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# COALITION FOR CRIMINAL JUSTICE REFORM

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## BLUEPRINT FOR CRIMINAL JUSTICE REFORM

### BRINGING JUSTICE TO SCALE

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The Coalition includes the Center for Alternative Sentencing and Employment Services (CASES), the Center for Community Alternatives (CCA), the Center for Employment Opportunities (CEO), Family Justice, the Fortune Society, Greenhope Services for Women, the Legal Action Center, the Osborne Association, and the Women's Prison Association (WPA).

February, 2007

**BLUEPRINT FOR CRIMINAL JUSTICE REFORM  
BRINGING JUSTICE TO SCALE**

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## BLUEPRINT FOR CRIMINAL JUSTICE REFORM - BRINGING JUSTICE TO SCALE

### EXECUTIVE SUMMARY

The Coalition for Criminal Justice Reform<sup>1</sup> presents this “Blueprint for Criminal Justice Reform in New York,” a comprehensive plan for improving New York’s criminal justice system with a particular focus on community corrections, sentencing reform and reentry. This Blueprint is based on the fundamental principles that reform must be bipartisan; a coherent vision and comprehensive plan will increase public safety, reduce criminal justice costs and strengthen affected communities; and sentences must be rational, proportionate and fair.

Research has shown that reforming sentencing and expanding community corrections and community- and family-focused reentry will further reduce crime, cut costs, help people, and build communities. New York’s use of alternative to incarceration (ATI) programs and probation has been a smart and effective investment of resources and a key component of New York’s unique success in reducing crime while cutting back on its reliance on incarceration. It is not a coincidence that New York State has the largest network of ATI programs in the country and – unlike other large states such as California and Texas – has seen crime and incarceration rates plummet simultaneously, improving public safety while also saving lots of money. New York also has taken important steps to reform its sentencing laws and examine ways to improve the reentry of individuals returning to their communities from the justice system. Now is the time to bring all these successful approaches to scale and to change laws and policies that impede greater utilization of these programs and diminish public safety by creating barriers to successful reentry. This approach will reap both immediate and long-term savings, not just in dollars, but in human lives, families, and communities as well.

Following are our three lead recommendations in each area. The report provides additional recommendations. While some require an initial financial investment, all will quickly save the State an enormous amount of money that will cover the costs plus fund community re-investment and other priorities.

#### Community Corrections

Crime can be reduced further, and criminal justice costs can be cut, when incarceration is viewed as a last, and not a first resort. Incarceration disrupts families and harms communities, especially African American and Latino communities from which most incarcerated individuals come. The cost of incarceration drains resources from other human services needs. From Fiscal Year 1994-95 through 2005-06, the State Operations cost to run the Department of Correctional Services supported by state tax dollars increased by 44% to \$2 billion (not including capital costs).<sup>2</sup> Research has shown that community-corrections programs – probation, alternative to incarceration (ATI) and related programs (including pre-trial services, defender-based advocacy, client specific planning, community service sentencing, legal and employment assistance) – are more effective than incarceration in reducing recidivism and less costly, both in dollars and human terms. Thus, we recommend that New York:

- Increase the use of community corrections, by expanding to scale and replicating the intermediate sanctions programs already operating in New York that have proven successful in diverting and monitoring individuals and protecting public safety, and developing new programs;
- Make a greater range of individuals eligible for intermediate sanctions.
- Adopt a comprehensive system of community corrections that, among other things, embraces a state/local partnership, incorporates principles of community justice,<sup>3</sup> and creates financial incentives to promote the use of intermediate

sanctions and financial disincentives to discourage across-the-board over-reliance on incarceration.

### Sentencing Reform

Two sets of laws enacted in the 1970's, known as the Rockefeller Drug Laws, removed discretion from judges in sentencing decisions. The first law required individuals convicted of possessing or selling certain amounts of controlled substances to be sentenced to a minimum of 15 years to life. The second law, known as the Second Felony Offender law, required prison time for anyone convicted of a second felony offense.<sup>4</sup> The Second Felony Offender law applies to all second felony convictions, not just drug crimes.

The drug law reforms already enacted provide relief from some of the harshest provisions of the Rockefeller Drug laws by changing the length of sentences individuals must serve for drug convictions. However, despite the fact that an astonishing 70-80% of individuals involved in the criminal justice system have a drug or alcohol problem, these reforms did not enable *even one* additional addicted individual to be sent to community-based treatment instead of prison. Nor did these reforms give judges any discretion to send people convicted of any other second felony offenses to a non-incarceratory sentence. In addition, many individuals currently incarcerated under the Rockefeller Drug laws are not eligible for retroactive relief.

Our drug laws have had a particularly onerous impact on communities of color. Although their rates of drug use are no greater than those of whites, African Americans and Latinos comprise over 91% of the individuals convicted of drug offenses in New York State prisons.<sup>5</sup>

In order to redress this terrible human rights problem, better protect society, and save the state large amounts of money, New York should:

- Reform our sentencing laws so that judges and prosecutors have expanded opportunities to send appropriate individuals to community-based programs instead of prison.
- Make a wider range of defendants eligible for diversion from prison to community-based programs - addicted individuals charged not just with drug crimes but other offenses as well, and non-addicted individuals charged with non-violent offenses - and expand the category of individuals eligible for retroactive relief.
- Expand treatment funding and capacity substantially so that providers are able to serve the increasing numbers of people who will be diverted as a result of these sentencing reforms and meet the special needs of the criminal justice population.

### Reentry

New York prisons release about 26,000 individuals a year.<sup>6</sup> Re-entering individuals, most imprisoned for non-violent crimes, tend to be men of color from a handful of communities. Many have not graduated from high school, have little or no work experience, suffer from mental illness, and have histories of alcohol and drug problems. Although in-prison programs have been shown to help reduce recidivism among re-entering individuals, substantial numbers of New York's re-entering population do not receive the vocational and educational assistance, therapy, or drug or alcohol treatment they need while in prison or when they return home. In addition, there is widespread agreement among policymakers and practitioners alike that our parole system needs serious reform. In 2004-2005, an astonishing 80% of parolees returned to prison were reincarcerated for technical violations, not for committing new crimes: only 2,087 parolees were returned to prison after being convicted of new crimes, 8,126 were returned for violating conditions of parole.<sup>7</sup> Many legal and policy barriers to successful reentry affect not only those

individuals coming home from jail or prison, but also those people under community supervision. New York must radically rethink and change how it deals with reentry of individuals from the criminal justice system, as follows:

- Better prepare individuals who are incarcerated for returning home by redesigning and expanding prison-based programming, developing comprehensive discharge plans with the involvement of family and community-based organizations, and putting mechanisms in place to implement those discharge plans, including ensuring that people in prison have the identification cards, Medicaid, and other benefits they need upon release.
- Revamp New York's parole system.
- Eliminate legal and policy barriers to successful reentry of people with criminal records, including those who have completed the period of incarceration to which they were sentenced and those serving sentences in the community.

## BLUEPRINT FOR CRIMINAL JUSTICE REFORM - BRINGING JUSTICE TO SCALE

The Coalition for Criminal Justice Reform\* presents this “Blueprint for Criminal Justice Reform in New York” (Blueprint), a comprehensive plan for improving New York’s criminal justice system, with a particular focus on community corrections, sentencing reform and reentry. This Blueprint was developed after thorough consultation with a wide range of stakeholders around the State and after a broad review of relevant research, articles and books. The Blueprint is based on the fundamental principles that reform must be bipartisan; a coherent vision and comprehensive plan will increase public safety, reduce criminal justice costs and strengthen affected communities; and sentences must be rational, proportionate and fair. We have focused on sentencing reform and expansion of community corrections and community- and family-focused reentry, because these are three policy reforms New York can implement that research has shown will further reduce crime, cut costs, help people, and build communities.

New York’s use of alternative to incarceration (ATI) programs and probation has been a smart and effective investment of resources and a key component of New York’s unique success in reducing crime while cutting back on its reliance on incarceration. It is not a coincidence that New York State has the largest network of ATI programs in the country, and the State - unlike other large states such as California and Texas - has seen crime and incarceration rates plummet simultaneously, improving public safety and saving lots of money. While the crime index has dropped in New York, California and Texas,<sup>8</sup> New York’s incarceration rate has also dropped, while the incarceration rates in California and Texas have steadily risen.<sup>9</sup> New York also has taken important steps to reform its sentencing laws and examine ways to improve the reentry of individuals returning to their communities from the justice system. Now is the time to bring all these successful approaches to scale and to change laws and policies that impede greater utilization of these programs and diminish public safety by creating barriers to successful reentry. This approach will reap both immediate and long-term savings, not just in dollars, but in human lives, families, and communities as well.

### INTRODUCTION - WHY A BLUEPRINT NOW?

New York has seen plummeting crime and incarceration rates. Steps that the State has already taken that led to New York’s unique success in reducing crime while cutting back on its reliance on incarceration, including funding the largest network of ATI programs in the country, and changes in public attitudes toward crime and punishment, have created momentum that the State can build on to significantly improve its criminal justice practices and policies.

While New York had made major strides in improving its criminal justice system, more clearly needs to be done - too many New Yorkers are still being incarcerated; too many go back to prison, either for technical parole violations or because they have committed new crimes<sup>10</sup>, and too little is done to prepare either the individuals being released or the communities into which they are being released to deal with the demands of reentry.

With 63,000<sup>11</sup> people in prison, New York still has the fourth largest prison population in the country. Thousands more are in jail - approximately 14,000 in New York City alone - or under some other form of correctional supervision. Indeed, if all the people under correctional supervision in New York lived in one place, they would constitute one of the largest cities in

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New York - larger than New Rochelle or Mount Vernon or Schenectady, and about the size of Albany. The costs of supervising such a large population are considerable, and drain resources from other public priorities, for example, education.

In addition to its size and the strain it places on the State's budget, there are three things worth noting about this population: first, it is overwhelmingly African-American or Latino; second, it is made up in significant part of nonviolent property and low-level drug offenders; and, third, nearly all will, sooner or later, return home.

In fact, New York prisons release approximately 26,000 individuals a year.<sup>12</sup> In addition, over 100,000 individuals are on probation supervision.<sup>13</sup> While some of these individuals will receive the help they need to re-enter society successfully, New York has yet to develop a coherent vision or comprehensive plan for reentry - one that will cut costs, reduce recidivism, and strengthen affected families and communities.

Encouragingly, New York recognizes that it needs to do more. Recently, for example, the State has reduced the number of people behind bars, cut back on the size of its corrections workforce, and created an intra-governmental task force to develop a plan to improve reentry service. (The task force has been meeting for two years but has not released any recommendations to date.) However, these developments have been piece-meal and far from comprehensive.

These and other developments demonstrate that the time is ripe to devise a new vision and specific recommendations for improving criminal justice practices and policies in New York, especially in the wake of New York's success in reducing crime while cutting back on its reliance on incarceration. For example, New York has taken its first steps toward reforming the notorious Rockefeller-era Drug Laws, although judges still have no discretion to divert addicted defendants from prison to community-based treatment. The State has created reentry programming for individuals nearing release from the Queensboro Correctional Facility. At the municipal level, New York City has its Departments of Correction and Homeless Services and others working together to improve reentry for people leaving Rikers.

These initiatives are occurring at the same time as an apparent sea change in public attitudes. Polls show that the public supports drug law reform, treatment instead of incarceration for those with addiction problems, and taking steps to assist those with criminal records to successfully re-enter society.<sup>14</sup> Editorial pages around the state express widespread media support for such reforms. The New York State budget includes recommendations for prison closings rather than prison expansion. Lately, spurred by fiscal realities, and a growing sense that public safety need not depend on mass incarceration, more and more states have re-visited their sentencing, correctional and reentry policies.

The Coalition for Criminal Justice Reform believes that these steps forward have created momentum that New York State can build on to significantly improve its criminal justice practices and policies.

#### **Who is the Coalition for Criminal Justice Reform?**

The Coalition for Criminal Justice Reform includes the Center for Alternative Sentencing and Employment Services (CASES), the Center for Community Alternatives (CCA), the Center for Employment Opportunities (CEO), Family Justice, the Fortune Society, Greenhope Services for Women, the Legal Action Center, the Osborne Association, and the Women's Prison Association (WPA). Each Coalition member has a long history of involvement in efforts to improve the New York criminal justice system. The Blueprint represents the collaborative commitment of these community-based criminal justice agencies that have worked together for more than twenty years to advocate for the best possible criminal justice system. Additional information about these agencies can be found in the appendix.

## How the Blueprint was Created

In creating this “Blueprint” the Coalition sought wide input, soliciting the views and experiences a variety of stakeholders in the criminal justice system. The Coalition interviewed stakeholders, from upstate and downstate, including criminal justice officials, elected officials, criminologists, people with direct experience with the criminal justice system including family and community members and formerly incarcerated individuals, advocates for people with conviction records, service providers, religious leaders, the business community, opinion leaders and policymakers.

## PART ONE: COMMUNITY CORRECTIONS

New York has reduced the number of people behind bars. Nonetheless, it is still incarcerating many thousands of people who could safely receive intermediate community-based sanctions, which, when targeted to appropriate individuals, have proven to be both more effective than prison in reducing recidivism and less costly. The harmful effects of incarceration on families and communities has been well documented.<sup>15</sup> Community corrections, when properly utilized, not only better protect public safety and save money, but also avoids the disruption that incarceration causes families and communities. These programs divert and supervise appropriate individuals as well as provide treatment, education and employment training in the community. (The use of intermediate sanctions for individuals released from prison is discussed in PART THREE, Reentry.) ATI, community-based treatment programs<sup>16</sup> and probation allow people to remain a part of the workforce, to be parents, and to play a role in strengthening the fabric of their families and neighborhoods.

- A recent analysis by the New York City Criminal Justice Agency found that felony alternative to incarceration (ATI) participants were significantly less likely to be re-arrested than similar people sent to and discharged from a City jail. ATI participants and probationers were no more likely to be re-arrested than similar people sentenced to and released from probation or State prison. CJA also found that programs serving felons displaced an average of 116 days of jail time per participant. The report concludes, "To the extent that they are viewed as alternatives to jail sentences, these ATI programs can be recommended as more effective in reducing recidivism."<sup>17</sup>
- A study of New York City's ATI programs by the Vera Institute of Justice found that many felony offenders can be sent to rigorous community programs rather than jail without increasing risk to the public.<sup>18</sup>

### Recommendations:

1. **Increase the use of community corrections, by expanding to scale and replicating the intermediate sanctions programs already operating in New York that have proven successful in diverting and monitoring individuals and protecting public safety, and developing new programs.** Programs already operating in New York that have proven successful in diverting and monitoring individuals and protecting public safety should be expanded to scale and replicated, and new programs should be developed. Expansion and development of programs should be particularly targeted to those that leverage funding and community resources. Many ATI programs bring together, in varying combinations, many community resources in collaborative efforts to provide services to people diverted from and coming out of prison. Expansion and development of programs should also be targeted to programs that create partnerships with defense attorneys and parole and probation, and those that focus on the family and community as agents of reintegration.
2. **Make a greater range of individuals eligible for intermediate sanctions.** At a minimum, Intermediate sanctions should be available for individuals convicted of nonviolent property and low-level drug offenses, and for parolees with technical violations or convictions for minor charges. These programs should also target:
  - Individuals who are facing convictions for second felony offenses, thereby facing mandatory prison sentences, or first felony offenses that carry mandatory prison sentences, and

- Individuals who, by the nature of their offense or other personal characteristics, would be appropriate to receive sentences other than prison, such as people who are chemically dependent, the developmentally disabled and mentally ill, women who are in abusive relationships, young people, people with AIDS, and veterans.
3. **Adopt a comprehensive system of community corrections that, among other things, embraces a state/local partnership, incorporates principles of community justice,<sup>19</sup> and creates financial incentives to promote the use of intermediate sanctions and financial disincentives to discourage across-the-board over-reliance on incarceration.** Such a system embraces a state/local partnership and gives communities the opportunity to assume greater involvement and control over the programs and services that are provided to individuals. In the early stages, the State should begin implementing this approach by establishing it in a few pilot counties that demonstrate strong interest and capability in pioneering a much more effective and cost-efficient criminal justice system. Such a system should :
    - Establish a State Board, to develop rules and guidelines for the development of policies and implementation of the program on the local level. This Board would also coordinate and monitor reentry efforts and policies.
    - Establish a Board comprised of community members to develop and oversee the local program. The Board can be an opportunity for communities to be more fully involved in both diversion and reentry efforts and help take into account the specific needs of particular communities and families.
    - Restructure the State’s funding priorities and reimbursement systems to create greater incentives for localities to undertake greater responsibility for individuals who need not be sent to prison (these could include 100% funding mechanisms, seed money for new innovative programs, etc.) and financial disincentives or “chargebacks” for localities that do not meet prearranged goals.
    - Ensure that criminal justice-involved individuals are punished in the least restrictive setting, consistent with the nature of the crime and public safety needs.
    - Include an evaluation component to ensure oversight and accountability.
    - Make adequate technical expertise and resources available to counties developing their community corrections plan.
  4. **Offer deferred adjudications as well as diversion programs so that individuals have the opportunity to avoid a conviction.<sup>20</sup>** Deferred adjudications programs, such as the original Brooklyn Drug Treatment Alternative to Prison (DTAP) model, are especially important when a defendant is a non-citizen who can be deported based on a plea allocation alone.
  5. **Explore the concept of creating a capital funding stream to support the construction of facilities to provide services for individuals getting diverted or returning home from prison.**
  6. **Impose financial conditions (bail) only when no other conditions of release will provide reasonable assurance that the defendant will appear for court proceedings.**
  7. **When applicable, incorporate principles of restorative justice that emphasize repairing the harm caused or revealed by criminal behavior, into community-corrections programs.** Some of the programs identified with restorative justice include:

mediation, circles, victim assistance, assistance for the criminal justice-involved individual, restitution and community service.

8. **Utilize gender validated risk assessment instruments that identify individuals with the greatest risk of recidivism.** Probation and parole services could then be better targeted to those who have the greatest need for supervision. Electronic reporting “kiosks” similar to those used by the New York City Department of Probation, could be implemented for those who do not require intensive or personal supervision.
9. **Ensure that probation has sufficient resources to provide effective supervision.** Probation supervises greater numbers of people than are incarcerated in the entire prison system, and provides specialized services for targeted populations in order to ensure public safety. New research has given rise to models for community supervision based on principles of behavior management<sup>21</sup> and probation should have sufficient resources to incorporate these models into their supervision strategies.
10. **Promote the establishment of a joint DPCA/OCA work group to further cooperation between traditional ATI programs and drug courts.**

## PART TWO: SENTENCING REFORM

Sentencing reform efforts to-date have focused on changing laws affecting individuals charged or convicted of drug crimes. This focus is understandable, as current laws create barriers that prevent many individuals charged with drug crimes from obtaining the treatment they need to interrupt the cycle of addiction and repeated criminal behavior. However, if the important goals of sentencing reform - increased public safety and a fairer and more effective and cost-efficient criminal justice system - are to be achieved, then a more expansive view of sentencing reform is needed. The Second Felony Offender law, one of the two sets of laws enacted in the 1970's that are known as the Rockefeller Drug Laws, removed discretion from judges in sentencing decisions and requires prison time for anyone convicted of a second felony offense, not just those individuals convicted of drug crimes. Thus any individual convicted of any second felony offense, whether addicted or needing mental health, educational, vocational, or other services, must be incarcerated.

Our recommendations listed below propose expanding the range of defendants eligible for diversion in a number of ways. New York should reform its sentencing laws to return to judges the discretion to send to treatment or other community supervision and services individuals who are: (1) addicted and convicted of drug offenses; (2) addicted and convicted of non-violent offenses other than drug offenses; and (3) not addicted and convicted of non-violent offenses. For all these categories judges should have the power to determine the most appropriate sentence that will best protect public safety, including ensuring that individuals receive the education, job training, drug and alcohol treatment, mental health counseling, and other services they need from the programs described in PART ONE of the Blueprint.

For those who have alcohol and drug problems, numerous studies have indicated that treatment is effective at reducing alcohol and drug use and crime. Other studies have found that treatment is also less expensive than prison, so substantial cost savings for the state could be an additional benefit of reforming the drug laws. Yet, thousands of non-violent individuals who have no substantial role in the drug trade but who use or sell small quantities of drugs to support their own habits are locked up every year. New York's Rockefeller drug laws have deprived children of their parents, wasted enormous human and financial resources, and failed to address effectively the addiction that underlies most drug offenses. These laws have had a particularly onerous impact on communities of color. Although their rates of drug use are similar to those of whites, African Americans and Latinos comprise over 91% of the drug offenders in New York State prisons.

Commendably, the legislature has in recent years ameliorated the harshest of the Rockefeller Drug laws by enacting reforms that made sentences for drug crimes more proportionate with sentences for other non-violent crimes and brought retroactive relief to some individuals sentenced under the Rockefeller drug laws. However, despite that fact that an astonishing 70-80% of individuals involved in the criminal justice system have a drug or alcohol problem, these reforms have done nothing to expand use of mandated community-based treatment for addicted individuals.

Chemical dependence is one of our State's most serious public health problems with enormous social and economic costs to individuals, families, communities, government, and society as a whole:

- According to a report by the National Institute on Drug Abuse and National Institute on Alcohol Abuse and Alcoholism, addiction, including alcoholism and drug dependence, costs the nation an estimated \$246 billion in 1992, including \$28.75 billion in health care costs, \$176.4 billion in lost productivity, and \$40.5 billion in other costs (such as crime, welfare, and motor vehicle crashes).<sup>22</sup>

- A report released in January 2002 by the White House Office of National Drug Control Policy found illegal drugs cost the nation \$143.4 billion from the U.S. economy in 1998 (\$168 billion in 2004 dollars).<sup>23</sup>
- According to a February 2001 report by OASAS, 70% of all individuals in the custody of DOCS are subsequently identified as addicted.

Numerous studies have proven that mandatory drug and alcohol treatment is cost effective, reduces recidivism and enhances public safety:

- The Brooklyn District Attorney's office estimates its DTAP program has saved \$36.6 million in correction, health care, public assistance and recidivism costs, combined with tax revenues generated by DTAP graduates. A report from the National Center on Addiction and Substance Abuse at Columbia University, found that, compared to a matched group, DTAP participants are 67% less likely to return to prison two years after leaving the program, and graduates had re-arrest rates that were 33% lower; had re-conviction rates that were 45% lower; and were 87% less likely to return to prison and three and one-half times likelier to be employed.<sup>24</sup>
- According to a recent study of the impact of California's Proposition 36 conducted by the Justice Policy Institute, California reduced its drug-possession prison population by over 34%, while at the same time experiencing a dramatic drop in violent crime. This study follows one by UCLA that showed that Proposition 36 saves California \$2.50 for every dollar invested in the program. Over a 30-month follow-up period, this represented a savings to state and local government of \$173.3 million.
- A cost benefit analysis conducted by the Legal Action Center found that for every individual diverted from prison to community-based treatment, New York could save approximately \$60,000.<sup>25</sup>
- According to a meta-analysis conducted on 78 studies of drug treatment conducted between 1965 and 1996, "drug abuse treatment has both a statistically significant and a clinically meaningful effect in reducing drug use and crime...."<sup>26</sup>

In order to make New York State families and communities healthier and safer and save large amounts of state and local tax dollars, New York should:

### Recommendations

1. **Reform our sentencing laws so that judges and prosecutors have expanded opportunities to send appropriate individuals to community-based programs instead of prison.**
  - Probation should be an option for individuals convicted of first time Class B felony drug offenses. When such a person is given a sentence of probation and assessed (by an addiction specialist licensed or certified by OASAS) as having a drug or alcohol dependency problem for which treatment would be beneficial, participation in treatment should be a mandatory condition of sentence.
  - Probation with a mandatory treatment requirement should also be an option for individuals convicted of a first time Class B or predicate Class B, C, D, or E drug offenses involving sale of or possession with intent to sell one eighth of an ounce or less of a narcotic drug or other controlled substance, who are assessed (by an addiction specialist licensed or certified by OASAS) as having a chemical dependency problem for which treatment would be beneficial. Since possession of less than an

eighth of an ounce of a narcotic drug is currently only a misdemeanor offense, a sentence of probation for sale of or possession with intent to sell that amount is more proportionate, especially when the individual is addicted and in need of treatment.

- There should also be an opportunity for court supervised drug treatment for other individuals charged with first time Class B and predicate Class B, C, D and E drug felonies. If individuals successfully complete treatment, their cases should either be dismissed or reduced to a misdemeanor, depending on the conditions specified by the court.
  - Drug Treatment Alternative to Prison (DTAP) programs should be defined and expanded. As is done, for example, by the pioneering DTAP program in Brooklyn, these programs should require clinically determined levels of care and time frames for length of treatment, and deem those who successfully complete treatment to have satisfied all program requirements as per the determination of the treatment program.
2. **Make a wider range of defendants eligible for diversion from prison to community-based programs, including addicted individuals charged not just with drug crimes but other offenses as well, and non-addicted individuals charged with non-violent offenses - and expand the category of individuals eligible for retroactive relief.** Community-based treatment opportunities should also be provided to addicted individuals who have a history of minor violence, provided they meet other qualifications for community custody.<sup>27</sup> Individuals incarcerated on Class B drug offenses should have an opportunity to go before a judge and have their sentences reduced, in accordance with the revised sentencing guidelines recently passed by the Legislature.
  3. **Expand treatment funding and capacity substantially so that providers are able to serve the increasing numbers of people who will be diverted as a result of these sentencing reforms and the special needs of the criminal justice population.** Such funding should include an initial investment of \$25 million, with funding in future years for treatment, as well as prevention and criminal justice programs, coming from the monetary savings generated by increased diversions.
  4. **Expand the identification of addicted individuals.** Mechanisms should be in place to ensure that individuals charged or convicted are assessed to determine if they have a drug or alcohol dependence problem and should be sent to treatment.
    - Before individuals are sentenced, they should be given an assessment to determine whether they have a drug or alcohol dependence problem. If such a problem is identified, then those individuals should be sent to treatment, either in a court supervised or DTAP program. Only if the court finds that such a sentence would not be appropriate should the case then proceed.
    - All drug and alcohol assessments should be conducted by a chemical dependence treatment professional located in a community-based program licensed or authorized by OASAS using criteria approved by OASAS.
    - In order to ensure that treatment is being offered to the full universe of eligible offenders, a statewide screening process should be developed to identify addicted defendants.<sup>28</sup>
    - Diversion into treatment should be based on a diagnosis of chemical dependency, regardless of whether the primary diagnosis is alcoholism or substance abuse and

regardless of the age of the defendant.

- Judges should be trained in issues relating to alcohol and drug dependency through a curriculum approved by OASAS.
5. **Consider and utilize all treatment modalities when determining the appropriate treatment option for an individual.** As recommended by the National Institute of Drug Abuse (NIDA) Principles,<sup>29</sup> this should include long and short term residential treatment programs, standard and intensive out-patient services, and drug free and medication assisted programs, including methadone maintenance and other approved medications. All treatment services should be gender and culturally appropriate. NYS should also ensure that there are adequate treatment services appropriate for women.
  6. **Develop new models of treatment to accommodate the complex needs of offenders.** These should include residential methadone programs and more programs that address the needs of specific populations - such as programs that treat dually diagnosed individuals, trauma survivors, women and children, individuals with medical or mental health problems, offenders with special language needs, and adolescents.
  7. **Recognize that relapse is part of recovery.** Clients mandated by the criminal justice system sometimes will relapse and should be given an opportunity to remain in treatment as long as the provider determines that they are making progress toward recovery and do not pose a risk to community safety.
  8. **Utilize graduated sanctions, similar to those used in Drug Courts.** These can include writing assignments, increased monitoring, attendance at extra court sessions, and movement to an earlier phase of treatment or a more intensive level of care. Prison should not be the only sanction.
  9. **Use a holistic approach in addressing clients' multiple needs.** Most addicted individuals involved with the criminal justice system have a wide range of problems. Services such as practical life skills, educational services, vocational counseling and training, and parenting classes should be provided and funded or made available through referral as part of the treatment process.
  10. **Expand the use of treatment in the reentry process.** (This is discussed in greater detail in PART THREE: Reentry.)

### PART THREE - REENTRY

Much attention has recently been paid to reentry, and for good reason. There are approximately 63,000 people in state prisons and 40,000 incarcerated in local jails throughout New York State, with another 100,000 under community supervision. Yearly, over 26,000 people are released from state prison<sup>30</sup> and more than 100,000 from local jails back into our communities. Many of these individuals will recidivate. According to a study by the Bureau of Justice Statistics on recidivism, 30% of people released from prison were rearrested in the first six months, 44 % within the first year, and 67.5% within three years of release from prison.<sup>31</sup> Even when released individuals do not commit new crimes, many are nonetheless returned to prison for having committed parole violations. In fact, individuals who fail on parole are more likely to be incarcerated for parole violations than for committing new crimes. In 2004-2005, an astonishing 80% of parolees returned to prison were reincarcerated for technical violations, not committing new crimes: only 2,087 parolees were returned to prison after being convicted of new crimes, 8,126 were returned for violating conditions of parole.<sup>32</sup>

Much more needs to be done to assist people being released from prison and jail if we want to break this cycle of recidivism. Re-entering individuals:

- Tend to be men of color from a handful of downstate communities.<sup>33</sup> In March, 2004, 76% of parolees on supervision in New York were black or Hispanic.<sup>34</sup>
- The majority of individuals in prison are not imprisoned for a violent crime.<sup>35</sup>
- Many individuals in prison have not graduated from high school. According to the New York State Division of Parole, in March 2004, 15% of people on parole had only a grade school education, and 79% had only some high school.<sup>36</sup>
- Many criminal justice involved individuals suffer from mental illness and more than three fourths have chemical dependence histories. According to the Department of Correctional Services, on December 31, 2004, 77% of the individuals in custody were identified as substance abusers.<sup>37</sup> According to the Division of Parole, in March 2004, 91% of parolees had a history of drug abuse, and 71% had a history of alcohol abuse.<sup>38</sup>

According to a recent report, New York can save a lot of money by improving reentry services.

- A cost/benefit forecast developed by the Public Policy Group of the Judicial Process Commission in Monroe County suggests that county taxpayers will save \$11,000,000 in reduced County and State spending over six years by implementing pre- and post-reentry case management in conjunction with additional supportive housing for 900 County Correctional Facility returnees, thereby reducing recidivism by 20%. Substantial public safety enhancement through crime reduction and quality of life improvement will also occur. The 900 are 40% of the County's total reentry population."<sup>39</sup>

New York has recognized that it needs to improve reentry services and more than three years ago created an intra-governmental taskforce to develop a plan to improve reentry services, though it has not released any recommendations to date. In June, 2006, Governor Pataki signed into law a change to New York's Penal Law that adds a new goal, "the promotion of their (convicted person's) successful and productive reentry and reintegration into society..." (Chapter 98 of the Laws of 2006), to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation.

In order to make this legislative change a reality, significant reform needs to take place in the major areas affecting reentry: prison programming and transition services, parole supervision, and legal and policy barriers.

## Recommendations

1. **Better prepare individuals who are incarcerated for returning home by redesigning and expanding prison-based programming, developing comprehensive discharge plans with the involvement of family and community-based organizations, and putting mechanisms in place to implement those discharge plans, including ensuring that people in prison have the identification cards, Medicaid, and other benefits they need upon release.** Prison should be targeted towards successful reentry, since release will occur for all but those who die in prison. The release and reentry of people with conviction records should be phased in and accompanied by necessary services and other support.
2. **Revamp New York's parole system.** Parole services should encourage successful reintegration and discourage technical violations.
3. **Eliminate legal and policy barriers to successful reentry of people with criminal records, including those who have completed the period of incarceration to which they were sentenced and those serving sentences in the community.**

Specific recommendations to implement each of these reforms follow.

### Prison Programming

Prison must better prepare individuals for returning home. Working with the unions representing DOCS employees, New York should develop an integrated approach to correctional services that links a person's needs upon admission to prison programming, release decisions, transitional services and community-based supervision. Models that provide such an approach and integrate evidence-based practices have been developed but have not been adopted in this State.<sup>40</sup> Although in-prison programs have been shown to help reduce recidivism among re-entering individuals, substantial numbers of New York's re-entering population do not receive the vocational services, educational assistance, or drug or alcohol treatment they need while in prison or when they return home. Nor do they receive the family preservation services vital to successful reentry. Although families and community ties have been shown to contribute significantly to the successful reintegration of individuals reentering society, many policies create obstacles to maintaining or fostering these connections: the siting of programs far away from communities where incarcerated come from, huge surcharges for telephone calls from prisons, and inhospitable visitation policies and places. Much more needs to be done to facilitate and encourage constructive contact between parents and children.

### Vocational Services<sup>41</sup>

While some individuals who are incarcerated receive training that qualifies them for better paying, more skilled employment, most individuals in prison do not. Most people have access to some form of vocational training or perform a prison "job" during incarceration, but few of these opportunities are thoughtfully designed for to the actual job market in which they will compete upon release. Very few formerly incarcerated individuals who seek employment through intermediary organizations are able to identify truly useful skills acquired while in prison.

## Educational Opportunities in Prison<sup>42</sup>

To increase public safety, reduce victimization, and make better use of the vast and ever-expanding resources allocated to the New York State (NYS) Correctional budget, NYS should reaffirm its commitment to offer meaningful higher educational opportunities for people inside prison and upon their release back into the community.<sup>43</sup>

The level of educational achievement of people leaving prison has a direct and profound impact on their future. Most notably, higher educational programs lower rates of recidivism and increase people's ability to reintegrate into community life and enter the labor market with prospects for modest but genuine upward mobility.<sup>44</sup>

Over the reasoned objections of both prison superintendents and educators nationwide, the 1994 federal crime bill made people in prison ineligible for Pell Grants. New York's Governor then issued an executive order forbidding the continued use of any NYS tax revenues in support of higher education in prison. With the stroke of a pen, hundreds of college in-prison programs that had stabilized and dignified prison environments, and nearly eliminated recidivism among participants, were themselves eliminated.<sup>45</sup>

To better protect public safety by reducing recidivism, a new, system-wide post-secondary educational regime should focus on the needs of the community, government, labor markets, and people returning from prison.

## Drug and Alcohol Treatment

Incarcerated individuals have complex and significant health care needs. They suffer from a wide range of communicable and chronic medical and mental health conditions. According to a 2002 federal study *The Health Status of Soon-to-be-Released Inmates: A Report to Congress*,<sup>46</sup> the prevalence of chronic and communicable diseases and severe mental disorders among people in jail and prison is far greater than among other people in the community of comparable ages. The report also found that throughout the US, tens of thousands of individuals are released into the community every year without these conditions being diagnosed or treated. It is beyond the scope of the Blueprint to make specific recommendations regarding the medical care that individuals should receive in prison; our focus here is on prison-based drug and alcohol treatment services. However, it must be stated that individuals should get access to comprehensive, quality services in prison and be connected with community-based health care services upon release.

The treatment needs of incarcerated individuals has been well documented. As noted previously, more than three fourth of individuals in New York prisons have chemical dependence histories. Research has shown that prison-based chemical dependence treatment, combined with aftercare, leads to major reductions in recidivism.<sup>47</sup> Yet, initial evaluations of programmatic needs of individuals when they first enter prison do not include assessments by credentialed alcoholism and substance abuse counselors, DOCS-run Alcohol and Substance Abuse treatment programs (ASAT) and Comprehensive Alcohol and Substance Treatment (CASAT) programs do not have sufficient capacity to handle the numbers of people who need treatment, many people are on waiting lists<sup>48</sup>, and CASAT eligibility requirements preclude many from getting access to the level of care they need to interrupt the cycle of addiction and repeated criminal behavior.<sup>49</sup>

Treatment programs in New York prisons are run by DOCS employees. Except for the Willard program, none are licensed by the Office of Alcoholism and Substance Abuse Services (OASAS). When the legislature passed the Prison Omnibus Bill of 1989, it authorized the CASAT program with the express expectation that treatment services would be contracted out to private treatment providers, in order to ensure that those receiving treatment inside prison walls would have a smooth transition to aftercare and continued treatment services on the outside.

However, only one community-based contract with Phoenix House was awarded; the rest of the CASAT programs are run by DOCS. The Phoenix House CASAT program at the Marcy Correctional Facility was discontinued in 2006. Unfortunately, no independent evaluation was conducted to compare outcomes of the programs run by DOCS and the one run by Phoenix House. The only remaining community-based program is the Stay N' Out program, which is neither an ASAT or a CASAT program, and thus is the only program that can accept individuals who are ineligible for CASAT and on waiting lists for the ASAT program. Clearly, more must be done to expand and improve treatment opportunities in prison.

#### **Recommendations:**

1. **Begin discharge planning when an individual first enters prison.** Each individual's educational, vocational, health, and treatment needs should be evaluated using validated assessment tools upon entry to prison, and a *comprehensive* reentry plan designed. This plan should be periodically updated as the individual's needs change. The TPCI model is illustrative.<sup>50</sup>

#### Vocational Services

2. **Initiate a strategic planning process within DOCS to redesign vocational programs so that individuals' industry-specific skill levels during incarceration increase and training opportunities are more relevant to the modern workplace.** This strategic planning process should include input from members of the business and nonprofit communities and result in tailoring pre-release training to post-release private sector needs and demands. Outside intermediary organizations should be utilized, based on their knowledge of the job market, to develop and deliver training within DOCS.
3. **Make certain vocational programs known to be relevant to the current labor market are immediately available in DOCS.** This should include job training that includes hard and soft skills, such as training on Microsoft Office programs, the Internet and other computer technology relevant to the job market, and training in culinary arts, building maintenance, and other skills relevant to specific small and large businesses. This should also include job retention and job coaching services.
4. **Develop specific reentry planning and workforce development for people with histories of violent convictions.** Individuals with violent convictions are excluded from many programs - including drug courts, in-prison opportunities to shorten sentences such as the Shock program, CASAT programs, temporary release, and other programs.

#### Educational Opportunities

5. **Restore eligibility for the New York State Tuition Assistance Program and other public resources to people in prison.** Research has demonstrated that doing so will reduce dramatically return to criminal activity.
6. **Mandate that DOCS provide appropriate space, security, technology, classification holds, and other reasonable resources necessary for the creation and maintenance of successful post-secondary initiatives within the system and the provision of vocational services.** NYS should also explore private and public partnerships in support of such endeavors.<sup>51</sup>
7. **Reinstate the systematic use of "Educational Release" by the NYS DOCS for men and women in prison who qualify for temporary release.**<sup>52</sup> DOCS should collaborate with and support programs such as the College Initiative and College and Community

Fellowship that assist formerly incarcerated people and others with criminal records enroll in accredited colleges and universities in the community.

8. **Recognize and encourage enrollment in accredited post-secondary institutions as part of the terms and conditions of parole release.** The pursuit of an education should be considered on par with the Division of Parole's current mandate that all parolees 'seek, obtain and maintain employment.' In addition, the NYS Board of Parole should consider educational attainment as evidence of a reduced risk of recidivism when considering an application for release.
9. **Improve the use of the federal Incarcerated Youthful Offender Grant funds by following other states in administering the grants through the State Department of Education rather than through the Department of Correctional Services.**<sup>53</sup> Other states have effectively utilized this funding stream to promote meaningful educational opportunities.

#### Drug and Alcohol Treatment

10. **Require that a comprehensive drug and alcohol assessment be conducted by a credentialed alcoholism and substance abuse counselor for every person who enters a DOCS facility.** As long as treatment capacity in DOCS remains limited, such as assessment can help DOCS identify individuals with the greatest treatment needs and motivation.
11. **Evaluate prison treatment programs in order to assess if they are effective, provide gender and culturally competent services, and address patient needs.** This would include conducting an independent study to assess the comparative effectiveness of treatment programs run by DOCS and Stay N' Out, and the discontinued program run by Phoenix House (because Phoenix House no longer runs a program in DOCS, the study would have to compare the records of former participants in the Phoenix House program and individuals who participated in a DOCS run CASAT program during the same time period.) Such a study would be helpful in determining whether treatment programs should be run by DOCS employees or community-based providers.
12. **Require that all prison programs are OASAS licensed - whether they are run by DOCS or outside community-based providers.** OASAS regulates programs in the community in order to ensure that quality prevention and treatment services are provided. No less should be expected from programs inside prisons.
13. **Enact legislation that allows increased access to CASAT programs.** This can include:
  - Changing the date under which those eligible would be able to begin the CASAT program from 2.5 years prior to initial parole eligibility or determinate sentencing release date to 3.5 years prior to such dates.
  - Expanding the categories of individuals who are eligible for work release. CASAT eligibility is linked to work release eligibility. Expanding the category of individuals eligible for work release will increase access to the CASAT program.

#### **Transitional Services**

New York must rethink how it plans for the transition of individuals leaving prison and returning home. Policies pertaining to incarceration and reentry should take into account the needs of the community as well as the families affected by incarceration. Whether or not individuals are released to post-release supervision, all need to be better prepared to return to society. Yet, comprehensive discharge planning does not take place in New York prisons. People leaving DOCS

usually do not have access to uninterrupted health care services in the community, no evaluation is undertaken to assess whether housing plans are sufficient or realistic, individuals are not given current information about resources in the community, and community-based organizations and family members are not involved in discharge planning. It is no surprise that most individuals who recidivate do so right after they are released from prison.<sup>54</sup> Prisons must better prepare those who are returning home.

## Recommendations

1. **Develop and implement a New York State Reentry Planning Initiative, modeled on the Discharge Planning Initiative developed by the New York City Departments of Corrections and Homeless Services.** Such a planning initiative should utilize the expertise of public and non-profit agencies currently involved in providing workforce development, discharge planning and reentry services to people released from prison and jails.<sup>55</sup>
2. **Develop comprehensive discharge plans that identify the principle challenges the released individuals will face in reentering the community, and the steps required to overcome those challenges.** The development of such plans should be undertaken with the involvement of the family and community-based organizations. Plans should include housing and job placement, document needs for employment and entitlements, and referrals for drug and alcohol treatment and case management services.
3. **Provide workshops to help with family reunifications on topics such as effective parenting, healthy relationships and child support.** As Donald Braman notes in *Doing Time on the Outside*, "The very laws intended to punish selfish behavior and to further common social interests have, in practice, strained and eroded the personal relationships vital to family and community life."<sup>56</sup> Constructive contact between incarcerated individuals and family members should be facilitated and encouraged.<sup>57</sup> Parenting, anger management, child support, and similar classes help individuals and their families prepare for release and, where appropriate, reunification.
4. **Ensure that individuals leaving prison (and jail where practical) who are eligible are reinstated on Medicaid or have applied for and are immediately eligible for coverage.** For individuals who entered prison and jail with Medicaid benefits, Medicaid should be suspended rather than terminated so that eligibility is immediately restored upon release as required by federal law. A recent study conducted by the Urban Public Health Department at Hunter College, City University of New York<sup>58</sup>, found women released from New York City jail who were enrolled in Medicaid were less likely to be rearrested and less likely to repeat illegal activities than women without Medicaid coverage.
5. **Provide each person leaving prison and jail with state-issued identification cards.** People coming out of prison or jail are released either without any official state identification other than a prison discharge slip or a DOCS inmate identification card, neither of which are sufficient to obtain a job, a place to live, public benefits, or necessities in the community. DOCS has the proofs of identity needed to get a Motor Vehicles photo ID and thus is in the ideal position to issue state-identification cards.
6. **Revise child support enforcement regulations to provide for the setting aside or downward modification of child support arrears that accrued during incarceration.** Such a revision would allow those released from prison to be released with a reasonable child support order that would encourage them to participate in legitimate job opportunities, and ensure that over time, children receive sufficient levels of support.

7. Employ “back end” approaches, including work release and furloughs, to ease the transition back into the community by:

- Implementing a phased system in which people with conviction records move toward lower security and more freedom, closer to home; and
- Expanding the use of work release by expanding the number of beds, the list of people who are eligible, and the activities that are legitimate work release activities, including drug/alcohol and mental health treatment, education and care of relatives.

## Housing

For many of the thousand of individuals leaving prison or jail, being released from incarceration simply means that they have traded a prison cell for a park bench or a cot in a homeless shelter. One study found that an estimated 30% of New York City’s shelter residents had been incarcerated at least once previously, with some shelter providers reporting that as many as 70% of clients were formerly incarcerated<sup>59</sup>. According to New York City DOC data, more than half of the individuals discharged to the community from local jails entered the shelter system within 90 days of their release (including 28% within only one week).<sup>60</sup> However, for many, the move from incarceration to homelessness is just the latest step in a vicious cycle of crime, incarceration and homelessness that continues to play out numerous times over their lives. Thus it is not surprising that a study found that 22% of jailed inmates in New York City reported being homeless on the night before they were arrested.<sup>61</sup>

Safe and affordable housing is a critical component to successful reintegration and a chief factor in guaranteeing public safety. However, because many individuals returning home struggle with addiction and mental illness, lack financial resources, and face obstacles to gaining admission into public housing because of federal housing laws and local housing agencies’ policies regarding the admission of people with criminal records, securing housing often initially proves to be unattainable. As a result, an array of emergency, transitional and supportive housing should be a vital component of any effort to assist New York’s formerly incarcerated population. Some individuals will only need transitional housing, as they build a legitimate income stream or rebuild the relationships necessary in order to reunite with their families. Others will need supportive housing that provides coordinated social services such as family counseling, case management, medical services, drug and alcohol treatment, anger management, vocational training, and assistance with obtaining vital documents such as Social Security cards and birth certificates. Supportive housing itself can come in several forms. For those individuals with the most severe needs - in which independent living is unlikely - supportive housing can be permanent. Supportive housing can also be a phase-permanent facility - like the Fortune Academy - in which individuals released from prison are offered short term, emergency housing followed by longer term transitional housing coupled with supportive services.

Such transitional and supportive housing is extremely cost effective when compared to the two most likely alternatives - the shelter system or incarceration. The cost of sheltering a homeless family in the New York City Shelter system is \$36,000 per year, while the cost of shelter for a homeless individual is \$23,000 per year. In contrast, a supportive housing apartment with services can cost as little as \$12,500 per year.<sup>62</sup> Prisons and jails are even more expensive. It costs approximately \$32,400 a year to incarcerate a person in a New York State prison, and approximately \$59,000 a year to keep a person in a New York City jail.<sup>63</sup>

Permanent housing opportunities for individuals with criminal records should also be increased. While federal law mandate certain specific provisions about public housing for individuals with criminal records, housing authorities have a great deal of discretion to decide whom to admit to their housing. Housing authorities should craft policies that take into account both valid public

safety concerns and the need for those with criminal records to obtain stable homes. These policies should require housing authorities to make individualized determinations about an applicant's eligibility based on his or her criminal history, and require consideration of evidence of rehabilitation. To maximize limited resources and leverage critical familial support, a person with a criminal record should also be permitted to return to his or her family where appropriate.<sup>64</sup>

## Recommendations

1. **Create a funding stream that provides for an array of housing options for individuals being released into the community.** These facilities could accommodate the large number of returning individuals who are unable to find permanent housing or are not able to get access to the services they need to successfully reenter. This can include converting under-utilized work-release or urban facilities into community reentry centers or transitional or supportive housing, building new facilities, or utilizing scatter site options.
2. **Create a pilot program with housing authorities that allows individuals with criminal records to live with family members in public housing and be listed on leases.** Often, the most immediate need for individuals returning home is securing housing, which for many people is the key to successful integration. Housing authority policies prevent these individuals from living with family members who live in public housing. A pilot program could be initiated in a limited number of housing projects.

## Parole Supervision

Almost everyone who leaves prison is released to some sort of post-release supervision, usually run by parole. Although the laudable mission of the Division of Parole is to "promote public safety by preparing inmates for release and supervising parolees to successful completion of their sentences," all too often the focus of parole officer efforts is on catching parolees who violate the terms and conditions of their release. And when violations do occur, parole officers inevitably end up returning parolees to prison rather than addressing the underlying cause of the violations. In 2004-2005, while only 2,087 parolees were returned to prison after being convicted of new crimes, 8,126 were returned for technical violations.<sup>65</sup>

Why does this occur? According to noted criminologist and former New York City Correction and Probation Commissioner Michael Jacobson, now Director of the Vera Institute of Justice, "The overriding rationale given by parole agencies for high rates of revoking parole and returning technical violators to prison is that unless they do so, more serious criminal conduct will result. The problem with this rationale is that no extant research demonstrates any connection between rule-breaking behavior of the kind involved in technical violations and future crime. Arguably, then, the whole enterprise is thrown into question by the lack of any cause-and-effect data connecting technical violations and crime.... [G]iven both the financial costs of prison and its long-term consequences for those sent back and their families, it is hard to imagine that using these alternatives is not better.... [T]he wholesale return of so many parolees to prison for technical violations, especially for drug use, has the effect of drawing funds away from interventions that could bring substantial safety benefits."<sup>66</sup>

New York must devise a new parole supervision strategy, consulting with leading experts such as Jacobson, New York City Commissioner of Correction and Probation Martin Horn, and John Jay President Jeremy Travis, and working with the parole officers' union, that improves public safety and saves money by more effectively addressing the needs of parolees and their families, victims and the community.

## Recommendations:

1. **Reallocate parole resources and frontload parole services.** Most individuals who violate parole do so in the first few months after release from prison.<sup>67</sup> Services should be frontloaded to help parolees during the difficult and stressful period as they adjust to life in the community.
2. **Better utilize family and community-based supports to assist with reintegration.** Families and communities play an important role in supporting reintegration. Opportunities should be created to actively engage family members, community members, faith-based organizations, neighborhood associations, business groups and other community-based organizations in the reentry process.
3. **Increase information about and referrals to resources such as workforce development, housing, health, mental health and drug and alcohol treatment and social service programs.** Parole officers often do not have immediate access to up-to-date information about the services available to help parolees. Parole officers should have access to regularly updated computer resource data bases and increase referrals, and parolees should have access to resource desks with service provider information.
4. **Explore the feasibility of agencies such as Medicaid and Social Security coming to parole offices and assisting parolees in obtaining documentation required for legal employment and government assistance.** While referrals to these agencies can also be made, parolees are more likely to gain access to these services if they do not have to negotiate these bureaucracies by themselves.
5. **Create clear guidelines for the exercise of parole officer discretion.** Parolees often encounter inconsistency in supervision requirements when they are assigned new parole officers. For example, parolees are sometimes required to leave jobs and housing that prior parole officers found to be acceptable.<sup>68</sup> Clear guidelines should be established to provide for consistency in supervision and review of the exercise of parole officer authority.
6. **Revise performance measures for all parole officers.** Parole officers' performances should not only be based on their monitoring abilities, but also their consistent effort and ability to find, develop and refer to resources that will help formerly incarcerated individuals to successfully reenter.<sup>69</sup> Parole officers should be rewarded for higher rates of successful completions of parole, and low violation and rearrest rates.
7. **Utilize graduated sanctions to respond to technical violations and use the most extreme sanction of prison and jail only as the last resort.**
8. **Design parole waiting rooms to convey the expectation of successful reintegration.** Current parole waiting areas are reminiscent of correctional settings, orienting parolees toward the past. More positive, inviting and motivational waiting areas with access to computer terminals and other resources will instill greater confidence that he or she can successfully reintegrate and remain in the mainstream. Even more important, such waiting areas would convey to parolees the Division of Parole's expectation of their successful reentry and provide additional opportunities to do so.<sup>70</sup>

## Legal and Policy Barriers

People with criminal records face a daunting array of counterproductive, debilitating legal barriers that make it much more difficult for them to succeed in almost every important aspect of life. More and more employers are conducting criminal background checks on job applicants, which can make it much more difficult for New Yorkers with criminal records to find employment and become productive, law-abiding members of society. Even though, during the past three

decades, New York State enacted a series of statutes to implement a strong statewide public policy encouraging the hiring of qualified individuals with histories of incarceration or other criminal histories who are striving to lead productive, tax-paying, law-abiding lives, there are still some gaps in the law and technical problems with the existing statutes. Thus, unintended obstacles remain for those who have completed their rehabilitation and have demonstrated job-readiness. The stigma of a criminal conviction often means some people will be denied employment and other opportunities, no matter how long ago or minor their offenses.

Where protections do exist to prohibit discrimination against individuals with criminal records, employers are often unaware of these protections and solicit information or take other actions prohibited by law. Employers are also often unaware that resources are available to them in the form of intermediary organizations and transitional job programs.<sup>71</sup> In order to help individuals with criminal records overcome these barriers to employment, in addition to passing legislation, New York should give employers a financial incentive to take a chance on candidates they might otherwise dismiss.<sup>72</sup>

In addition to barriers to employment, individuals with criminal records face other obstacles that hinder successful reentry. New York's disenfranchisement laws, which take away the right to vote from individuals on parole or in prison on a felony conviction, have weakened the voice of African American and Latino communities throughout the state. According to a new book by Chris Uggen and Jeff Manza, African Americans make up 64% of New York's disenfranchised population.<sup>73</sup>

Increasing voter participation by people coming out of the criminal justice system gives them a voice and a stake in the community. A recent study found that formerly incarcerated people who vote were half as likely as those who do not vote to end up back in prison.<sup>74</sup> The right to vote - to be empowered and to have a voice in the democratic process - is not only a fundamental civil and human right, it also is critical to an individual's successful reintegration into the community.

New York should eliminate legal and policy barriers that hinder the successful reentry of individuals with criminal records.

#### Recommendations:

##### State Policy

1. **Examine State policies to ensure that they are advancing the Penal Law's new goal, "the promotion of their (convicted persons') successful and productive reentry and reintegration into society."** This should include examining the State's own hiring practices and those of its contractors and vendors and enforcing protections of New York's anti-discrimination law, Article 23-A of the Corrections Law.<sup>75</sup>

##### Legislation (See Appendix B for model legislation and memoranda in support.)

2. **Enact legislation that would permit the conditional sealing of certain non-violent criminal records.** This bill would give qualified people with criminal records a true "second chance" to become employed, responsible members of society by:
  - Providing for the sealing of several categories of non-violent convictions;
  - Giving prosecutors notice of the record-sealing provisions and an opportunity to express their support or opposition to the filing;
  - Making sealing of these records conditional. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in

a conviction, the sealing order would be vacated. If the case is dismissed, it would be reinstated.

- Rendering ineligible individuals whose records contain a conviction for a sexual offense as defined in § 130 of the Penal Law.
  - Deeming a conviction that has been conditionally sealed a nullity. Employers may thus only inquire about convictions of crimes that have not been sealed.
3. Amend Article 23-A of the Correction Law so that individuals who are already employed, as well as applicants for a job (who are currently protected under Article 23-A), are also protected from unfair employment discrimination. This amendment was passed by the State Legislature in 2006 but vetoed by the Governor on technical language grounds.
  4. Amend the Human Rights Law (Executive Law § 296 (16)) so that individuals with confidential youthful offender adjudications and sealed convictions for non-criminal offenses are protected against discrimination. This amendment was passed by the State Legislature in 2006 but vetoed by the Governor.
  5. Amend Criminal Procedure Law § 160.60 so that individuals with YO adjudications or convictions for non-criminal offenses are restored to the status they had before their prosecutions. This will prevent the inappropriate disclosure or use by employers of sealed criminal history information about records of cases that did not result in a criminal conviction.
  6. Amend Criminal Procedure Law § 160.55 so that convictions for non-criminal offenses are sealed, with certain exceptions, on the court level. This restores the Legislature's purpose in enacting CPL § 160.55, to shield persons who were arrested but not convicted of crimes from employment discrimination and damage to their reputation, and prevents employers from gaining access to information that they would not legally be allowed to gain from the Division of Criminal Justice Services or any other agency.
  7. Enact A.06393, a bill that would limit the length of time conviction histories can be posted on the New York State Department of Correctional Services' website to 10 years after a person is released from custody. Old, incomplete, and misleading information about a person's incarceration is simply irrelevant once that individual is released from prison. Given the other options in New York for individuals to obtain complete criminal history information, the time that a conviction history can be posted on the DOCS website should be limited, at most, to 10 years after a person is released from custody. This is consistent, also, with the ten year period used by the courts to determine second and persistent felony offender status.
  8. Enact legislation that would protect employers from negligent hiring claims if they comply with New York's laws that protect individuals with criminal records from discrimination. Fear of negligent hiring liability contributes to employers not hiring individuals with criminal histories. Shielding employers from such liability if they rightfully follow Article 23-A, New York's law that provides guidelines regarding the hiring of people with criminal histories, will help these individuals find employment and successfully reintegrate.
  9. Create a taskforce comprised of state and community-based organizations to examine the utilization of Certificates of Relief from Disabilities and Good Conduct and make recommendations regarding legislative and/or administrative changes to improve and increase their use. Certificates are extremely valuable but underutilized tools that

provide a way for qualified people with criminal records to demonstrate rehabilitation and lift bars to employment and licensure. The taskforce should examine both the process of obtaining Certificates and review the authorizing statutes and make specific recommendations for improving the availability and utilization of Certificates.

#### Employer Assistance

10. **Create a \$25 million Wage Subsidy Program specifically for formerly incarcerated people.** This can be similar to the Office of Temporary Disability Assistance (OTDA) Wage Subsidy Program (WSP) which offers time-limited subsidies to employers for wages and fringe benefit costs and reimburses community-based organizations that facilitate the employment of eligible recipients for non-wage subsidy costs on the basis of performance. First priority should be given to those individuals being released from prisons to the seven neighborhoods with the highest reentry rates: the Lower East Side, the South Bronx, Harlem, Brownsville, Bedford-Stuyvesant, East New York and South Jamaica. While this WSP is based on the OTDA program, there should be a few significant changes:
  - Small businesses should be targeted for this initiative as they typically have less capital to expend on overhead and human resources.
  - The percentage of subsidized wages should vary on a sliding scale, based on the size of the business (i.e., a business with 50 employees would receive 90 percent of the wage, while a business with 75 employees would receive 80 percent).
  - Contracts should be flexible and terms should be negotiable between employers and employment intermediaries (CBOs). However, contracts must prohibit employers from replacing an existing employee with a wage-subsidized employee and/or cycling several individuals through one wage-subsidized position.<sup>76</sup>
11. **Provide opportunities for employers to be educated on the state law relating to the employment of individuals with criminal record and the financial incentives and resources, including intermediary organizations, available to help employers.** A survey conducted by the Global Strategy Group for the Independent Committee on Reentry and Employment found that most business owners “are not very knowledgeable about the legal ramifications and restrictions surrounding an employer’s ability to screen for an applicant’s criminal background.... Employers are virtually unaware of staffing resources in the form of intermediary organizations and transitional job programs.” In addition, employers had “little knowledge of the social or economic incentives available to them.”<sup>77</sup> However, the Independent Committee on Reentry and Employment also noted in the report that, in general, employers are interested in and open to learning more about intermediary agencies and the financial incentives that are available to them.

#### Voting

12. **Enact A.11652, the “New York Voting Rights Notification and Registration Act,”** which streamlines procedures for voter registration for people who are on probation or who have completed their incarceration and parole.
13. **Amend New York State’s Election Law to allow all individuals to automatically regain the right to vote immediately upon release from prison.**

## Funding

Some of our recommendations call for the expansion of community corrections and prison-based and community-based programming, and strengthening communities weakened by high incarceration rates. This will require an initial investment of resources. However, as the report has shown, greater use of alternatives to incarceration, reduction in imprisonment, and improved reentry not only will improve public safety but will quickly save the State an enormous amount of money that will cover their costs plus fund community re-investment and other priorities.

## COMPREHENSIVE LIST OF RECOMMENDATIONS

### *I. COMMUNITY CORRECTIONS*

1. Increase the use of community corrections, by expanding to scale and replicating the intermediate sanctions programs already operating in New York that have proven successful in diverting and monitoring individuals and protecting public safety, and developing new programs.
2. Make a greater range of individuals eligible for intermediate sanctions.
3. Adopt a comprehensive system of community corrections that, among other things, embraces a state/local partnership, incorporates principles of community justice,<sup>78</sup> and creates financial incentives to promote the use of intermediate sanctions and financial disincentives to discourage across-the-board over-reliance on incarceration.
4. Offer deferred adjudications, as well as diversion programs so that individuals have the opportunity to avoid a conviction.
5. Explore the concept of creating a capital funding stream to support the construction of facilities to provide services for individuals getting diverted or returning home from prison.
6. Impose financial conditions (bail) only when no other conditions of release will provide reasonable assurance that the defendant will appear for court proceedings.
7. When applicable, incorporate principles of restorative justice that emphasize repairing the harm caused or revealed by criminal behavior, into community-corrections programs.
8. Utilize gender validated risk assessment instruments that identify individuals with the greatest risk of recidivism.
9. Ensure that probation has sufficient resources to provide effective supervision.
10. Promote the establishment of a joint DPCA/OCA work group to further cooperation between traditional ATI programs and drug courts.

### *II. SENTENCING REFORM*

1. Reform our sentencing laws so that judges and prosecutors have expanded opportunities to send appropriate individuals to community-based programs instead of prison.
2. Make a wider range of defendants eligible for diversion from prison to community-based programs - addicted individuals charged not just with drug crimes but other offenses as well, and non-addicted individuals charged with non-violent offenses, and expand the category of individuals eligible for retroactive relief.
3. Expand treatment funding and capacity substantially so that providers are able to serve the increasing numbers of people who will be diverted as a result of these sentencing reforms and meet the special needs of the criminal justice population.
4. Expand the identification of addicted individuals.
5. Consider and utilize all treatment modalities when determining the appropriate

treatment option for an individual.

6. Develop new models of treatment to accommodate the complex needs of offenders.
7. Recognize that relapse is part of recovery.
8. Utilize graduated sanctions, similar to those used in Drug Courts.
9. Use a holistic approach in addressing clients' multiple needs.

### **III. REENTRY**

1. Better prepare individuals who are incarcerated for returning home by redesigning and expanding prison-based programming, developing comprehensive discharge plans with the involvement of family and community-based organizations, and putting mechanisms in place to implement those discharge plans, including ensuring that people in prison have the identification cards, Medicaid, and other benefits they need upon release.
2. Revamp New York's parole system.
3. Eliminate legal and policy barriers to which they were sentenced and those serving sentences in the community.

#### Prison Programming

1. Begin discharge planning when an individual first enters prison.

#### Vocational Services

2. Initiate a strategic planning process within DOCS to redesign vocational programs so that individuals' industry-specific skill levels during incarceration increase and training opportunities are more relevant to the modern workplace.
3. Make certain vocational programs known to be relevant to the current labor market are immediately available in DOCS.
4. Develop specific reentry planning and workforce development for people with histories of violent convictions.

#### Educational Opportunities

5. Restore eligibility for the New York State Tuition Assistance Program and other public resources to people in prison.
6. Mandate that the NYS Department of Correctional Services (DOCS) provide appropriate space, security, technology, classification holds, and other reasonable resources necessary for the creation and maintenance successful post-secondary initiatives within the system and the provision of vocational services.
7. Reinstate the systematic use of "Educational Release" by the NYS DOCS for men and women in prison who qualify for temporary release.
8. Recognize and encourage enrollment in accredited post-secondary institutions as part of the terms and conditions of parole release.

9. Improve the use of the federal Incarcerated Youthful Offender Grant funds by following other states in administering the grants through the State Department of Education rather than through the Department of Correctional Services.

#### Drug and Alcohol Treatment

10. Require that a comprehensive drug and alcohol assessment be conducted by a credentialed alcoholism and substance abuse counselor for every person who enters a DOCS facility.
11. Evaluate prison treatment programs in order to assess if they are effective, provide gender and culturally competent services, and address the needs of those who are incarcerated.
12. Require that all prison programs are OASAS licensed - whether they are run by DOCS or outside community-based providers.
13. Enact legislation that allows incarcerated individuals to have increased access to CASAT programs.

#### Transitional Services

14. Develop and implement a New York State Reentry Planning Initiative, modeled on the Discharge Planning Initiative developed by the New York City Departments of Corrections and Homeless Services.
15. Develop comprehensive discharge plans that identify the principle challenges the released individual will face in reentering the community, and the steps required to overcome those challenges.
16. Provide workshops to help with family reunifications on topics such as effective parenting, healthy relationships and child support.
17. Ensure that individuals leaving prison (and jail where practical) who are eligible for Medicaid have applied for and are immediately eligible for coverage.
18. Provide each person leaving prison (and jail) with state-issued identification cards.
19. Revise child support enforcement regulations to provide for the setting aside or downward modification of child support arrears that accrued during incarceration.
20. Employ "back end" approaches, including work release and furloughs to ease the transition back into the community.

#### Housing

21. Create a funding stream that provides for an array of housing options for individuals being released into the community.
22. Create a pilot program with housing authorities that allows individuals with criminal records to live with family members in public housing and be listed on leases

#### Parole Supervision

23. Reallocate parole resources and frontload parole services.
24. Better utilize family and community-based supports to assist with reintegration.

25. Increase information about and referrals to resources such as workforce development, housing, health, mental health and drug and alcohol treatment and social service programs.
26. Explore the feasibility of agencies such as Medicaid and Social Security coming to parole offices and assisting parolees in obtaining documentation required for legal employment and government assistance. Create clear guidelines for the exercise of parole officer discretion.
27. Revise performance measures, for all parole officers.
28. Utilize graduated sanctions to respond to technical violations and use the most extreme sanction of prison and jail only as the last resort.
29. Design parole waiting rooms to convey the expectation of successful reintegration. Utilize graduated sanctions to respond to technical violations and use the most extreme sanction of prison and jail only as the last resort.

#### Legal and Policy Barriers

30. Examine State policies to ensure that they are advancing the Penal Law's new goal, "the promotion of their (convicted person's) successful and productive reentry and reintegration into society."

#### Legislation

31. Enact legislation that would permit the conditional sealing of certain non-violent criminal records.
32. Amend Article 23-A of the Correction Law so that individuals who are already employed, as well as applicants for a job (who are currently protected under Article 23-A), are also protected from unfair employment discrimination.
33. Amend the Human Rights Law (Executive Law § 296 (16)) so that individuals with confidential youthful offender adjudications and sealed convictions for non-criminal offenses are protected against discrimination
34. Amend Criminal Procedure Law § 160.60 so that individuals with YO adjudications or convictions for non-criminal offenses are restored to the status they had before their prosecutions.
35. Amend Criminal Procedure Law § 160.55 so that convictions for noncriminal offenses are sealed, with certain exceptions, on the court level.
36. Support *A.06393*, a bill that would limit the length of time conviction histories can be posted on the New York State Department of Correctional Services' website to 10 years after a person is released from custody.
37. Enact legislation that would protect employers from negligent hiring claims if they comply with New York's laws that protect individuals with criminal records from discrimination.
38. Create a taskforce comprised of state and community-based organizations to examine the utilization of Certificates of Relief from Disabilities and Good Conduct and make recommendations regarding legislative and/or administrative changes to improve and increase their use.

### Employer Assistance

39. Create a \$25 million Wage Subsidy Program specifically for formerly incarcerated people.
40. Provide opportunities for employers to be educated on the state law relating to the employment of individuals with criminal record, and the financial incentives and resources, including intermediary organizations, available to help employers.

### Voting

41. Support A.11652, the "New York Voting Rights Notification and Registration Act," which streamlines procedures for voter registration for people who are on probation or who have completed their incarceration and parole.
42. Amend New York State's Election Law to allow all individuals to automatically regain the right to vote immediately upon release from prison.

# APPENDIX

## APPENDIX A

### THE COALITION FOR CRIMINAL JUSTICE REFORM

Following is a description of the community-based criminal justice agencies that comprise the Coalition.

#### **The Center for Alternative Sentencing and Employment Services**

The Center for Alternative Sentencing and Employment Services (CASES) was established in 1989 when the Court Employment Project and the Community Service Sentencing Project - originally demonstration projects designed and managed by the Vera Institute of Justice - were gathered under the umbrella of a single, independent non-profit corporation. Today, CASES operates seven programs for adults and four for youth. With a staff of 140 and an annual budget of \$9 million, CASES provides services and supervision for over 10,000 offenders a year.

The mission of CASES is to increase the understanding and use of community sanctions that are fair, affordable, and consistent with public safety. For more than 30 years, CASES has worked with the justice system to find sentencing alternatives that respond to justice system needs. By addressing the factors that underlie criminal behavior, such as poor education, lack of community support, inability to get and keep a job, substance abuse and low self-esteem, CASES' programs help young and adult offenders re-integrate into society. CASES offers structured alternatives that are more substantial than probation, but less costly and intrusive than jail or prison. CASES and its programs contribute to safer streets, improve lives and save taxpayer dollars each year.

#### **Center for Community Alternatives: Innovative Solutions for Justice**

The Center for Community Alternatives (CCA) has a 25-year successful history in providing services, research and training to reduce reliance on incarceration. Beginning in 1981, when CCA became the first not-for-profit organization to provide alternative sentence services, CCA has helped youth and adults live productive, healthy and safe lives by connecting them with community resources. CCA currently operates 18 major programs in New York City and Syracuse, NY. CCA's sentencing advocacy service, Client Specific Planning, is called upon throughout New York State and nationally, in local, state and federal courts. CCA is one of the premier organizations doing death penalty mitigation work across the country. In addition to direct services, CCA's Justice Strategies division undertakes research, program evaluation work and training and technical assistance. Justice Strategies work appears in peer-reviewed and practitioner journals.

CCA has pioneered model programs to inform the alternative to incarceration field. These include the nationally recognized program Youth Advocacy Program that works with juveniles charged as adults, Crossroads, New York's, first ATI drug treatment program for women, and CHOICES, that provides a range of support and reentry services for prisoners living with HIV. Working with the Syracuse City School District, CCA also introduced Strategies for Success, a program to reduce the school-to-prison pipeline.

CCA partners with government agencies including state and local corrections, probation, parole, schools and health departments. CCA's key partners - grassroots community groups- reflect CCA's understanding that solutions to crime rest within communities.

#### **Center for Employment Opportunities (CEO)**

For almost thirty years, the Center for Employment Opportunities (CEO) has addressed the

relationship between work and crime by providing immediate, effective and comprehensive employment services to men and women returning home from jail and prison to New York City. CEO offers highly structured and tightly supervised programs that aim at helping participants regain the skills and confidence they need to make a successful transition to a stable and productive life. CEO's signature work experience program - the Neighborhood Work Project - provides immediate, paid, time-limited employment and serves as an "employment lab," preparing participants with the essential skills to rejoin the workforce and restart their lives. CEO's Vocational Development Program places participants in full-time, unsubsidized employment and follows up through the first year, providing retention and advancement counseling, fatherhood services including child support advocacy, and referrals. CEO began in 1978 as a project of the Vera Institute of Justice and became an independent nonprofit organization in 1996. During its decade as an independent organization, CEO has placed over 8,000 persons with criminal records into full-time, unsubsidized employment.

### **Family Justice**

Family Justice draws on the unique strengths of the family and neighborhoods to break cycles of involvement with the criminal justice system. The national nonprofit recognizes that strong family support and efficient integration of social services offer the best opportunity to reduce the cost and expense of recidivism and victimization.

Family Justice works with government agencies and local partners to provide direct services, offer training and technical assistance in its methods, and serve as a resource for public policy makers and the criminal justice field. Its national applications are distilled from its award winning evidenced-based practice at La Bodega de la Familia. Established in 1996 in a storefront on New York's Lower East Side, La Bodega offers a family-focused approach to case management, working in partnership with government and community based providers to model blended funding with a fusion of health and criminal justice dollars.

Family Justice has expanded the breadth of its work to bring family support tools to fields such as public housing, health and mental health, epidemiology, domestic violence, mentoring, and substance abuse treatment, and has informed the work of the Council of State Government and the National Governor's Association. The U.S. Department of Justice, the U.S. Substance Abuse and Mental Health Services Administration, and the U.S. Department of Housing and Urban Development, as well as state and local governments, invest in its family support model as a means to improve the lives of poor families involved in the criminal justice system.

### **The Fortune Society**

The Fortune Society was created in 1967 after the opening of an off-Broadway play, "Fortune and Men's Eyes," about the horrors of prison life. As a result, the producer, David Rothenberg, and several former prisoners established The Fortune Society to help former prisoners break the cycle of crime and incarceration so that they could become productive members of their communities. In the past 38 years, Fortune has grown to provide a holistic continuum of services for former prisoners that include: Congregate and Scattered Site Housing, Substance Abuse Treatment, Counseling, Education, Career Development, Alternatives-to-Incarceration, Family Services, Health Services, Peer Training, Recreation and Food, and 24-hour Drop-in Center Services for Rikers Island releasees. In the past year, Fortune provided these services for close to 6,000 men, women and at-risk youth.

Fortune's program models have been nationally recognized for their innovation and quality by numerous institutions. For example, Fortune has been funded on six consecutive occasions by the federal government's SPNS (Special Projects of National Significance) initiative for our model HIV/AIDS programs. Fortune was also profiled by The Urban Institute as a model re-entry program, was featured in *Enterprise Quarterly* as a model program addressing the housing needs

of former prisoners returning to New York City; and was listed by AIDS Housing of Washington as a model for post-release housing programs for HIV-positive releasees in their report, "From Locked Up to Locked Out: Creating and Implementing Post-release Housing for Ex-Prisoners." The National Institute of Justice (NIJ) has also selected Fortune for a three-year outcome evaluation on its re-entry service model. The results of the evaluation will be shared nationally, and are considered valuable because Fortune's model is "of interest to service providers involved in ex-offender re-entry programming as well as researchers and policymakers interested in key components of successfully transitioning ex-offenders from prison to society."

### **Greenhope Services for Women**

Greenhope Services for Women, Inc. was established in 1975 in a convent that was transformed into a comprehensive residential treatment program for formerly incarcerated women. Over the years, it has developed formal relationships with the criminal justice system and has expanded its work to include services for women on parole and those referred by the courts as an alternative to incarceration (ATI).

Located in East Harlem, Greenhope's commitment to providing quality services to predominantly poor African American and Latina ex-offenders has made it a leader in working with women to address the problems that lead to a life of drugs and crime. It is one of the few woman-centered facilities operating in New York State, which serves both parolees and ATI clients.

Greenhope operates three programs: Residential Treatment, Day Treatment, and Outpatient Services. In addition to its treatment focus, Greenhope is actively involved in local and statewide policy and advocacy efforts that address the specific needs of women in prison. Greenhope services over 200 women annually. To date, Greenhope has helped over 4,000 women reclaim their lives, reunite with their families and rebuild their communities.

### **Legal Action Center**

For over thirty years the Legal Action Center (LAC) has been a successful and integral player in advocating on the local, state and national levels for sound criminal justice and drug policies. LAC advocates for policies that place a much greater emphasis on strategies that have proven effective in reducing crime, treating drug and alcohol problems, improve public safety and help people reclaim their lives, maintain their dignity and participate fully in society.

LAC forms partnerships with organizations to engage in a wide variety of educational and advocacy efforts to encourage and hopefully convince policy makers to adopt these policy improvements. LAC responds to inquiries from policy makers, including legislators on the local, state and national levels and the media for information and assistance; analyzes proposals and develop its own, and writes letters and position papers.

LAC is often the only advocate for individuals whose voice and rights might otherwise be disregarded. Through advocacy, LAC is able to improve the administration of justice by convincing leaders to change laws and policies and by providing many wonderful organizations and their staff the expanded resources and tools needed to monitor and assist their clients.

### **The Osborne Association**

The Osborne Association, established in 1931 after the death of its founder Thomas Mott Osborne, is the oldest organization in NY providing direct services to men and women affected by incarceration. With services offered in three community sites (Bronx, Brooklyn and Queens), two courts, and 20 prisons and jails, Osborne provides a wide range of family, educational,

employment, and treatment programs at every stage of the criminal justice process, from alternatives to incarceration to reentry.

### **Women's Prison Association**

Founded in 1844, WPA is a service and advocacy organization committed to helping women with criminal justice histories realize new possibilities for themselves and their families. WPA program services make it possible for women to obtain work, housing, and health care; to rebuild their families; and to participate fully in civic life. Through the Institute on Women & Criminal Justice, WPA pursues a rigorous policy, advocacy, and research agenda to bring new perspectives to public debates on women and criminal justice.

WPA provides direct assistance to approximately 2500 women and their families each year. WPA offers an integrated continuum of services to criminal justice-involved women in response to five key areas of need: livelihood, housing, family, health and well-being, and criminal justice compliance. WPA's programs are based in jail and prisons, as well as in the community. WPA helps women at different stages of involvement with the criminal justice system address their current needs and plan for their futures.

## APPENDIX B

### Legal Action Center's Proposals to Improve Successful Reentry of Qualified Individuals with Criminal Records

#### Background

There are approximately 63,000 people in state prisons and 40,000 incarcerated in local jails throughout New York State, with another 100,000 under community supervision. Yearly, 13,000 people are released from state prison and more than 100,000 from local jails back into our communities. All are rightly expected to seek and maintain employment and become productive members of society, but they face many daunting roadblocks as they try to rebuild their lives and support their families.

During the past three decades New York has enacted a series of statutes to implement the state's strong public policy to encourage the employment of qualified individuals with histories of criminal justice system involvement so that those who pay their debt to society can earn a living and lead productive, tax-paying, and law-abiding lives. While these laws have been very beneficial, there is still one large gap - individuals who have demonstrated their rehabilitation and job-readiness can never escape their past no matter how long ago or minor their criminal convictions - and there are also some technical problems with the existing statutes. The Legal Action Center has drafted a package of proposals to remedy these problems.

#### "Second Chance"

Recognizing the wisdom of assisting individuals with criminal records to obtain employment and housing if they have completed their sentences, are qualified for employment, and are not a threat to public safety, a wide range of leaders, including a diverse group convened by former Mayor Ed Koch in 1989 and Governor Pataki when he proposed his drug law reform bill of 2003, have proposed that New York State enact a "Second Chance" law to permit the sealing of certain non-violent criminal records. Building on their proposals and consultations with Mayor Koch and a wide range of policymakers and experts, the Legal Action Center has drafted a bill to give qualified people with criminal records a "Second Chance" to achieve the American dream of a productive, self-sufficient life for themselves and their families.

#### Technical Amendments to Existing Legislation:

In our more than 30 years of experience assisting people with criminal records to obtain employment, housing, and other necessities of life, we have identified a number of technical problems with current laws that unintentionally deny adequate protections to young people who receive youthful offender status and others who have paid their debt to society and demonstrated rehabilitation. To fix these problems, the Legal Action Center and other organizations have drafted proposals to:

1. Amend Article 23-A of the Correction Law so that individuals who are employed, as well as individuals who are applicants for a job (who are currently protected under Article 23-A), are protected from unfair employment discrimination. This bill was passed by the Legislature and vetoed for technical language reasons.
2. Amend the Human Rights Law (Executive Law § 296(16)) so that individuals with confidential youthful offender (YO) adjudications and sealed convictions for non-criminal offenses are protected against discrimination. This bill was passed by the Legislature and vetoed by the Governor.

3. Amend Criminal Procedure Law § 160.60 so that individuals with YO adjudications or convictions for non-criminal offenses are restored to the status they had before their prosecutions.
4. Amend Criminal Procedure Law §160.55 so that convictions for non-criminal offenses are sealed, with certain exceptions, on the court level.
5. Support A.06393, a bill that would limit the length of time that conviction history can be posted on the department of corrections' website to 10 years after an individual is released from custody.

Draft legislation and memoranda follow.

#### **Voter Notification and Registration**

1. Support A.11652, "New York Voting Rights Notification and Registration Act," which streamlines procedures for voter registration for people who are on probation or who have completed their incarceration and parole.

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### **Memorandum In Support of "Second Chance" Legislation to Conditionally Seal Non-Violent Criminal Records**

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society - even after they have fully paid their debt to society and, in many cases, lived law-abiding lives for many years after completion of their sentences. New York State has long been a leader in providing fair employment opportunities for qualified individuals with histories of criminal justice system involvement for the sensible reason that people with criminal records who are able to earn a living are much more likely to lead productive, tax-paying lives and much less likely to return to crime.

Recognizing the wisdom of assisting individuals with criminal records who are qualified and not a threat to public safety to obtain employment and housing, a wide range of leaders, including a diverse group convened by former Mayor Ed Koch in 1989 and Governor Pataki when he proposed his drug law reform bill of 2003, have proposed that New York State enact a "Second Chance" law to permit the sealing of certain non-violent criminal records. Building on their proposals and consultations with a wide range of policymakers and experts, the Legal Action Center has drafted a Second Chance that has the following key components:

- Provides for the sealing of different categories of non-violent convictions. An individual who has a drug felony conviction and is mandated into chemical dependence treatment can petition to have his or her record conditionally sealed upon completion of sentence; a person with a class D or E non-violent felony can petition for a conditional seal after 3 years of completion of sentence, and after 5 years after completion of sentence on a class B or C non-violent felony. In all of these cases, individuals cannot have any other felony convictions and cannot have more than two other non-violent misdemeanor convictions. In some cases the petition is filed with the court, in other instances with an administrative tribunal. Individuals with longer records of non-violent convictions can petition to have their records sealed 10 years after completion of sentence for the last conviction.

- Gives prosecutors in all cases notice of the petition and an opportunity to support or oppose the petition.
- Lists the factors that a court or administrative tribunal has to consider, based on those listed in the Governor's bill.
- Conditionally seals records. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order is vacated; if the case is dismissed, it is reinstated. This is identical to the conditional sealing provisions in the Governor's bill.
- Renders ineligible individuals whose records contain a conviction for a sexual offense defined in section 130 of the penal law.
- Deems a conviction that has been conditionally sealed a nullity. An employer may only inquire about convictions of crimes that have not been sealed.

#### SECOND CHANCE PROPOSAL (A. 10988)

The criminal procedure law is amended by adding a new section 160.65 to read as follows:

##### Petition to conditionally seal certain convictions

1. A person may petition for the record of conviction or convictions to be conditionally sealed:

(a) Upon a person's completion of sentence on a felony defined in article 220 or 221 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, and such person was mandated into and completed a term of chemical dependence treatment, or upon completion of a sentence on a misdemeanor, such misdemeanor imposed prior to or after the effective date of this chapter, where such person stands convicted of not more than two other misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law; or

(b) three years after the completion of a sentence on a class D or E non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law, or

(c) five years after the completion of a sentence on a class B or C non-violent felony, other than offenses defined in section 130 of the penal law, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of no other felony and not more than two misdemeanor convictions not including misdemeanor offenses defined in section 130 of the penal law.

(d) Notwithstanding the provision of paragraph (a) (b) (c) of subdivision one of this section, and subdivision six, a determination by the court following a hearing that (a) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of such offense, (b) such abuse was a factor in causing the defendant to commit such offense and (c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined in subdivision two or section four hundred

fifty-nine-a of the social services law, shall be eligible to petition for the record of conviction or convictions to be conditionally sealed.

(e) For the purposes of this section, a conviction of a misdemeanor or felony shall include a conviction in any other jurisdiction of an offense that includes all the essential elements of a felony or a misdemeanor as defined in the penal law.

2. Such petition shall include:

(a) identification of the conviction or convictions for which the petitioner is seeking relief;

(b) a sworn affirmation that the sentence imposed on the conviction or convictions has been completed and date of completion;

(c) if the petitioner was mandated into chemical dependence treatment, evidence that the petitioner completed such treatment or other evidence that the petitioner is not dependent on alcohol or drugs except as prescribed by a medical practitioner;

(d) (i) for petitions to conditionally seal convictions or convictions pursuant paragraph (a) (b) and (c) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner, and the petitioner has not been convicted of more than one non-violent felony and the allowable number of misdemeanors not including offenses defined in section 130 of the penal law, (ii) for petitions to conditionally seal convictions or convictions pursuant paragraph (d) of subdivision one of this section, a sworn affirmation that no charges are pending against the petitioner and the petitioner has not been convicted of any crimes for the ten year period following the petitioner's completion of sentence on the petitioner's last conviction.

(e) any other supporting materials that would assist in determining whether it would be in the interest of justice to grant the petition.

3. For convictions to be sealed pursuant to paragraphs (b) and (c) of subdivision one of this section, the petition shall be filed with division of parole, with notice to the prosecutors of the jurisdictions in which the petitioner was convicted. The prosecutors, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. If the prosecutors do not submit materials in opposition to the petition, the division of parole shall determine if the petition complies with sections 1 and 2 (a), (b), (c) and (d) of this article, and if it does so comply, shall grant the petition. The division of parole shall notify the division of criminal justice services, and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed, and heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The division of parole shall also notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon receipt of a conditional sealing order from the division of parole, the division of criminal justice services shall follow the procedures set forth in section 160.50 of this article except that the division of parole shall specify in the order that it is based upon the authority of this section.

4. If the prosecutors submit materials in opposition to the petition, the division of parole shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The division of parole shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the division of parole shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed chemical dependence treatment or otherwise is in recovery if it is determined that the petitioner has a history of chemical dependence; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The division of parole shall state the reasons for its determination on the record. If the petition is granted, the division of parole shall notify the division of criminal justice services, and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed, and heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The division of parole shall also notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon receipt of a conditional sealing order from the division of parole, the division of criminal justice services shall follow the procedures set forth in section 160.50 of this article except that the division of criminal justice services shall specify in the order that it is based upon the authority of this section.
5. For petitions to be sealed pursuant to paragraph (a) of subdivision one of this section, the petition shall be filed with the sentencing court for the felony conviction, with notice to the prosecutor of the jurisdiction in which the petitioner was convicted. The prosecutor, within 10 days of receiving the petition, may submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition. The court to which the petition is submitted shall request from the division of criminal justice services a copy of the petitioner's current criminal history record, including any sealed information. The court shall determine whether the petitioner has demonstrated, by a preponderance of the evidence, that it would be in the interest of justice to grant the petition. In making its determination, the court shall consider the following factors: (a) the circumstances and seriousness of the offense or offenses that resulted in the conviction or convictions; (b) the character of the petitioner, including evidence that the petitioner participated in and successfully completed treatment or otherwise is in recovery if it is determined that the petitioner has a history of drug abuse; (c) the criminal history of the petitioner; (d) the impact of granting the petition upon the criminal justice system; and (e) any other relevant factor. The court shall state the reasons for its determination on the record. If the petition is granted, the court shall notify the division of criminal justice services, and the division of criminal justice services shall notify the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions. The court shall notify the petitioner that any subsequent arrest for any misdemeanor or a felony shall conditionally unseal the record of the conviction or convictions for which the conditional sealing order was granted and that if such arrest results in a criminal conviction the conditional sealing order will be automatically vacated. Upon issuing a conditional sealing order, the court shall inform the division of criminal justice services which shall follow the procedures set forth in section 160.50 of this article except that the court shall specify in the order that it is based upon the authority of this section.
6. For any record of conviction where 10 years have passed following a person's completion

of a sentence on his or her last conviction on a non-violent felony or misdemeanor offense, such sentence imposed prior to or after the effective date of this chapter, where such person stands convicted of only non-violent offenses not including non-violent offenses defined in section 130 of the penal law, the conditional sealing shall be automatic and shall not require a petition. Such conditional sealing shall be initiated by the division of criminal justice services and the division of criminal justice services shall notify the clerks of the court where such actions or proceedings shall be sealed and the heads of all appropriate police departments and other law enforcement agencies of the conditional sealing of such conviction or convictions and shall follow the procedures set forth in section 160.50 of this article.

7. In the event that a person who has had a record conditionally sealed under this section is subsequently arrested for any crime, the records relating to the conviction or convictions shall be conditionally unsealed pending the final disposition of the arrest. If such arrest results in a conviction of a crime, the order of conditional sealing shall be deemed automatically vacated. The division of criminal justice services and any other entity subject to such order shall unseal any records that had been sealed by virtue of this section. All records unsealed pursuant to this subdivision shall be restored to their original status and treated as though the order had never been entered. If such subsequent arrest results in proceedings that are terminated as described in subdivision three of section 160.50 or 160.55 of this article, the original conditional sealing order shall remain in effect and the records relating to the original order shall be sealed again in accordance with the provisions of section 160.50 or 160.55 of this article.
8. For purposes of this section, conditional sealing shall mean that the records of the subject conviction or convictions are sealed and shall not be made available to any person or public or private agency, as provided in section 160.50, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check; provided, however, that any record conditionally sealed pursuant to this section shall also be made available, if otherwise admissible, for use before the jury, or the judge as trier of fact, if the person who is the subject of the record is a witness as defined in paragraph (b) or (c) of subdivision one or paragraph (b) or (c) of subdivision two of section 240.45 of this chapter.

Effect of termination of criminal actions in favor of the accused or by conviction that has been conditionally sealed.

N.Y. Crim. Proc. Law § 160.60 shall be amended as follows:

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this [chapter] article, or upon the conditional sealing of a conviction or convictions, as defined in section 160.65 of this chapter, the arrest and prosecution and conviction or convictions conditionally sealed shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest, prosecution and conviction or convictions. The arrest or prosecution or conviction(s) conditionally sealed shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required in section 160.65 of the criminal procedure law or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution or conviction or convictions conditionally sealed. In the case of a conviction conditionally sealed, an employer, except those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, may only ask whether a person has been convicted of a crime that has not been conditionally sealed. In the event that an employer other than those persons or public or private agencies who are mandated by law to fingerprint individuals as part of a background check, asks an illegal

question, the person will only have to reveal those criminal convictions that have not been conditionally sealed.

N.Y. Exec. Law § 296(16) shall be amended as follows:

It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or any conviction or convictions that have been conditionally sealed, as defined in section 160.65 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty- three and thirty-four of section 1.20 of the criminal procedure law.

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#### Memorandum in Support of Amending Article 23-A of Correction Law § 750-755

##### Proposed Amendment

Article 23-A of Correction Law prohibits unfair discrimination against individuals with criminal records whose convictions are unrelated to the job sought and do not constitute a threat to safety and encourages "the licensure and employment of persons previously convicted of one or more criminal offenses." However, a gap in the statute has limited its intended protections. The following bill, passed by the Legislature and vetoed by the Governor for technical language reasons, closes this gap.

A10986/S7730

The People of the State of New York, represented in Senate and Assembly, do enact as follow:

1 Section 1. Subdivision 3 of section 750 of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license {or employment sought}, OPPORTUNITY, OR JOB IN QUESTION.

S 2. Section 751 of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

S 751. Applicability. The provisions of this article shall apply to any application by any person FOR A LICENSE OR EMPLOYMENT AT ANY PUBLIC OR PRIVATE EMPLOYER, who has previously been convicted of one or more criminal offenses{,} in this state or in any other jurisdiction, {to any public agency or private employer for a license or employment} AND TO ANY LICENSE OR EMPLOYMENT HELD BY ANY PERSON WHOSE CONVICTION OF ONE OR MORE CRIMINAL OFFENSES IN THIS STATE OR IN ANY OTHER JURISDICTION PRECEDED SUCH EMPLOYMENT OR GRANTING OF A LICENSE, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.

§ 3. The opening paragraph and subdivision 1 of section 752 of the correction law, as added by chapter 931 of the laws of 1976, are amended to read as follows:

No application for any license or employment, AND NO EMPLOYMENT OR LICENSE HELD BY AN INDIVIDUAL, to which the provisions of this article are applicable, shall be denied OR ACTED UPON ADVERSELY by reason of the {applicant's} INDIVIDUAL'S having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the {applicant} INDIVIDUAL has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought OR HELD BY THE INDIVIDUAL; or

§ 4. Paragraph (b) of subdivision 1 of section 753 of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

(b) The specific duties and responsibilities necessarily related to the license or employment sought OR HELD BY THE PERSON.

§ 5. This act shall take effect immediately.

### Need for Amendment

It is inconsistent to require employers to individually consider each person with a criminal history who applies for a job and make it illegal to deny that person a job unless specific criteria are met, but not extend that protection to individuals who are already employed. New York has a strong, longstanding policy of encouraging the employment of qualified individuals with criminal records. Sections 750 through 755 of the Correction Law should be amended to include current employees and license holders so that its protections are implemented consistently, evenly and fairly across the board.<sup>1</sup>

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## Memorandum in Support of Amending the Human Rights Law So That Individuals with Confidential Youthful Offender Adjudications and Sealed Convictions for Non-Criminal Offenses are Protected Against Discrimination

### Proposed Amendment

Under current law, employers cannot ask job applicants about arrest terminated in their favor nor use those arrests in making employment decisions. Furthermore, individuals with criminal convictions are protected against discrimination if their conviction is not job-related and they do not pose a threat to safety or property. However, individuals who have confidential youthful offender (YO) adjudications or sealed convictions for non-criminal offenses have none of these protections, frustrating New York State's important policy goal of helping them lead productive and crime-free lives. We propose that § 296(16) of the Executive Law be amended to extend the same protections to people with YO adjudications, a disposition granted by a judge to alleviate a youthful defendant from the stigma of a criminal conviction, and to people with non-criminal offenses, as those whose criminal cases have been terminated in their favor. The following bill, which does just that, was passed by the Legislature and vetoed by the Governor.

A10989/S7728

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<sup>1</sup> This amendment will not protect individuals who lie on their applications and whose employers later uncover their criminal histories. Courts have long held that applicants who lie or withhold information on their applications have no protections under Article 23-A, and this reasoning would extend to current employees. Nor does it prevent employers from taking action if an employee is convicted after obtaining employment.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 16 of section 296 of the executive law, as amended by chapter 208 of the laws of 1985, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

§ 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

#### Need for Amendment

Section 296(15) of the Executive Law prohibits unfair employment and licensure discrimination, as provided in Article 23-A of the Corrections Law, against individuals who have *criminal convictions*. Section 296(16) of the Executive Law provides even greater protection to individuals whose *cases have been terminated in their favor*, not allowing employers even to ask about or use the arrest in making employment decisions. The state enacted these laws to prevent people who have never been convicted of a crime from suffering the stigma and discriminatory consequences that so often result from the disclosure and use of criminal history information.

YO adjudications, which are not judgments of convictions (*see* C.P.L. § 720.35), and convictions for non-criminal offenses, fall under neither of these categories, and thus individuals with these histories are entirely without protection against unfair employment and licensure discriminatory practices. Because of the failure to include them within the protection of the Human Rights Law, these two groups of individuals have no remedy if employers refuse to hire them. Indeed, it makes no sense that they have even less protection than people with adult criminal convictions. New York State should correct this oversight.

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**Memorandum in Support of Amending Criminal Procedure Law §160.60  
To Correct Unforeseen Gaps in Sealing Law Protections**

**Proposed amendment**

New York's sealing laws were enacted to prevent the inappropriate disclosure or use by employers of sealed criminal history information about records of arrests that did not result in a criminal conviction. For cases that are terminated in an individual's favor, §160.60 of the Criminal Procedure Law explains the legal effect of such termination. However for the two other groups whose cases are sealed or afforded comparable confidential protections, youthful offenders (YO) and individuals with non-criminal dispositions, no such provision exists. To remedy this, we propose the following amendment:

**§ 160.60 Effect of termination of criminal actions in favor of the accused, or by youthful offender adjudication or conviction for noncriminal offense.**

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, or by a youthful offender adjudication, as defined in section 720.35 of this chapter, or by a conviction for a traffic infraction or violation sealed pursuant to section 160.55 of the criminal procedure law, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he or she occupied before the arrest and prosecution....

**Need for amendment**

Section 160.60 of the criminal procedure law restores individuals whose cases have terminated in their favor to the legal status they had before the arrest occurred. It allows these individuals not to respond in the affirmative to inquiries about the sealed arrest or prosecution. Individuals who have confidential YO adjudications and sealed non-criminal convictions have no such protection. Thus, even though their cases are sealed or confidential, an employer can legally ask if individuals have these dispositions. And, because New York's two laws that protect individuals with past arrests or conviction records from unfair employment discrimination do not apply to these two groups, (see Exec. L. §§296(15) and (16); Article 23-A of the Correction Law, Corr. L. §§750-755), employers not only can ask about these dispositions, they can lawfully refuse to hire individuals with these histories.

An increasing number of employers are obtaining access to sealed criminal history records from sources that simply did not exist when the sealing laws were originally enacted. Records pertaining to sealed cases involving non-criminal convictions, not yet sealed at the court level, are available on the Office of Court Administration's new electronic criminal history information database. Rapidly increasing numbers of employers are also using consumer credit agencies to conduct background checks on job applicants and employees, and are being given reports containing information about non-criminal convictions even though that is in violation of the state Fair Credit Reporting Act provisions. (G.B.L. §380-j(a)(1)).

Amending C.P.L. §160.60 will remedy the problems outlined above by bringing statutory protections for confidential YO adjudications and sealed non-criminal convictions in line with §160.60, thus ensuring that the same fundamental protections are afforded to records of individuals in all three categories of cases where arrests do not end in a criminal conviction.

Memorandum in Support of Amending the Criminal Procedure Law § 160.55 To Seal Court Records

Proposed Amendment:

Pursuant to CPL § 160.55, when a person is arrested and fingerprinted for a crime, but is convicted only of a non-criminal offense (with limited exceptions which this proposal would not change), the fingerprints and associated photographs are destroyed, and associated police and prosecution records are sealed, under the same terms as such records are sealed under §160.50. Court records, however, are not sealed. With the advance in technology and the proliferation of commercial background check companies that increasingly purchase their data directly from the Office of Court Administration, people who plead guilty to non-criminal convictions with the understanding that their records will be sealed now suffer unexpected disclosures and resulting barriers to employment and housing based on these minor, non-criminal convictions. To prevent unfair discrimination based on these sealed non-criminal convictions, we propose the following amendment:

CPL §160.55 (1)(c) should be amended to read:

"All official records and papers relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be sealed and not made available to any person or public or private agency, except as provided in paragraphs (d) or (e) of this subdivision;

This paragraph shall not apply to published court decisions or opinions, or records and briefs on appeal.

CPL §160.55(1)(d) should be amended to read:

(d) the records referred to in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (ii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iii) the New York state division of parole when the accused is under parole supervision as a result of conditional release or parole release granted by the New York state board of parole and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (iv) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision. Records made available to an officer or agency under this paragraph shall be used only by the officer or agency and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency.

CPL §160.55(1)(e) shall be amended to read:

(e) the court records referred to in paragraph (c) of this subdivision shall be made available to the court's own personnel or to a prosecutor, on the court's own motion or on the motion of a party, in the event that the criminal action or proceeding is re-opened, or in the event that the accused person is subsequently charged with an additional crime or offense, or in the event that the accused person subsequently becomes a witness and disclosure of his criminal record is required by this chapter or by court order. Disclosure under this paragraph shall occur, under the specified circumstances, only if the court determines that disclosure is required by law or in the interest of justice. Records made available to the court or the prosecution under this paragraph shall also be made available to the subject of the record. Records made available to the court or

the prosecution under this paragraph shall be used only in the particular proceeding and shall not be re-disclosed, except with the consent of the accused or pursuant to a lawful court order, to any other person or public or private agency. At the conclusion of the proceeding, they shall be re-sealed.

[provision providing disclosure if accused subsequently moves for a marijuana ACD is deleted as superfluous; in this situation, disclosure would be required by law under the amended wording]

Existing CPL §160.55(1)(e) shall be re-designated (f).

CPL § 160.55, subd. 3 is replaced by the following language:

3. A person against whom a criminal action or proceeding was terminated as defined in subdivision one of this section [delete more specific language], prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

An additional section of the new law, not part of the Consolidated Laws, should provide,

The office of court administration shall develop and promulgate regulations which shall require the implementation of the amendments made by chapter ..... of the Laws of 2006, requiring the sealing of court records under CPL § 160.55, with respect to criminal actions or proceedings terminated after the effective date of that section, but prior to the effective date of said amendments.

**Need for Amendment:**

Availability of non-criminal conviction information on the court level has become a serious problem because court records are now computerized, and the court system sells easy, computerized access to licensed investigative agencies, among others. Indeed, access to court records is easier than access to NYSIID (rap sheet) information. The result is that potential employers, creditors, and others who investigate applicants now often use court records, instead of rap sheet inquiries, to learn about criminal histories. These electronic court records contain not only the charge that led to conviction but also additional charges that appear in arrest documents or accusatory instruments that were dropped by the prosecution or dismissed by the court, in many cases because they were unproven or inaccurate.

The Legislature's purpose in enacting CPL § 160.55, to shield persons who were arrested but not convicted of crimes from employment discrimination and damage to their reputations arising from the unproven charges, has been undermined and frustrated. These protections must be restored, and reinvigorated, by sealing the computerized court records and preventing employers from gaining access to information that they would not legally be allowed to gain from the Division of Criminal Justice Services or any other agency.

The proposed amendment restores the Legislature's original intent, while also respecting the purpose behind the Legislature's 1992 amendment (chapter 249, laws of 1992) clarifying that court records were not to be sealed under § 160.55. At the time § 160.55 was originally enacted, the goal of eliminating employment-related discrimination against this class of persons could be accomplished by sealing fingerprint-related records. Court records were not normally used to investigate job applicants because of the practical difficulty of traveling to every courthouse to look them up. The Legislature's 1992 amendment was not meant to facilitate the discrimination that § 160.55 prohibits, but to assure that persons who pled down to infractions or violations

could not hide their past petty-offense convictions in the event of future violations of the law. (See, e.g., memo of Dept. of Motor Vehicles, expressing concern that sealing of court records could impair the Department's efforts to maintain accurate driving records and impose appropriate license sanctions.) The amendment would allow intended uses of these records while preventing unintended uses.

The amendment allows access to court records sealed under § 160.55 when a sealed case is re-opened (e.g., when a defendant has failed to perform restitution or community service), when the defendant is re-arrested, or when the former defendant testifies as a witness. This serves the legitimate desire of the prosecution to consider the previous charges in formulating their recommended disposition of the new case, and also serves the legitimate need of trial attorneys to be able to cross-examine witnesses about their prior convictions and bad acts. The provisions reinforce the distinction between CPL § 160.50, under which cases terminated in the defendant's favor are to be deemed a nullity, and CPL § 160.55, under which a conviction exists but should not be the basis for discrimination in employment or other non-criminal contexts.

The amendment also limits the use of unsealed records and prohibits re-disclosure by persons and agencies who have obtained lawful access. This prohibition is implicit in existing law, but making it explicit will provide added protection. Cf. § 995-d of the Executive Law, making DNA records confidential and prohibiting unauthorized redisclosure of such records outside the limited contexts in which disclosure is lawful.

Finally, the proposed legislation requires the court system to implement record-sealing for completed cases. This is readily achievable, particularly for computerized records and for paper records which are specifically requested. These Court records already bear an indication that they are sealed under CPL § 160.55. There is no reason to require a person whose law enforcement records are already sealed to come into court and move for sealing of the court records. Imposing such a requirement would nullify the value of the amendment for many tens of thousands of persons who would otherwise benefit from it.

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**Memorandum in Support of A.06393 to Streamline DOCS' Website Listing of  
Current and Former Inmates**

The Legal Action Center and its National H.I.R.E. Network support A.06393, legislation that would limit the length of time that conviction history can be posted on the Department of Correctional Services (DOCS) website to 10 years after a person is released from custody. (This proposal does not affect sex offenders). Currently, DOCS maintains all information on people currently or formerly incarcerated on its website indefinitely, even if the person is deceased or has been released from custody for decades. We urge the New York State Senate to introduce companion legislation and the Senate and the Assembly to pass it.

The Department of Correctional Services has a legitimate need to maintain a website of individuals incarcerated in state prisons. Victims of crimes may want to ascertain if people who committed crimes against them are still incarcerated, and family and friends of people in prison may need a means of determining where their loved ones are being held. Once a person is released from prison, however, those reasons disappear. Those individuals who need criminal record information can obtain it from New York State's Division of Criminal Justice Services, which provides comprehensive criminal conviction information for individuals and agencies who are authorized to conduct such requests, and from the Office of Court Administration, which also provides statewide criminal conviction information.

Instead, the DOCS information database, available on the Internet as a free service, *is being misused as an inappropriate criminal background check resource for employers and others*. The result of this practice is that large numbers of qualified jobseekers are being denied access to employment and housing based on information that is incomplete and potentially misleading. For example, it contains information about when a person is eligible for release from parole, but, because the database is maintained by DOCS and not the Division of Parole, omits information that the person has been discharged from parole, leaving the impression that they are still under state supervision. Moreover, the DOCS database can be accessed by name alone, making it likely that a person with a common name but no criminal history might be confused with another person, currently or formerly incarcerated, with the same name.

Old, incomplete, and misleading information about a person's incarceration is simply irrelevant once that individual is released from prison. Given the other options in New York for individuals to obtain complete criminal history information, the time that a conviction history can be posted on the DOCS website should be limited, at most, to 10 years after a person is released from custody. This is consistent, also, with the ten year period used by the courts to determine second and persistent felony offender status.

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## New York Voting Rights Notification and Registration Act

**Summary:** The Voting Rights Notification and Registration Act strives to increase participation in the democratic system by eligible voters with felony convictions by providing notice regarding voting rights, assistance with voter registration and voting by absentee ballot, and data sharing among the department of corrections, the division of parole, and the state board of elections.

### SECTION 1. SHORT TITLE

This Act shall be called the "Voting Rights Notification and Registration Act."

### SECTION 2. PURPOSE AND JUSTIFICATION

**(A) PURPOSE** - The purposes of this Act are to strengthen democratic institutions by increasing participation in the voting process, to help people with felony convictions become productive members of society, and to streamline procedures for voter registration for people who are on probation or who have completed their incarceration and parole.

**(B) JUSTIFICATION** - The legislature finds that:

(To be added)

**SECTION 3.** The opening paragraph and subdivisions 2, 4, and 5 of section 5-211 of the election law are amended to read as follows:

§ 5-211. Agency assisted registration. Each agency designated as a participating agency under the provisions of this section shall implement and administer a program of distribution of voter registration forms pursuant to the provisions of this section. The following offices which provide public assistance and/or provide state funded programs primarily engaged in providing services to persons with disabilities are hereby designated as voter registration agencies: designated as the state agencies which provide public assistance are the department of social services and the department of health. Also designated as public assistance agencies are all agencies of local government that provide such assistance. Designated as state agencies that

provide programs primarily engaged in providing services to people with disabilities are the department of labor, office for the aging, division of veterans' affairs, office of mental health, office of vocational and educational services for individuals with disabilities, commission on quality of care for the mentally disabled, office of mental retardation and developmental disabilities, commission for the blind and visually handicapped, office of alcoholism and substance abuse services, the office of the advocate for the disabled and all offices which administer programs established or funded by such agencies. Additional state agencies designated as voter registration offices are the department of state, and] the division of workers' compensation, the division of probation and correctional alternatives when providing direct probation supervision services under section 247 of the executive law, as well as county probation departments. Such agencies shall be required to offer voter registration forms to persons upon initial application for services, renewal or recertification for services and], change of address relating to such services, and orientation or initial intake for the division of probation and correctional alternatives and county probation departments. Such agencies shall also be responsible for providing assistance to [applicants] such persons in completing voter registration forms, receiving and transmitting the completed [application] registration form from all [applicants] persons who wish to have such form transmitted to the appropriate board of elections. The state board of elections shall, together with representatives of the department of defense, develop and implement procedures for including recruitment offices of the armed forces of the United States as voter registration offices when such offices are so designated by federal law. The state board shall also make request of the United States Immigration and Naturalization Service to include applications for registration by mail with any materials which are given to new citizens. All institutions of the state university of New York and the city university of New York, shall, at the beginning of the school year, and again in January of a year in which the president of the United States is to be elected, provide an application for registration to each student in each such institution. The state board of elections may, by regulation, grant a waiver from any or all of the requirements of this section to any office or program of an agency, if it determines that it is not feasible for such office or program to administer such requirement.

1. The state board of elections shall adopt such rules and regulations as may be necessary to carry out the requirements of this section and shall prepare and distribute to participating agencies written instructions as to the implementation of the program and shall be responsible for establishing training programs for employees of participating agencies involved in such program. The state board of elections shall provide a toll free telephone to answer registration questions.

2. Strict neutrality with respect to a person's party enrollment shall be maintained and all persons seeking voter registration forms and information shall be advised that government services are not conditioned on being registered to vote. No statement shall be made nor any action taken to discourage the [applicant] person from registering to vote.

3. If a participating agency provides services to a person with a disability at the person's place of residence, the agency shall offer the opportunity to complete a voter registration form at such place of residence.

4. Each participating agency shall provide to each [applicant] person who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the agency with regard to the completion of its own form unless the [applicant] person refuses such assistance.

5. Employees of a voter registration agency who provide voter registration assistance shall not:

- (a) seek to influence [an applicant's] a person's political preference or party designation;
- (b) display any political preference or party allegiance;
- (c) make any statement [to an applicant] a person or take any action the purpose or effect of which is to discourage [the applicant] a person from registering to vote; or
- (d) make any statement [to an applicant] a person or take any action the purpose or effect of which is to lead [the applicant] a person to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

6. The state board of elections shall coordinate and monitor the distribution of voter registration forms by those state agencies, departments, divisions and offices selected to participate in the program to maximize the efficient and non partisan distribution of voter registration information and forms. The board shall also adopt such rules and regulations as may be necessary to require county boards and participating agencies to provide the state board with such information and data as the board deems necessary to assess compliance with this section and to compile such statistics as may be required by the federal elections commission.

7. Each participating agency, department, division and office that makes available voter registration forms shall prominently display promotional materials designed and approved by the state board of elections, informing the public of the existence of voter registration services.

8. Each participating agency, department, division or office that makes available voter registration forms pursuant to this section shall offer with each application for the services or assistance of such agency, department, division or office, or, in the case of the county probation departments and the division of probation and correctional alternatives, upon orientation or initial intake, and with each recertification, renewal or change of address form relating to such service or assistance, a registration form together with instructions relating to eligibility to register and for completing the form except that forms used by the department of social services for the initial application for services, renewal or recertification for services and change of address relating to such services shall physically incorporate a voter registration application in a fashion that permits the voter registration portion of the agency form to be detached therefrom. Such voter registration application shall be designed so as to ensure the confidentiality of the source of the application. Included on each participating agency's application for services or assistance or on a separate form shall be:

(a) the question, "If you are not registered to vote where you live now, would you like to apply to register here today?"

(b) the statement, "applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

(c) boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote.

(d) the statement in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

(e) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."

(f) the statement, "If you believe that someone has interfered with your right to register or decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the state board of elections (address and toll free telephone number)."

(g) a toll free number at the state board of elections that can be called for answers to registration questions.

9. Disclosure of voter registration information, including a declination to register, by a participating agency, its agents or employees, for other than voter registration purposes, shall be deemed an unwarranted invasion of personal privacy pursuant to the provisions of subdivision two of section eighty-nine of the public officers law and shall constitute a violation of this chapter.

10. The form containing the declination to register to vote shall be retained by the recipient agency for the same period of time as such agency retains the accompanying application for services or for such shorter period of time as may be approved by the state board of elections.

11. The participating agency shall transmit the completed applications for registration and change of address forms to the appropriate board of elections not later than ten days after receipt except that all such completed applications and forms received by the agency between the thirtieth and twenty-fifth day before an election shall be transmitted in such manner and at such time as to assure their receipt by such board of elections not later than the twentieth day before such election.

12. Completed [application] registration forms, when received by a participating agency not later than the twenty-fifth day before the next ensuing primary, general or special election and transmitted by such agency to the appropriate board of elections so that they are received by such board not later than the twentieth day before such election shall entitle the [applicant] person to vote in such election provided the board determines that the [applicant] person is otherwise qualified.

13. The state board of elections shall provide [application] registration forms for use pursuant to this section except that any agency which uses a form other than such registration form shall be responsible for providing such form. Forms which vary in design and or content from the form approved by the state board of elections may only be used with the approval of such board.

14. [Applications] Registration forms shall be processed by the board of elections in the manner prescribed by section 5-210 of this title or, if the [applicant] person is already registered to vote from another address in the county or city, in the manner prescribed by section 5-208 of this title. The board shall send the appropriate notice of approval or rejection as required by either subdivision nine of such section 5-210 or subdivision five of such section 5-208.

15. The head of each participating agency shall take all actions which are necessary and proper for the implementation of this section. Each agency head shall designate one person within the agency as the agency voter registration coordinator who will, under the direction of the state board of elections, be responsible for the voter registration program in such agency.

16. The state board shall develop and distribute public information and promotional materials relating to the purposes and implementation of this program.

17. Each agency designated as a participating agency under this section shall conduct a study and prepare a report to determine the feasibility, practicality and cost-effectiveness of designing their agency intake forms to serve also as voter registration forms that comply with state and federal law. Such study and report shall be completed by December 1, 1996. Copies of such reports shall be provided to the governor, the temporary president of the senate, the speaker of the assembly and the state board of elections. After submission of the report, participating agencies that determine that it is feasible, practical and cost-effective to have such forms also serve as voter registration forms shall do so upon the approval of the state board of elections. For each agency that determines it is feasible, practical and cost effective to use agency intake forms that serve also as voter registration forms, the state board of elections shall approve or disapprove such use within six months of the submission of the report by the agency.

**SECTION 4.** Section 220.50 of the criminal procedure law is amended by adding a new subsection 8 to read as follows:

8. Prior to accepting a defendant's plea of guilty to a count or counts of an indictment or a superior court information charging a felony offense which will impose a sentence of incarceration, the court must advise the defendant on the record that conviction will result in loss of the right to vote until the individual has served his maximum sentence of incarceration and parole.

**SECTION 5.** The criminal procedure law is amended by adding a new section 380.51 to read as follows:

§ 380.51. Statements regarding voting rights. Before imposing a sentence of incarceration for a felony conviction, the court must advise the defendant on the record that conviction will result in the loss of the right to vote until the individual has served his maximum sentence of incarceration and parole.

**SECTION 6.** The correction law is amended by adding a new section 510 to read as follows:

§510. Voting by qualified inmates. 1. At the time of the initial orientation or intake of an inmate at a local correctional facility, the chief administrative officer of such local correctional

facility, or his or her designee, shall inform the inmate in writing of his or her right to apply to register to vote. In addition, such notice shall be printed in block letters and posted in a prominent place where inmates congregate. Such posted notice shall include qualifications required to exercise the right to vote, and the availability at the correctional facility of assistance to apply to register to vote, to request an absentee ballot application, and to vote by absentee ballot. Such chief administrative officer, or his or her designee, shall assist inmates in applying to register to vote in the same manner and to the same extent as the agencies listed in section 5-211 of the election law.

2. On an annual basis, 30 days before each primary and general election, the chief administrative officer, or his or her designee, shall provide each inmate with written information about qualifications and procedures for voting by absentee ballot and shall make absentee ballot applications available to all inmates. [took out assistance re: completing ballots]

(a) In the event that an inmate of a local correctional facility is temporarily absent from such facility, including but not limited to inmates receiving medical care at a local healthcare facility, the information required under this section shall be mailed to such inmate.

**SECTION 7.** Section 8-406 of the election law is amended to read as follows:

§ 8-406. Absentee ballots, delivery of. If the board shall find that the applicant is a qualified voter of the election district containing his residence as stated in his statement and that his statement is sufficient, it shall, as soon as practicable after it shall have determined his right thereto, mail to him at an address designated by him, or deliver to him, or to any person designated for such purpose in writing by him, at the office of the board, such an absentee voter's ballot or set of ballots and an envelope therefor. If the ballot or ballots are to be sent outside of the United States to a country other than Canada or Mexico, such ballot or ballots shall be sent by air mail. However, if an applicant who is eligible for an absentee ballot is a resident of a facility operated or licensed by, or under the jurisdiction of, the department of mental hygiene, or a resident of a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law, or a resident of a hospital or other facility operated by the Veteran's Administration of the United States, or an inmate of a local correctional facility as defined by subdivision sixteen of section two of the correction law, such absentee ballot need not be so mailed or delivered to any such applicant but, may be delivered to the voter in the manner prescribed by section 8-407 of this chapter if such facility is located in the county or city in which such voter is eligible to vote.

**SECTION 8.** The section heading and subdivision 1 and 3 of section 8-407 of the election law are amended as follows:

§ 8-407. Voting by residents of nursing homes, residential health care facilities, facilities operated or licensed, or under the jurisdiction of, the department of mental hygiene or hospitals or facilities operated by the Veteran's Administration of the United States, or by inmates of local correctional facilities.

1. The board of elections of a county or city in which there is located at least one facility operated or licensed, or under the jurisdiction of, the department of mental hygiene, or a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law or an adult care facility subject to the provisions of title two of article seven of the social services law, or a hospital or other facility operated by the Veteran's Administration of the United States, or a local correctional facility as defined by subdivision sixteen of section two of the correction law, shall provide that residents or inmates of each such facility for which such board has received [twenty-five] fifteen or more applications for absentee ballots from voters who are eligible to vote by absentee ballot in such city or county at such election, may vote by absentee ballot only in the manner provided for in this section. Such board may, in its discretion, provide that the procedure described in this subdivision shall be applicable to all such facilities in such county or city

without regard to the number of absentee ballot applications received from the residents of any such facility.

3. Not earlier than thirteen days before or later than the day before such an election such a board of inspectors shall, between the hours of nine o'clock in the morning and five o'clock in the evening, attend at each such facility for the residents or inmates of which the board of elections has custody of [twenty-five] fifteen or more absentee ballots or, if the board of elections has so provided, each such facility for which the board has custody of one or more such absentee ballots, pursuant to the provisions of this chapter.

**SECTION 9.** The correction law is amended by adding a new section 75 to read as follows:

§75. Voting rights upon completion of sentence. 1. Upon the discharge from a correctional facility of any person who has reached his or her maximum sentence of imprisonment for the conviction of a felony, the department, and, subject to their agreement, federal correctional institutions in New York, shall notify such person of his or her right to vote, provide such person with a form of application for voter registration together with written information distributed by the board of elections on the importance and the mechanics of voting and shall assist such person in registering to vote in the same manner and to the same extent as the agencies listed in section 5-211 of the election law.

2. The department of corrections and, subject to their agreement, federal correctional institutions in New York, shall, on or before the 15th day of each month, transmit to the board of elections a list containing the following information about persons age 18 or older who, during the preceding period, have become eligible to vote because of their discharge from incarceration: (a) name, (b) date of birth, (c) last known address with county of residence, and (d) driver's license number (if known) or last four digits of Social Security number (if known).

**SECTION 10.** The executive law is amended by adding a new section 259-jj to read as follows:

§259-jj. Voting rights upon discharge. 1. Upon discharge of a person from presumptive release, parole, or conditional release, or upon the expiration of a person's maximum sentence of imprisonment while under the supervision of the division of parole, the division of parole shall notify such person of his or her right to vote, provide such person with a form of application for voter registration together with written information distributed by the board of elections on the importance and the mechanics of voting and shall assist such person in registering to vote in the same manner and to the same extent as the agencies listed in section 5-211.

2. The division of parole shall, on or before the 15th day of each month, transmit to the board of elections a list containing the following information about persons age 18 or older who, during the preceding period, have become eligible to vote because of their discharge from presumptive release, parole or conditional release: (a) name, (b) date of birth, (c) last known address with county of residence, and (d) driver's license number (if known) or last four digits of Social Security number (if known).

**SECTION 11.** Section 5-614 of the election law is amended by adding new subsections 6.1 and 6.2 and 12(b)(4) to read as follows:

6.1. Once every month, and within five days of receipt, the state board of elections shall obtain and transmit to local boards of elections the information provided by the department of correctional services pursuant to section 75(2) of the correction law, and by the division of parole pursuant to section 259-jj(2) of the executive law.

6.2. Each local board of elections shall use such list, within ten days after receipt, to ensure that there are no remaining barriers to registration, including the use of electronic codes or other forms of eligibility demarcation, resulting from past convictions of the people so listed, and to ensure that their names are added to the official statewide list of registered voters in the same manner as all other names are added to that list.

6.3. Any voter registration application that was rejected prior to the local board's receipt and processing of the information described in sections 6.1 and 6.2, and that, upon receipt and processing of that same information, is found to be eligible, shall be approved and the voter shall be registered and so notified.

SECTION 12. The election law is amended by adding a new section 3-102.1 to read as follows:

§ 3-102.1 State board of elections; duties under the Voting Rights Notification and Registration Act.

1. The state board of elections shall develop and implement a program to educate attorneys; judges; election officials; corrections officials, including parole and probation officers; and members of the public about the requirements of the Voting Rights Notification and Registration Act, ensuring that:

a. Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their voting rights, in accordance with sections 220.50(8) and 380.51 of the criminal procedure law.

b. The department of corrections and, subject to their agreement, federal correctional institutions in New York, are prepared to assist people with registration to vote in anticipation of their discharge from incarceration, including by forwarding their completed voter registration forms to the local election boards.

c. The language on voter registration forms makes clear that people are disqualified from voting only while they are serving sentences of incarceration or parole on felony convictions and that they regain the right to vote upon completion of their maximum sentence.

d. The department of corrections and, subject to their agreement, federal correctional institutions in New York, and the division of parole, are prepared to transmit to the state board of elections the information specified in section 75(2) of the corrections law and section 259jj(2) of the executive law.

e. All local boards of elections are prepared to restore names to the computerized statewide voter registration list in accordance with section 5-614 of the election law.

f. Probation and parole officers are informed of the changes in the law and are prepared to notify probationers and parolees of their voting rights.

g. Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes is made available through a single publication to government officials and the public.

2. The state board of elections shall amend or promulgate pertinent rules and regulations as necessary to implement this act.

SECTION 13. EFFECTIVE DATE: This Act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

## Endnotes

<sup>1</sup> The Coalition includes the Center for Alternative Sentencing and Employment Services (CASES), the Center for Community Alternatives (CCA), the Center for Employment Opportunities (CEO), Family Justice, the Fortune Society, Greenhope Services for Women, the Legal Action Center, the Osborne Association, and the Women's Prison Association (WPA). Each Coalition member has a long history of involvement in efforts to improve the New York criminal justice system.

<sup>2</sup> Letter dated June 6, 2006 from Glenn S. Goord, Commissioner of the State of New York Department of Correctional Services to Tom Coburn, Chairman, U.S. Senate Committee on the Judiciary, *available* at: <http://www.docs.state.ny.us/PressRel/06SafetyandAbuseReport/ChairmanCoburnLetter.pdf>.

<sup>3</sup> Noted criminologist Todd Clear defines "community justice" as "different from traditional criminal justice in three important ways: It is based on the neighborhood rather than on legal jurisdiction; it is problem solving rather than adversarial; and it is restorative rather than retributive." Clear, Todd, and George Cole (2000) *American Corrections*. Belmont, CA: Wadsworth Publishing Co., p.487.

<sup>4</sup> The second felony conviction must be within ten years of the first conviction.

<sup>5</sup> Correctional Association Fact Sheet at <http://www.correctionalassociation.org/general/pubs.html>.

<sup>6</sup> According to New York State Department of Correctional Services Admissions and Release data, 26,146 people were released from DOCS in 2005. Nationally, in 2002 more than 630,000 people left federal and state prisons (1,700 per day). Travis, Jeremy, 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. The Urban Institute Press.

<sup>7</sup> SOURCE: New York State Division of Parole

<sup>8</sup> See <http://www.disastercenter.com/crime/txcrime.htm>.

<sup>9</sup> According to the Bureau of Justice Statistics (BJS), New York's incarceration rate dropped from 67,065 in 2002, to 65,198 in 2003, to 63,751 in 2004, the latest year these statistics have been reported. California's incarceration rate rose from 161,361 in 2002 to 164,485 in 2003, and 166,556 in 2004. Texas' incarceration rate rose from 162,003 in 2002 to 166,911 in 2003, and 168,105 in 2004. More information can be found at <http://www.ojp.usdoj.gov/bjs/data/corpop02.csv>.

<sup>10</sup> The New York recidivism rate is about 40%. New York State Department of Correctional Services, "1996 Releases: Three Year Post Release Follow-Up" (June 2000). The recidivism rate dropped about 16% during the 1990s. E. J. McMahon, New York Crime Hits a Tipping Point, City Journal (Winter 2005), (<http://www.city-journal.org/printable.pbp?id=1742>). Significantly more recidivists are re-incarcerated for technical violations of parole than for committing new crimes.

<sup>11</sup> According to a letter dated June 6, 2006 from Glenn S. Goord, Commissioner of the State of New York Department of Correctional Services to Tom Coburn, Chairman, U.S. Senate Committee on the Judiciary, there were 63,098 individuals in DOCS facilities as of June 5, 2006. This letter is *available* at: <http://www.docs.state.ny.us/PressRel/06SafetyandAbuseReport/ChairmanCoburnLetter.pdf>.

<sup>12</sup> According to New York State Department of Correctional Services Admissions and Release data, 26,146 people were released from DOCS in 2005. Nationally, in 2002 more than 630,000 people left federal and state prisons (1700 per day). Travis, Jeremy, 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. The Urban Institute Press.

<sup>13</sup> According to the U.S. Department of Justice Bureau of Justice Statistics, in 2004, 126,138 individuals in New York were on probation. More information can be found on the BJS website at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus04.pdf>.

<sup>14</sup> In a statewide poll commissioned by the Legal Action Center in 2002, 75% of New Yorkers believed that treatment was the best approach to preventing future drug-related crimes by non-violent, addicted individuals; only 18% thought that prison was. More information on the poll results can be found on the Legal Action Center website at: <http://www.lac.org/news/alerts.html>.

<sup>15</sup> See Travis, Jeremy, *But They All Come Back: Facing the Challenges of Prisoner Reentry*; Jacobson, Michael, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*, New York University Press, 2005, citing *inter alia*, Clear, Todd R (1994) *Harm in American Penology: Offenders, Victims and Their Communities*. Albany: State University of New York Press; Clear, Todd, *The Impact of Reintegrating Offenders into the Community*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; The Vera Institute of Justice (January 1996) *Unintended Consequences of Incarceration: Papers from a Conference Organized by Vera*. Available at [www.vera.org/publications](http://www.vera.org/publications).

<sup>16</sup> The role of treatment will be discussed in greater detail in the *Sentencing Reform* section of the Blueprint.

<sup>17</sup> Jukka Savolainen, Ph.D, CJA Research Brief No. 2, *The Impact of Felony ATI Programs on Recidivism*, (April 2003), available at [www.nycja.org](http://www.nycja.org).

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<sup>18</sup> This study, *BALANCING PUNISHMENT AND TREATMENT: Alternatives to Incarceration in New York City*, can be found on the Vera Institute's website at [http://www.vera.org/publication\\_pdf/164\\_251.pdf](http://www.vera.org/publication_pdf/164_251.pdf)

<sup>19</sup> Noted criminologist Todd Clear defines "community justice" as "different from traditional criminal justice in three important ways: It is based on the neighborhood rather than on legal jurisdiction; it is problem solving rather than adversarial; and it is restorative rather than retributive." Clear, Todd, and George Cole (2000) *American Corrections*. Belmont, CA: Wadsworth Publishing Co., p.487.

<sup>20</sup> The American Bar Commission on Effective Criminal Sanctions has made this and other recommendations, which were approved by the Commission on Effective Criminal Sanctions on May 5, 20026. They have been submitted to the House of Delegates for consideration in August 2007 and do not constitute the official policy of the Association. The Executive summary of this report can be found at [http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Introductorymaterial61506\(2\).pdf](http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Introductorymaterial61506(2).pdf)

<sup>21</sup> *Tools of the Trade: A Guide to Incorporating Science into Practice*, Faye Taxman, Eric Shepardson, James Byrne. This report can be found at: <http://www.nicic.org/pubs/2004/020095.pdf>.

<sup>22</sup> "The Economic Costs of Alcohol and Drug Abuse in the United States, 1992", Rockville, MD: May 1998. Updated figures from "Economic Benefits of Drug Treatment: A critical Review of the Evidence for Policy Makers", February 2005 by Steven Belenko, Ph.D., Principal Investigator, with Nicholas Patapis, Psy.D., Research Scientist, and Michael T. French, Ph.D., Treatment Research Institute at the University of Pennsylvania.

<sup>23</sup> "The Economic Costs of Drug Abuse in the United States; 1992 - 1998", Office of the National Drug Control Policy, September 2001.

<sup>24</sup> "Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to-Prison (DTAP) Program", a federally-funded five-year evaluation of the DTAP program.

<sup>25</sup> Some savings will only be generated if the operational costs of prisons are reduced. This would occur if entire prisons or certain sections of these facilities are closed down.

<sup>26</sup> Prendergast ML, Podus D, Chang E, Urada D. The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug Alcohol Depend.* 2002 Jun 1;67(1):53-72.

<sup>27</sup> The American Bar Commission on Effective Criminal Sanctions has made this and other recommendations, which were approved by the Commission on Effective Criminal Sanctions on May 5, 20026. They have been submitted to the House of Delegates for consideration in August 2007 and do not constitute the official policy of the Association. The Executive summary of this report can be found at [http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Introductorymaterial61506\(2\).pdf](http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Introductorymaterial61506(2).pdf)

<sup>28</sup> Recommendation of the NYS Commission on Drugs and the Courts.

<sup>29</sup> The NIDA *Principles of Drug Addiction Treatment: A Research Based Guide* can be found at: <http://www.nida.nih.gov/PODAT/PODAT1.html>.

<sup>30</sup> According to New York State Department of Correctional Services Admissions and Release data, 26,146 people were released from DOCS in 2005.

<sup>31</sup> Report and recommendations of the New York State Bar Association's Special Committee on Collateral Consequences of Criminal Proceedings, "Re-entry and Reintegration: The Road to Public Safety" citing Patrick A Langan and David J. Levin, *Recidivism of Prisoners Released in 1994* (U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, Wash., D.C. 2002.

<sup>32</sup> SOURCE: New York State Division of Parole

<sup>33</sup> For example, 50% of the people in Brooklyn who are on parole come from 11% of the blocks in Brooklyn. This analysis was done by Eric Cadora and Charles Schwartz for the Community Justice Project at CASES, 1999.

<sup>34</sup> New York State Division of Parole Parolee Facts, available on the NYS Division of Parole Website at: <http://parole.state.ny.us/PROGRAMstatistics.html>.

<sup>35</sup> According to the Correctional Association's *Trends in New York State Prison Commitments*, in 2005, 56.8% of individuals in prison were incarcerated for non-violent crimes, available at: [http://www.correctionalassociation.org/PPP/publications/trends\\_in\\_commitments\\_2006.pdf](http://www.correctionalassociation.org/PPP/publications/trends_in_commitments_2006.pdf)

<sup>36</sup> New York State Division of Parole Parolee Facts, available on the NYS Division of Parole Website at: <http://parole.state.ny.us/PROGRAMstatistics.html>

<sup>37</sup> Report from the New York State Department of Correctional Services, *Identified Substance Abusers - December 2004*, available at <http://www.doc.state.ny.us/Research/annotate.html>.

<sup>38</sup> New York State Division of Parole Parolee Facts, available on the NYS Division of Parole Website at: <http://parole.state.ny.us/PROGRAMstatistics.html>

<sup>39</sup> This report, *Pre- and Post-Reentry Case Management: Saving Money and Building Community Through Public Safety and Recidivism Reduction*, by the Monroe County, Judicial Process Commission's Public Policy Group, is still in draft.

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<sup>40</sup> The Transition from Prison to Community Initiative (TPCI) offers such an integrated plan. More information about the model can be found at: <http://www.abtassociates.com/Page.cfm?PageId=16288>.

<sup>41</sup> This section and the recommendations regarding vocational services that follow have been taken from the Independent Committee on Reentry and Employment's "Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People".

<sup>42</sup> This section and the recommendations for increasing educational opportunities in prison were drafted by Dan Karpowitz, Bard Prison Initiative, Max Kenner, Bard Prison Initiative, Debbie Mukamal, Director, Prisoner Reentry Initiative at John Jay College of Criminal Justice (affiliation for identification purposes only), Glenn Martin, National HIRE Network of the Legal Action Center, and Vivian Nixon, College and Community Fellowship.

<sup>43</sup> The Department's \$2.2 billion in operating expenses is supported primarily by state tax revenue. See <http://publications.budget.state.ny.us/fy0506app1/docs.pdf>. From 1988 to 1998, the Department of Correctional Services has received a \$761 million budgetary increase while general fund support for New York's city and state university systems has declined by \$615 million. See <http://www.justicepolicy.org/article.php?id=20>.

<sup>44</sup> "Learning to Reduce Recidivism: A 50-State Analysis of Postsecondary Correctional Educational Policy." The Institute for Higher Education Policy, 2005. [www.ihep.org/pubs/PDF/Recidivism.pdf](http://www.ihep.org/pubs/PDF/Recidivism.pdf). See also *Confronting Confinement: A Report of The Commission on Safety and Abuse in America's Prisons*, Nicholas de B. Katzenback and John J. Gibbons, Co-Chairs, Copyright 2006, The Vera Institute of Justice.

<sup>45</sup> Existing solely on private donations, there remain a handful of college programs including The Bard Prison Initiative, Consortium of the Niagara Frontier, Marymount College, Hudson Link, and the New York Theological Seminary.

<sup>46</sup> *The Health Status of Soon-to-be-Released Inmates: A Report to Congress*. Chicago, IL: National Commission on Correctional Health Care, 2002.

<sup>47</sup> See Martin, S. S., Butzin, C. A., Saum, C. A., & Inciardi, J. A. (1999). Three-year outcomes of therapeutic community treatment for drug-involved offenders in Delaware: From prison to work release to aftercare. *The Prison Journal*, Vol. 79, pp. 294-320; Wexler, H. K., De Leon, G., Thomas, G., Kressel, D., & Peters, J. (1999). The amity prison to evaluation reincarceration outcomes. *Criminal Justice and Behavior*, Vol. 26, pp. 147-167.

<sup>48</sup> According to the New York State Public Employers Federation (PEF), in 2002, 11,300 individuals were on waiting lists for substance abuse treatment (ASAT) programs. See PEF flyer at [http://www.pef.org/fact\\_sheets/old2002/docs.pdf#search=%22DOCS%20ASAT%20programs%22](http://www.pef.org/fact_sheets/old2002/docs.pdf#search=%22DOCS%20ASAT%20programs%22)

<sup>49</sup> For example, to be eligible for a CASAT program, a person must be eligible for temporary release, which precludes individuals incarcerated for violent crimes.

<sup>50</sup> Information about the model can be found at: <http://www.abtassociates.com/Page.cfm?PageId=16288>.

<sup>51</sup> One approach might be to follow North Carolina in the creation of a public corporation to sponsor and coordinate private philanthropy in support of college-in-prison programs.

<sup>52</sup> Such holds and other administrative tools still exist under current NYSDOC Regulations and Directives.

<sup>53</sup> Maryland, one such state, should serve as an example for New York in this regard.

<sup>54</sup> Travis, Jeremy, 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. The Urban Institute Press.

<sup>55</sup> Recommendation of the Independent Committee on Reentry and Employment's in "Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People."

<sup>56</sup> Donald Braman, *Doing Time on the Outside* (Ann Arbor: University of Michigan Press, 2004). P. 221.

<sup>57</sup> Programs such as Osborne's Family Works and the Children Center at Bedford Hills should be replicated.

<sup>58</sup> The authors of the study are Nicholas Freudenberg, Distinguished Professor of Urban Public Health at Hunter College, City University of New York; Dr. Joshua Lee, at the Program in Health Service Research and Clinical Epidemiology, Weill Cornell Medical College; and Martha Crum, a doctoral student in sociology at the CUNY Graduate Center. The study was funded by the Robert Wood Johnson Foundation. A paper describing these findings has been submitted for publication.

<sup>59</sup> Cho, Richard (2004), "Putting the Pieces Back Together" Corporation for Supportive Housing

<sup>60</sup> Ibid

<sup>61</sup> Métraux and Culhane; David Michaels et al., "Homelessness and indicators of mental illness among inmates in New York City's correctional system." *Hospital and Community Psychiatry* 43 (2002); 150-155.

<sup>62</sup> Coalition for the Homeless, [www.coalitionforthehomeless.org/advocacy/basic\\_facts.html#basic\\_facts](http://www.coalitionforthehomeless.org/advocacy/basic_facts.html#basic_facts).

<sup>63</sup> Correctional Association Fact sheet, March 2006.

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<sup>64</sup> The Legal Action Center has developed a Housing Advocacy Toolkit that makes specific recommendations as to model housing authority policies. This tool kit can be found at [www.lac.org](http://www.lac.org).

<sup>65</sup> SOURCE: New York State Division of Parole

<sup>66</sup> Jacobson, Michael, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*, New York University Press, 2005, p.155.

<sup>67</sup> See Travis, Jeremy, *But They All Come Back: Facing the Challenges of Prisoner Reentry*; Jacobson, Michael, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*, New York University Press, 2005

<sup>68</sup> One parolee was ordered to get rid of his child's two little dogs. Programs who work with parolees can provider a number of examples of such exercise of parole officer authority.

<sup>69</sup> Recommendation of the Independent Committee on Reentry and Employment's in "Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People."

<sup>70</sup> Recommendation of the Independent Committee on Reentry and Employment's in "Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People."

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup>Uggen, Christopher; Manza, Jeff, *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press. More information about this book can be found at:

<http://www.oup.com/us/catalog/general/subject/Sociology/Political/?pr=10&pf=0&ss=title.asc&sf=recommended&sd=asc&view=usa&ci=0195149327> .

<sup>74</sup>Uggen, Christopher; Manza Jeff, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36, Colum. Human Rights L. Rev. 193 (2004).

<sup>75</sup> In Florida, the Governor issued Executive Order No. 05-28, requiring that state agencies assume a leadership role with regard to the issues of prisoner reentry.

<sup>76</sup> More information on the wage subsidy program can be found in the Independent Committee on Reentry and Employment's report, "Report and Recommendations to New York State on Enhancing Employment Opportunities for Formerly Incarcerated People."

<sup>77</sup> Ibid.

<sup>78</sup> Noted criminologist Todd Clear defines "community justice" as "different from traditional criminal justice in three important ways: It is based on the neighborhood rather than on legal jurisdiction; it is problem solving rather than adversarial; and it is restorative rather than retributive." Clear, Todd, and George Cole (2000) *American Corrections*. Belmont, CA: Wadsworth Publishing Co., p.487.