

24 The -- the number of -- the --

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2 the -- it's -- it's very interesting. The police
3 in New York City are making more arrests every year
4 than in the preceding year. The -- what has
5 changed is that the growth in arrests is all
6 misdemeanor arrests. And misdemeanors don't stay
7 very long. So we reduce the time that people
8 serve. Again, two things determine how many people
9 are in a prison or a jail system. It's a bath tub.
10 How fast is the water coming in? How fast is the
11 water coming out? If it's -- if the water's going
12 out at the same rate, it's stable. If you stop up
13 the drain, which is what happened when -- when --
14 when -- when I was the Executive Director of
15 Parole -- and somebody asked this question
16 earlier -- we were releasing sixty-five percent of
17 the people that we saw at their first Parole Board
18 appearance -- were being released. When -- after I
19 left, that number dropped to about thirty-five
20 percent. I don't know where it is today. If you
21 go from a sixty-five percent release rate to a
22 thirty-five percent release rate, the bathtub's
23 going to fill up. What we did in New York -- and
24 this is -- this gets to another issue, which is

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 2 judicial administration with respect to the
 3 jails -- how quickly did the courts dispose of
 4 cases in New York City? We've worked very hard to
 5 expedite the disposition of cases. The faster
 6 you -- you dispose of cases on trial, the better it
 7 is for your jail system.

8 COMMISSIONER O'DONNELL: The --
 9 the other question is -- I don't know where you
 10 were in 1984 and 1985.

11 MR. HORN: In 1984, I was the
 12 warden at Hudson; in 1985, I was the Director of
 13 Operations at Parole.

14 COMMISSIONER O'DONNELL: Okay.
 15 So you were around for the last sentencing
 16 commission, --

17 MR. HORN: Yes.

18 COMMISSIONER O'DONNELL: -- at
 19 least at Parole.

20 MR. HORN: I appeared before it.

21 COMMISSIONER O'DONNELL: And --
 22 and, you know, we -- we read the -- the very --.

23 MR. HORN: Read Ted Merced's
 24 (phonetic spelling) book?

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 2 the result. And pretty -- you have to make sure
 3 that people are going out at about the same right
 4 they're going out now, right, of your prison
 5 population. Now, you can -- you can buy time. You
 6 can reduce the amount of time that a minor offender
 7 serves, and you can use that to purchase more time.
 8 North Carolina, by the way, did an excellent job
 9 with their sentencing guidelines, and they reduced
 10 the amount of time that minor offenders, drug
 11 offenders served, and used that time to buy more
 12 time for felony offenders. If you look what the
 13 actual time served by rapists -- when I was here,
 14 the -- a rapist in New York was serving, on
 15 average, eighty-four months. Is the legislature
 16 going to vote to say, you commit rape -- one in New
 17 York State, you do eighty-four months? No, because
 18 they would much prefer that a D.A. stand up and say
 19 ten to twenty, eight and a third to twenty-five.
 20 Right? Whatever -- and -- and
 21 then -- well, we trace it. Is it eight and a third
 22 or is it twenty-five? So it's very hard. It's
 23 politically very hard. And the other thing that
 24 was operating in '83-84 is, because it's a plea

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 2 COMMISSIONER O'DONNELL: Yeah.
 3 Yeah. But -- but very thoughtful report -- a lot
 4 of effort that went into it headed toward the
 5 determinate sentencing model with sentencing
 6 guidelines. If you go to the determinate
 7 sentencing model without sentencing guidelines, you
 8 have -- you've basically, you know, removed looking
 9 at factors other than the severity of the offense.
 10 Is that -- do you have thoughts on that? Is that,
 11 you know, where you're -- you're recommending that
 12 we consider going or --?

13 MR. HORN: As -- as --
 14 intellectually, I believe that there should be
 15 sentencing guidelines. I believe there should be
 16 determinancy. I believe that the elements of a
 17 sentence should all be incorporated at the time of
 18 sentencing, as I've said. That said, it's very
 19 hard, and there are a lot of politics. Right?

20 There's the -- you know, if you -- if you -- you
 21 have to -- if you don't want to increase the prison
 22 population, then the determinate sentences in the
 23 guidelines we establish have to be pretty close to
 24 the current average time served. Right? You have

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 2 bargaining system, you have to -- you can't get the
 3 plea bargaining system. It's all about power.
 4 Who's got the power? The D.A. had the power. This
 5 is about the power of district attorneys, and I
 6 love my district attorneys in New York. We have
 7 the finest district attorneys in New York. But
 8 it's about power. Sentencing is all about plea
 9 bargaining, and the power in plea bargaining is in
 10 the district attorney. And -- and so if you start
 11 taking that way, and -- and then you get the soft
 12 on crime thing, and then -- then you -- then --
 13 then you start ratcheting up the amount of time
 14 served.

15 I saw Paul looking it up. What's
 16 the average for rape?

17 MR. KOROTOKIN: First degree,
 18 first felony, eight years.

19 MR. HORN: Eight years -- so we
 20 can say the penalty for rape in New York is eight
 21 years.

22 MR. KOROTOKIN: And going --
 23 going down.

24 MR. HORN: You know, I mean,

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 2 that's what you have to say. You have to say -- if
 3 you, you know -- there might be some a little
 4 longer, but on average, you'd have to keep the
 5 average sentence for rape at eight years. You
 6 know, Senator Schneiderman or Assemblyman Lentol
 7 can tell you whether or not that can fly in the
 8 legislature. But my experience, in 1983, was it
 9 couldn't. And that's the problem you're up
 10 against.

11 UNIDENTIFIED SPEAKER: We're
 12 trying to defeat the knee capping for probation
 13 violation bill, in a sense.

14 MR. HORN: I mean, it's tough.
 15 And, you know, I -- I don't envy your -- your --
 16 your -- your -- your challenge.

17 MR. LENTOL: I think, Marty, it
 18 might be useful for you to explain to us -- and I
 19 know it a little bit -- as to why the district
 20 attorneys have the power. And I know, in
 21 Rockefeller, a lot of my colleagues here may know
 22 that the district attorneys have the supreme power.
 23 But why is it so with other crimes?

24 MR. HORN: Well, I mean, because

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 2 they -- individuals are held on bail. If the
 3 individual wants to get out, the D.A. has to agree
 4 to accept a plea. And -- and so they will -- they
 5 will hold out. There's no -- there's no incentive
 6 for the D.A. not to hold out for the plea that they
 7 want. And so -- and the -- and the higher the --
 8 the -- the range of sentencing, then the more
 9 currency the D.A. has to work with. You know, he
 10 has a bigger range. He can say, well -- you know,
 11 eight months, nine months, twelve months. He --
 12 he -- he's -- he's got time -- the -- the currency
 13 in the court, in the plea bargaining, is time. And
 14 that --.

15 MR. LENTOL: I -- and I suppose
 16 you -- you -- you would agree that it also has
 17 something to do with the sentencing structure,
 18 speaking to specifically about second-felony
 19 offenders --.

20 MR. HORN: Oh, yeah. Sure. I
 21 can choose -- I can choose to trade off. "I
 22 won't -- I won't seek second-felony offender if you
 23 agree to this plea."

24 MR. LENTOL: Right.

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 2 MR. HORN: Right. It's all
 3 about -- it's all about that.
 4 MR. LENTOL: And my second
 5 question -- I guess it's not really a question.
 6 Maybe I'm editorializing again, but I like what
 7 you -- what you gave us. You really gave us, I
 8 think, a blueprint for reentry. And I also like
 9 what you said about sobriety being very important.
 10 And I -- I want you to comment, respectfully as you
 11 can, as to the efficacy and the effectiveness of
 12 the CASAT program in -- in the state prisons
 13 because there is some question as to whether we --
 14 we ought to do something differently in order to
 15 make sure that we allow certain people to come out
 16 of jail.

17 And then the second thing is, in
 18 our state, there's only one program for alcoholism.
 19 And it's in Suffolk County. And we don't do
 20 anything to get people sober --

21 MR. HORN: Right.

22 MR. LENTOL: -- except lock up
 23 D.W.I. people and put them in jail. And I think
 24 that that's also part of --

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 2 MR. HORN: Uh-huh.
 3 MR. LENTOL: -- the configuration
 4 that we need to think about in order not only to
 5 stop D.W.I. crime, but also to have programs -- I
 6 mean, we have A.A. But we don't have -- people who
 7 go to jail aren't the ones that go to A.A. And
 8 maybe there ought to be more alcoholism programs to
 9 treat people who are in prison.

10 MR. HORN: Certainly, I agree,
 11 and also, I think that it's a mistake to think that
 12 alcoholism and drug addiction are mutually
 13 exclusive. There's tremendous overlap. And -- and
 14 not that I don't -- I'm not even talking about
 15 things like, you know, entry drugs or -- or -- or
 16 that sort of thing. But people who are addicted
 17 find a way to get high. And if they can't get high
 18 on drugs, they'll get high on alcohol. If -- if --
 19 if they're high on cocaine, they'll drink alcohol
 20 to take the edge off. There's a tremendous
 21 interrelationship. There's a blurring of the
 22 lines. So I -- I think we ignore alcoholism, as
 23 you say correctly, at great risk. And we have to
 24 address that. And -- and -- yes. I think that, as

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 2 with mental health, it raises the question about
 3 whether imprisonment -- nobody likes D.W.I.s.
 4 Every one of us steps off the curb and could be the
 5 victim of it. But I'm not sure that imprisonment
 6 changes things. I think -- and I -- I know my
 7 colleagues in state prisons, and we talk about it
 8 all the time. It's very hard -- and it's very hard
 9 for me in the city jails -- to keep drugs out.

10 People who are addicts will do
 11 anything to get high. And the -- the -- the length
 12 that I see people go to to get drugs into the
 13 jails -- you can't even speak about it. It's
 14 Draconian, I mean, the things that go on. And --
 15 and so it's -- and so keeping the inmate sober
 16 requires enormous effort.

17 And with respect to CASAT, I
 18 think that -- I think it's an earnest effort. I
 19 think you can't just do it in a few places. I
 20 think the problem with state -- you can't say, "oh,
 21 we're going to do it in this prison, that prison,
 22 and that prison." You have to do it in every
 23 prison. I think, also, it has got to be part of
 24 the culture. One of the things that I've

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 2 morale building, a tremendous investment in
 3 supervision. Another problem that you have is
 4 recruiting professions. There is a dearth of
 5 alcohol and substance abuse professionals in New
 6 York. The state probably should make a greater
 7 investment in training. You know, when they open
 8 the CASAT programs, every county alcoholism agency
 9 complained, because where did the employees of the
 10 county alcoholism agency go? They went to work in
 11 state prisons because the state salaries were
 12 better. Right? That's exactly what happened. So
 13 it -- it -- you -- it's not something that can
 14 happen overnight, but it has to happen.

15 I also think -- and this is
 16 something else I learned. When I was -- I started
 17 as a parole officer. And they taught me how to be
 18 a parole officer and all the rules, and I knew when
 19 to issue a warrant and all that. But they never
 20 talked to me, as a parole officer, about
 21 understanding the disease of addiction. Addiction
 22 is a disease. And they never talked to me about
 23 recovery. And recovery is a process, and it
 24 doesn't proceed in a straight line. Right? And

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 2 learned -- and -- and -- and -- and people smarter
 3 than myself who work in the field of addiction --
 4 Stacy Murphy who used to be with the Fellowship
 5 Center of the New York Council on Alcoholism,
 6 taught me that -- that you -- you send people
 7 double messages. If an inmate goes to drug
 8 treatment, right, in a classroom in the prison, and
 9 then he comes back to the cell block, and the two
 10 officers are talking about how, when they get off
 11 shift, they're going to get wasted, or "man, did I
 12 get wasted last night," and they're talking --
 13 because right -- because, as a society, we're
 14 ambivalent about the use of alcohol. And we're
 15 really ambivalent about the notion of getting high.
 16 The inmates are getting a -- a mixed message.
 17 "Well, wait a minute. It's
 18 okay." What are we really saying? And so you
 19 almost have to create a culture within the prison,
 20 much like they do with the state program at Arthur
 21 Kill. It has to -- the entire prison has to become
 22 an -- a therapeutic environment. That's very hard
 23 to do. It requires a tremendous investment in
 24 training. It requires a tremendous investment in

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 2 they never told me to start talking to my parolees
 3 about their addiction on the first day they came
 4 out. Parolee comes out, and say, "where are you
 5 going to live? Where are you going to work? Here
 6 are the rules. I expect you to do this. I expect
 7 you to do that. Don't get high." You never
 8 explore the addiction. You never say -- and I want
 9 you to -- and unless it's a special condition that
 10 the Board imposed, by and large, we're not saying,
 11 "and I want you start in treatment today." Right?
 12 Today, we do a lot of drug and alcohol testing. We
 13 probably do it on all parolees now. Right? But
 14 you have to start talking about it in prison. Part
 15 of it is a cognitive thing, to understand. To -- I
 16 mean, we can do a better job in the prisons of
 17 helping inmates to understand. We have to do it in
 18 every prison. We don't need a CASAT program to
 19 ensure that, in every prison, we are talking to
 20 inmates about addiction, that they learn why they
 21 drink, that they learn how to stay sober and that,
 22 on day one, the parole officer or the probation
 23 officer work with them.

24 Here's what I learned. I learned

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 2 that -- and -- and this is before we had the sort
 3 of on-site drug tests that we have now. A parolee
 4 would be on parole for a couple of weeks, a couple
 5 of months, and he's doing fine. And all of a
 6 sudden, something changes. He loses his job. He
 7 missed a couple of reports. So you say, "Smitty,
 8 are you using drugs?"

9 And he says, "no, no, Mr. -- I'm
 10 not using drugs."
 11 I'd say, "oh, yeah; I think you're using drugs."
 12 Back then, heroin was new, so you'd roll up their
 13 arm and put their arm -- say, "look -- needle
 14 marks."

15 "Oh, no. I gave blood."

16 "Well, all right. You've got to
 17 come back next week, and I expect that to be
 18 healed."

19 Well, the next week, he doesn't
 20 come back. He comes back two weeks later. Smitty,
 21 right? He's got a few more needle marks. Am I
 22 right, Felix? But the time you finally get Smitty
 23 to agree that he's using drugs -- right -- by the
 24 time you send a test to an outside lab, and a week

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 2 to affect the outcome. And if they're on parole, I
 3 see them once a week.

4 MR. ANNUCCI: I was just about to
 5 ask your experience in Pennsylvania where
 6 sixty-five percent go into halfway houses. How
 7 could they possibly achieve that in the
 8 communities?

9 MR. HORN: Most of the programs
 10 were privately run, on contract -- Quakers.
 11 There's a -- Pennsylvania -- and I -- I have to
 12 say, the one thing that -- that differentiated my
 13 experience in Pennsylvania from my -- is the Quaker
 14 history in Pennsylvania. There's -- there's a
 15 difference in the prisoners in Pennsylvania and a
 16 difference in the communities. And I -- and I
 17 attribute it to the Quakers, quite frankly. I'm
 18 not sure you could do it. Listen. The first time
 19 I met now-Governor Rendell, he was Mayor Rendell.

20 And the -- my phone rings, and
 21 they say, "Mayor Rendell is on the phone." This
 22 was the mayor. He called me up and says, "you
 23 know, we understand that, you know, so-and-so --
 24 Community Education Centers is trying to -- has a

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 2 later, it comes back, and you're arguing with him,
 3 he's now been using drugs for three months. He's
 4 too far gone. By the time they've been using drugs
 5 for three months, they're too far gone. They have
 6 to go back into detox. So we have to nip it in the
 7 bud. We have to intervene and prevent the drug
 8 abuse much earlier in the experience of probation
 9 and parole. We have to keep them -- our goal has
 10 to be to keep them drug-free and alcohol-free,
 11 beginning on day one. And it's hard. But it can
 12 be done. It can't be done on the cheap.

13 I think you could do it better --
 14 and this is why I -- I -- I believe in this notion
 15 of a halfway house -- if they -- if they leave
 16 Attica, and they come down to a halfway -- and
 17 then, of course, you've got the whole problem of
 18 community acceptance of halfway houses, right? So
 19 I know that I'm not talking about reality, here,
 20 because you -- right in -- you know, in your
 21 community and -- and they don't want them. But
 22 in -- in a halfway house, they're coming home every
 23 night. If I can put them in A.A. every night, in
 24 the halfway house, I've got a much greater ability

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 2 contract from you, and they're trying to put a -- a
 3 halfway house in our community, and we don't want
 4 it." I mean, sure; it happened. It didn't happen
 5 overnight. It happened over a period of years.
 6 But they -- there was a long history of having
 7 community-based programs. And really, we had
 8 existing programs, and we pretty much grew them.

9 We took existing programs and
 10 grew them. You had the ability in New York in the
 11 early '90s, when you were up to -- what -- six
 12 thousand people in work release, and you had a lot
 13 of contract facilities. I don't know if you could
 14 ever get it back. I mean, you got six thousand.
 15 If you had six thousand bids, and you could move
 16 twelve thousand people a year through that, you're
 17 talking about fifty percent of your -- that was --
 18 you know, you could -- that was fifty percent of
 19 your release program.

20 COMMISSIONER O'DONNELL: Marty,
 21 I'm going to have to wrap it up. I really
 22 appreciate it, and --

23 MR. HORN: Thank you.

24 COMMISSIONER O'DONNELL: -- I

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 2 hope we --
 3 MR. HORN: I -- I hope --.
 4 COMMISSIONER O'DONNELL: -- have
 5 you back and -- and call you for assistance --
 6 MR. HORN: Sure.
 7 COMMISSIONER O'DONNELL: -- as we
 8 move along in this process. Thank you very much.
 9 Lastly, we have Bob Maccarone, who -- who is
 10 certainly one of the preeminent experts in
 11 probation, in reentry, and so many criminal justice
 12 issues. Bob was a former A.D.A. He has many
 13 positions in Westchester County in the criminal
 14 justice system. He's served as the State Director
 15 of the New York State Division of Probation and
 16 Correctional Alternatives since 2005. He served
 17 ably in the last administration. Governor Spitzer
 18 asked Bob to stay on as one of his first
 19 appointments at the commissioner level in his
 20 administration, which shows just how good he is --
 21 what a professional he is. And I'm just delighted
 22 to have you here, Bob.
 23 MR. MACCARONE: Thank you. Thank
 24 you, Commissioner. And it is a pleasure to be here

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 2 today. Just let me say that I just came from
 3 addressing the New York State Association of Prison
 4 Chaplains, who have a unique look at the needs of
 5 offenders and have some distinct thoughts about how
 6 they might succeed in the community. And I
 7 understand my colleague, Commissioner Brian
 8 Fischer, is going to be addressing them tomorrow.
 9 And so that was a very good group as a warm-up,
 10 certainly, for the commission.
 11 And let me say that I want to
 12 talk a little bit about probation, but I have
 13 strong interests, as the Commissioner knows, in
 14 reentry and its implications for sentencing, et
 15 cetera. I don't know how much you know about
 16 probation. I'm very reluctant to say too much
 17 about the data because Donna Hall, who I am in awe
 18 of in her understanding of the data with New York,
 19 is here. So I'll -- so I'll try to let Donna. But
 20 let me just say the following, that -- because I
 21 think it is important that you understand
 22 probation. Probation in New York State is
 23 performed by city governments. We have fifty-seven
 24 departments in the City of New York. So it's

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 2 fifty-eight probation departments. I think they do
 3 an outstanding job -- an absolutely outstanding job
 4 in managing a -- a part of the community --
 5 corrections population. There's also a very
 6 impressive array of alternatives to incarceration
 7 programs, and I want to talk a little bit about
 8 those later, as well.
 9 But our fifty-eight probation
 10 departments manage one hundred and twenty thousand
 11 offenders -- adult offenders in the criminal
 12 justice system -- a hundred and twenty thousand
 13 offenders, a hundred and twenty-eight thousand
 14 cases. Some offenders have more than one case.
 15 Commissioner Horn's department, the New York City
 16 Department of Probation, manages thirty-two
 17 thousand offenders. And eight of those -- eight
 18 thousand of those offenders are actually in
 19 specialized caseloads where their caseload sizes
 20 are one to sixty-five. I think Commissioner Horn's
 21 made some great decisions down in New York about
 22 the utilization of personnel and how he manages
 23 them. He does an initial assessment on ninety days
 24 of every offender coming through the system, and he

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 2 places upwards of twenty-four thousand offenders
 3 reporting to a kiosk. But there's regular
 4 involvement -- coming in for drug testing, some
 5 contact with probation officers. But they do an
 6 initial assessment, referral -- information
 7 referral. So given the overwhelming numbers that
 8 they have, they've made some smart decisions on
 9 resource allocations.
 10 Probation has a huge mission in
 11 New York State. I should preface my comments,
 12 however, by saying we should be -- we should look
 13 at the reality on the large picture of things. New
 14 York State has done a good job with its criminal
 15 justice system. Let me just repeat that. New York
 16 State has done a pretty good job with its criminal
 17 justice system. Why do I say that? Because in
 18 1974, New York State had twelve thousand five
 19 hundred inmates in its prison system. And of
 20 course, it ramped up, and there's a couple of
 21 things responsible for that. And I think it was a
 22 combination of a second-felony offender law in
 23 combination with making five hundred milligrams of
 24 crack cocaine a Class D felony offense. Up until

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 2 that point, it was a misdemeanor. So it's the
 3 nexus of those two pieces of legislation coming
 4 together and the redefinition of some violent
 5 felonies that required state prison time. That
 6 really drove that prison population. Well, it
 7 drove it to seventy thousand people.

8 But how is it that we were tied
 9 with places like California and Texas, at twelve
 10 thousand people, some thirty, forty years ago, and
 11 today, California has two hundred thousand people
 12 in its state prison system, and Texas has a hundred
 13 and seventy-five thousand? And I don't know what
 14 the budget of the Department of Correction is
 15 today. It used to be about a billion five with a
 16 two-hundred-million-dollar debt service to pay for
 17 the construction that the two prior governors had
 18 to build, and I'm sure they weren't pleased about
 19 it. Because, let's face it, when you pump a lot of
 20 money into an infrastructure like prison
 21 construction, for social, economic, and political
 22 reasons, two realities occur. One is, those
 23 institutions are filled. And secondly, it is very
 24 difficult to close them. So once you commit those

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 2 types of resources and those types of revenues --
 3 the state's revenues to that level of selective
 4 incapacitation -- that's what we're doing. We're
 5 selectively incapacitating a group of individuals
 6 for extended periods of time, and we don't have the
 7 resources to do all the other things that we want
 8 to do. We don't have the resources to provide
 9 medical insurance to four hundred thousand
 10 uninsured children in New York State, which the
 11 Governor is doing, and we don't have the money to
 12 commit to public education. And those clearly
 13 ought to be our priorities. If you read Thomas
 14 Friedman's book, "The World Is Flat" -- it's a
 15 little difficult getting through seven hundred and
 16 fifty pages -- but I think he has keen insights
 17 into the ability of our country, our nation to
 18 compete globally with other countries. And
 19 actually, the picture is a good one. And America
 20 can compete, but education is the key. So what
 21 we've done in putting money into education is
 22 important. How does corrections and probation and
 23 criminal justice play into that? It's the argument
 24 that I just said -- that if you continue to invest

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 2 resources -- enormous resources into the prison
 3 system, you won't have those resources available to
 4 reinvest in others. And there is no going back,
 5 once you've committed to that. Governor
 6 Schwarzenegger knows that because he is requesting
 7 billions of dollars to add fifty thousand new
 8 cells. Apparently, they're still under the
 9 impression that they can build themselves out of
 10 their criminal justice problem. Ironically, the
 11 crime problem continues to grow in those states,
 12 and it continues to -- to decline in the State of
 13 New York for largely, I think, good reason. We've
 14 been smart about a lot of things in criminal
 15 justice. So I want to present to you a balanced
 16 approach, because I'm proud to live in a state
 17 that's made some good decisions about criminal
 18 justice.

19 With respect to those states,
 20 however, and what New York State -- why -- why have
 21 we succeeded? A couple of reasons -- I think, one,
 22 the New York Police Department -- the N.Y.P.D., I
 23 think, is a -- a really enormous and wonderful
 24 organization that is really capable of responding

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 2 to crime. And -- and under Commissioner
 3 O'Donnell's leadership, we're trying to extend that
 4 to the seventeen impact jurisdictions outside the
 5 City of -- City of New York, which, indeed, if you
 6 look outside the City of New York, eighty-five
 7 percent of the crime occurs in those seventeen
 8 impact jurisdictions. So we're trying to ramp up
 9 and bring that same level of expertise, crime
 10 analysis, and dedication of resources to the police
 11 departments and sheriff's offices in those other
 12 counties, clearly.

13 So New York has been different.
 14 Why -- why have we been different, apart from law
 15 enforcement? I think certainly what Commissioner
 16 Horn said about the economics and about the
 17 demographics play into that, clearly. I think,
 18 actually, probation and the A.T.I. community is
 19 also responsible. And let me tell you why. New
 20 York State has always enjoyed and benefited from a
 21 strong tradition of probation regulation, albeit
 22 the state's reduced commitment to probation
 23 funding. And it is indeed true that the statute
 24 provides for reimbursement up to fifty percent. I

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 2 think the appropriation language, however, is
 3 forty-six and a half percent. And over the last
 4 twenty years, we've reduced funding to probation
 5 and community corrections, down to now what is
 6 eighteen percent. Probation caseloads continue to
 7 grow. When I talked about a hundred twenty
 8 thousand adult offenders, you need to know that
 9 fifty percent of those hundred and twenty thousand
 10 probationers -- fifty percent statewide, sixty-five
 11 percent in New York City are felons. So fifty
 12 percent are felons, and fifty percent misdemeanors.
 13 Included among that probation population, twelve to
 14 fourteen percent of probationers are violent felony
 15 offenders.
 16 We manage twenty-five to
 17 twenty-six thousand D.W.I.s, and as Assemblyman
 18 Lentol -- I want to talk about D.W.I.s because I
 19 think that's a real potential population that we
 20 should address. But we need to do it in a planful
 21 way -- in a careful way because, after all, while
 22 most of us think we're somewhat immune from being
 23 victims of violent crime, no one's immune from
 24 being the victim of a D.W.I. The chances of us

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 2 to fix that problem with sex offenders. So when
 3 Westchester County looked at its sex offending
 4 population, it determined that, after the use of
 5 polygraph and continued supervision, some of those
 6 people had upwards of fifty prior offenses. And
 7 then many of them had public lewdness charges on
 8 their record. And I think Commissioner Pozzi may
 9 have spoken with you today, and I'm very proud of
 10 the job that he does in -- in my home county, of
 11 course. But sex offender management is a
 12 challenge. It's three to five percent of our
 13 population, depending whether you include those two
 14 thousand additional ones. We spend about
 15 eighty-five percent of our time in sex offenders,
 16 given the gravity of its -- its nature in -- in the
 17 community.
 18 Let me say, also parenthetically,
 19 we have a thousand-foot provision in the penal
 20 code. Local communities are going about passing --
 21 increasing that distance, whether it's two
 22 thousand, three thousand. And I guess my question
 23 to you would be, how many feet will make you feel
 24 comfortable? The truth is, we need to protect our

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 2 coming back from the movies on a Saturday night
 3 with our families and running into a drunk driver,
 4 for many of us, are much, much larger than meeting
 5 a violent felon at gunpoint and being robbed in our
 6 communities, when you think about it. So -- but we
 7 manage twenty-five, twenty-six thousand D.W.I.s, an
 8 equal number of drug-dependent offenders, six
 9 thousand sex offenders. We spend -- that's three
 10 to five percent of our population.
 11 And the reason I say three to
 12 five percent of our population -- we manage six
 13 thousand sex offenders. Four thousand are on the
 14 sex offender registry. We -- we manage another two
 15 thousand sex offenders that are comprised of four
 16 hundred juveniles, six hundred youthful offenders
 17 whose records are sealed and actually adjudicated
 18 instead of convicted. The conviction, as you know,
 19 of a youthful offender is -- is converted to an
 20 adjudication. And then another thousand people
 21 plead in satisfaction of a sex offense, and that is
 22 endangering the welfare of a minor and public
 23 lewdness. And let me say, just parenthetically at
 24 this time, that we need to address that. We need

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 2 communities from sex offenders, but probation is
 3 the most frequently used disposition. Forty
 4 percent of the dispositions on sex -- sex offenses
 5 are to probation departments. It's community
 6 supervision, followed by parole, with fifteen
 7 hundred. Another forty percent, of course, are
 8 sentenced to state prison. I have two daughters.
 9 I'm a father of three children and -- and one son.
 10 And clearly, I'm concerned about
 11 the safety of my children. But I want to manage
 12 sex offenders out of an intelligent, practical
 13 strategy and not one out of fear. And the research
 14 says that aggressive case supervision and intensive
 15 treatment -- treatment not as in a cure, but
 16 treatment as in management, and use of polygraph
 17 will drive down recidivism. And so we need -- need
 18 to give both Parole and Probation the resources to
 19 intelligently manage sex offenders in the
 20 community. Excuse me.
 21 Iowa had an experience with this
 22 when we were looking at sentencing around sex
 23 offenders. And if you look at Iowa's experience in
 24 that, they passed increasingly expanding perimeters

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 2 and circles of exclusion, zones of exclusion, until
 3 they excluded the sex offenders out of almost every
 4 community. That doubled the number of their
 5 absconders. And if you look at a white paper
 6 created by their state's attorney general's office
 7 and county attorneys, you'll find that they're --
 8 they want to take those back. They want to take
 9 those back because they -- they recognize they need
 10 to manage sex offenders successfully in the
 11 community. I don't think I want to live in a state
 12 where we sentence sex offenders to living under
 13 causeways, as in other states. And, you know, I
 14 think we've come a long way in 2000. When I read
 15 about that, one state sentencing sex offenders and
 16 placing them under the Julia Tuttle Causeway, I
 17 think of the movie "Ben Hur," when Ben Hur went to
 18 visit his mother on the island of lepers. And I
 19 say, "haven't we changed in the last two thousand
 20 years?" I would hope that we have. So I think
 21 when you compare New York State with other states,
 22 we've done some good things.
 23 And now the question -- and I
 24 think, Paul, if you look at the statistics, I think

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 2 can do a better job on that?
 3 So I would say to the sentencing
 4 commission that we need to do a couple of things.
 5 We need to look for opportunity to divert people
 6 and shift people from the state prison -- state
 7 prison system, where appropriate. And we need to
 8 get better at determining who should remain in
 9 prison and protect the public. And that is not an
 10 exact science, but I think we're getting better at
 11 it. One of the things we need to look at is the
 12 use of risk and need assessments. In risk and need
 13 assessments, risk looks at usually static factors:
 14 prior criminal history. An individual cannot
 15 change their prior criminal history. But they can
 16 change the dynamic factors: their education, their
 17 criminal attitudes and thinking, their criminal
 18 associates and peers, family dysfunction, sobriety,
 19 employment. Those are the things that we can
 20 change. And I think it's incumbent upon the state
 21 to do so.
 22 I think state prison can be an
 23 opportunity for -- for some people. Earlier this
 24 week, I was in the company of Glen Martin, who's

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 2 you'll probably be able to verify the fact that if
 3 you look over the last five, ten years, the
 4 violence percent of the -- the percent of violent
 5 offenders in -- in state prison continues to grow.
 6 And percent of nonviolent offenders continues to
 7 decrease. We're actually doing a better job at
 8 identifying those threats to community safety in
 9 New York City. And I think that's important to
 10 recognize. However, we're not doing the best job
 11 that we could. When I look at offenders like
 12 Darryl Littlejohn and his crime in the Lower East
 13 Side in Manhattan, and I look at the crime of
 14 Philip Brandt in my own county, in Westchester, a
 15 person who's convicted of three rapes in New York
 16 State in 1979, and then I look at the -- at the
 17 murder that was committed of Maria Conchevaluso
 18 (phonetic spelling) -- basically, the individual's
 19 name who's been attached to the civil confinement
 20 law in New York State -- a level three sex offender
 21 living in our community, I say why? Aren't we
 22 better at this point in identifying the real
 23 threats to our community? Shouldn't we be?
 24 Doesn't the public have a right to expect that we

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 2 working for the Legal Action Center. And Glen is a
 3 pretty remarkable individual who changed his life.
 4 He was very successful at committing armed
 5 robberies. He -- his specialty was jewelry stores.
 6 And he was knocking them off pretty regularly. And
 7 he was caught, convicted, and sent to prison. But
 8 he was a smart kid, and someone came into the
 9 prison system at some point in his testing and
 10 said, "you should be in college. You're a really
 11 bright individual." And so he pursued -- because
 12 Canisius College provides an educational program at
 13 Wyoming, he pursued that, got his undergraduate
 14 degree. And he said to the group in attendance --
 15 and it was a national group looking at voter
 16 disenfranchisement -- he said, "when I reached the
 17 Port Authority, I had, in my backpack, my four-year
 18 undergraduate degree. And I said to myself, 'what
 19 am I going to do? You know, what direction am I
 20 going to take?'" He said, "that evening, my
 21 friends came to visit me, and they gave me a loaded
 22 handgun and a -- a vest, and said, 'we're back in
 23 business, Glen.'" And he said, "you know, I
 24 thought about it all night. And I decided because

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 2 I had the degree, and I had the opportunity, and I
 3 had the job" -- Legal Action Center was giving him
 4 minimum wage -- "that I could make a difference."
 5 It's all about opportunity and the opportunities we
 6 create for people in their integration back into
 7 society.

8 He said something about
 9 rehabilitation. People expect, well, you know,
 10 rehabilitation. And I said to him later, "Glen,
 11 was that because -- people are people. You really
 12 don't change. It's not a question of something
 13 magical happening, and at some point because we
 14 selectively incapacitate you for a number of years.
 15 It's a question of what we do while you're in that
 16 facility and what you do while you're in that
 17 facility that mattered." And for me, it's all
 18 about employment. It's all about housing. I agree
 19 with Commissioner Horn. It's a variety.

20 Employment and housing are key.
 21 Now, just let me annotate that a little bit because
 22 I think sobriety is overblown. And I think drug
 23 dependency in this country is overblown. And I
 24 think we've dedicated far too many resources to it.

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 2 they have housing, if they feel that they have a
 3 chance to succeed, then drug and alcohol addiction
 4 is going to be played less prominently into their
 5 lives. So please don't misunderstand me. I'm not
 6 saying that drug and alcohol treatment isn't --
 7 isn't important. I don't think it is the key thing
 8 that is important. If, in fact, we treat
 9 addiction, and the person comes out to -- out of
 10 prison with no job and no housing and -- and no
 11 real opportunity, then -- then we have a drug-free
 12 person who's not going anywhere. And that's not
 13 going to last for long. So I think that's
 14 important to say.

15 I want to say a couple of other
 16 things to you about sentencing and probation, as it
 17 is, because one of the things in terms of metrics,
 18 in addition to the hundred and twenty thousand
 19 people we supervise, we prepare a hundred and
 20 thirty thousand investigation -- pre-sentence
 21 investigations for the courts. And that's a huge
 22 tax. And in fact, one of the findings of the
 23 Judicial Task force on the Future of Probation was
 24 that that -- that document is so important, not

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 2 Is drug dependency and alcoholism an issue? Yes,
 3 it is. But is it the real issue or is it
 4 symptomatic of our larger problem? A person with
 5 no education, a person with no skills, a person who
 6 believes he does not have a chance or an
 7 opportunity or hasn't made an opportunity for
 8 themselves will probably resort to drug and alcohol
 9 dependency. When I visited the Doe Fund down in
 10 Brooklyn, at the Sharpe Center -- and anyone who
 11 hasn't visited that, you ought to take the
 12 opportunity to do so -- and spoke to George
 13 McDonald. He's very, very good at getting people
 14 to build a -- a -- a history, if you will, of
 15 successful employment, starting off in
 16 meaningful -- very low paying but meaningful jobs
 17 and Ready, Willing, Able groups down in New York
 18 City. And he's got contracts with the city, and
 19 he's got contracts with the bids, including New
 20 York City and ensuring that it's litter-free. And
 21 then, while he took me through the shop center, and
 22 he took me by two of his drug testing machines, he
 23 says to me, "Bob, that's my drug treatment
 24 program." Because if people have employment, if

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 2 only to the sentencing judge -- and some would
 3 argue that it's less important because, indeed,
 4 ninety-six or ninety-seven percent of the cases in
 5 New York City are through plea. I was a
 6 prosecutor, however, and I sat in court and stood
 7 before the judge. And in many cases, the P.S.I.
 8 upstate -- maybe not in New York City, but outside
 9 of New York City -- can make a real difference.
 10 And I think judges throughout the state rely
 11 heavily both on the family courts and in the adult
 12 courts on the recommendations in probation.
 13 But what we said in the Judicial Task force report
 14 is that we ought to raise state aid funding if for
 15 no other reason than the preparation of a
 16 pre-sentence report. And people from Corrections
 17 came in, and people from Parole came in and
 18 testified to the importance of the pre-sentence
 19 report. I submit to you today that I think that's
 20 important. I don't think it's that important as
 21 far -- in terms of following the person through the
 22 system. And you would say, "well, you know, you're
 23 the State Director of Probation, Bob. How can you
 24 possibly be saying that?" We prepare that report

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 2 for judges. It has to go along with the individual
 3 at commitment or we don't accept them into the
 4 prison system, along with some other information.
 5 And it follows that individual
 6 through parole. My question is, after eight or ten
 7 years, how meaningful is a report that was prepared
 8 eight or twelve years before that? And why is
 9 Parole looking at that as the seminal document in
 10 determining what, in fact, should be done with this
 11 individual? Isn't it incumbent upon the Department
 12 of Correction in our state to do its own
 13 assessment -- careful assessment, not only for
 14 classification but for risk and need and
 15 identifying the types of programs and services this
 16 individual will benefit from? And what I'm talking
 17 about is the preparation for real jobs. And while
 18 I agree with Commissioner Horn that there's
 19 integrity in every job -- and I believe that,
 20 including the individual who cleans the wastepaper
 21 baskets in this room. If you do a careful job, and
 22 you take pride in that -- and I think everyone, at
 23 the end of their day, wants to go home and feel the
 24 same pride that, one, they did a good job, and what

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 2 want to save -- I don't want to take too much time
 3 on this, but it reflects our active probationers,
 4 and it talks about the felony misdemeanor
 5 distribution. It talks about the fact that we get
 6 three thousand probationers each and every month
 7 placed on probation, half of which are felony and
 8 misdemeanors. On the second page, however, I want
 9 to talk to you about our A.T.I. programs -- the
 10 Alternatives to Incarceration. And I want to talk
 11 about that for a couple of reasons because I think
 12 it played handily into why we were able to reduce
 13 our prison population -- not only a strong history
 14 of probation regulation, unlike other states like
 15 Texas and California. In 1983 and 1984, New York
 16 State passed a remarkable piece of legislation.
 17 It's called the Classification Alternatives to
 18 Incarceration Order. And the reason that I think
 19 that is remarkable is it gave counties just small
 20 amounts of money to plan about -- plan programs
 21 that reduced their reliance on jail -- on their own
 22 jail systems because they were all overcrowded at
 23 the same time. I would have liked to have seen
 24 that money increase over the years. I'd still like

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 2 they did was important. I understand that. But
 3 let's face it. When we leave the community, there
 4 are only so many jobs for folks. And in fact,
 5 we're an increasingly technical society. And so we
 6 ought to prepare people. I was really encouraged,
 7 also, when I heard Commissioner Horn talk about
 8 literacy. That seems to be something that we
 9 should really be able to accomplish. And yet so
 10 many people in our prison system are illiterate.
 11 So getting back to the job of
 12 Corrections, I think we ought to be more careful as
 13 to carefully assessing risk and need. And -- and I
 14 think that Parole ought to be doing the same thing.
 15 So our report is important because it should
 16 reflect the thinking and motivations of that
 17 individual when they committed that crime six,
 18 eight, and ten years ago. But it shouldn't be the
 19 most important because, indeed, both Corrections
 20 and Parole should know that individual far better
 21 than when Probation was involved with this
 22 individual.
 23 I want to talk about -- I -- I
 24 handed out some papers to you, and basically, I

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 2 to see it increase further. But nevertheless, what
 3 was important was not the level of funding, but the
 4 way they program was designed. If counties
 5 developed alternatives to incarceration service
 6 plans, in turn -- and we reviewed and approved
 7 those as the state authorizing agency -- they were
 8 able to reduce the classification in their local
 9 jail systems. And that was very, very important to
 10 counties -- from twelve to four, in fact. And so
 11 they saved huge amounts of money in overtime. And
 12 when facilities were overcrowded at that time, that
 13 provided enormous relief to them. So that was
 14 important.
 15 What types of programs did they
 16 develop and we fund? Pretrial service programs --
 17 and the numbers there, I need to caution you, that
 18 does not include the New York City C.J.A. --
 19 Criminal Justice Agency -- which screens over three
 20 hundred thousand individuals each year and is
 21 responsible for release -- for release on
 22 recognizance of some one hundred and fifty
 23 thousand. So it doesn't include the C.J.A. But it
 24 includes forty-one programs, forty-two pretrial

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 2 service programs. We developed -- counties
 3 developed, we funded forty community service
 4 programs and fourteen defender-based advocacy
 5 programs, ten task programs. In the last category,
 6 which I think is really interesting, are what I
 7 call the eclectic programs -- you know, the
 8 programs that are unique to New York State and New
 9 York City and upstate, as well. And what are those
 10 programs, because it's important to know them?
 11 They're the Women's Prison Association and Project
 12 Green Hope and Center for Employment Opportunity
 13 and the Center for Community Alternatives and --
 14 and programs like that. They've done an absolutely
 15 wonderful job in changing the lives of individuals
 16 one by one -- and the CASES Program, the Nathaniel
 17 Program that operates in Kings County, as well as
 18 E.A.C. that operates in the Bronx -- tremendous
 19 programs.

20 Apart from all the good that they
 21 did, they achieved something else. And that is
 22 that they achieved a change in judicial thinking.
 23 What we did is -- those programs, I think, changed
 24 the culture of judicial decision-making and laid

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 2 the groundwork for -- for courageous people, like
 3 District Attorney Hines in Brooklyn, to say, "a
 4 second-felony offender doesn't have to go to state
 5 prison. The fact that a person had twelve vials of
 6 crack in his pocket last year, which was a
 7 misdemeanor, and this year, that's a Class D
 8 felony, I can convict that individual, and I can
 9 coerce that individual into succeeding and
 10 treatment. And I can use it -- do it using my
 11 powers as a district attorney." And he did so, and
 12 he did so very effectively, and New York State is
 13 indebted to him and the other district attorneys
 14 that followed suit because they had an enormous
 15 effect -- an enormous effect on the state prison
 16 population with respect to drug-dependent
 17 offenders. And D.A. Brown and Morgenthau followed
 18 suit, and we diverted a whole lot of people out of
 19 state prison, and we got great outcomes.

20 At the same time, Judge Kaye
 21 developed a -- a series of -- of drug treatment
 22 courts. And it's important to talk about the drug
 23 treatment courts. They deal in small numbers. But
 24 they have very good outcomes. There are over two

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 2 hundred drug treatment courts today in the state, a
 3 series of mental health courts, five sex offender
 4 courts -- a little different in their outcome and
 5 their -- their direction, but still important,
 6 clearly. What's important to know about drug
 7 treatment courts is the notion that I want to carry
 8 into probation. And that is the power of the black
 9 robe. It is the responsivity. The thing that
 10 makes the drug treatment court work is that there's
 11 immediate access to treatment, and if there's
 12 violative behavior, that individual is before that
 13 judge the very next day. And what I have said to
 14 the judges last year at the administrative judges'
 15 session -- I'm going to sit in next week at the
 16 judicial training -- is the same thing. I wish
 17 probation enjoyed the same responsivity of judges
 18 in New York State. Indeed, if we did, I think we'd
 19 have similar outcomes, because Commissioner cannot
 20 live in a system where he has to wait for four or
 21 five months for a probation violation hearing.
 22 Everything we know about human behavior, we know --
 23 we exercise this in bring up our children -- that a
 24 response to wrong behavior has to be swift and

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 2 certain. It has to be immediate to the act. And
 3 in the -- one of the things I'm going to suggest to
 4 this commission is that we think about expanding
 5 the powers of probation officers to enact
 6 intermediate sanctions -- the power to up the
 7 level, to ensure that a person goes to drug and
 8 alcohol treatment without going back to the court,
 9 the -- the power to impose a curfew, where
 10 necessary. Give us the latitude to impose
 11 increasingly serious conditions -- and I know that
 12 New York City's been a big proponent of this over
 13 the years and has looked at the State of Oregon
 14 with respect to this -- you know, a graduated -- a
 15 graduated sanction matrix, if you will, of what we
 16 can do to avoid violative behavior. And when we do
 17 violate an individual, if we're before the court
 18 the very next day, I think we'll change offender
 19 behavior. And indeed, if we had a place to put
 20 that individual into a respite, rather than going
 21 through the entire violation process and had him
 22 spend seventy-two hours in jail, rather than the
 23 next year and a half, I think we might bring in the
 24 same message with him, and that what they did was

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2 wrong.

3 Very similar and analogous to
4 this is our agency's quest for a detainer in the
5 legislature. We are going in very narrowly around
6 sex offenders and domestic violence batterers. But
7 I think it is so important for probation officers,
8 when the courts are not in session, and we see
9 violative behavior, to take immediate action and
10 ensure that person is removed from the community,
11 that we arraign within twenty-four or forty-eight
12 hours. And certainly, their due -- due process
13 rights will not be violated.

14 Recidivism -- we measure
15 probation performance by recidivism. When I got
16 there several years ago, probation departments had
17 never seen recidivism data. We -- thank you to
18 D.C.J.S., who we work very closely with, in
19 providing that. How can you -- how can you measure
20 a performance without recidivism? Recidivism is
21 the goal of probation. It's -- it's reducing --
22 it's changing offender behavior in reducing
23 recidivism. If you look at the numbers, you see
24 that twelve months for felony re-arrest. It's

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2 about thirteen percent. Twenty-four months for the
3 twenty, and three years were about twenty-five
4 percent.

5 And I won't go into the details,
6 but I provided you New York City -- the statewide
7 picture, New York City, and non-New York City
8 numbers. They're a little different as -- clearly,
9 you heard Commissioner Horn say that he has --
10 sixty-five percent of his caseload are felons. So
11 he's dealing with a more serious probation or
12 population. So his recidivism is going to be
13 naturally higher.

14 I also provided some of the
15 charts that I read each and every quarter when Sue
16 Jacobson sends them over to me. And again, thank
17 you to D.C.J.S. It's the sentences for felony
18 convictions. And I monitor by county what's
19 happening throughout the state with respect to
20 probation sentences. But if you'll look at the
21 first one -- and it's for felony convictions only,
22 now -- it's for felony convictions off of
23 indictments -- you'll see that, between probation
24 and jail and probation, the split sentences for

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2 felonies and misdemeanors -- that, in fact,
3 thirty-six percent of all dispositions are to
4 probation. On felonies, forty-five percent of them
5 are off to state prisons. So probation has an
6 enormous workload. And then you'll see that broken
7 down by classification and drug offenses, as well.
8 For probation and sentencing, several things -- and
9 I'll -- I'll try to move along as quickly as
10 possible. But I want to talk to you about the
11 nonwaiver of the pre-sentence report. Right now,
12 Probation's experience is that we often find
13 offenders at our doorstep, sometimes beating the
14 paperwork to the door, that the offender has been
15 sentenced to probation supervision -- even a period
16 of five years for a felony or ten years for a sex
17 offender. And we may not have had the opportunity
18 to conduct a pre-sentence investigation. And I
19 will tell you that I think that's just wrong
20 because, when they get there, we -- we have to do a
21 pre-sentence investigation, anyhow. When it comes
22 to probation supervision, a nonwaiver of the
23 pre-sentence investigation is absolutely essential.
24 And we have better outcomes at

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2 sentencing if, in fact, we were present with a
3 recommendation to the judge. I've been a
4 prosecutor. I know about expediency. You know, I
5 know about moving cases, and -- and I know about
6 court schedules. But I also think that's
7 important.

8 Just tailing back a moment on
9 probation violations -- you know, I said that our
10 action has to be swift and certain. One of the
11 things that I -- I would suggest that a sentencing
12 commission -- and certainly something that I expect
13 we're going to pursue as a department next year,
14 and I'm talking to the Office of Court
15 Administration on uniform court rule, is a standard
16 for probation violation rights -- five business
17 days. That's going to seem heretical to a lot of
18 people. Everyone will throw up their hands and
19 say, "how can we possibly do that?" And I guess I
20 would say, "how can we possibly not do that?" The
21 court has sentenced this individual to probation
22 supervision. We have their authority and the
23 public's trust that we're going to succeed with
24 them. If, in fact, we're violating that

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 2 individual, the -- the response by the board -- the
 3 court has to be immediate. So that's something I
 4 would suggest the court -- the sentencing
 5 commission certainly take a look at. The --
 6 COMMISSIONER O'DONNELL: I --
 7 I -- I just want to interrupt you because I -- I
 8 know --
 9 MR. MACCARONE: Yeah.
 10 COMMISSIONER O'DONNELL: -- I --
 11 I -- I know we cut into your time somewhat. But
 12 one of our explicit missions is to look at A.T.I.s
 13 and how they can be expanded to reduce
 14 incarceration rates. Is there -- you know, can you
 15 kind of point us in that direction? I'm thinking,
 16 are there specific offenses, for instance, that
 17 there may be data or we may be looking for data
 18 that will simply show that they either they don't
 19 need probation supervision; they certainly don't
 20 need incarceration, and that if we were to expand
 21 programs for these more moderate offenses that are
 22 alternative completely to any kind of -- of
 23 criminal intervention, that we could save a lot of
 24 money and maybe not make their situation worse --

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 2 MR. MACCARONE: Right. I
 3 understand.
 4 COMMISSIONER O'DONNELL: -- by --
 5 by way of intervention? Do you have ideas along
 6 those lines?
 7 MR. MACCARONE: I do. Let me say
 8 the following, that I don't there's a minor
 9 offender in the state prison system in New York.
 10 You have to earn your way into the state prison
 11 system in New York. And you may hear different
 12 things. But as a prosecutor, I know who goes to
 13 state prison. And if you look at that criminal
 14 history, it's pretty serious. It's not that we
 15 can't make decisions about diverting some of those
 16 and shifting some of those people. I know no one
 17 wants to build additional state prisons, and I was
 18 encouraged to hear the governor say that. So we
 19 need to rely on community corrections. But we need
 20 to be careful in what we do because, in fact, if
 21 indeed we make recommendations like that, it's
 22 going to have some serious repercussions on local
 23 county jails and local -- and county probation
 24 departments.

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 2 Why don't we take the D.W.I. as
 3 an example? The most commonly -- common -- and I
 4 think certainly Paul and Donna can give you better
 5 data on this -- is the D.W.I. population. Now,
 6 who's going to prison for the D.W.I.? Probably, if
 7 you look at the way our laws are structured, the
 8 first gets pled down to a D.W.I. violation. Second
 9 is a misdemeanor. The third is a felony. He's on
 10 probation at that point, And he may have been even
 11 prior to, although not necessarily. And even on
 12 the first felony, he may not be on probation -- may
 13 pay a fine, and he's done. So it may be the second
 14 felony by the time we reach that person. And some
 15 of our offenders will fail from probation and be
 16 even given another chance. So we're talking about
 17 a third- or fourth-time offender that we catch,
 18 that law enforcement -- he comes to the attention
 19 of law enforcement. How many other times is he --
 20 he's -- has he driven while under the influence
 21 of -- of alcohol? However, is there opportunity
 22 here? Yes, there is, because the D.W.I. offender
 23 is an individual clearly, by definition, who owns
 24 an automobile, who pays insurance, who pays car

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 2 payments like everyone else and is probably
 3 employed.
 4 Could we do something different?
 5 I think there's opportunity there, but I would
 6 never say that we should divert that person from
 7 the state prison system and just into probation.
 8 Rather, I'd look at the Suffolk County model. And
 9 that's within the context of a Suffolk County jail
 10 facility. And it's a period of, I think, six
 11 months, the last time that I visited that
 12 program -- six months of incarceration followed by
 13 five years of probation supervision -- every day,
 14 five, six days a week in a treatment milieu and
 15 looking at their chemical dependency because, let's
 16 face it, we're dealing with alcoholics. And
 17 alcoholism is an extremely difficult disease to
 18 change. But couldn't we do something in the
 19 community on that order? Yes, we could. And could
 20 probation be there for the community supervision
 21 aspect of that? Yes, it could. But we've got to
 22 be sure to fund that in a very planful and
 23 intelligent way, because the worst thing that we
 24 could is divert D.W.I. offenders back into the

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2 community and have them re-offend. Fifteen hundred
3 deaths occur on our -- on our highways in New York
4 State each and every year. Five hundred and fifty
5 of those -- about a third -- are D.W.I.-related.

6 Interestingly, we've looked at
7 the D.M.V. One Oh Four Crash Fatality Reports in
8 Probation, and each and every year, thirteen
9 percent of the deaths are persons who are known to
10 Probation. I'd be interesting in working with
11 ITSMAR, the Institute for Traffic Safety and
12 Management and Research, in determining how many
13 parolees are involved in those. We're not only
14 involved in D.W.I.s, but just in risk-taking
15 behaviors. And so that's something we're looking
16 at, clearly, and admission into LOPS and -- and
17 license plate readers and a whole lot of other
18 strategies to manage our population.

19 So when you ask me, Commissioner,
20 is there opportunity, yes, there is. The D.W.I.
21 population, if we did something on the Suffolk
22 County model for certain offenders, I think is
23 possible. I think there's certainly an opportunity
24 to intervene with drug-dependent offenders, and I

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2 think the Rockefeller Drug Laws was our first entry
3 into that -- to that vehicle. I know Class D
4 felons were looked at. I think we ought to
5 probably take another look at them under certain
6 limited conditions and see what their activity is
7 and -- and whether there's opportunity to divert
8 them into treatment. I think there's opportunity
9 there for different populations.

10 COMMISSIONER O'DONNELL: What
11 about initial programs, like first-time offender
12 programs and, you know, programs that really are
13 about -- I guess that's where I was kind of
14 focused.

15 MR. MACCARONE: Yeah.

16 COMMISSIONER O'DONNELL: Do we
17 have enough programs in the state? Are they funded
18 sufficiently? You know, I know we had huge
19 problems with the juvenile justice system and --
20 and, you know, how people -- you had people
21 graduating from that system into the adult system,
22 even at age sixteen. That -- and what about the
23 more minor offenses? I don't know --
24 shoplifting -- those kinds of offenses. Are we

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2 aggressive enough in the way that we're
3 intervening, and do we have the programs available?

4 MR. MACCARONE: Too aggressive --
5 too aggressive from a probation perspective -- what
6 risk and need is demonstrating to us, and all the
7 literature says -- and you can speak to Ed Latessa
8 out of the University of Cincinnati and Dr. Faye
9 Taxman out of the Bureau of Governmental Research
10 at the -- at the Commonwealth, and more recently,
11 she was with the University of Maryland. They
12 looked at that and said there's a population that,
13 in fact, you're going to over-supervise. And
14 because we do have minor offenders who are
15 sentenced to probation -- I'd like to give you one
16 class of offenders that we ought to do something
17 about right away. And that is people who are
18 ordered to pay restitution. They're not placed on
19 probation for any other reason than paying
20 restitution. And so there are a number of those.

21 I don't know the exact number
22 because we're automating probation departments with
23 your financial assistance, as you know, and we'll
24 know better in the future. But there's a whole

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2 class of individuals that are placed on probation
3 for us to collect the restitution and give the
4 collection agency. Might we suggest to you that
5 that should be done by courts, just like a traffic
6 ticket? And you know, if you don't pay, you get
7 the notice in the mail, and you go out -- and in
8 fact, I would think that we get better results with
9 the judge sitting there than the probation officer
10 trying to plead for them to make the next payment.
11 What that might do is free up resources so we could
12 shift and handle another population, because
13 anything we do, frankly, we've got to fund
14 better -- fund probation better.

15 One of the things we're doing -- and I know you've
16 heard this, but for the benefit of the sentencing
17 commission, I think it's important -- is we're
18 looking carefully at these risk and need
19 instruments because we are defining -- more clearly
20 defining the probation population. Out of the
21 first five thousand cases we've looked at, we know
22 the breakdown. Ten percent are the highest risk
23 probationer. Thirty percent is the next level, and
24 so forth and so on. The truth is, we

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 2 over-supervise, and we over-involve a lot of
 3 offenders because all the research says that a
 4 whole lot of offenders, you should do nothing.
 5 They're not going to recidivate.
 6 So don't -- don't over-program those offenders.
 7 You'll be doing, you know, a disservice to them.
 8 That should free up resources. That's going to do
 9 two things for us during the next two years. One,
 10 it's going to necessarily drive us to reconsider
 11 our supervision rule. Right now, our supervision
 12 rule is very structural. Thank God it is. But
 13 it's about context -- counting context and not
 14 determining the quality of those contexts. So
 15 we're all about seeing the person once a week, and
 16 "do you have your pay stub, and are you going to
 17 treatment? Are you remaining in drug treatment?
 18 Thank you, and how were the Yankees last night?"
 19 And off they go, rather than sitting around in a
 20 cognitive behavioral group and saying to that class
 21 of offenders, "what are you doing without a job?"
 22 And we've made some inroads on employment, I need
 23 to say, because we've got a great affiliation with
 24 the National Institute of Corrections, and most

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 2 recently, Commissioner Horn has become the fifth
 3 model resource site in the state, and he sent an
 4 entire team of representatives to every borough to
 5 a three-week, one-hundred-and-eighty-hour training
 6 course by N.I.C. He's going to train probation
 7 officers in employment. They're going to do groups
 8 starting in September around employment because
 9 they need -- they need skill-building, role
 10 modeling about how to get a job, how to obtain a
 11 job, how to keep a job.
 12 So when you ask them is there
 13 opportunity, yes, there is. But just to finish my
 14 thought, the risk and needs is going to drive us to
 15 reconsider how we have contact with offenders, and
 16 that's going to necessarily drive the development
 17 of recommended caseload standards. And I will tell
 18 you that one of the things we absolutely have to do
 19 in this state is we have to have a standard
 20 because, indeed, there are only thirty-seven and a
 21 half hours each week. And how we want to spend
 22 those hours and how we want to allocate resources
 23 is absolutely the most important thing. We just
 24 completed a caseload survey in the last week. I

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 2 sent it out to directors, and I can make it
 3 available so you can see -- the members of this
 4 commission can see the probation caseload sizes by
 5 supervision, by investigation, by criminal, and by
 6 family court in the caseloads. They're very high.
 7 Some of the sex offender caseloads have upwards of
 8 seventy-five and eighty people -- very, very
 9 difficult. And --
 10 COMMISSIONER O'DONNELL: Well,
 11 Bob, we had at least one recommendation that by
 12 having lengthy terms of supervision, probation or
 13 parole, that, you know, maybe you're setting some
 14 people up for failure, that it's so long, that the
 15 people that go to the other level where they're
 16 just -- you know, you're seeing them once a month
 17 or they send in their pay stubs -- or whatever
 18 that -- that kind of reduced supervision is --
 19 doesn't really accomplish much, and yet you keep
 20 people basically under supervision for a much
 21 longer period of time. It's costly. There are
 22 some costs associated with it.
 23 MR. MACCARONE: Uh-huh.
 24 COMMISSIONER O'DONNELL: And

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 2 there is people that violate. Do you -- do you
 3 have a feeling about that or a view on that?
 4 MR. MACCARONE: Truthfully, a lot
 5 of offenders are cut loose early in New York State.
 6 A lot of the inmates -- a lot of offenders are --
 7 their probation is -- they go back to the court
 8 probation officers and request that their probation
 9 status be terminated. If they're succeeding, if
 10 they're employed, they're sober, and -- and they're
 11 succeeding, the probation department will go back
 12 to the court. Now, the problem is, that is
 13 permissive. It is not mandatory now. And so we
 14 could, with careful analysis of the data, begin to
 15 look at that area more carefully so we can move
 16 people through probation at a quicker point in time
 17 because, you know, to parrot what Commissioner Horn
 18 said, you know, it's -- it's -- it's employment;
 19 it's opportunity; it's sobriety; it's housing.
 20 If -- if we're addressing those
 21 major factors, the -- the offender ought to be
 22 doing okay and not recidivating. So -- but in --
 23 I -- I would be -- I wouldn't be honest if I -- I
 24 said here that everyone serves their entire term.

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 2 They do not. And it's an individual decision.
 3 Now, what I want to do in the
 4 next year or so around sex offender management is I
 5 want to drive a model policy that limits their
 6 ability, although I have to say that our
 7 department's doing an impressive job of managing
 8 that population. And I don't know of any probation
 9 departments that are going out to seek early
 10 termination on -- on sex offenders unless it's in
 11 unique circumstances and rare cases and low-risk
 12 cases.
 13 So that being the case -- you
 14 know, I -- I would say, in my closing statement
 15 here, you know, in -- I gave a lot of thought to
 16 the sentencing commission. And, you know, it seems
 17 to me you have many goals. And one is to look at
 18 how we can rely on community corrections greater --
 19 both the A.T.I.s and the probation system. And is
 20 there great potential there? Absolutely. But it
 21 must be adequately funded. And that's an important
 22 consideration. Distinct populations -- I can think
 23 of a few. We've discussed them here. But I think
 24 we've got to do it in a very planful way to ensure

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 2 that the public is protected. Clearly, upstate, I
 3 think there's great potential for the D.W.I.
 4 population where most of the offenses occur. I
 5 think that there -- I would hope that you look
 6 at -- at a -- a risk model and really determine
 7 where sentences should be decreased, where
 8 populations can be diverted, and where some
 9 sentences for violent offenders should be, in fact,
 10 increased.
 11 With respect to determinant and
 12 indeterminant, I think you can look at the federal
 13 system on determinant. I don't think that's
 14 successful. I don't think sentencing guidelines
 15 where they're written in stone serve anyone's
 16 interest, and I think the federal system has its
 17 drawbacks. I understand that the indeterminant
 18 sentence -- and I certainly understand the issue
 19 with parole. If, in fact, you're going to have a
 20 true indeterminant sentence, then the Parole Board
 21 has to get on board and make the decisions that way
 22 and can't continue to give reasons for precluding
 23 release, as it goes back to the original of a
 24 crime. Well, there's nothing the offender can

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 2 really do to change that now.
 3 So, you know, I think that there
 4 has to be incentive in -- within the prison system
 5 to achieve. And if we take that away and say,
 6 "look, your sentence is fifteen years regardless of
 7 your behavior" -- although I have to say, I -- I
 8 was -- I did find very interesting Commissioner
 9 Horn's model of -- of actually adding time on for
 10 behavior. And that's certainly a way to -- I think
 11 that we ought to look at that. But I think that --
 12 you know, I think some of the indeterminant --
 13 well, it's a patched quilt. And the thing that I
 14 like in New York State's sentencing laws, too, it's
 15 kind of like the federal tax return when you think
 16 about it. It's the basic statement, and then it's
 17 a hundred pages of attachments. And at the end,
 18 you find out that you still have to pay your
 19 children's tuition. So -- so in that respect, I --
 20 I think that there's opportunity for change.
 21 We will be sending the commission
 22 a written document with all of our detailed
 23 recommendations to you on changes in restitution,
 24 in P.S.I. things that we're looking at that -- and

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 2 we'll work on that the next couple of weeks and
 3 give you something in writing.
 4 COMMISSIONER O'DONNELL: That
 5 would be really helpful. I am curious -- and I
 6 don't know if -- if any of the research people know
 7 this or you may know this or Murray may -- but are
 8 there any good research studies that -- that show
 9 that probation or supervision really work or
 10 what -- what kind of supervision models work?
 11 MR. MACCARONE: Washington Policy
 12 Institution, Stephen Aos -- A-O-S -- Dr. Faye
 13 Taxman, Dr. Ed Latessa -- we think -- they think
 14 the research indicates what works. For years, the
 15 thinking was, nothing works. I don't think that's
 16 true. I think we know what works. But it is basic
 17 And it's around those things we discuss -- same for
 18 the parolee population.
 19 Just let me say something for the parolee
 20 population and -- and how we do reentry in the
 21 state. I'm absolutely convinced that we have to
 22 change that process. I've talked about it before.
 23 If we make no change, we should
 24 not expect a different result. People cannot leave

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 2 the SHU after fourteen years or Southport after
 3 twelve and be dumped in a homeless shelter and
 4 expect that we're going to succeed with them.
 5 We're not going to. And we've invested a lot of
 6 money. Some people look at it as an investment. I
 7 wish we had more to show for it in terms of
 8 education. Education is important and should be an
 9 important part of the corrections experience.
 10 Where else do we have such a captive population to
 11 achieve those goals? So I think that we have to
 12 step down. Some people call that work release.
 13 And work release, unfortunately,
 14 has a bad connotation to it or has come to had a --
 15 have a bad connotation to it. I think we could
 16 look at it as just structuring the prison
 17 sentence -- restructuring the prison sentence where
 18 there is a stay within a correctional institution,
 19 followed by a step down into a halfway house. I am
 20 convinced people have to have the opportunity to be
 21 employed, to have savings, to be sober. And only
 22 then should they be moved to the community.
 23 Community opposition is -- is certainly an issue
 24 out there. I don't think it's insurmountable. I

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 2 happens except cases are processed.
 3 MR. MACCARONE: Uh-huh.
 4 MR. VANCE: There isn't any -- at
 5 least in my experience, cases are moved, adjourned,
 6 but there really is no impact in terms of stemming
 7 the tide of individuals who go through the system
 8 or stemming the tide by sanctions or preventing
 9 that group from becoming more professional and --
 10 and -- and committing higher crimes. Is there,
 11 from your perspective, a way to look at the
 12 misdemeanor courts differently, perhaps by
 13 decriminalizing as a concept or -- or -- or a
 14 number of minor offenses and sending them to a --
 15 you know, a -- a different kind of resolution,
 16 which is designed to have a personal impact and be
 17 more effective in reserving the misdemeanor courts
 18 for those misdemeanors where you're going to have
 19 tough guaranteed sanctions? It's a general
 20 question, but my observation is, it doesn't do
 21 anything to change your process and -- and really
 22 affect people who go through it, except on the
 23 margins.
 24 MR. MACCARONE: I think you're

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 2 think you go to communities the same way Joanne
 3 Paige did when she built the castle and say, "you
 4 know what? These folks are in your community. At
 5 least now we know where they are." The parolee
 6 population, we're not quite sure. The probationer
 7 population, like parole, we try to do home visits;
 8 we try to have a lot of contact. But there's an
 9 element of the population returning from state
 10 prison that would be better served being in the
 11 step-down facility over a period of time, in easing
 12 that integration back in a very planned way. I
 13 think that is something that we have to do.
 14 COMMISSIONER O'DONNELL: Thank
 15 you.
 16 MR. MACCARONE: Questions?
 17 COMMISSIONER O'DONNELL: Thank
 18 you. We --.
 19 MR. VANCE: I think director --
 20 following up on Commissioner Horn's comments, I've
 21 spent time as an assistant D.A. in Manhattan in
 22 misdemeanor court. It's -- it -- that is an arena
 23 where it seems to me nothing -- with all -- I mean
 24 no disrespect to judges or prosecutors -- nothing

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 2 right. Let me just say by analogy that, you know,
 3 with -- let's look at the truancy issue there. We
 4 don't do much in this country around truancy until
 5 the -- you know, the child has about eighty
 6 absences, and then we, you know, seek to intervene
 7 and bring in educational neglect, which is very
 8 difficult to prove. And so we have these enormous
 9 dropout rates. And yet, in Scandinavia, when a --
 10 when an individual doesn't show up at school, they
 11 send an entire governmental team out to the house
 12 because they know that's a prognosticator of
 13 problems occurring in that family. So I'm not
 14 about ignoring the issue, and I don't think you're
 15 suggesting that but, rather, are looking for more
 16 effective intervention.
 17 I think there can be more
 18 effective interventions, but I think New York --
 19 and New York City is looking at this through some
 20 of their midtown courts, which prove to be very
 21 effective. And that is -- you know, it's a -- you
 22 know, an ordinance or -- not an ordinance, but even
 23 a lesser serious misdemeanor -- a petit larceny.
 24 And the individual comes into court that day and

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 2 goes out and performs the community service almost
 3 that day. And New York City's doing a lot of that.
 4 I think that there is a potential to look at that,
 5 and maybe we do a specialized court. I mean, maybe
 6 that's what we do with all misdemeanors and to
 7 concentrate on some of the more serious felons.
 8 That -- that's something I certainly think is
 9 worthy of looking at because a lot of the
 10 misdemeanors will not re-offend. Once they're, you
 11 know, arrested, they will not re-offend. I may
 12 also say, there's another entire -- entire
 13 population that continues to commit misdemeanor
 14 after -- after misdemeanor, and they fill our jail
 15 system numerous times. And there's no graduated
 16 sentence in New York State. Some district
 17 attorneys have suggested there ought to be. And I
 18 think that might be something we want to take a
 19 look at.

20 MR. BERGAMO: Thinking about the
 21 alternatives, they really are radical. I think it
 22 would be real hard for a politician to sell. I
 23 agree with some of the things you've said,
 24 certainly. I think -- politically, I think it

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 2 couldn't be sold. I -- I agree with you, but I
 3 don't know how to present it politically.
 4 MR. SCHNEIDERMAN: Well, the --
 5 one issue that I -- I'm very interested in that --
 6 looking at your page on A.T.I.s is, what
 7 information do we have? I mean, what if --
 8 we're -- how did -- who is in -- who are -- where
 9 did it come from? Is it counties or by --
 10 particular judges use them, and some judges don't
 11 use them? How much -- it'd be -- I'd be very
 12 interested in getting some more detailed
 13 information because my experience is that a lot of
 14 it is -- is a lack of information about what works
 15 and what doesn't work. Some judges like them; some
 16 judges don't like them. And that we could -- just
 17 by systematizing and getting better information and
 18 having it more current, that does make it easier to
 19 sell.

20 MR. BERGAMO: Yes. I agree.

21 MR. MACCARONE: Yeah. Let me say
 22 that I can give you some more detailed information
 23 now, and that is that two thirds of those hundred
 24 and seventy A.T.I. programs are operated by

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 2 probation departments. So virtually all of the
 3 pre-trial service programs, except two or three
 4 counties -- Monroe, Westchester, and -- and New
 5 York City C.J.A. -- are actually operated by county
 6 probation departments. Similarly, most of the
 7 community service programs are operated by the
 8 probation departments. The task programs are
 9 either part of probation or independent. And the
 10 defender-based obviously are. And then the
 11 remaining fifty or so programs are those
 12 programs -- the Center for Employment Opportunity.
 13 Where do they get their clients from? Well, the
 14 cases -- Nathaniel Program, which runs a very
 15 successful ACT team in intervening and, you know,
 16 the mentally ill, takes its cases out of Rikers,
 17 plus felony indictment. They go to Rikers, and
 18 they interview offenders, and they come back and
 19 advocate before judges. And they're very
 20 successful, as I said, changing lives one at a time
 21 there. So some of the A.T.I.s will get their cases
 22 from direct referral from Probation, throughout the
 23 state. Others will have independent screeners in
 24 court and get their cases and make separate

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 2 arguments. And the Judicial Task force identified
 3 this -- that some of the judges had relationships
 4 directly with the A.C. Task and with the Center for
 5 Employment Opportunity. And as part of the
 6 discussion in moving where D.P.C.A. should be --
 7 and the only reason for arguing where D.P.C.A.
 8 should be in terms of changing it to the courts --
 9 was to build a constituency in there to fund
 10 probation. Most people feel county probation is
 11 doing a good job. And they think that we're
 12 leading in the right direction. But they lack the
 13 resources. And what they really need is the
 14 guarantee and support of -- of the governor and the
 15 legislature on resources and -- because probation
 16 officers want to do the right job. They just
 17 want -- they need the resources to do that.

18 COMMISSIONER O'DONNELL: Bob,
 19 that's a really good point, though. And I'm glad
 20 you brought that there to -- do you have a list of
 21 A.T.I. programs in the state? Is there a glossary
 22 or -- or -- I don't know if you have one, Marty,
 23 that we could take a look at.

24 MR. MACCARONE: Sure.

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 2 COMMISSIONER O'DONNELL: And, you
 3 know, is anyone seriously looking -- did the
 4 commission, for instance, look at how to make that
 5 information more available to judges, where in the
 6 state -- in the state -- in that state these
 7 programs don't exist and --
 8 MR. MACCARONE: Yeah.
 9 COMMISSIONER O'DONNELL: -- and
 10 should be started, if they don't?
 11 MR. SCHNEIDERMAN: It sounds like
 12 some counties have some, and some counties don't.
 13 Some judges have relationships; some judges --
 14 COMMISSIONER O'DONNELL: And they
 15 work --.
 16 MR. SCHNEIDERMAN: -- don't.
 17 It's not --.
 18 COMMISSIONER O'DONNELL: Do they
 19 work is always --
 20 MR. MACCARONE: Yeah.
 21 COMMISSIONER O'DONNELL: -- the
 22 core --.
 23 MR. SCHNEIDERMAN: Yeah. And
 24 then -- yeah.

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 2 UNIDENTIFIED SPEAKER: I think,
 3 two years ago, the New York City Criminal Justice
 4 Agency did an evaluation of the A.T.I.s in New York
 5 City. I'm sure that's -- we can get a copy of that
 6 for you.
 7 MR. MACCARONE: And you'll want
 8 to look at that -- the A.T.I. evaluation --
 9 because, you know, it shows that, you know,
 10 outcomes are about the -- the same.
 11 Let me just say something about
 12 what we're doing with the A.T.I.s, and certainly, I
 13 can give you an index of -- you know, a -- a -- a
 14 guide on where all the A.T.I.s are by county, and
 15 we have that information. In fact, one of the
 16 things we sent it over was just for the -- the
 17 recent reentry hearing.
 18 COMMISSIONER O'DONNELL: Uh-huh.
 19 MR. MACCARONE: But we'll give
 20 that, as well as the 2010 programs we're funding.
 21 And we can provide that information.
 22 But we've done three or four
 23 distinct things with the A.T.I.s since I got there.
 24 First of all, we implemented a careful quarterly

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 2 reporting. So you have the data for the first
 3 time. You never had data. You know, when I got
 4 there, they said, "well, we're so understaffed, and
 5 the agencies won't want to really provide the
 6 data." They must absolutely provide the data
 7 thirty days after the close of the quarter or they
 8 don't get funded that quarter. So they have to
 9 give us the data.
 10 The second thing that we did in
 11 the last two years is we moved all of our two
 12 hundred contracts to performance-based
 13 contracting -- all of it. And but for the member
 14 items on the TANF (phonetic funding) funding and
 15 SASTO (phonetic spelling) and some of the other
 16 specialized fundings, they're all R.F.P. We
 17 evaluate the programs after a year. Anything under
 18 the fifty percent in completions in terms of what
 19 they told us they were going to do, we stopped the
 20 contract, take the money back, turn it into a new
 21 R.F.P. We want to show that we're dynamic in
 22 responding to, you know, the -- the situation.
 23 We are working with D.C.J.S. in
 24 providing tracking data and, for the first time,

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 2 recidivism information on the A.T.I.s. That, too,
 3 is going on the public website because they need to
 4 know how they're succeeding. And some of them are
 5 very expensive. It is not inexpensive. If you
 6 look at some of the Fortune programs and -- and
 7 some of the other residential programs, there can
 8 be upwards of eighteen, twenty thousand dollars per
 9 offender. We do our best to create a very
 10 competitive environment and hold them to the
 11 milestones. If they do not reach their milestones,
 12 they do not get paid.
 13 So we've made it
 14 performance-based contracting. We've provided
 15 recidivism data. And this year, we implemented a
 16 thirty-three percent random sample audit. We just
 17 sent out cases. They have to deliver to us an
 18 exact copy of their file to review to ensure that
 19 they hit all of the benchmarks on those cases, as
 20 a -- and a way of auditing against them. Why is
 21 that important? Performance-based contracting for
 22 the A.T.I.s is the first step in getting them
 23 toward evidence-based outcomes -- looking at
 24 outcomes. And we've had programs that now are

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 2 really concentrated on how are we going to succeed
 3 with this offender. So it's an entire -- entirely
 4 different philosophy than getting the state money,
 5 regardless of whether we perform or not. So --.

6 COMMISSIONER O'DONNELL: Well, so
 7 I don't get fired here as --

8 MR. MACCARONE: Yeah.

9 COMMISSIONER O'DONNELL: -- chair
 10 of this commission on our second meeting, I -- I'm
 11 going to have to bring it to a close so we can get
 12 out of here by five. But I really want to make a
 13 plea to you, Bob, to you, Marty, to work with us.
 14 We're -- we're -- we have a schedule. We're going
 15 to be breaking down into subcommittees in July and
 16 August that are really going to tackle these issues
 17 for a preliminary report, to make preliminary
 18 findings. And we really need your expertise. So
 19 I'll talk to you --

20 MR. MACCARONE: Sure.

21 COMMISSIONER O'DONNELL: --
 22 individually, but I'm really making this plea,
 23 as -- as two of the preeminent experts in this
 24 field, that we could really use your help and

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 2 reentry. And we're going to have a presentation
 3 for our research team. We're going to hear from
 4 Mike Jacobson from VERA on a number of very
 5 important issues. And we're also going to get
 6 some -- some speakers from the courts to talk about
 7 the specialty courts. So it's going to be really
 8 a -- a critical session. I hope you can all make
 9 it. It's in New York City. So we'll get you the
 10 address, and we look forward to seeing you there.

11 Are there any matters that we
 12 need to address before we adjourn today?

13 MR. SCHNEIDERMAN: I just want to
 14 raise one issue. I don't know if it's -- it's
 15 really within the scope of our jurisdiction or not.
 16 But it occurs to me, listening to everyone -- and
 17 this is an incredible array of speakers. Your
 18 staff has done an amazing job of getting that --
 19 the best people in the business. But we're going
 20 to think somewhat, if we're going to have any
 21 impact at all, about financing mechanisms for
 22 programs -- for probation, for parole. It's not
 23 going to do us any good to make a proposal where
 24 our colleagues are just not going to fund -- fund

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 2 support and guidance and direction. So I hope
 3 you'll sit with us and -- and work very closely
 4 with us --

5 MR. MACCARONE: Certainly.

6 COMMISSIONER O'DONNELL: -- over
 7 the summer, if you can.

8 MR. MACCARONE: Surely. Thank
 9 you.

10 COMMISSIONER O'DONNELL: Well,
 11 any pertinent matters everyone would like to
 12 discuss. I just want to make sure everyone knows
 13 our next meeting is June 27th. So we won't be
 14 meeting next week to allow our legislators to pass
 15 some very meaningful legislation as we wind down
 16 the legislative session. Our meeting is going to
 17 be a very important one. I think that all -- both
 18 of them have been so far. But we are going to hear
 19 from Ed Latessa, who Bob Maccarone spoke about,
 20 who's really a national expert on a number of
 21 corrections issues and, particularly, reentry
 22 issues. So he's going to be very important. We're
 23 going to hear from Jeremy Travis, you know, who is
 24 also a national expert and wrote the book on

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 2 it. If we're able to reduce prison populations,
 3 there are cost savings. Is there any way to
 4 suggest or provide that that -- those savings be
 5 reinvested into criminal justice? I don't know.
 6 But somewhere in here, I think the finances of this
 7 have to be addressed, because if we're just going
 8 to rely on the legislature to fund alternatives
 9 with the money they would have spent on prison, I
 10 think we're going to have a problem. That goes --
 11 I mean, probation and parole -- very incredibly
 12 impressive presentations, but obviously --.

13 COMMISSIONER O'DONNELL: Yeah.
 14 Absolutely. I mean, it absolutely is part of what
 15 we have to do. It was part of the executive order
 16 that any recommendations that we're going to make,
 17 we're going to have to think about how they can be
 18 financed, what -- where there's cost savings in the
 19 system. And it's not easy. We didn't really ask
 20 DOCS to address this. But you're asked to address
 21 it frequently, and how can you reduce the
 22 population significantly and not save money?

23 But -- but there's reasons that
 24 I'm sure they'll all share with us. So it -- it

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 2 absolutely is part of it. We have one session
 3 where we have some budget people, but really, it's
 4 going to have to be part of the ongoing work, as
 5 we're working in the subcommittee with our research
 6 staff, having some budget people who will be
 7 working with us on it from the various components.
 8 But it is true. We -- we won't succeed if we have
 9 grandiose proposals and no way to finance them
 10 and -- and no cost savings as a result. So it's
 11 widely said -- yes.

12 UNIDENTIFIED SPEAKER: I tried to
 13 address it, and I did reach out to Budget and talk
 14 to them about this.

15 COMMISSIONER O'DONNELL: Great.
 16 Thank you very much. Thank you to our speakers.
 17 You were magnificent.

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 2 I, Gary T. McGloine, do hereby certify that the
 3 foregoing was taken by me, in the cause, at the time
 4 and place, and in the presence of counsel, as stated
 5 in the caption hereto, at Page 1 hereof; that before
 6 giving testimony said witness(es) was (were) duly
 7 sworn to testify the truth, the whole truth and
 8 nothing but the truth; that the foregoing typewritten
 9 transcription, consisting of pages number 1 to 290,
 10 inclusive, is a true record prepared by me and
 11 completed by Associated Reporters Int'l., Inc. from
 12 materials provided by me.

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 14 Gary T. McGloine, Reporter
 15 _____ Date

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