



**New York State Assembly**

Carl E. Heastie, Speaker

# ANNUAL REPORT 2015

A dark blue silhouette of the New York City skyline, including various skyscrapers and buildings, positioned behind the large white text of the title.

Committee on

**Correction**

Daniel J. O'Donnell, Chairperson



DANIEL O'DONNELL  
Member of Assembly  
69<sup>th</sup> Assembly District

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

CHAIR  
Committee on Correction  
Codes Subcommittee on  
Criminal Procedure

COMMITTEES  
Codes  
Education  
Environmental Conservation  
Tourism, Parks, Arts and  
Sports Development

December 15, 2015

The Honorable Carl E. Heastie  
Speaker of the Assembly  
Capitol, Room 346  
Albany, NY 12248

Dear Speaker Heastie:

As Chairperson of the Assembly Standing Committee on Correction, I am pleased to present to you the Annual Report for the 2015 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.

Very truly yours,

A handwritten signature in blue ink that reads "Daniel O'Donnell".

Daniel J. O'Donnell  
Chairperson  
Standing Committee on Correction

**2015 ANNUAL REPORT**

**STANDING COMMITTEE ON CORRECTION**

**Daniel J. O'Donnell, Chair**

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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 54 state correctional facilities and 62 local correctional systems, including all local jails and police lockups operated by municipalities across New York State. New York's correctional system is the third largest in the nation with approximately 52,000 inmates housed in state facilities and 25,038 inmates in local facilities. More than 40,000 correctional personnel combined are employed in all correctional facilities.

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. Public hearings held by the Committee on Correction are reviewed in Section IV.

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

### **A. State Correctional Facilities and Community Supervision**

As of November 1, 2015, the prison population of the Department of Corrections and Community Supervision (DOCCS) was 51,985 inmates and 677 parolees under custody. This is 1,235 fewer inmates than at this time in 2014. The overall population has now declined 27.8% since the peak of 71,538 in 1999. The total under-custody population is 48.5% African American, 24.7% Caucasian, and 23.7% Hispanic as of November 1, 2015. Females comprise 4.5% of the inmate population and males 95.5% of the inmate population. The number of state-ready inmates (inmates held in a local correctional facility waiting transfer to state prison) as of November 1, 2015 was 538, and 43 state-ready parolees. It should be noted that although not recognized as part of the prison population, the Willard Drug Treatment Campus, which houses low-level drug offenders and parole violators, typically confines an average population of between 600 and 900 inmates. Willard counted for an additional 817 persons on November 1, 2015. The three-month length of stay for Willard inmates resulted in a population of 2,330 during the first ten months of 2015. Additionally, there were 818 persons under Community Supervision diverted to a residential treatment facility operated by the Department of Corrections and Community Supervision as of November 1, 2015, which is 11 persons fewer than this time last year.

There were 17,964 inmate admissions to state correctional facilities from January 1, 2015 through October 31, 2015, and 2,263 parolee admissions in that same time. New court commitments for this period were 10,582, including 552 judicially sanctioned admissions to DOCCS' facilities. There were 3,057 returned parole violators and 3,734 conditional release revocations, including 1,520 violators who were admitted into DOCCS-operated alternative-to-incarceration programs, some of which are 45 day or 90 day drug treatment

programs. These alternative-to-incarceration programs are often referred to as Alt 45 and Alt 90 programs, and are located in Edgecombe Correctional Facility and Willard Correctional Facility. Additionally, two other specialized parole diversion programs (PDP) are located in Orleans Correctional Facility and Hudson Correctional Facility. While the location of some of these DOCCS-operated alternative-to-incarceration programs may be in current or former correctional facilities, the persons on parole who are diverted to these programs, and successfully complete them, are released without a parole revocation violation on their record. The 1,070 persons on parole returned for new felony offenses are included in the total new court commitments.

## **B. Local Correctional Facilities**

The total under-custody population among local correctional facilities as of the end of the fiscal year 2015 was 25,038. For the City of New York, there were 9,743 inmates under custody while county correctional facilities outside of the City of New York had an under-custody population of 15,295 at that time. These populations are in line with last year's populations.

## **C. Community Supervision**

The Department of Corrections and Community Supervision is the sole agency responsible for the supervision of all persons under custody or released from the state correctional facilities and subject to a term of parole or post-release supervision. This responsibility includes efforts to ensure successful, law-obedient adjustment to community living and help with drug treatment, job training, job placement and other services to enhance the likelihood of a self-sufficient and crime-free lifestyle. DOCCS 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 DOCCS, as of November 1, 2015, there were 36,278 persons in New York State under parole supervision, which are 81 fewer parolees than at the same time last year.

Almost half, 49%, of the parolees under community supervision as of December 31, 2014 were African-American. The median age of these parolees was 37, and 48% are from New York City. The large majority of people on parole, 93%, are male. Sixty percent had a drug abuse history, 2,819 or 8% are registered sex offenders, and 7%, or 2,345 were female. Among female parolees, 33% were convicted of a legislative violent felony offense, followed by 24%, who were convicted for a drug offense. Only 2%, or 701, parolees have Youthful Offender status.

## **D. Board of Parole**

The Board of Parole (Board) reviews parole-eligible prison inmates sentenced to an indeterminate term of imprisonment and either denies or approves release on parole. This is separate and apart from the release mechanism for those inmates sentenced to a determinate term of imprisonment or those eligible for conditional release. The Board also sets conditions of release for all persons who are subject to a period of community supervision. Data received from the Board shows that in the first 10 months of 2015, initial Board interview releases declined to 20%, down from 24.5% a year ago this time, including Shock and Presumptive Release. Lesser and greater rates of release apply within each category of crime of conviction. Persons subsequently appearing before the Board after initially being denied were granted parole release at an average rate of 20% in the first 10 months of 2014, down from 21.1% during this same period in 2014. However, subsequent appearances remain significantly lower than the 36% in 2010-2011 State Fiscal Year and higher historical norms. Rates of release for specific categories of inmates vary considerably.

Between January 1 and October 31, 2015, there were 10,343 such interviews representing 394 fewer inmates than the 10,737 interviews held a year ago during this same period. Non-administrative release interviews are those interviews conducted in person, including interviews conducted by video teleconference. Administrative releases by DOCCS are forwarded to the Board of Parole in order to set conditions of release. Non-administrative release rates during the first ten months of 2015 were 20% for initial interviews, and 20% for reappearance interviews. Specific category of crime release rates include 23% for A1 violent offenders, 7% for statutorily defined violent felony offenders, 18% for drug offenders, 18% for other coercive offenders, 28% for major property offenders, and 22% for youthful and juvenile offenders. These category of crime release rates are consistent with the rates of release last year at this time.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision, often with revised conditions. Through October 31, 2015, 7,868 parolees were ordered returned to DOCCS, including 1,070 who were returned for a new felony conviction and 7,798 returned for a technical rule violation, which includes those who were returned to an Alt-90 and Alt-45 program.

## **E. Community Corrections Programs**

According to data obtained from the Office of Probation and Correctional Alternatives (OPCA), which is housed in the Division of Criminal Justice Services (DCJS), at the end of the SFY 2014-2015, there were 105,510 adults under probation supervision across New York State, a decrease of 3,774 since last year at this time. The adult probation population includes 51,322 persons on felony probation and 49,297 misdemeanor offenders on probation, a reduction of over three thousand. In addition, local probation departments supervise youth placed under supervision by the family court, which



includes approximately 2,598 juvenile delinquency cases, and 897 persons in need of supervision (PINS) cases in this last fiscal year.

Probation departments are also called upon to investigate and prepare pre-sentence reports based upon those investigations. Through the end of fiscal year 2015, probation departments conducted 56,365 investigations for both felony and misdemeanor cases. Among specialized projects lead by OPCA is the Sex Offender Address Confirmation Project. Probation is the most frequently used disposition for defendants convicted of sex offenses in New York State. The supervision period for sex offenders under probation is longer than the supervision period for offenders convicted of other offenses. Probation officers regularly confirm offender addresses, comparing them to the State's Sex Offender Registry (SOR), require that offenders complete change of address forms, and file violations and request warrants on absconders. There are approximately 3,500 registered sex offenders under probation supervision. Heeding suggestions from probation officers, the SOR database was modified to allow searches by supervising agency. This will enable each probation department to identify its cases on the Sex Offender Registry.

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

The SFY 2015-16 Budget for DOCCS appropriates \$2,902,906,000 in state operations funding, which is a \$113 million increase in state operations funding from the budget for the prior year. The DOCCS budget represents funding for the operation of state correctional facilities as well as community supervision and the Board of Parole. Included within the DOCCS budget is \$145.9 million for the supervision of persons released to parole and post release supervision, and \$6.6 million to support the functions of the Board of Parole. The Department possesses the largest state operations budget of any state agency and the average cost to house an inmate is approximately \$50,400 per year. The budget also includes \$28.2 million in Aid to Localities funding, which includes funding for increased use of Medicaid reimbursement for inmate health services. The budget has benefited from savings associated with the recent prison closures.

#### **A. Department of Corrections and Community Supervision**

##### **Facilities**

After closing four correctional facilities in the last fiscal year, no corrections facilities were closed in SFY 2015-2016. Previous facility closures have resulted in a number of property sales and conversions of such properties for new uses often benefitting the community at large.

In 2015, it was announced that the previously shuttered Bayview Correctional Facility for women in Manhattan is to become a facility which will host a collection of women's rights advocate groups. The Empire State Development Corporation awarded the rights

to restore the former Bayview Correctional Facility and turn it into The Women's Building. The new use will include gallery space for public meetings as well as support and resource services for women's groups. The original building was constructed in 1931 and served as a YMCA for merchant sailors. It was converted into a medium security prison for women in the 1980's. Bayview Correctional Facility closed in 2012 after sustaining damage in Superstorm Sandy.

In Orange County the property surrounding the former Mid Orange Correctional Facility was sold to the Town of Warwick and has been turned into a public park. Under the terms of the agreement it cannot be resold and must remain undeveloped and used only for public recreational and land preservation purposes. Those public lands include 400 acres of New York State DEC-designated wetlands, a pavilion, an event space, a baseball field and several access points to Wickham Lake. Adjacent to Wickham Woodlands, another thirty-six acres of Mid Orange Correctional Facility was sold to an organization to develop the property into an indoor and outdoor sports training facility and overnight summer camp.

The SFY 2015-2016 Executive Budget again included \$1 million for Prisoners Legal Services (PLS), which provides legal representation and assistance to indigent prisoners in civil cases. The Assembly was able to secure an additional \$1.2 million for PLS, but the program continues to be funded below its traditional support level. The Committee believes that PLS is an important program that 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 DOCCS.

Funding for Alternative to Incarcerations programs is \$20,123,000 in SFY 2015-2016. The Assembly included more than \$715,000 in additional funding for various ATI programs. These funds are appropriated in the Division of Criminal Justice Services budget.

### **Medical Parole**

The SFY 2015-2016 budget included legislation to allow the Department to grant medical parole release to certain non-violent offenders suffering from a terminal illness, for an estimated savings of \$1 million. The Chairperson of the Board of Parole may either accept the determination of the Commissioner of the Department of Corrections and Community Supervision to release a medical parole applicant or schedule the applicant to appear for consideration before the Board. Currently, DOCCS certifies applications to the Board of Parole following a medical assessment review and consideration under the Executive Law. This process of certifying inmates who have applied for medical parole is so time consuming that one in five die before they see the Board.

Between the medical parole program's inception in 1992 and the year ending in 2013, there were 495 certified applications submitted by DOCCS to the Board. Ninety-nine of those applicants died prior to seeing the Board of Parole. Of the 389 who actually saw

the Board of Parole during this time frame, 354 were granted medical parole and 29 were denied due to risk assessment based on their criminal history. The remaining six had their hearings postponed and died before their next appearance. Of the 354 granted medical parole, 24 still died before they were to be released.

The medical parole process includes providing written notice to the sentencing judge, prosecuting district attorney and defense counsel so that their comments may be considered. The process also includes a medical discharge plan which is prepared by the Department identifying the level of medical care the inmate will require. Those inmates granted medical parole are reviewed by the Department every six months after they've been released to determine whether to renew the grant of medical parole. Parole officers maintain contact with medical providers and monitor the medical parolee. Where a medical condition has improved, those inmates may be returned to prison.

Elderly and infirm inmates have been estimated to cost more than \$100,000 per year to keep in prison. Releasing 327 inmates to medical parole since the program's inception has saved the state more than \$15 million.

### **Hepatitis and HIV**

The SFY 2015-2016 Executive Budget also provided \$24 million for the treatment of inmates who have been diagnosed with Hepatitis C, which is estimated to cost \$80,000 to \$90,000 per patient.

The enacted Budget also included the repeal of a section of law that required written consent from an inmate in order to test for HIV. The practice of opting out, rather than opting in, has been found in other states to significantly reduce the presence of HIV in correctional populations. While the number of HIV positive inmates and HIV related inmate deaths have seen great reductions, it is hoped that repeal of this legislation will result in increased screening and earlier identification of inmates who may be in need of HIV treatment.

### **Prison Rape Elimination Act**

In compliance with the Federal Prison Rape Elimination Act the Department has implemented separate general confinement housing units for 16- and 17-year-olds at Coxsackie, Greene and Woodbourne Correctional Facilities. These units provide specialized programming and education along with additional recreation time. Upon reaching the age of 18 these inmates are transferred into an adult general confinement unit.

### **Overtime**

The Executive SFY 2015-2016 Budget includes a \$20 million savings in overtime reduction related to increased worker's compensation oversight and tougher overtime controls. According to the State Comptroller, agencies with over 25% percent of their

workforces accruing overtime can be considered heavily reliant on overtime to meet agency responsibilities. 31.2% of the DOCCS workforce accrues overtime and 7.5% of the entire DOCCS budget is allocated for overtime. Second only to the State Police, DOCCS employees have the highest rate of overtime in excess of \$50 per hour. Most overtime goes to corrections officers and nurses in certain facilities. Seventeen new correction officers training classes were included in this fiscal year.

### **Board of Parole**

Funding for the Board of Parole is separately appropriated and may not be decreased by interchange with any other appropriation in the DOCCS budget in order to ensure adequate funding to perform its mission with the required independence. The SFY 2015-2016 Board of Parole budget is \$6.6 million.

The Board of Parole is statutorily maintained as a 19-member appointed body with independent decision-making authority. Housed within DOCCS for administrative support, the Board maintains its independence in conjunction with its own counsel's office and cadre of Administrative Law Judges. The Board continues to make discretionary determinations regarding the release of indeterminately sentenced inmates, the setting of release conditions, revocations of supervision for parolees charged with violating conditions of release, and the three-year discharges of sentence for certain persons under supervision. Former Board functions of granting merit termination of sentences, granting certificates of rehabilitation and preparing parole summaries are now carried out by DOCCS since 2011.

Six months after the only African American male commissioner appointed to the Board of Parole retired in 2014, a new appointment was made and confirmed in June 2015. Five vacancies currently remain on the Board.

### **Community Supervision**

The DOCCS budget allocation for supervision of persons released to the community in SFY 2015-2016 is \$142.2 million, an increase of \$3.7 million from the prior year. Community Supervision is entirely separate from the Board of Parole budget, since community supervision is no longer a function of the Board following the merger with DOCCS in 2011.

Two new parole officer training classes were scheduled for this fiscal year. Community supervision staff members oversee approximately 35,634 people on parole and post-release supervision out of seven regional offices around the state.

Currently 55% of the individuals on community supervision live in the five boroughs of New York City or are on Long Island, while 45% reside Upstate, representing an increasing shift towards upstate communities. Many of the ex-offenders have high educational and vocational needs, a history of substance abuse and problems maintaining stable housing and income. The Correction Committee recognizes the importance of

supportive reentry services and continues to advocate for increased funding and diversity of programming to help people coming out of prison successfully reintegrate into the community.

## **B. Local Correctional Agencies**

The DOCCS budget continues to include \$200,000 in aid to localities funding for local correctional facilities for reimbursement 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. The reimbursement for “state-ready” inmates was basically eliminated in the SFY 2009-10 Budget but the state is still liable to reimburse 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 DOCCS that the inmate is ready for transport.

## **C. Office of Probation and Correctional Alternatives**

The SFY 2011-12 Budget restructured certain appropriations so that formerly separate programs within the Division of Criminal Justice Services (DCJS) such as the Office of Probation and Correctional Alternatives (OPCA), among other appropriations, have been consolidated. The new program structure of DCJS now consists of the Administration, Crime Prevention and Reduction Strategies and separate programs for each of the newly merged agencies.

Thus, the appropriation for OPCA is unspecified within the Executive Budget and contained within a larger \$65 million appropriation for DCJS Crime Prevention and Reduction Strategies Program covering additional programs for organizations and services such as Aid to Prosecution, Crime Labs, and Drug Diversion, among others.

The DCJS budget includes \$44.9 million for aid to local probation departments and additional federal funds are also directed to help offset probation aid cuts. It should be noted that state aid to local probation departments represents only a small percentage (less than 20%) of the actual costs of these services.

## **D. State Commission of Correction**

The State Commission of Correction is responsible for the regulation and oversight of all correctional facilities in New York State. This responsibility encompasses 54 state correctional facilities, 62 county jails and the New York City correctional system comprising 18 facilities and 200 police lockup facilities, and five secure centers operated by the Office of Children and Family Services. The Commission’s budget for SFY 2015-2016 is \$2.89 million.

Regarding local correctional facilities, the Commission operates a New Institutions Transitions Assistance Program (NITAP), which works closely with localities constructing new correctional facilities or additions to existing facilities. In the year ending 2014 the Commission worked with Dutchess County to provide technical assistance to the county as they complete plans to construct modular housing units to ease overcrowding. In both Greene and Sullivan counties the Commission assisted their efforts to build a new county jail. The Commission also provided extensive technical assistance to Herkimer County as they continue plans for a new county jail. Jefferson County is in the midst of designing a new thirty-six bed dormitory to be converted from an existing indoor exercise area. The Commission also worked with Saratoga County in converting a portion of the facility's chapel into a small dormitory, while in Montgomery County they assisted in identifying space for additional beds within current housing units. Schoharie County and the Commission have worked closely together since the closure of their jail in 2011 as a result of the devastating floods caused by Hurricane Irene. Officials seek to either renovate or replace the Schoharie County Jail.

In 2014, the last year for which data is available, the Commission's Citizen Policy and Complaint Review Council reviewed 2,287 individual letters of complaints concerning state correctional facilities and 1,329 complaints regarding local correctional facilities. The Commission handled 1,766 county facility grievances. The Commission's Forensic Medical Unit fully investigated 26 inmate deaths, which are six more than were investigated the year prior, and conducted an abbreviated investigation of 11 additional deaths, which are 7 fewer than were investigated the year prior. There were 172 inmate deaths in state and local facilities in 2014, 26 fewer than were reported in 2013. 125 occurred in a state correctional facility, a reduction of 16 from 2013. Of those, twelve were suicides, two were from HIV/AIDS, none were from causes unknown while seven were from an "other" category. The remaining 104 died from natural causes. In total there were 29 suicides in state and local correctional facilities in 2014. In the City of New York, there were ten deaths in correctional facilities, which is fifteen fewer than in 2013, a significant reduction. Of these, one was a homicide, five were from unknown causes, and the remaining 4 from natural causes. The Commission reports no suicides in a New York City Correctional facility in 2014.

The Commission has reported that by the end of 2014 there were only 99 double banded cells resulting from variances remaining in the Department of Corrections and Community Supervision. Seventy-two of those cells are located in the Wallkill Correctional Facility and twenty-seven in Clinton Correctional Facility.

## IV. COMMITTEE ACCOMPLISHMENTS

### A. Significant Legislation Advanced by the Correction Committee in 2015

The Correction Committee advanced the following legislation which passed both houses in 2015.

**Relates to the restraint of pregnant female prisoners during childbirth** Strengthens the prohibition against shackling women in labor and expands the anti-shackling law to include any pregnant woman or woman during a postpartum period of eight weeks. (A.6430/S.983A, Chapter 518 of the Laws of 2015)

**Relates to Incapacitated Parole Violators** The Court of Appeals recently held that a man who was determined to be unfit to stand trial was therefore necessarily unfit to participate in a parole revocation proceeding. This bill provides for a mental incapacitation hearing for an alleged parole violator in the context of a parole revocation proceeding, including such parolees who are brought in to the revocation process on a technical violation rather than a new crime. (A.7685/S.4780A, Chapter 545 of the Laws of 2015)

**Provides inmates with medical authorization form to disclose private medical information** Requires the Department of Corrections to provide all inmates with medical authorization and mental health treatment information consent forms and to provide executed copies to persons authorized. (A.7501A/S.5428A, Vetoed, Message 272)

**Requires Additional Mental Health Training for Certain Prison Employees** Ensures that mental health training is updated annually for certain prison employees who work in direct contact with inmates in order to reduce inmate suicide and injuries resulting from inmates who suffer from mental illness (A.836/S.633, Chapter 518 of the Laws of 2015)

**Provides inmates an opportunity to obtain a GED** Requires DOCS to establish academic programs to prepare all 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. (A.3838B/S.979B, Chapter 431 of the Laws of 2015)

**Authorizes Release on Thursdays** Authorizes the Department of Corrections and Community Supervision to release inmates on a Thursday who otherwise would be released on a Friday for the purpose of having such inmate report to their parole officers within 24 hours of release. This bill will ensure that parolees are properly supervised on their first weekends out of prison. (A.7814/S.4905, Chapter 270 of the Laws of 2015)

**Relates to Correctional Medical Review Board's Access to Autopsies** Ensures that county coroners and medical examiners promptly perform autopsies and toxicology reports of prisoners and jail inmates who die while under custody and report the results to

the Medical Review Board that investigates such deaths. (A.7825/S.4903, Chapter 490 of the Laws of 2015)

**Relates to clinical records and confidentiality** Allows the Justice Center access to certain clinical records, and adds a separate provision permitting access for the now-independent federal protection & advocacy and client assistance program system. (A.2143/S.5680, Chapter 247 of the Laws of 2015)

**Livingston County Pre-Arrest Detainees** Allows detainees in Livingston County to be held in the county jail prior to arraignment. (A.7656A / S.5023A; Chapter 321 of the Laws of 2015)

**Extending The Interstate Compact for Juveniles** Extends New York's participation in the Interstate Compact for Juveniles which governs the interstate management, monitoring, and supervision of juvenile delinquents and provides for the return of non-adjudicated juveniles who have run away from home to another state. (A.7972/S.4906, Chapter 195 of the Laws of 2015)

In addition, the Assembly passed the following correction-related bills:

**Prohibition Against Placing Juveniles, People with Mental Illness and the Developmentally Disabled in Solitary Confinement** Prohibits placement of such inmates in Special Housing Unit in accordance with recommendations issued by the United Nations Committee Against Torture relating to the use of solitary confinement in American prisons. (A.1346A; Passed Assembly)

**Prohibition Against Placing Pregnant Women in Solitary Confinement** Prohibits placement of pregnant inmates in Special Housing Unit (SHU) absent exceptional circumstances creating an unacceptable safety risk, prohibits disciplinary restriction of diet, medical and mental health care for such prisoners, and provides for post-partum care for inmates in SHU. (A.1347; Passed Assembly)

**Relates to the residence and domicile of sex offender registrants** Defines "residence" for clarification in the sex offender registry law and directs the Division of Criminal Justice Services to develop a notification procedure for mandatory reporting by offenders who have multiple residences. (A.1819A; Passed Assembly)

**Publication of Parole Appeal Decisions on Public Web Site** Requires decisions from the Parole Appeals Unit to be published on the agency web site. (A.1984; Passed Assembly)

**Authority to Hold Mentally Ill Inmates in Psychiatric Center** Authorizes the Central New York Psychiatric Center to continue to provide appropriate treatment to inmates transferred to the Center due to a mental health emergency after the emergency has been resolved. Current law requires inmates to be returned to prison where they often



decompensate. (A.2009; Passed Assembly)

**Relates to risk assessment instruments for sex offenders** Requires the Board of Sex Examiners to update the guidelines of the sex offender risk assessment instrument and requires use of a validated instrument. (A.2190; Passed Assembly)

**Relates to the Definition of “Direct Relationship” for the Purposes of Article 23-A of the Correction Law regarding certain Licenses and Employment** Changes the definition of "direct relationship" to require a substantial connection between the specific job duties or license sought and the nature of the criminal conviction in order to deny employment to such person on the basis of unreasonable risk to property or public safety. (A.2734; Passed Assembly)

**Reporting on Demographics by Board of Parole** Requires the Board of Parole to track and report statistical information on the demographics of people appearing before the board, including age, gender, race, ethnicity and region of commitment, among other factors. (A.2943; Passed Assembly)

**Requires employers to make a conditional offer of employment before inquiring about any criminal convictions of a prospective employee** Also known as Ban the Box, this legislation seeks to curtail unlawful discriminatory practices against persons with criminal records and help to ensure that employers abide by the provisions of Article 23-A of the correction law. (A.2990; Passed Assembly)

**Relates to notification of death of inmates to next of kin** Upon the death of an inmate, requires the Department of Corrections to be responsive to the inquiries of next of kin and to provide them with a preliminary death certificate. (A.7500; Passed Assembly)

**Relates to the classification of transgender and intersex inmates in county jails** Brings county jails into compliance with the Prison Rape Elimination Act. (A.7826; Passed Assembly)

**Relates to providing equal retirement benefits for persons who have been appointed to the title of superintendent in the Department of Corrections and Community Supervision** Equalizes the retirement benefits for all who have been appointed to the title of superintendent. (A.3879A; Passed Assembly)

## **B. Public Hearings and Roundtables**

### **1. Sex Offender Residency Restrictions**

In February 2015, the Court of Appeals struck down all local laws relating to sex offender residency restrictions around schools and other places children congregate, deciding that state law preempts such local laws. Accordingly, the Committee convened

a public roundtable on May 20, 2015, for the purpose of examining the efficacy of sex offender residency restrictions and identifying best practices to promote public safety and discourage repeat offending by sex offenders. During the roundtable discussion, the Committee received evidence-based recommendations from sex offender treatment providers and other professionals relating to housing restrictions and public safety. The roundtable panelists stated that any such restrictions should be individualized and targeted toward offenders who pose a danger to children. In response to the roundtable, a new bill was introduced (A.7878, O'Donnell) providing for a mental health evaluation and the imposition, when appropriate, of long term residency restrictions by a court for any individual with a child victim or who otherwise poses a danger to children. The Committee will again advance this bill in 2016.

## **2. Oversight and Investigations of the Department of Corrections and Community Supervision**

On December 2, 2015, the Committee held a public hearing focusing on oversight and investigations within DOCCS. Correction Law Section 112 has been interpreted to permit the commissioner of DOCCS to conduct his or her own investigations rather than refer matters to the State Office of the Inspector General (IG). DOCCS maintains its own Office of Special Investigations, staffed by DOCCS employees, charged with investigating unusual incidents internally. Most state agencies refer such investigations to the IG.

In 2015, two inmates escaped from Clinton Correctional Facility and two other inmates died during use of force incidents. The escape was allegedly facilitated in part by actual participation and long term negligence of correctional employees. The question asked in this hearing was whether investigations concerning certain kinds of incidents at DOCCS should be handled by an impartial outside agency rather than by DOCCS employees. Because the IG investigation is still pending, the hearing will reconvene at a future date. The Committee will review testimony from the hearing to determine whether or not legislation should be proposed to create external oversight of serious incidents taking place in our correctional system.

### **C. Prison Tours**

Assemblymember Daniel O'Donnell has toured 25 prisons in the three years of his tenure as Committee chair. In 2015, he went to visit four state and local correctional facilities: Clinton, Elmira, Coxsackie and Rikers Island. At the state correctional facilities, Chairperson O'Donnell met with the superintendent, staff and members of the Inmate Liaison Committee and/or other inmate associations. During 2016, the Chair will tour more facilities throughout the State.

## **V. ISSUES TO BE ADDRESSED IN 2016**

### **A. Security and Oversight**

2015 has been a troubled year for DOCCS. In March, three correctional officers who worked at Attica Correctional Facility were allowed to resign after pleading guilty to misdemeanor assault for severely beating an inmate in their custody. In April, an inmate's death was ruled a homicide due to injuries sustained after a confrontation with correctional officers at Fishkill. That same month, another inmate died from injuries caused by correctional officers at Sullivan. In June, two inmates escaped from Clinton Correctional Facility with the assistance of a civilian employee. In the aftermath of the escape, nine security staff members were suspended pending investigation by the State Office of the Inspector General (IG).

Most investigations into unusual incidents at DOCCS are conducted by its own Office of Special Investigations (OIS). The investigators are DOCCS employees, many of whom are former security staff. There is a growing consensus in the criminal justice community that police departments should have oversight by non-police agencies. In 2015, the Chair of the Committee introduced a bill placing investigations under the IG instead of OIS (A.8321). In 2016, the Committee will consider the need for external oversight of the department and will look for best practices in the field of correctional oversight. We expect to propose legislation concerning external oversight of DOCCS by the end of the 2016 session.

The union for correctional officers, the New York State Correctional Officer and Police Benevolent Association, asserts that violence is on the rise in our state prisons, with 747 reported assaults on staff by inmates in 2014, compared to 524 such assaults in 2012. The union contends that prisons have become much less safe for staff and inmates at least in part because of the increasing concentration of violent offenders in the system. Each one of the reported incidents of violence is investigated internally, with some investigations being turned over to the state police if DOCCS believes a crime has been committed.

### **B. Segregated Confinement**

#### **1. Overuse of Segregated Confinement**

At any given moment there are approximately 4,000 New York state prisoners, or 7-8% of the prison population, being housed in segregated disciplinary units, known as Special Housing Units (SHU). An unknown number of inmates are also confined in keeplock units or are keeplocked in their own cells. Inmates in keeplock and SHU are locked into their cells 23 hours a day, with one hour of recreation time. Out-of-cell recreation is usually spent alone in a bare outdoor cage. Inmates in SHU are denied phone calls, most

commissary privileges and personal property and most programming, including classroom-based educational programming. They have restricted visitation rights and are unable to attend religious services. In some cases, a restricted diet may be given as punishment for misbehavior when an inmate has been sanctioned with SHU time to his or her maximum expiration date or when the inmate is being punished for food-related misconduct. There is no limit to the amount of SHU time an inmate may receive as a sanction for misbehavior in New York prisons and prisoners with serious or multiple infractions, as well as prisoners under “administrative segregation”, may stay in SHU for years. The average length of stay in SHU in New York is approximately five months. According to an investigation by the New York Civil Liberties Union, only about 16% of the inmates in SHU are placed there for incidents involving assaults or weapons, so the majority of inmates in SHU are there for non-violent misbehavior and drug use.

Heavy reliance on solitary confinement has not only been a state prison policy. In March 2012, the former Commissioner of the New York City Department of Correction testified at a city council budget hearing that the use of solitary confinement had increased 44% at Riker’s Island over the previous two years. An October 2013 report by the New York City Board of Correction stated that 27% of the 16-, 17- and 18-year-olds at Riker’s Island were in punitive segregation and that 71% of all inmates in punitive segregation were mentally ill. Since that time Rikers has made enormous strides in removing young people from isolation and intends to divert all inmates under 21 from solitary confinement in the near future.

In September 2012, DOCCS began an internal review of its SHU policies. In December 2012, the New York Civil Liberties Union filed suit in federal court to challenge the constitutionality of the state’s SHU practices and policies. As a result of that law suit and another law suit filed by Prisoner’s Legal Services, a partial settlement has been reached and experts for both sides are evaluating DOCCS’ use of SHU to make recommendations for reform. Under the settlement reached, inmates under the age of 18 are no longer housed in SHU and are given significant out-of-cell programming and exercise even when placed under disciplinary sanctions. Additionally, the settlement provided for a presumption against placing pregnant inmates in SHU and a created a new program to divert developmentally disabled inmates from SHU. However, changes at DOCCS have been slow and the number of inmates in solitary has not significantly decreased since the settlement was reached.

The Committee on Correction advanced two new bills in 2015 (A.1346-A, O’Donnell; A.1347, Rozic) following guidelines recommended by the United Nations Committee Against Torture. The bills would limit the time an inmate could spend in solitary confinement and prohibit the use of solitary confinement for adolescent, developmentally disabled and mentally ill inmates and pregnant women. The Committee will again advance these bills for consideration by the entire Assembly and will continue to consider other bills to limit SHU time in New York.

## **2. Prisoners with Mental Illness and Cognitive/Physical Disabilities**

Correction Law § 137 (6) (d) and (e) was enacted in 2008, excluding “seriously mentally ill” prisoners from solitary confinement of more than 30-days duration. Six years out, there are still 650 to 700 inmates in SHU who suffer from some form of mental illness. The Committee will continue to examine the mental health SHU exclusion law to see if it should be amended to broaden the eligibility for SHU exclusion, including prisoners with cognitive impairment or physical disabilities. The Committee will also consider other changes to ensure that people who need mental health treatment or special accommodations do not have their conditions made worse by disciplinary segregation.

### **C. Parole**

Records show that since 1985 more than half a million people have been released from New York state prisons. Today we have fewer than 35,000 individuals on community supervision and 52,000 individuals in state prison, an approximately 27% decrease in the prison population since 1999. The declining population of people in custody and on community supervision indicates that most people on parole successfully re-integrate back into the community. Only 9% of people on parole return to incarceration within three years of their release for a felony new offense. Viewed in terms of total statewide arrests, parolees represent less than 5% of all felony arrests and just 2.5% of all misdemeanor arrests per year statewide.

Although New York has medical parole for inmates who are either terminally ill or medically incapacitated, the process has been so slow that nearly a quarter of the inmates who have sought medical parole die before they can be interviewed by the board. Eligibility for medical parole may be too restrictive and in need of expansion.

Given the importance of a successful parole system, we must ensure that we do everything we can to support DOCCS and the Board of Parole in its reentry mission. The Committee regularly consults with professionals, academics, law enforcement experts, advocates and the public to evaluate whether the practices and procedures in place today for both DOCCS and the Board of Parole are fair and effective, and to make recommendations to improve future outcomes.

In 2015, the Committee advanced a bill which passed both houses (A.7685, O’Donnell) to provide capacity hearings for mentally ill parole violators who seem to be legally incapacitated. In 2016, the Committee will continue to advance bills supporting needed parole reforms and will introduce several new pieces of legislation to make sure that inmates who do not pose a public safety risk are released to community supervision as quickly as possible and that inmates who are assessed as posing a low risk of recidivism will be released unless the Board identifies overriding factors militating against release that were not taken into account by such assessments.

## **D. 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 education. Most college programs operating in prisons throughout the state shut down after TAP was discontinued.

The benefits of post-secondary correctional education are clear. The New York State Commission on Sentencing Reform reported that post-secondary correctional education programs have been shown to reduce recidivism by up to 40%. The Bard Prison Initiative reports that while nearly 40% of inmates statewide return to prison within three years for a new crime or a parole technical violation, only 4% of students who have spent any time in the Bard College program return to prison within three years.

Despite the 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 small legislative initiative grants. Identifying resources to expand post-secondary education in prison is an ongoing goal of the Committee.

## **E. Re-Entry**

Legal disabilities, such as a bar to professional licensing or the prohibition against certain offenders in public housing, and state or local policies can operate as barriers to re-entry after incarceration is long over. While such disabilities tend to be added piecemeal to statutes and regulations, the overall affect can be to stymie efforts by ex-offenders to find housing or jobs or to continue education and training programs. In 2010 the National Conference of Commissioners on Uniform State Laws recommended that all states enact their Uniform Collateral Consequences of Conviction Act. In 2006, the New York State Bar Association's report "Re-entry and Reintegration: The Road to Public Safety" made a number of specific recommendations for New York legislative reforms aimed at decreasing the collateral consequences of incarceration, including streamlining the process for ex-offenders to obtain a Certificate of Relief from Disabilities or a Certificate of Good Conduct and expanding Article 23-A of the Correction Law to prevent discrimination against persons with a criminal record who pose no threat to public safety. This year the Committee will advance bills, including legislation to "Ban the Box" on employment applications, to help law-abiding formerly incarcerated people stabilize their lives by eliminating or reducing barriers to education, employment, housing and public benefits and by supporting programs and initiatives to encourage successful re-entry into their home communities.

APPENDIX

**2015 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	12
To Ways and Means Committee	12
To Codes Committee	15
To Rules Committee	5
<b>Total</b>	<b>44</b>

**Bills Having Committee Reference Changed** **1**

**Senate Bills Substituted or Recalled**

Substituted	1
Recalled	1
<b>Total</b>	<b>2</b>

**Total Assembly Bills in Committee** **180**

**Total Number of Meetings Held** **5**