

TESTIMONY OF THE LEGAL ACTION CENTER

ON BEHALF OF THE ATI AND REENTRY COALITION

Assembly Ways and Means and the
Senate Finance Committees
Joint Public Hearing on Public Protection
Executive Budget FY 2016-2017

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Presented by

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Endorsed by

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

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

The Legal Action Center is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas. We also run a national center to promote the employment of individuals with convictions, the National H.I.R.E. Network. H.I.R.E.'s goal is to increase the number and quality of job opportunities available to people with criminal records by changing public policies, practices and public opinion. H.I.R.E has worked for the last fourteen years to serve as a national clearinghouse for information and technical assistance for non-profit and government agencies working to improve employment prospects for the formerly incarcerated across the country.

In New York State, we work closely with the coalition of Alternative to Incarceration (ATI and Reentry) and related programs (pre-trial services, defender based advocacy, client specific planning, community service sentencing, drug treatment diversion programs, TASC, legal and employment assistance). These programs divert appropriate individuals who have been arrested or convicted to community supervision and sanctions and thereby protect the public and save the state enormous sums of money by reducing prison costs, preventing recidivism and stabilizing these individuals and their families.

We present these budget recommendations on behalf of the ATI and Reentry Coalition:

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, and are essential to successful implementation of Rockefeller drug law reform and ending the cycle of addiction and crime. It is no coincidence that New York, with an effective network of ATI and reentry programs, has seen both crime and incarceration rates plummet simultaneously, without compromising public safety, all while saving New York money. We very much appreciate the Governor's and the Legislature's continued funding and strong bi-partisan support for ATI and reentry programming and commend the decision to maintain baseline funding for ATI and reentry programs for the last three years, thereby stabilizing and strengthening these critically important services. We urge the Legislature to take the following steps to bring highly successful ATI and reentry services to scale around the State:

- **Support the \$2 million increase in the Executive Budget and add \$20 million to expand ATI and reentry programs, including services that:**
 - **Divert individuals from arrest or sentences of incarceration where appropriate and assist them in transitioning back into the community;**
 - **Provide “back-end” alternatives to incarceration by enabling early release to program services;**
 - **Provide treatment for addiction and mental illness, either as part of a diversion program or after release from incarceration;**
 - **Help people with criminal justice involvement obtain employment, education and housing; and connect them to Medicaid and needed health care, including helping providers develop needed information technology infrastructure;**
- **Support the Executive Budget proposal to reappropriate \$5 million in funding to help link those in the criminal justice system to the health care services they need;**
- **Encourage the State to apply for authorization from the Federal government and amend the Social Services Law to allow the State and localities to use Medicaid funding**

during the last 30 days of incarceration to coordinate health services between jails and prisons and community-based providers;

- **Support the Executive’s proposals to:**
 - **Provide transitional housing for those coming out of the criminal justice system;**
 - **Provide needed education to those who are incarcerated in State prisons;**
 - **Raise New York’s age of criminal responsibility for most crimes and increase the use of diversion for this population;**
 - **Allow sealing of criminal records for certain crimes for individuals who have not been convicted of new crimes for over ten years;**
 - **Help families maintain contact during incarceration;**
 - **Expand work release and increase parole release rates for those who are deemed to pose a low risk of recidivism;**
- **Support the Governor’s pilot program allowing parole violators from New York City to receive opioid antagonist medication, and build on this pilot to allow all those in the criminal justice system to receive any addiction medication that will assist them in achieving and maintaining recovery and avoiding recidivism; and**
- **Shorten the maximum sentence for an A misdemeanor by one day in order to reduce the immigration consequences of such convictions.**

Support the \$2 million increase in the Executive Budget and add \$20 million to expand ATI and reentry programs, including services that: divert individuals from arrest or sentences of incarceration where appropriate and assist them in transitioning back into the community; provide “back-end” alternatives to incarceration by enabling early release to program services; provide treatment for addiction and mental illness, either as part of a diversion program or after release from incarceration; help people with criminal justice involvement obtain employment, education and housing; and connect them to Medicaid and needed health care, including helping providers develop needed information technology infrastructure

We greatly appreciate the continuation of baseline funding for ATI and reentry programs both in this year's Executive Budget and in the budgets that the Legislature enacted over last three years. We are also very grateful to the Legislature for adding over \$700,000 for ATI and reentry programs in last year's budget. We support the Governor's proposal to add \$1 million to fund efforts to identify individuals who would benefit from diversion in underserved geographic areas, such as upstate New York and Long Island, and those charged with offenses that are less frequently targeted for diversion. We also support the Executive's proposal to add \$1 million for County Reentry Taskforces to help coordinate services for those being released from prisons.

However, in order to bring highly successful ATI and reentry services to scale around the State, and to support new ATI initiatives for perennially un-served populations, we call on the Legislature to provide an additional \$20 million to support:

- ***Expansion of ATI services throughout geographic areas that are currently underserved by such services, including upstate New York and Long Island, as well as to populations in New York City that are not currently being sufficiently diverted*** – Every community in New York will benefit if the Legislature provides sufficient funding to bring ATI services to scale, including replication of the many programs that have already been proven effective and the development of new ATI program models, so that every appropriate person across the state can be diverted from unnecessary incarceration to needed services that are both more effective in reducing recidivism and less expensive. The need for such services is especially pressing as a result of the State's huge increase in heroin and other opiate use. New funding

would allow programs to identify, advocate for, and provide services to individuals who could safely be diverted from incarceration to community-based programs;

- ***Services throughout the State to advocate for individuals' release from incarceration and support in reentering the community*** – Individuals who could safely be released back into the community are too often held in prisons unnecessarily at great expense to the State. The Legislature should expand programming to advocate for appropriate individuals' release from incarceration and for the monitoring and services they need to succeed upon their return to the community;
- ***Treatment for addiction and mental illness*** – Most individuals in the criminal justice system suffer from addiction and/or mental illness. The opiate epidemic that has struck New York has further increased the need for addiction services. As a result, individuals in all parts of the State who are involved in the criminal justice system need more addiction services, either as part of an alternative to incarceration program or upon their release from incarceration. There is also a huge need for services to treat and divert, whenever possible, those with mental illness who are involved in the criminal justice system, as there are large gaps in such services in all parts of the State as well;
- ***Services to assist individuals who have been involved with the criminal justice system develop needed employment skills and locate and retain jobs*** – Employment has a huge impact in allowing individuals to avoid recidivism and succeed in the community, whether they are diverted from incarceration or are reentering from jails and prisons. We appreciate the Executive's recognition that all individuals with prior criminal justice involvement need support in connecting to employment. The State's risk assessment tool divides individuals into three levels for determining risk of recidivism. These different populations require

different types and levels of services, as even low-risk individuals often require help finding and maintaining employment. While programs exist in various communities in the State, they are nowhere near sufficient to meet the need for such services in existing geographic areas or throughout New York, nor are they sufficient to meet employment needs at all stages of the criminal justice system. Youth employment has additional challenges that require wage subsidies or paid internships as well as intermediaries, which are needed in addition to tax credits to incentivize employers to hire young people;

- ***Current and new housing programs for people who have had involvement in the criminal justice system*** – New York has nationally recognized programs to provide housing for individuals who have been involved in the criminal justice system. However, these programs barely scratch the surface of the need for such services, and most programs that do exist are based in New York City. Furthermore, the challenges involved in finding housing are particularly acute at a time of rising homelessness. Also, many individuals who have been involved with the criminal justice system require a combination of housing and specialized services. Examples of innovative New York State-based models trying to serve this population that could be supported through this funding include:
 - The Fortune Society and the Center for Community Alternatives are seeking to replicate Fortune’s successful Castle program in Syracuse. This program provides an innovative new model as it is being developed in partnership with the local housing authority;
 - The Osborne Association is developing a new model for housing services using the former Fulton Correctional Facility in the Bronx.

Both programs need additional funding to complete construction and begin providing services. Other existing programs need funding to keep operating. Even with these programs, huge gaps exist throughout the State for housing for this population; and

- ***Efforts to link ATI and reentry programs to Medicaid*** – New York’s redesign of its Medicaid system creates new opportunities to better coordinate services and provide new types of health supports to individuals who have been involved with the criminal justice system. Many of those in the criminal justice system would benefit from the new “Home and Community Based Services” (HCBS) that New York is starting to provide through Health and Recovery Plans (HARPs), a new insurance product for those with severe addiction and mental illness. Many ATI and reentry programs have already been designated as HCBS providers. However, in order to begin billing Medicaid, programs will need support in the following areas:

- *Information technology* – Both hardware and programming, to allow ATI and reentry programs to begin linking their services to other health care providers and to billers;
- *Connecting services to managed care companies* – Community-based ATI and reentry programs understand the criminal justice population and are well positioned to deliver services that can be provided and funded by Medicaid. However, for this effort to be successful, and to maximize both the potential health benefits and financial savings, programs need to build institutional capability to participate in Medicaid and work with insurers. ATI and reentry programs have little or no prior experience working with managed care organizations, and some have not dealt with Medicaid at all. 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;

- Treat recent incarceration as an eligibility factor for health homes - 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.

The Legislature has an opportunity to ensure that all New Yorkers have access to the services they need - \$20 million in new funding will go a long way to enabling the creation of a truly statewide network of programs serving all those who can be safely diverted or are being released from incarceration.

Support the Executive Budget proposal to reappropriate \$5 million in funding to help link those in the criminal justice system to the health care services they need

Last year, the Governor requested and the Legislature allocated \$5 million in Medicaid funding to support efforts to connect those in the criminal justice system who have chronic health conditions to Health Home services in the community. Health homes are care coordination networks that provide comprehensive care management services to Medicaid recipients with multiple chronic health conditions (including addiction), serious mental illness, and/or HIV/AIDS. As a result of certain obstacles, this funding was unable to be spent last year. In this year's Executive Budget, the

Governor has reappropriated the money, to be spent over two years, and amended the budget language to remove the obstacles that prevented the allocation from being spent. We urge the Legislature to support this request, which will enable key linkage efforts that will result in reduced institutionalization, both in the criminal justice system, through reduced recidivism, and in the health care system, through the reduced use of emergency rooms and detox facilities, and will also allow the State to realize significant financial savings.

Encourage the State to apply for authorization from the Federal government and amend the Social Services Law to allow the State and localities to use Medicaid funding during the last 30 days of incarceration to coordinate health services between jails and prisons and community-based providers

Both Federal Medicaid rules and New York's Social Service Law §366(1-a) bar the use of Medicaid to pay for services inside prisons or jails. However, numerous studies have shown that the most effective strategy for connecting people to health care during their reentry from incarceration is to engage them in services as early as possible prior to their release. This period is essential for building the trust necessary for engaging these individuals – many of whom have had little previous interaction with the regular public health system – into community health care. The reappropriation in this year's budget will allow the State to begin investing in the necessary engagement and coordination. However, enabling the State to use Federal (and State) Medicaid funds for these services will allow this to be done in a much more comprehensive manner. Furthermore, because so much of the incarcerated population will be eligible for the increased federal match under the

Affordable Care Act, most of the revenue for this effort would come from the federal government, thereby generating significant savings over the long term for the State.

We urge the Legislature to modify the Social Service Law to allow the use of Medicaid funds within prisons and jails pursuant to any federal authority the State is able to obtain. We also urge the State to seek a waiver or other federal authority to allow the use of Medicaid expenditures for individuals with significant medical needs in the 30 days prior to release. These steps would result in improved health outcomes, reduced recidivism, and significant financial savings.

Support the Executive's proposal to provide transitional housing for those coming out of the criminal justice system

Housing is essential for ensuring that individuals are able to remain sober, address their health and mental health needs, obtain and maintain employment, and avoid recidivism and reincarceration. Furthermore, as the Governor noted in the Budget Briefing and State of the State books, the six month period immediately following a person's release from the criminal justice system is the most critical time. Yet, as homelessness has increased in New York, those previously involved in the criminal justice system face particular obstacles in obtaining housing because many landlords are unwilling to rent to this population, leaving those on parole or with any prior criminal history living in shelters, three-quarter houses or on the street.

We urge the Legislature to support the Governor's proposal to include those leaving incarceration as a target population within the larger housing plan by providing transitional housing in the period

immediately following release. We also urge that the Legislature support the targeting of new supportive housing units to those with addiction issues and mental health problems, as these initiatives are likely to benefit those with prior criminal justice involvement. Lastly, we recommend that any broader supportive housing proposal dedicate 15% of new supportive housing resources to individuals and families with criminal justice histories. This should be accomplished by targeting 15% of units in each category of special needs housing in any agreement to people with criminal justice histories, as the obstacles facing people in need of housing with criminal justice histories are similar to those of all special needs populations, though they are often the last group to receive services.

Support the Executive’s proposal to provide needed education to those who are incarcerated in State prisons

Numerous studies demonstrate the significant impact of correctional post-secondary education programs on reducing recidivism. According to research by the RAND Corporation cited in the Governor’s State of the State Book, participants who complete education programs in prison are over 40 percent less likely to reoffend upon release and return to prison, and participants are 13 percent more likely to obtain post-release employment. The Governor is proposing to partner with SUNY and CUNY using \$7.5 million of criminal forfeiture funds obtained by Manhattan District Attorney Cyrus Vance, matched with other non-state funding, in order to provide approximately 1,000 individuals over five years with the opportunity to receive college-level instruction and earn an Associate’s degree, Bachelor’s degree, or industry-recognized certificate.

The Governor has also proposed investing \$2.5 million to support new staff training in specialized education and small or individualized instruction for the significant numbers of individuals in State prison who have learning disabilities. He also proposed new investments to modernize prison-based vocational training to ensure that individuals leaving State prison have the technological skills needed to compete in the modern workforce, as well as a new partnership between DOCCS and the Department of Labor, to assist those being released from incarceration prepare for and access registered apprenticeships in the skilled trades.

We applaud these new initiatives and urge the Legislature to support the requested funding. These investments will result in improved success in obtaining employment upon release, thereby decreasing recidivism and saving the State significant sums of money.

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

New York State is one of only two states that still consider 16 year olds to be adults who are fully criminally responsible for their actions – the other is North Carolina. The Governor's Commission on Youth, Public Safety and Justice, which was comprised of a number of experts from law enforcement and from the community, spent nine months researching how New York could most effectively and safely go about raising the age of criminal responsibility. The Commission examined the current system, looked at best practices from around the country and developed recommendations around every step of the criminal justice system, from arrest through reentry, as well as the collateral consequences of a criminal record. Their final report included 38 discrete recommendations for how New York could best accomplish the goal of treating 16 and 17 year olds who are arrested in a

developmentally appropriate way. Significantly, these recommendations recognize the effectiveness of alternatives to incarceration, recommending the diversion of young people from incarceration whenever possible. The Governor's budget includes legislation necessary to enact these recommendations. The Legislature should enact legislation that will put an end to New York's outdated and counterproductive policy of treating 16 and 17 year olds as adults in the criminal justice system.

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

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

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

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

However, in spite of these steps, individuals with criminal convictions continue to face significant challenges in obtaining employment, even many years after their conviction or release from incarceration. As a result of this reality, a number of states around the country have enacted legislation to seal criminal convictions once a certain period of time following the conviction has elapsed. Yet, New York currently offers no opportunity for the vast majority of individuals convicted of crimes to have their records sealed, even though several studies have shown that, if individuals are crime-free for a certain period of time (the length of time depends on the nature of the crime and other factors), their likelihood of committing a new crime is no greater than the general population. A disproportionate number of people who suffer from job denials based on old criminal histories are people of color, since they are arrested and convicted at significantly higher rates than whites.

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

Support the Executive's proposals to help families maintain contact during incarceration

Research has shown that maintaining close family contact while a person is incarcerated results in a more successful re-entry transition and lower recidivism. More than 100,000 children in New York State have a parent currently in prison or jail. The Executive Budget proposes investing \$300,000 to expand video visitation opportunities between incarcerated parents and their children. The Governor also proposed exploring the use of secure e-mail communication tools to allow incarcerated individuals to communicate with their families. We urge the Legislature to support funding and initiatives that will assist families in maintaining contact with their incarcerated relatives.

Support the Governor's efforts to expand work release and increase parole release rates for those who are deemed to pose a low risk of recidivism

Work release helps individuals nearing the date of their release from incarceration to begin working while continuing to live in prison. These programs provide for a structured transition from prison to the community by allowing people to leave correctional facilities for periods of time to engage in

work and other rehabilitation-related activities. Such programs have been very successful in helping individuals transition back into the community. They also have the potential to save New Yorkers millions of dollars each year. However, a number of changes, including two Executive Orders, have resulted in program participation plummeting by more than 90% from its peak in 1994. We strongly support the proposal to revive this program, thereby helping individuals successfully reenter the community and saving the State significant amounts of money.

Additionally, in his State of the State, Governor Cuomo offered a number of proposals regarding steps that the Board of Parole should take in order to increase the rate of discretionary release for individuals who pose a low risk of reoffending. The Board of Parole currently denies more than 10,000 parole applicants each year and only grants parole to one in five individuals who apply. We strongly support the Governor's recommendations and urge the Parole Board to adopt them. The Governor also raised the possibility of introducing statutory changes to increase the rate of parole release for those deemed at low risk of reoffending. We urge the Governor to introduce, and the Legislature to enact, this legislation.

Support the Governor's pilot program allowing parole violators from New York City to receive opioid antagonist medication and urge the State to build on this pilot to allow all those in the criminal justice system to receive any addiction medication that will assist them in maintaining sobriety and avoiding recidivism

Like many states throughout the country, New York has been hit hard by a growing opiate epidemic. The risk of overdose and death is especially high in the weeks immediately following release from

incarceration. Medication assisted treatment has been scientifically proven to help appropriate people with opioid use disorders to become and remain well. The international scientific community, as well as various U.S. scientific bodies such as the National Institutes of Health, have long supported the use of effective and evidence-based medications to treat chronic opioid addiction.

The Executive has proposed the first pilot program to provide medication assisted treatment to appropriate individuals from New York City incarcerated in a State facility for violating their parole as a result of a relapse. We applaud this initiative and urge the State to implement this program and build on it to ensure that all individuals in State and local incarceration facilities, as well as throughout the criminal justice system, have access to the medications they need to achieve and maintain their sobriety and avoid recidivism.

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

Currently, a conviction for certain misdemeanor offenses can trigger mandatory deportation, even for green card holders. Because A misdemeanors in New York have a potential sentence of one year, legally present immigrants can often be deported for a single misdemeanor conviction, even if they are not sentenced to a single day in jail. This occurs because of the way New York's one-year maximum sentence for misdemeanors interacts with a draconian provision of federal immigration law. As a result, immigration judges are often deprived of discretion to even determine whether deportation is warranted. Reducing the maximum potential sentence by one day would restore discretion to immigration judges and spare thousands of such lawfully present immigrants from

deportation. This proposed one day change would have little impact on the criminal justice system but it would greatly reduce the immigration consequences faced by immigrant New Yorkers convicted of a misdemeanor offense. Other states, such as California, have already acted to make such a change. We urge the Legislature to introduce and pass legislation to make this change.