

NEW YORK STATE ASSEMBLY • SHELDON SILVER, SPEAKER

2007
Annual Report

COMMITTEE ON
CORRECTION
JEFFRION L. AUBRY, CHAIR

December 15, 2007

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 2007 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

2007 ANNUAL REPORT

STANDING COMMITTEE ON CORRECTION

Jeffrion L. Aubry, Chair

Committee Members

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William Colton
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William Scarborough
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TABLE OF CONTENTS

| | | |
|-------------|---|-----------|
| I. | Jurisdiction..... | 1 |
| II. | New York State’s Correctional Population..... | 1 |
| | A. State Correctional Facilities..... | 1 |
| | B. Local Correctional Facilities..... | 1 |
| | C. Parole Supervision..... | 1 |
| | D. Community Corrections Programs..... | 2 |
| III. | State Budget Impact on Correctional Agencies..... | 3 |
| | A. Department of Correctional Services..... | 3 |
| | B. Local Correctional Agencies..... | 4 |
| | C. Division of Parole..... | 4 |
| | D. Division of Probation and Correctional Alternatives..... | 4 |
| | E. State Commission of Correction..... | 4 |
| IV. | Committee Accomplishments..... | 5 |
| | A. Significant Legislation..... | 5 |
| | B. Public Hearings..... | 7 |
| V. | Issues to be Addressed in 2008..... | 8 |
| | A. Drug Law Reform..... | 8 |
| | B. Prisoner Reentry..... | 9 |
| | C. Merit Time for Domestic Violence Survivors..... | 10 |
| | Appendix: 2006- 07 Summary Sheet..... | 11 |

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 69 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 2007, the under custody population of the Department of Correctional Services (DOCS) was 62,761. This represents a 1% decrease in the prison population from 2006 and an overall population decline of 12% in the last eight years. The number of state ready inmates was 91 at the end of December 2007, a much lower figure compared to 433 state ready inmates at the close of December 2006 (a decrease of 79%). 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 2007 were 27,860, a 3.4% increase from the 2006 total admissions. It is useful to examine a breakdown of this total admission figure. New court commitments for this period were 17,247 (a 2.2% increase over 2006). Returned parole violators and conditional release revocations were 9,880 (5% increase over 2006).

B. Local Correctional Facilities

The total under custody population among local correctional facilities as of December, 2007 was 28,400. For the City of New York, there were 13,018 inmates under custody in December, 2007, which is 1,223 less than in December 2006. County correctional facilities outside of the City of New York had an under custody population of 15,382 as of December 2007, which is 1,625 less than in December, 2006.

C. Parole Supervision

The Division of Parole (Division) is responsible for the supervision of all persons released from the Department of Correctional Services and 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 is 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 2006-07 SFY, there were 42,373 persons in New York State under parole supervision, which is 759 fewer than at the end of the 2005-06 SFY.

The Board of Parole (Board) reviews all parole eligible prison inmates and either denies or approves release on parole. In the 2006-07 SFY, only 28% of prisoners were granted parole following their initial Board interview, which is a 6% decrease in release rate from the 2005-06 SFY and a 9% decrease from the 2004-05 SFY. Prisoners whose crime of commitment is statutorily defined as “violent” have been particularly unsuccessful before the Board. In SFY 2006-07, only 8% of prisoners with a crime of commitment defined as “violent” were granted parole at their initial interview, which is a 5% decrease from the 2005-06 SFY.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision. In the 2006-07 SFY, 14,028 parolees were ordered returned to DOCS, including 2,182 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 (DPCA), as of December, 2007 there were 123,015 adult probationers under supervision across New York State, including 67,797 felony probationers and 56,563 misdemeanor probationers. In addition, local probation departments supervise persons placed under supervision by the family court, which includes approximately 7,000 juvenile delinquency cases and 2,000 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, DPCA 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 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 2007-08 Budget for DOCS provides \$2.62 billion in state operations funding which is a \$26 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 approximately \$41,000 per year. The 2007-08 Budget also includes \$6 million in aid to localities, principally to reimburse of local facilities for the confinement of state inmates. In addition, the SFY 2007-08 Budget includes capital funds in the amount of \$300 million for maintenance and improvements to existing facilities.

Since the cuts to prison programming in 1995 and 1996, programs to prepare inmates to lead law abiding lives upon release have been severely lacking. However, the 2007-08 Budget did provide a small amount of funding to transform existing DOCS facilities into transitional centers in order to better link inmates to treatment and support services upon release. By the end of 2007, one such transitional center was in operation at the Orleans Correctional Center in Erie County. The Budget also provided funding for additional parole officers to coordinate with DOCS to provide transitional planning to inmates. Finally, \$2 million in additional resources was provided for local re-entry task forces to coordinate community support and programming for returning inmates.

In addition, the Assembly provided funding in the 2007-08 Budget to support higher education programming in prison and to sustain the operation of Prisoners Legal Services (PLS). Unfortunately, the Governor neglected to restore funding for PLS in the Executive Budget proposal. Since 1976, PLS has played a vital role in making New York prisons safer and more humane. Its work has resulted in positive changes in prisoners' attitudes and behavior and has promoted constructive policy and programmatic modifications within DOCS. PLS' work has also benefited the State Attorney General's Office and state and federal court judges by providing professional legal representation.

B. Local Correctional Agencies

The SFY 2007-08 State Budget provides \$31 million for reimbursement through the Division of Parole for the housing of parole violators in local correctional facilities pending determination of parole revocation proceedings.

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 sentence, but have not yet been accepted for custody by DOCS within the time period required by law. Finally, funding is provided for to confine 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 \$226 million, including funding for parole operations and aid to localities to reimburse local governments for the confinement of parole violators in local correctional facilities as discussed above. Local aid, in the amount of \$27 million, included funds for vocational training, job placement drug relapse prevention programs and related drug and alcohol treatment services for parolees, former inmates of the New York City Department of Correction and other offenders.

D. Division of Probation and Correctional Alternatives

DPCA's annual budget of \$73.97 million includes \$71.72 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 18% 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 State Commission of Correction is responsible for the regulation and oversight of all correction 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 200 police lockup facilities. It has an annual budget of \$2.6 million and a total staff of about forty positions.

IV. COMMITTEE ACCOMPLISHMENTS

A. Significant Legislation

1. Elimination of Disciplinary Confinement for Mentally Ill Inmates

For the last several years, the Assembly passed legislation to remove inmates with serious mental illness from solitary confinement and establish residential treatment programs to treat mentally ill inmates. In the 2006 legislative session, the Senate finally acknowledged the importance of this issue and joined the Assembly in passing this important legislation. Unfortunately, the bill was vetoed by then Governor Pataki. At the end of the 2007 legislative session, the Assembly and the Senate again passed this important legislation with the hope that the newly elected Governor, Elliot Spitzer, would agree that the barbaric practice of placing seriously mentally ill inmates in solitary confinement must end.

Following the end of the 2007 legislative session in June, the Assembly, Senate and Governor entered into negotiations on the bill and a three-way agreement was reached on legislation in late July. The agreed-upon bill will remove the majority of inmates with serious mental illness from segregated confinement and place them in residential mental health treatment units. The agreement is represented in A.9342 and A.9341 which the Assembly plans to pass early in the 2008 legislative session, and the Governor has pledged to sign into law.

Specifically, the legislation will require that state prisoners placed into segregated confinement for disciplinary purposes be assessed by a mental health clinician. Inmates diagnosed with serious mental illness would be removed from segregated confinement and placed in a residential mental health treatment unit. In exceptional circumstances, where an inmate's removal from segregated confinement poses a substantial threat to safety or security, the inmate could remain in segregated confinement. Inmates remaining in such confinement must receive a heightened level of mental health care including at least two hours of out-of-cell therapy per day. Inmates removed from segregated confinement and placed in treatment units must be provided at least four hours of out-of-cell therapeutic programming each day in addition to other therapeutic activities. These new mental health treatment units would be operated jointly by the Office of Mental Health (OMH) and DOCS. All inmates in segregated confinement not initially diagnosed with serious mental illness must receive mental health assessments at regular intervals. The bill also requires that all correction officers receive additional training in how to effectively and safely manage inmates with mental illness. Finally, the bill requires the New York State Commission on Quality of Care and Advocacy for Person with Disabilities to monitor mental health care provided to inmates and to report on the State's progress in complying with this legislation.

2. Sex Offenders

The Legislature passed a number of bills related to managing sex offenders. Three of these bills were signed into law by the Governor. First, A.6162 (Chapter 7 of 2007) enacts a

comprehensive program for the management of persons convicted of felony sex offenses and authorizes, when necessary, additional court-ordered conditions of civil supervision or civil confinement after such persons have completed their prison terms. This legislation also enhanced sentences by making all of the felony sex crimes set forth in Penal Law Article 130 subject to determinate sentences (without parole eligibility) and greatly increased the post-release supervision periods applicable to persons convicted of these crimes. In addition, A.7512-A (Chapter 373 of 2007) increased the penalty for failure to register as a sex offender from a class A misdemeanor to a class E felony.

Finally, A-4332-A (Chapter 335 of 2007) expands the definition of “employee” for the purposes of §130.05 of the penal law. Current law recognizes that inmates do not have the free will to consent to sexual relations with employees of the correctional facility in which they are incarcerated. Therefore, if an employee of a correctional facility engages in sexual relations with an inmate, such employee is guilty of rape. This legislation expands the definition of “employee” to include volunteers and contractors who provide direct services to inmates. This will provide greater protection to inmates and ensure that persons who violate an inmate’s right to be free from sexual abuse are held criminally liable.

3. Inmate Telephone Services

For the last ten years, New York State has charged families, friends and loved ones of inmates excessively high telephone rates. The average person receiving a collect call from a prisoner could expect to pay 630% more than if they were to receive a call from someone outside the prison system. This was an unconscionable practice. In addition, many correction facilities are in remote locations and phone calls are often the only way that inmates can directly contact family members and loved ones.

Since 2004, the Assembly has passed legislation ending the practice of charging families of prisoners excessive telephone rates but the Executive and the Senate had been resistant. Thankfully, as part of the 2007-08 state budget, newly elected Governor Spitzer renegotiated the telephone contract and ended the commission, or "kickback", that the state receives from the telephone carrier which was responsible for driving up the cost of these calls. The Governor’s action should reduce the cost of these calls by 50% or more. The legislature quickly followed suit by passing legislation (A.3397-A, Chapter 240 of 2007) that makes this policy permanent and ensures that inmate telephone rates will remain reasonably priced and accessible.

4. Prisoner Reentry

The Assembly passed a number of bills to advance the successful reentry of persons returning from incarceration. Several important reentry-related bills became law including the following:

- *A.3208-A (Chapter 284 of 2007) – Protects Employees with Criminal Records from Discrimination*

Article 23-A of Correction Law prohibits unfair discrimination against individuals with criminal records whose convictions are unrelated to the job sought and do not constitute a threat to safety. However, without this legislation, the anti-discrimination protections of Article 23-A applies only to *applicants* for employment or occupational licenses who have criminal convictions and provided no protection to current employees or license holders who face unfair discrimination based on criminal records that *predated* their employment or licensure. This legislation extends the anti-discrimination protections to current employees and license holders.

➤ *A.3379-A (Chapter 639 of 2007) – Protects Youthful Offenders from Unfair Discrimination in Employment*

This legislation will protect persons who have a youthful offender adjudication or non-criminal violation from unfair discrimination in obtaining employment. Records of youthful offender adjudications and non-criminal violations are sealed by law and are not supposed to be used by employers to deny employment. However, before passage of this bill, the law did not expressly bar employers from denying employment based upon these non-criminal findings. The bill corrects this oversight and will ensure that persons who receive youthful offender status or are convicted of a non-criminal violation do not suffer unfair discriminatory treatment when applying for employment.

5. Probation

Two bills regarding probation supervision became law in 2007. First, A.8592 (Chapter 377 of 2007) establishes a pilot project to empower the state director of the Division of Probation and Correctional Alternatives to designate four counties in which probation authorities would have the legal authority to issue temporary detainer warrants for certain high-risk probationers. Also, A.8198 (Chapter 191 of 2007) was signed into law which establishes that when probation supervision is transferred from the probation department serving the county of a probationer's conviction to the county serving the probationer's residence, there is a complete transfer of probation responsibilities to the receiving jurisdiction.

B. Public Hearings

1. Implementation of the Parole/OASAS Initiative Budget Hearing

In March, 2007, the Assembly Committee on Correction, together with the Assembly Committee on Codes and the Assembly Committee on Alcoholism and Drug Abuse conducted a public hearing to examine the adequacy of existing substance abuse treatment services and resources available to people released from incarceration and to determine what additional resources are needed to address this population. In addition, the Committees inquired about the status of the Division of Parole/Office of Alcoholism and Substance Abuse Services reentry initiative funded in the SFY 2006-2007 state budget. The committees received testimony on a variety of related issues including the effectiveness of substance abuse treatment services in addressing recidivism rates among substance abusers released from incarceration and the potential cost savings of

diverting persons convicted of drug-related crimes into substance abuse treatment as a potential alternative to incarceration.

2. Wrongful Convictions and the DNA Database

In May, 2007, the Assembly Committee on Correction and Assembly Committee on Codes conducted a public hearing to examine legislative proposals designed to reduce instances of wrongful convictions, as well as legislation proposing to expand the statewide DNA database. The Committees heard from prosecutors, legal scholars and other experts who made recommendations on how to avoid wrongful convictions. In addition, testimony was received on the status of the statewide convicted offender DNA database, created in 1994, the effectiveness of the 2006 expansion of the database, and whether additional changes to the law are needed.

3. Employment and Housing for Formerly Incarcerated Individuals

In July, 2007, the Assembly Committee on Correction, together with the Assembly Committee on Social Services and the Assembly Committee on Housing conducted a public hearing to examine the adequacy of existing resources and programs designed to prepare incarcerated individuals to return home and the availability of such programs for people released from incarceration. The hearing focused on improving services for this population to ensure continuity and stability upon release.

V. ISSUES TO BE ADDRESSED IN 2008

A. Drug Law Reform

In 1973, Governor Nelson Rockefeller signed legislation enacting the Rockefeller Drug Laws. The implementation of these laws gave New York the dubious distinction of having the harshest drug laws in the United States. At the time, Governor Rockefeller and many others, believed that the effort to treat and rehabilitate drug abusers had failed and that the epidemic of drug abuse could only be quelled by the imposition of mandatory, inflexible and harsh prison sentences.

Despite calls for change, the Rockefeller Drug Laws remained largely in place until 2004 when the Legislature and the Governor were finally able to come together to enact modest drug law reforms. At the time, both the Executive and the Legislature recognized that these reforms represented just the first step towards meaningful change and that other major modifications to the drug laws were needed. Unfortunately, despite the Assembly's repeated efforts to bring about progressive change, including the passage of comprehensive drug law reform legislation, the Executive and the Senate have resisted meaningful reform.

35 years of a drug policy focused on punishing drug users and spending billions of dollars on incarceration has failed to significantly reduce the use of drugs or the commission of drug-related crime. Instead, over the last three and a half decades, large numbers of drug abusers have been imprisoned, families and communities, particularly communities of color, have been destroyed, and billions of dollars have been devoted to incarceration while resources for prevention and treatment services have been drained.

Drug abuse is a serious public health problem that affects most families and communities. Each year drug abuse results in an estimated 40 million serious illnesses or injuries among people in the United States. We have learned over the last 35 years that drug addiction is a treatable disease and that effective treatment can successfully reduce the levels of drug abuse and crime. During the 2008 legislative session, the Assembly must renew its efforts to restore sentencing discretion to judges and empower courts to place drug offenders in treatment as an alternative to incarceration.

B. Prisoner Reentry

There are currently more than 62,000 people in state prison in New York and an additional 28,000 in local county jails. Most of this population will eventually return to our communities. Currently, DOCS releases about 26,000 people each year. The success of people returning from incarceration stands to benefit our entire community while failure perpetuates a cycle of recidivism and incarceration. Currently, persons returning from incarceration face many obstacles including insufficient medical and mental health benefits, employment discrimination, and the inability to find suitable housing.

Generally, New York needs to better prepare individuals for release through a comprehensive, multi-agency reentry program beginning upon a person's entry into prison. Elimination of legal and administrative barriers to successful reentry and restoration of DOCS programming, including Tuition Assistance Program (TAP) availability and restoration of college programs are also vital policy components.

Therefore, the Correction Committee is committed to advancing legislation that will assist offenders to successfully reenter society therefore reducing further criminal behavior and victimization of our communities. Specifically, a number of legislative initiatives will be advanced to promote employment opportunities for persons returning from incarceration including: (1) providing a tax credit for employers who hire persons recently released from incarceration; (2) limiting the legal exposure of employers against negligent hiring claims when such employers comply with Article 23-A of the correction law and make good faith, reasonable determinations to hire persons with a criminal record; (3) ensuring that employers and prospective employees are aware of the mandates of Article 23-A of the correction law.

Additionally, the Correction Committee will advance legislation to ensure that Medicaid applications are filed for inmates prior to release from prison and that all inmates who are eligible for Medicaid receive coverage immediately upon release. Enrollment of inmates in Medicaid upon release from incarceration is essential to ensuring access to medical care, drug treatment, and mental health services for individuals leaving prison. Access to such vital

services also plays a critical role in preventing recidivism. However, under current law, enrollment in Medicaid can often take two or three months after release from incarceration creating a significant gap between release and Medicaid eligibility.

C. Merit Time for Domestic Violence Survivors

In 2002, a law was enacted to allow inmates who were victims of domestic violence and committed crimes against their abusers to be eligible for work release. At the time, the legislature and the Governor recognized that women who break the law as a direct result of domestic violence are a special category of offenders who pose very little risk to public safety and have extremely low rates of recidivism. In the 2008 legislative session, the Assembly will advance legislation to expand on that idea by allowing women who commit certain crimes due in substantial part to domestic abuse to be eligible for a one-third merit time allowance. Merit time reduces an inmate's sentence and allows for the possibility of early release

Women who are incarcerated for defending themselves against a batterer or committing crimes because of domestic abuse pose virtually no threat to public safety: most have no prior criminal record, no history of violence, and they have extremely low rates of recidivism. Allowing these inmates whose lives have been shattered by violence to be eligible for increased merit time would be an important advance in New York's continuing fight against the terrible epidemic of domestic violence. It would allow incarcerated survivors of domestic violence to more quickly begin the difficult journey of returning to their communities and children, rebuilding their lives and recovering from abuse.

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 | 7 |
| To Ways and Means Committee | 6 |
| To Codes Committee | 13 |
| To Rules Committee | 3 |
| Total | 29 |

Bills Having Committee Reference Changed **2**

Senate Bills Substituted or Recalled

| | |
|--------------|----------|
| Substituted | 4 |
| Recalled | 0 |
| Total | 4 |

Total Bills in Committee **169**