

TESTIMONY OF THE LEGAL ACTION CENTER

ON BEHALF OF THE ATI AND REENTRY COALITION

**Assembly Ways and Means and the
Senate Finance Committees
Joint Public Hearing on Public Protection
Executive Budget FY 2017-2018**

January 31, 2017

Presented by

**Sebastian Solomon
Director of NYS Policy
Legal Action Center**

Endorsed by

**Center for Alternative Sentencing and Employment Services (CASES)
Center for Community Alternatives (CCA)
EAC TASC
Osborne Association
Center for Employment Opportunities (CEO)
Greenhope Services for Women
The Correctional Association
TASC of the Capital District
The Fortune Society
Women's Prison Association
Legal Action Center**

Good Afternoon. My name is Sebastian Solomon. I am the Director of New York State Policy for the Legal Action Center. I appreciate the opportunity to address you today.

In New York State, we work closely with the coalition of Alternative to Incarceration (ATI) and Reentry and related programs. These programs enable many thousands of men and women – the vast majority of whom are Black and Latino—to be appropriately supervised in the community. These services divert individuals who would otherwise be sent to more expensive prison beds to less expensive community supervision and appropriate community services. They also assist individuals who are released from incarceration with reentry to the community by lowering barriers to employment, housing and health services, thereby reducing the likelihood of recidivism.

We recognize the fiscal uncertainty confronting the State given the change in Federal administration. Now more than ever, we call upon the Legislature to protect New York’s investment in nationally-recognized ATI and reentry which have served many thousands of men and women in communities all across the State.

- **Restore the \$2.022 million in cuts to alternative-to-incarceration, reentry and related programs proposed by the Executive**
- **Add \$8 million to expand ATI and reentry programs to all parts of the State, including services that:**
 - **Divert individuals from arrest or sentences of incarceration where appropriate and assist them in transitioning back into the community;**
 - **Provide treatment for addiction and mental illness, either as part of a diversion program or after release from incarceration; and**
 - **Help people with criminal justice involvement obtain employment and housing;**

- **Improve access to Medicaid funded services for those being released from incarceration**
- **Restore the \$2.5 million in funding to help link those in the criminal justice system to the health care services they need;**
- **Support the Executive's proposals to:**
 - **Provide short-term housing supports for people leaving state prison without a home;**
 - **Raise New York's age of criminal responsibility and increase the use of diversion for this population;**
 - **Allow sealing of criminal records for certain crimes for individuals who have not been convicted of new crimes for over ten years;**
- **Oppose the Executive's proposal to reduce the number of visiting days at maximum security facilities; and**
- **Shorten the maximum sentence for an A misdemeanor by one day in order to reduce the immigration consequences of such convictions.**

Restore the \$2.022 million in cuts to alternative-to-incarceration, reentry and related programs proposed by the Executive

The Executive Budget cut 5.5% from all ATI/reentry funding streams: funding for aid to counties and New York City was cut by \$301,000; funding for alternatives to incarceration, community supervision and/or employment programs was cut by \$797,000; and funding for programs aimed at reducing the risk of re-offending was cut by \$221,000. Additionally, the \$703,000 added by the legislature was not renewed. Cutting ATI and reentry programs is both counter-productive and short-sighted. ATI and reentry programs reduce recidivism, while simultaneously saving taxpayer dollars. Not only will these cuts weaken programs that protect public safety and strengthen communities. They will also cost the State more money over the long term because

these programs enable the State to save significant amounts of money that would otherwise be spent on incarceration. It is therefore critically important to public safety that the Legislature restore these funds.

In its January 2015 report, “End of an Era? The Impact of Drug Law Reform in New York City,” the Vera Institute of Justice compared individuals sentenced to jail, probation or prison with those diverted from incarceration and supervision into the treatment system. The report found that, while 64% of those diverted to treatment remained arrest-free over a two-year follow-up period, the rate was only 46% for those sentenced to incarceration or probation supervision. Those in the diversion group also had fewer overall rearrests and fewer felony arrests than the comparison group. Diversion also cut the rate of arrest for violent felonies in half – 3% of those diverted were arrested for a violent crime during the two-year follow-up period compared with 6% for the comparison group, underlining the positive that these programs have on public safety.

These cuts are particularly problematic at a time that opioid epidemic is ravaging communities across the State. Now more than ever, individuals in all parts of the State need the diversion and addiction services that ATI and reentry programs provide so as to avoid increases in unnecessary incarceration and the resulting increase in recidivism. Furthermore, in light of research indicating that there is a 12-fold rise in the risk of death in the first two weeks after release from incarceration, these programs save lives.

We urge the Legislature to restore funding for ATI programs to enable these programs to continue their cutting edge work.

Add \$8 million to expand ATI and reentry programs in all parts of the State

In order to further expand access to highly successful ATI and reentry services around the State, and to support new ATI initiatives for perennially un-served populations, we call on the Legislature to provide:

- ***An additional \$2 million to support the provision of ATI services to an additional 200-400 people both in areas currently underserved by such services, such as upstate New York and Long Island, as well as for populations in New York City that are not currently being sufficiently diverted*** – Every community in New York will benefit if the Legislature provides sufficient funding to begin bringing ATI services to scale, including replication of the many programs that have already been proven effective and the development of new ATI program models, so that many more people across the state can be diverted from unnecessary incarceration to needed services that are both more effective in reducing recidivism and less expensive. With services costing between \$5,000 and \$10,000 per person (compared with \$60,000 for state incarceration), an additional \$2 million would allow programs to serve an additional 200 to 400 individuals. The need for such services is especially pressing as a result of the State's huge increase in heroin and other opiate use. New funding would allow programs to identify, advocate for, and provide services to individuals who could safely be diverted from incarceration to community-based programs;
- ***An additional \$2 million to provide treatment for addiction and mental illness*** – Between 60% and 80% of individuals involved in the criminal justice system suffer from addiction and/or mental illness. The opiate epidemic that has struck New York has further increased the

need for addiction services. As a result, individuals in all parts of the State who are involved in the criminal justice system need more addiction services, either as part of an alternative to incarceration program or upon their release from incarceration. There is also a huge need for services to treat and divert, whenever possible, those with mental illness who are involved in the criminal justice system, as there are large gaps in such services in all parts of the State as well. There are a number of initiatives that this funding could support, including:

- Increase capacity for alternative to incarceration programs that serve the addicted and/or mentally ill – New York State has been a leader in developing and implementing successful programs that treat addicted and mentally ill individuals in the community rather than incarcerating them. Additional funding can supporting both expansion of existing programs and creation of new models.
- A pilot to help link those who are incarcerated to health services in the community - Numerous studies have shown that the most effective strategy for connecting people to health care during their reentry from incarceration is to engage them in services as early as possible prior to their release in order to build the trust necessary for engaging them into community health care. New York is currently funding pilots to provide health services to individuals once they are released. However, there is still no funding to help set up a plan of care and link people to services prior to their release. ATI and reentry programs could be helpful in this linkage process as many of them already operate within facilities and have relationships with those who are incarcerated. Funding a pilot of this sort would result in improved health outcomes, reduced recidivism, and significant financial savings;

- Information technology – Changes to New York’s Medicaid program has created opportunities for new ways to fund services to those receiving services from ATI and reentry programs. However, in order for the programs to take advantage of these opportunities, providers need hardware and programming to begin linking their services to other health care providers and to billers;
 - Connecting services to managed care companies – Community-based ATI and reentry programs understand the criminal justice population and are well positioned to deliver services that can be provided and funded by Medicaid. However, for this effort to be successful, and to maximize both the potential health benefits and financial savings, programs need to build institutional capability to participate in Medicaid and work with insurers. ATI and reentry programs have little or no prior experience working with managed care organizations, and some have not dealt with Medicaid at all.
- ***An additional \$2 million to support services that assist individuals who have been involved with the criminal justice system develop needed employment skills and locate and retain jobs*** – Employment allows individuals to avoid recidivism and succeed in the community, whether they are diverted from incarceration or are reentering from jails and prisons. Early evaluations of State funded employment programming have already demonstrated that these programs result in a significant reduction in recidivism – those receiving services had a 24% lower rate in felony rearrests than a comparison group. We appreciate the Executive’s recognition that all individuals with prior criminal justice involvement need support in connecting to employment, including those considered low-risk. While

programs exist in various communities in the State, they are nowhere near sufficient to meet the need for such services in existing geographic areas or throughout New York;

- ***An additional \$2 million to support current and new housing programs for people who have had involvement in the criminal justice system*** – New York has nationally recognized programs to provide housing for individuals who have been involved in the criminal justice system. However, these programs barely scratch the surface of the need for such services, and most programs that do exist are based in New York City. Furthermore, many individuals who have been involved with the criminal justice system require a combination of housing and specialized services. Housing services for this population cost approximately \$25,000 per individual per year, so an additional \$2 million would allow approximately 80 more people to receive services. Examples of innovative New York State-based models that could be supported through this funding include:

- The Fortune Society and the Center for Community Alternatives are seeking to replicate Fortune’s successful Castle program in Syracuse. This program provides an innovative new model as it is being developed in partnership with the local housing authority;
- The Osborne Association is developing a new model for housing services using the former Fulton Correctional Facility in the Bronx.

\$8 million in new funding will increase access to these essential services throughout the State. This will enable New York to move closer to the goal ensuring that individuals are no longer incarcerated unnecessarily when they can be safely diverted to services in the community, at much lower cost, and

that those who are incarcerated are able to obtain the services they need to successfully readjust to the community and remain crime-free.

Improve access to Medicaid funded services for those being released from incarceration

New York's redesign of its Medicaid system creates new opportunities to better coordinate services and provide new types of health supports to individuals who have been involved with the criminal justice system. For example, many of those in the criminal justice system would benefit from the "Home and Community Based Services" (HCBS) that New York is starting to provide through Health and Recovery Plans (HARPs), a new insurance product for those with severe addiction and mental illness. Many ATI and reentry programs have already been designated as HCBS providers. However, because access to these many of these services is based on prior Medicaid billing, those who are incarcerated are not eligible for these services immediately after their release from incarceration.

We therefore recommend the State take the following steps:

- *Use an individual's documented medical history while they are incarcerated to determine eligibility for services in the community* – Currently, New York does not use an individual's medical history while they were incarcerated to identify what their health needs will be once they are released. As a result, most of this population is unable to receive the expanded menu of available Medicaid services immediately after they are released. Such a policy is completely counterproductive. As mentioned above, between 60% and 80% of individuals involved in the criminal justice system suffer from addiction and/or mental illness.

Additionally, because of the accelerated aging that can result from incarceration, many individuals, especially those who have served longer sentences, suffer from a number of other chronic conditions that can be expensive to treat. Without immediate access to the services they need, they are likely to cost the state much more money over the long-term, both as a result of increased hospitalization and increased recidivism because of the greater likelihood of relapse or negative mental health outcomes that can then result in rearrest. We urge the State to use the health records from an individual's incarceration to match them to needed care in the community.

- *Include recent incarceration as an eligibility factor for health homes* - The State should amend the eligibility criteria for health homes to include recent incarceration as an eligibility factor for those with only one diagnosed chronic condition. Many people who are recently incarcerated may be unable to document that they have two qualifying chronic conditions but would benefit greatly from the coordination and range of services offered by health homes. Additionally, the experience of incarceration itself often results in a number of negative health consequences, including psychological harm, such as PTSD, and physical damage, such as accelerated aging and early mortality.

Restore the \$2.5 million in funding to help link those in the criminal justice system to the health care services they need, and require health homes receiving those funds to contract for ATI and reentry services

Last year, the Governor requested and the Legislature allocated \$5 million in Medicaid funding to support efforts to connect those in the criminal justice system who have chronic health conditions to

Health Home services in the community. Health homes are care coordination networks that provide comprehensive care management services to Medicaid recipients with multiple chronic health conditions (including addiction), serious mental illness, and/or HIV/AIDS. Last year's allocation of \$2.5 million was distributed in December. We were very pleased that the Department of Health instructed eligible health home applicants to delineate how they would coordinate their services in order to best reach individuals being released from both prisons and jails, as well as those participating in ATI programs.

The Governor's budget does not include funding for the second year of this allocation. We urge the Legislature to restore this funding, which will enable key linkage efforts that will result in reduced institutionalization, both in the criminal justice system, through reduced recidivism, and in the health care system, through the reduced use of emergency rooms and detox facilities, and will also allow the State to realize significant financial savings. Furthermore, in order to ensure that this funding reaches many of the ATI and reentry programs that are providing linkage to care and supportive services for this population, we recommend that the legislature require that part of this funding be directed to support these programs.

Support the Executive's proposal to provide short term housing supports for people leaving state prison without a home

Housing is essential for ensuring that individuals are able to remain sober, address their health and mental health needs, obtain and maintain employment, and avoid recidivism and reincarceration. The six month period immediately following a person's release from the criminal justice system is the most critical time as this is when individuals are most likely to commit another offense. Unstable

housing increases the risk that an individual will recidivate. Yet, as homelessness has increased in New York and low-income individuals everywhere struggle to find housing, those previously involved in the criminal justice system face particular obstacles as many landlords are unwilling to rent to this population, leaving those on parole or with any prior criminal history living in shelters, three-quarter houses or on the street.

In order to reduce the risk of homelessness for some recently released individuals, the Executive Budget proposes setting up pilots in two communities across the State to assist individuals obtain housing. These pilots are an important first step towards providing those being released from incarceration to communities throughout the State with access to the housing that they need to be able to succeed in the community. We strongly urge the Legislature to support this proposal. We also urge that, once these pilots have been tested, they be expanded rapidly to other communities throughout the State. This will have a huge impact in increasing public safety, reducing crime and incarceration, and saving significant amounts of money that are currently used to pay for homeless shelters.

Support the Executive's proposals for raising New York's age of criminal responsibility for most crimes and increasing the use of diversion for this population.

New York State is one of only two states that still consider 16 year olds to be adults who are fully criminally responsible for their actions – the other is North Carolina. The Governor's Commission on Youth, Public Safety and Justice, which was comprised of a number of experts from law enforcement and from the community, spent nine months researching how New York could most effectively and safely go about raising the age of criminal responsibility. The Commission examined

the current system, looked at best practices from around the country and developed recommendations around every step of the criminal justice system, from arrest through reentry, as well as the collateral consequences of a criminal record. Their final report included 38 discrete recommendations for how New York could best accomplish the goal of treating 16 and 17 year olds who are arrested in a developmentally appropriate way. Significantly, these recommendations recognize the effectiveness of alternatives to incarceration, recommending the diversion of young people from incarceration whenever possible. The Governor's budget includes legislation necessary to enact these recommendations. The Legislature should enact legislation that will put an end to New York's outdated and counterproductive policy of treating 16 and 17 year olds as adults in the criminal justice system.

In particular, we call on the Legislature to ensure that the following items are included:

- ***Maximizing diversion of young people from incarceration at as early a point as possible –***
Diversion is not only cost-effective, it can reduce the risk of recidivism. But resources must be sufficient as youth can be especially difficult to serve, as they often confront a large number of issues and often do not stick with programs. Without sufficient funding and flexibility around the use of this funding, the reforms will be unable to reach their full potential for reducing recidivism, saving money and increasing public safety;
- ***Raising the upper and lower age of juvenile jurisdiction;***
- ***Barring the confinement of any minor in adult jails or prisons regardless of where their case is heard;***
- ***Increasing the age of eligibility for youthful offender adjudication from 18 to 21;***

- *Keeping confidential the proceedings of most cases in which an individual is eligible for youthful offender status; and*
- *Investing in evidence based support services for those charged with status offenses and their families.*

Support the Executive's proposal to allow sealing of criminal records for individuals who have not been convicted of new crimes for over ten years

New York was the first in the nation to make it illegal for employers to discriminate against individuals on the basis of a criminal record. As early as the 1970's, New York's Legislature recognized that allowing those with non-job-related criminal records to obtain employment would reduce crime and increase employment, thereby contributing to more productive and safer communities. New York was also very early in recognizing that individuals should not be discriminated against on the basis of arrests that did not result in convictions as well as convictions for non-criminal offenses. As a result, the State allowed the sealing of these types of cases in the mid-seventies and early eighties and barred employers from asking about or considering such information.

However, in spite of these steps, individuals with criminal convictions continue to face significant challenges in obtaining employment, even many years after their conviction or release from incarceration. As a result of this reality, a number of states around the country have enacted legislation to seal criminal convictions once a certain period of time following the conviction has elapsed. Yet, New York currently offers no opportunity for the vast majority of individuals convicted of crimes to have their records sealed, even though several studies have shown that, if individuals are

crime-free for a certain period of time (the length of time depends on the nature of the crime and other factors), their likelihood of committing a new crime is no greater than the general population. A disproportionate number of people who suffer from job denials based on old criminal histories are people of color, since they are arrested, convicted and incarcerated at significantly higher rates than whites.

The proposal offered by the Governor in his Executive Budget would take an important step towards correcting this gap by allowing individuals convicted of up to either one non-violent, non-sexual felony and one misdemeanor or two misdemeanors to apply to a court to have their cases sealed ten years after the date of their last conviction or release from incarceration. We applaud the Governor's proposal and urge the Legislature to enact legislation to allow sealing of convictions for certain crimes.

Oppose the Executive's proposal to reduce the number of visiting days at maximum security facilities

More than 80,000 children in New York State have a parent currently incarcerated in State prison. Parental incarceration places children at risk- it can impact children's education, health, and social relationships, as well as their future success. Parental visits have been shown to decrease the likelihood that the incarcerated person's child will later be incarcerated themselves. Visiting incarcerated parents, meanwhile, has been shown to result in higher self-esteem, improved non-verbal IQ scores, better adjustment to school and foster care and fewer behavioral problems.

Visiting is also beneficial to the functioning of a correctional institution and to the individual's successful reentry into the community. According to a 2016 report, "studies consistently reported positive effects of prisoners receiving visits. Prison visits reduced depressive symptoms in women and adolescent prisoners. There was some evidence of reduction in rule-breaking behavior. One high-quality study suggested that visits reduced recidivism and increased survival in the community."

In his Executive Budget, the Governor proposes reducing from seven to three the number of days per week individuals can visit their loved ones incarcerated at maximum security facilities. Doing so would essentially end the ability of many families to visit their loved ones. The vast majority of those with incarcerated loved ones are low-income individuals whose visiting opportunities are already often limited by work schedules, child care and other responsibilities. Additionally, most prisons are located far from where family members reside. Many of those visiting loved ones in prison do not own cars, and most prisons are set in isolated rural communities inaccessible by direct bus or train routes. And, in 2011, New York eliminated the free bus program which took families from their homes to prisons around the state. As a result, visiting a relative can require several days away from home. If individuals are not able to visit when their lives provide them with the opportunity, many will no longer be able to do so.

Such a policy change is also unlikely to result in the financial savings predicted – any immediate savings generated by reducing visiting days is likely to result in greater expenses as the elimination of visits for many individuals will lead to a loss of some of the positive outcomes that result from visitation both inside the facility and upon release. As a result, this change in policy could lead to

people remaining incarcerated longer and an increase in recidivism, which would result in more incarceration costs in the future.

Modify State law to shorten the maximum sentence for an A misdemeanor by one day in order to reduce the immigration consequences of such convictions

Currently, a conviction for certain misdemeanor offenses can trigger mandatory deportation, even for green card holders. Because A misdemeanors in New York have a potential sentence of one year, legally present immigrants can often be deported for a single misdemeanor conviction, even if they are not sentenced to a single day in jail. This occurs because of the way New York's one-year maximum sentence for misdemeanors interacts with a draconian provision of federal immigration law. As a result, immigration judges are often deprived of discretion to even determine whether deportation is warranted. Reducing the maximum potential sentence by one day would restore discretion to immigration judges and spare thousands of such lawfully present immigrants from deportation. This proposed one day change would have little impact on the criminal justice system but it would greatly reduce the immigration consequences faced by immigrant New Yorkers convicted of a misdemeanor offense. Other states, such as California, have already acted to make such a change. We urge the Legislature to introduce and pass legislation to make this change.

