

2008 ANNUAL REPORT

NEW YORK STATE ASSEMBLY

COMMITTEE ON
ALCOHOLISM AND DRUG ABUSE



Sheldon Silver, Speaker

Felix W. Ortiz, Chair

THE ASSEMBLY
STATE OF NEW YORK
ALBANY



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December 15, 2008

Honorable Sheldon Silver
Speaker of the Assembly
Legislative Office Building, Room 932
Albany, New York 12248

Dear Speaker Silver:

On behalf of the Assembly Committee on Alcoholism and Drug Abuse, I respectfully submit to you the Committee's 2008 Annual Report. This year, the Committee was successful in securing the passage of a host of measures intended to improve and ensure quality treatment for individuals with alcoholism, chemical dependence, and compulsive gambling issues.

The Committee continued its ongoing mission to improve quality services and ensure access to the vast array of chemical dependence programs that are available in New York State. As part of this effort, the Committee reported legislation that made treatment more accessible, promoted client advocacy, and ensured that special populations such as veterans are well represented and have quality treatment available.

We intend to continue our efforts in the new 2009 Session and hope to see some of these, as well as new initiatives, become permanent fixtures in New York's alcoholism and substance abuse services system.

On behalf of myself and the other members of the Committee, I would like to express my sincere appreciation for your support and encouragement throughout the Legislative Session.

Very truly yours,

Felix W. Ortiz, Chair
Committee on Alcoholism and Drug Abuse

**2008 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON ALCOHOLISM AND DRUG ABUSE**

**Felix W. Ortiz
Chair**

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Adriano Espaillat
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Linda Buckley – Chief of Staff
Tobey Zimmer – Legislative Assistant/Committee Clerk

Program and Counsel Staff

Donald Robbins – Principal Legislative Coordinator
Willie Sanchez – Legislative Analyst
Alison Jacobs – Executive Secretary

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I. INTRODUCTION

The Assembly Committee on Alcoholism and Drug Abuse develops and considers legislation impacting programs that provide treatment, prevention, and recovery services for individuals in New York State.

This year the Committee reviewed and investigated numerous issues affecting the lives of those with alcohol or chemical dependence; or compulsive and problem gambling throughout the state. The Committee introduced and reported several new pieces of legislation aimed at raising awareness to geriatric chemical dependence, prevention of underage drinking, compulsive and problem gambling, and specific problems experienced by veterans. Also addressed was the inclusion of OASAS licensed facilities in the site selection process currently known as the “Padavan” Law. More specifically, some of these bills would:

- Expand the scope of the Interagency Geriatric Mental Health Planning Council to encompass issues concerning chemical dependence and veterans;
- Allow providers of gambling and prevention services to serve as members of the Alcohol and Substance Abuse Services Advisory Council;
- Permit OASAS and its providers to participate in the Padavan Law process to the same extent as the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD);
- Implement a Chemical Dependence Treatment Bill of Rights whereby all persons being treated for chemical dependency would receive a copy of their rights upon admission to a treatment program. All facilities providing such care would be required to post signs detailing the patients’ Bill of Rights;
- Restructure the existing Advisory Council on Underage Alcohol Consumption so that it is located within OASAS

The 2007-2008 budget negotiation process provided the Committee a vital opportunity to advocate for positive change within the mental hygiene and alcohol and chemical addiction field. The Committee proposed additional funding for several key areas that included community-based detoxification. The restructuring of Medicaid rates will ultimately encourage an increase in utilization of community-based detoxification providers, which are more cost effective and provide a more appropriate level of treatment for most individuals who need treatment. However, there is concern that there is not sufficient capacity to absorb the number of clients that would be shifted away from hospital-based to community-based detoxification services.

Additional Committee legislative proposals would: allow community providers to deliver services to senior citizens with chemical addictions; assist the effort to move people from the criminal justice system into community treatment programs; make treatment available to adolescents who do not have private insurance, nor are eligible for Medicaid; and assure that our veterans have access to quality mental health care. Appropriate treatment of veterans for post traumatic stress disorder (PTSD) may help to prevent future alcohol and chemical addiction issues over the long term.

During the 2008 session, the Standing Committee on Alcoholism and Drug Abuse held public hearings seeking input on several important issues under its purview. In May, the Committee held a public hearing with the Committee on Correction on the topic of community re-entry for incarcerated individuals with a history of chemical dependence. The hearing examined the adequacy of existing substance abuse treatment programs and the need for increased services and resources. Testimony was provided by a number of constituent groups and organizations.

In conjunction with the Assembly Committees on Codes, Health, Correction, Social Services, and Judiciary the Alcoholism and Drug Abuse Committee convened public hearings in both New York City and Rochester to gather information on the impact of the Rockefeller Drug Laws. This was significant as this year marked the 35th anniversary of these laws. The hearings specifically examined the impact of the 2004 and 2005 reforms of the laws in addressing drug abuse and the illegal drug trade. The hearings also attempted to examine the effectiveness of substance abuse treatment services as an alternative to incarceration and as a means to address offender recidivism; and, to determine the adequacy and effectiveness of existing substance abuse treatment services and resources. The testimony provided important feedback that enabled the Committees to explore the current criminal sentencing structure and barriers to important resources, and treatment for persons with a history of substance abuse who are released from incarceration.

II. SIGNIFICANT LEGISLATION – 2008

A. ALTERNATIVE SOURCES OF FUNDING

1. Community Reinvestment Program

A.309-A (Dinowitz)

OASAS licensed community based treatment is essential for public safety and public health. Releasing inmates or diverting arrestees without a strong treatment and job training component will pose a considerable public risk. Community-based treatment provides a therapeutic structure that increases dramatically the likelihood that a person will remain drug/alcohol free and become a law abiding, productive citizen.

The New York State Office of Alcoholism and Substance Abuse Services and other leading researchers have documented the dramatic successes of treatment and prevention in reducing alcohol and drug dependence.

This bill would create the Chemical Dependence Reinvestment Fund; establish the State Interagency Council on Chemical Dependence Reinvestment Fund Utilization, which would develop and implement a schedule for studying chemical dependence prevention and treatment programs; and establish the Community Reinvestment Program.

This bill was advanced to Ways and Means.

2. Compulsive Gambling Prevention and Treatment Programs

A.7290-A (Hoyt)

According to a study issued by the New York Council on Problem Gambling in August, 1996, lifetime problem gambling prevalence increased among the State's adult population by 74% from 4.2% in 1986 to 7.3% in 1996. The study revealed that while there are between 750,000 to more than 1 million lifetime problem gamblers, there are at least one-quarter million additional residents currently experiencing serious to severe difficulties due to gambling. Further, between 118,000 and 266,000 adult New Yorkers may be classified as compulsive gamblers. These statistics do not, however, include the thousands of adolescents anticipated to have gambling related problems or the millions of other residents adversely affected by the gambler's activities.

This bill would provide funding for compulsive gambling prevention and treatment programs and services by mandating that the Problem and Compulsive Gambling Prevention, Education and Treatment Fund receive 25% of the monies paid to the State Tax Commission from uncashed pari-mutuel betting tickets.

This bill was advanced to Ways and Means.

3. Chemical Dependence Detoxification Reinvestment Program
A.10700 (Ortiz)

Many individuals who receive hospital-based detoxification do not require that level of service. Sixty to 80% of cases billed to Medicaid are considered uncomplicated. Many of those currently served in hospital-based detoxification programs could be served in a community-based detoxification setting that would better meet their level of need at a significantly lower cost.

The 2008 final Budget included provisions for Medicaid rate reform designed to provide savings to the State by encouraging a shift towards non-hospital based detoxification programs. These reforms are to be phased in over a four year period. This bill will enable a portion of those savings to be reinvested by creating a fund to aid non-hospital based detoxification programs in providing an appropriate level of care while remaining financially viable.

This bill was advanced to Ways and Means.

B. GERIATRIC CHEMICAL DEPENDENCE

1. Senior Citizen Alcoholism Demonstration Programs
A.2903 (Cook)

The latest census for New York State shows that 12.3% of the State's residents are age 65 or older. The problem of alcoholism and drug abuse among the elderly has not been sufficiently addressed. Past estimates of the number of problem drinkers aged 60 years and older are as high as 4.9%. However, this number may not be accurate as alcoholism among the elderly is very often masked by a physical or mental illness or other complications associated with the aging process.

This bill would require the State Office for the Aging (SOFA) and the Office of Alcoholism and Substance Abuse Services (OASAS) to develop alcoholism prevention, education and treatment demonstration programs for the elderly. SOFA, in consultation with OASAS, would be required to solicit requests for proposals from local governments or voluntary not-for-profit agencies wishing to receive grants to administer these demonstration projects.

This bill was advanced to Ways and Means.

2. Interagency Geriatric Mental Health Planning Council
A.10934 (Ortiz)/S.7537 (Morahan)
Chapter 203

According to the United States Substance Abuse and Mental Health Services Administration (SAMHSA), substance abuse, particularly of alcohol and prescription drugs, is growing among adults 60 and older. 97% of people aged 65 and older with substance abuse problems do not receive treatment. Currently, 1.7 million Americans over the age of 50 are addicted to drugs; by the year 2020, that number is projected to increase to 4.4 million. In New York State, the number of people

aged 60 and older who are admitted to chemical dependence treatment programs is growing by 20% each year. In addition, the population of veterans is both aging and increasing in numbers and this population has needs that are unique among the larger geriatric population and should be given special consideration.

This bill expands the scope of the Interagency Geriatric Mental Health Planning Council to encompass issues concerning chemical dependence and veterans.

C. ENFORCEMENT & ADVOCACY & TREATMENT

1. Intent to Defraud Drug Screening Tests

A.996 (Destito)

Many large corporations and small businesses today have adopted what amounts to a zero tolerance policy toward illicit drug use. Almost all of the nation's Fortune 200 companies have instituted drug testing programs in the past decade. Surveys by the American Management Association, a trade group whose members are disproportionately large companies, estimates that about three-quarters of their members do drug testing.

This bill would make the sale, donation, purchase, or transport of urine with intent to defraud a drug screening test a misdemeanor punishable by a fine of up to \$1000 and imprisonment of up to one year for the first offense. Subsequent convictions for the same offense within three years would constitute a class E felony.

This bill was advanced to Codes.

2. Diagnostic Treatment Centers

A.7289-A (Hoyt)

Currently, licensed diagnostic and treatment centers serving primarily substance abuse patients cannot access any existing indigent care pool. Section 2807-p of the New York Public Health Law authorizes the Commissioner of Health to make indigent care payments only to "comprehensive" diagnostic and treatment centers, which Health Department regulations define as those offering comprehensive primary medical care to the general population. Under the regulation, diagnostic and treatment centers primarily serving substance abuse patients are not considered "comprehensive" because they focus on a population with a specific medical condition. As a result, the care they provide to low-income, uninsured substance abuse patients goes uncompensated, even as the cost of this care increases each year.

This bill would authorize the Commissioner of Health to make payments to eligible diagnostic and treatment centers from a new fund to assist in meeting losses resulting from uncompensated care.

This bill was advanced to Ways and Means.

**3. Chemical Dependence Treatment Bill of Rights
A.10699 (Ortiz)**

It is essential that a stigmatized group such as persons suffering from chemical dependency be entitled to the same type of rights and protections that are afforded to persons seeking other forms of medical care. Clearly enumerating the rights to which persons in treatment are entitled will help to provide essential protections to a vulnerable population.

This bill would improve existing statute by enumerating in one place a number of rights specific to persons in chemical dependence treatment. This bill would also mandate that all such persons receive a copy of these rights upon admission to a treatment program. Facilities providing such care would have to post signs detailing those rights.

This bill passed the Assembly but was not acted upon by the Senate.

D. ADVISORY COUNCIL & SITE SELECTION

**1. Advisory Council on Alcoholism and Substance Abuse Services
A.10939 (Ortiz)/S.7562 (Morahan)
Chapter 259**

To be truly representative of the field of addiction recovery, all modalities and groups regulated by the Office of Alcoholism and Substance Abuse Services should be eligible for inclusion on the Council. Accordingly, this bill permits providers of gambling services and prevention services to serve as Council members, and permits payers of substance abuse services to serve as members.

**2. Advisory Council on Underage Alcohol Consumption
A.10940 (Ortiz) / S.8254 (Morahan)
Chapter 275**

OASAS is already engaged in underage drinking education, treatment, and prevention efforts. The agency would benefit from the advice of experts who focus on underage alcohol consumption-such as those who sit on the Advisory Council. It is therefore logical and appropriate to place this Council within the OASAS structure.

This bill restructures the existing Advisory Council on Underage Alcohol Consumption so that it is located within OASAS.

**3. Locating Sites for OASAS Licensed Facilities
A.11157 (Ortiz)**

The need for community-based chemical dependence treatment is increasing. In particular, indicators of social trends throughout the population point to a steady increase in the number of

homeless veterans with chemical dependencies. OASAS was the recipient of a recent budget initiative to construct residential treatment facilities for veterans with locations yet to be determined.

This bill will assist OASAS in establishing these and other community-based residential treatment facilities by permitting OASAS and its providers to participate in the Padavan Law process to the same extent as OMH and OMRDD. This will also allow communities to have the same input and protection in the current site process that are currently applicable to OMH and OMRDD residences.

This bill was passed by the Assembly but was not acted upon by the Senate.

III. LEGISLATIVE HEARINGS

A. Community Re-Entry for Inmates with Substance Abuse Issues

Joint Hearing with the Assembly Committee on Correction

Monday, May 5th, 2008 at 10:00am
State Education Building, Chancellors Hall, Albany

There are currently 63,000 people in state prison in New York and an additional 28,000 in local county jails. Seventy two percent of inmates under DOCS' custody had reported a chemical dependence. Effective chemical dependence treatment programs may reduce the rate of recidivism among formerly incarcerated substance abusers and improve their prospects for developing skills that would promote successful re-entry to the community. Additionally, drug treatment is significantly more cost-effective than incarceration as a means of reducing drug-related crime. The successful re-entry of those formerly incarcerated would benefit our entire community while their failure perpetuates a cycle of chemical abuse, crime and incarceration.

B. The Rockefeller Drug Laws – 35 Years Later

Joint Hearing with the Assembly Committee on Codes

Assembly Committee on Correction
Assembly Committee on Judiciary
Assembly Committee on Health
Assembly Committee on Social Services

Thursday, May 8th, 2008 at 10:00am
Assembly Hearing Room, 250 Broadway, 19th Floor, Room 1923, New York, NY

Thursday May 15th, 2008 at 10:30am
City Hall Chambers, 30 Church Street, Room 302-A, Rochester, NY

May 8, 2008, was the 35th anniversary of the enactment of New York's "Rockefeller Drug Laws." The stated purpose of these laws was to deter the use and sale of drugs by imposing harsh mandatory prison sentences on drug offenders. There have been a number of amendments to those laws over the years. In 2004, New York amended the drug laws recognizing that a drug policy which focused purely on inflexible criminal sanctions was ineffective. At the time, both the Executive and the Legislature recognized that while significant, the 2004 reforms, as well as a 2005 amendment, represented just a first step towards meaningful reform and that other major changes to the drug laws were urgently needed. However, since 2004 only the Assembly has passed legislation to further reform New York's drug laws.

Unquestionably, drug abuse is a serious public health problem that affects families and almost every community. Each year, even under the current scheme of drug law enforcement, drug abuse results in an estimated 40 million serious illnesses or injuries in the United States. Drug addiction is a treatable disease, and the issue is raised as to whether a system that focuses on preventing and treating drug addiction rather than simply incarcerating individuals will result in a reduction in the use and sale of drugs – something mandatory imprisonment laws have failed to accomplish.

It is also important to ask whether authorizing judges to sentence drug-addicted persons convicted of crimes to treatment as an alternative to incarceration would help break the cycle of addiction and crime and make our streets, homes and communities safer. Furthermore, more effective prison-based drug treatment programs may reduce the rate of recidivism among formerly incarcerated substance abusers and improve their prospects for successful re-entry into the community. Such reforms may also produce significant fiscal savings by reducing correctional costs and the dependence on public assistance dollars thereby allowing the state to invest necessary resources in community based alternative to incarceration and drug treatment programs.

APPENDIX A

2008 SUMMARY OF ACTION ON BILLS REFERRED TO THE ALCOHOLISM AND DRUG ABUSE COMMITTEE

<u>Final Action</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total Bills</u>
Bills Reported With or Without Amendment			
To Floor; Not Returning to Committee	0	0	0
To Ways and Means	9	0	9
To Codes	1	0	1
To Rules	1	0	1
TOTAL	11	0	11
Bills Having Committee Reference Changed			
TOTAL	0	0	0
Senate Bills Substituted or Recalled			
Substituted	0	2	2
Recalled	0	0	0
TOTAL	0	2	2
Bills Never Reported, Held in Committee	1	1	2
Bills Never Reported, Died in Committee	6	0	6
Bills Having Enacting Clause Stricken	2	0	2
TOTAL BILLS IN COMMITTEE	20	3	23
Total Number of Committee Meetings Held	4		

APPENDIX B

FINAL ACTION ON BILLS REPORTED BY THE ALCOHOLISM AND DRUG ABUSE COMMITTEE

ASSEMBLY BILL # SPONSOR	SENATE BILL # SPONSOR	FINAL ACTION	DESCRIPTION
A.309-A Dinowitz	S.7228 Golden	Referred to Ways & Means	Provides for the reinvestment of funds into community-based services for persons suffering from chemical dependence and for establishment of fund
A.996 Destito		Referred to Codes	Prohibits the sale and purchase of urine with the intent to defraud drug screening tests
A.2903 Cook		Referred to Ways & Means	Establishes the senior citizen alcoholism demonstration programs
A.7289-A Hoyt		Referred to Ways & Means	This bill will create a funding pool to defray the costs of providing medical services to substance abuse patients; It will authorize the Commissioner of Health to distribute grants to eligible diagnostic and treatment centers, based on each center's uncompensated care need
A.7290-A Hoyt		Referred to Ways & Means	Provides for the source of funds for the problem and compulsive gambling prevention, education and treatment fund
A.10699 Ortiz		Passed Assembly	Creates the Chemical Dependence Treatment Bill of Rights to be posted in a conspicuous place in all treatment facilities
A.10700 Ortiz		Referred to Ways and Means	Aims to create a chemical dependence detoxification reinvestment program
A.10934 Ortiz	S.7537 Morahan	Chapter 203	Expands duties of interagency geriatric mental health planning council to include chemical dependence and veterans

A.10939 Ortiz	S.7562 Morahan	Chapter 259	Changes membership on the advisory council on alcoholism and substance abuse services
A.10940 Ortiz	S.8254 Morahan	Chapter 275	Creates an advisory council on underage alcohol consumption; repealer
A.11157 Ortiz		Passed Assembly	This bill will permit OASAS and its providers to participate in the Padavan Law process to the same extent as OMH and OMRDD. This bill will also allow communities to have the same input and protection in the site selection process that are currently applicable to OMH and OMRDD residences

APPENDIX C

LAWS ENACTED DURING THE 2008 SESSION

CHAPTER	ASSEMBLY BILL # SPONSOR	SENATE BILL # SPONSOR	DESCRIPTION
Chapter 203	A.10934 Ortiz	S.7537 Morahan	Expands duties of interagency geriatric mental health planning council to include chemical dependence and veterans
Chapter 259	A.10939 Ortiz	S.7562 Morahan	Changes membership on the advisory council on alcoholism and substance abuse services
Chapter 275	A.10940 Ortiz	S.8254 Morahan	Creates an advisory council on underage alcohol consumption; repealer

APPENDIX D

LEGISLATION VETOED IN 2008

In the 2008 session, the Committee on Alcoholism and Drug Abuse had no legislation vetoed.

APPENDIX E

2009 COMMITTEE GOALS

Increase Beer Excise Tax

New York State currently is 41st out of 50 states with a beer excise tax of only 11 cents per gallon. This is roughly half the rate of 1991 when the tax was 21 cents per gallon. There are currently seven states with an alcohol excise tax dedicated to alcohol treatment including neighboring New Jersey. Challenging economic times and looming budget deficits undoubtedly will lead to cuts in spending. It is time to consider an increase in the beer excise tax in order to create a dedicated fund that would go towards chemical dependence treatment, prevention, and recovery services.

Rockefeller Drug Law Reform

Despite sentencing reforms, large numbers of drug offenders continue to be incarcerated in New York State prisons. As of January 1, 2008, 13,425 drug offenders were in state prison representing more than 21% of the male prison population and more than 33% of the female population. Statistics show that a large majority of this population has never been convicted of a violent offense and up to 40% are incarcerated for drug possession rather than for selling drugs. Notably, the Rockefeller Drug Laws have had a disproportionate impact on communities of color – more than 90% of all drug offenders in New York State prisons are Black or Latino.

Over the thirty-five years of experience New York has had under its drug laws, a question that continues to arise is whether authorizing judges to sentence drug-addicted persons convicted of crimes to treatment as an alternative to incarceration would help break the cycle of addiction and crime and make our streets, homes and communities safer. Furthermore, more effective prison-based drug treatment programs may reduce the rate of recidivism among formerly incarcerated substance abusers and improve their prospects for successful re-entry into the community. Such reforms may also produce significant fiscal savings by reducing correctional and public assistance costs thereby allowing the state to invest necessary resources in community-based alternative to incarceration and drug treatment programs.

Include OASAS in the Padavan Law

Indicators of social trends throughout the population point to a steady increase in the number of individuals, including veterans, who are homeless and in need of community-based chemical dependence treatment. In order to deliver the most comprehensive and quality services to those with chemical addictions, OASAS and its community-based providers should be allowed to participate in the same site selection process as OMH and OMRDD known as the “Padavan” Law.

Cross-Systems Collaboration

Chemical dependence treatment and prevention programs can be instrumental in driving down the costs associated with other systems of care. Blueprint for the States asserts that increasing prevention and treatment services will decrease the need for foster care placement for children of

addicted parents, reduce re-arrest rates for persons in the criminal justice system (drop from 75% to 27% with treatment), decrease adolescent re-arrest rates from 64.5% to 35.5% after a year of residential chemical dependence treatment, reduce the average family's healthcare spending by \$363 per month, increase employment 19% and decrease dependence on public assistance by 11%, reduce the prevalence of Fetal Alcohol Syndrome (the number one cause of developmental disabilities), and reduce the cost associated with co-occurring mental health disorders.

Raise Awareness and Increase Capacity for Treatment of Problem Gambling

The increased availability of gambling options in New York has created more risk for problem gambling. The need for problem gambling prevention and treatment services for individuals with gambling addictions has increased accordingly. While it is difficult to assess the seriousness of this issue due to the social norms that make gambling acceptable, compulsive gambling has a severe social and financial impact on individuals and families. Funding should be provided that would allow community providers and OASAS to conduct a social impact study and increase awareness of compulsive and problem gambling through media markets.