

NEW YORK STATE
A S S E M B L Y

SHELDON SILVER, SPEAKER



committee on
Correction
Jeffrion L. Aubry, Chair



Annual
Report 2010

December 15, 2010

The Honorable Sheldon Silver
Speaker of the Assembly
Capitol, Room 346
Albany, NY 12248

Dear Speaker Silver:

As Chairman of the Assembly Standing Committee on Correction, I am pleased to present to you the Annual Report for the 2010 Legislative Session.

The Annual Report continues the longstanding practice of highlighting the work of the Committee on Correction, as well as reviewing major aspects of state and local corrections by providing budgetary, workload and population data.

I would like to take this opportunity to acknowledge the hard work of the members of the Committee on Correction and all of the members of the Assembly for their continued commitment to the work of the Committee and to progressive corrections legislation. As always, your continued support is deeply appreciated.

Sincerely,

Jeffrion L. Aubry
Member of Assembly

2010 ANNUAL REPORT

STANDING COMMITTEE ON CORRECTION

Jeffrion L. Aubry, Chair

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I. JURISDICTION

The Assembly Committee on Correction has jurisdiction over legislation affecting all aspects of the operations of both state and local correctional facilities. This responsibility includes 67 state correctional facilities and 62 local correctional systems, including all local jails and police lockups operated by municipalities across New York State. New York's correctional system is the third largest in the nation with approximately 100,000 inmates housed in state and local facilities and employing 48,000 correctional personnel.

The Committee on Correction works closely with other committees of the Assembly, including the Committees on Alcoholism and Drug Abuse, Codes, Health, and Mental Health, regarding issues that affect correction staff and inmates.

II. NEW YORK STATE'S CORRECTIONAL POPULATION

A. State Correctional Facilities

At the time of the publication of this report, the under custody population of the Department of Correctional Services (DOCS or the Department) was 56,242. This represents a 3.9% decrease in the prison population from 2009 and an overall population decline of 21.4% since the peak of 71,538 in 1999. The under custody population is 50.6% African American, 24.9% Hispanic, and 22.3% white. The number of state ready inmates (inmates held in a local correctional facility waiting transfer to state prison) was 472 on November 27, 2010. It should be noted that although not recognized as part of the Department's population, the Willard Drug Treatment Campus typically confines an average population of between 700 and 900 inmates. The three month length of stay for Willard inmates results in an annual population of approximately 3,500.

There were 20,873 total admissions to the Department during the first 11 months of 2010 which is a slight decrease from the total admissions during the same period in 2009. New court commitments for this period were 13,439 (a 4.2% decrease from 2009). Returned parole violators and conditional release revocations were 6,867 (a 7.4% increase from 2009).

It is projected that the state prison population will continue to decline in the coming years thanks in large part to legislation enacted during the 2009 legislative session reforming the Rockefeller Drug Laws and restoring discretion to judges to sentence non-violent drug offenders to probation as a possible alternative to prison.

B. Local Correctional Facilities

The total under custody population among local correctional facilities as of December, 2010, was 30,457. For the City of New York, there were 13,374 inmates under custody in December, 2010, which is 38 less than in December, 2009. County correctional facilities outside of the City of New York had an under custody population of 17,083 as of December, 2010, which is 573 more than in December, 2009.

C. Parole Supervision

The Division of Parole (Division) is responsible for the supervision of all persons released from the Department of Correctional Services and subject to a term of parole, post release supervision or conditional release. This responsibility includes Division efforts to ensure successful, law obedient adjustment to community living and, in many instances, Division staff will help to place persons in drug treatment, job training, job placement and other services to enhance the likelihood of a self sufficient and crime-free lifestyle. Division staff is also responsible for identifying violations of parole conditions which may result in the use of corrective measures, including revision of parole conditions and, in some cases, parole revocation. According to the Division of Parole, at the end of the 2009-10 SFY, there were 39,759 persons in New York State under parole supervision, which are 1,425 fewer than at the end of the 2008-09 SFY.

The Board of Parole (Board) reviews all parole eligible prison inmates and either denies or approves release on parole. In the 2009-10 SFY, 20% of inmates were granted parole following their initial Board interview, which is a 1% decrease in the release rate from the 2008-09 SFY. Prisoners whose crime of commitment is statutorily defined as “violent” have generally been unsuccessful before the Board and in SFY 2009-10, only 9% of prisoners convicted of a violent crime were granted parole at their initial interview. Persons subsequently appearing before the Parole Board after initially being denied were granted parole release at a rate of 17%.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision, often with revised conditions. In the 2009-10 SFY, 10,856 parolees were ordered returned to DOCS, including 1,514 who were returned for a new felony conviction and 9,342 returned for a technical rule violation. In addition, 1,217 parolees were revoked and sent to the Willard Drug Treatment Campus.

D. Community Corrections Programs

According to data obtained from the Office of Probation and Correctional Alternatives (OPCA), housed in the Division of Criminal Justice Services (DCJS), at the end of the 2009-10 SFY, there were 122,086 adult probationers under supervision across New York State, including 60,037 felony probationers, 57,350 misdemeanor probationers and 4,699 reported by DCJS as “unknown”. In addition, local probation departments supervise persons placed under supervision by the family court, which includes more than 5,000 juvenile delinquency cases and 1,400 persons in need of supervision (PINS) cases each year.

Probation departments are also called upon to investigate and prepare pre-sentence reports based upon those investigations. In SFY 2009-10, probation departments conduct 65,926 investigations for both felony and misdemeanor cases.

Additionally, OPCA funds and oversees a variety of alternatives to incarceration programs. These programs are arranged into five programmatic categories: pretrial services, defender-based advocacy, Treatment Alternatives to Street Crime (TASC) and treatment programs, specialized programs and community service sentencing programs. These programs are briefly described below:

1. Pretrial service programs interview defendants, evaluate community ties and assess the likelihood of appearance in court. This information is made available to the court and has proven to be a useful aid in making bail decisions.
2. Defender-based advocacy programs evaluate defendants' needs for services such as drug treatment, family counseling, etc., prepare alternative sentencing plans, and aid defense attorneys in representing their clients.
3. TASC programs evaluate defendants with substance abuse histories, develop treatment plans, assist in placing defendants in treatment programs and monitor treatment performance.
4. Specialized drug and alcohol treatment services evaluate defendants with substance abuse histories and place defendants in treatment programs ordered by the courts as alternatives to incarceration. These programs may also treat defendants.
5. Community service sentencing programs arrange for community-based work sites, place defendants in community service work and monitor compliance with court-ordered community service.

III. STATE BUDGET IMPACT ON CORRECTIONAL AGENCIES

A. Department of Correctional Services

The SFY 2010-11 Budget for DOCS appropriates \$2.69 billion in state operations funding which is a \$26 million increase in state operations funding over the budget for the prior year. The Department possesses the largest state operations budget of any state agency and the average cost to house an inmate is now more than \$47,000 per year. The SFY 2010-11 Budget also includes \$200,000 in aid to localities funding which is the same amount appropriated in SFY 2009-10. In addition, the SFY 2010-11 Budget includes capital funds in the amount of \$320 million for maintenance and improvements to existing facilities.

As part of the SFY 2010-11 Budget, the Department closed two minimum security prisons – Lyon Mountain Correctional Facility in Clinton County and the minimum portion of Butler Correctional Facility in Wayne County. The closure of these facilities resulted in a savings of \$3.04 million in SFY 2010-11 and is estimated to save \$12.4 million in SFY 2011-12. The Department also continued the consolidation of under-populated medium security dormitories for additional savings of \$3.9 million in SFY 2010-11. Even after these closures and consolidations, the Department continues to maintain thousands of vacant beds throughout the prison system.

Additionally, the SFY 2010-11 Budget included Article VII legislation that directly impacts the Department. First, legislation was enacted that shifts the responsibility to issue an adaptive reuse plan, pursuant to Section 79-b of the Correction Law, for a prison slated for closure from the Commissioner of DOCS to the Commissioner of Economic Development. The rationale for this change is that the closure of state correctional facilities can often have significant economic consequences for the local community in which the facility is located. The Commissioner of Economic Development - with oversight of all economic development issues throughout New York State - is better positioned to determine the most appropriate and economically viable reuse

of a prison facility once it is closed and develop and issue a reuse plan. Further, the legislation ensures that all stakeholders are involved in the development of a reuse plan by making clear that local government officials in the community where the facility will be closed as well as other relevant agencies and authorities are consulted.

Unfortunately, the SFY 2010-11 Budget does not include the traditional Assembly-sponsored funding to support higher education programming in prison or to sustain the operation of Prisoners Legal Services (PLS). The continued economic downturn that created large revenue shortfalls in the state prevented the legislature from providing funding for these and other vital programs in SFY 2010-11. The Committee believes that PLS is an important program that has played a vital role in making New York prisons safer and more humane. Its work has resulted in positive changes in prisoners' attitudes and behavior and has promoted constructive policy and programmatic modifications within DOCS. Despite the lack of funding, the Correction Committee will continue to work to find ways to support the work of PLS and increase opportunities for higher education programming in prison.

B. Local Correctional Agencies

The DOCS budget includes \$200,000 in aid to localities funding for local correctional facilities for reimbursement to counties for housing "state-ready" inmates. "State-ready" inmates are persons who have been sentenced to state prison and are being held in a county jail awaiting transport. The reimbursement for "state-ready" inmates was basically eliminated in the SFY 2009-10 budget but the state is still liable to reimburse counties up to \$100 per day for each "state-ready" inmate that is not transferred to state prison within 10 days of the locality notifying DOCS that the inmate is ready for transport.

The SFY 2009-10 Budget also eliminated reimbursement to local correctional facilities for the housing of technical parole violators. However, the Division of Parole's budget for SFY 2010-11 does include an appropriation of \$5 million for local correctional facilities that are owed reimbursement by the state for costs incurred prior to April 1, 2010, for the housing of technical parole violators.

C. Division of Parole

The Division's total budget for SFY 2010-11 is \$189 million, including funding for parole operations and aid to localities. This is a \$5 million decrease from the SFY 2009-10 Budget. It is important to note that due to the economic downturn, the Division of Parole's 2009-10 budget eliminated \$8 million in state funding for community-based treatment contracts for programs such as vocational training, job placement, drug relapse prevention programs and related drug and alcohol treatment services for parolees. In an effort to reduce the impact of the elimination of these contracts, the SFY 2010-11 budget directs \$9 million in federal funding from the American Recovery and Reinvestment Act of 2009 to reentry providers focused on assisting persons released from prison find gainful employment. The need for reentry programs is especially important in a time of economic turmoil, because such programs have been proven to result in measurable short-term and long-term financial savings for the state by continuing to reduce the prison population and increasing public safety.

Additionally, thanks to the Assembly advocating the need for improved security at parole offices around the state, \$4.4 million in funding through 2013 was designated to install metal detectors and increase security measures.

D. Office of Probation and Correctional Alternatives

The SFY 2010-11 budget included Article VII legislation to merge the former Division of Probation and Correctional Alternatives into the Division of Criminal Justice Services (DCJS) as a specialized office within DCJS. The rationale for this merger was to create operational efficiencies, improve coordination of policies and programs and provide more efficient and cost-effective delivery of probation and alternative to incarceration programs. In order to ensure that a strong and independent voice for probation and alternative to incarceration programs remained after the merger, the legislation requires that the director of the new Office of Probation and Correctional Alternatives (OPCA) must be approved by the Governor rather than simply appointed by the Commissioner of DCJS. Further, the legislation provides that the director shall serve as a special advisor to the Governor and make recommendations related to the types and nature of alternative to incarceration programs needed to reduce incarceration where the purpose of such incarceration can be adequately served by alternative programs.

OPCA's budget for SFY 2010-11, which is included within the DCJS budget, is \$64.1 million, which includes \$61.4 million in aid to localities and \$2.7 million for state operations. The aid to localities expenditure represents a \$7 million decrease from the SFY 2009-10 funding level due to across the board reductions in all local assistance programs, including probation aid and funding for alternative to incarceration (ATI) programs. It should be noted that the SFY 2010-11 budget includes \$2.2 million in federal funding from the American Recovery and Reinvestment Act of 2009 to support ATI programs as a partial restoration of the loss to ATI funding in the OPCA budget. These programs play a key role in developing and implementing community-based services that reduce the need for incarceration and promote successful reentry of people returning to the community from prison and jail.

Funding for aid to localities in the OPCA budget also provides aid to local probation departments. However, probation funds provided to local governments represent only a small percentage (less than 20%) of actual costs of these services, rather than the 46.5% authorized in statute. Again, federal funds from the American Recovery and Reinvestment Act of 2009 in the amount of \$4.45 million were included in the SFY 2010-11 Budget to help offset cuts to local probation aid. Further, the SFY 2010-11 Budget included Article VII legislation that changed the manner in which state probation aid will be distributed to the counties and the City of New York from a reimbursement program to a block grant program.

E. State Commission of Correction

The State Commission of Correction is responsible for the regulation and oversight of all correctional facilities in New York State. This responsibility encompasses 67 state correctional facilities, 62 county jails and the New York City correctional system comprising 18 facilities and 200 police lockup facilities. The Commission's budget for SFY 2010-11 is \$2.975 million.

IV. COMMITTEE ACCOMPLISHMENTS

A. Significant Legislation

1. Prisoner Reentry

There are currently more than 56,000 people in state prison in New York and an additional 29,000 in local county jails. Most of this population will eventually return to our communities. Currently, DOCS releases about 25,000 people each year. The success of people returning from incarceration stands to benefit our entire community while their failure perpetuates a cycle of recidivism and incarceration. Persons returning from incarceration face many obstacles including barriers to finding gainful employment and stable housing, acquiring identification, voter disenfranchisement and more.

For many years, the Assembly Correction Committee has been advancing various reentry-related bills to help promote the successful reentry of persons returning from incarceration. Thanks to the cooperation of the Executive and the Senate in 2010, many of these bills were enacted into law as Article VII legislation included as part of the SFY 2010-2011 state budget.

Removed Barrier to Employment in Alcohol and Beverage Control Law

An arbitrary barrier to employment was eliminated from the Alcohol and Beverage Control Law by removing the statutory prohibition against a person with a criminal conviction being employed by establishments, such as restaurants, that hold a liquor license. Previously, the law prohibited persons convicted of a felony from being employed at an establishment with a license for on-premises consumption without the written approval of the State Liquor Authority. This new legislation requires employers to consider whether an individual's conviction is related to the job and whether hiring such individual would present a risk to public safety, in accord with Article 23-A of the Correction Law, but removes the absolute bar to employment. (*Chapter 56 of the Laws of 2010, Part OO, Section 1; See also A.3770-A*)

Removed Unnecessary Information from Department of Correctional Services Website

This legislation provides that criminal information related to certain non-violent offenders may be posted on the DOCS website for a period not to exceed five years after completion of sentence. All violent and sex offenders would continue to be listed. The statute also allows DOCS to continue posting information on prior offenses for non-violent inmates committed to state prison on a subsequent offense. Before this change, DOCS kept information on all inmates who had ever been in state prison on the public website indefinitely. Many other states and the Federal Bureau of Prisons only include persons currently in custody on their public websites.

The reason for this change is that the information on the DOCS website has been found to be out-dated and incomplete. Further, the DOCS database is often misused as an inappropriate criminal background check resource for employers and others. The result of this practice is that large numbers of qualified job seekers are being denied access to employment and housing based on information that is potentially misleading. Those individuals who need criminal record information can obtain it from DCJS, which provides comprehensive criminal conviction information to individuals and agencies authorized to conduct such requests, and from the Office of Court Administration, which provides statewide criminal conviction information to the public.

This new provision will not impact a victim's ability to use the website to see when a person will be released because violent offenders will remain on the website. Further, crime victims can register to be automatically notified by DOCS and Parole upon the release of an inmate through the Victim Information and Notification Everyday (VINE) system. (*Chapter 56 of the Laws of 2010, Part OO, Section 2; See also A.9382*)

Certificates of Relief for Persons Convicted of Federal Offense

This legislation provides that when a person convicted of a federal crime in New York applies for a "certificate of relief from disabilities", the Board of Parole may issue such certificate upon the favorable written recommendation of the chief probation officer of the federal district where the conviction was obtained. Before issuing the certificate, the Board must ensure that the recommendation is consistent with the interests of justice. This process will streamline the existing procedure for obtaining a "certificate of relief from disabilities" from the Board of Parole with respect to a judgment of conviction entered in a federal court in New York State and will also result in cost savings for the Division of Parole. (*Chapter 56 of the Laws of 2010, Part OO, Section 3, See also A.3814*)

Allow Inmates to Obtain a Copy of their Criminal Record

The Division of Criminal Justice Services is now required to provide an inmate with a free copy of their criminal record upon request. The Legal Action Center has found that up to 54% of criminal records in New York contain errors. This new provision will allow individuals to clear up inaccuracies and help prevent a potential employer from relying on erroneous information in making a hiring decision. With more and more employers conducting criminal background checks, it is important that these records be accurate and that the subject of the record have an opportunity to review the information before release from incarceration. (*Chapter 56 of the Laws of 2010, Part OO, Section 4; See also A.3769*)

Provide Inmates with Access to Pre-sentence Reports

This legislation requires the court to provide an inmate with a copy of a pre-sentence report for use by such inmate at his or her Parole Board hearing or in an appeal of a Parole Board determination. The court must provide the pre-sentence report within twenty days of an inmate's written request. The court will continue to have the discretion to withhold certain confidential and sensitive information from disclosure. (*Chapter 56 of the Laws of 2010, Part OO, Section 5; See also A.3492-A*)

Access to Birth Certificates for Inmates Released from Jail and Prison

This legislation provides that no fee shall be charged when the DOCS, a local correctional facility or a juvenile detention facility request a birth certificate on behalf of an inmate being released. One significant barrier to successful reentry is the inability of a former inmate to obtain proper identification. Securing proper identification is vital to a formerly incarcerated person's ability to find stable employment and housing, and access benefits. (*Chapter 56 of the Laws of 2010, Part OO, Sections 6 and 7; See also A.3686*)

Notice of Voting Rights

This legislation requires DOCS and the Division of Parole to notify offenders who have completed their maximum sentence about their right to vote and to provide them with a voter registration form.

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. Increasing voter participation by people coming out of the criminal justice system gives them a voice and a stake in the community. The felony disenfranchisement laws in New York have weakened the voice of minority communities throughout the state and hindered successful reentry by individuals coming out of prison. Further, felony disenfranchisement has a disproportionate impact on minority communities because African Americans and Latinos comprise nearly 87% of those currently denied the right to vote as a result of New York's felon disenfranchisement law.

Persons convicted of a felony who have completed their maximum sentence of imprisonment are eligible to vote in New York. However, there is much confusion and misinformation on the part of convicted individuals and even within the local boards of elections, about when and whether individuals with criminal records are able to vote. This law will help to increase voter education and decrease the misinformation and confusion about voter eligibility. (*Chapter 56 of the Laws of 2010, Part OO, Section 8; See also A.2266-A*)

Certificates of Relief from Disability and Certificates of Good Conduct

This legislation makes technical conforming changes to various sections of law to ensure that both “certificates of relief from disabilities” and “certificates of good conduct” are properly recognized as lifting statutory bars to employment and licensure. Before this change, some statutes that impose bars to employment and licensure based on a criminal conviction mistakenly referenced only one certificate. As a result individuals who are eligible only for the other certificate were forever arbitrarily barred from certain employment and licensing opportunities. (*Chapter 56 of the Laws of 2010, Part LL; See also A.3664-B*)

Discrimination by Public Agencies

This bill would allow the Division on Human Rights to enforce the provisions of Article 23-A of the Correction Law when a person is discriminated against by a public agency. Under Section 755 of the Correction Law, individuals denied employment by a public agency because of their criminal record have only one remedy available to them - an Article 78 proceeding in state court. However, individuals wrongly denied employment by a private employer are able to file a complaint with the Division of Human Rights. There is no reason that people who are discriminated against by a public agency because of their criminal record should be limited to fewer options than those complaining about discrimination by private employers. Thus, this bill sought to amend Section 755 of the Correction Law to give persons who suffer discrimination based on a criminal record by a public employer access to the same enforcement mechanisms as those discriminated against by private employers. (*A.8012 / S.4687; Vetoed by Governor*)

2. Counting Prisoners for Purposes of Redistricting

The New York State Constitution states that “no person shall be deemed to have gained or lost a residence while confined in any public prison.” However, for the purposes of legislative redistricting, prisoners have been counted as residents of the community where they are imprisoned instead of the community in which they resided prior to their incarceration. This year, as part of the SFY 2010-11 Budget, legislation was enacted to correct this injustice and

require that inmates be counted as residents of the community where they resided prior to incarceration. (*See Chapter 57 of the Laws of 2010, Part XX*)

The United States Bureau of the Census includes everyone housed in federal, state, and local correctional facilities in its count of the general population of each census block. Before the change enacted in the budget, New York's reliance on the Census Bureau's flawed prison counts in drawing legislative districts may have violated federal statutory and constitutional law in two ways: it diluted minority voting strength in a possible violation of Section 2 of the Voting Rights Act of 1965; and it may violate the one person, one vote principle of the Equal Protection Clause, which requires voting districts to have equal numbers of residents.

Recognizing this inequity, 13 counties in New York previously passed laws to subtract the prison population from the official count prior to drawing local legislative districts to ensure equal representation and avoid creating legislative districts that have more people in prison than actual residents. This new legislation enacted in the state budget will require all localities to subtract prisoners from the census count before drawing legislative districts.

It is important to note that this legislation is limited to the drawing of legislative districts, and does not in anyway revise or alter the underlying census data. Thus, the legislation has no impact on funding formulas and allocations that are based on federal census data.

3. Sex Offenders

The Assembly passed a number of bills related to the managing of sex offenders. Only one of these bills was passed by the Senate and signed into law by the Governor.

Notice to Housing Authorities of the Presence of Sex Offenders (A. 3024-F; Chapter 278 of the Laws of 2010). Requires the Division of Criminal Justice Services to notify municipal housing authorities whenever certain high risk sex offenders are living in public housing.

The following legislation related to managing sex offenders passed the Assembly and the Senate but was vetoed by the Governor:

A.2108 – Requires registry to include violation of registration requirements. Requires that the sex offender registry maintained by DCJS include additional information stating whether a sex offender is in violation of the registration requirements. (*Vetoed by Governor*)

A.2132 – Time offender fails to register is added to duration of registration. Provides that a sex offender who fails to properly register or verify their address shall have the period of time of such failure added to the duration of their registration. (*Vetoed by Governor*)

A.10973-A – Notice to law enforcement regarding sex offenders in temporary housing. Requires law enforcement agencies to be notified when sex offenders in Suffolk County are placed in temporary housing. (*Vetoed by Governor*)

Additional legislation passed by the Assembly related to the management of sex offenders includes:

A.841 – Relates to failure of sex offender to properly verify his or her address. Establishes procedures to be followed in the event that a sex offender fails to return a signed annual verification form within the time proscribed by law. Specifically, law enforcement would be directed to visit the last known residence of the offender and require that they complete the verification form or be subject to a felony for failure to register. In cases where a sex offender has moved without properly notifying law enforcement, the district attorney would be notified. *(Passed Assembly)*

A.10777 - Registry information on supervision of offender. Requires the sex offender registry to include information about the type and length of supervision an offender is serving. *(Passed Assembly)*

A.10974 - Community notice of level two offenders. Permits law enforcement officers to notify communities about the exact address of certain sex offenders who move into their neighborhood. This bill would also add attempted unlawful surveillance to the list of registerable offenses. *(Passed Assembly)*

4. Other Significant Bills Advanced by the Correction Committee in 2010

The Correction Committee also advanced the following legislation that was signed into law in 2010.

Alternative Placement for Persons Sentenced to Parole Supervision (A.8613; Chapter 82 of the Laws of 2010)

The Criminal Procedure Law permits certain non-violent offenders and parole violators to be sentenced to a 90 day drug treatment program followed by a period of parole supervision as an alternative to a state prison sentence. DOCS operates the Willard Drug Treatment Campus in Seneca County for offenders who receive such a parole supervision sentence. However, the Willard facility is unable to meet the needs of inmates with certain medical and mental health care requirements. This bill empowers DOCS to place inmates with certain medical and mental health needs in an alternative 90-day program so that such inmates' needs can be adequately addressed and the intent of the sentencing court's order can be fulfilled. Such inmates must receive a written notification describing the alternative drug treatment program and advising each inmate of their right to object in writing to such placement. If an individual objects, DOCS must notify the sentencing court. The court must then conduct a proceeding to modify its sentencing order accordingly.

Allows inmates to perform work for non-profit organizations. (A.10061; Chapter 256 of the Laws of 2010)

Permits inmates in state and local correctional facilities to voluntarily perform work for non-profit corporations. This legislation enacts a recent amendment to the New York State Constitution ratified by the people in 2009.

Expansion of Shock Incarceration Program. (A.11391; Chapter 377 of the Laws of 2010)

Expands eligibility for the Shock Incarceration Program to certain non-violent offenders previously incarcerated in state prison for a non-violent or drug offense. Prior to the enactment of this bill, inmates who had previously served time in state prison were automatically disqualified from the Shock program. DOCS estimates that this expansion will result in the screening of 150 additional inmates per month, with an estimated 50 inmates per month approved.

Expansion of Limited Credit Time Allowance. (A.10611; Chapter 412 of 2010)

Expands the eligibility for limited credit time allowance for certain inmates convicted of violent offenses who successfully complete a significant programmatic accomplishment. Under the bill, four new advanced skill programs have been added to the list of programs that allow an inmate to be eligible for credit time.

The following correction-related legislation was passed by the Assembly and the Senate but vetoed by the Governor:

Annual report on prison staffing and capacity. (A.11330-A; Vetoed by Governor)

Requires the Department of Correctional Services to provide an annual report to the Legislature on staffing and bed capacity in state correctional facilities, including information as to the number of inmates living in double-bunked and double-celled conditions. The measure also would mandate that such reports include an analysis of any proposed prison closure and its impact on inmate security level classification, correctional employees, facility staffing and available bed capacity.

Implementation of new Interstate Compact for Juveniles. (A.11400-A; Vetoed by Governor)

Enacts the new Interstate Compact for Juveniles (ICJ) which would govern the interstate management, monitoring, and supervision of juvenile delinquents and provide for the return of non-adjudicated juveniles who have run away from home to another state.

In addition, the Assembly passed the following correction-related bills:

Commission to Study and Investigate Sexual Misconduct in Prisons. (A.3755-A; Passed Assembly)

Establishes a temporary commission to investigate, evaluate and make recommendations regarding sexual misconduct in state correctional facilities. Recommendations by the commission would be used to formulate any additional rules and regulations as may be necessary to reduce the risk that correctional employees engage in unlawful and prohibited sexual contact with inmates.

Provides inmates an opportunity to obtain a GED. (A.3766; Passed Assembly)

Requires DOCS to establish academic programs to prepare all inmates to complete the General Equivalency Diploma (GED) and provides inmates with an opportunity to complete a GED before release on parole, conditional release, post release supervision or presumptive release.

B. Public Hearings

1. Implementation and Funding of the Rockefeller Drug Law Reform Legislation

At the time of publication of this report, the Correction, Codes, Judiciary, and Alcoholism and Substance Abuse Committees have planned a public hearing for December 20, 2010, to examine the implementation and funding of Rockefeller Drug Law Reform by the courts and community-based programs. Specifically, the committees will take testimony concerning: (1) the availability, adequacy and distribution of funding for community-based residential and outpatient substance abuse treatment and case management services for drug offenders court-ordered into treatment as an alternative to incarceration; (2) how the judicial diversion program authorized as part of the Rockefeller Drug Law reform legislation has been implemented by the courts; and (3) the role and funding of alternative to incarceration and defender-based programs in the implementation of the Rockefeller Drug Law reforms.

As part of the SFY 2009-10 New York State budget, the legislature enacted significant reforms of the “Rockefeller Drug Laws.” The reforms enacted in the budget significantly increased judicial discretion - authorizing judges to sentence many non-violent drug offenders to probation as a possible alternative to state prison. The legislation also created a statutorily defined, uniform judicial diversion program, expanded the availability of drug treatment courts and allowed certain non-violent drug offenders serving long terms of incarceration under the old drug laws to apply to the courts for possible resentencing.

Returning discretion to judges to sentence drug offenders to treatment as a potential alternative to prison has increased the need for community-based substance abuse treatment programs and alternative to incarceration services. Additionally, the demand for drug treatment courts has risen. According to the Division of Criminal Justice Services, as of October 1, 2010, 1000 persons who would likely have been sent to state prison were instead sentenced to an alternative sentence – 300 received a local jail sentence or probation while 700 were ordered into a court-monitored judicial diversion program.

In order to meet this increased need for substance abuse treatment and other alternative to incarceration programs, the SFY 2010-2011 state budget included funding for outpatient and residential substance abuse treatment services, expansion of drug treatment courts, probation services and alternative to incarceration and reentry programs. The majority of funds provided to support Rockefeller Drug Law reform are derived from federal funds received as a result of the American Recovery and Reinvestment Act of 2009.

This hearing will provide an opportunity for the committees to hear from community-based programs, the courts and executive agencies about how the funds provided in the SFY 2010-2011 budget have been and will be distributed and utilized and the implementation of the judicial diversion program. The Correction Committee, in partnership with the Codes and Alcoholism and Substance Abuse Committees, will continue to monitor the program to ensure that the intent of the Rockefeller Reform legislation is carried out.

V. ISSUES TO BE ADDRESSED IN 2011

A. Higher Education in Prison

Studies have consistently found that the higher the level of education attained, the more likely a former inmate will be to obtain gainful and stable employment, and the less likely he or she will be to engage in future criminal activity. However, in 1994, federal tuition assistance, in the form of Pell Grants, for individuals incarcerated in federal and state correctional facilities was terminated with the enactment of the Violent Crime Control and Law Enforcement Act. Then, in 1995, New York prohibited inmates from accessing state funds through the Tuition Assistance Program (TAP) for post-secondary correctional education. According to a report published by the Correctional Association of New York in January, 2009, entitled “Education From the Inside, Out: The Multiple Benefits of College Programs in Prison,” only four out of seventy post-secondary correctional education programs continued to operate in New York following the termination of TAP availability for inmates.

The benefits of post-secondary correctional educational have been well-documented. Most recently, the New York State Commission on Sentencing Reform recently reported that post-secondary correctional education programs have been shown to reduce recidivism by up to 40% and the Commission recommended that more post-secondary educational opportunities be made available to inmates. In addition, the Correctional Association report asserts that in-prison college programs are a cost-effective method of improving public safety. The report states that “[t]he cost differences in education versus incarceration in New York, plus the short- and long-term benefits of a better educated population, makes investment in higher education for incarcerated individuals and people in the community smart fiscal policy.”

Despite the potential benefits of post-secondary correctional education programs, only a relatively small number of programs currently operate in the New York state prisons funded mostly through private sources, federal grants for youth offenders or through small legislative initiative grants. Identifying the resources (both private and public) necessary to expand post-secondary education in prison is challenging, particularly in this tough economic time. Therefore, for the last two years the Correction Committee advanced a bill (A.8552) to establish a commission on post-secondary correctional education to examine, evaluate, and make recommendations concerning the availability, effectiveness and need for expansion of post-secondary education in the New York state prison system. In 2011, the Correction Committee will again advance this important legislation and work to expand post-secondary education in prison.

B. Parole Reform

Records show that since 1985 more than 500,000 persons have been released from the Department of Correctional Services to the Division of Parole. It is also common sense that being tough on crime also requires being smart on crime. Towards that end, the Division of Parole and the Board of Parole are each responsible for public safety in important but different ways. Most violent offenders are now sentenced to a determinate term and are released by the Department of Correctional Services. The Board of Parole determines the release of all indeterminately sentenced offenders including non-violent offenders, persistent offenders and

Class A-I offenders. In addition, the Board conducts merit time hearings and determines release for those with final deportation orders as well as for the remaining violent offenders who were sentenced prior to the enactment of determinate sentencing. Lastly, the Board sets the conditions of release for all offenders released to supervision.

Today, we have only 41,000 persons on parole and 57,000 persons in state prison. In contrast to the more than half a million persons released from incarceration in the last 25 years, these numbers indicate that rehabilitation does work and the Division of Parole successfully reintegrates most parolees back into the community. The number of parolees who return to incarceration for a new offense has dropped from a high of 2,500 in 2000 to a current low of less than 1,500 in the 2009-10 SFY. The percentage of parolees who return to incarceration within three years of their release for a new offense is 8%. Viewed in terms of total statewide arrests, parolees represent less than 5% of all felony arrests and just 2.5% of all misdemeanor arrests per year statewide.

Given the importance of a successful parole system, we must ensure that we do everything we can to support the Division of Parole in its mission. The scope of our inquiry during the 2011 legislative session will also include consideration of whether we are doing our best to prepare prisoners to reenter society and lead successful, law abiding lives. The Committee may consider convening with professionals, academics, law enforcement experts, advocates and experienced members from the community to evaluate whether the practices and procedures in place today for both the Division of Parole and the Board of Parole are fair and effective, and to make recommendations to improve future outcomes.

C. Expungement of Criminal Records

Thousands of New Yorkers currently 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 criminal histories 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, New York enacted a conditional sealing provision for certain drug offenders as part of the 2009 Rockefeller Reform legislation. Expansion of this legislation is necessary to allow more people convicted of nonviolent offenses who have completed appropriate treatment and/or remained crime free an opportunity to rebuild their lives without the stigma of a criminal record.

D. Advancing Policies to Aid Successful Reentry of the Formerly Incarcerated

The Correction Committee is committed to advancing legislation that will assist offenders to successfully reenter society therefore reducing further criminal behavior and victimization of our communities. Specifically, a number of legislative initiatives will be advanced to promote employment opportunities for persons returning from incarceration including: (1) providing a tax credit for employers who hire persons recently released from incarceration; (2) streamlining the

process for ex-offenders to obtain a Certificate of Relief from Disabilities or a Certificate of Good Conduct; (3) expanding Article 23-A of the Correction Law to prevent discrimination against persons with a criminal record who pose no threat to public safety.

E. Expansion of Merit Time and Work Release

Merit time affords inmates with the ability to earn a reduction of their sentence after completing significant programming and maintaining a positive disciplinary record. Current law only allows inmates with certain nonviolent convictions to earn merit time. However, the availability of merit time allowance motivates inmates to complete necessary programming and maintain a positive disciplinary record during incarceration. The program, in fact, reduces prison violence and studies show that inmates granted merit time and released early have lower recidivism rates. Further, DOCS estimates that since its inception in 1997, the merit time program has resulted in a savings of \$369 million. Therefore, during the 2011 session, the Committee intends to advance legislation to expand the availability of merit time.

F. Voting Notification and Registration

For the last several years, the Assembly has passed legislation to enact the Voting Rights Notification and Registration Act (A.2266) and help to clear up the confusion that surrounds the eligibility of persons convicted of a felony to vote. As noted in Section IV(A) of this report, the Assembly was successful in enacting a small piece of the Voting Rights Notification and Registration Act as part of the SFY 2010-11 state budget.

Current law prohibits a person from voting while they are imprisoned or on parole for the conviction of a felony. Once the person has completed their maximum sentence of imprisonment or has been discharged from parole, their right to register to vote is automatically restored. In addition to the new law enacted as part of the budget to require persons imprisoned for a felony to be notified of their eligibility to vote upon release from state prison or discharge from parole, the bill will require probation departments and local jails to notify persons about their right to register to vote. Additionally, the bill will require the Department of Correctional Services and the Division of Parole to notify the state Board of Elections once per month regarding persons who have reached their maximum sentence of imprisonment or have been discharged from parole to ensure that there are no barriers to registration.

The Election Law currently provides a specific procedure for removing the names of convicted felons from the voting rolls by requiring every criminal court or the Office of Court Administration to transmit to the New York State Board of Elections on a quarterly basis the names, addresses, and birth dates of all persons convicted of felonies and sentenced to incarceration. However, no similar procedure is in place to inform the state and local boards of elections once an individual has served his maximum sentence or been discharged from parole, and hence is once again eligible to vote. This one-way communication has caused enormous confusion and misinformation, resulting in the *de facto* disenfranchisement of thousands of eligible voters throughout New York State. An investigation by the Legal Action Center, the Brennan Center for Justice, and the Community Service Society in 2004 found that more than half of New York's 62 counties, including all five boroughs in New York City, were wrongly refusing to register individuals with felony records.

Further, there is much confusion and misinformation on the part of convicted individuals, the staffs of Corrections, Probation, and Parole, and even within the local boards of elections, about when and whether individuals with criminal records are able to vote. This bill will help to increase voter education and decrease the misinformation and confusion about voter eligibility within various criminal justice agencies and the boards of elections.

APPENDIX

2010 SUMMARY SHEET

**Summary of Action on All Bills
Referred to the Committee on
CORRECTION**

Final Action on Assembly Bills

Bills Reported With or Without Amendment

To Floor; Not Returning to Committee	9
To Ways and Means Committee	6
To Codes Committee	13
To Rules Committee	4
Total	32

Bills Having Committee Reference Changed **1**

Senate Bills Substituted or Recalled

Substituted	3
Recalled	0
Total	3

Total Assembly Bills in Committee **182**

Total Number of Meetings Held **5**