

New York State Assembly | Sheldon Silver, Speaker



committee on

Correction

Jeffrion L. Aubry, Chair

December 15, 2009

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 2009 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 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

2009 ANNUAL REPORT

STANDING COMMITTEE ON CORRECTION

Jeffrion L. Aubry, Chair

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Hakeem S. Jeffries
Alan N. Maisel
Felix Ortiz
Jose R. Peralta
William Scarborough
Harvey Weisenberg
Keith L.T. Wright

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Joe M. Giglio, Ranking
Janet L. Duprey
Teresa R. Sayward

Staff

Seth H. Agata, Assistant Secretary for Program and Policy
Daniel Salvin, Counsel
Shani Smoak, Committee Clerk

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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 67 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, regarding issues that affect correction staff and inmates.

II. NEW YORK STATE'S CORRECTIONAL POPULATION

A. State Correctional Facilities

As of December 1, 2009, the under custody population of the Department of Correctional Services (DOCS or the Department) was 58,565. This represents a 3.3% decrease in the prison population from 2008 and an overall population decline of 18% since the peak of 71,538 in 1999. The under custody population is 51.1% African American, 24.8% Hispanic, and 21.9% white. The number of state ready inmates (inmates held in a local correctional facility waiting transfer to state prison) was 507 on December 1, 2009, up slightly from a daily average of 450 state ready inmates held in county jails in 2007. 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.

There were 21,001 total admissions to the Department from January 1, 2009 through December 1, 2009, a 12% decrease from the total admissions during the same period in 2008. New court commitments for this period were 14,041 (a 3.1% decrease from 2008). Returned parole violators and conditional release revocations were 6,393 (a 25.5% decrease from 2008).

It is projected that the state prison population will continue to decline in the coming years thanks in large part to legislation enacted during the 2009 session to reform the Rockefeller Drug Laws and restore discretion to judges to sentence non-violent drug offenders to probation as a possible alternative to prison. See Section IV of this report for a detailed discussion of the Rockefeller Drug Law reform legislation.

B. Local Correctional Facilities

The total under custody population among local correctional facilities as of December, 2009, was 29,700. For the City of New York, there were 13,190 inmates under custody in December, 2008, which is 195 less than in December, 2008. County correctional facilities outside of the City of New York had an under custody population of 16,510 as of December, 2009, which is 507 more than in December, 2008.

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 2008-09 SFY, there were 41,184 persons in New York State under parole supervision, which is 1,790 less than at the end of the 2007-08 SFY.

The Board of Parole (Board) reviews all parole eligible prison inmates and either denies or approves release on parole. In the 2008-09 SFY, 21% of prisoners were granted parole following their initial Board interview, which is an 11% decrease in the release rate from the 2007-08 SFY. Prisoners whose crime of commitment is statutorily defined as “violent” have generally been unsuccessful before the Board and in SFY 2008-09, only 8% of prisoners convicted of a violent crime were granted parole at their initial interview which is a 5% decrease from SFY 2007-08.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision, often with revised conditions. In the 2008-09 SFY, 10,414 parolees were ordered returned to DOCS, including 1,439 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), at the end of the 2008-09 SFY, there were 122,842 adult probationers under supervision across New York State, including 60,586 felony probationers and 57,483 misdemeanor probationers. In addition, local probation departments supervise persons placed under supervision by the family court, which includes approximately 5,200 juvenile delinquency cases and 1,400 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 70,000 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 SFY 2009-10 Budget for DOCS provides \$2.67 billion in state operations funding which is a \$20 million decrease 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 \$45,000 per year. The SFY 2009-10 Budget also includes \$200,000 in aid to localities funding which is a decrease of \$6 million from SFY 2008-09. This decrease is the result of legislation passed with the SFY 2009-10 Budget that eliminated reimbursement to local facilities for the confinement of state inmates awaiting transfer to state prison. In addition, the SFY 2009-10 Budget includes capital funds in the amount of \$320 million for maintenance and improvements to existing facilities.

As part of the SFY 2009-10 Budget, the Department closed three minimum security prisons – Camp Gabriels in Franklin County, Camp Pharsalia in Chenango County, and Camp McGregor in Saratoga County. The closure of these facilities resulted in a savings of \$12.8 million in SFY 2009-10. The Department also closed six correctional annexes for an additional savings of \$8.5 million in SFY 2009-10. These closures were made possible by the continued decline in the state prison population noted in Section II-A of this report. It should also be noted that the Rockefeller Drug Law reform legislation included in the budget includes a provision to allow certain non-violent class B drug offenders to apply to be resentenced. It is estimated that approximately 1,500 inmates may be eligible to apply for resentencing and as a result, some will be eligible for immediate or early release. This is likely to further reduce the prison population in the coming year.

In addition to the cost savings resulting from efforts to right-size the state's prison system, the Department was able to achieve savings in the SFY 2009-10 Budget through the expansion of medical parole and the Shock Incarceration Program as well as the creation of a new credit time allowance for certain offenders. First, eligibility for medical parole was expanded to include non-terminal inmates and certain offenders not previously eligible. This measure was enacted as a way to help reduce medical costs within the Department since the state prison population has

grown significantly older over the last ten years – about 3,300 inmates in state prison are over the age of 55. The budget legislation expanded the pool of eligible inmates to include those suffering from permanent and debilitating non-terminal conditions. Inmates eligible for medical parole may only be released after both the DOCS Commissioner and the Parole Board have determined that such inmate is so debilitated as to create a reasonable probability that he or she is incapable of presenting any danger to society. Further, inmates convicted of first-degree murder are not eligible for medical parole and those serving sentences for certain other homicide and sex offenses must serve at least half their sentence to be eligible for release.¹ The expansion of medical parole will result in an estimated reduction of \$2 million in medical costs.

The SFY 2009-10 enacted budget also expanded the availability of the Shock Incarceration Program and created a new credit time allowance for certain persons convicted of offenses classified as violent. Specifically, the Shock Incarceration Program was expanded to increase the maximum age eligibility from 40 to 50 years old. In addition, eligibility to participate in the Shock program was expanded to allow inmates, regardless of the length of their sentence, into the program once they are within 3 years of parole or conditional release. Before this change, eligibility was limited to inmates who were within 3 years of release upon entry into state prison. Further, the Rockefeller Reform legislation discussed in Section IV of this report includes a provision that allows judges to order certain drug offenders directly into the Shock Incarceration Program. A new credit time allowance was also enacted to provide a 6-month reduction in the sentence of an inmate who maintains good behavior and accomplishes a significant programmatic achievement. It is estimated that these initiatives will result in a savings of \$4 million in SFY 2009-10.

The Assembly provided funding in the SFY 2008-09 Budget to support higher education programming in prison and to sustain the operation of Prisoners Legal Services (PLS). 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 to inmates.

It is important to note that the DOCS budget discussed here will likely be further reduced due to the continued economic downturn that has created a large revenue shortfall in the state. Already, Governor Paterson has ordered all state agencies to reduce non-personal service spending in the SFY 2009-10 enacted budget. The result is that DOCS will be required to cut approximately \$70 million in state operations spending before the end of the 2009-10 SFY.

B. Local Correctional Agencies

The SFY 2009-10 State Budget eliminated reimbursement to local correctional facilities for the housing of technical parole violators. In prior years, localities received reimbursement through the Division of Parole for the housing of parole violators in local correctional facilities pending determination of parole revocation proceedings at a rate of \$40 per day. However, mid-year budget cuts enacted in August, 2008, had reduced this reimbursement rate to \$37.60. The

¹ During the 2009 Extraordinary Session, the legislature enacted a chapter amendment (Chapter 495 of the Laws of 2009) to the medical parole statute to clarify that inmates convicted of certain homicide and sex offenses must serve at least half of the sentence imposed for such crime and shall not receive credit for time previously served on a prior sentence.

elimination of such reimbursement resulted in a savings to the state of \$21.5 million in SFY 2009-10. There is no doubt that this measure will have a negative fiscal impact on localities. However, this impact may be lessened by the fact that over the last year and a half, the Division of Parole has successfully moved alleged parole violators through the revocation process and out of local jails faster thanks to a series of administrative initiatives implemented as part of the SFY 2008-09 State Budget. These efforts have helped to reduce the number of parole violators held in local jails by more than 25%. Further, new legislation included in this year's budget to implement a system of graduated sanctions should continue to reduce this population.

Similarly, the SFY 2009-10 Budget also eliminated reimbursement payments to counties for housing "state-ready" inmates. "State-ready" inmates are persons who have been sentenced to state prison and are being held in a county jail awaiting transport. Before reimbursement was eliminated this year, counties received \$37.60 per day for each state-ready inmate housed in a local facility. There is a safeguard included in the legislation that will require the state to reimburse the counties up to \$100 per day for each "state-ready" inmate that is not transferred to state prison within 10 days of the locality notifying DOCS that the inmate is ready for transport. This payment will be retroactive to the date of such notification. As discussed earlier, the state inmate population has declined substantially over the last ten years. Because of this decline, the number of "state-ready" inmates in local correctional facilities waiting transfer to state facilities has likewise fallen drastically. For example, in 1999, the daily average of "state-ready" inmates housed in local correctional facilities statewide was more than 4000. As of April 1, 2009, the daily average of "state ready" inmates in local facilities statewide was about 200.

C. Division of Parole

The Division's total budget for SFY 2009-10 is \$194 million, including funding for parole operations and aid to localities. This is a \$30 million decrease from the SFY 2008-09 budget. This decrease is due mostly to a reduction in aid to localities spending including the elimination of reimbursement to local governments for the housing of parole violators in local correctional facilities, as discussed above, which produced a savings of \$20.5 million. Additionally, the Division's budget eliminated all community-based treatment contracts for programs such as vocational training, job placement, drug relapse prevention programs and related drug and alcohol treatment services for parolees.

The unfortunate elimination of contracts for community-based programs was first initiated by the Division in SFY 2008-09 in response to a mandate by the Governor that all agencies reduce spending by 10.35%. It should be noted that the reduction of important, and already insufficient, community-based programs for persons returning to the community from prison is at odds with the Correction Committee's long-standing commitment to adopting policies and investing in programs that assist offenders to successfully reenter society. This is especially important in a time of economic turmoil, because such programs have been proven to result in measurable short-term and long-term financial savings for the state by continuing to reduce the prison population and increasing public safety.

D. Division of Probation and Correctional Alternatives

DPCA's total budget for SFY 2009-10 is \$71.4 million, which includes \$68.4 million in aid to localities and \$3 million for state operations, funding approximately thirty staff positions. The aid to localities expenditure represents a \$9.8 million decrease from the SFY 2008-09 funding

level due mostly to a 6% reduction in all local assistance programs, including probation aid, and the elimination of \$2.9 million in funding for alternative to incarceration (ATI) programs provided by the Assembly in SFY 2008-09. It should be noted that \$1.5 million in Federal Stimulus moneys dedicated to fund programs to support the Rockefeller Drug Law reform legislation will be allocated to ATI programs as a partial restoration of the ATI funding eliminated in the DPCA budget. These programs play a key role in developing and implementing community-based services that reduce the need for incarceration and promote successful reentry of people returning to the community from prison and jail.

Funding for aid to localities in the DPCA budget also provides partial reimbursement to local probation departments. However, probation funds provided to local governments represent only 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 68 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 \$3 million and a total staff of about forty positions.

IV. COMMITTEE ACCOMPLISHMENTS

A. Significant Legislation

1. Rockefeller Drug Law Reform (Chapter 56 of the Laws of 2009, Part AAA)

In May, 2008, the Committee on Correction, in collaboration with the Codes, Judiciary, Alcoholism and Substance Abuse, Health and Social Services Committees held a series of hearings in New York City and Rochester. The purpose of these hearings, which coincided with the 35th Anniversary of the passage of the Rockefeller Drug Laws, was to explore the impact of the drug laws on drug addiction, drug-related health problems and drug-related crime. The committees received testimony from more than 75 witnesses representing a broad spectrum of stakeholders including prosecutors, judges, drug treatment professionals, health care providers, academia, religious leaders and community leaders. An overwhelming majority of witnesses testified that over the last 35 years, the Rockefeller Drug Laws did not effectively reduce drug use or drug-related crime in New York. Moreover, witnesses cited the high cost to incarcerate a lower-level, non-violent drug offender - approximately \$45,000 a year – and the relatively low cost to place such a person in a residential drug rehabilitation facility - approximately \$15,000 per year. Additionally, many witnesses presented evidence to the committees demonstrating that substance abuse treatment can be much more effective in reducing drug use and recidivism than incarceration alone.

The Assembly hearings on the drug laws established a framework for legislation approved and signed into law this year that finally brought about significant reform of New York's inflexible

Rockefeller Drug Laws. Assemblyman Jeffrion Aubry, Chair of the Committee on Correction, was the prime sponsor of the legislation and has been a longtime champion for drug law reform. Under Assemblyman Aubry's leadership, the State Assembly has for years advanced legislation reforming these mandatory sentencing laws and their failed, one-size-fits-all approach. This year, it succeeded in restoring needed judicial discretion and authorizing substance abuse treatment programming for many lower-level offenders as a potential alternative to a lengthy prison sentence.

This new law does not lower maximum sentences. Judges may still impose prison terms of the same length they did before. But the new law gives judges the discretion to divert certain persons charged with non-violent, lower-level drug and marijuana offenses to a treatment regimen supervised by a treatment provider or the local probation department and the court. The treatment provider or probation department will monitor the person's progress and give reports to the courts. Infractions may result in escalating sanctions, discharge from the program and traditional prosecution and sentencing. For those who successfully complete the treatment regimen, criminal charges may be reduced or dismissed.

The law also authorizes courts to conditionally seal records of certain drug, marijuana and other lower-level, non-violent crimes after the defendant has successfully completed a judicial diversion program, prosecutor-sponsored DTAP program, or a similar treatment program. A new arrest for any crime will unseal these records pending disposition of the new charge; the records will be permanently unsealed if the new charge results in a conviction for any crime.

Changes are made with respect to those sentenced (and not diverted) in drug cases as well. While maximum sentences are not changed, the courts are afforded additional discretion when making certain sentencing determinations. For example, a first-time felony offender convicted of a class B drug felony may be sentenced to one year or less in the county jail or five years probation supervision. Previously, a state prison sentence of at least one year was required. The minimum, mandatory prison term for a second felony offender (with a prior, non-violent felony) is reduced from two years to one and a half years.

The new law makes changes to prison programming as well. Judges are given expanded authority to sentence certain non-violent, drug-involved persons to the Department of Correctional Services ("DOCS") Willard drug treatment prison in Seneca County, New York. The state Office of Alcoholism and Substance Abuse Services ("OASAS") is directed to monitor alcohol and substance abuse programming within DOCS facilities, issue guidelines for the operation of such programs, and prepare annual reports concerning their findings.

Also, the law authorizes DOCS and the courts to enroll eligible inmates in the DOCS Shock Incarceration boot-camp style program when such inmates are within three years of parole or conditional release eligibility. Previously, only those who *entered* DOCS with less than three years remaining until parole or conditional release eligibility could participate in the program. Further, the maximum age for those entering the DOCS Shock Incarceration program is increased from forty to fifty years of age.

A limited class of inmates serving an indeterminate prison sentence for a class B drug offense under prior law is authorized to seek discretionary resentencing by the sentencing court. Among such offenders ineligible to seek resentencing are persons convicted of a violent felony with ten

years prior to the application date and persons who, at any time, were adjudicated a second violent or persistent violent offender.

Finally, the new law established two new crimes with enhanced sentencing ranges. First, a new class B felony is created for an adult over age twenty-one who sells a controlled substance to a child under age seventeen. (“Criminal Sale of a Controlled Substance to a Child,” Penal Law §220.48.) Second, a new class A-I drug crime is created. Under this new law, a person convicted for his or her role in a “controlled substance organization” involving more than \$75,000 in proceeds faces a life sentence with a minimum term of imprisonment (before parole eligibility) of between fifteen and twenty five years.

2. Prohibition on the Shackling of Pregnant Inmates

In 2000, the Assembly first passed a bill to prohibit the shackling of pregnant inmates during transport to the hospital to give birth or during labor. This year, the Senate was finally able to join the Assembly in passing this important legislation (A.3373-A / S.1290-A) which was signed into law by the Governor as Chapter 411 of 2009.

Specifically, the legislation prohibits correctional authorities from using restraints on a pregnant female inmate who is about to give birth and is being transported to the hospital. In extraordinary circumstances in order to prevent an injury to the inmate or medical or correctional staff, a pregnant inmate being transported to the hospital to give birth may be handcuffed by one wrist. However, under the new law, no restraints of any kind may be used on an inmate who is in active labor.

Although DOCS had claimed that they do not use restraints on pregnant inmates being transported to the hospital or during labor, before the passage of this legislation, internal DOCS policy actually required handcuffs to be used during transport – even where a women was in active labor. Further, DOCS policy allowed for the use of leg restraints during transport to the hospital and for the use of handcuffs during delivery of the child.

The use of restraints on pregnant women is a degrading practice that can be dangerous to the health of the mother and child and is very rarely justified for security purposes. A number of other states, such as California, Illinois and Vermont, have also recently enacted laws that prohibit the use of restraints on pregnant inmates. In addition, the Federal Bureau of Prisons recently amended their regulations to prohibit the shackling of female inmates during transport to the hospital.

3. Sex Offenders

The Assembly passed a number of bills related to managing sex offenders. Only one of these bills was passed by the Senate and signed into law by the Governor.

- *A.1242-B (Chapter 478 of 2009) – Allows residents to receive an email alert when information about sex offenders in a particular locality is updated.*

This legislation will allow residents of New York to register their e-mail addresses with the Division of Criminal Justice Services (DCJS) to receive an automatic email alert when a Level 2 or 3 sex offender moves into their zip code. Citizens will be able to request email

alerts for up to three counties or zip codes. The purpose of the legislation is to allow parents to receive updated information about sex offenders living in their neighborhoods without having to continually check the DCJS website which makes information about all Level 2 and 3 sex offenders available to the public.

Other legislation related to the management of sex offenders passed by the Assembly but not signed into law include:

- *A.841 – Relates to failure of sex offender to properly verify his or her address.*

This legislation would establish procedures to be followed in the event that a sex offender fails to return a signed annual verification form within the time proscribed by law. Specifically, law enforcement would be directed to visit the last known residence of the offender and require that they complete the verification form or be subject to a felony for failure to register. In cases where a sex offender has moved without properly notifying law enforcement, the district attorney would be notified.

- *A.2108 – Requires registry to include violation of registration requirements.*

This bill would require that the sex offender registry maintained by DCJS include additional information stating whether a sex offender is in violation of the registration requirements.

- *A.2132 – Time offender fails to register is added to duration of registration.*

This bill, if enacted, would provide that a sex offender who fails to properly register or verify their address shall have the period of time of such failure added to the duration of their registration.

4. Prisoner Reentry

The Assembly passed a number of bills to promote the successful reentry of persons returning from incarceration. Unfortunately, none of these reentry-related bills became law in 2009.

- *A.3664-A– Conforms the law to ensure Certificates of Rehabilitation are recognized.*

This bill makes conforming changes to various sections of law where only one certificate of rehabilitation is mistakenly listed. Certificates of rehabilitation are issued either by the court or by the Parole Board to help people with criminal records that have rehabilitated themselves to obtain employment. The Correction Law establishes two certificates – a “Certificate of Relief from Disabilities” and a “Certificate of Good Conduct.” Each certificate has separate eligibility requirements. A Certificate of Relief from Disabilities is available to a person with one felony while a Certificate of Good Conduct is available to a person with more than one felony (3 or 5 year waiting periods apply depending on the seriousness of the conviction). However, there are many sections in the law that only mention one of the certificates. This bill makes conforming changes to ensure that both certificates of relief from disabilities and certificates of good conduct are properly recognized.

Certificates of rehabilitation allow people with criminal convictions to be eligible for certain types of employment and licenses. However, some statutes that impose bars to employment or licensure based on a criminal conviction only refer to one certificate. This has led to confusion and improper denial of employment and licensure in some cases.

- *A3766 – Provides inmates an opportunity to obtain a GED.*

This legislation would require DOCS to establish academic programs to prepare inmates to complete the General Equivalency Diploma (GED) and provides inmates with an opportunity to complete a GED before release on parole, conditional release, post release supervision or presumptive release. Each year, DOCS releases 26,000 former inmates back to the community. The success of these individuals stands to benefit our entire community while their failure will only cause further victimization and feed the revolving door of incarceration costing the state many millions of dollars. Education programs have been shown to reduce recidivism by up to 40%. Similarly, employment is a major factor in reducing recidivism and obtaining a GED greatly increases the chance that a former inmate will be able to find gainful employment. This bill would help to ensure that inmates have an opportunity to obtain a GED before release thereby helping to reduce recidivism and better prepare inmates for successful reintegration into the community. It should be noted that current DOCS regulations generally require inmates to be afforded an opportunity to obtain a GED but such regulations are always subject to change without a statutory mandate.

- *A8012 - Grants Division of Human Rights (DHR) authority to enforce Article 23 of the Correction Law.*

This bill would establish that the provisions of Article 23-A of the Correction Law are enforceable by the Division of Human Rights when a person is illegally discriminated against by a public employer. New York State's Human Rights Law §297 enumerates the remedies available to a person with a claim of unlawful discrimination. This provision states that, any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint with DHR. However, under Article 23-A of the Correction Law, which protects persons with a criminal record from unfair discrimination, those discriminated against by public agencies on the basis of their criminal record have their remedies limited. Specifically, under Section 755 of the Correction Law, individuals denied employment by a public agency because of their criminal record have only one remedy available to them - an Article 78 proceeding in state court. However, individuals wrongly denied employment by a private employer are able to file a complaint with the Division of Human Rights. There is no reason that only people who are discriminated against by a public agency because of their criminal record should be limited to fewer options than those complaining about discrimination by private employers. Thus, this bill amends the Correction Law to give persons who suffer discrimination based on their criminal record by a public employer access to the same enforcement mechanisms as those discriminated against by private employers.

- *A8065 – Strengthens definition of “direct relationship” under Article 23-A of the Correction Law.*

The bill would change the definition of “direct relationship” for purposes of Article 23-A of the correction law. Specifically, the bill would require that in order to deny employment to a person based on a criminal record, the employer must find that there is a substantial

connection between the job and the conviction and that such a connection would create an unreasonable risk to property or public safety.

Studies indicate that the ability to find stable and gainful employment is a major factor in determining the success of persons returning to the community from prison. However, despite the requirements of Article 23-A, which prohibits discrimination against persons based on their criminal record, many employers continue to deny employment based only on a past criminal conviction. Many employers deny employment based on a claimed threat to property or public safety even where the job is completely unrelated to the conviction. This often results in employers exempting a whole class of people with a criminal record because the employer can always claim some threat to property or safety – however, the risk should be based on a connection between the employment and the conviction in order to deny.

This bill would strengthen the provisions of Article 23-A to allow denial of employment based on a criminal record where there is a connection between the job and the conviction and such connection would create a risk to property or safety. Existing law would still guide employers in making the decision to require that several factors be considered in determining whether such a connection exists. Factors that must be considered include the specific duties and responsibilities necessarily related to the license or employment sought or held by the person, the time which has elapsed since the occurrence of the offense, the seriousness of the offense, the interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

5. Other Correction Committee Bills that Became Law in 2009

Several other bills reported by the Committee on Correction became law in 2009 including:

- *Permitting Prisoners to Voluntarily Perform Charitable Work* - Amends the New York State Constitution to permit the legislature to pass a law to allow inmates to voluntarily perform work for not-for-profit institutions. (A.5598 / S.4124; Ratified at the general election by the people of New York on November 3, 2009)
- *Expands Definition of Clergy Allowed to Visit Inmates* - Expands the definition of clergy authorized to visit state and local correctional facilities. Specifically, the bill allows a clergyman or minister, as those terms are defined in the Religious Corporations Law, from the county in which the facility is located to visit an inmate. (Chapter 291 of 2009)
- *Medical Care of Civil and Pre-trial Inmates* - Permits civil and pretrial inmates to receive medical diagnosis and treatment in outside hospitals without a court order. (Chapter 33 of 2009)

Use of County Jails for Electronic Fingerprinting - Clarifies that county jails may use space within the jail for the electronic processing of fingerprints on a Live Scan unit for persons who have not been arraigned on criminal charges. (Chapter 271 of 2009)

B. Public Hearings

1. Access to Justice

The Correction, Codes, Judiciary and Governmental Operations Committees held a hearing on February 24th to assess whether the need for legal services for low-income New Yorkers is being met and to examine the impact of the economic crisis and recent state budget cuts on such legal services. The provision of quality legal services to all regardless of economic and social status is the underpinning of any fair and just society. This hearing provided the participating Assembly standing committees with an opportunity to assess the ongoing need of such services provided through state funding to those requiring civil or criminal legal services who cannot afford them, and as well to those who are incarcerated. Special attention was given to the current economic downturn, the state budget and the concomitant increased demand for legal services by those who have felt its harshest effects.

The committee members heard from representatives of the Interest on Lawyer's Account (IOLA), the private bar, civil, criminal and prisoner legal service providers and their clients and examined the challenges facing these legal service providers from both a caseload and funding perspective. No surprisingly, testimony demonstrated that the recent economic downturn has caused an increase in demand for no-cost legal services. Testimony also focused on the need for steady and consistent legal services funding in order to ensure a continuity of services from year to year. Additionally, several witnesses offered recommendations about how to make New York's assigned counsel system more efficient and effective and suggested an increase in the resources made available to prisoner legal services to ensure that inmates have sufficient means to resolve disputes and seek redress for mistreatment. Following the hearing, the Assembly restored over \$7 million for civil legal services and \$2.3 million in funding for Prisoners Legal Services in the SFY 2009-10 State Budget which had been omitted from the Governor's budget.

2. Implementation of the Rockefeller Drug Law Reform Legislation

The Correction, Codes, Judiciary and Alcoholism and Substance Abuse Committees held a hearing on December 8, 2009, to examine the implementation of Rockefeller Drug Law Reform by the courts and community-based programs. Specifically, the committees heard testimony concerning: (1) the availability and adequacy of community-based residential and out-patient substance abuse treatment and case management services for drug offenders court-ordered into treatment as an alternative to incarceration; (2) how the courts have prepared for and are implementing the Judicial Diversion Program and resentencing of certain drug offenders; and (3) the role of community-based programs in facilitating the successful re-entry of drug offenders returning to the community from prison.

V. ISSUES TO BE ADDRESSED IN 2010

A. Prisoner Reentry

There are currently more than 58,000 people in state prison in New York and an additional 29,000 in local county jails. Most of this population will eventually return to our communities. Currently, DOCS releases about 25,000 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. Eliminating legal and administrative barriers to successful reentry and restoring DOCS programming, including higher education programs, are also vital policy priorities.

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) streamlining the process for ex-offenders to obtain a Certificate of Relief from Disabilities or a Certificate of Good Conduct; (3) expanding the protections against discrimination for persons with a criminal record who pose no threat to public safety and ensuring that employers are informed about New York's anti-discrimination laws; (4) removing barriers to employment for persons with criminal records.

Additionally, the Correction Committee will again advance legislation to ensure that Medicaid applications are filed for inmates before release from prison and that all inmates who are eligible for Medicaid receive coverage immediately upon release. The Assembly successfully included a small amount of funding and legislation to create a Medicaid pilot project in the SFY 2009-10 enacted budget to begin the process of filing Medicaid applications for inmates released from specialized reentry units. However, a system-wide process is necessary to ensure that all eligible inmates can access necessary medical care, drug treatment, and mental health services upon release. Access to such vital services 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.

B. Higher Education in Prison

Studies have consistently found that the higher the level of education attained, the more likely a former inmate will be to obtain gainful and stable employment, and the less likely he or she will be to engage in future criminal activity. However, in 1994, federal tuition assistance, in the form of Pell Grants, for individuals incarcerated in federal and state correctional facilities was terminated with the enactment of the Violent Crime Control and Law Enforcement Act. Then, in 1995, New York prohibited inmates from accessing state funds through the Tuition Assistance Program (TAP) for post-secondary correctional education. According to a report published by the Correctional Association of New York in January, 2009, entitled "Education From the Inside, Out: The Multiple Benefits of College Programs in Prison," only four out of seventy post-secondary correctional education programs continued to operate in New York following the termination of TAP availability for inmates.

The benefits of post-secondary correctional educational have been well-documented. Most recently, the New York State Commission on Sentencing Reform recently reported that post-secondary correctional education programs have been shown to reduce recidivism by up to 40% and the Commission recommended that more post-secondary educational opportunities be made

available to inmates. In addition, the Correctional Association report asserts that in-prison college programs are a cost-effective method of improving public safety. The report states that “[t]he cost differences in education versus incarceration in New York, plus the short- and long-term benefits of a better educated population, makes investment in higher education for incarcerated individuals and people in the community smart fiscal policy.”

Despite the potential benefits of post-secondary correctional education programs, only a relatively small number of programs currently operate in the New York State prisons, funded mostly through private sources, federal grants for youth offenders or through small legislative initiative grants. Identifying the resource (both private and public) necessary to expand post-secondary education in prison is challenging, particularly in this tough economic time. Therefore, this year the Correction Committee reported a bill (A.8552) to establish a commission on post-secondary correctional education to examine, evaluate, and make recommendations concerning the availability, effectiveness and need for expansion of post-secondary education in the New York state prison system. In 2010, the Correction Committee will again advance this important legislation and work to expand post-secondary education in prison.

C. Expungement of Criminal Records

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society - even after they have fully paid their debt to society and, in many cases, lived law-abiding lives for many years after completion of their sentences. New York State has long been a leader in providing fair employment opportunities for qualified individuals with criminal histories for the sensible reason that people with criminal records who are able to earn a living are much more likely to lead productive, tax-paying lives and much less likely to return to crime. Recognizing the wisdom of assisting individuals with criminal records who are qualified and not a threat to public safety to obtain employment and housing, New York recently enacted a conditional sealing provision for certain drug offenders as part of the Rockefeller Reform legislation. As discussed above, the law now authorizes courts to conditionally seal records of certain drug, marijuana and other lower-level, non-violent crimes after the defendant has successfully completed a judicial diversion program or a similar treatment program. Expansion of this legislation is necessary to allow more people convicted of nonviolent offenses who have completed appropriate treatment and/or remained crime free an opportunity to rebuild their lives without the stigma of a criminal record.

D. Expansion of Merit Time and Work Release

Merit time affords inmates with the ability to earn a reduction of their sentence after completing significant programming and maintaining a positive disciplinary record. Current law only allows inmates with certain nonviolent convictions to earn merit time. However, the availability of merit time allowance motivates inmates to complete necessary programming and maintain a positive disciplinary record during incarceration. The program, in fact, reduces prison violence and studies show that inmates granted merit time and released early have lower recidivism rates. Further, DOCS estimates that since its inception in 1997, the merit time program has resulted in a savings of \$369 million. Therefore, during the 2010 session, the Committee intends to advance legislation to expand the availability of merit time.

E. Voting Notification and Registration

For the last three years, the Assembly has passed legislation to enact the Voting Rights Notification and Registration Act (A.2266) and help to clear up the confusion that surrounds the eligibility of persons convicted of a felony to vote. Current law prohibits a person from voting while they are imprisoned or on parole for the conviction of a felony. Once the person has completed their maximum sentence of imprisonment or has been discharged from parole, their right to register to vote is automatically restored. The Voting Rights Notification and Registration Act would require persons imprisoned for a felony to be notified of their eligibility to vote upon release from incarceration or discharge from parole. Further, the bill will require probation departments to notify persons on probation about their right to register to vote. Additionally, the bill will require the Department of Correctional Services and the Division of Parole to notify the state Board of Elections once per month regarding persons who have reached their maximum sentence of imprisonment or been discharged from parole to ensure that there are no barriers to registration.

The Election Law currently provides a specific procedure for removing the names of convicted felons from the voting rolls by requiring every criminal court or the Office of Court Administration to transmit to the New York State Board of Elections on a quarterly basis the names, addresses, and birth dates of all persons convicted of felonies and sentenced to incarceration. However, no similar procedure is in place to inform the state and local boards of elections once an individual has served his maximum sentence or been discharged from parole, and hence is once again eligible to vote. This one-way communication has caused enormous confusion and misinformation, resulting in the de facto disenfranchisement of thousands of eligible voters throughout New York State. An investigation by the Legal Action Center, the Brennan Center for Justice, and the Community Service Society in 2004 found that more than half of New York's 62 counties, including all five boroughs in New York City, were wrongly refusing to register individuals with felony records.

Further, there is much confusion and misinformation on the part of convicted individuals, Corrections, Probation and Parole staff, and even within the local boards of elections, about when and whether individuals with criminal records are able to vote. This bill will help to increase voter education and decrease the misinformation and confusion about voter eligibility within various criminal justice agencies and the boards of elections.

The felony disenfranchisement laws in New York have weakened the voice of minority communities throughout the state and hindered successful reentry by individuals coming out of prison. Increasing voter participation by people coming out of the criminal justice system gives them a voice and a stake in the community. The right to vote – to be empowered and to have a voice in the democratic process – is not only a fundamental civil and human right, it also is critical to an individual's successful reintegration into the community. Therefore, the Committee on Correction will continue to work with the Election Committee to advance this important piece of legislation.

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	5
To Ways and Means Committee	10
To Codes Committee	10
To Rules Committee	6
Total	31

Bills Having Committee Reference Changed **1**

Senate Bills Substituted or Recalled

Substituted	3
Recalled	0
Total	3

Total Assembly Bills in Committee **159**

Total Number of Meetings Held **5**