



New York State Assembly
2011 ANNUAL REPORT

committee on
CORRECTION

Jeffrion L. Aubry
Chair



Sheldon Silver
Speaker

December 15, 2011

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 2011 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

2011 ANNUAL REPORT

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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 61 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.

2011 was a significant year in Corrections. The Department of Corrections and Community Supervision (DOCCS) was created by merging the Department of Correctional Services (DOCS) and the Division of Parole into a single agency. Further, seven state correctional facilities were closed. Both of these historic undertakings are reviewed in greater detail in Sections III and IV of this report.

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. Public Hearings held by the Committee on Correction and other committees are reviewed in Section IV.

II. NEW YORK STATE'S CORRECTIONAL POPULATION

A. State Correctional Facilities and Community Supervision

As of December 3, 2011, the prison population was 55,050. This represents a 2.1% decrease in the prison population from 2010 and an overall population decline of 23% since the peak of 71,538 in 1999. The under-custody population is 49.7% African American, 24.7% Hispanic, and 23% white. The number of state-ready inmates (inmates held in a local correctional facility waiting transfer to state prison) was 639 on December 1, 2011, up from a daily average of 472 state-ready inmates held in county jails in 2010. It should be noted that although not recognized as part of the prison 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 21,955 total admissions to state correctional facilities from January 1, 2011 through December 1, 2011, a 5.18% increase from the total admissions during the same period in 2010. New court commitments for this period were 13,212 (a 1.7% decrease from 2010). Returned parole violators and conditional release revocations were 8,307 (a 17.33% decrease from 2010).

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.

After the merger of the Division of Parole and the Department of Correctional Services, DOCCS assumed the responsibility for the supervision of all persons released from the state correctional facilities and subject to a term of parole or post release supervision. According to DOCCS, at

the end of the 2010-2011 SFY, there were 38,006 persons in New York State under parole supervision, 1,753 fewer than at the end of the 2009-2010 SFY.

B. Local Correctional Facilities

The total under custody population among local correctional facilities as of December, 2011, was 29,636. For the City of New York, there were 12,479 inmates under custody in December, 2011, which is 895 less than in December, 2010. County correctional facilities outside of the City of New York had an under custody population of 17,157 as of December 5, 2011, which is 74 more than in December, 2010.

C. Board of Parole

The Board performs some 21,000 non-administrative release consideration interviews annually, with a grand total of 29,057 interviews and reviews in FY 2010-11, only two fewer than in the prior year. Release rates by the Board, however, continue to be reduced significantly, most recently reported at 6% for violent felony offenders, down from 9% the year prior and down from 21% ten years ago. Initial release rates for all classes of felons are down to 18% from 20% the year prior and from 47% ten years ago. Overall release rates are 36% when including reappearance interviews, down from 40% the year prior and from 53% in SFY 2000-01.

Data supplied by the Board shows a percentage reduction in virtually every category of offender considered for release. Youthful and Juvenile Offenders receive the second highest rate of initial release at 24%, second only to major property offenders at 29%, although these two classes of offenders have also seen reductions from 43% and 50% respectively ten years ago.

The Board of Parole also reviews parole violation cases and either revokes parole or restores parolees to supervision, often with revised conditions. In the SFY 2010-11, the Board returned 11,827 releasees to prison for violating the conditions of their release, including 1,547 who were returned for a new felony conviction and 9,104 returned for a technical rule violation. In addition, 1,176 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 2010-2011 SFY, there were 119,653 adult probationers under supervision across New York State, including 59,028 felony probationers and 55,701 misdemeanor probationers. In addition, local probation departments supervise persons placed under supervision by the family court, which includes approximately 4,843 juvenile delinquency cases and 1,408 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. Each year, probation departments conduct more than 61,409 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 Corrections and Community Supervision

The SFY 2011-12 Budget for DOCCS appropriates \$2.60 billion in state operations funding which is a \$270 million decrease in state operations funding from the budget for the prior year. It is important to note that due to the merger, the DOCCS budget represents funding for the operation of state correctional facilities as well as community supervision and the Board of Parole. Included within the DOCCS budget is \$146.5 million for the supervision of persons released to parole and post release supervision and \$5 million to support the functions of the Board of Parole. 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 2011-12 Budget also includes \$17.1 million in aid to localities funding.

As part of the SFY 2011-12 Budget, the Department closed seven medium and minimum security prisons, eliminating 3,800 beds from operation – Arthurkill Correctional Facility in Richmond County, Mid Orange Correctional Facility in Orange County, Oneida Correctional Facility in Oneida County, and the minimum security facilities of Fulton Work Release Facility in Bronx County, Buffalo Work Release of Erie County, Summit Shock of Schoharie County and Camp Georgetown of Madison County. The closure of these facilities resulted in a savings of \$72 million in SFY 2011-12 and is estimated to save \$112 million in SFY 2012-13. The Department continues to maintain over five thousand vacant beds throughout the prison system.

Unfortunately, once again the SFY 2011-12 Budget does not include the traditional Assembly-sponsored funding to support higher education programming in prison or to adequately 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 the needed funding for these and other vital programs in SFY 2011-12. 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. Although \$1 million in funding was secured for PLS in SFY 2011-12, the program was forced to reduce its workforce by 50% due to the budget cuts. Despite the insufficient funding, the Correction Committee will continue to work to find ways to support what remains of PLS and increase opportunities for higher education programming in prison.

It is also important to note that the SFY 2011-12 enacted budget directs \$6.2 million in federal funding for alternative to incarceration programs and approximately \$5.5 million for reentry providers focused on assisting persons released from prison in finding gainful employment. These funds are appropriated in the Division of Criminal Justice Services budget.

1. Merger of the Department of Correctional Services and the Division of Parole

As part of the SFY 2011-12 enacted budget, the Department of Correctional Services and the Division of Parole were consolidated into a single state agency known as the Department of Corrections and Community Supervision (DOCCS). Under this construct, DOCCS is now charged with both institutional and community-based offender supervision with a mandate to seamlessly blend operations to strengthen the focus on re-entry, while the Board of Parole maintains independent decision-making authority within the new agency. Combining resources and streamlining operations under the new agency was estimated to yield a savings of \$6.5 million in SFY 2011-12. An additional \$5 million savings was achieved by a reduction in central management staff to reflect reductions associated with the merger as well as the prison closures, detailed below. 1,893 employees were transferred from the Division of Parole to the Department of Corrections and Community Supervision.

The goal of the merger is to strengthen the focus on reentry by improving coordination of programming for inmates to help ensure a successful reentry to the community upon release thereby lowering their risk of recidivism. Toward that end, the budget includes a requirement that the department develop a transitional accountability plan (TAP) for all inmates entering state prison. The TAP is a comprehensive, dynamic and individualized case management plan based on the programming and treatment needs of the inmate. The purpose of the TAP is to promote successful rehabilitation and provide DOCCS with the necessary information to prioritize programming and treatment services based on the individual needs of each inmate. The TAP will also be provided to the Parole Board to assist them in making discretionary parole release decisions.

The merger also shifted the responsibility for the supervision of all inmates released to a period of parole or post release supervision to DOCCS. This responsibility includes efforts to ensure successful, law-obedient adjustment to community living and help with drug treatment, job training, job placement and other services to enhance the likelihood of a self sufficient and

crime-free lifestyle. DOCCS staff is also responsible for identifying violations of parole conditions, seeking revision of parole conditions and in some cases, parole revocation.

Finally, DOCCS has taken over the responsibility for issuing Certificates of Relief from Disabilities and Certificates of Good Conduct. Such certificates are granted to formerly incarcerated persons who demonstrate evidence of rehabilitation and operate to lift various bars to employment and licensure that can result from a criminal conviction.

2. Prison Closures

Seven state correctional facilities were closed in 2011, saving an estimated \$72 million. The justification for such closures is the continued decline of the prison population to new historic lows. Prior to the closures, the system maintained nearly 8,000 empty prison beds and currently houses 15,000 fewer inmates than in 2000 – a more than 20 percent decline. In spite of the closure of some small correctional facilities in the past few years, excess capacity is significant. Only 3,800 of these excess beds are removed from operation by the closure of these facilities. Facilities selected for closure were limited to medium security and minimum security correctional facilities.

In order to effectuate the closures and realize the savings in SFY 2011-12, the budget included a one-time exception to the requirements of Correction Law §79-a that twelve months notice be provided for the closure of any state correctional facility. Instead, the legislature agreed to authorize the Governor to select the facilities slated for closure and provide at least 60 days notice to the legislature.

The budget also includes the availability of \$50 million in economic grants through the Regional Economic Development Councils for communities impacted by the closure of a correctional facility.

3. Board of Parole

The Board of Parole is statutorily maintained as a 19-member appointed body with independent decision-making authority. Housed within the new DOCCS for administrative support, the Board maintains its independence in conjunction with its own counsel's office and cadre of Administrative Law Judges. The Board continues to make discretionary determinations regarding the release of indeterminate sentenced inmates, the setting of release conditions, revocations of supervision for parolees charged with violating conditions of release, and the three-year discharges of sentence for certain persons under supervision. Board functions of granting merit termination of sentences, granting certificates of rehabilitation and preparing parole summaries have been assigned to DOCCS.

The budget legislation also includes a requirement that the Board establish new written procedures for its use in making parole release decisions. The new guidelines will incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board and the likelihood of success of such persons upon release.

Finally, funding for the Board of Parole is separately appropriated and new statutory language provides that appropriations made for the Board shall not be decreased by interchange with any

other appropriation in the DOCCS budget in order to ensure adequate funding to perform its mission with the required independence.

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.

C. Office of Probation and Correctional Alternatives

The SFY 2011-12 Budget restructured certain appropriations so that formerly separate programs within the Division of Criminal Justice Services (DCJS) such as the Office of Probation and Correctional Alternatives (OPCA), among other appropriations, have been consolidated. The new program structure of DCJS now consists of the Administration, Crime Prevention and Reduction Strategies and separate programs for each of the newly merged agencies.

Thus, the appropriation for OPCA is unspecified and contained within a larger \$106.1 million appropriation for DCJS covering additional programs for organizations and services such as Aid to Prosecution, Crime Labs, and Drug Diversion, among others. In SFY 2010-11, OPCA’s operations budget was \$61.4 million in an overall \$115.8 million DCJS appropriation. The SFY 2011-12 DCJS budget represents an 8.3% reduction from the prior year to fund OPCA and associated programs.

The rationale for the merger of OPCA into DCJS 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, while ensuring a strong and independent voice for probation and alternative to incarceration programs by director of OPCA, who must be approved by the Governor. The Correction Committee recently held a public hearing to review the impact of this merger. Information obtained as a result of this public hearing is detailed in Section IV of this report.

The DCJS budget includes \$44 million for aid to local probation departments and additional federal funds are also directed to help offset probation aid cuts. It should be noted that state aid to local probation departments represents only a small percentage (less than 20%) of the actual costs of these services.

D. 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 61 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 2011-12 is \$2.975 million.

IV. COMMITTEE ACCOMPLISHMENTS

A. Significant Legislation Advanced by the Correction Committee in 2011

The Correction Committee advanced the following legislation that was signed into law in 2011.

The interstate compact for juveniles (A.55A, Chapter 29 of the Laws of 2011)

Enacts the new Interstate Compact for Juveniles (ICJ) which will 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.

Delivery of sentence commitment documents (A.7930, Chapter 177 of the Laws of 2011)

Requires that a sentence order, commitment or certificate of conviction, and any order of protection, be delivered at the time of a defendant's admission into a state or local correctional institution, or a facility operated by the Office of Children and Family Services.

Relates to sexual conduct between a state employee and an inmate (A.8449, Chapter 205 of the Laws of 2011)

Expands the definition of employees who are prohibited from having sexual contact with an inmate to include those who work in a state correctional facility providing direct supervision to inmates and to employees that supervise persons under community supervision.

Relates to the information required by the sex offender registry (A.2565, Chapter 507 of the Laws of 2011)

Requires the sex offender registry to include information about the type and length of supervision an offender is serving

Community notice of level two sex offenders (A.5661, Chapter 513 of the Laws of 2011)

Permits law enforcement officers to notify communities about the exact address of certain sex offenders who move into their neighborhood. This bill also adds attempted unlawful surveillance to the list of registerable offenses.

Provides for the court to determine the fitness of an eligible offender for a certificate of relief (A.7597A, Chapter 488 of the Laws of 2011)

Requires the court to make an initial determination as to the fitness of an eligible offender for the issuance of a Certificate of Relief from Disabilities at the time of sentencing where the court sentences such offender to jail or to a revocable sentence.

Requires level two sex offenders to register their employment address (A.7950, Chapter 532 of the Laws of 2011)

Enacts requirement for level two sex offenders to register their address of employment and annually verify same with the Division of Criminal Justice Services.

Authorizes local correctional facilities to house out-of-state inmates (A.8238, Chapter 573 of the Laws of 2011)

Permits local correctional facilities in New York to contract with local jails of other states for the purpose of boarding-in certain inmates. This legislation permits the counties an opportunity to generate revenue where such county maintains excess jail capacity.

The following correction-related legislation was passed by the Assembly and the Senate but has either been vetoed or not yet signed by the Governor at the time of the publication of this report:

Procedures to be followed in the event a sex offender fails to verify registration (A.424, Passed both houses, not yet signed by the Governor)

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 he or she 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.

Provides for the collection of supervision fees for parolees (A.1363, Passed both houses, not yet signed by the Governor)

In order to ensure that the focus of parole officers is on public safety and reintegration into society, this bill removes the obligation from parole officers to also collect supervision fees by requiring that such fees be collected at a central location.

Relates to a report on the capacity and staffing of the state prison system (A.3582, Passed both Houses, Vetoed by the Governor, see Veto Memo #34)

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.

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

Commission to study and investigate sexual misconduct in prisons (A.1426, 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.

Relates to the manner in which certain provisions of the correction law are enforced (A.1874, Passed Assembly)

This bill would allow the Division of 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 would 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.

Provides for notice of availability of services to prisoners upon their release from state prison (A.2161, Passed Assembly)

Requires state prisons to provide notice of services available in the community to which an inmate is being released. Such services would include mental health services, drug treatment, employment related opportunities, vocational training, housing related services, medical services, and programs that facilitate the reentry of such persons into the community.

Establishes the commission on post-secondary education (A.3657, Passed Assembly)

This bill establishes a temporary commission to study and make recommendations regarding the provision of higher education to persons under custody. It is undisputed that an education obtained during incarceration reduces recidivism. This commission would advise the governor and the legislature on the availability and effectiveness of post-secondary educational programs in adult correctional facilities.

Provides inmates an opportunity to obtain a GED, (A5355, 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.

Relates to the definition of "direct relationship" for the purposes of Article 23-A of the Correction Law (A.5357, Passed Assembly)

Changes the definition of "direct relationship" to require a substantial connection between the specific job duties or license sought and the nature of the criminal conviction in order to deny employment to such person on the basis of unreasonable risk to property or public safety.

Relates to certificates of relief from disabilities issued by the department of corrections and community supervision (A.7813, Passed Assembly)

This legislation establishes parity between the Board of Parole and the courts in establishing the criteria necessary in order to issue a certificate of relief from disabilities. Such criteria include a determination regarding the rehabilitation of the applicant and that the granting of such a certificate is consistent with the public interest.

Relates to establishing terms of probation sentences (A.8089, Passed Assembly)

This bill would provide the court with the discretion to impose a probation term of three, four or five years for a felony and two or three years for a misdemeanor other than a sexual assault.

B. Public Hearings

1. Merger of the Department of Correctional Services and the Division of Parole

On November 10th, the Correction Committee held a public hearing on the merger of DOCS and the Division of Parole into DOCCS. The purpose of the hearing was to examine the implementation and progress of the merger and to identify any problems or successes within the first six months of the merger. Specifically, the committee requested testimony on: (1) the budget savings resulting from the merger; (2) the impact of the merger on facility and field parole officers; (3) the effect of the merger on re-entry programs including pre-release and post-release services promoting reintegration of offenders into society; and (4) the implementation of the Transition Accountability Plan (TAP) and the new risk and needs assessment instrument in parole release determinations.

While the DOCCS commissioner and the chair of the Parole Board stressed efficiency, increased security, independence of the Parole Board, and the savings already achieved by the merger of the two agencies, the main focus of their testimony was on the merger's positive impact on coordination of re-entry services and risk assessment. The commissioner indicated that the TAP should be fully implemented by July 1, 2012, and will offer an individualized assessment of each offender's treatment needs. He also reported that the risk and needs assessment instrument, Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), is being piloted in three correctional facilities and will be used throughout the system within the next year. It will provide information to both DOCCS employees and the Board of Parole.

The committee also heard testimony from former Division of Parole employees and representatives of legal and community advocacy groups, attorneys and prisoner family members. The testimony made clear that employees who transitioned from the former Division of Parole to DOCCS are concerned with the treatment they have received since the merger, increase in parole officer caseloads, and a lack of resources dedicated to parole and reentry services. Advocates expressed concern over cutting programs like the free bus program for families and friends visiting state prisoners, low parole release rates, the under-utilization of work release, and the implementation of the new risk and needs assessment instrument. The committee also heard testimony concerning the difficulty of obtaining timely responses from DOCCS to administrative parole appeals and the subjectivity of the parole release process.

2. Alternatives to Incarceration and Probation

On November 17th the Correction and Codes Committees held a joint hearing to examine the effects of the merger of the Division of Probation and Correctional Alternatives into a specialized office within the Division of Criminal and Justice Services. The committees took testimony from the affected agencies, the Council of Probation Administrators (COPA) and non-profit groups interested in alternatives to incarceration (ATI). Major issues of concern were the impact of the merger on probation and ATI services, the implementation of probation block grants to counties and New York City, the reduction of state funding for county probation departments and the funding of ATI programs.

Testimony provided by agency representatives was generally favorable and focused on efficiencies created by freeing central probation staff from managing and monitoring contracts to allow them to focus on oversight of local probation and ATI programs. A representative from

COPA testified that more money is needed on the local level and that funding and staffing is inadequate for increased caseloads under new legislative mandates for supervision of DWI and sex offenders, DNA collection, interim probation supervision and reentry programs. The non-profit agencies also testified about the need for increased funding for expanded ATI services.

3. Mental Health Treatment in Prison

The Correction and Mental Health Committees held a hearing on December 6, 2011, to explore the implementation of the Special Housing Unit (SHU) Exclusion Law and the recent increase in the number of suicides in state correctional facilities. Signed into law in 2008, the purpose of the SHU Exclusion Law is to require that all state prisoners placed into segregated confinement for disciplinary purposes receive a mental health assessment and that those diagnosed with serious mental illness be removed from segregated confinement and placed in a residential mental health treatment unit where they are able to receive appropriate treatment. The law also requires that inmates in segregated confinement who are not initially diagnosed with serious mental illness must receive mental health assessments at regular intervals. Additionally, the law mandates that all correction officers receive increased training in how to effectively and safely manage inmates with mental illness and requires the Commission on Quality of Care and Advocacy for Persons with Disabilities to oversee and monitor mental health care programs provided to inmates.

Further, in 2010, 20 inmates committed suicide in state correctional facilities, the highest prison suicide rate since 1982 and twice the number of suicides in 2009.

The committees heard testimony concerning: (1) the implementation, status and monitoring of the SHU Exclusion Law; (2) the availability of mental health treatment for non-SHU inmates; (3) re-entry and parole planning for mentally ill inmates; and (4) the causes of, and solutions to, the suicide epidemic of 2010.

Unfortunately, the executive agencies charged with the implementation of the SHU Exclusion Law chose not to participate in the hearing. However, the Committee did hear testimony from legal experts representing Disability Advocates, the Prisoners' Rights Project of the Legal Aid Society and Prisoners' Legal Services of New York as to their assessment of the residential mental health treatment units after four years of monitoring the terms of the DAI Settlement which paved the way for the SHU Exclusion Law. Other speakers included family members of mentally ill inmates and advocacy groups.

C. Fortieth Anniversary of the Attica Uprising

This year marked the 40th anniversary of the Attica rebellion in which inmates seized control of the prison and held it for four days. The prisoners at Attica had a list of demands, including decent medical care, access to legal assistance, individualized rehabilitation programs and parole reform. On the fourth day of the rebellion, September 13, 1971, then-Governor Nelson A. Rockefeller ordered the state police to retake the prison by force. Troopers shot and killed 38 people, including 9 correctional staff being held as hostages. One correctional officer died as a result of injuries inflicted by prisoners.

The Attica Uprising was the beginning of a movement to reform prisons in New York and around the country. While prisons have improved in many aspects over the last four decades, some of the prisoners' demands are still unmet, including a lack of higher education programs,

an over-reliance on solitary confinement as punishment for disciplinary infractions and the unwarranted return of parolees to prison for technical violations of parole conditions. The Committee will continue to work on these important issues during the coming year.

V. ISSUES TO BE ADDRESSED IN 2012

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. Since that time, several small college programs have been opened in state correctional facilities, but they still reach only a fraction of the inmate population compared to programs prior to 1995.

The benefits of post-secondary correctional education are clear. Most recently, the New York State Commission on Sentencing Reform 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 environment. Therefore, for the last three years the Correction Committee advanced a bill (A.3657 of 2011) 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 2012, the Correction Committee will again advance this important legislation and work to expand post-secondary education in prison.

B. Reentry Policies and Initiatives

Records show that since 1985 more than 500,000 persons have been released from New York state prisons. Today we have approximately 38,220 persons on community supervision and

56,000 persons in state prison, a 20% decrease in the prison population since 1999. The declining population of people in custody and on community supervision indicates that rehabilitation does work and that most parolees successfully re-integrate 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 total of 1,514 in the 2009-10 SFY. Only 8% percent of parolees return to incarceration within three years of their release for a new offense. 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 DOCCS and the Board of Parole in its reentry mission. The scope of our inquiry during the 2012 legislative session will include consideration of whether we are doing our best to prepare prisoners to reenter society and lead successful, law abiding lives. The Committee regularly consults 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 DOCCS and the Board of Parole are fair and effective, and to make recommendations to improve future outcomes.

One of the most important factors in preventing recidivism, regardless of any other offender risk factor, is employment. In order to promote public safety and increase successful offender reentry, the Committee will explore legislation to promote employment opportunities for persons returning from incarceration including streamlining the process for ex-offenders to obtain a Certificate of Relief from Disabilities or a Certificate of Good Conduct and expanding Article 23-A of the Correction Law to prevent discrimination against persons with a criminal record who pose no threat to public safety. The Committee will also examine other possible programs and policies that will increase the number of job opportunities available for people leaving prison.

C. Expungement of Criminal Records

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society - even after they have fully paid their debts 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. Work Release and Merit Time Expansion

Work release helps successfully reintegrate inmates to their communities, while providing supervision and job experience. Work release is cheaper than incarceration; in 2007 it cost \$31,000 a year to incarcerate a prisoner, but only \$7,500 a year to house each work release participant. Participation in work release enhances public safety by providing a detailed and

realistic assessment of an inmate's preparedness for parole and post-release supervision and helps identify any needs the inmate may have that should be addressed. It also provides an incentive for inmates to complete programs and maintain clean disciplinary records. The Committee will seek to advance policies in 2012 that will expand the availability of work release programs.

Merit time affords inmates with the ability to earn a reduction of their minimum sentence after completing significant programming and maintaining a positive disciplinary record. Current law only allows inmates with certain nonviolent convictions to earn merit time even though the program has been demonstrated to reduce prison violence and lower recidivism rates. DOCCS 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 consider legislation to expand the availability of merit time.

E. Evidence-based Examination of the Risk Posed by Sex Offenders

The legislature created a Board of Examiners of Sex Offenders in 1995 as part of the Sex Offender Registration Act. In order to promote public safety, the Board is responsible for making individualized recommendations to the court system concerning the likelihood of sex offenders to commit new sex offenses. Such recommendations are considered by the court in determining the level of community notification assigned to a sex offender.

To carry out its mandate, the Board uses a risk assessment instrument (RAI) that it created in 1996 to assign reoffense risk levels to all sex offenders. A Level 1 sex offender has been determined to present a low risk of reoffending, a Level 2 offender a moderate risk and a Level 3 sex offender a high risk of committing a new sex offense. Appellate courts have held the RAI score to be presumptively correct in determining an offender's risk level and do not generally authorize departure from the risk level recommended by the Board except under situations in which an aggravating or mitigating factor not taken into account by the RAI is present. Departures are the exception, not the rule, in risk level determinations. However, in spite of the presumptive validity of the RAI and the fact that we now have 15 years of data to determine if the RAI is actually predictive of an individual's propensity to reoffend, the State has never done the calculations necessary to see if the RAI in fact provides an accurate assessment of risk of recidivism.

Additionally, there has not been any attempt to update the RAI to reflect extensive research conducted in the last 15 years on the risk of recidivism by sex offenders. If the RAI is not accurate, it is possible both that high risk sex offenders are mistakenly designated as Level 1 and, on the other hand, that scarce public resources are being invested in supervising low risk sex offenders who have been mistakenly designated as Level 3. The Committee will explore legislation requiring that the RAI be scientifically validated or replaced by a validated, evidence-based instrument with demonstrated reliability.

Additionally, the Committee will again advance legislation creating a temporary commission on sex offender supervision and management to examine, evaluate and make recommendations concerning the effectiveness of sex offender programs and to investigate all factors that impact the risk of recidivism, including the public safety risk posed by the concentration of sex offenders in certain residential neighborhoods.

F. Solitary Confinement

Currently, there are approximately 4,500 state prisoners being housed in segregated disciplinary units, known as Special Housing Units (SHU). Inmates in those units are locked into their cells 23 hours a day, with one hour of out-of-cell recreation time, usually alone in an outdoor cage. Inmates in SHU are denied commissary privileges, phone calls, personal property and most programming. They also have restricted visitation rights and are unable to attend religious services. During the December 6, 2011 public hearing on mental health in prisons held by the Committees on Correction and Mental Health, several witnesses testified that there is no limit to the amount of SHU time an inmate may receive in disciplinary hearings and that New York's extensive use of solitary confinement is contrary to practice in other states. Recently, a United Nations expert on torture recommended that solitary confinement be limited to 15 days for adults and prohibited for juveniles and prisoners with mental disabilities. The Committee on Correction will explore the use of solitary confinement and consider recommendations on limiting SHU time for adults and juveniles in New York State prisons.

APPENDIX

2011 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	6
To Ways and Means Committee	6
To Codes Committee	6
To Rules Committee	3
Total	21

Bills Having Committee Reference Changed **1**

Senate Bills Substituted or Recalled

Substituted	2
Recalled	0
Total	2

Total Assembly Bills in Committee **146**

Total Number of Meetings Held **6**