

February 24, 2015

## **POSITION PAPER ON THE 2015–2016 CRIMINAL JUSTICE BUDGET**

New York State is nationally known for its highly effective network of alternative to incarceration (ATI) and reentry programs. These programs have been critical to the State's success in simultaneously reducing crime, reducing the prison population and saving taxpayers many millions of dollars. We appreciate Governor Cuomo's inclusion of baseline funding for ATI and reentry programming in the Executive Budget as well as the many years of support we have received from the Legislature. Strong, bi-partisan support of ATI/reentry services has enabled New York to develop the robust network of services that have allowed the State to become a model in reducing crime and incarceration.

As New York State engages in an examination of next steps needed for criminal justice reform, we urge the Legislature to strengthen the important role ATI and reentry programs play by:

- Maintaining funding for ATI and reentry programs and adding \$3 million to expand those programs to underserved populations and offer a full spectrum of services based on individual needs;
- Adding \$2 million in capacity building to enable ATI and reentry programs to work more closely with the health care system to divert more people, promote successful reentry and reduce criminal justice and health care costs, and adding funding to develop a health IT system in DOCCS;
- Supporting the Executive Budget proposal to dedicate \$5 million in Medicaid funding to help link those in the criminal justice system to the health care services they need through health homes, and ensuring that Medicaid payments for health home services provided to the criminal justice population are adequate and the caseloads are appropriate;
- Supporting the Executive's proposals for raising New York's age of criminal responsibility for most crimes and increasing the use of diversion for this population;
- Supporting the Executive's proposal to authorize the DOCCS Commissioner to make the final determination regarding medical parole release for individuals convicted of certain crimes;
- Building on Rockefeller Drug Law reforms to expand diversion opportunities for additional crimes and additional populations, such as additional non-violent B and C felonies (e.g. grand larceny in the first and second degrees) and those with mental health diagnoses;
- Expanding criminal record sealing to allow people who enter treatment voluntarily to have their convictions conditionally sealed;
- Supporting the Executive Budget's proposal to require annual reporting from law enforcement agencies to DCJS regarding arrests made and tickets issued for low-level charges;
- Supporting the Executive Budget's request of \$50 million to create a Nonprofit Infrastructure Capital Investment Program and the additional funding for this program requested by the Human Services Council.

**Maintain funding for ATI and reentry programs and add \$3 million to expand those programs to underserved populations and offer a full spectrum of services based on individual needs**

We commend the Governor and the Legislature for maintaining baseline funding for ATI and reentry programs for the last two years, thereby stabilizing and strengthening these critically important services. We urge the Legislature support the Governor's budget request, and also to add \$3 million to allow programs to develop innovative strategies for addressing the emerging and underserved client and community needs, including:

- **Underserved geographic areas** – Large swaths of the state, especially the upstate urban areas responsible for much of the state's crime and incarceration, remain acutely underserved by ATI and reentry services;
- **Women** receive few of these services, with the main source of state funding specifically targeting this population focused solely on those with HIV;
- **Young people** are significantly underserved, while even more would benefit from these services if the state raises the age of criminal responsibility;
- **Elderly** – Between 2007 and 2014, the proportion of the prison population over the age of 50 increased by 61%. Caring for the aging can be very expensive; providing targeted funding for ATI/reentry programs to serve them, including enhanced rates or bridge payments, would be more cost-effective without compromising public safety.
- **Mentally ill** – Serving the mentally ill in the community, instead of incarcerating them, improves public safety and reduces costs.
- **Addicted individuals convicted of property crimes** – Many individuals eligible for diversion under drug law reform are still being incarcerated. Additional funding would increase capacity to divert more, especially in upstate counties.
- **Individuals charged with violent offenses** – Diverting more individuals charged with violent offenses who can be safely diverted from incarceration would decrease recidivism, improve community involvement, and save taxpayer dollars. .
- **Access to housing support services** – Investing in case management, referral and advocacy services to help individuals find housing increases sobriety, improves health, saves money, reduces reincarceration and helps fill the gap left by federal rules rendering recently incarcerated individuals ineligible for certain types of housing support.
- **Criminal record and collateral consequence counseling** – Very few providers outside of New York City counsel people on how to obtain and correct criminal record information and overcome barriers to employment, housing and education. These services help individuals sustain their reintegration into society and avoid rearrest and reincarceration.
- **Maintaining connections between those incarcerated and their families** -- Few resources are available despite its demonstrated impact on successful reintegration.

While we strongly support the state's evidence-based strategy of targeting high-risk and high-need individuals with more intensive services, we also must serve other populations. In providing alternative to incarceration services, risk of incarceration, not just risk of recidivism, must be taken into account. Eliminating ATI for those at lower-risk would not only result in increased incarceration of the least likely to recidivate, studies show it can actually increase recidivism. Furthermore, while lower risk populations do not require as intensive services, they still confront barriers arising from having a criminal record which may prevent their successful

reentry into the community and lead to a return to crime. Additionally, if programs only serve high-risk, high-need populations, they will have much greater difficulty placing individuals in employment and housing since, in order to maintain relationships with employers and other providers, programs must have a full range of candidates to place. Therefore, ATI and reentry programs need the flexibility to determine what level of services an individual needs and provide a full spectrum of services to people at every level of risk and need as appropriate.

**Provide \$2 million in capacity building to enable ATI and reentry programs to work more closely with the health care system to divert more people, promote successful reentry and reduce both criminal justice and health care costs, and additional funding for DOCCS IT**

New York State is at the forefront of efforts to link those in the criminal justice system to the health care services they need in a coordinated and effective manner. States around the country are watching New York closely to see how it carries out efforts to enroll its criminal justice population in health care insurance and links these individuals to the care that they need. Such connections provide opportunities for reducing institutionalization in both the criminal justice system through reduced recidivism and incarceration, and health care through the reduced use of emergency rooms and detox facilities. Furthermore, through the increased federal Medicaid match being provided to the State as part of health care reform, there is the potential for the State to realize significant financial savings.

Community-based ATI and reentry programs understand the criminal justice population and are well positioned to deliver services that can be provided and funded by Medicaid. However, for this effort to be successful, and to maximize both the potential health benefits and financial savings, programs need \$2 million to build institutional capability to participate in Medicaid and work with insurers. ATI and reentry programs have little or no prior experience working with managed care organizations, and some have not dealt with Medicaid at all. They will need to build those relationships; market their ability to provide services and to reduce costs; develop contracting, billing, information technology and corporate compliance ability, and train their staff to perform all those tasks if they are to work in this new environment;

We also support providing IT infrastructure for DOCCS to support a pilot electronic health records program, including exploring opportunities for DOCCS to utilize the newly built OMH EHR infrastructure to engage with health homes. This also has potential for modeling EHR capacities within county correctional settings.

**Support the Executive Budget's proposal to provide \$5 million to support connections between the criminal justice system and the State's innovative network of health homes, and ensure health home case rates will support services for criminal justice population**

Health homes provide care for New Yorkers with two or more chronic conditions, HIV/AIDS, and severe and persistent mental illness, which includes many in the criminal justice system. The State has developed a number of health home pilots focused on the needs of those involved in the criminal justice system. These pilots are identifying protocols that would enhance the connection to care for this population, starting with those leaving local and state correctional facilities. The goals are improving public health, increasing public safety and reaping substantial cost savings. The proposed resources are needed to help the pilots succeed in achieving these goals by:

- Developing a liaison service to connect health homes with the criminal justice system – beginning in state and local correctional facilities, and then extending to DWI/drug courts, probation and parole offices, arraignments, and central booking. The most effective strategy for connecting people to care during reentry is to engage them as early prior to release as is feasible. Because federal Medicaid will not reimburse care of incarcerated individuals, resources are needed to facilitate the transition by enabling health homes to place staff in various criminal justice settings and teleconference with incarcerated individuals. Community-based ATI/reentry programs can also play an important liaison role helping health homes connect with a clientele with whom they have limited experience and understanding.
- Criminal Justice and Health Homes Learning Collaborative for the provision of training and technical assistance and sharing of best practices so the 6 pilots can receive technical assistance and share their knowledge with each other as well as the more than 40 other health homes across the state.
- Intensive engagement with CJ/health homes enrollees for up to 6 months post-release. The period immediately following release from incarceration is critical. Research shows that individuals at this stage have an increased risk of dying. They are also at heightened risk for recidivism. Health homes must be paid a sufficient rate during this period to allow them to keep caseloads small enough to provide appropriate level of services to prevent these negative outcomes.

Additionally, the State should amend the eligibility criteria for health homes to treat recent incarceration as an eligibility factor for those with only one diagnosed chronic condition. Many people who are recently incarcerated may be unable to document that they have two qualifying chronic conditions but would benefit greatly from the coordination and range of services offered by health homes.

**Support the recommendations of the Governor’s Commission on Youth, Public Safety and Justice for raising the age of criminal responsibility in New York to 18 for most crimes.**

New York State is one of only two states that still consider 16 year olds to be adults who are fully criminally responsible for their actions – the other is North Carolina. Utilizing research finding that adolescent brains are not yet fully formed and that, as a result, adolescents are less able to understand the consequences of their actions than adults, the Governor’s Commission on Youth, Public Safety and Justice proposed raising the age of criminal responsibility for many, but not all offenses, focusing instead on non-violent felonies, misdemeanors and violations, and other reforms. We urge the Legislature to enact all the Commission’s recommendations, including:

- **Maximizing diversion of young people from incarceration** – Diversion is not only cost-effective, it can reduce the risk of recidivism. But resources must be sufficient since youth can be especially difficult to serve, as many do not stick with programs and they often confront a large number of issues.
- **Raising the upper and lower age of juvenile jurisdiction**
- **Barring the confinement of any minor in adult jails or prisons regardless of where their case is heard**

- Increasing the age of eligibility for youthful offender adjudication from 18 to 21
- Keeping confidential the proceeding of most cases in which an individual is eligible for youthful offender status
- Investing in evidence based support services for those charged with status offenses and their families
- Conditional sealing

**Support the Executive Budget’s proposal to authorize the Commissioner of the Department of Corrections and Community Supervision (DOCCS) to make the final determination regarding medical parole release for individuals convicted of certain crimes**

The proportion of individuals over the age of 50 incarcerated in New York State prisons increased by 61% between 2007 and 2014. To qualify for medical parole, an individual must be suffering from a terminal condition and so debilitated or incapacitated as to be incapable of presenting any danger to society. Under current law, all individuals seeking medical parole release must appear before the Board of Parole for a final determination, a process that can be so time-consuming that many eligible individuals die in prison. Allowing the DOCCS Commissioner to make the final determination regarding medical parole for individuals convicted of non-violent crimes would significantly expedite decision-making. The Legislature should support this proposal. Keeping individuals in prison who are so seriously ill that they are incapacitated costs the state huge amounts of money and provides no public safety benefit.

**Build on Rockefeller Drug Law reforms to expand diversion opportunities for additional crimes and additional populations, such as additional non-violent B and C felonies (e.g. grand larceny in the first and second degrees) or those with mental health diagnoses**

The expanded use of diversion from incarceration through drug law reform has resulted in significant decreases in the number of addicted individuals sent to state prison. Between 2008 and 2014, the number of individuals under the custody of DOCCS for drug crimes decreased by more than 46%, with particularly significant decreases in the number of individuals being incarcerated from upstate communities. According to the most recent DCJS report on the reforms<sup>1</sup>, published in May 2014, “drug court participants had significantly lower recidivism rates than similarly situated offenders who were sentenced to prison...Results suggest that drug court could be a safe and cost-effective option for high risk offenders facing prison sentences.” Additionally, a study released this year by the Vera Institute of Justice found that the reforms led to a 35% rise in the number of eligible individuals diverted to treatment in New York City, and cut racial disparities in who was sentenced to incarceration by half.<sup>2</sup>

However, there remain a number of individuals whose convictions are related to an addiction who remain ineligible for diversion, including a number of non-violent B, C, D, E felonies, as well as certain violent felonies where individuals could be safely diverted. Furthermore, there are a number of individuals who have a mental health diagnosis which played a role in their conviction. Additionally, the Vera study found that only one out of five eligible individuals in New York City was actually enrolled in treatment. Many of these individuals would benefit

<sup>1</sup> <http://www.criminaljustice.ny.gov/drug-law-reform/documents/dlr-update-report-may-2014.pdf>

<sup>2</sup> Vera Institute of Justice, *End of an Era? The Impact of Drug Law Reform in New York City*, <http://www.vera.org/pubs/drug-law-reform-new-york-city>

significantly by being diverted from incarceration to treatment in the community. The Legislature should expand on prior reforms to make more individuals eligible for diversion, including those convicted of additional offenses and those with a mental health diagnosis.

**Expand opportunities for conditional sealing of convictions for individuals who participate in drug treatment**

The 2009 law authorizing greater diversion of individuals with addictions from prison to treatment included a provision allowing courts to conditionally seal certain convictions if an individual successfully completed a “court mandated” treatment program, Criminal Procedure Law § 160.58. No provision was made, however, for sealing records of individuals who successfully completed treatment without being mandated by a court. As a result, tens of thousands of individuals who sought treatment and achieved recovery on their own are ineligible for sealing’s employment and licensing benefits that are available to those who were court-mandated. The Legislature should allow all individuals who successfully recover from addiction to apply to have their convictions conditionally sealed.

**Support the Executive Budget’s proposal to require additional annual information reporting from law enforcement agencies to DCJS**

The Executive Budget includes legislation that would require all state law enforcement agencies to annually report to the Division of Criminal Justice Services (DCJS) the number of arrests made for violations and misdemeanors, the number of instances where police conduct may have resulted in the death of a person during an arrest for a violation or a misdemeanor, and demographic information about individuals who receive appearance tickets or summonses. This proposal would increase transparency, allowing the public greater access to important information by providing statistics that would inform discussions about policing.

**Support the Executive Budget’s request of \$50 million to create a nonprofit infrastructure capital investment program and the additional funding for this program requested by the Human Services Council**

The Executive Budget includes \$50 million to create a nonprofit infrastructure capital investment program to make targeted investments in capital projects that will improve the quality, efficiency, and accessibility of non-profit human services organizations. The ATI/Reentry Coalition strongly supports the Governor’s proposal. We also call on the Legislature to provide the increased funding for this initiative proposed by the Human Services Council, as the state’s highly effective alternative to incarceration and reentry programs are among the non-profit agencies that could make good use of such a timely, prudent, and appropriate use of a projected non-recurring State surplus.

Endorsements

Center for Alternative Sentencing and Employment Services (CASES)  
Center for Community Alternatives (CCA)  
Center for Employment Opportunities (CEO)  
Correctional Association

Education & Assistance Corporation, NYC TASC & Mental Health Programs (EAC)

The Fortune Society

Greenhope Services for Women

Legal Action Center (LAC)

The Osborne Association

TASC of the Capital District

Women's Prison Association (WPA)