

# 2008 ANNUAL REPORT

NEW YORK STATE ASSEMBLY

COMMITTEE ON  
CORRECTION



Sheldon Silver, Speaker

Jeffrion L. Aubry, Chair

December 15, 2008

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 2008 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

**2007 ANNUAL REPORT**

**STANDING COMMITTEE ON CORRECTION**

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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 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, regarding issues that affect correction staff and inmates.

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

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

As of December 1, 2008, the under custody population of the Department of Correctional Services (DOCS or the Department) was 60,621. This represents a 3.4% decrease in the prison population from 2007 and an overall population decline of 15.2% since the peak of 71,538 in 1999. The under custody population is 51% African American, 26% Hispanic, and 21% white. The number of state ready inmates (inmates held in a local correctional facility waiting transfer to state prison) was 382 on December 1, 2008, down 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 23,857 total admissions to the Department from January 1, 2008 through December 1, 2008, a 5.8% decrease from the total admissions during the same period in 2007. It is useful to examine a breakdown of this total admission figure. New court commitments for this period were 14,501 (an 8.2% decrease from 2007). Returned parole violators and conditional release revocations were 8,583 (a 2.9% decrease from 2007). It is also useful to note that for the first ten judicial terms of 2008 (January 1, 2008 through October 5, 2008), felony indictments were down 3.8% or 1,584 fewer indictments than reported during the first ten terms of 2007. The decrease in indictments occurred in all regions of the state including a 3.8% decrease in New York City, a 7.5% decrease in Suburban New York City and a 2% decrease in Upstate counties.

### **B. Local Correctional Facilities**

The total under custody population among local correctional facilities as of December, 2008, was 29,388. For the City of New York, there were 13,385 inmates under custody in December, 2008, which is 679 less than in December, 2007. County correctional facilities outside of the City of New York had an under custody population of 16,003 as of December, 2008, which is 621 more than in December, 2007.

### **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 2007-08 SFY, there were 42,974 persons in New York State under parole supervision, which is 600 more than at the end of the 2006-07 SFY.

The Board of Parole (Board) reviews all parole eligible prison inmates and either denies or approves release on parole. In the 2007-08 SFY, 32% of prisoners were granted parole following their initial Board interview, which is a 4% increase in release rate from the 2006-07 SFY. Prisoners whose crime of commitment is statutorily defined as “violent” have generally been unsuccessful before the Board and in SFY 2007-08, only 13% of prisoners convicted of a violent were granted parole at their initial interview.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision, often with revised conditions. In the 2007-08 SFY, 14,467 parolees were ordered returned to DOCS, including 2,620 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 2007-08 SFY, there were 122,350 adult probationers under supervision across New York State, including 61,378 felony probationers and 56,287 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 1,500 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 64,000 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 2008-09 Budget for DOCS provides \$2.69 billion in state operations funding which is a \$73 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 \$44,000 per year. The SFY 2008-09 Budget also includes \$6.3 million in aid to localities funding, principally to reimburse local facilities for the confinement of state inmates awaiting transfer to state prison. In addition, the SFY 2008-09 Budget includes capital funds in the amount of \$320 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 SFY 2008-09 Budget did provide a small amount of funding to continue progress made in the SFY 2007-08 Budget to transform existing DOCS facilities into transitional centers in order to better link inmates to treatment and support services upon release. Specifically, in addition to the transitional center in operation at the Orleans Correctional Center in Erie County, the SFY 2008-09 Budget includes funding to open three additional reentry units. The Budget also provides funding to open a 100-bed parole violator program at the Edgecombe Correctional Facility to allow technical parole violators to be diverted to Edgecombe for a 30-day program aimed at addressing the root causes of the violation without the need for a return to state prison. Finally, additional resources are provided to expand the family reunion program.

In addition, 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.

The DOCS budget discussed here will likely be reduced due to the economic downturn that has created a large revenue shortfall in the state. Already, Governor Paterson has ordered all state agencies to reduce spending by 10.35% from the SFY 2008-09 enacted budget. The result is that

DOCS will be required to cut approximately \$240 million in state operations spending. At the time of the publication of this report, DOCS has issued two savings plans that reduce spending by about 3.35% in response to the Governor's request. The plans have focused on dormitory housing consolidations made possible by a 15% decline in the prison population since 1999, accessing previously unavailable federal funds for the incarceration of illegal aliens, shifting construction security costs to capital financing, and a small reduction in staff through the elimination of vacant positions and attrition. It is unclear at this time how DOCS will achieve the remaining 7% of spending reductions before the end of the SFY.

## **B. Local Correctional Agencies**

The SFY 2008-09 State Budget provides \$21.5 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 Executive law calls for local facilities to be reimbursed at a rate of \$40 per day for such parole violators. However, mid-year budget cuts enacted in August reduced this reimbursement rate to \$37.60.

Local correctional facilities also receive reimbursement at the rate of \$18.20 per day from DOCS for the housing of state inmates returned to local facilities for the purpose of appearing in court and \$37.60 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 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 SFY 2008-09 is \$225.5 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. Aid to localities, in the amount of \$50 million, includes funds for vocational training, job placement, drug relapse prevention programs and related drug and alcohol treatment services for parolees.

As discussed above, due to the economic downturn, all state agencies are required to reduce spending by 10.35%. The Division of Parole intends to accomplish the savings through staffing reductions, conserving resources through the use of video conferencing, and ending a large number of contracts with community-based providers of relapse prevention treatment programs and housing services. 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 2008-09 is \$83 million, which includes \$80.3 million in aid to localities and \$2.6 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 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.

Additionally, the Assembly provided \$3 million in funding in SFY 2008-09 to support alternative to incarceration programs. 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.

## **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 \$2.8 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 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. This year, pursuant to a negotiated agreement with the Senate and the Executive, legislation was enacted (Chapter 1 of the Laws of 2008) that will end the practice of placing seriously mentally ill inmates in solitary confinement.

The new law will remove the majority of inmates with serious mental illness from segregated confinement and place them in residential mental health units. 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.

The majority of the new law's provisions will not be effective until July 1, 2011, in order to provide DOCS with sufficient time to construct the residential mental health units. However, the oversight responsibilities of the New York State Commission on Quality of Care and Advocacy for Person with Disabilities took effect on July 1, 2008, and they are in the process of establishing a forensic unit in order to begin monitoring prison mental health programs.

## **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.

- *A.9859-A (Chapter 67 of the Laws of 2008) - Electronic Security and Targeting of Online Predators Act ("E-Stop")*

The purpose of E-Stop is to prohibit convicted sex offenders from using the internet to victimize children. Specifically, the bill requires all sex offenders to register internet accounts and internet identifiers - such as e-mail addresses and screen names - with the Division of Criminal Justice Services. Additionally, an offender must notify DCJS within 10 days of any change to such internet information. This law also allows internet entities offering social networking services to access the internet information of sex offenders in order to screen or remove such offenders from their service and notify law enforcement of violations of the law. Additionally, the law imposes several internet-related mandatory conditions of probation and parole on certain high-risk sex offenders. Such mandatory conditions will prohibit certain offenders from using the internet to: access pornography; access social networking websites; communicate with others for purpose of promoting sexual relations with minors; communicate with persons under the age of 18. The bill also allows the court to impose other limits on a sex offender's internet use if necessary to protect public safety.

- *A.4988 (Chapter 568 of the Laws of 2008) - New rules for the placement of sex offenders.*

This legislation was enacted to ensure a coordinated and comprehensive statewide policy regarding the placement of sex offenders who are under parole or probation supervision or who have applied for, or are receiving, emergency shelter. The new law requires the Division of Parole, the Division of Probation and Correctional Alternatives, and the Office of Temporary and Disability Assistance to consider certain factors in approving the residence of

a sex offender in the community. Such factors include the location of other sex offenders, whether there is a concentration of sex offenders in a particular neighborhood or residential area, accessibility to supportive services, including, but not limited to, locally available sex offender treatment programs and the availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient.

- *A.9949 (Chapter 232 of the Laws of 2008) – Registration as a sex offender in New York for federal convictions.*

The Legislation adds three federal offenses to the list of sex offenses for which registration as a sex offender is now required in New York. The specific offenses added were coercion and enticement (18 U.S.C. 2422 (b)); transportation of minors (18 U.S.C. 2423); and use of interstate facilities to transmit information about a minor (18 U.S.C. 2425).

### **3. Prisoner Reentry**

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

- *A.7847-A (Chapter 534 of the Laws of 2008) – Protects employers from undue legal exposure for hiring persons with a criminal record.*

Up to 60% of persons released from New York prisons are unemployed one year after release and this high unemployment rate bears a strong correlation to recidivism rates. A major barrier to finding gainful employment is the fact that most employers inquire about whether an applicant has been convicted of a crime. Employers often refuse to hire an individual with a criminal record in order to avoid potential negligent hiring claims. This legislation will help to eliminate barriers faced by ex-offenders in obtaining employment by protecting employers from undue legal exposure for hiring persons with a criminal record where the employer acts reasonably and in good faith. Specifically, the legislation creates a rebuttable presumption in favor of excluding evidence of an employee's past criminal record in a negligent hiring case where the employer has made a reasonable, good faith determination under with Article 23-A of the Correction Law. Article 23-A provides that employers can only reject an applicant based on a criminal record if there is a "direct relationship" between the criminal conviction and the specific employment sought, or if granting the employment would involve an unreasonable risk to property or personal safety. The potential for excluding prior convictions from evidence in negligent hiring cases will protect employers who act reasonably and in good faith pursuant to Article 23-A and will help persons with convictions find employment and become productive members of society

- *A.10288-A (Chapter of 2008) – Requires employers to provide prospective employees with a copy of Article 23-A of the Correction Law.*

Studies show that employment is a major factor in reducing recidivism. Therefore, the Assembly Correction Committee has consistently recognized that it is important for New York to promote policies to assist formerly incarcerated individuals and those with criminal records to obtain gainful employment. Many employers and prospective employees are

unaware that New York law prohibits discrimination against individuals with criminal records. As noted above, Article 23-A of the Correction Law requires employers to consider a number of factors to determine whether the criminal conviction is a directly related to the job in question and whether hiring the person would create an unreasonable risk to safety or property. This legislation will ensure that employers and persons interviewing for employment are informed about the requirements of Article 23-A and help to make sure that prospective employees with criminal records receive fair consideration as they struggle to find gainful employment. Specifically, the legislation requires an employer to provide a copy of Article 23-A to a prospective employee when the employer has requested and receives a consumer report about such prospective employee that contains criminal record information. The legislation also requires employers to post a copy of Article 23-A in a conspicuous manner in the workplace.

#### **4. Parole, Presumptive Release and Post-Release Supervision**

The Legislature enacted three bills that changed the law regarding post-incarceration supervision in New York.

- *A.9727 (Chapter 310 of the Laws of 2008) – Returns discretion to Parole Board to discharge persons with life sentences from parole supervision.*

This legislation returns discretion to the parole board to discharge parolees with an indeterminate sentence with a maximum sentence of life who the board no longer believes are a threat to public safety and when such discharge is in the best interest of society. For almost 70 years, the parole board exercised this discretion without incident until 1998 when the ability to discharge individuals with a maximum life sentence was removed. There are currently 820 parolees convicted of non-drug offenses with an indeterminate maximum sentence of life. Many of these individuals have been on parole for decades living successful, law abiding lives. However, before this legislation was enacted, the law mandated that they remain on lifetime parole despite that fact that the Parole Board may no longer believe that such supervision is necessary.

- *A.11558 (Chapter 486 of the Laws of 2008) - Clarifies when a drug offender who was presumptively released must be discharged from parole supervision.*

This legislation corrects an oversight in the 2004 Rockefeller Drug Law reform legislation that unintentionally excluded non-violent drug offenders who earn a presumptive release from being eligible for a mandatory termination of parole supervision after two or three years of unrevoked parole. The 2004 drug law reform included a provision to require termination of parole for a class A drug offender after three years of unrevoked parole and for all other drug offenders after two years of unrevoked parole. However, this provision mistakenly left out non-violent drug offenders who earn presumptive release and are under the supervision of the Division of Parole.

In order to earn presumptive release, an inmate must have completed individually prescribed treatment and educational programs, have no history of a violent conviction, no serious disciplinary record and have not filed a frivolous lawsuit. Inmates granted presumptive

release are not released earlier than inmates who are paroled. Rather, they are released by DOCS without having to see the Board of Parole because they have met the obvious criteria for parole release. However, an oversight in the drug law reform legislation penalized non-violent drug offenders who earned a presumptive release by not allowing them to be discharged from parole in the same manner as other drug offenders who are released by the parole board. This legislation corrects this oversight and requires drug offenders who are presumptively released to be discharged in the same manner as those who are paroled.

- *A.11764 (Chapter 141 of the Laws of 2008) – Re-sentencing of inmates sentenced to a determinate term where the court failed to pronounce a term of post-release supervision.*

Section 70.45 of the Penal Law, enacted in 1998 as part of Jenna's Law, mandate that each determinate sentence include an additional period of post-release supervision (PRS). However, since the enactment of section 70.45, some individuals have been delivered to DOCS with an order of commitment that is silent regarding the period of PRS. Generally, an order of commitment may be silent regarding PRS in two instances: (1) the sentencing judge failed to pronounce the applicable period of PRS at sentencing; or (2) the sentencing judge pronounced a period of PRS at sentencing and a clerical error resulted in an inaccurate order of commitment. Since 1998, DOCS, on its own initiative, had calculated a period of PRS as part of an inmate's determinate sentence even in cases where the order of commitment was silent regarding PRS. Therefore, in cases where the sentencing judge did not pronounce a period of PRS as part of a person's sentence, DOCS nonetheless administratively imposed such period. However, in April, 2008, the New York Court of Appeals ruled that only the sentencing judge can impose a sentence and therefore, the periods of supervision administratively added by DOCS were invalid - potentially requiring the immediate release of inmates serving such invalid sentences. The court did allow for the possibility to re-sentence a defendant and impose the applicable period of post-release supervision.

In order to avoid releasing hundreds of inmates convicted of violent offenses with no supervision, the Assembly, Senate and Governor agreed on legislation that establishes a process to facilitate the orderly and expedient re-sentencing of inmates sentenced to a determinate term where the court failed to pronounce a term of post-release supervision. Specifically, for inmates sentenced to a determinate term between 1998 and the effective date of the bill, DOCS must notify the sentencing court where the order of commitment does not include a term of post-release supervision. After receiving notice, the court must promptly schedule the case for an initial hearing and appoint defense counsel. The determination about whether to re-sentence the defendant must be made within 40 days of the notice and the court must notify DOCS of the new sentence. Going forward, the bill directs judges to properly pronounce post-release supervision at sentencing. In addition, the bill will ensure that DOCS receives sentencing minutes from the court in order to determine if an inmate has received an illegal sentence, and if so, immediately take remedial action.

## **B. Public Hearings**

### **1. Re-entry**

In May, 2008, the Assembly Committee on Correction, together with the Assembly Committee on Alcoholism and Substance Abuse, conducted a public hearing to examine the adequacy of existing substance abuse treatment services and resources available to people released from incarceration. The Committees received testimony about the current capacity for residential and outpatient substance abuse treatment in the community as well as the need to increase community-based treatment resources. In addition, testimony on a variety of related issues was presented including the potential cost savings related to reduced recidivism resulting from providing adequate treatment, the effectiveness of prison-based treatment programs and pre-release procedures used by DOCS and the Division of Parole to help ensure the successful integration of persons with substance abuse issues released from prison.

### **2. Rockefeller Drug Laws – 35 Years Later**

The Assembly Committee on Correction, together with the committees on Codes, Judiciary, Health, Social Services and Alcoholism and Drug Abuse, held two public hearings to receive public comment on the impact of New York's Rockefeller Drug Laws. This year, 2008, was the thirty-five year anniversary of the enactment of New York's so-called Rockefeller Drug Laws. These laws amended the Penal Law to include mandatory prison sentences for the unlawful possession of specified quantities of a controlled substance, as well as mandatory prison terms for the sale of a controlled substance or possession of a controlled substance with intent to sell it. These laws also mandate a prison sentence for any second controlled substance felony committed within ten years of a first felony crime.

The hearings were held in New York City and Rochester. These public hearings generated a great deal of public interest. 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.

A number of witnesses focused their comments on the effectiveness of the drug laws in addressing drug addiction and drug-related crime. The vast majority of witnesses testified that the Rockefeller Drug Laws have failed to reduce drug use or drug-related crime in New York. In fact, many witnesses testified that the drug laws have had the opposite effect by destabilizing many urban communities. Further, several witnesses testified about the racial disparities in the enforcement of the Rockefeller Drug Laws. Witnesses spoke generally about the disproportionate number of Blacks and Hispanics imprisoned under the Rockefeller Drug Laws despite the fact that Whites reportedly use drugs at the same or an even higher rate than African Americans and Hispanic.

A large majority of witnesses contended that these laws should be significantly reformed. Amendments made in the 1990s and additional reforms in 2004 and 2005 addressed some of the harshest aspects of these laws, they said, but the hallmark mandatory prison provisions remain. These witnesses pointed out that discretionary resentencing opportunities enacted in 2004 and 2005 were limited to certain class A-I and class A-II offenders, who were serving mandatory maximum prison terms of life imprisonment. A much larger group of persons sentenced to up to

twenty-five years for lesser, class B drug sale or drug possession crimes are not eligible for resentencing under the 2004 and 2005 amendments. Many of these witnesses also urged broader authority for judges to divert defendants in need of drug treatment to treatment programs as an alternative to traditional prosecution and a potential alternative to a mandatory prison term.

Several witnesses from the substance abuse treatment and medical communities identified drug abuse and addiction as a major, long-term public health issue. They testified that punitive drug policies have failed to eliminate drug use and that in order to reduce the harm associated with drug addiction, the state must shift the focus away from the criminal justice system and instead concentrate on treating drug abusers through the public health and treatment systems. Many witnesses cited research that shows drug treatment is more effective at reducing drug abuse and drug-related crime than incarceration.

The committees also heard testimony from prosecutors who drew a distinction between drug addiction and drug dealing. While acknowledging that drug addiction is a public health issue, the prosecution witnesses testified that mandatory prison sentences are appropriate for major drug dealers. These witnesses also noted that prosecutor-sponsored DTAP (Drug Treatment Alternative to Prison) programs in place in many New York counties afford prosecutors a means to divert deserving defendants to long-term treatment as a potential alternative to mandatory imprisonment.

Many witnesses urged an expansion of vocational and work opportunities in distressed communities, as well as moderation of laws that make it difficult for ex-offenders to find work and return successfully to their home communities.

## **V. ISSUES TO BE ADDRESSED IN 2008**

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

As described above, the Assembly held extensive hearings on the Rockefeller Drug Laws in 2008. While the committees heard a range of testimony, the overwhelming majority of witnesses testified that the drug laws must be significantly reformed in order to expand treatment opportunities for drug-addicted persons in the criminal justice system.

In 2004, when the Legislature and the Governor were able to come together to enact modest drug law reforms, all parties publicly 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.

As we have learned, most recently through the public hearings discussed above, 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 incarcerating non-violent drug-addicted offenders 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 know that drug addiction is a treatable disease and that effective treatment can successfully reduce the levels of drug abuse and crime. During the 2009 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 60,000 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. Elimination of legal and administrative barriers to successful reentry and restoration of DOCS programming, including availability of higher education 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) 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.

Additionally, the Correction Committee will again 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. The Assembly was successful in including a small amount of funding the SFY 2008-09 enacted budget for a pilot project 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.

## **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 must enact legislation to allow for the expungement of a criminal record to allow 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**

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 has been shown to reduce 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 2009 session, the Committee intends to advance legislation to expand the availability of merit time.

### **1. Merit Time for Victims of Domestic Violence**

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 passed 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.

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. Therefore, the Committee intends to again advance legislation to expand merit time eligibility for survivors of domestic violence during the 2009 legislative session.

**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	0
To Ways and Means Committee	4
To Codes Committee	15
To Rules Committee	5
<b>Total</b>	<b>24</b>

**Bills Having Committee Reference Changed** **2**

**Senate Bills Substituted or Recalled**

Substituted	5
Recalled	0
<b>Total</b>	<b>5</b>

**Total Assembly Bills in Committee** **175**

**Total Number of Meetings Held** **6**