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
COMMISSION MEMBERS:
Commissioner Denise E. O'Donnell, Co-chair
George B. Alexander
Anthony Annucci, Esq.
Michael C. Green, Esq.
Paul Korotokin
Assemblymember Joseph Lentol
Michael P. McDermott, Esq.
Judge Juanita Bing Newton
Senator Eric T. Schneiderman
Tina Marie Stanford
Cyrus Vance, Jr. Esq.

COMMISSION STAFF:
John Amodeo, Esq.
Michael Barrett, Esq.
Gina L. Bianchi, Esq.
Donna Hall, Ph.D.
Patti Greco

SPEAKERS:
Martin Horn
Robert Maccarone
Rocco Pozzi
Felix Rosa
Terry Salo
Terrence Tracy

MR. ANNUCCI: Good morning.
COMMISSIONER O’DONNELL: We're back --
MR. ANNUCCI: Thank you, --
COMMISSIONER O’DONNELL: -- on
MR. ANNUCCI: Okay. To continue, the -- the -- the -- a lot of the sentencing laws that you see right now are the end result of many, many hours of arduous negotiations between two houses of the legislature. And I think just objectively describing it, without trying to, in any way, describe which side is -- is right or wrong, that there are -- there are very different philosophies in -- in approaching criminal justice. Perhaps the best place to start is in the early '80s when the bond act was placed before the voters of the state to allow money to be -- to conduit to float bonds, to raise money that can now be used to build prisons. And so when we needed to get more prisons, that would be placed before the legislature. It was part of the budget process. And that would start the negotiation process in terms of whether or not the money would be there for additional prisons and, by the same token, what types of reform provisions would be part of -- of that type of legislation. So that's one part of the equation.

Another part is what was going on in the early '80s and well throughout the '90s. We had a drug -- drug epidemic in this -- in this state, especially in New York City. Crack was a very, very serious problem. And not only just the drugs, but the tangential violence that was going along with crack was a very, very serious problem.
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2. So there were court orders in effect throughout the state in various counties that basically put a legal obligation on the Department of Correctional Services. "You have to accept these inmates within this prescribed period of time or you're going to be in noncompliance with this court order." And even if we were operating at a hundred and twenty-five percent capacity, the Court of Appeals, in a case called Airs, said, "existing overcrowding is not a legal excuse. You are required to comply with court orders. And if not, you can theoretically be held in contempt."

3. And that is, in fact, what happened. I spent a lot of time running from court to court, battling contempt orders. And the measure of damages typically was for every man day of noncompliance, whatever the per diem cost was to house that individual, multiply that times the number of days, and that would be the contempt fine that would be imposed upon us to pay. Many, many millions of dollars -- I remember one time when I was pretty unhappy with what they were left with. But we ended up getting the wherewithal to build a lot of new prisons, and in particular, we called them "cookie-cutter facilities." These were seven-hundred-fifty-bed medium-security prisons that we could erect in about eleven months' period of time. We put up a number of them to be able to deal with all of the drug offenders that were coming into our system.

4. But a lot of other changes were made -- the Shock Incarceration Program, the Earned Eligibility Program to increase the number of people being released on parole, case app facilities, which were prisons that were going to provide intensive drug treatment and lead to releases into the community, the Willard Program, first alternative to second felony offenders, and a number of others. All of these things were the end result of a lot of negotiations between both houses of the legislature, which is why, in a lot of ways, just looking at it for the first time, you say -- you say to yourself, "why was this written in this way and that way?" It had the practical result of building prisons, and yet getting people out of prison who are nonviolent earlier, so that we

5. And always, we would go back to the legislature and say, "we're -- we're kind of the pawn in this game. We didn't ask for this situation. We have to accept these state regs. So we need either the wherewithal to build new prisons or change sentencing laws or some mix or combination of the two." And at the end of the day, what happened with regularity is that you would see legislation that basically was a compromise on both sides. And both sides typically, with -- with any good compromise, would be unhappy with what they were left with. But we ended up getting the wherewithal to build a lot of different research reports that we put out. And another thing that I've

6. Now, housekeeping, there's several materials that have been distributed. One is a very detailed outline that I prepare for the criminal justice practitioner -- that's the judge, the D.A., the defense attorney -- to walk them through all of the different programs that we operate. What happens when the individual in court has a sentence pronounced and is let out by the court officers through the back of the courtroom to be delivered, ultimately, to the State Department of Correctional Services? So this is a very detailed explanation of a lot of the different programs, some of which I can only touch on briefly, but you can read about in greater detail on your own.

7. Another thing that I've distributed is a listing that our program planning and research unit prepares with all of the different research reports that we put out. And
they deal with all of our programs, from Merit Time to Shock Incarceration to Earned Eligibility. If there is any one report that anybody wishes to have or any subcommittee wishes to have it, as you do your work, we'll certainly make them available to you today. Ultimately, it is our hope to actually put these reports on our website. We're not there yet. But ultimately, we plan to do that so that any member of the public can get them by going online. Any member of the public can get them now by just requesting, but we -- we're certainly consistent with Governor Spitzer's direction to all government. We want to be more transparent, more open about what we're doing, what we're -- what we're about. And the other handout will be the printouts of -- of the various screens that will be showing a lot of the statistical information.

So with that, let me just turn to the -- to the next screen, which shows the Department of Correctional Services and all sixty-nine of our correctional facilities, as well as the Willard Correctional Services and all sixty-nine of our facilities scattered throughout the four corners of this state. I thought, okay, if I wanted to go growing up in the city, I had a rather myopic view of the state. And originally, by the way, I'm from Brooklyn, New York, like Assemblyman Lentol. And when that is ready, they then telegraph to us that someone is state-ready. That's -- at that point, the clock starts, by which time we have to accept them into our reception centers. The local counties prepare a package of documents that go together with an inmate. And that includes youthful offenders. Anyone who receives a definite sentence of imprisonment is committed to a local facility.

Now, as you can see, we have facilities scattered throughout the four corners of this state. I thought, okay, if I wanted to go to upstate New York, I traveled and traveled, and once I crossed the Tappan Zee Bridge, I'm in upstate New York. When you work for the Department of Correctional Services, and you have to actually travel to all of these different facilities -- some are in -- members of gangs on the streets, and we have to take all these individuals into our system and not only provide for their safe and humane confinement, but we have to try and allow them to leave the system better than -- than what they came into the system.

It all starts with our reception centers. Individuals who are -- are sentenced to state imprisonment are delivered to reception centers. The local counties prepare a package of documents that go together with an inmate. And when that is ready, they then telegraph to us that someone is state-ready. That's -- at that point, the clock starts, by which time we have to accept them into our reception centers, usually within a ten-day period. And we schedule movement into the system.

It's said there are sixty-three thousand eight hundred inmates in the system. It's not a stagnant pool. Think of it as a constantly flowing body of water. Every month, maybe between fifteen hundred, two thousand inmates are delivered.
...
The documents that we get consist of detail on the process and the background of the individual -- what he's accused of. For example, the indictment spells out in great detail what the individual is charged with. If you're indicted for robbery in the first degree, the count in the indictment says, "the People of the County of Kings accuses Defendant of the crime of robbery in the first degree and that, on such-and-such a date, he forcibly stole property from such-and-such individual during the course of the commission of a crime, displayed what appeared to be a deadly weapon -- to wit, a -- a loaded firearm." You have all of that detail spelled out in the indictment. If the individual pleads guilty, then he stands up in open court, and he says in front of the judge exactly what he did, physical act-wise, that constitutes the crime of robbery in the first degree. We do not see any of that information. If there's a degree. We do not see any of that information.

If the individual pleads guilty, then he stands up in open court, and he says in front of the judge exactly what he did, physical act-wise, that constitutes the crime of robbery in the first degree. We do not see any of that information.
we will look up that inmate's case, five years from now, ten years from now, what have you. So both the presentence report and the inmate's attitude when he's interviewed by a correctional counselor -- and obviously, when he's interviewed by the probationer in the preparation of the -- of the presentence report -- are very critical points of time in terms of -- of determining what happens with that inmate.

So that's the reception process. From the reception process, the inmate then moves to some general confinement facility. Following through with the -- with the sentence, my outline has a little bit of sentence calculation. I'm not going to reiterate what Rich DiSimola (phonetic spelling) explained, but there's one point I -- I wish to emphasize. Both with indeterminate and determinate sentences of imprisonment, there are conditional release dates. With an indeterminate, you can earn as much as one third off your sentence. With a -- with a determinate sentence, you can earn as much as one seventh.

Both of them depend solely upon one thing -- what for inmates to behave while in prison.

The other side of the coin is complying with all of the programs that are created for the inmates. So as I said up front -- and there is a statute that specifically says -- and it's Eight Oh Five -- The Earned Eligibility Statute created in, I think, '87 under -- under Tom Coughlin to help with parole releases. But the very first sentence of that -- of that statute says, "every inmate who is committed to state prison shall be assigned a program of work and treatment as soon as practical." So that is our authority to assign a program of work and treatment. We get to decide what the appropriate program is. And that --.

COMMISSIONER O'DONNELL: Tony, can I ask you a question?

MR. ANNUNCI: Sure.

COMMISSIONER O'DONNELL: I -- I thought you said that -- that, you know, whether the -- the inmate gets the good time is based on the behavior when they come to the state prison.

MR. ANNUNCI: Correct.
COMMISSIONER O'DONNELL: Uh-huh.

MR. ANNUCCI: We do have ways --

it's -- it's not often used. But we do have ways

where our employees can make a record of something

that the inmate has done that -- that's very

positive. For example, if somebody was a

participant in the program where outsiders were

brought in, and they addressed youth and said

things like, you know, "you want to avoid drugs;

you want to avoid making the mistakes I did," that

could be the basis for making an entry into their

record, which would play into their appearance

before the parole board. It might also help them

in terms of the time allowance committee if they

looked at that as also further amelioration or to

offset the -- the original act of misbehavior. But

basically, it all comes down to what does the

inmate do after he's delivered to our reception

centers. Any acts of misbehavior that took place

in the local jail can't be weighed against them

when -- when they come -- come to state prison.

COMMISSIONER O'DONNELL: Okay.

MR. ANNUCCI: That's correct.

MR. BERGAMO: Of who's there --.

MR. ANNUCCI: -- those are the --

those are the places that have to house the most

disruptive inmates -- not just the inmates that

have the longest sentences, but those inmates who,

for whatever reason, don't function in a

medium-security facility, which is why the system

very much functions on movement. We transfer

inmates all the time who can't make it in

medium-security facilities or act disruptive or

don't get the level of medical care or mental

healthcare that would otherwise -- they otherwise

need that may be available at some of our larger

institutions. There are many, many factors that

enter -- enter into this. But -- but by and large,

the medium-security facilities and the minimums,

you know, your behavior is what gets you there.

And -- and in particular, so many of our inmates

come from New York State, the downstate regions.

The incentive to behave factors into their ability,

ultimately, to get a transfer to a facility closer

to home. Most inmates want to be housed closer to

home where their families can visit. So that's

another major incentive for them -- them to behave.

But the system constantly corrects itself.

Somebody -- even with a one-to-three sentence, if

they start out in a -- in a medium, but then they

get assaultive or what have you, then we have to

transfer them to a maximum-security facility where

we have much greater security control. There's

much less freedom of movement and -- and the

ability to --.

MS. BING-NEWTON: May I ask a

question?

COMMISSIONER O'DONNELL: Yes, Judge.

MS. BING-NEWTON: I want to just

ask a one-second -- if I could just ask you, you

said that the single most important document in

placement is the pre-sentence report.

MR. ANNUCCI: Correct.

MS. BING-NEWTON: And over the

last few years, it seems to me that the
24 we're still just getting out of the starting blocks and potentially be subject to supervision. Right now, we're dealing with a lot of logistical issues with the new law. We're trying to assemble the requisite records in time, and potentially be subject to supervision. And for the most part, we're trying to -- to do this in such a way that we're not disrupting the normal inmate

MR. ANNUCCI: It -- you're --

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

22 going inside.

21 trying to assemble the requisite records in time, getting them to O.M.H. to be reviewed. And for the most part, we're trying to -- to do this in such a way that we're not disrupting the normal inmate

20 since this is so new, I don't know exactly what's going on inside.

19 that's affected anything. Can you tell us what --

18 affected sex treatment programs in prison, whether that's affecting anything. Can you tell us what --

17 processes now about good time, whether that's relevant, but with the advent of civil confinement and sex offenders who are in prison and the thought

16 and sex offenders who are in prison and the thought

15 on resuming their old ways, and they felt it was worth staying in prison for that additional period rather than go out at the conditional release date

14 individuals who were just -- obviously, were intent on resuming their old ways, and they felt it was

13 into custody and do the best we can.

12 pre-sentence report, we have to accept the inmate

11 on the inmate. But yet, if -- if it qualifies as a

10 providing the county probationary departments with

9 enough resources for them to fulfill that -- that mandate?

8 There have been instances where it was very

7 information in the pre-sentence report as possible.

6 So on the one hand, the -- we do want as much

5 the -- the appropriate resources that they have.

4 there -- there was a sentiment that they don't get

3 created that looked at a number of things and that

2 know there was a separate commission that was

1 pre-sentence reports have contained less and less information. I call them sentence-light reports.

The other side of the coin is if we require or mandate a certain minimum quality to -- to the pre-sentence report, then we'd have to be prepared to answer the question, are we providing the county probationary departments with

I just --

Tony, before you do, MR. LENTOL: Yes.

I have kind of a question. I don't -- I don't really know if it's relevant, but with the advent of civil confinement and sex offenders who are in prison and the thought

That needs -- certainly, I think that that needs to be addressed, but attempted to address a big issue.

simple answer is that the -- the better quality

MR. ANNUCCI: That -- that's a very good question, Judge. The -- the -- the

We can't always provide quality.

limited staff. We got limited funding,

limited staff. We can't always provide quality.

And -- and certainly, it is in our interests, as a -- as an agency, to get as much information as possible. By the same token, we also have to be sensitive to the potential costs that are being borne by the counties presently and -- and whether or not their county probation departments have the resources and -- and the support that they need.

I called it a "sentence-light report," and I think that's fair. And I think that the -- the -- the appropriate resources that they have.

And -- and certainly, it is in our interests, as a -- as an agency, to get as much information as possible. By the same token, we also have to be sensitive to the potential costs that are being borne by the counties presently and -- and whether or not their county probation departments have the resources and -- and the support that they need.

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23 here in the county because of the lack of resources. One of the things that certainly was

24 resources. One of the things that certainly was

23 or not their county probation departments have the

22 borne by the counties presently and -- and whether

21 sensitive to the potential costs that are being

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16 and sex offenders who are in prison and the thought

15 on resuming their old ways, and they felt it was

14 individuals who were just -- obviously, were intent on resuming their old ways, and they felt it was

13 answer to any supervisory authority. So we had the

12 wanted to go into the community without having to answer to any supervisory authority. So we had the

11 date because they wanted to max out, because they

10 deliberately remained in prison beyond their C.R.

9Skimpy -- individual reports. And it was very difficult to make any kind of intelligent decisions on the inmate. But yet, if -- if it qualifies as a

8 It's a very good question, Judge. The -- the -- the

7 information in the pre-sentence report as possible.

6 So on the one hand, the -- we do want as much

5 the -- the appropriate resources that they have.

4 there -- there was a sentiment that they don't get

3 created that looked at a number of things and that

2 know there was a separate commission that was

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

Inmates, years and years ago, got
the message that if they didn't participate in sex
offender counseling, if they raised issues such as
requiring me to talk about my crime could violate
my Fifth Amendment rights because I appealed my
conviction -- they still understood that that would
mean that they will stay in prison beyond the C.R.
date. Most inmates do want to get out as soon as
possible at their C.R. date. So they do -- they --
they do understand that failing to participate in
the program meaningfully to discuss their
background, to discuss their crime, will -- will
potentially lead to -- to additional incarceration.

But I think it's too early to tell whether or not
they're thinking long range in -- in potential
civil commitment. I think, like anybody else, you
want to hope for the best. You want to think that
you would be able to explain to anybody who is
no longer dangerous, that you've turned your life
around, and you can safely be released into -- into
the community. But we are really, very, very new at
this. And so a lot of these things have yet to
coalesce so that we can really make intelligent
determinations on that.

Okay. Moving -- moving along --.

COMMISSIONER O'DONNELL: Tony, do
we have a microphone there that can be turned on?

Do we know? Because it is a little -- the
acoustics here are -- well, I -- I was asking more
the technical people, but could you just speak a
little bit louder, Tony, and I'll get somebody --

MR. ANNUNCI: Sure.

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

MR. ANNUNCI: Okay.

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

MR. ANNUNCI: Continuing along,
on -- on the screen, you can see the -- the curve
on -- on our prison population. I think the
earliest year is about 1970. So that's a dramatic
growth in -- in the inmate under custody
population, starting in -- in 1970 or thereabout
when we had, you know, about twelve thousand
inmates. We, again, peaked at seventy-one thousand
six hundred and are now back down to sixty-three
thousand eight hundred. And a lot of it was the
result of the special release programs that were
created. Probably the biggest and the most
significant and the one I'm most proud of is -- is
the Shock Incarceration Program, which came about
1987.

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

And he said, "your boss,
 realize that this is going to be a brand-new type of incarceration. It's going to be difficult, and it's going to be demanding. And if we're going to put inmates through it, we have to have a way to give them an incentive to do this. And we came up with the idea of time off the minimum sentence. The rule up until that point in time had been, if the judge says you have a three-to-nine sentence, no matter what else, that judge knew you're doing three years. You can't get out any earlier. And that had been an ironclad component of our sentencing scheme for many, many, many years. With the advent of Shock, now comes an entirely new twist to the rule, which is that a person who we select and approve to go into this program, if he successfully completes it, can be released after six months -- in effect, buying a significant amount of time off of the minimum sentence.

MR. ANNUCCI: No. I don't think it's affected the -- the effectiveness. I don't think it's affected the -- the effectiveness. I think it's affected the -- the effectiveness. I think it's affected the -- the effectiveness.

MR. ALEXANDER: On -- you mentioned the age to -- current age now is about age forty. Has that affected the effectiveness of the program -- of Shock?

MR. ANNUCCI: No. I -- I don't think it's affected the -- the effectiveness. I think it's affected the -- the effectiveness.

MR. ALEXANDER: On -- you mentioned the age to -- current age now is about age forty. Has that affected the effectiveness of the program -- of Shock?
24 being supervised in the community. We want to get
23 environment of the -- of the Shock facility and
22 want to have a long hiatus between the structured
21 meet with their parole officer, because we don't
20 return home, the very next day, that Friday, they
19 happen on a Thursday so that when the inmates
18 always arrange, for example, for our graduations to
17 So it is a very, very worthwhile program. We
16 one -- one billion dollars at this point in time.
15 of incarceration avoidance costs is well over
14 York State, as a result of this program, in terms
13                   The cumulative savings to New
12 very, very well in it.
11                   And just very quickly, if -- at
10 of, and we want to continue it.
9 is one program that we in New York are very proud
8 consider would be allowing someone to come into the
7 experience. There are no magic bullets in -- in
6 the award for improving the most in his math score.
5 reading score. We give to another inmate the --
4 the award for having improved the most in his
3 the leadership award. We give to an inmate the --
2 accomplished. For example, we give to one inmate
1 their attention and keep it as -- as much as -- as

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

MR. ANNUCCI: The recidivism
rates, I believe, are about the same. You know,
that doesn't sound like a ringing endorsement. But
by the same token, when you look at it from the
perspective of the candidates that are successful,
that's important. We know, Mr. Chairman, that a
lot of these young offenders do very well in a
very, very structured environment, and that's what
they'll get in a shock facility. It's very tough
to continue that kind of structure into some of the
communities that some of these offenders are -- go
back to, as -- particularly when drugs are involved
in -- in tough neighborhoods. But we have had a

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

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

COMMISSIONER O’DONNELL: Tony, is the Shock Program six months for everybody?

MR. ANNUCCI: Yes.

COMMISSIONER O’DONNELL: And have you played with any variations of that -- whether, you know, longer period of time would improve recidivism or whether there could be a longer Shock Program for some more serious offenders or -- you know, do you know if any other states are doing that or if we've experimented with it?

MR. ANNUCCI: Well, I -- I know we haven't experimented with it, and I know we haven't really looked to vary it. I think six months works well for us. It's very carefully structured -- the different phases that -- that the inmates go through. It -- it seems to work well. But I guess that's a fair issue --

Question --

MR. ANNUCCI: -- that we can --

COMMISSIONER O’DONNELL: -- as to what they're doing --.

MR. BERGAMO: How many facilities have a Shock Program?

MR. ANNUCCI: I think the entire facility, basically, is -- is a Shock facility for the ones that we establish because we want to really separate Shock from -- from general confinement facilities. So --.

MR. BERGAMO: Let me make sure I understand you. Every group was in a Shock --?

MR. ANNUCCI: No, no, no, no.

The -- when -- when -- for the facilities that are Shock facilities, --

MR. BERGAMO: Okay.

MR. ANNUCCI: -- basically, the -- their -- their entire mode -- mode is -- is Shock.

MR. BERGAMO: Okay.

MR. ANNUCCI: For example, Lakeview is -- is a large Shock facility. We also
MR. BERGAMO: On an annual basis, what percentage of new inmates end up going to Shock, as opposed to traditional incarceration?

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

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

COMMISSIONER O'DONNELL: Really --

MR. ANNUCCI: Yes.

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

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

MR. ANNUCCI: -- confinement --

right.

COMMISSIONER O'DONNELL: -- sentence?

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

MR. ANNUCCI: Yes.

COMMISSIONER O'DONNELL: -- facilities?

MR. ANNUCCI: Absolutely. Yes.

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

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

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

MR. VANCE: Parole violations.

MR. LENTOL: Tony, I don't know if you answered this question. Or if you -- if you did, I didn't hear it. What's the recidivism rate comparison in Shock for the older inmates as opposed to the younger inmates?

MR. ANNUCCI: Paul, did we -- did we do any studies that compare Shock recidivism rates by age of offender?

MR. KOROTOKIN: Well, the younger offender traditionally has a higher recidivism rate than the older. We -- we didn't necessarily look at older versus younger. We looked at older versus older -- people who go to Shock versus people who were probably ineligible for Shock. And the Shock Incarceration Program, irrelevant of the age, improves the recidivism rate at -- at each strata. And we looked at groups of under thirty, thirty to thirty-five, and up to forty.

COMMISSIONER O'DONNELL: Could you give us that percentage of inmates that are eligible actually elect to do the Shock?

MR. KOROTOKIN: Sure.

COMMISSIONER O'DONNELL: -- data from that study? I think that's something we'll want to --

MR. KOROTOKIN: It may have been part of the --

COMMISSIONER O'DONNELL: -- to take a look at.

MR. KOROTOKIN: -- annual report that we --.

COMMISSIONER O'DONNELL: That is here -- uh-huh. Okay.

MR. ANNUCCI: Sorry. Was there a question in the back?

UNIDENTIFIED SPEAKER: Yes.

Thank you.

Do you find that there's more eligible applicants than there are actual spaces in Shock? And if that is the case, what would you do --

MR. ANNUCCI: No.

THE WITNESS: -- with the exception --.

MR. ANNUCCI: No. Clearly, if we had more applicants than we had Shock spaces, we -- we would convert more space for -- for Shock.

It -- it's that important to us. No one is turned away who would otherwise be eligible. We see again, unfortunately, the opposite trend, where we're losing some people who would otherwise be good candidates for the program because the amount of time on their underlying sentence is not long enough for them to have the incentive to go through six months of very tough, structured boot camp-style existence, but getting the benefit of time off their sentence.

MR. KOROTOKIN: Well, the volunteer rates are very high. About two thirds of some -- some don't get in for psychological reasons; some don't get in for health reasons. But about two thirds, seventy percent of those that are eligible serve. And then about seventy percent of those who serve get in.

MR. ANNUCCI: John? Yes.

MS. AMODEO: Tony, I -- I just wanted to clarify. Is it true that if the defendant is either in on a violent felony or has a violent felony history they're not eligible for Shock?

MR. ANNUCCI: If -- if you're in on a violent felony, the statute says you're ineligible. If you have a violent felony history, the screening committee looks at -- at your history and exercises its discretion whether or not to let you in or not. It all depends. I mean, the
MR. SCHNEIDERMAN: Just --

COMMISSIONER O'DONNELL: -- and

let's move because I want to keep --.

MR. SCHNEIDERMAN: -- just really

an -- an addendum. So -- it would also be
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work-release facility for two nights a week, depending.

There were executive orders under the former governor, Five Point One and Seventeen, which greatly restricted the eligibility of who -- who could go into work release. And that executive order basically said, anybody convicted of a violent felony offense that involved the use or threatened use of a deadly weapon, dangerous instrument, or the infliction of serious physical injury was ineligible for any program or work release. The statute, by the way -- also, in addition to that -- has a blanket restriction against all homicide offenders. And remember, at the time, Coughlin was the commissioner, and the legislature was very upset with the large numbers of inmates that had been participating in this program, a number of whom had committed offenses. And they then enacted that restriction, and we didn't differentiate violent from nonviolent because, as you know, we have every degree of homicide, starting with Murder One, Murder Two, all the way down to the Class E nonviolent criminally negligent homicide. They are all ineligible by the statute, as well as former governor's Executive Order Seventeen. Governor Spitzer took office. He did adopt Executive Orders Five Point One and Seventeen. The issue was new on executive order, which is attached to your materials -- contains the identical restrictions but adds additional exclusionary crimes -- acts of terrorism, for example, the use of a child in a sex performance in Article Two Sixty-three. Anybody convicted of that is ineligible for any program of temporary release. It means those individuals will remain incarcerated in a general confinement facility until their release within accordance with law.

COMMISSIONER O'DONNELL: -- in the state?

MR. ANNUCCI: Yeah. We -- we've -- the populations of our work release facilities have been significantly reduced. To put this in perspective, one of the reasons that these statutes were enacted is because the budget for the department in the early nineties was crafted on the principle that, among other things, we would maintain a population of sixty-three hundred at any one time in work release, which was a very, very high number -- very tough to manage and very tough to keep under control. That led to a lot of crimes being committed, a lot of incidents, and a lot of backlash. And that's when the legislature passed their restriction on homicide. Right now, the number of participants that we have in work release, I think -- and it is -- it should be on the population sheet. We had sixty-three hundred. We start -- if the population is there, more people, on their merits, were approved for the program. We -- we could -- we could deal with it and provide spots for them in -- in the facility. Another major program we have, alcohol and substance abuse treatment --

COMMISSIONER O'DONNELL: Tony, before you get there, though, I -- I know there's at least some concern or criticism that there just aren't enough work release facilities. Is that accurate? Of you have, you know, plenty of beds for work release --

MR. ANNUCCI: Sure.

COMMISSIONER O'DONNELL: -- in the state?

MR. ANNUCCI: Yeah. We --

we've -- the populations of our work release facilities have been significantly reduced. To put this in perspective, one of the reasons that these statutes were enacted is because the budget for the department in the early nineties was crafted on the principle that, among other things, we would maintain a population of sixty-three hundred at any one time in work release, which was a very, very high number -- very tough to manage and very tough to keep under control. That led to a lot of crimes being committed, a lot of incidents, and a lot of backlash. And that's when the legislature passed their restriction on homicide. Right now, the number of participants that we have in work release, I think -- and it is -- it should be on the population sheet. We had sixty-three hundred. We start -- if the population is there, more people, on their merits, were approved for the program. We -- we could -- we could deal with it and provide spots for them in -- in the facility.

COMMISSIONER O'DONNELL: And now we think the number is five or six --?

MR. ANNUCCI: Paul, do you have that ready?

MR. KOROTOKIN: As of yesterday, it was seven seventy-two --

MR. ANNUCCI: Yeah. It should --

MR. KOROTOKIN: As of --.

MR. ANNUCCI: As of yesterday, it was seven seventy-two --

COMMISSIONER O'DONNELL: Only --.

MR. KOROTOKIN: -- seven hundred and seventy-two.

MR. ANNUCCI: Seven hundred and seventy-two.

COMMISSIONER O'DONNELL: Throughout the whole state system?

MR. BERGAMO: Why so low? It seems incredibly low.
MR. ANNUCCI: Well, you have -- you have the restrictions that -- that say who can and who can't go into work. We lost a lot of candidates by virtue of -- of violent felony offenses. Maybe this is -- these are appropriate questions to -- to ask for subcommittees to work on -- whether or not there's a way. And we are looking at ways right now, as an agency, do an alternative type program for violent felony offenders that are going to be released under the rubric of the transitional release facility concept the Governor put forward. We'll -- we'll be able to -- to move these individuals into these facilities in the community. It won't be work release. It won't be furlough. But there may be ways that we can bring community representatives into the facilities to work with them because these individuals are definitely getting out of prison, no matter what. So if you have a release date for this individual two, three, four months down the road, you know he's definitely getting out. It makes sense to move them into these types of facilities and enhance the transitional services too.

COMMISSIONER O'DONNELL: Okay. But just so we're clear, it used to be, at one point, sixty-three thousand. MR. ANNUCCI: Sixty-three -- COMMISSIONER O'DONNELL: And now --. MR. ANNUCCI: -- hundred. COMMISSIONER O'DONNELL: Okay -- sixty-three hundred. Okay. Sixty-three hundred, and now it's down to around seven hundred and seventy-two. Okay.

MR. SCHNEIDERMAN: And Tony, is it --? UNIDENTIFIED SPEAKER: Sorry. Go ahead, Eric. MR. SCHNEIDERMAN: Just -- and do you have any stats on recidivism for people participating in work release?

MR. ANNUCCI: I know we had -- I think if you're asking me if we have stats on -- on the crimes that occur in the community --

COMMISSIONER O'DONNELL: Okay -- one more thing to address. Okay.

MR. LENTOL: Yes. I -- I think it's fair to say, isn't it, Tony, that programs like work release and furlough and parole, for that matter, have been affected by politics, and that you have -- if you have a crime committed, somebody who's on parole, somebody who's on work release or furlough that is going to be a natural trend towards reducing who's going to be eligible for that program, both legislative and by the executive cracking down on whoever the administrator of those programs are?

MR. ANNUCCI: Yeah. I think that's a fair assessment, Senator.
the programs in the exhibit -- talk about the case study.

We had twenty-six thousand individuals, including the two thousand -- closer to twenty-seven thousand, slightly more than what happened in 2005. But compare that to 1993, when we had thirty-five thousand eight hundred.

Sixty-three percent were new commitments.

Now, we released almost an identical number -- twenty-six thousand three hundred and seventy-one. Forty-nine percent were released by the action of a parole board or presumptive release, which is another mechanism for release. One third are conditional releases, meaning that they were entitled to release as a matter of law, not by the acts of the parole board. Two thousand seven hundred and forty-seven were offenders who reached the maximum expiration date of their sentence.

This is a snapshot of who's actually in our system right now. Again, the highest -- twenty-one five thirty-eight.

Currently, fifty-seven percent are violent felons. So we have followed the trend, though, of trying to increase the number of violent felony offenders in prison and release nonviolent offenders, drug offenders -- the groups that want to leave earlier than would otherwise be the case. So this is a snapshot. We take our picture. Fifty-seven percent are serving violent felony offenses. Now we've increased by over fifty-eight hundred. At the same time, re-impose has increased by two hundred compared to 1997. And again, they made up back then fifty-three point three percent. Now it's up to fifty-seven point four percent at year close.

Twenty-two percent of inmates under custody at December 31st were drug offenders.

So in the big snapshot, the number of drug offenders in DOCS custody has decreased -- and these are the last nine years -- a remarkable thirty-nine percent over that period. That's a significant reduction in the number of drug offenders that are in the system when you take that snapshot on December 31st.

On number seven, we did not put up parole, by the way. These individuals were placed under one charges. We have one last inmate on death row waiting to see what happens with the Court of Appeals' decision in his case. This chart is a little hard to read, but you can read it on the handout, as it tells you breakdowns by crimes and comparison percentages since -- from 1997 to 2006. Thirteen thousand nine hundred twenty-eight is the actual number constituted at twenty-two percent. And as a proportion, it's the lowest it's been since 1987. And the Class B's, as you might guess, are the largest percentage -- five thousand Class B felons. You know, there are charts that break it down by first felony versus second felony, and as we reviewed last week, we know that first-time 'B' drug offenders have to go to state prison. We know the second time 'B' drug felons also have to go to state prison and can't go into Shock, although all the predicates can go into Shock. We know that the Willard Program -- that people who are repeat Class D and E drug felons are able to go to Willard, which is a ninety-day program comparable to Shock. But we know that if you previously were convicted of an 'A' or 'B', including a drug 'B', you were ineligible for Willard, which might -- the question of whether or not, as a commission, we should consider whether that would be one change we'd want to make.

COMMISSIONER O'DONNELL: Tony, could you just talk about Willard --

MR. ANNUCCI: Sure.

COMMISSIONER O'DONNELL: -- and put it into perspective here? You were going to go into drug treatment --

MR. ANNUCCI: Yeah.

COMMISSIONER O'DONNELL: -- is -- is a ninety-day drug treatment program, and -- and it is the -- the first time that the state bought into an alternative to the
One of the things we have seen automatically disqualify you from Willard. Look at is whether or not having a prior 'B' should be sentenced to parole. So the way it works is the judge imposes the underlying sentence of parole. The other change we could consider whether or not the judge should be able to sentenced to -- to Willard without parole has massaged their regulation -- changed.

There are two types of individuals that can go to Willard. One is the judicially sanctioned, as we deliberately kept it as a state department facility. The other is technical parole violator. Parole has massaged their regulation -- changed.

One of the things we know -- and this is one of the things that I think the department is, some judges, with the D.A. and defense consent, have deliberately engineered Willard sentences for individuals who clearly weren't really drug offenders in a conventional sense. These were individuals that were extremely ill or debilitated. They just wanted to get them the shortest incarcerated time the law would permit. So they engineered Willard dispositions, which was a little bit of a challenge for us because we don't have complex medical facilities at Willard to deal with complex problems, including, sometimes, women about to -- to give birth, you know, in the eighth month.

One of the things that I think -- I think Category Two -- it's almost like a mandatory commitment to Willard. So if they violate their parole, the -- they're going to Willard. 

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

COMMISSIONER O'DONNELL: Tony, I think -- I think Willard is going to be pretty pivotal to -- to what we do in terms of a model and how it works and how it doesn't. What kind of good data do you have on Willard -- if it's working, if
it isn't -- in terms of recidivism? And if not, is
it something that you think we should start right
now and try to do rather intensively over the next
two or four months, six months?

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

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

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

MR. ANNUCCI: Yeah.

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

MS. BING-NEWTON: Can -- can I
ask a question? A -- a question is, sensible
amendments to the Willard policy, since these are
really supposed to be people with drug problems,
adiction problems? And we pretty much know from
Drug Court that ninety days is not going to solve
your addiction problems. Has there been any
consideration of consecutively leading the ninety
days' parole -- that we may need ninety days and
then into a long-term non-jail drug treatment
I can show you -- I can move on to the charts to just show you the result of the Rockefeller Drug Laws and what has happened with re-sentencing, what has happened with supplemental merit time and who's been released from our custody as a result of that. I'm just going to skip over this stuff.

Okay. As of May 31st, two hundred and fourteen Class A One drug felons had been re-sentenced, and at least six were women. On average, these two hundred and fourteen inmates were released an average of forty-nine months before their previously calculated earliest release dates. In all, a total of three hundred and fifty-four had actually been re-sentenced, though some number of them obviously are still in our custody until they've reached their release dates. With respect to the 'A' Twos, a total of a hundred and fifteen have been re-sentenced and released. Ten were women. On average, they served an average -- they stayed, on average, twelve months before the previously calculated earliest release dates. In total of three hundred and twenty-eight 'A' Two drug offenders were re-sentenced. Again, supplemental merit time -- this is kind of a retroactive -- a review to measure for the Class 'A' Two drug offenses -- earned an additional one sixth off their minimum sentence for a total reduction of one third. And two thousand -- as of May 7th, two thousand one hundred and eighty-one drug offenders were able to earn the additional one sixth credit. They stayed an average of six point five months before their merit eligibility dates. So there's a significant reduction in the amount of time drug offenders would have otherwise been required to serve -- serve in state prison. And the last thing is, merit time for 'A' One drug offenders -- these are drug offenders who didn't want to get re-sentenced -- they can get one third of their minimum sentence if they qualify for merit time. And Thirty-three 'A', when drug offenders have earned merit time and been released -- so the fifteen-to-life individual earned merit time and

COMMISSIONER O'DONNELL: Okay. Tony, could you just touch very briefly on the other drug programs?

MR. ANNUCCI: Sure.

COMMISSIONER O'DONNELL: Because we -- we might come back to it if we can't get it in here, but I think it's pretty important that we all have that understanding.

MR. ANNUCCI: The -- the other major drug program we have is called the CASAT program -- Comprehensive Alcohol and Substance Abuse Treatment Facility. Inmates, to get into this program, have to be otherwise eligible for temporary release, which means they're subject to the Governor's executive order in terms of eligibility. The Rockefeller Drug Law said that they can get into CASAT when they're within thirty months of their earliest release date. Prior law had been two years. So we can get them into this program earlier. The judges now have the ability to impose a court order on an individual for us to enroll them into CASAT. And it's basically structured as a three-phase program, phase one being at one of these facilities where they have six months of intensive drug treatment in a therapeutic community. It's a competency-based program. And they -- if they successfully move on to phase two, which is in a work release facility slash residential treatment facility, they can continue to get drug treatment. They'll go out and get jobs, hopefully. And ultimately, they -- they'll be released to phase three, which is under the supervision under the Division of Parole. At one time, as one of the compromises to negotiate building more prisons, there was a cap placed by the legislature on -- on the number of beds. It's right in the statute -- two thousand five hundred and fifty -- because, when these people were graduating, they were, in effect, granted a lot of liberty. They were in the community. A lot of them were being made very porous. So one of the -- the tacks was a negotiated settlement that -- that put a cap on the total number of beds. In actuality, you know, the numbers, like the numbers for work release, are

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

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

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

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

MR. VANCE: And --.  
COMMISSIONER O’DONNELL: Those  
programs getting them out of the system earlier.  

MR. ANNUCCI: All drugs --  
COMMISSIONER O’DONNELL: -- they  
keep people out --  

MR. ANNUCCI: -- the courts we  
have --. 
COMMISSIONER O’DONNELL: -- 
unless they have to, but --.  

MR. ANNUCCI: All those things,  
also, divert an individual before they’re even  
considered. 
MR. VANCE: And presumably  
keeping them out because the percentage of drug  
offenders still remains this high percentage --  
lower, of course, than nine years ago. 
COMMISSIONER O’DONNELL: Thank 
you. And -- and -- uh-huh. 

MR. MCDERMOTT: When you looked  
at the New York State Inmate population and the  
statistics on how many are violent, nonviolent,
drugs, is there anything peculiar about New York
when you compare it to the rest of the nation? Or
is it -- is this -- are those numbers pretty much
stable throughout the country? And is there
anything that -- we have more of this, and we have
a --

MR. ANNUCCI: Yeah.

MR. MCDERMOTT: -- a lot less --?

MR. ANNUCCI: Paul, have -- have

we done any kind of studies like that?

MR. KOROTOKIN: We used to have

more drug offenders than -- than most states. And

it all depends on lack of the drug laws. We

reformed drug laws because of that. We're now more

in line with what other states are.

Can I respond, also, to the other

question? We had four hundred and eighty-five

people who came to Willard from courts.

Sixty-eight of them were standard Willard cases in

which they do three months at Willard, followed by

six months of intervention treatment, before a

six-month community program.

COMMISSIONER O'DONNELL: So we

just try to play devil's advocate because these are

the things that we, in the legislature, heard about

Willard. And of course, you know, some of it --

maybe part of it sometime may not be true. But the

fact of the matter is, I think you -- you mentioned

that -- the way Willard was set up regarding the

offenders requiring the consent of the D.A. in

order to put them there, and that that should be

taken out of the statute in order for a program

like that to work. That's fairly clear. And

the -- the aspect of why technical violators go to

Willard is because you didn't have enough drug

offenders to send to Willard in order to fill up

the place. Is that a fair statement?

MR. ANNUCCI: Well, I don't -- I
don't know if I -- I would characterize it that

way. I think --.

MR. LENTOL: Well, I'd like to

hear it because that's what -- that's what we

heard.

MR. ANNUCCI: Well, I -- I --

I'll certainly defer to -- to my colleagues from

Parole to -- to address who -- parole violators

are going to Willard. But clearly, parole violators

are going to come back to state prison if they

violate the conditions of the parole. Separate and

aside from Willard, if they are not reporting or

testing positive for drugs or they're not making

curfews, and the parole officer cannot get them
to -- to conform to what's expected of them in the

community. If they're not going to Willard, but

they're otherwise legitimately a violator, they're

going to come back to state prison, and it's going
to be for a lot longer period of time than --

than -- than -- than Willard. So the real question

is, do -- do we need to have more alternatives

between violating somebody's case and continued

supervision in the community, something to get

their attention? For example, someone will speak
to that. Does it make sense to give the -- to give

a parole officer the ability to get somebody's

attention, to lock them up for a weekend but then,
you know, withdraw the warrant so that he knows,
you know, there's a consequence if I'm not going to
respond to supervision; there's a consequence if I
don't report? And the consequence is, I could end
COMMISSIONER O'DONNELL: Okay.

And we're going to -- just to try to stay on schedule, I would like to have people -- if you have it when it's fresh in your mind, suggestions about issues you want to do research on or want us to look at further, because I think the -- a number of things that Tony touched on are part of really our core mission and responsibilities and -- and where we're going to look to programs and whether they're working or whether they should be expanded. But I -- I do -- I came into this with the notion that we have to look at Willard and how it's functioning and policies with the notion that we should continue to have veto power over somebody's participation in Willard?

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

MR. MCDERMOTT: Have we invited somebody from the District Attorneys' Association to speak to us about their position on whether they think it's important we hear from them, as well.

MR. BERGAMO: Thank you very much.

MR. ANNUCCI: Thank you.

COMMISSIONER O'DONNELL: Okay.

When we tried to put together our speakers -- in particular, speakers that are knowledgeable about running a local jail, about the impact that sentencing laws have on local jails, the -- the important role that probation plays and that kind of environment in which probation needs to operate at the local level and county level, the -- the name that repeatedly came to mind was Rocco Pozzi. And Rocco frequently lectures on these topics. He's certainly recognized not only throughout the state but throughout the country for his programming and -- and his vision and his leadership in many of these areas. So we're delighted to have you, Rocco, and -- and we'd appreciate it if you would address the commission on many of these topics.

MR. POZZI: Thank you. It is -- it is an honor to be here today, and I put together some points that I would like to go over, you know, with the commission. And I -- I feel like the warm-up act, talking about the jails and probation, because I know later on this afternoon, Bob...
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a year or six months or whatever their sentence was. And as we started down that road, one of the questions that we started asking ourselves -- okay. We put this plan together, but who do we give it to? Do we give it to the inmate who's being discharged and hope that they follow up on the recommendations that we're making for them to continue to do the things that they're starting to do in the correctional facilities? For instance, you know, we created a drug treatment program. We would certainly want them to follow up with outpatient drug treatment once they get out -- vocational training programs that we started to develop, educational programs that we started to develop for the inmates. Who takes on that responsibility? Because we all know now, under the statutes of New York State, that once someone serves their time, they max out, and they're released back into the community. So my recommendation is that no one really should be released back into our communities without some type of supervision -- without a period of supervision.

Now, we -- we kind of backed into a period of supervision many years ago when we transferred conditional release from state parole almost eighteen years ago to the county -- and I know it's -- it's back with state parole again where we were able to give early discharges for inmates and then have a one-year period of supervision for those folks to make sure that they would follow up on the release plan that was prepared by the conditional release commission. But we don't have that right now once, obviously, conditional release has been moved back to the state. You know, periodically, we do get some, you know, early discharges through state parole, but not very many -- not as many as we used to. So at -- the other controversial recommendation I'm going to make is that I really believe -- and I know my county executive strongly supports having that conditional release process put back at the county level again. It worked well in Westchester. We felt, in Westchester, that, you know, we -- we had a couple of high-profile cases that really went the wrong way or maybe things weren't done correctly. But it really didn't mirror all the good work that was being done in a lot of the local facilities through conditional release commissions in dealing with the -- with the inmates that were housed in our facilities. So I would strongly recommend that we look at creating in our statutes some mandatory period of supervision for anyone who is being released back into our communities so that we can make sure that the transitional plans that we are preparing are at least followed up for a certain period of time, and also the -- taking back the conditional release function, you know, to the counties or at least making it optional. I mean, if some counties really don't want to get back into that business again, that's fine. If not, you know, we would -- we would certainly welcome the opportunity to have conditional release come back at the local level because I think we did it really well, and we had one of the best programs, I would like to say, in the -- in the state in dealing with conditional discharge.

MR. POZZI: Yes.

COMMISSIONER O'DONNELL: -- since you were -- you're starting out with policy recommendations, which we appreciate. The conditional release suggestion -- is that -- is it -- does it have to be mutually exclusive? In other words, can Parole exercise it for people on parole and probation or -- or exercise it for people on probation?  

MR. POZZI: Well, I mean, what -- what we're talking about are people who were sentenced, you know, to one year or less, you know, at the correctional facility. So I mean, right now, parole being spread out all over the place, you know, and -- and I'm sure, you know -- I'm sure Tony mentioned something, and George, if he were here, would talk about, you know, the resources that are available to them to really be able to, you know, respond to the request for early releases, you know, act upon them, and then actually supervise them, you know, for the one-year period. We would certainly welcome that -- that back.

COMMISSIONER O'DONNELL: Can I

ask --
COMMISSIONER O'DONNELL: I see.

MR. POZZI: You know, I --

COMMISSIONER O'DONNELL: So it would be --

MR. POZZI: It wouldn't really --.

COMMISSIONER O'DONNELL: -- taking that function away, --

MR. POZZI: Yes.

COMMISSIONER O'DONNELL: -- essentially, from Parole and giving it --

MR. POZZI: Giving it back to --

COMMISSIONER O'DONNELL: -- to a probation department.

MR. POZZI: -- to Probation -- yeah.

COMMISSIONER O'DONNELL: And do you think other probation departments that are more stressed, less resources -- would they feel the same way about it or --?

MR. POZZI: Well, that's why I say they may not. That's why you may want to, you know, have the option of doing an early discharge, which I think is -- you know, is possible. So you know, length of supervision --

COMMISSIONER O'DONNELL: -- to a probationary term. Do you have a view on that?

MR. POZZI: Well, you know, I --

COMMISSIONER O'DONNELL: Uh-huh.

MR. POZZI: -- want to, you know, do it, perhaps they can, you know, put the --

COMMISSIONER O'DONNELL: -- to allow that.

Now, I was talking yesterday, you know, about the --

MR. POZZI: I remember having a conversation with our former governor about that particular issue, especially when they were thinking about abolishing parole in the state, and

it just seemed illogical that we were going down a path where we were looking for longer prison sentences, and yet we were looking to shorten the amount of time that we actually supervise people that are back in our communities when they can do the most harm to people. And we want to make sure, you know, that they are following the plan -- the release plan that has been developed by Parole. So it seemed to be illogical. You know, it's --

it didn't -- it didn't make sense. So, you know, thankfully, you know, we -- we really never did abolish, you know, parole in New York State, and we do have a period of supervision. I think what you need to have is maybe some flexibility in that --

in that period, you know, that if someone is doing really well, you know, you have the option of doing an early discharge, which I think is -- you know, is possible. So you know, length of supervision --

you know, I -- I think it -- it really determines -- you know, it should really be based on the individual, you know, themselves, you know, on how long they should be under a period of supervision.

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you know, I -- I think it -- it really determines -- you know, it should really be based on the individual, you know, themselves, you know, on how long they should be under a period of supervision.

Now, I was talking yesterday, you know, about the --

about sex offenders and the fact that, you know, someone had -- we have a committee in Westchester called Protect the Kids. You know, we were talking about the length of probation sentences for sex offenders. You know, we've now doubled them in New York State over the last couple of years, where we went from three years of supervision to six years on a misdemeanor, and five years on a felony to ten years. And someone had brought to the table, should we be considering lifetime probation for sex offenders? And when you look at the statutes throughout the country, lifetime is really not lifetime in a lot of these jurisdictions. I think in Arizona, which was one of the first states to develop lifetime probation, you know, for sex offenders, I think the average length was about fourteen years. And then the recommendation was made to the court for a discharge at that point.

And the question was, you know, if you have a ten-year period right now, and the -- and -- and the average has been about fourteen years, you
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2. know, what do you -- what do you gain in those four years? You know, for a lot of people, you -- you may not need those four years. But for other people, you may really need to keep some of these folks on lifetime probation supervision. They may not meet the so-called, you know, confinement requirements, but yet may -- may need that -- that supervision in our -- while they remain in our communities.

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

4. COMMISSIONER O'DONNELL: For everybody --

5. MR. POZZI: Yeah. So --

6. COMMISSIONER O'DONNELL: Uh-huh.

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

8. know, citizens of -- of -- of Westchester that sat -- had some experience, you know, in -- in criminal justice. Maybe -- you know, we had -- at one point, we had a professor from John Jay University on it that was the director of criminal justice programs. We had former -- former employees that -- former probation director was on the commission -- people who had knowledge but really weren't tied to any agency. And they act as an independent body. And actually, Probation prepared the reports, you know, for people who were applying for the conditional release, and they looked at it very seriously. And in the very beginning, they were very reluctant to let people out because, at that point, when I had taken over Corrections, there were very few programs available to inmates. So the conditional release commission was requesting from the Commissioner of Corrections more programs so that these folks can at least demonstrate the willingness to want to correct their behavior and start dealing with some of the deficiencies that they -- they had. And at that point, they might give consideration for early releases. So when we did put those programs in at the Department of Corrections, we found that the release rate went up proportionately. And we found that a high percentage of people were able to complete that one-year period of supervision without violating and were able to really do something more constructive in the community than staying in the local correctional facility.

9. Now, when you look at what happened with a lot of other counties -- you know, and probably Bob -- Bob Maccarone would be able to give you, you know, some specifics on some other counties. They didn't structure it that way. I mean, in some counties you had a Director of Probation that was actually part of the conditional release commission and some other folks. You know, and perhaps there could have been a charge, you know, by, you know, the county executive or by somebody that -- we really don't want to be considering a whole lot of releases for these type of folks, where we didn't have that in Westchester. They actually had an independent body that was able to -- to function, and we supported it.
We'll let you get back on track.

MR. POZZI: Okay.

COMMISSIONER O'DONNELL: So --

MR. POZZI: All right. And --

COMMISSIONER O'DONNELL: -- thank you.

I'm sure you're going to hear from a lot of other people about parole violators. And I'm talking about jail concerns. One of the things that we've been really, you know, looking to get some relief on are parole violators. At any given -- I'll just give you an example in -- in -- in Westchester. At any given time, I have -- well, there's two types of parole violators that we deal with. We have those are being held on technical violations. And when we mean technical violation, we're talking about people who have not been rearrested on new offenses -- new criminal offenses. They are there because they violated the conditions of their release -- not going -- not reporting, not going to drug treatment, not doing the things that they should be doing. Or a lot of them, unfortunately, have absconded from supervision. You know, they have warrants out for their arrest, and eventually, you know, they're taken into custody or arrested. And we're housing them in the local jails. On any given day, I have close to eighty of those individuals, and the -- and the -- the numbers in New York City are huge. I think it's over six hundred that Marty probably has that are -- six -- six to eight hundred technical violations that he has in his facility. And we've been pushing -- you know, and I know this governor has been very, you know, attune to, you know, some of the concerns that are being brought to his attention about these parole violators and trying to move them out of the local facility into the state facility because it's really felt that it's a -- you know, at that point, it's really a -- a state sentence that has been violated, and these folks should be going back to the state facility to have these procedures -- these violation procedures continued. And we do understand that, at --
are needed in order to conduct these type of
hearings.

COMMISSIONER O’DONNELL: Well, I
don't know if this even a subject of a separate
discussion because it -- it -- it is a huge issue.
It's a huge issue policy-wise. I don't know if it
impacts directly on sentencing, per se. But you do
have -- I -- I think -- Tony, you may know this
better, but I think the average sentence that
technical parole violators serve in the state
correctional system is something like four months
or six months or something like that --
MR. ANNUCCI: Yeah. I think --
COMMISSIONER O’DONNELL: -- that
is --
MR. ANNUCCI: -- that sounds
right.
COMMISSIONER O’DONNELL: --
relatively brief. And so when you really look at
that from a policy point of view, if people are
repeat technical offenders who kind of go in and
out at very, you know, high cost, removing them
from the local facilities who are overburdened,
utilization of these reports -- recommendation that
judges should be utilizing, you know, probation and
reports that we can prepare as part of the pre-plea
process, where a lot of sentences or
recommendations for sentences are being created.
And there's a whole lot of information that could
be available, you know, to the judges, to the
defense bar and the district attorney through the
creation of these pre-plea investigations. And a
lot of people have always said, "well, if you do a
pre-plea, then you're going to have to do another
report, which is a pre-sentence report." You know,
so you're kind of duplicating the efforts, but
we're not really doing that because, if we do a
pre-plea investigation, we would just update the
pre-plea investigation and actually add a little
bit more information that might be pertinent to the
sentencing that would take place in -- in -- in the
court, or support the plea that may have been
negotiated by the court. So -- but the problem
with that -- and one of the -- you know, one of the
problems that we're having is actually resources
available to probation departments to really do a
MR. BERGAMO: Are there special judges that are used for the violations or must go back to the original court?

MR. POZZI: I'm sorry. I -- I -- I couldn't hear you.

MR. BERGAMO: I'm sorry. That's all right.

MR. BERGAMO: Are there special hearing officers utilized for this or they must go back to the original judge?

MR. POZZI: It's got to back to
MR. BERGAMO: There's no changes?

MR. POZZI: No. No. As a matter of fact, I know many years ago there was some thought about creating hearing officers. And I -- it -- it wasn't around violations. And the -- another subject -- and we're -- you're leading me right into another subject -- is around upward modifications that need to take place that we've got to go back to court to get upward modifications.

MR. BERGAMO: Would you recommend, based on your experience, that there should possibly be hearing officers to avoid this delay -- just on violations, not about whether or not --?

MR. POZZI: Whether it be a hearing officer or whether it be --

MR. BERGAMO: What would the title be?

MR. POZZI: -- you know --.

MR. BERGAMO: What that title is --.

MR. POZZI: I -- you know, I -- I just think that it's got to be some type of mechanism that allows the court to address these things speedily, whether it's hearing officers if they're willing to delegate that authority to a hearing officer, or whether they create a special -- special -- you know, a special type of court just to deal with violations that would get them, you know --

MR. BERGAMO: Keep them moving.

MR. POZZI: -- keep them moving, you know. That -- we did that in Westchester. We actually, you know, had a violation court. We -- we have that right now.

MR. BERGAMO: Does it work?

MR. POZZI: It works real well.

You know, we're -- we're getting, you know, not as quickly as I would like for them to be done, but a lot quicker, certainly, than they were before. But I think, you know, justice has got to be immediate. You know, and I think it sends a very bad message back to the probation community that you can violate your probation, and you're going to be...
already done that. All right. Now, sometimes it does work. It does work. But I'm just going to tell you, Tina, by the time we file a violation, something serious has occurred or, if you check the record, you'll see many efforts have been made to try to deal with that behavior before we want to bring it back to the court. All right. So we're -- we're not just violating people at the drop of a dime. If we did that, you know, the number of violation hearings that would be scheduled would be just astronomical.

MS. STANFORD: And maybe that speaks to -- to the issue of the difference, perhaps, between your county and your department and other counties because I'm from Erie County, and I think maybe the difference is the -- the number of support staff, the -- the quality of the ability to -- to follow that probationer, because -- I won't say that they were violating them. And then, when the judge would suggest, "well, maybe you give them another chance," they might have felt that maybe they really didn't have the chance to do that. So they were more willing to go along with it. So -- so those differences between probation departments might be significant in the equation, too. So we could just keep someone from --

COMMISSIONER O'DONNELL: But --

MR. POZZI: That --

MS. STANFORD: -- actually getting --

MR. POZZI: -- that -- that --

MS. STANFORD: -- getting more support for probation.

MR. POZZI: That's true. I mean, it could be a reaction to high caseloads. We don't have time, you know, to do things with people. So the easy solution is to find violations, and you don't have them on their -- on your caseloads any longer. That is atypical to what happens in Westchester. I -- you -- you're -- you're right, Tina. You're absolutely right.

sanctions, you know, to that particular case, without having the burden of courts, you know, or have -- have -- you know, have us be able to do something for a certain period of time and then have it reviewed by a hearing officer, you know, to make sure that we're in line with the things that we're recommending as far as the upward modification is concerned. If there is a concern by a defense that maybe probation might be going too far or maybe they're imposing some, you know, additional sanctions that are not necessary, there always should be a review process. But I think there has to be a mechanism developed that allows us to do that and really use violation as, you know, the last alternative. You know, and unfortunately, that's -- you know, that is the mindset in some jurisdictions, and it's not -- you know, it -- it is just not a New York phenomenon.

That happens in a lot of other jurisdictions that were facing some of the issues that Erie County might have been facing, and that's exactly what the reaction is to it, which is -- leads me into the next -- next point, which is a healthy probation...
system, because when you're talking about
sentencing, you've got to have a healthy probation system because, really, what is happening is a contract is being -- is being created between the court and the probation department for us to be able to carry out those things that are being mandated by the court. And if you don't have probation departments that have the ability to properly supervise, to properly, you know, make sure people are adhering to those orders and conditions that are imposed by the court, then sentencing itself becomes meaningless because, in a lot of -- in a lot of ways, becomes what a lot of people think probation is, which is a slap on the wrist, and you've really gotten away with something, instead of really being held accountable -- you know, follow up on what the court wants you to do, change your life. And for Probation to be in a position where we can do those graduated sanctions if you're not adherent to it, or we're in a position where we can take you back into court, and you're going to pay the ultimate, you know, penalty of having your freedom taken away.

since we passed the PINS Eighteen Law, where I have kids that are under probation supervision at age sixteen and seventeen and, at the same time, are acting out and have PINS behavior and are going into the family court and filing -- and there are -- there are PINS petitions being filed, and I have kids that are being supervised into criminal court, and I have kids that are going through -- the same kid that is going through the family court now on a PINS petition. And I have two different judges dealing with that -- with that -- with that kid. So one of the recommendations that we are making -- and this was a -- an idea that -- that really resurrected from our -- our current district attorney, Janet DiFiore, who was the supervisor judge, you know, of the Ninth Judicial District Criminal Court -- and Judge Cooney, who was a former, you know, family court judge -- that we really need to look at creating an integrated youth court where these -- you know, these kids -- these J.O.s and these, you know, younger offenders that had the possibility of having actions taken place in the family court be consolidated with one
little bit different with a sixteen-year-old and a seventeen-year-old. Yet we've applied -- we've applied that theory to the sixteen-year-old. "We want you to work." Well, what we're doing in Westchester now, is you know, instead of creating a unit that is just based on charge, like sex offenders or D.W.I. or domestic violence, we're now looking at this age group -- the sixteen-, seventeen-, the eighteen-year-olds.

And we're actually going to recommend to the court so that we can supervise them on the family court model. And we're not going to use adult instruments on them to determine risk or need. We're actually going to use juvenile or family court models. And the thing that we're going to do is reunify these kids with school. And we know that that's going to be a tough job right now because most of the schools were very happy to get rid of these kids because these kids that are on probation are the ones that have been causing a lot of problems in the school.

But when it really gets down to it, I mean, what kind of a job can we get a sixteen-year-old who's dropped out of school or has been thrown out of school? You know, they're going to be working at McDonald's for the rest of their lives. So the theory behind this unit now is to try to, you know, reunify these kids with school or some type of vocational training program or try to redirect them and start dealing with those -- these cognitive deficiencies that they have because they're still developing. And I think that's something else that needs to -- we really need to start looking at. And I think that's a natural flow -- that unit, perhaps, from an integrated youth program.

And the other -- the other thing about specialty courts, as far as sentencing is concerned -- and I -- I've given a packet to John -- actually, to -- to Gina -- you know, of all our special programs that we run that support the specialty courts. And in that package, I have put, you know, a description of those units. And also, I put in there the orders and conditions that we recommend to the court so that we can supervise these individuals properly when they're released back into the community. And that is extremely important, especially when you're dealing with sex offender issues, when you're dealing with domestic violence issues. These orders and conditions become extremely important to the probation departments across this state because without those orders and conditions -- those special conditions -- we really -- not that we can ever guarantee anything in this field -- but it makes our lives a hell of a lot more difficult in trying to do something meaningful with these people unless we have those orders and conditions. And I know, you know, Bob will talk about that, and Marty's going to talk a little bit about that. But as far as sentencing is concerned, and when you look at some uniformity, you know, we really need to be looking at these orders and conditions and making them a part of our sentences. Even though we don't want to take away judicial discretion -- I've always been in favor of a lot of judicial discretion. But I think our judges really need to be looking at these orders and conditions that need to be imposed on these individuals that are going back into our communities.
person is placed on probation, we estimate that we
know about ten to twenty percent about what that
person's behavior is or anything about that person.
So when we order -- you know, when we recommend to
the court a number -- like thirty, thirty-six
different conditions that we would like to have
imposed on that person -- we are asking for those
conditions because we really don't know who we have
under supervision. And how that kind of gets
magnified is, at the time of sentencing, when a sex
offender appears before a judge, we are aware, on
the average -- at least, this is Westchester --
about one point one victims that that particular
sex offender may have had or has reported to have
had. When we get them under supervision -- and
after a couple of months we have them in treatment,
and we actually administer a polygraph to them --
the average has been about fifty-five to sixty
victims each one of these folks have had by the
time we get them under supervision, in therapy, and
have them, you know -- have them questioned with
the polygraph. So it's -- it's kind of
frightening. You know, and then we get some people
that just have had a couple. And we have people
who have had hundreds of other victims that were
never reported. So that's why I, as an -- it's a
shocking example, but it's an example of why the
Probation Department would want all of these
additional conditions imposed, at least up front.
And then, at some point, maybe six months down the
road or a year down the road, we look at those
conditions after we've learned something about
those -- those folks, and maybe we start striking
some of those conditions, as we may not need them.
Or we may need more conditions on those particular
people. So it's a very -- I would ask that you --
you take a look at those. Those conditions become
very, very important.

COMMISSIONER O'DONNELL: Rocco,
can you talk about electronic monitoring and --
you use it, how --
MR. POZZI: We --
COMMISSIONER O'DONNELL: -- we -- we --

MR. POZZI: -- use it. Yeah. We
use G.P.S. As a matter of fact, we -- we -- I
think I have the only unit in New York State where
I have probation officers that work around the
clock. We -- we are twenty-four-seven. We -- we
do our own --.
COMMISSIONER O'DONNELL: So you
monitor your own --
MR. POZZI: We monitor our --
COMMISSIONER O'DONNELL: --
systems?
MR. POZZI: -- absolutely. You
know, we use global positioning for sex offenders
in Westchester. We do real-time. That means we
can actually see where individuals are at any given
time. And we --
COMMISSIONER O'DONNELL: Is this
a bracelet or what --?
MR. POZZI: It's a -- yeah. It's
an ankle bracelet.
COMMISSIONER O'DONNELL: Ankle

MR. POZZI: It's an ankle
bracelet that we -- that we utilize. And we do
both programs. We do the -- the global
positioning, and we do the traditional electronic
monitoring where it's -- basically, we're
interested in people being at their home at a
certain time -- you know, that they leave in the
morning when they're supposed to be leaving and
they're back at home at a certain time. The G.P.S.
is used primarily for the -- for the sex offenders,
but we also are using it for our domestic violence
cases, you know, to make sure that, you know,
people are not going into areas where spouses may
be and things like that so we can monitor their --
their activities. And actually, the nice thing
about it is that we were able to go back, you know,
and trace people's steps. In other words, if
something happened, and we think this person might
have been there, we can go back into the system and
actually plot that person's activities for the
entire day and find out whether or not they were
really there or not. So -- yeah. So we -- it --
again, any -- it's a tool. All right. It's one of many tools that we use -- like I said, polygraph.

You know, G.P.S. is a tool. But they're only as good as the people who are in those programs. I can have, you know, polygraph and G.P.S., but if I have caseloads of a hundred and twenty-five sex offenders or a hundred and fifty sex offenders per probation officer, I mean, it's almost impossible, you know, for us to do anything really meaningful with those folks. You know, so --.

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

MR. POZZI: Well, you know, it was kind of -- when we were looking at some of the -- the restricted areas and a lot of locations where sex offenders are not allowed to go, and you -- you really start plotting those points, you know, we found out that, in certain areas, some people can never even live in an entire city, you know, because they would be violating their probation because they're getting into an area that they're supposed to be getting into -- not supposed to be near libraries or schools or nurseries or things like that. So, you know, he's got to stay 'X' number of feet away from them, and when you really plotted them, there was no place for them to really go or even live. All right. So it does become a problem. It's an evolving technology, as far as the technology is concerned. You know, there are some, you know, areas where you just can't pick up people, you know, that they -- I mean, it's just like your cell phone service. You know, you -- you're driving down the road. All of a sudden, you have a -- you have a dead zone.

MR. BERGAMO: A tangential question -- prior to treatment one point one and treatment fifty-five, is there any statistics you're aware of -- or someone is aware there -- is there any cure for them?

MR. POZZI: Absolutely. I mean, we're -- what it really allows us to do is to create a cell in the community. That is much cheaper for us and, to some degree, probably more efficient for us. And we're able to do more things with people when they're in our communities because, obviously, there are more programs that are available to people, and we're able to do more things with them. So if you can kind of create -- you can create a mindset that you can create a cell within the community by utilizing these technologies, you know, I -- I -- I think it's a much better way to go. I think it's -- it's much wiser sentencing if we can -- if we can utilize this technology.
MR. BERGAMO: Well, what about after probation?

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

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

MR. POZZI: No, it's not -- I mean, it's not accurate. I think, you know, the mindset that most -- most sex offenders wind up in...
supervision strategies, Tony, I -- and -- and I know George will probably come back a little bit later. George might be able to speak to this. But I would think --

COMMISSIONER O’DONNELL: Felix, --

MR. POZZI: -- that the strategies --

you've been --

COMMISSIONER O’DONNELL: --

MR. POZZI: -- work.

COMMISSIONER O’DONNELL: -- out there.

MR. POZZI: Yeah. 

MR. ROSA: Absolutely.

MR. POZZI: Yeah. It's -- it's basically --

MR. ROSA: It's pretty much the same -- right.

the --

MR. POZZI: -- the same, you know.

MR. ROSA: -- it's the same. The problems are the same. The lack of housing is the same. The splitting -- going to the treatment provider and saying, "this is what's going on,"

going to the parole officer, going to social services and getting a different story. It's all pretty --.

MR. POZZI: Pretty much the same -- right.

MR. ROSA: You still need the warrant, but -- but yes. The parole warrant would be by a --

MR. POZZI: You get --.

COMMISSIONER O’DONNELL: Trying to change -- it's --

MR. POZZI: I -- I know.

COMMISSIONER O’DONNELL: -- being debated right now.

MR. POZZI: Right.

MR. MCDERMOTT: Yeah.

COMMISSIONER O’DONNELL: I don't know where it's headed, but --.

MR. POZZI: I know P.P.C.A. has put in a bill. And I've -- and I've worked very closely with Bob on trying to give Probation the ability to -- to be able to follow a detainer, you know, if someone is acting out, that we would actually have a document that we can have that person held until the next morning where we can have an arraignment. Because right, even though we can do a warrantless arrest, that probation officer cannot turn that particular person over to a correctional facility or to, you know, a police department to be held pending the arraignment, unless we can get a -- you know, an emergency judge, you know, if it's off-hours, you know, during the middle of the night to do an arraignment so that we can get a -- you know, a certificate to have bail set and then get the person held at a local facility because I'll put my corrections hat on. I won't take them unless I have a commitment order --

COMMISSIONER O’DONNELL: Uh-huh.

MR. POZZI: -- from a judge.

So --.

MR. LENTOL: It -- it sounds like there is a significant difference in the intensive supervision that goes on in Westchester County as opposed to the state, as well, with regard to sex offenders, whether they're low level or high level. And what significance do you think that plays into the recidivism rate or their re-arrest rate?

MR. POZZI: It -- it -- it plays a significant -- it really -- it would play
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significantly. Our probation officers, you know,
not only provide the -- we keep the caseloads --
right now, the average caseload is about
twenty-eight per officer. And I'd prefer it to be
at twenty-five. But anywhere between twenty-five
to thirty is the workload. Our officers also, you
know, work -- we -- we do the treatment program
right on site at the probation department. They
come to probation and are -- the -- the treatment
groups that are run are run at the Probation
Department, and our probation officers are
cr-facilitators of those treatment groups. So we
know immediately if someone who was scheduled to be
in treatment on a particular night doesn't show up.
You know, our probation officers will react to that
right away. We'll be making phone calls, you know,
right then and there to find out why that person is
not there. All right. But they have developed the
expertise that they can actually be
co-facilitators, that they understand the treatment
issues that well, that the treatment providers want
them there, not only to provide security but also
to participate in the treatment. It's an -- I

COMMISSIONER O'DONNELL: We're
going to have to move on.

MR. SCHNEIDERMAN: I -- and this
may be -- not be something you can answer, but it'd
be very interesting to look at the different
caseloads that are spread around the state because,
twenty-eight -- frankly, it sounds high to you, but
it sounds low as compared to what I'm used to
hearing about. And obviously, the -- what you're
saying, what we know intuitively, the size of the
caseload has got to be directly related to your
ability to provide the kind of supervision and
treatment you're talking about.

MR. POZZI: Absolutely -- not
only for sex offenders, but for the domestic
violence cases. You know, we've got -- you know,
we try to keep small caseloads for the felony
D.W.I. cases, too.

COMMISSIONER O'DONNELL: Well,
I -- I will say that we struggled with our
invitation to Rocco because we invited him because
he really is forward-thinking and runs an

extraordinarily well functioning probation
department and facility. But he's not typical of
the state in --

MR. POZZI: Right.

COMMISSIONER O'DONNELL: -- terms
of the resources and the programs and what you've
been able to accomplish. And it's important that
everyone recognize that. Maybe Bob Maccarone can
address some of that globally throughout the state.

MR. POZZI: But there are a lot
of -- I mean, there are a lot of good programs, you
know, --

COMMISSIONER O'DONNELL: Right.

MR. POZZI: -- in -- in a lot of
our other counties -- you know, the Nassau and
Suffolk. And, you know, it -- it -- we've been
very fortunate. I'm glad that he said that. We --
we've been very fortunate to have a county
government, a county executive -- both my county
executives, you know -- you know, Judge O'Rourke,
who was the former county executive, and now, you
know, Andy Spano -- and having a board of
legislators that were willing to make that

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I'll just turn it over to you. Thank you --

MR. HORN: Thank you very --

COMMISSIONER O'DONNELL: -- for joining us.

MR. HORN: -- much, Commissioner O'Donnell. It's a pleasure to be here, pleasure to see old friends -- or friends of long duration. I don't want to suggest that anybody's old -- and -- and former -- former proteges. And I'm delighted to -- to be able to say that I've worked with Tony, with Felix, with -- with Terry. And there is nobody finer -- and I think what you've heard --

what I've listened to already this afternoon, for the short time I've been here, is just how passionate and how committed the individuals who work in parole and corrections and certainly in probation in New York are.

And -- and one of the things that comes through very clearly is just how complex this all is. You've heard so much about the various varieties of ways in which people can be sentenced -- the various permutations of how people get released and all of the challenges that they going to be done with them, then I think even some of those marginal cases where a judge may be, you know, having doubts on whether or not that person should be released, whether it's a sex offender or a D.B. case that's very volatile, you know, if there's a good probation department, then the judge might be more likely and inclined to -- to release that person to that probation department because they know something's going to be done. Not only something's going to be done, but they know we're in a position that if something happens, we can do something about it.

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

COMMISSIONER O'DONNELL: Not only if you want to just go out to the -- he actually has held many different positions, both in the State of Florida and the State of New York. He has served as the Executive Director of the Division of Parole here in New York, facility -- correctional facility here in New York State. Now, he serves as the Commissioner -- Commissioner for Corrections as the Director of the Probation Department for the City of New York and has a very long and distinguished bio that is -- you can read it in the materials. We're really listening for valid and concrete suggestions -- things that we should consider. We have a broad mandate, that includes a lot of things, including alternatives to incarceration and reentry. And so
First of all, I'll talk a little bit about discharge planning and reentry. And let me suggest to you that it's very complex, in that how we do it has a lot to do with sentencing, and sentencing has to be explicit. And I think it has a state's money on imprisonment. And you can even choose to spend more money on imprisonment or less money on imprisonment. There are only two things -- and I'm sure Paul Korotokin will agree with me -- only two things that determine how many people are in prison: how many people come in and how long they stay. And that's what sentencing is all about. And so you have to bear that in mind.

And I -- I -- so there are some choices to be made. And all of the discussion that -- that we heard, that Terry was talking about -- meritorious time, supplemental merit time, presumptive sentencing, Shock incarceration, early parole for deportation only -- why has the state gotten itself into this crazy quilt of different ways of sentencing and ways of determining who to release and when to release them. The state comported itself in this way, quite simply -- and I'm free to say it -- because the cost of imprisonment was rising. The number of people in the state's prisons was -- when I started in this business, there were fewer than ten thousand people in prison. In 1981, we tried to get the state to adopt a bond issue. Right? We were going to build enough prisons for a generation -- twenty-five thousand beds. And today, you've got -- what -- sixty-five thousand people in custody? It's been as high as seventy thousand. All of those things that you were talking about -- merit time, supplemental. The walls have doors. They were all MacGuffins that had been created to allow us to keep the basic structure of sentencing. I will say that I think the best thing that the state has done is Jenna's direct effect on prison population, and it is essentially a taxation decision -- how many people we imprison. There's a question of public policy, more so than any other barrier. Also, keep in mind, the decisions that you make about sentencing have a state and local effect. And you may make decisions to reduce the potential penalty for a certain class of offender, to move it from a -- a 'C' to a 'D', to -- to change the allowable sentence. Would you be, in fact -- only making -- doing a shifting of the cost burden and creating an additional cost burden? And that's what sentencing is all about.

As I said, sentencing has a very direct effect on prison population, and it is essentially a taxation decision -- how many people we imprison. There's a question of public policy, more so than any other barrier. Also, keep in mind, the decisions that you make about sentencing have a state and local effect. And you may make decisions to reduce the potential penalty for a certain class of offender, to move it from a -- a 'C' to a 'D', to -- to change the allowable sentence. Would you be, in fact -- only making --
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24 Attorneys don't.  I -- I have -- I have lectured to
23 work release.  People don't understand Shock.
22 post-sentencing options.  People don't understand
21 press poorly understand the sentencing process and
20 most attorneys -- no offense -- the public and the
19 that, in my experience after thirty-eight years,
18                   I also want to suggest to you
17 But there's certainly many others.
16 only way in which we purchase public safety thereby?
15 further suggest to you that imprisonment is not the
14 And could we use that money in better ways and --
13 average was reduced by six months?  And yet, what
12 substantial diminution of public safety if the
11 person serves six months less?  Would there be a
10 people who leave prison each year -- if the average
9 in effect, creating a cost shift and an unfunded
8 sentence of probation is now permissible, you are,
7 which an alternative sentence to a local jail for a
6 now mandatory, and you make it a -- a crime for
5 you take an offense for which state imprisonment is
4 you -- if you change the Rockefeller Drug Laws, and
3 an offense for which state imprisonment -- if
2 unfunded mandate for the counties?  So if you take
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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 want to consider

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

Bear this in mind, as well. In New York State, most sentences -- ninety-eight percent -- are the result of pleas. There aren't very many criminal trials. In New York City, in a year, there are probably fewer than two hundred criminal trials. Ninety-eight percent of the sentences that are imposed in the City of New York are imposed as a result of pleas. We have to ask, in that context, to what extent judges actually are imposing a sentence with due regard to the requirements of workload issue, the perception of fairness and the appropriateness of the sentence imposed bear on the ability of corrections organizations to fulfill its assigned task. Prisons and jails operate on the perception of the part of the inmates that we are fair. If they perceive us as unfair, we lose legitimacy. If they come to us feeling they have been treated fairly, they accept the sentence that has been imposed. If, on the other hand, they feel they have been treated unfairly, it compromises legitimacy. It compromises our ability to manage our facility in a safe way.

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24 probation, never did a day in jail, goes out, 
23 The person has committed the 'B' felony, received 
22 acts to revoke the parole. Judges impose 
21 their parole in a serious manner, the Parole Board 
20 parolee is found to have violated the conditions of 
19 And they take those conditions seriously. When a 
18 administrative body. The conditions are their own. 
17 contrast is most stark. The Parole Board is 
16 and probation, I think that is exactly where the 
15 someone asked Felix to contrast the power of parole 
14 legislation pending to fix it. An individual 
13 felony. And it's something that's worth looking 
12 the computation of the new sentence for the second 
11 York City simply -- simply will not revoke 
10 law, the underlying probation sentence is revoked, 
9 imprisonment -- this is a -- a -- a matter of 
8 it." But here's the reality. The 
7 can do. We can't shoot them in the kneecaps. And 
6 victim's point of view, there's not a whole lot we 
5 individual is not paying the restitution, from the 
4 But from a probation officer's point of view, if an 
3 to lock somebody up for not paying restitution. 
2 maybe there is a good reason, based in justice, not 
1 reality is, you can't revoke probation in New York 

Going back to -- to the issue of 
fairness, with respect to the use of imprisonment, 
I think it's important for prison administration 
that inmates perceive the system to be fair. It's 
equally important that the public, victims, and the 
press view the system as fair. To that end, as I 
said before, I think sentences need to be 
transparent, and they need to be explicit. That is 
to say, they should be explicit insofar as all 
elements of the sentence are clear at the time the 
sentence is imposed, and transparent insofar as the
elements are clearly understood by all the parties. And I'll speak more about this in a moment. But my point is that there should be no surprises. We should not have a situation where a district attorney or a reporter calls the parole board outraged that I gave this guy five to ten, and here he is back on the street. "Well, you know, he got merit time. You know, he got supplemental merit time." They don't understand that. That's not transparent, and it's not explicit.

I think the indeterminate sentence is adverse to this goal. Inmates feel betrayed when they are held beyond their minimum, absent bad behavior. And that does happen.

Inmates are held beyond their minimum because the opinion of the Board of Parole to release you at this time would deprecate the seriousness of the offense -- depreciate the seriousness of the offense. In effect, the Parole Board is re-sentencing. Now, we may want to keep the individual by the Parole Board -- no offense -- is individual sufficiently to substitute its judgment for the court's judgment, which was made in open court, in full view of the public, with an opportunity for all concerned parties to have been heard. The evidence suggests the Board does no better than chance. The failure rate on parole after three years is over forty-five percent. 

MR. KOROTOKIN: Thirty-nine.

MR. HORN: Forty percent -- it's a little better than chance. Flip a coin; you'll do as well. One third of the admissions -- thirty-five percent, Paul tells me, of the admissions to state prison are technical parole violators. That being the case, what value is added by having a discretionary parole release program?

I think that the considerations...
There are three things that we have to address: sobriety, employment, and housing. If the state is serious about that return, the prosecutor has to think coming back into my county.”

I'm going to go live with my sister. And for the first week or two, they go out, and they start looking for work, but they don't find work. As a state, the amount of money that we spend helping offenders find jobs is negligible -- negligible. A parole officer without the ability to help an offender find jobs is a parole officer who cannot make a difference. So what happens? After a week or two weeks, the sister says, "hey, buddy. You know, you're sleeping on my couch. You're eating into my privacy. You're not bringing any money in. I'm doing your dirty laundry." So what does he do? He starts hanging out on the street. He gets drunk; he gets high. Sister kicks him out. Or maybe he gets a job. He doesn't stay sober, and he loses the job. He's got to stay sober. We've got to invest in sobriety; we've got to invest in jobs. The Work of imprisonment and the work of post-release supervision, whatever else it means, has to mean those three things: sobriety, employment, and housing. If the state is serious, it must make investments in keeping prisoners drug-free environments. If we're going to talk about alcohol and other drugs. Prisons must be drug- and alcohol-free.
and alcohol free, teaching inmates how to remain sober, and helping them remain sober upon release. If we are serious about successful and productive reentry -- the -- the -- the statutory language -- we have to invest in helping inmates learn how to work. We can't teach inmates in prison to be brain surgeons. We shouldn't pretend. But we -- every job in prison -- every task in prison has meaning, whether you are a state legislator, whether you are an attorney, whether you are a judge, whether you are a bureaucrat. And you have to get up in the morning and go to work. You have to work cooperatively with other people. You have to accept criticism. You have to take pride in your work. You can take pride in your work if you're helping to clean up the cell block. You can take pride in your work if you're working in the kitchen. You can take pride in your work if you're helping to paint the prison. It is the work ethic. It is how we can teach inmates in prison. We can also teach inmates how to read and write. It is unconscionable to steal thirty-six or forty-two months of a person's life. And we know the -- know they do all those things -- less than a half an hour a week per caseload or weighted caseload of forty cases? That is, we can't. If we have equipped an inmate with the tools he needs to succeed upon release, and if we provided him help to stay sober, find and keep a job and find a place to live, then the responsibility to succeed is the parolee's. A parole or probation officer in New York State works thirty-seven and a half hours a week -- thirty-seven and a half hours a week. Think about that for a minute. How much time can he or she spend with an individual, even with the mixed caseload or weighted caseload of forty cases? That is less than an hour a week, and that is if that parole officer never takes a vacation, never does any paperwork, never has to appear at a hearing, never has to write a report, never has to go to training. And we knew the -- know they do all those things -- less than a half an hour a week per constitutively acceptable due process.
individual. It can't be done. Let's be honest.

It has to be done by the
offender, and that's true on probation or on
parole.

The issue of capacity -- this is
what I mean by capacity -- limits the expectations
we can have of probation and parole. In order to
maintain a probation and parole system, we have to
have housekeeping rules. What are those
housekeeping rules? Well, if we say that I'm a
parole officer, and I'm going to have some
interaction with the parolee. I'm going to counsel
him, and I have to have a rule that requires him to
come see me. If he doesn't come see me, what do I
do, Felix? I get a warrant. Right? He has to
tell me where he lives so I can go visit him at his
home. If he moves, and he doesn't tell me where he
lives, what am I going to do, Terry? I'm going to
get a warrant. I'm going to arrest him. Give
him one or two chances, but ultimately, that's what
I'm going to do. The rules that result in
thirty-five percent of the returns to state prison
are rules that exist simply because we need them to

I'll tell you, I'm sure there's law. I'm sure there are
many things that are wrong with it. But just for
the purposes of moving your discussion along, is
there a possibility to improve the likelihood of
success on the part of the offender, change the
locus of responsibility, and perhaps create more
transparency and explicitness in sentencing? I
think that a -- a -- a sentence has to be
appropriate to its purpose, right? A dangerous,

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dangerous offender that we want to recognize that they don't belong in prison. The state's getting beat up over it. They -- it -- it makes the lives of other inmates impossible. It makes other people unsafe. The people who are mentally ill are themselves unsafe. It makes it impossible to succeed on parole. It's very difficult on parole or on probation. We have to think about what we are doing with mentally ill in this society, and we never created a substantial safety net for the mentally ill when we deinstitutionalized. That's not to say that the mentally ill are criminal. They're not. But some end up committing crimes by virtue of the symptoms that they have. They get into fights. They -- they make the rest of us uncomfortable. They use drugs to self-medicate. It's not because they're criminal. And let's recognize that they don't belong in prison. On the other hand, as compared to that dangerous offender that we want to

enrolled in a community-based drug and alcohol treatment program and would be given guidance and assistance in finding private sector housing. The stay at the halfway house could for a fixed period of time -- not less than six months, say, with release subsequent to that dependent upon some concrete and measurable objectives. Let's say, for example, you have to have been living in the halfway house for six months and have been drug and alcohol free for the last ninety days. How about, you have to have been in the halfway house for at least six months and have held a steady job for at -- at least the last ninety days? How about, you have been in the halfway house for six months, and you have a lease on an apartment and enough money in the bank account to pay your first three months' rent? When you achieve those three concrete measurable goals, you go out the door. Whether we supervise with a parole officer or not, as far as I'm concerned, is irrelevant. And as I've said, I don't think a parole officer's ability to add much value at that point exists. Instead of discretionary release upon attainment of the objectives and the requisite time, the offender is incapacitated, the non-dangerous, nonviolent young offender with a lesser record doesn't need to be held as long. But the structure of the prison sentence could be the same. In both cases, they're coming home. Let's ask ourselves. How should this occur? Perhaps the judge could specify that the last year of the sentence shall be served in the community. The violent offender would be in prison longer than the nonviolent, but each would spend some portion at the end of their sentence in a reentry phase. The victim, the press, the public would all know the date the offender would be released into the community -- no surprises. If the inmate misbehaves and is found to have violated prison rules, pursuant to a multidisciplinary hearing, the time before the community supervision commences could be extended, perhaps by some fraction of the underlying sentence -- bad time instead of good time.

Upon transfer to some halfway house, the offender would receive help finding a job, perhaps by a parole officer. They would be domiciled in the community. The violent offender would be in prison longer than the nonviolent, but each would spend some portion at the end of their sentence in a reentry phase. The victim, the press, the public would all know the date the offender would be released into the community -- no surprises. If the inmate misbehaves and is found to have violated prison rules, pursuant to a multidisciplinary hearing, the time before the community supervision commences could be extended, perhaps by some fraction of the underlying sentence -- bad time instead of good time.

51 (Pages 198 to 201)
MR. HORN: I think -- with probation?  How would you help probation?

MR. BERGAMO: What would you do about probation?  How would you help probation?

MR. HORN: I think -- with probation, I -- I -- I think there are a -- a couple of things.  Probation has a very important role.  First of all, whether or not a

MR. BERGAMO: So how do we grant probation?

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MR. HORN: There are states, you know, that are tapering, that have elements of it.

MR. VANCE: Connecticut appears to be, in its sentencing commission, doing new and different things.  I actually don't know what they are, but I just read that they are.

MR. HORN: There are states, you know, that are tapering, that have elements of it.

MR. LENTOL: Yeah.  Why don't you tell us what you really think?

COMMISSIONER O’DONNELL: Wow.

MR. HORN: Thank you.
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2. they all -- 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 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

53 (Pages 206 to 209)
COMMISSIONER O'DONNELL: The -- the other question is -- I don't know where you were in 1984 and 1985.

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

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

MR. HORN: Yes.

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

MR. HORN: I appeared before it.

COMMISSIONER O'DONNELL: And --

and, you know, we -- we read the -- the very --

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

The result. And pretty -- you have to make sure that people are going out at about the same right they're going out now, right, of your prison population. Now, you can -- you can buy time. You can reduce the amount of time that a minor offender serves, and you can use that to purchase more time. North Carolina, by the way, did an excellent job with their sentencing guidelines, and they reduced the amount of time that minor offenders, drug offenders served, and used that time to buy more time for felony offenders. If you look what the actual time served by rapists -- when I was here, the -- a rapist in New York was serving, on average, eighty-four months. Is the legislature going to vote to say, you commit rape -- one in New York State, you do eighty-four months? No, because they would much prefer that a D.A. stand up and say ten to twenty, eight and a third to twenty-five.

Right? Whatever -- and --

then -- well, we trace it. Is it eight and a third or is it twenty-five? So it's very hard. It's politically very hard. And the other thing that was operating in '83-84 is, because it's a plea bargaining system, you have to -- you can't get the plea bargaining system. It's all about power.

Who's got the power? The D.A. had the power. This is about the power of district attorneys, and I love my district attorneys in New York. We have the finest district attorneys in New York. But it's about power. Sentencing is all about plea bargaining, and the power in plea bargaining is in the district attorney. And -- and so if you start taking that way, and -- and then you get the soft on crime thing, and then -- then -- then you start ratcheting up the amount of time served.

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

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

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

MR. KOROTOKIN: And going --

going down.

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 may 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.
People who are addicts will do anything to get high. And the -- the -- the length that I see people go to get drugs into the jails -- you can't even speak about it. It's Draconian, I mean, the things that go on. And -- and so it's -- and so keeping the inmate sober requires enormous effort. And with respect to CASAT, I think that -- I think it's an earnest effort. I think you can't just do it in a few places. I think the problem with state -- you can't say, "oh, we're going to do it in this prison, that prison, and that prison." You have to do it in every prison. I think, also, it has got to be part of 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. I also think -- and this is
15  something else I learned. When I was -- I started
16  as a parole officer. And they taught me how to be
17  a parole officer and all the rules, and I knew when
18  to issue a warrant and all that. But they never
19  talked to me, as a parole officer, about
20  understanding the disease of addiction. Addiction
21  is a disease. And they never talked to me about
22  recovery. And recovery is a process, and it
23  doesn't proceed in a straight line. Right? And

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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

56 (Pages 218 to 221)
that -- and -- and this is before we had the sort
of on-site drug tests that we have now. A parolee
would be on parole for a couple of weeks, a couple
of months, and he's doing fine. And all of a
sudden, something changes. He loses his job. He
missed a couple of reports. So you say, "Smitty,
are you using drugs?"
And he says, "no, no, Mr. -- I'm
not using drugs."
I'd say, "oh, yeah; I think you're using drugs."
Back then, heroin was new, so you'd roll up their
arm and put their arm -- say, "look -- needle
marks."
"Oh, no. I gave blood."
"Well, all right. You've got to
come back next week, and I expect that to be
healed."
Well, the next week, he doesn't
come back. He comes back two weeks later. Smitty,
right? He's got a few more needle marks. Am I
right, Felix? But the time you finally get Smitty
to agree that he's using drugs -- right -- by the
time you send a test to an outside lab, and a week
later, it comes back, and you're arguing with him,
he's now been using drugs for three months. He's
too far gone. By the time they've been using drugs
for three months, they're too far gone. They have
to go back into detox. So we have to nip it in the
bud. We have to intervene and prevent the drug
abuse much earlier in the experience of probation
and parole. We have to keep them -- our goal has
to be to keep them drug-free and alcohol-free,
beginning on day one. And it's hard. But it can
be done. It can't be done on the cheap.
I think you could do it better --
and this is why I -- I -- I believe in this notion
of a halfway house -- if they -- if they leave
Attica, and they come down to a halfway -- and
then, of course, you've got the whole problem of
community acceptance of halfway houses, right? So
I know that I'm not talking about reality, here,
because you -- right in -- you know, in your
community and -- and they don't want them. But
in -- in a halfway house, they're coming home every
night. If I can put them in A.A. every night, in
the halfway house, I've got a much greater ability
to affect the outcome. And if they're on parole, I
see them once a week.
MR. ANNUNCI: I was just about to
ask your experience in Pennsylvania where
sixty-five percent go into halfway houses. How
could they possibly achieve that in the
communities?
MR. HORN: Most of the programs
were privately run, on contract -- Quakers.
There's a -- Pennsylvania -- and I -- I have to
say, the one thing that -- that differentiated my
experience in Pennsylvania from my -- is the Quaker
history in Pennsylvania. There's -- there's a
difference in the prisoners in Pennsylvania and a
difference in the communities. And I -- and I
attribute it to the Quakers, quite frankly. I'm
not sure you could do it. Listen. The first time
I met now-Governor Rendell, he was Mayor Rendell.
And the -- my phone rings, and
they say, "Mayor Rendell is on the phone." This
was the mayor. He called me up and says, "you
know, we understand that, you know, so-and-so --
Community Education Centers is trying to -- has a
contract from you, and they're trying to put a -- a
halfway house in our community, and we don't want
it." I mean, sure; it happened. It didn't happen
overnight. It happened over a period of years.
But they -- there was a long history of having
community-based programs. And really, we had
existing programs, and we pretty much grew them.
We took existing programs and
grew them. You had the ability in New York in the
early '90s, when you were up to -- what -- six
thousand people in work release, and you had a lot
of contract facilities. I don't know if you could
ever get it back. I mean, you got six thousand.
If you had six thousand bids, and you could move
twelve thousand people a year through that, you're
talking about fifty percent of your -- that was --
you know, you could -- that was fifty percent of
your release program.
COMMISSIONER O'DONNELL: Marty,
I'm going to have to wrap it up. I really
appreciate it, and --
MR. HORN: Thank you.
COMMISSIONER O'DONNELL: -- I
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58 (Pages 226 to 229)
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24 resources -- enormous resources into the prison system, you won't have those resources available to reinvest in others. And there is no going back, once you've committed to that. Governor Schwarzenegger knows that because he is requesting billions of dollars to add fifty thousand new cells. Apparently, they're still under the impression that they can build themselves out of their criminal justice problem. Ironically, the crime problem continues to grow in those states, and it continues to -- to decline in the State of New York for largely, I think, good reason. We've been smart about a lot of things in criminal justice. So I want to present to you a balanced approach, because I'm proud to live in a state that's made some good decisions about criminal justice.

With respect to those states, however, and what New York State -- why -- why have we succeeded? A couple of reasons -- I think, one, the New York Police Department -- the N.Y.P.D., I think, is a -- a really enormous and wonderful organization that is really capable of responding to crime. And -- and under Commissioner O'Donnell's leadership, we're trying to extend that impression that they can build themselves out of their criminal justice problem. Ironically, the crime problem continues to grow in those states, and it continues to -- to decline in the State of New York for largely, I think, good reason. We've been smart about a lot of things in criminal justice.

So New York has been different.

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

Friedman's book, "The World Is Flat" -- it's a little difficult getting through seven hundred and fifty pages -- but I think he has keen insights into the ability of our country, our nation to compete globally with other countries. And actually, the picture is a good one. And America can compete, but education is the key. So what we've done in putting money into education is important. How does corrections and probation and criminal justice play into that? It's the argument that I just said -- that if you continue to invest...
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I think the appropriation language, however, is forty-six and a half percent. And over the last twenty years, we've reduced funding to probation and community corrections, down to now what is eighteen percent. Probation caseloads continue to grow. When I talked about a hundred twenty thousand adult offenders, you need to know that fifty percent of those hundred and twenty thousand probationers -- fifty percent statewide, sixty-five percent in New York City are felons. So fifty percent are felons, and fifty percent misdemeanors. Included among that probation population, twelve to fourteen percent of probationers are violent felony offenders. We manage twenty-five to thirty thousand, three thousand. And I guess my question is, how many feet will make you feel comfortable? The truth is, we need to protect our community. Excuse me.

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

And now the question -- and I think, Paul, if you look at the statistics, I think...
It's all about opportunity and the opportunities we create for people in their integration back into society. He said something about rehabilitation. People expect, well, you know, rehabilitation. And I said to him later, "Glen, was that because -- people are people. You really don't change. It's not a question of something magical happening, and at some point because we selectively incapacitate you for a number of years. It's a question of what we do while you're in that facility and what you do while you're in that facility that mattered." And for me, it's all about employment. It's all about housing. I agree with Commissioner Horn. It's a variety. Employment and housing are key. Now, just let me annotate that a little bit because I think sobriety is overblown. And I think drug dependency in this country is overblown. And I think we've dedicated far too many resources to it.

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

Is drug dependency and alcoholism an issue? Yes, it is. But is it the real issue or is it symptomatic of our larger problem? A person with no education, a person with no skills, a person who believes he does not have a chance or an opportunity or hasn't made an opportunity for themselves will probably resort to drug and alcohol dependency. When I visited the Doe Fund down in Brooklyn, at the Sharpe Center -- and anyone who hasn't visited that, you ought to take the opportunity to do so -- and spoke to George McDonald. He's very, very good at getting people to build a -- a -- a history, if you will, of successful employment, starting off in meaningful -- very low paying but meaningful jobs and Ready, Willing, Able groups down in New York City. And he's got contracts with the city, and he's got contracts with the bids, including New York City and ensuring that it's litter-free. And then, while he took me through the shop center, and he took me by two of his drug testing machines, he says to me, "Bob, that's my drug treatment program." Because if people have employment, if only to the sentencing judge -- and some would argue that it's less important because, indeed, ninety-six or ninety-seven percent of the cases in New York City are through plea. I was a prosecutor, however, and I sat in court and stood before the judge. And in many cases, the P.S.I. upstate -- maybe not in New York City, but outside of New York City -- can make a real difference. And I think judges throughout the state rely heavily both on the family courts and in the adult courts on the recommendations in probation. But what we said in the Judicial Task force report is that we ought to raise state aid funding if for no other reason than the preparation of a pre-sentence report. And people from Corrections came in, and people from Parole came in and testified to the importance of the pre-sentence report. I submit to you today that I think that's important. I don't think it's that important as far -- in terms of following the person through the system. And you would say, "well, you know, you're the State Director of Probation, Bob. How can you possibly be saying that?" We prepare that report.
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3. for judges. It has to go along with the individual
4. at commitment or we don't accept them into the
5. prison system, along with some other information.
6. And it follows that individual
7. through parole. My question is, after eight or ten
8. years, how meaningful is a report that was prepared
9. eight or twelve years before? And why is
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

25. Page 247
26. they did was important. I understand that. But
27. let's face it. When we leave the community, there
28. are only so many jobs for folks. And in fact,
29. we're an increasingly technical society. And so we
30. ought to prepare people. I was really encouraged,
31. also, when I heard Commissioner Horn talk about
32. literacy. That seems to be something that we
33. should really be able to accomplish. And yet so
34. many people in our prison system are illiterate.
35. So getting back to the job of
36. Corrections, I think we ought to be more careful as
37. to carefully assessing risk and need. And -- and I
38. think that Parole ought to be doing the same thing.
39. So our report is important because it should
40. reflect the thinking and motivations of that
41. individual when they committed that crime six,
42. eight, and ten years ago. But it shouldn't be the
43. most important because, indeed, both Corrections
44. and Parole should know that individual far better
45. than when Probation was involved with this
46. individual.
47. I want to talk about -- I -- I
48. handed out some papers to you, and basically, I

49. Page 248
50. want to save -- I don't want to take too much time
51. on this, but it reflects our active probationers,
52. and it talks about the felony misdemeanor
53. distribution. It talks about the fact that we get
54. three thousand probationers each and every month
55. placed on probation, half of which are felony and
56. misdemeanors. On the second page, however, I want
57. to talk to you about our A.T.I. programs -- the
58. Alternatives to Incarceration. And I want to talk
59. about that for a couple of reasons because I think
60. it played handily into why we were able to reduce
61. our prison population -- not only a strong history
62. of probation regulation, unlike other states like
64. State passed a remarkable piece of legislation.
65. It's called the Classification Alternatives to
66. Incarceration Order. And the reason that I think
67. that is remarkable is it gave counties just small
68. amounts of money to plan about -- plan programs
69. that reduced their reliance on jail -- on their own
70. jail systems because they were all overcrowded at
71. the same time. I would have liked to have seen
72. that money increase over the years. I'd still like
73. to see it increase further. But nevertheless, what
74. was important was not the level of funding, but the
75. way they program was designed. If counties
76. developed alternatives to incarceration service
77. plans, in turn -- and we reviewed and approved
78. those as the state authorizing agency -- they were
79. able to reduce the classification in their local
80. jail systems. And that was very, very important to
81. counties -- from twelve to four, in fact. And so
82. they saved huge amounts of money in overtime. And
83. when facilities were overcrowded at that time, that
84. provided enormous relief to them. So that was
85. important.
86. What types of programs did they
87. develop and we fund? Pretrial service programs --
88. and the numbers there, I need to caution you, that
89. does not include the New York City C.J.A. --
90. Criminal Justice Agency -- which screens over three
91. hundred thousand individuals each year and is
92. responsible for release -- for release on
93. recognizance of some one hundred and fifty
94. thousand. So it doesn't include the C.J.A. But it
95. includes forty-one programs, forty-two pretrial
96.
21 They exercise this in bring up our children -- that a 
22 response to wrong behavior has to be swift and 
23 we exercise this in bring up our children -- that a  
24 What we did is -- those programs, I think, changed   
25 wonderful job in changing the lives of individuals 
26 Apart from all the good that they 
27 did, they achieved something else. And that is 
28 that they achieved a change in judicial thinking. 
29 What we did is -- those programs, I think, changed   
30 the culture of judicial decision-making and laid 
31 hundred drug treatment courts today in the state, a 
32 series of mental health courts, five sex offender 
33 courts -- a little different in their outcome and 
34 their -- their direction, but still important, 
35 clearly. What's important to know about drug 
36 treatment courts is the notion that I want to carry 
37 into probation. And that is the power of the black 
38 robe. It is the responsibility. The thing that 
39 makes the drug treatment court work is that there's 
40 immediate access to treatment, and if there's 
41 violative behavior, that individual is before that 
42 judge the very next day. And what I have said to 
43 the judges last year at the administrative judges' 
44 session -- I'm going to sit in next week at the 
45 judicial training -- is the same thing. I wish 
46 probation enjoyed the same responsibility of judges 
47 in New York State. Indeed, if we did, I think we'd 
48 have similar outcomes, because Commissioner cannot 
49 live in a system where he has to wait for four or 
50 five months for a probation violation hearing. 
51 Everything we know about human behavior, we know -- 
52 we exercise this in bring up our children -- that a 
53 response to wrong behavior has to be swift and 
54 that there's the same responsibility of judges 
55 in New York State. Indeed, if we did, I think we'd 
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Very similar and analogous to this is our agency's quest for a detainer in the legislature. We are going in very narrowly around sex offenders and domestic violence batterers. But I think it is so important for probation officers, when the courts are not in session, and we see violative behavior, to take immediate action and ensure that person is removed from the community, that we arraign within twenty-four or forty-eight hours. And certainly, their due process rights will not be violated.

Recidivism -- we measure probation performance by recidivism. When I got there several years ago, probation departments had never seen recidivism data. We -- thank you to D.C.J.S., who we work very closely with, in providing that. How can you -- how can you measure a performance without recidivism? Recidivism is the goal of probation. It's -- it's reducing -- it's changing offender behavior in reducing recidivism. If you look at the numbers, you see that twelve months for felony re-arrest. It's about thirteen percent. Twenty-four months for the twenty, and three years were about twenty-five percent.

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

I also provided some of the charts that I read each and every quarter when Sue Jacobson sends them over to me. And again, thank you to D.C.J.S. It's the sentences for felony convictions. And I monitor by county what's happening throughout the state with respect to probation sentences. But if you'll look at the first one -- and it's for felony convictions only, now -- it's for felony convictions off of indictments -- you'll see that, between probation and jail and probation, the split sentences for sentencing if, in fact, we were present with a recommendation to the judge. I've been a prosecutor. I know about expediency. You know, I know about moving cases, and -- and I know about court schedules. But I also think that's important.

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

COMMISSIONER O’DONNELL: -- by --
by way of intervention? Do you have ideas along those lines?

MR. MACCARONE: I do. Let me say the following, that I don't there's a minor offender in the state prison system in New York. You have to earn your way into the state prison system in New York. And you may hear different things. But as a prosecutor, I know who goes to state prison. And if you look at that criminal history, it's pretty serious. It's not that we can't make decisions about diverting some of those kinds of cases, and shifting some of those people. I know no one wants to build additional state prisons, and I was encouraged to hear the governor say that. So we need to rely on community corrections. But we need to be careful in what we do because, in fact, if indeed we make recommendations like that, it's going to have some serious repercussions on local county jails and local -- and county probation departments.

Why don't we take the D.W.I. as an example? The most commonly -- common -- and I think certainly Paul and Donna can give you better data on this -- is the D.W.I. population. Now, who's going to prison for the D.W.I.? Probably, if you look at the way our laws are structured, the first gets pled down to a D.W.I. violation. Second is a misdemeanor. The third is a felony. He's on probation at that point. And he may have been even prior to, although not necessarily. And even on the first felony, he may not be on probation -- may pay a fine, and he's done. So it may be the second felony by the time we reach that person. And some of our offenders will fail from probation and be even given another chance. So we're talking about a third- or fourth-time offender that we catch, that law enforcement -- he comes to the attention of law enforcement. How many other times is he -- he's -- has he driven while under the influence of -- of alcohol? However, is there opportunity here? Yes, there is, because the D.W.I. offender is an individual clearly, by definition, who owns an automobile, who pays insurance, who pays car payments like everyone else and is probably employed. Could we do something different?

I think there's opportunity there, but I would never say that we should divert that person from the state prison system and just into probation. Rather, I'd look at the Suffolk County model. And that's within the context of a Suffolk County jail facility. And it's a period of, I think, six months, the last time that I visited that program -- six months of incarceration followed by five years of probation supervision -- every day, five, six days a week in a treatment milieu and looking at their chemical dependency because, let's face it, we're dealing with alcoholics. And alcoholism is an extremely difficult disease to change. But couldn't we do something in the community on that order? Yes, we could. And could probation be there for the community supervision aspect of that? Yes, it could. But we've got to be sure to fund that in a very planful and intelligent way, because the worst thing that we could is divert D.W.I. offenders back into the
Community and have them re-offend. Fifteen hundred deaths occur on our -- on our highways in New York State each and every year. Five hundred and fifty of those -- about a third -- are D.W.I.-related. Interestingly, we've looked at the D.M.V. One Oh Four Crash Fatality Reports in Probation, and each and every year, thirteen percent of the deaths are persons who are known to Probation. I'd be interested in working with ITSMAR, the Institute for Traffic Safety and Management and Research, in determining how many parolees are involved in those. We're not only involved in D.W.I.s, but just in risk-taking behaviors. And so that's something we're looking at, clearly, and admission into LOPS and -- and license plate readers and a whole lot of other strategies to manage our population.

So when you ask me, Commissioner, is there opportunity, yes, there is. The D.W.I. population, if we did something on the Suffolk County model for certain offenders, I think is what that might do is free up resources so we could shift and handle another population, because what is people who are ordered to pay restitution. They're not placed on probation for any other reason than paying restitution. And so there are a number of those. I don't know the exact number because we're automating probation departments with your financial assistance, as you know, and we'll know better in the future. But there's a whole shoplifting -- those kinds of offenses. Are we...
COMMISSIONER O’DONNELL: And some costs associated with it.

MR. MACCARONE: Uh-huh.

COMMISSIONER O’DONNELL: And if -- if we’re addressing those major factors, the -- the offender ought to be doing okay and not recidivating. So -- but if -- if I -- I would be -- I wouldn't be honest if I -- I said here that everyone serves their entire term.

COMMISSIONER O’DONNELL: Well, Bob, we had at least one recommendation that by having lengthy terms of supervision, probation or parole, that, you know, maybe you're setting some people up for failure, that it's so long, that the people that go to the other level where they're just -- you know, you're seeing them once a month or they send in their pay stubs or whatever that -- that kind of reduced supervision is -- doesn't really accomplish much, and yet you keep people basically under supervision for a much longer period of time. It's costly. There are some costs associated with it.

MR. MACCARONE: Uh-huh.

COMMISSIONER O’DONNELL: And it's not -- don't over-program those offenders. You'll be doing, you know, a disservice to them. That should free up resources. That's going to do two things for us during the next two years. One, it's going to necessarily drive us to reconsider our supervision rule. Right now, our supervision rule is very structural. Thank God it is. But it's about context -- counting context and not determining the quality of those contexts. So we're all about seeing the person once a week, and "do you have your pay stub, and are you going to treatment? Are you remaining in drug treatment? Thank you, and how were the Yankees last night?"

And off they go, rather than sitting around in a cognitive behavioral group and saying to that class of offenders, "what are you doing without a job?" And we've made some inroads on employment, I need to say, because we've got a great affiliation with the National Institute of Corrections, and most completed a caseload survey in the last week. I said here that everyone serves their entire term. If -- if we're addressing those major factors, the -- the offender ought to be doing okay and not recidivating. So -- but if -- if I -- I would be -- I wouldn't be honest if I -- I said here that everyone serves their entire term.
They do not. And it's an individual decision.

Now, what I want to do in the next year or so around sex offender management is I want to drive a model policy that limits their ability, although I have to say that our department's doing an impressive job of managing that population. And I don't know of any probation departments that are going out to seek early termination on -- on sex offenders unless it's in unique circumstances and rare cases and low-risk cases.

So that being the case -- you know, I -- I would say, in -- I gave a lot of thought to the sentencing commission. And, you know, it seems to me you have many goals. And one is to look at how we can rely on community corrections greater -- both the A.T.I.s and the probation system. And is there great potential there? Absolutely. But it must be adequately funded. And that's an important consideration. Distinct populations -- I can think of a few. We've discussed them here. But I think we've got to do it in a very planful way to ensure.

So, you know, I think that there has to be incentive in -- within the prison system to achieve. And if we take that away and say, "look, your sentence is fifteen years regardless of your behavior" -- although I have to say, I -- I was -- I did find very interesting Commissioner Horn's model of -- of actually adding time on for behavior. And that's certainly a way to -- I think that we ought to look at that. But I think that -- you know, I think some of the indeterminant -- well, it's a patched quilt. And the thing that I like in New York State's sentencing laws, too, it's kind of like the federal tax return when you think about it. It's the basic statement, and then it's a hundred pages of attachments. And at the end, you find out that you still have to pay your children's tuition. So -- so in that respect, I -- I think that there's opportunity for change.

We will be sending the commission a written document with all of our detailed recommendations to you on changes in restitution, in P.S.I. things that we're looking at that -- and of the few. We've discussed them here. But I think we've got to do it in a very planful way to ensure.

Now, what I want to do in the next year or so around sex offender management is I want to drive a model policy that limits their ability, although I have to say that our department's doing an impressive job of managing that population. And I don't know of any probation departments that are going out to seek early termination on -- on sex offenders unless it's in unique circumstances and rare cases and low-risk cases.

So, you know, I think that there has to be incentive in -- within the prison system to achieve. And if we take that away and say, "look, your sentence is fifteen years regardless of your behavior" -- although I have to say, I -- I was -- I did find very interesting Commissioner Horn's model of -- of actually adding time on for behavior. And that's certainly a way to -- I think that we ought to look at that. But I think that -- you know, I think some of the indeterminant -- well, it's a patched quilt. And the thing that I like in New York State's sentencing laws, too, it's kind of like the federal tax return when you think about it. It's the basic statement, and then it's a hundred pages of attachments. And at the end, you find out that you still have to pay your children's tuition. So -- so in that respect, I -- I think that there's opportunity for change.

We will be sending the commission a written document with all of our detailed recommendations to you on changes in restitution, in P.S.I. things that we're looking at that -- and

If we make no change, we should not expect a different result. People cannot leave
MR. MACCARONE: I think you're affecting people who go through it, except on the margins.

MR. VANCE: There isn't any -- at least now we know where they are."

MR. MACCARONE: Uh-huh.

MR. VANCE: There isn't any -- at least in my experience, cases are moved, adjourned, but there really is no impact in terms of stemming the tide by sanctions or preventing that group from becoming more professional and -- and -- and committing higher crimes. Is there, from your perspective, a way to look at the misdemeanor courts differently, perhaps by decriminalizing as a concept or -- or a number of minor offenses and sending them to a -- you know, a -- a different kind of resolution, which is designed to have a personal impact and be more effective in retaining the misdemeanor courts for those misdemeanors where you're going to have tough guaranteed sanctions? It's a general question, but my observation is, it doesn't do anything to change your process and -- and really affect people who go through it, except on the margins.

MR. MACCARONE: I think you're

COMMISSIONER O'DONNELL: Thank you. We --.

MR. VANCE: I think director -- following up on Commissioner Horn's comments, I've spent time as an assistant D.A. in Manhattan in misdemeanor court. It's -- it -- that is an arena where it seems to me nothing -- with all -- I mean no disrespect to judges or prosecutors -- nothing

MR. MACCARONE: Questions?

COMMISSIONER O'DONNELL: Thank you.

MR. MACCARONE: Uh-huh.
MR. BERGAMO: Thinking about the alternatives, they really are radical. I think it would be real hard for a politician to sell. I agree with some of the things you've said, certainly. I think -- politically, I think it certainly. That's something I certainly think is worthy of looking at because a lot of the defendants obviously are. And then the defender-based obviously are. And the remaining fifty or so programs are those programs -- the Center for Employment Opportunity. Where do they get their clients from? Well, the cases -- Nathaniel Program, which runs a very successful ACT team in intervening and, you know, the mentally ill, takes its cases out of Rikers, plus felony indictment. They go to Rikers, and they interview offenders, and they come back and advocate before judges. And they're very successful, as I said, changing lives one at a time there. So some of the A.T.I.s will get their cases from direct referral from Probation, throughout the state. Others will have independent screeners in court and get their cases and make separate

MR. MACCARONE:  Yeah. Let me say that I can give you some more detailed information now, and that is that two thirds of those hundred and seventy A.T.I. programs are operated by probation departments. So virtually all of the pre-trial service programs, except two or three counties -- Monroe, Westchester, and -- and New York City C.J.A. -- are actually operated by county probation departments. Similarly, most of the community service programs are operated by the probation departments. The task programs are either part of probation or independent. And the defender-based obviously are. And then the remaining fifty or so programs are those programs -- the Center for Employment Opportunity. Where do they get their clients from? Well, the cases -- Nathaniel Program, which runs a very successful ACT team in intervening and, you know, the mentally ill, takes its cases out of Rikers, plus felony indictment. They go to Rikers, and they interview offenders, and they come back and advocate before judges. And they're very successful, as I said, changing lives one at a time there. So some of the A.T.I.s will get their cases from direct referral from Probation, throughout the state. Others will have independent screeners in court and get their cases and make separate

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COMMISSIONER O’DONNELL: And, you know, is anyone seriously looking -- did the commission, for instance, look at how to make that information more available to judges, where in the state -- in the state -- in that state these programs don't exist and --

MR. MACCARONE: Yeah.

COMMISSIONER O’DONNELL: -- and should be started, if they don't?

MR. SCHNEIDERMAN: It sounds like some counties have some, and some counties don't. Some judges have relationships; some judges --

COMMISSIONER O’DONNELL: And they work --.

MR. SCHNEIDERMAN: -- don't.

It's not --.

COMMISSIONER O’DONNELL: Do they work is always --

MR. MACCARONE: Yeah.

COMMISSIONER O’DONNELL: -- the core --.

MR. SCHNEIDERMAN: Yeah. And then -- yeah.

UNIDENTIFIED SPEAKER: I think, two years ago, the New York City Criminal Justice Agency did an evaluation of the A.T.I.s in New York City. I'm sure that's -- we can get a copy of that for you.

MR. MACCARONE: And you'll want to look at that -- the A.T.I. evaluation --

because, you know, it shows that, you know,

outcomes are about the -- the same.

Let me just say something about what we're doing with the A.T.I.s, and certainly, I can give you an index of -- you know, a -- a -- a guide on where all the A.T.I.s are by county, and

we have that information. In fact, one of the things we sent it over was just for the --

recent reentry hearing.

First of all, we implemented a careful quarterly

recidivism information on the A.T.I.s. That, too, is going on the public website because they need to know how they're succeeding. And some of them are very expensive. It is not inexpensive. If you look at some of the Fortune programs and -- and some of the other residential programs, there can be upwards of eighteen, twenty thousand dollars per offender. We do our best to create a very competitive environment and hold them to the milestones. If they do not reach their milestones, they do not get paid.

So we've made it performance-based contracting. We've provided recidivism data. And this year, we implemented a thirty-three percent random sample audit. We just sent out cases. They have to deliver to us an exact copy of their file to review to ensure that they hit all of the benchmarks on those cases, as a -- and a way of auditing against them. Why is that important? Performance-based contracting for the A.T.I.s is the first step in getting the toward evidence-based outcomes -- looking at outcomes. And we've had programs that now are
really concentrated on how are we going to succeed with this offender. So it's an entire -- entirely different philosophy than getting the state money, regardless of whether we perform or not. So --.

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

MR. MACCARONE: Yeah.

COMMISSIONER O' DONNELL: -- chair of this commission on our second meeting, I -- I'm going to have to bring it to a close so we can get out of here by five. But I really want to make a plea to you, Bob, to you, Marty, to work with us.

We're -- we're -- we have a schedule. We're going to be breaking down into subcommittees in July and August that are really going to tackle these issues for a preliminary report, to make preliminary findings. And we really need your expertise. So I'll talk to you --

MR. MACCARONE: Sure.

COMMISSIONER O' DONNELL: -- as -- as two of the preeminent experts in this field, that we could really use your help and support and guidance and direction. So I hope you'll sit with us and -- and work very closely with us --

MR. MACCARONE: Certainly.

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

MR. MACCARONE: Surely. Thank you.

COMMISSIONER O' DONNELL: Well, any pertinent matters everyone would like to discuss. I just want to make sure everyone knows our next meeting is June 27th. So we won't be meeting next week to allow our legislators to pass some very meaningful legislation as we wind down the legislative session. Our meeting is going to be a very important one. I think that all -- both of them have been so far. But we are going to hear from Ed Latessa, who Bob Maccarone spoke about, who's really a national expert on a number of corrections issues and, particularly, reentry issues. So he's going to be very important. We're going to hear from Jeremy Travis, you know, who is also a national expert and wrote the book on...
absolutely is part of it. We have one session where we have some budget people, but really, it's going to have to be part of the ongoing work, as we're working in the subcommittee with our research staff, having some budget people who will be working with us on it from the various components. But it is true. We -- we won't succeed if we have grandiose proposals and no way to finance them and -- and no cost savings as a result. So it's widely said -- yes.

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

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