

December 15, 2006

The Honorable Sheldon Silver  
Speaker of the Assembly  
Capitol, Room 346  
Albany, NY 12248

Dear Speaker Silver:

As Chairman of the Assembly Standing Committee on Correction, I am pleased to present to you the Annual Report for the 2006 Legislative Session.

The Annual Report continues the longstanding practice of highlighting the work of the Committee on Correction as well as reviewing major aspects of state and local corrections by providing budgetary, workload and population demand data.

I would like to take this opportunity to acknowledge the hard work of the members of the Committee on Correction and all of the members of the Assembly for their continued commitment to the work of the Committee and to progressive corrections legislation. As always, your continued support is deeply appreciated.

Sincerely,

Jeffrion L. Aubry  
Member of Assembly

**2006 ANNUAL REPORT**  
**STANDING COMMITTEE ON CORRECTION**

**Jeffrion L. Aubry, Chair**

**Committee Members**

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William Colton  
Diane Gordon  
Felix Ortiz  
Jose Peralta  
William Scarborough  
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**Minority**

Tom O'Mara, Ranking  
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**Staff**

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## **I. JURISDICTION**

The Assembly Committee on Correction has jurisdiction over legislation affecting all aspects of the operations of both State and local correctional facilities. This responsibility includes 70 State correctional facilities and 62 local correctional systems, including all local jails and police lockups operated by municipalities across New York State.

The Committee on Correction works closely with other committees of the Assembly, including the Committees on Alcoholism and Drug Abuse, Codes, Health and Mental Health, Mental Retardation and Developmental Disabilities regarding issues that affect correction staff and inmates.

## **II. NEW YORK STATE'S CORRECTIONAL POPULATION**

### **A. State Correctional Facilities**

As of December 2006, the under custody population of the Department of Correctional Services (Department or DOCS) was 63,304. This represents a 1% increase in the prison population from 2005 and ends six consecutive years of population decline. In addition, the average daily count of state ready inmates confined in local correctional facilities is 500 which is similar to the average number of state ready inmates that were confined in local correctional facilities in 2005. It should be noted that although not recognized as part of the Department's population, the Willard Drug Treatment Campus typically confines an average population of between 800 and 900 inmates. The three month length of stay for Willard inmates results in an annual population of approximately 3,500.

Total admissions to the Department in calendar year 2006 were 26,942 which is a 7.1% increase from the 2005 total admissions. It is useful to examine a breakdown of this total admission figure. New court commitments for this period were 16,868 (3.1% increase over 2005), parole revocations and remands to prison for this period were 6,106 (7.8% increase over 2005) and conditional release revocations and remands to prison were 3,303 (39.7% increase over 2005). The increase in conditional release revocations may have been at least partially due to a significant increase in persons being conditional released in 2006.

As noted above, 2006 marks the end of six consecutive years of decreases in the State's prison population. At this time, it is hard to know whether this slight rise in prison population is meaningful. It is interesting to note that although New York State's overall crime rate dropped by 3%, including a 2% drop in violent crime, statewide felony case processing data indicates an increase in felony indictments, convictions, and guilty pleas.

## **B. Local Correctional Facilities**

The total under custody population among local correctional facilities as of December, 2006 was 34,531. For the City of New York, there were 14,043 inmates under custody in December, 2006 which is 564 more than in December, 2005. County correctional facilities outside of the City of New York had an under custody population of 20,488 as of December, 2006 which is 3,849 more than in December, 2005.

## **C. Parole Supervision**

The Division of Parole is responsible for the supervision of all persons released from the Department of Correctional Services who are subject to a term of parole, post release supervision or conditional release. This responsibility includes Division efforts to ensure successful, law obedient adjustment to community living and in many instances, Division staff will help to place persons in drug treatment, job training, job placement and other services to enhance the likelihood of a self sufficient and crime-free lifestyle. Division staff are also responsible for identifying violations of parole conditions which may result in the use of corrective measures, including revision of parole conditions and in some cases parole revocation. According to the Division of Parole, at the end of the 2005-06 SFY, there were 43,132 persons in New York State under parole supervision which is 897 fewer than at the end of the 2004-05 SFY.

The Board of Parole reviews all parole eligible prison inmates and either denies or approves release on parole. In the 2005-06 SFY, only 34% of prisoners were granted parole following their initial Parole Board interview which is a 3% decrease in release rate from the 2004-05 SFY and a 13% decrease from the 2003-04 SFY. Prisoners whose crime of commitment is statutorily defined as "violent" have been particularly unsuccessful before the Parole Board. In SFY 2005-06, only 13% of prisoners with a crime of commitment defined as "violent" were granted parole at their initial interview which is a 3% decrease from the 2004-05 SFY.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision. In the 2005-06 SFY, 13,010 parolees were ordered returned to DOCS, including 2,989 who were sent to the Willard Drug Treatment Campus.

## **D. Community Corrections Programs**

According to data obtained from the Division of Probation and Correctional Alternatives, as of December, 2006, there were 125,098 adult probationers under supervision across New York State, including 64,097 felony probationers and 58,797 misdemeanor probationers. In addition, local probation departments supervise persons placed under supervision by the family court which includes approximately 5,000 juvenile delinquency cases and 4,000 persons in need of supervision (PINS) cases each year.

Probation departments are also called upon to investigate and prepare pre-sentence reports based upon those investigations. Each year, probation departments conduct more than 130,000 investigations for both felony and misdemeanor cases.

Additionally, the Division funds and oversees a variety of alternatives to incarceration programs. These programs are arranged into five programmatic categories: pretrial services, defender-based advocacy, Treatment Alternatives to Street Crime (TASC) and treatment programs, specialized programs and community service sentencing programs. These programs are briefly described below:

1. Pretrial service programs interview defendants, evaluate community ties and assess the likelihood of appearance in court. This information is made available to the court and has proven to be a useful aid in making bail decisions.
2. Defender-based advocacy programs evaluate defendants' needs for services such as drug treatment, family counseling, etc., prepare alternative sentencing plans, and aid defense attorneys in representing their clients.
3. TASC (Treatment Alternatives to Street Crime) programs evaluate defendants with substance abuse histories, develop treatment plans, assist in placing defendants in treatment programs and monitor treatment performance.
4. Specialized drug and alcohol treatment services evaluate defendants with substance abuse histories and place defendants in treatment programs ordered by the courts as alternatives to incarceration. These programs may also treat defendants.
5. Community service sentencing programs arrange for community-based work sites, place defendants in community service work and monitor compliance with court-ordered community service.

### **III. STATE BUDGET IMPACT ON CORRECTIONAL AGENCIES**

#### **A. Department of Correctional Services**

The 2006-07 Budget for DOCS provides \$2.35 billion in state operations funding which is a \$90 million increase in state operations funding over the budget for the prior year. The Department possesses the largest state operations budget of any state agency and the average cost to house an inmate is now more than \$37,000 per year. The 2006-07 Budget also includes \$6 million in aid to localities funding, principally for the reimbursement of local facilities for the confinement of state inmates. The reimbursement rate to localities was increased in the SFY 2006-07 budget from \$34 to \$40 for the confinement of inmates awaiting transfer to state prison and from \$17 to \$20 for the confinement of state inmates

returned to local correctional facilities for court-related matters.

In addition, the SFY 2006-07 Budget includes capital funds in the amount of \$250 million for maintenance and improvements to existing facilities.

It should be noted that the program cuts experienced in 1995 and 1996 have never been replaced and programs which prepare inmates to lead law abiding lives upon release have clearly not kept pace with the system's population. This reduction in inmate programs included reduced staffing for vocational training, academic education, drug and alcohol abuse treatment and other services. Over the years, the decrease in program services has taken its toll in the day-to-day operations of every correctional facility, making the already difficult jobs of correction officers and prison administrators even more difficult and increasing the risks to personal safety for staff and inmates.

Additionally, the Department continues to employ a policy that limits the availability of substance abuse treatment in general confinement facilities and provides full treatment services only for inmates the Comprehensive Alcohol and Substance Abuse Treatment Program (CASAT) and for selected inmates who are within a few months of release from prison, notwithstanding the fact that two-thirds of the prison population are substance abusers. It is a widely accepted fact among treatment professionals that substance abuse treatment, if it is to be effective and have a lasting impact on inmates, must be of a long term nature. For this reason the Assembly has advocated for a minimum of one full year of substance abuse treatment for those inmates found to be in need of treatment.

## **B. Local Correctional Agencies**

The SFY 2006-07 State Budget provides \$28 million for reimbursement through the Division of Parole for the housing of parole violators in local correctional facilities pending determination of parole revocation proceedings. The Budget increased the per diem reimbursement rate from \$34 to \$40. However, even with the increase to the reimbursement rate, state funding provides for less than half of actual costs for the majority of local facilities. This is especially problematic for those jails that are operating at facility capacity and are therefore obliged to board inmates at other facilities at rates ranging from eighty to one hundred dollars per day. There are currently approximately 1900 parole violators confined in local facilities.

As discussed above, local correctional facilities also receive reimbursement at the rate of \$20 per day from DOCS for the housing of state inmates returned to local facilities for the purpose of appearing in court and \$40 per day for the housing of inmates who have been sentenced to an indeterminate or determinate sentence, but have not yet been accepted for custody by the Department within the time period required by law. Finally, funding is provided for the confinement of inmates pursuant to section 95 of the Correction Law, who have been sentenced to state time and may be boarded in a local correctional facility for a period not to exceed six months.

### **C. Division of Parole**

The Division's total budget for 2006 is \$213.5 million. \$160.5 million is provided for parole operations and \$53 million is provided for aid to localities, which includes \$28 million to reimburse local governments for the confinement of parole violators in local correctional facilities as discussed above. This local aid also includes funds for vocational training, job placement and related services for parolees, former inmates of the New York City Department of Correction and other offenders. Finally, these local aid monies include \$11.8 million for drug relapse prevention programs and other drug and alcohol treatment services for parolees currently under supervision of the Division.

### **D. Division of Probation and Correctional Alternatives**

The Division's annual budget of \$72.8 million includes \$70.85 million in aid to localities and \$1.95 million for state operations, funding approximately thirty staff positions.

Funding for aid to localities provides partial reimbursement to local probation departments and alternatives to incarceration programs. However, probation funds provided to local governments represent approximately eighteen percent of actual costs of these services, rather than the 46.5% authorized in statute. As a consequence of this shortfall in state aid for probation, local governments must provide funding for the balance. Because the actual cost of these services increases each year, the county share for probation services always increases.

### **E. State Commission of Correction**

The Commission of Correction is responsible for the regulation and oversight of all correctional facilities in New York State. This responsibility encompasses 70 State correctional facilities, 63 county jails, the New York City correctional system comprising 18 facilities and approximately 200 police lockup facilities. The Commission has an annual budget of \$2.6 million and a total staff of about forty positions.

## **IV. COMMITTEE ACCOMPLISHMENTS**

### **A. Significant Legislation**

#### **1. Sex Offenders**

During the 2006 Legislative Session, the Assembly passed a number of bills related to sex offender registration and notification. Three of these bills were signed into law by the Governor. First and most significantly, A.9472 (Chapter 1 of 2006) extends the registration period for Level 2 sex offenders to life (Level 3 offenders must register for life under existing law) and to 20 years for Level 1 offenders. This new law removes the ability of Level 3 offenders to petition for relief from the requirement to register and



authorizes certain Level 2 sex offenders to petition for relief after they have been registered for 30 years. Additionally, legislation was passed which expands the information released to the public about Level 1 and 2 sex offenders. Specifically, the new law expands the public notification provisions of Megan's Law by requiring the Division of Criminal Justice Services (DCJS) to post information about Level 2 offenders on the internet and allows law enforcement to notify vulnerable populations about Level 1 offenders in the community.

## **2. Prisoner Reentry**

The Legislature passed a number of bills to advance the successful reentry of persons returning from incarceration. Unfortunately, the Governor vetoed the majority of this legislation. However, two important reentry-related bills did become law. First, the Governor signed legislation that amends the Penal Law to make clear that the promotion of successful and productive reentry into society of convicted individuals is a central principle of the Penal Law. This legislation is significant because it requires judges to consider reentry issues at each step of the criminal adjudication process. For example, judges will be required to consider the impact of a particular sentence on the future reentry of a convicted individual.

Additionally, a new law requires that probation reports used by the court in making a determination on an application for a certificate of relief from disabilities be made available to the applicant before the court makes a decision. Individuals with criminal records must be able to obtain certificates of relief from disabilities in order to find gainful and stable employment. This new law will allow persons seeking a certificate to correct any mistakes in the probation reports to ensure that judges are making decisions based on accurate information.

## **B. Public Hearings**

### **1. Parole Policies and Practices**

In January, 2006, the Assembly Committee on Correction conducted two public hearings to examine to policies and practices of the New York State Division of Parole. The first hearing was held on January 11, 2006, and included testimony from 22 witnesses. The purpose of the hearing was to examine the various aspects of parole supervision from pre-release procedures to termination and discharge. Particular emphasis was given to (1) pre-release programming for prison inmates to be released on parole, conditional release or post-release supervision; (2) program services and supervision standards for sex offenders and drug offenders released to the custody of the Division; (3) the role of the Willard Drug Treatment Campus in the Division's management of parole technical violators; and (4) policies and procedures for managing parolees who violate conditions of their release.

A second hearing was held on January 30, 2006, specifically to take the testimony of the director of the Division of Parole, Anthony Ellis, who failed to attend the earlier hearing.

## **2. Mental Health Treatment in Prison**

The Assembly Committee on Correction conducted a hearing on January 18, 2006, to examine the operation and adequacy of mental health programs in New York State prisons. The Committee heard testimony from 13 witnesses including DOCS administration, mental health experts, advocates and former inmates.

In 2004, the Executive Budget proposed a new program initiative to improve the management and treatment of seriously mentally ill inmates within the Department of Correctional Services. According to the Executive, this initiative followed a comprehensive review, conducted in SFY 2003-04, of mental health treatment programs and infrastructure available for the custodial care and treatment of seriously mentally ill inmates. This initiative has been funded and is operated by the Department and the Office of Mental Health. According to the Department, monies provided in the SFY 2004-05 State Budget allowed for the expansion of existing programs and the addition of new programming which serves those seriously mentally ill inmates who were unable to adjust to living within the general prison population and were, therefore, often placed in disciplinary confinement. This public hearing examined the progress made in the implementation of this initiative in order to determine what additional programming is necessary.

## **V. ISSUES TO BE ADDRESSED IN 2007**

### **A. Drug Law Reform**

The amendments to New York State's drug laws in 2004 and 2005 represented significant but modest advances in our efforts to achieve a comprehensive and enlightened policy for dealing with drug offenders. Despite the Assembly's repeated efforts to bring about progressive change, including the passage of comprehensive drug law reform legislation (A.8098-A), there continues to be resistance to meaningful reform. The Assembly must renew its efforts during the 2007 Legislative Session and the first objective should be to restore judicial discretion empowering courts to place non-violent drug offenders in treatment rather than prison. This goal can only be achieved if funds for community-based substance abuse treatment programs are made available so that courts have an adequate supply of effective treatment resources.

Other objectives of true drug law reform should include: (a) mandatory treatment for persons who are substance abuse dependent and are sentenced to prison or probation, or are serving a term of parole supervision; (b) a requirement that each New York State

county have at least one drug court; and (c) a mandatory indeterminate sentence of 15 years to life for offenders who are major traffickers in illegal drugs.

## **B. Elimination of Disciplinary Confinement for Mentally Ill Inmates**

For many years, the Assembly has passed legislation that would ban the practice of placing seriously mentally ill inmates in solitary confinement. In the 2006 legislative session, the Senate finally acknowledged the importance of this issue and joined the Assembly in seeking to end this barbaric practice. Unfortunately, Governor Pataki vetoed the legislation.

The bill passed by the Assembly and Senate would have prohibited prisoners with serious mental illness from being placed in solitary confinement. The legislation would have also established a residential treatment program for mentally ill inmates who are unable to conform their behavior to prison rules because of their mental condition and empowered the Commission on Quality of Care for the Mentally Disabled to monitor mental health treatment in prison.

Currently, approximately 12% (8,000 inmates) of the general prison population suffers from mental illness. More alarming is that 23% of inmates (more than 1,000) in solitary confinement are seriously mentally ill and not receiving adequate mental health services. Recent studies have found that when a mentally ill inmate is put into solitary confinement, they often engage in acts of self-mutilation and commit suicide at a rate three times higher than inmates in the general population. Further, many mentally ill inmates spend their entire sentence in solitary confinement and are then released directly to the community, posing a serious threat to public safety.

Although modest, DOCS has taken some steps to address this issue. Specifically, in response to a lawsuit filed by mental health advocates, DOCS created Behavioral Health Units (BHU) as part of a new program initiative included in the SFY 2004-05 Executive Budget. Under this initiative, existing mental health programs within the prisons were expanded and new programs, such as the BHU, were created to serve seriously mentally ill inmates placed in disciplinary confinement. While the recent creation of the BHU and other mental health programs in prison are a step in the right direction, these efforts are not sufficient to address the more than 1,000 inmates with serious mental illness currently being held in disciplinary confinement.

Therefore, the Assembly must continue its efforts to persuade the Executive that the inhumane and self-defeating practice of placing seriously mentally ill inmates in solitary confinement defies all reason and should be abandoned.

### **C. Elimination of Excessive Telephone Charges to Families of Inmates**

For years, the Executive has abused the requirements of the state procurement law which requires that contracts be awarded to the lowest, responsible bidder and has instead sought to achieve millions of dollars in profit from the collect call system inmates in the state prison system are obliged to use. No other state institution operates a profit-making phone system and the practice should end. During the 2006 Legislative Session, the Assembly passed legislation that would have ended the practice and efforts to enact legislation should continue in the 2007 Legislative Session.

### **D. Restoration of DOCS Programs**

As a result of program cuts made by the Executive in 1995 and 1996, the availability of training, treatment, and educational programs that prepare inmates for successful release into the community has been severely diminished and inmate waiting lists for programs often run into the thousands. It should be recognized that these programs serve the interests of public safety by preparing inmates to obtain and hold jobs, thereby preventing crime. Research findings consistently affirm that inmates who complete education and vocation training programs have lower rates of recidivism.

### **E. Mandatory Substance Abuse Treatment**

Although it is widely recognized that substance abuse is a major contributing factor in accounting for criminal behavior, the availability of effective treatment within our prison system is woefully inadequate and treatment programs no longer meet the needs of the inmate population. The Legislature should mandate comprehensive treatment, for a minimum of one full year, for all DOCS inmates who have a history of substance abuse. Such mandatory treatment, for a minimum of one full year, should also be a required condition of parole.

**APPENDIX**

**SUMMARY SHEET**

**Summary of Action on All Bills  
Referred to the Committee on  
CORRECTION**

**Final Action on Assembly Bills**

**Bills Reported With or Without Amendment**

To Floor; Not Returning to Committee	3
To Ways and Means Committee	4
To Codes Committee	8
To Rules Committee	2
<b>Total</b>	<b>17</b>

**Bills Having Committee Reference Changed** **0**

**Senate Bills Substituted or Recalled**

Substituted	3
Recalled	0
<b>Total</b>	<b>3</b>

**Bills Never Reported, Died in Committee** **133**

**Total Bills in Committee** **153**