

December 15, 2005

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 2005 Legislative Session. During this Session we expanded on the historic reform to the State's drug laws which occurred during the 2004 Legislative Session to allow more nonviolent drug offenders to petition the court for a reduction of their sentence. In addition, we continued a series of public hearings on the death penalty and conducted a round table on civil commitment of sex offenders in response to rising public concern about the effectiveness of the criminal justice system to deal with sex offenders.

The Annual Report also continues the longstanding practice of reviewing major aspects of state and local corrections by providing budgetary, workload and population demand data.

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

Sincerely,

Jeffrion Aubry  
Member of Assembly

**2005 ANNUAL REPORT**  
**STANDING COMMITTEE ON CORRECTION**

**Jeffrion L. Aubry, Chair**

**Committee Members**

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William Colton  
Diane Gordon  
Felix Ortiz  
Jose Peralta  
William Scarborough  
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Tom O'Mara, Ranking  
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**Staff**

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Richard McDonald, Analyst  
Abib Tejan-Conteh, Graduate Scholar  
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## **I. JURISDICTION**

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

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

The publication deadline for this report precludes the inclusion of annual data; as a consequence, partial year data appears where such data is available. For some agencies, no data is readily available and has therefore been omitted.

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

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

As of October 2005, the under custody population of the Department of Correctional Services (Department) was 62,965 and this represents the sixth consecutive year of population decline. In addition, the daily count of state ready inmates confined in local correctional facilities ranges between 500 and 600 inmates and this represents a modest increase over the average number of state ready inmates confined in local correctional facilities during the previous year. 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 approximately 800 inmates. The three month length of stay for Willard inmates results in an annual population of approximately 3,200 inmates.

For the first ten months of 2005, admissions to the Department were 21,020, 235 fewer than for the same period in 2004. Although this is a minimal decrease in total admissions, it is useful to examine the components of this total figure. New court commitments for this period are 13,825, which is 177 less than the same period in 2004. Parole/conditional release revocations and remands to prison for this period were 6,588.

The continued decrease in the State's prison population derives from the continued decline in felony cases in New York State. Preliminary statewide felony case processing data indicate a continuing downward trend in felony indictments, convictions, guilty pleas and sentences to prison. In addition, this decline is partially attributable to the impact of the reform of New York's drug laws.

## **B. Local Correctional Facilities**

The total under custody population among local correctional facilities as of October 2005 was 30,104. For the City of New York, there were 286 fewer inmates than the same period in 2004.

County correctional facilities outside of the City of New York had an under custody population of 16,639 as of October 2005.

## **C. Parole Supervision**

The Division of Parole is responsible for the supervision of all persons released from the Department of Correctional Services who are subject to a term of parole, post release supervision or conditional release. This responsibility includes Division efforts to ensure successful, law obedient adjustment to community living and in many instances Division staff will fulfill the requirements of parole conditions by placing persons in drug treatment, job training, job placement and other services to enhance the likelihood of a self sufficient and crime-free lifestyle. Division staff are also responsible for identifying failure to adhere to parole conditions and to use corrective measures which may include revision of parole conditions, and in some cases parole revocation. There were no parole supervision data readily available at the time of this document's publication.

The Board of Parole reviews all parole eligible prison inmates and either denies or approves release on parole. The Board also reviews parole violation cases and either revokes parole or restores parolees to supervision.

## **D. Community Corrections Programs**

According to data obtained from the Division of Probation and Correctional Alternatives, as of December, 2003, there were 126,515 adult probationers under supervision across New York State, including 66,310 felony probationers, 57,430 misdemeanor probationers. In addition, family court caseloads include 5,733 juvenile delinquency cases and 4,376 persons in need of supervision (PINS) cases.

Probation departments are also called upon to conduct investigations and prepare pre-sentence reports based upon those investigations and in 2003, criminal investigations were conducted for 62,374 felony cases and 72,617 misdemeanor cases.

Probation departments also serve as restitution collection agencies throughout the State and during calendar year 2003, departments collected \$9.5 million court-ordered restitution.

The Division also provides funding and oversight for a variety of alternatives to incarceration programs. Service delivery data is arranged into five programmatic categories: pretrial services, defender-based advocacy, 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/ROR decisions.
2. Defender-Based Advocacy Programs evaluate defendants' needs for services such as drug treatment, family counseling, etc., prepare alternative sentencing plans, and aid defense attorneys in representing their clients.
3. TASC (Treatment Alternatives to Street Crime) Programs evaluate defendants with substance abuse histories, develop treatment plans, assist in placing defendants in treatment programs and monitor treatment performance.
4. Specialized drug and alcohol treatment services evaluate defendants with substance abuse histories and place defendants in treatment programs ordered by the courts as alternatives to incarceration. These programs may also provide treatment to 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 2005-06 Budget for the Department of Correctional Services provides \$2.26 billion in state operations funding. The Department possesses the largest state operations budget of any state agency. The 2005-06 Budget also includes \$8 million in aid to localities funding, principally for the reimbursement for confinement of state inmates in local facilities. In addition, 2005-06 capital funds in the amount of \$205 million are appropriated for maintenance and improvements to existing facilities.

In the Executive's State Operations budget for the Department of Correctional Services, there is a modest increase (\$22.4 million) over the budget for the prior year. However, it is important to observe that as the prison population continues to decline, the increase in the Department's budget results in a higher average cost per inmate, now at approximately \$34,000 per year. The State Budget also includes \$11.4 million for reimbursement for the confinement of state inmates returned to local correctional facilities for court-related matters at the reimbursement rate of \$17 per day, and for confinement of state ready inmates at the reimbursement rate of \$34 per day and for the confinement of inmates pursuant to section 95 of the Correction Law. There are currently approximately 550 state ready inmates confined in local facilities.

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

The Executive's program budget cuts have taken many forms, including the substitution of prison work assignments for vocational training, reductions in academic education so that only limited academic education is offered beyond the eighth grade level and this effort relies heavily on the use of inmate tutors. In addition, the Executive continues to employ a policy that limits the availability of substance abuse treatment in general confinement facilities and provides full treatment services only for CASAT inmates and for selected inmates who are within a few months of release from prison, notwithstanding the fact that two-thirds of the prison population are substance abusers. It is a widely accepted fact among treatment professionals that substance abuse treatment, if it is to be effective and have a lasting impact on inmates, must be of a long term nature. For this reason the Assembly has advocated for a minimum of one full year of substance abuse treatment for those inmates found to be in need of treatment.

## **B. Local Correctional Agencies**

The 2005-06 State Budget provides \$23.5 million for reimbursement through the Division of Parole for the housing and board of parole violators in local correctional facilities pending determination of parole revocation. The per diem reimbursement rate of \$34 provides funding for less than 25% of actual costs for the majority of local facilities and is especially problematic for those jails that are operating at facility capacity and are therefore obliged to board inmates at other facilities at rates ranging from eighty to one hundred dollars per day. There are currently 1905 parole violators confined in local facilities.

Local correctional facilities also receive reimbursement at the rate of \$17 per day from the Department of Correctional Services for housing and board of state inmates who are returned to local facilities for the purpose of appearing in court and are reimbursed at the rate of \$34 per day for housing and board of inmates who have been sentenced to an indeterminate or determinate sentence, and who have not been accepted for custody by the Department within the time period required by law. Finally, funding is provided for the confinement of inmates pursuant to section 95 of the Correction Law, who have been sentenced to state time and may be boarded in a local correctional facility for a period not to exceed six months. The 2005-06 State Budget provides \$8 million for these various purposes.

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

The Division's total budget for 2005 of \$196 million provides \$152 million for parole operations and \$44.4 million in local aid, which includes \$23.5 million to reimburse local governments for the confinement of parole violators in local correctional facilities as discussed above. This local aid also includes \$10.2 million for vocational training, job placement and related services for parolees, for former inmates of the New York City Department of Correction and for other offenders. Finally, these local aid monies include \$10.7 million for drug relapse prevention programs and other drug and alcohol treatment services for parolees currently under supervision of the Division.

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

The Division's annual budget of \$70.4 million includes \$68.5 million in aid to localities and \$1.9 million for state operations, funding approximately thirty staff positions.

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

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

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

## **IV. COMMITTEE ACCOMPLISHMENTS**

### **A. Important Legislation**

#### **1. Drug Law Reform**

During the 2005-06 Legislative Session, legislation was enacted which represents an addition to the amendments to the State's drug laws which occurred in the 2004-05 Legislative Session. This new amendment extends to certain persons convicted of a Class A-II Article 220 offense the right to petition the sentencing court for a conversion of their indeterminate sentence to a new determinate sentence.



## **2. Statutory Extenders**

Chapter 56 of the Laws of 2005 (A. 1920, Lentol) extends for a period of two years authorization for many programs at both the state and local level that are important to the successful operation and management of our state and local criminal justice systems. This legislation also extended for a period of four years determinate sentencing for violent felons as enacted in subdivision 74 of Chapter 3 of the Laws of 1995.

## **B. Public Hearings**

### **1. Local Conditional Release**

The second of two public hearings concerning the future of New York's local conditional release law was held on January 11, 2005 in Albany. Testimony was given by the Commissioner of Probation for Westchester County, the Director of Probation for Ulster County, a Local Conditional Release Commissioner for Oneida County, the Legislative Coordinator for the NYS Probation Officers Association, a probation representative from Orange County and a representative from the New York State Association of Counties.

### **2. The Death Penalty**

In June of 2004, the New York State Court of Appeals found New York's death penalty statute to be unconstitutional. In response to this decision, the Assembly majority held five public hearings on this important issue, two of which were held on January 21, 2005 and January 25, 2005. The Assembly has published a report summarizing the hearings.

### **3. Civil Commitment of Sex Offenders**

In response to public concern regarding the effectiveness of criminal sanctions for certain sex offenders, the Assembly conducted a Round Table On Criminal Penalties and Legislation On Civil Commitment Of Sex Offenders in July of 2005. Participants included representatives of prosecution and defense agencies, mental health experts and others.

In September of 2005 a public hearing was conducted by the Assembly Committees on Correction, Codes and Mental Health to provide an opportunity for the general public to present their views on this important subject. Twenty individuals presented testimony at the hearing.

## **V. ISSUES TO BE ADDRESSED IN 2006**

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

The amendments to New York State's drug laws represent only modest advances in our efforts to achieve a comprehensive and enlightened policy for dealing with drug offenders. Despite the Assembly's repeated efforts to bring about progressive change, there continues to be resistance to meaningful reform. The Assembly must renew its efforts during the 2005-06 Legislative Session and the first objective should be the restoration of judicial discretion which would authorize courts to place low-level addicted non-violent drug offenders in treatment, rather than prison.

Other objectives of true drug law reform should include: (a) mandatory treatment for persons who are substance abuse dependent and are sentenced to prison or probation, or are serving a term of parole supervision; (b) additional drug sentencing reforms; (c) a mandatory minimum indeterminate sentence of 15 years to life for offenders who are major traffickers in illegal drugs; and (d) using the savings generated by drug law reform to finance enhanced drug treatment programs.

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

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

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

For years the Executive has sought to achieve millions of dollars in profit from the collect call system inmates in the state prison system are obliged to use. No other state institution operates a profit-making phone system and the practice should end. During the 2005-06 Legislative Session, the Assembly passed legislation that would have ended the practice and efforts to enact legislation should continue in the 2006-07 Legislative Session.

### **D. Local Conditional Release Legislation**

During the 2005-06 Legislative Session, the local conditional release law expired and local governments lost the authority to modify a definite sentence when such action was found to be in the best interest of the community and the offender. As a result of this expiration, the authority to release a person serving a definite sentence reverted to the Division of Parole.

As noted elsewhere in this Report, the Assembly Corrections Committee held two public hearings on this issue and all but one of those individuals presenting testimony supported continuation of the local conditional release law with appropriate amendments to ensure that the program's use was strictly limited to appropriate non-violent offenders.

## **E. Restoration of DOCS Programs**

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

## **F. Mandatory Substance Abuse Treatment**

Although it is widely recognized that substance abuse is a major contributing factor in accounting for criminal behavior, the availability of effective treatment within our prison system is woefully inadequate. Enhancing these programs would make our streets, homes and communities safer. The Legislature should mandate comprehensive treatment, for a minimum of one full year, for all DOCS inmates who have a history of substance abuse. Such mandatory treatment, for a minimum of one full year, should also be a required condition of parole.

**APPENDIX**

**SUMMARY SHEET**

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

**Final Action on Assembly Bills**

**Bills Reported With or Without Amendment**

|                                      |           |
|--------------------------------------|-----------|
| To Floor; Not Returning to Committee | 2         |
| To Ways and Means Committee          | 4         |
| To Codes Committee                   | 4         |
| To Rules Committee                   | 10        |
| <b>Total</b>                         | <b>20</b> |

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

**Senate Bills Substituted or Recalled**

|              |          |
|--------------|----------|
| Substituted  | 4        |
| Recalled     | 0        |
| <b>Total</b> | <b>4</b> |

**Bills Never Reported, Died in Committee** **88**

**Total Bills in Committee** **113**