NEW YORK STATE SENATE
STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND CORRECTION
2009 - 2010 REPORT

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Message From The Chairwoman

The Will To Believe

Senator Ruth Hassell-Thompson

In recent time, there are some in our State who have been harmed by special interest groups, media outlets and even government representatives. These New Yorkers no longer believe that justice and equality are attainable, or that representative government can even work. In essence, the most irreparable harm has been laid upon our collective will to believe. Frequent scandals, depressing news reports and constant partisan debates all serve to numb our senses, leaving far too many citizens with a deep and abiding sense of cynicism and despair.

As Chairwoman of the **Senate Standing Committee on Crime Victims, Crime and Correction**, it is my responsibility to provide leadership, design public policy, and take lasting steps to spend your tax dollars in a smarter, more cost efficient manner. The Senate Majority Conference has taken decisive steps to change things for the better, though many of our notable accomplishments have been obscured by distractions. Still, our work has been revolutionary. By turning away from decades of overspending and revolving door injustice, my colleagues and I have forged ahead with a meaningful analysis of the causes of crime and the most effective punishment that should be imposed.

Furthermore, I believe:

- By addressing the root cause of crime and by constructing a humanitarian infrastructure to assist formerly incarcerated persons re-entering the community, crime will continue to decrease and public safety will be enhanced;
- The Constitution of the United States requires that the criminally accused be afforded effective counsel, whether for a first arrest for petty larceny or a high profile homicide; a fair criminal and civil justice system is healthy for New York and healthy for America;
- Money should be appropriated to provide legal assistance for indigent New Yorkers facing foreclosure proceedings, denial of unemployment benefits, denial of disability benefits, domestic violence litigation, landlord tenant eviction proceedings and similar situations;
- Crimes against children, sexual assaults, domestic violence and illegal possession of firearms should be prosecuted aggressively and consistently;
- Addiction is a health problem, the consequences of which are linked to the criminal justice systems. Our policies will ensure that public safety is maintained by institutionalizing a comprehensive clinical approach rooted in best-practices and proven to be more effective than the “lock them up and throw away the key” policies of the past;
- New Yorkers will approve of our success as evidenced by decrease in our state prison population our work to prevent recidivism by investing in drug diversion and post-release re-entry programs.

What is all too often missing in news reporting is a failure to reflect upon what is working here in New York State, and while justice should be dispatched dispassionately, it should be fair and equal. Since attaining majority status in the State Senate, our Conference has created a new discourse as it relates to chemical dependency and treatment, begun to reform the parole and probation systems, decreased the prison population and right-sized our correctional facilities, ended the cynical practice of prison gerrymandering, ensured access to justice by creating the Office for Indigent Legal Services (OILS), and a nine-member Indigent Legal Services (ILS) Board, stabilized and restructured the funding stream for the Interest on Lawyer Account Fund (IOLA) , and made major strides in the reform of the domestic violence laws.

This document identifies legislation – proposed, pending and passed – that will, if enacted in law, significantly enhance protections of individual freedom, fairness, and, when necessary, increase the penalties for certain criminal offenses that compromise the health and safety of the community at large. There has not been a lack of popular support for this agenda. To the contrary, the proposals we recommend have broad public support in communities from the Bronx to Buffalo, as evidenced by public hearings held throughout New York State in the 2009-2010 Legislative Session. The Senate Majority will continue to advocate for a civil liberties agenda, while maintaining that the overall public safety of the community remains paramount.

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I. 2009 Protecting The Right To Counsel - Case Caps

In Gideon v. Wainwright, 372 U.S. 335 (1963), the Supreme Court of the United States held the right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial and that a conviction without the assistance of counsel violated the Fourteenth Amendment of the United States Constitution. As we entered the 2009 session, public defenders across the country complained that excessive caseloads violated an individual's right to effective counsel and due process of law. Indeed, in at least seven states, government appointed lawyers either refused to take new cases or filed lawsuits to limit them. In 1995, our Appellate Division, First Department, established guidelines that would amount to public defenders handling roughly 70 cases at a time. However, in New York City, Legal Aid Society lawyers handled over 277,000 cases in 2008 - an average of 103 cases a piece.[1]

New York City is illustrative of problems experienced across the nation by court appointed lawyers. New York's former Chief Judge Judith Kaye led the charge for analysis and reform and declared that New York's indigent defense system was in a state of crisis. Caseloads were a major focus of the New York State's Commission on the Future of Indigent Defense Services (Kaye Commission, 2006). The Commission's Report warned that excessive caseloads posed a threat to adequate representation and raised the possibility of wrongful convictions.

New York Legislature Acts Swiftly

In the Senate, led by Senator Ruth Hassell-Thompson, Senator John Sampson, Senator Eric Schneiderman and Senator Eric Adams, historic legislation was signed into law that served as a first step to stabilize the crisis in the criminal justice system. Under the new law, New York State's chief administrative judge is required to establish new caseload standards for public defenders by April 1, 2010. The judiciary will then have four years to phase in the limits and ensure proper funding. The case cap law is restricted to New York City. Admitting more needed to be done; Senator Ruth Hassell-Thompson said that the budget deficit required lawmakers to make "strategic decisions" as opposed to sweeping changes because of limited funding. While the law applies only to "case caps" in New York City, Senate Leaders are supporting steps to expand the law statewide. In one of his several speeches on Indigent Defense Reform, United States Attorney General Eric Holder complemented New York's commitment to case cap legislation and described the new law as a national example of "hard work".[2]

1 April 5, 2009, The New York Times, State Law to Cap Public Defender's Caseloads,

2 Attorney General Eric Holder on Indigent Defense Reform, Commentary, Brennan Center for Justice, November 17, 2009. *See also*, Remarks by Attorney General Eric Holder at the Department of Justice National Symposium on Indigent Defense: Looking Back, Looking Forward, 2000-2010, U.S. Department of Justice, February 18, 2010.

II. The Historic Creation of the Office for Indigent Legal Services and Indigent Legal Services Board

Heeding the Kaye Commission's warning that indigent criminal defense services were in a rapidly expanding crisis, Senator John Sampson and Senator Ruth Hassell-Thompson entered into negotiations with the Assembly and the Governor's Office for the purpose of creating a nine member Indigent Legal Services Board. The Board would oversee an Office of Indigent Legal Services and preside over a multimillion dollar legal services fund. S.6606-B / A.9706-C were signed into law by Governor Paterson in the Summer of 2010.

The legislation established the first office to oversee public defenders in the history of the State of New York. The creation of the office was a realized dream for Chief Judge Judith Kaye and a great achievement for constitutional advocates across the nation.

Some major goals of the new legislation include:

- To examine, evaluate and monitor services provided in each county;
- To collect and receive information and data regarding the provision of services, but not limited to:
- The types and combinations of such services being used in each county;
- The salaries and other compensation paid to individual administrators, attorneys and staff providing such services;
- The actual caseloads of attorneys;
- How the caseloads of the defense attorneys compare with the caseloads of the district attorneys;
- The types, nature and timing of dispositions of cases handled by defense and prosecution;
- The amount of money spent on ancillary services such as investigators, social workers and expert witnesses;
- The criteria and procedures used to determine eligibility; the number of persons considered and denied such services;
- The standards and criteria used to determine whether a person is qualified to provide indigent defense services;
- To establish measures of performance;
- The establishment of a nine member board headed by the Chief Judge of the Court of Appeals;
- The boards, to accept, reject or modify recommendations made by the office of indigent legal services regarding the allocation of funds and the awarding of grants, including incentive grants from the indigent legal services fund;
- The board to advise and make a formal annual report to the Legislature, Governor and Judiciary.

III. 2009-2010 Civil Legal Services Finds A Home in the Judiciary

New York State's Interest on Lawyer Account Fund ('IOLA") is a fund that uses bank interest to fund civil legal services in New York State which helps less affluent residents pay for legal services in civil proceedings. The interest is generated from attorney escrow accounts. In 2008, there was approximately $32 million in IOLA dollars available to fund 71 programs, but the historic economic downturn and consequential low interest rates are expected to leave the fund with just 6.5 million available to distribute in the 2010-2011 year. The grants administered by IOLA assisted New Yorkers with representation for foreclosure actions, unemployment claims, social security, disability claims, domestic violence litigation, landlord-tenant litigation and scores of other legal actions.

A 75% reduction in available funding came at a time when demand for civil legal services was soaring because of the economy. Steven Banks, Chief Attorney, for the Legal Aid Society, commented in 2008 that one out of seven New Yorker's seeking dire civil representation was turned away because of limited resources. Banks later updated that figure to one in nine in 2010. Clearly, the dismal economy had a direct relation to dramatic litigation spikes in the civil courts of New York State.

Public Protection Committees Chairs Lead the Way

In 2009, public protection chairs, Senator Ruth Hassell-Thompson, Senator John Sampson, Senator Eric Schneiderman, and Senator Eric Adams, supported by Senator Dale Volker, Senator George D. Maziarz, Senator Antoine Thompson, Senator Neil Breslin, Senator Velmanette Montgomery, Senator Liz Kruger and Senator Darrel Aubertine took to the road and conducted public hearings throughout the State of New York. The purpose of the hearings was twofold. First, the public hearings were targeted to bring public attention to the status of civil legal services; and secondly, the hearings were designed to bring together experts in the field who could suggest ways to stabilize IOLA and to suggest alternative ways to secure funding for civil legal services in the future.

Public Hearings were conducted throughout the State. In December 2009, the Committee conducted hearings at New York University Law School in Manhattan and at State University of New York's Buffalo Law School. In January 2010, the Committee conducted a joint Assembly and Senate Public Hearing on IOLA and the Future of Civil Legal Services at the Legislative Office Building in Albany. Representing the Assembly were Helene E. Weinstein, Chair Judiciary Committee, Assemblyman Daniel J. O'Donnell, Assemblyman Charles D. Lavine and Assemblyman Rory I. Lancman.

The response to the public hearings was overwhelming as hundreds of leaders from the judiciary, civil legal service community, law schools, bar associations, localities and counties, domestic violence providers, disability advocates, volunteer lawyer's associations, good government watchdog groups, policy think tanks and CLS experts from California and Pennsylvania testified in support of civil legal service providers and the need to secure funding.

A major factor highlighted during the hearings was the work of civil legal service lawyers in winning cases for New Yorkers seeking to adjudicate federal claims and domestic relations

litigation. Experts testified that civil legal services brought in 30 federal dollars for every state dollar invested into civil legal services. In total, IOLA grantees brought $250 million dollars in federal and court awards into local New York State communities in 2008.[3]

A partial list of speakers included, Jonathan Lippman, Chief Judge, New York State Court of Appeals, Honorable Ann Pfau, Chief Administrative Judge, New York State, Mayor Byron Brown, Mayor Jerry Jennings, Carla Palumbo, Rochester City Council, NYU Law School Dean Richard Revesz, Buffalo Law School Dean Makau W. Matua, Benito Romano, Chair of IOLA, Christopher O'Malley, Executive Director, IOLA, Steven Brooks, General Counsel, IOLA, Honorable Michael Breslin, Albany County Executive, Barbara Bartoletti, New York State League of Women Voters, Steven Acquario, New York State Association of Counties, Gordon Dean, President, Local 2320, UAW, Debra Wright, President Association of Legal Aid Attorneys, Cynthia Shrock Seeley, President, New York State Women's Bar Association, Michael Getnick, President, New York State Bar Association, Robert Convissar, President, Erie County Bar Association, Susan Schultz Laluk, President Monroe County Bar Association, John Powers, New York State Academy of Trial Lawyers, Steven Banks, Chief Attorney, the New York City Legal Aid Society, Lisa Frisch, Executive Director, the Legal Project, Karen Nicolson, Chief Attorney, Legal Services for the Elderly, Ken Peri, Executive Director, Legal Assistance of Western New York, Bill Hawkes, Executive Director, Neighborhood Legal Services of Buffalo, Ann Ericson, President, Empire Justice Center, Christopher Lamb, Executive Director MFY Legal Services, Harvey Epstein, Chair of LEAP, Andrew Scherer, Executive Director, Legal Service Corporation of New York City, Lillian M. Moy, Executive Director, Legal Aid Society of Northeastern New York, Alexander Bursztein, Legal Aid Society of Rockland County, Adrienne Holder, Attorney in Charge, NYC Civil Division, Legal Aid Society, Anita Martin, the Legal Action Center, David Udell, Brennan Center for Justice, Susan Lerner, Executive Director Common Cause, Victor A. Kovner, Fund for the Modern Courts, Frank Mauro, Executive Director, the Fiscal Policy Institute, Jonathan Gradess, Campaign for an Independent Public Defense Commission. John Nigro, CEO, the Nigro Companies, Edward Swyer, President, the Swyer Companies and Melinda Disare, Partner, Damon and Morey.

The Judiciary and Governor Weigh In on Civil Legal Services

In December 2009 and at the request of legislative leaders, the Judiciary requested $15 million to address the IOLA funding for civil legal services. In its budget request the Court stated that "[t]he Judiciary experiences first hand, on a daily basis, the growing need for these vital services. The same forces in the economy that are propelling litigants into the courts are making legal services for the poor more critical than ever before".

In January 2010, the Governor criticized the budget request by stating that The Judiciary has "no direct responsibility" for funding IOLA or civil legal services and that its inclusion in the court's budget request "runs contrary to the Executive Budget process as outlined in the State Constitution.[4]" The Chief Judge rebutted the Governor's press statements and declared that the Court does not merely administer "programs" but serves as the guardian of justice.

3 "In 2008, the clients served by IOA grantees obtained nearly $250 million in wrongfully denied federal benefits, child support, alimony, and affirmative judgments." - Testimony of Benito Romano. Chair of the Board of Trustees, The Interest On Lawyer Account Fund of the State of New York, December 9, 2009, at NYU Law School. Senate Public Hearing.

4 The New York Law Journal, January 20, 2010.

IV. Stabilizing IOLA and Giving Structure to Civil Legal Service Funding

Led by Senator Ruth Hassell-Thompson and Assemblywoman Helene Weinstein, the legislature suggested that the cost of providing civil lawyers for people unable to afford counsel should fall upon the shoulders of the banks and financial institutions. Accordingly, court filing fees for consumer credit transactions were increased by $95 and filing fees for the bank to bring a foreclosure action were hiked $190. These revenues have been committed to sustaining IOLA – the major source of government funding for legal service providers.

The Senate and the Assembly also passed a joint resolution[5] applauding Chief Judge Jonathan Lippman for carrying on public hearings regarding the needs of New Yorkers for civil legal services. The joint resolution requested the Judiciary to make a needs assessment and recommend a dollar figure to the legislature as to what it would cost to meet those human needs.

In summary, legislative leaders were able to stabilize the IOLA Fund with $15 million dollars raised by court fees. The burden of these fees would fall on banks and other financial institutions. However, it was understood that $15 million was a paltry number compared to what New Yorkers really needed to protect their homes and sources of income. Still, it was a beginning. Through agreements, the Judiciary agreed to embrace the nomadic civil legal services community, who up to the time of the joint resolution, had no permanent champion to articulate their needs and help them compete with better financed special interests.

5 Resolution **#J6368** Introduced by Hassell-Thompson, Sampson on Senate Res. & Weinstein for the Assembly.

V. 2009 Rockefeller Reform: Treating Drug Addiction as a Disease

In 1973 New York enacted, what were considered at the time, the harshest drug laws in the nation. The so-called Rockefeller Drug Laws eliminated judges' discretion and required them to impose harsh mandatory minimum prison sentences on drug offenders. New York State spends hundreds of millions a dollar a year incarcerating drug offenders.

More than 35 years after they were enacted, it was clear that the Rockefeller Drug Laws failed to effectively combat drug abuse or reduce violent crimes in our communities. What it did succeed in doing was to imprison tens of thousands of low level non-violent African-American and Latino offenders, with no prior history of committing violent crimes. It cost New Yorkers more than $500 million a year to imprison all individuals convicted of drug offenses at a state level.

The Rockefeller Drug Laws created a revolving door of substance abuse and imprisonment. The overwhelming number of people sent to prison suffered from unaddressed substance abuse problems. One study showed that 83% of inmates in prison have an identified substance abuse problem[6] (82 percent of male inmates and 88 percent of female inmates).

A 2004 report found that rates of illicit drug use are 8.1 percent for whites, 7.2 percent for Hispanics and 8.7 for African-Americans[7]. Yet today 90 percent of those incarcerated in state prisons for drug offenses are African-American or Latino. African-Americans comprise 58.5 percent of drug offenders in state prison; Latinos 31.5 percent and whites 8.9 percent[8]. 80 percent of drug offenders in state prison have never been convicted of a violent offense.[9]

In 2009, led by Senator Ruth Hassell-Thompson, Chair of the Senate Standing Committee on Crime, Crime Victims and Correction and Senator Eric Schneiderman, Chair of the Senate Standing Committee on Codes, drug policy in New York was about to dramatically change.

The Senate Takes a New Direction

With a new Democrat Majority in the Senate [10], historic legislation was signed into law which changed public policy on handling drug offenders. Instead of the old "lock them up and throw away the keys" mantra the new Democrat Majority advanced the smarter approach which was to address the causes of drug addiction and to point to the way back to a productive and peaceful life.

6 *Identified Substance Abuse, 2007*, New York State Department of Correctional Services.
7 *2004 National Survey on Drug Use and Health*, U.S. Department of Health, SAMHSA
8 Testimony submitted by Correctional Association of New York before Hearings of Joint Committees of the New York State Assembly, held May 8, 2008, New York City.
9 Id
10 Up until 2008, the Republicans had commanded the Majority for 40 years.

The Basics of Rockefeller Reform

- Illegal drugs remain illegal. Adults who sell drugs to children, individuals who use guns in drug deals are excluded from diversion programs, drug kingpins deserve and to receive harsh punishment.
- Discretion is returned to Judges to determine whether or not a defendant should be diverted to a drug treatment program based on a professional assessment of his or her health needs and whether or not the candidate is sincere in his or her desire to make a real change. Mandatory minimum prison sentences for Class B drug offenses and second time, non-violent drug offenders are ended.
- A contract is entered into by the defendant and the court.
- District Attorneys shall still play a key role in assessing appropriate candidates for diversion but will no longer be able to veto a judge's discretion.
- Defendants who fail to complete drug treatment; who fail to cooperate with health care counselors, who are found to be manipulative or get re-arrested while in treatment can be expelled from a treatment program and sentenced to probation, local jail or state prison time.
- Judges' discretion to sentence defendants to Willard and Shock Programs is expanded and the pool of defendants eligible to participate in these "short stay" programs is also expanded.
- In addition to these new sentencing options, the new law will give people serving old indeterminate sentences for Class B level drug convictions the opportunity to apply for re-sentencing [II]. The re-sentencing part of the new law became effective October 7, 2009. Inmates with a violent felony conviction within the last ten years are excluded from eligibility. Approximately, one thousand individuals will be eligible to petition the court for re-sentencing. At all times it will be in the judge's discretion to determine eligibility and how far to go in reducing the sentence.
- Expand the involvement of the Office of Alcoholism and Substance Abuse Services (OASAS) into the treatment side of the legislative reforms, both inside prisons and with outside treatment programs linked to the courts.

Saving the Taxpayers Money

The dramatic change in policy is an attempt to help community members address a major cause of misconduct, namely substance abuse and chemical dependency, a disease which requires professional counseling and medical treatment as well as the firm hand of a judge to maximize the opportunity for continued recovery. At the same time, this change in policy is contemplated to save the tax payers millions of dollars which can be reinvested into our communities. It now costs $45,000 a year to incarcerate an inmate in a state prison, and according to the Department of Correctional Services there are over 13,000 offenders who are in prison for drug related offenses. Add to that the hope of increased productivity for the people who succeed in treatment and you will see the vision and great hopes the Democrat Majority has for family, friends and community members who request a second chance and a helping hand.

II See the newly created Criminal Procedure Law §440.46

Committed to Stay the Course

The passing of last year's drug reform legislation still faces stiff opposition from people who continue to believe that a health care approach to criminal chemical dependency is a waste of money. But evidence to the contrary is starting to be published and the data suggests that we are on the right course.

A new report released on January 15, 2010, by the Legal Aid Society of New York is the first empirical proof that a change in drug policy was justified and advantageous to the public good. The Report shows that 2004 and 2005 changes to the Rockefeller Drug Laws reaped great benefits in terms of public protection, rehabilitation and saving the tax payers money. Applying the same measurement of recidivism as the Department of Correctional Services [12], Gibney & Davidson, found that the recidivism rate for people who were re-sentenced under Rockefeller '04 and '05 reform legislation was about 3 times better than those produced by the highly praised DOCS Shock program and considerably better than that produced by those prisoners serving drug offenses who were released in the usual way after serving their sentences.

The report concluded that "despite claims of dangerous consequences by district attorneys opposing re-sentencing petitions, the people released so far under drug law re-sentencing provisions have proven to pose a low risk to the community" [13]. The report continued that considerable cost savings and a very low rate of return to prison validated the determinations of judges who select which individuals should be re-sentenced and the length of prison time to be cut from the original sentence.

More Work Ahead: Protecting the Safety Net

Despite encouraging evidence of success with the re-sentencing component of our reforms, we must be vigilant to ensure that monies are set aside to support addiction treatment, parole and probation supervision and re-entry programs. Our core focus must continue to be to stop the cycle of addiction that causes irreparable harm to our family, friends and fellow citizens. The Legislature funds and provides oversight over all executive agencies. We must exercise these powers to ensure that lasting rehabilitation is a real factor in our new drug policy.

12 See Leslie Kellam, "2004 Releases: Three Years Post Release Follow-up", State of New York Department of Correctional Services, Division of Program Planning, Research and Evaluation, "19th Annual Shock Legislative Report 2007, http://www.s.ny.us/Research/Research.html. e.g., once a person is released into the community DOCS defines recidivism as any return to DOCS custody.

13 See, Drug Law Resentencing: Saving Tax Dollars With Minimal Community Risk, Gibney & Davidson, Special Litigation Unit, The Legal Aid Society of New York City, 2010.

OASAS

For instance, the Office of Alcoholism and Substance Abuse Services (OASAS), headed by Commissioner Karen M. Carpenter-Palumbo, is responsible for the development and management of the State's policy on chemical dependence and problem gambling. The 2010-2011 Executive Budget increases OASAS' budget by nearly $30 million dollars, or a 4.4 percent increase for an overall budget of nearly 721 million dollars.

The Governor's 2010-2011 budget request provides funding of 13 million to support the operating costs of an estimated 621 residential treatment beds and an additional 1,000 slots needed to meet projected demand for chemical dependence treatment services associated with drug law reform diversions.

The Senate Standing Committee on Crime, Crime Victims and Correction has a duty to ensure that the programs funded by state grants truly embrace a medical treatment approach to addiction. This requires a change of mind set from that of the gate-keeper and the kept; to that of the health care professional keeping the trust of her patients. The intent of our legislation was to help the addicted change the way she sees herself and the world and not to just superficially change her place of detention. It is not enough to pour money on a problem - the philosophy behind the expenditure is what makes the difference.

The Standing Committee on Crime, Crime Victims and Correction intends to:

- Verify that confidentiality policies between providers and patients are in compliance with generally accepted medical norms.
- Ensure that treatment providers and OASAS have a structure where there is a free exchange of ideas as to the best protocols to apply in treatment.
- Ensure that the legitimate interests of the clients are properly represented in the development of overall treatment policy.
- Ensure that representatives from the judiciary, defense bar and prosecution have a distinct voice in the development of treatment policy.
- Ensure that periodic status reports regarding the number of clients and the disposition of their cases are submitted to the legislature.
- Provide for periodic inspection of out-patient and residential treatment programs associated with Rockefeller reforms.
- Establish an advisory board of reform experts in the field of chemical dependence and substance abuse.

Division of Criminal Justice Services & Rockefeller Reform

Pursuant to budget allocations approved by the Legislature in 2009-2010, $67 million in federal funds through the American Reinvestment and Recovery Act was earmarked to support drug law reform through investments in drug treatment, drug courts, alternatives to incarceration, probation, probation violation centers, and computer training and transitional employment for former offenders. Deputy Secretary for Public Safety Denise O'Donnell has reported that in consultation with the NYS Office of Court Administration and OASAS, her Division will embark upon a "comprehensive analysis of the impact of this major legislation, and will provide ongoing data on the implementation and effectiveness of the reforms"[14].

14 2010-2011 NYS Executive Budget, Division of Criminal Justice Services at p. 331.

Our substantial investment in drug law reform and re-entry programs requires the legislature to monitor the expenditure of tax money. During this year the Standing Committee for Crime, Crime Victims and Corrections shall meet formally with the new Deputy Secretary for Public Safety, Mary Kavaney, for the purpose of being briefed on the progress of implementation of drug law reform and re-entry grants. This formal meeting shall explore:

- The progress of the Office of Court Administration in setting up and maintaining judicial diversion programs.
- Since October 2009, how many defendants have opted for judicial diversion programs established by drug law reform? How many defendants have been denied access to drug treatment courts?
- Reports as to any training judges have received with respect to judicial diversion programs.
- A report as to judicial referrals and treatment in the Shock and Willard programs.
- A report as to the role and relations between OASAS and OCA with respect to drug treatment administered by the courts.
- A report as to the number and names of outpatient and residential programs actually connected to judicial diversion programs.
- A report as to current needs and projected needs of treatment programs associated with judicial diversion programs.
- A report as to the status of judicial diversion programs upstate and downstate? Are there different needs that need to be reviewed?
- A report with respect to eligible inmates petitioning the courts for re-sentencing under 2009 drug law reform? What are the current statistics? What have we learned from previous drug law reform re-sentencing petitions and do we need to do things differently to improve the process?
- A report as to the actual and estimated costs savings to New York tax payers arising from drug law reform?
- A report as to the role of DCJS in the implementation of drug law reform now and within the next five years. How much money is spent on the administration and oversight of drug law reform implementation?
- A report as to 2009 enhancements of the Willard Drug Treatment Campus in Seneca County [15]. How effective are enhanced clinical strategies, including "smaller group sessions", "person-centered therapy" and "more intensive, individual counseling sessions" in a short term prison setting? Why does DCJS, OASAS, DOCS and the Division of Parole taut the enhanced Willard model as "blueprint" for the future of drug treatment; and how is it different than other treatment models? How much money did the enhancements cost and are they cost effective?
- A report as to DCJS's 2009 award of $14 million dollars in re-entry grants to create job opportunities for parolees. Currently, there are approximately 43,000 men and women under parole supervision; 52% are unemployed and 25% are employed part-time. $5 million was granted to the Center for Employment Opportunities; $3 million was granted to the DOE Fund; and $2 million was granted to the Osborne Association. How many parolees have been employed and are the grants providing lifelong competitive skills to the parolees?

15 The enhancements apparently required an OASAS 1045 Specialized Services Operating Certificate.

- The 2010-2011 Executive Budget states that $3.3 million is requested to supplement DCJS's re-entry efforts of local task forces, not for profits and the criminal justice community. Exactly how will these grants be used?[16]

CONCLUSION

In December of 2009, Assembly Standing Committees conducted public hearings to gather initial information regarding the implementation of drug law reform signed into law in 2009. The Senate Standing Committee for Crime, Crime Victims and Correction will meet with state commissioners responsible for drug law reform implementation, as well as other stakeholders, to ensure that the law is implemented as envisioned by the law makers. Based on these interactions further action, if necessary, will be taken.

16 2010-2011 Executive Budget, Division of Criminal Justice Services, at p. 330.

VI. 2009 No Delay of Implementation of the SHU Exclusion Law

In the 2009-2010 Executive Budget the Governor proposed to postpone the effective date of the SHU Exclusion Law for a period of three years, from 2011 to 2014.

Chapter 1 of the Laws of 2008, referred to as the Special Housing Unit (SHU) Exclusion Bill, required an expansion of mental health programs within the Department of Correctional Services facilities. The bill imposed requirements for the housing of inmates with mental illness that exceed those in a Private Settlement Agreement (PSA) that DOCS and the Office of Mental Health (OMH) reached with Disability Advocates, Inc. in April 2007. The SHU Exclusion Law had an effective date of either two years after the DOCS Commissioner certifies that the first new Residential Mental Health Unit (RMHU) is completed and ready to receive inmates or at the latest by July 1, 2011.

The PSA required the expansion of several existing mental health programs and creation of a new 100-bed Residential Mental Health Unit at the Marcy Correctional Facility for inmates who are in disciplinary housing but have been assessed as having a serious and persistent mental illness. The SHU Exclusion Law included provisions that could add additional RMHUs beyond the one at Marcy.

The Governor also requested SHU Exclusion Law requirements that mental health services be provided at level 3 and 4 correctional facilities be eliminated; and that required special staff training programs be reduced. The Governor argued that adoption of his proposals would save $19 million in 2009-2010 and $27.4 million in 2010-2011.

On March 17, 2009, the Senate Standing Committee for Crime, Crime Victims and Correction led a joint public hearing addressing the Governor's proposal for a 3 year delay of the new law's implementation. The Senate Committees also weighing in were: the Senate Standing Committee on Health, the Senate Standing Committee on Mental Health and Developmental Disabilities, the Senate Standing Committee on Children and Families, the Senate Standing Committee on Judiciary and the Senate Standing Committee on Codes. The public hearing was well attended and reported in the press. Former New York State Chief Judge Sol Wachtler, Attorneys Nina Lowenstein for Disability Advocates, Betsy C. Sterling for Prisoners' Legal Services and Sarah Kerr for the Prisoners' Right Project of the Legal Aid Society[17] were some of the witnesses who testified.

Lawyers and advocates testified that the SHU Exclusion Law was enacted with an understanding that there was a long-standing failure to provide adequate mental health services in our prisons and that the result included far too many prisoners with serious mental health needs languishing and psychiatrically deteriorating in the punitive segregated confinement settings of the SHU and Keeplock. The SHU Exclusion Law expanded on improvements of court directed settlements and promoted prison safety and public safety.

The Governor's proposal to delay remedial implementation of the law was defeated.

17 Each of these organizations had litigated against DOCS over the rights of the mentally ill and segregated confinement for over 15 years.

VII. 2009-10 Inspection of State Prisons

In 2009, DOCS Commissioner Brian Fisher invited the Senate Standing Committee on Crime, Crime Victims and Correction to inspect the new facilities at Marcy State Correctional Facility located in Oneida County. The Commissioner also gave legislators and staff a tour of Sing Sing Prison located in Westchester County. Soon thereafter, along with Senator Betty Little and staff we visited Camp Gabriel in Franklin County.

Marcy State Correctional Facility is located in Marcy, New York. The prison is located across from Central New York Psychiatric Center and Mid-State Correctional Facility. These facilities have historically housed prisoners with psychiatric ailments.

The Commissioner gave Members and staff a tour of the new 100 bed Residential Mental Health Unit (RMHU) at the existing S-block site at Marcy Correctional Facility. The Commissioner explained that doubled celled space was being converted to 100 single spaced cells to provide a heightened level of care to seriously mentally ill inmates who have also committed serious acts of misconduct while incarcerated.

We walked through specially designed facilities for clinical staff offices and program staff. To a great degree, the architectural design more resembled a clean and modern hospital clinic. New doors were designed to maximize visibility around all areas of the complex. Specialized "re-start" chairs for use in therapy sessions were designed to provide inmates more freedom of movement while maintaining safety and security for DOCS and OMH staff. The Commissioner stated that inmates would be offered four hours per day of structured out-of-cell therapeutic treatment and programming and that the curriculum and protocols designed by the Office of Mental Health would soon be regarded as a national model of treatment. We saw conference rooms where a Joint Central Review Committee would be able to "televideo" with the OMH staff and holistically review the case file of each inmate suffering from serious mental illness.

We were impressed with the sense of excitement accompanying the development of the new 100-bed Residential Mental Health Unit at Marcy. Because of our public hearing regarding the SHU Exclusion Law we were aware of how sorely needed an alternative to segregated housing units was for seriously mentally ill inmates. We left Marcy with a greater belief that the SHU Exclusion Law and Private Settlement Agreement would make profound differences in the treatment of human beings behind bars.

Commissioner Fisher also walked with us though one of the segregated housing units at Sing Sing Prison, a maximum security facility located in Ossining, New York. Sing Sing Correctional Facility was built in 1826. By 1916 all executions by electric chair were assigned to Sing Sing. In 1927, Ruth Synder was executed for murdering her husband in order to gain insurance money. A New York Daily News photographer hid a camera on his ankle, and at the moment the first jolt of electricity passed through Synder's body, he snapped the most famous and only picture ever taken during an execution. This photo is still in demand today. Most notably, Julius and Ethel Rosenberg, both convicted of espionage were executed at Sing Sing in 1953.

Senator Ruth Hassell-Thompson and Senator Eric Schneiderman met with prisoners who received college degrees with honors while behind bars. Some were sentenced to life for murder and some were sentenced to 10 or more years for violent felonies like robbery and burglary. All of the inmates were polite and communicative. They spoke about the need for more educational programs for inmates, in particular GED programs for older inmates. They asked the Members to consider making violent felons eligible for Merit Time. Other men said they were repeatedly denied parole notwithstanding exemplary conduct while in prison. They pointed out that most inmates charged with the most serious crimes have the lowest recidivism rates. They did not complain or deny responsibility for their crimes, but rather rhetorically questioned the quantum of proof necessary to prove one has paid his debt to society.

The Commissioner took us on a tour of a segregated housing unit. The men in the cell were quiet and reserved. They were in small cells and in an adjoining area there were small caged areas where the men could exercise alone. Some cells were encased with plastic sheets to prevent food and other objects from being thrown through the bars. Along the way, Commissioner Fisher spoke about educational programs, the Willard Program, the Shock Program, substance abuse programs and efforts regarding acquisition of birth certificates and medicaid cards needed for re-entry into the local communities.

Senator Betty Little and Senator Hassell-Thompson visited Camp Gabriels. Camp Gabriels was a minimum security state prison located in the Village of Gabriels in the Town of Brighton in Franklin County. The facility was located in the Adirondack Park. The facility was a conversion of a former tuberculosis sanatorium, which was named after Bishop Henry Gabriels when it was opened in 1897. The sanatorium was later used as part of nearby Paul Smith's College before it was sold to be used as prison, beginning in 1982. Most of the prisoners worked on forestry related projects and received instruction from conservation officers.

Senator Betty Little provided a tour of the prison camp grounds and introduced us to some of the citizens of the Village of Gabriels. We spoke to several people about the invaluable contributions the inmates made to the surrounding areas. For instance, an ice storm left the grounds of the historic Webster Street Cemetery in shambles. Men from Camp Gabriels cleared tree stumps, shrub trees and bushes. The debris was placed in town trucks and hauled off for removal. Local leaders were impressed with the quality of the work and thankful that a historic landmark has been preserved. There were many stories about the work of the men from Camp Gabriels.

We spoke to correctional officers who were frightened that the loss of the prison camp would eliminate a small but much needed economic engine from an already fragile economy. The loss of hundreds of inmates, uniformed officers, and support staff would create a disastrous ripple effect in the villages and towns of Franklin County.

In last year's Report of the Standing Committee for Crime, Crime Victims and Correction called for the re-tooling of these camps to provide for the manufacturing of solar panels and wind mill components. In response to our report DOCS has proposed the construction of a wind turbine to power Chateauguay Correctional Facility in Franklin County.[18] However, our calls, as well as the calls from local officials and community groups to save Camps Gabriels fell short as there have been no private investors interested in the properties, while government is saddled with multi-billion dollar shortfalls in tax revenues. To make matters more complicated the prison population has dropped from 63,577 in 2007 to 58,790 in 2010. DOCS Commissioner Brian Fisher has stated that he believes the drop in the New York State population will continue into 2011 by 1,000 people; and the overwhelming drop has been experienced in minimum and medium security prisons. Indeed, because of the dramatic drop, the Governor has proposed the closing of additional camps and prisons in the 2010-2011 budget proposals.

In March 2010, Senator Ruth Hassell-Thompson and Senator Betty Little and Town Supervisor Thomas Scozzafava visited the Moriah Shock Facility in Essex County. The Governor had also proposed shutting town Moriah, but the county leadership retained the services of economic impact expert Dr. Colin Read who predicted that the loss of 102 staff and 171 inmates would trigger a devastating ripple effect on the local economy. The report explained that the loss of Republic Steel and the collapse of the Lake Champlain Bridge - which connected the economies of Moriah and Vermont - left the New York region in a fragile economic condition. Moriah Shock is the second largest employer in the community and the closing of the facility would purportedly be equivalent to 79,000 layoffs in the Brooklyn economy. Hassell-Thompson and Little toured the facility and immediate community, speaking to people all along the way.

The people of Ogdensburg have a great champion in Senator Darrel Aubertine. Senate Mem-

18 See Testimony of Brian Fisher, Commissioner of the Department of Correctional Services of the State of New York, before Joint Legislative Fiscal Committees, February 8, 2010, Albany New York.

bers and staff have met with scores of political leaders, correction officers and citizens reviewing economic facts and figures making the case for a re-examination of the Governor's proposal to shut down the Ogdensburg correctional facility located in the northwest corner of the Town of Lisbon near the St. Lawrence River. During the past two decades and into the present, companies like Diamond National Shade Roller, Brecker Moore and dozens of other businesses have closed shop in St. Lawrence County. The County has the second lowest per capita income in the whole 62 counties of the State of New York.

Led by Senator John Sampson, Senator Ruth Hassell-Thompson and Senator Darrel Aubertine, intense negotiations ensued with the Governor and Assembly. At the end of the day, one year Notices of Closings for Moriah and Ogdensburg Correctional Facilities were rescinded and the towns of Ogdensburg and Moriah were able to save the correctional facilities which serve as vital economic engines for all of the town's people.

VIII. Continuing Education Lecture Series

During the course of 2009, the Committee sponsored continuing education lectures on effective sex offender policy, merit time and good time, and educational programs in state prisons. Megan McLemore, a world renowned researcher at Human Rights Watch, briefed Senate staff on her findings that drug treatment in prisons is in great need of public support. McLemore stated that drugs are very accessible in prison and that drug programs "behind the walls" are necessary and cost effective. To punctuate her point, McLemore stated that between 2005 and 2007, New York inmates were sentenced to a collective total of 2,561 years in the box[19] for drug related charges. She stated that for every dollar spent on prison substance abuse treatment, states save $2 to $6 on reduced recidivism and health care costs. Ironically, prisoners in solitary confinement are prohibited from participating in drug treatment programs. McLemore stated long "periods of isolation are a disproportionate sentence for any prisoner who uses drugs. But for prisoners struggling with addiction, the punishment of the symptoms of a chronic, relapsing disease, combined with a denial of treatment is cruel, inhuman and degrading treatment that violates international law and basic human decency." McLemore also opined that GED programs were lacking in New York State prisons and argued that education was a proven road to rehabilitation. Luke Martland, Director of New York State's Office of Sex Offender Management, lectured to the staff of the Senate and to Members of the Democratic Conference. Prior to employment at the Division of Criminal Justice Services, Martland was a well respected state and federal prosecutor. Martland opined that legislative efforts to restrict sex offenders from residing in local communities were counter- productive. He stated that research supported the notion that exclusion of sex offenders from their home communities promoted alienation. The research indicated that some "outcast" offenders simply stopped reporting and went "underground", leaving law enforcement to wonder where they are were living. On the other hand, Martland stated that sex offenders re-integrated into their local communities were more likely to get jobs, obtain stable housing and be readily available for verification of compliance with reporting requirements. He argued that restrictions seeking to exclude sex offenders from schools, parks and other public settings should be thought out more carefully. Martland also remarked that the stereotypical predatory stranger is more myth than fact. Martland stated that the overwhelming numbers of sexual assaults are committed by someone the victim knows.[20] Alfred O'Connor, Esq., a senior staff attorney with the New York State Defenders Association visited the Senate and lectured the staff on Merit Time and Good Time – two meritorious based

19 The "box" is slang for segregated housing units or solitary confinement.

20 Indeed, citing **Bureau of Justice Statistics** (2000), the **Fortune Society** asserts that 93% of victims under the age of 17 were sexually assaulted by someone they knew; 34% of child victims were assaulted by family members; a study in three states found that 96% of reported rape survivors under age 12 knew the attacker. 4% of the offenders were strangers, 20% were fathers, 16% were relatives and 50% were acquaintances or friends.

early release tools applied by correctional facilities across the nation. Attorney O'Connor also lectured staff on the difference between indeterminate sentencing and determinate sentencing. Committee staff was also fortunate to hear a lecture by William D. Gibney, Director of the Special Litigation Unit of the Legal Aid Society. Gibney served on New York State's Commission on Sentencing Reform.[21] Attorney Gibney reviewed indeterminate, determinate sentencing, sentencing schemes for violent felons, drug offenders, sex offenders and some of the findings of the Commission's 2009 Report on the Future of Sentencing in New York State: Recommendations for Reform.

In 2010, two roundtables were scheduled for Advanced Lectures Series on Effective Sex Offender Management & Policy.

The first discussion took place in February, 2010 and four experts talked about "Effective Sex Offender Management Policies." The panelists included Beth Devane, Supervisor, Department of Criminal Justice Services, Office of Sex Offender Management along with Counsel Natasha Harvin. Both spoke about assessment tools, website information, and requirements of registration. Alan Rosenthal and Patricia Wrath, Counsels and Co-Directors of Justice Strategies at the Center for Community Alternatives, contributed from an academic perspective the obstacles those labeled as sex offenders face with respect to residency and employment. Professor Richard Hamill, President of the State Alliance of Sex Offender Service Providers described the development of risk assessment levels and the need to amend them after fifteen years of new research and development. Dr. Hamill also suggested that the State replace the civil commitment component of the law with a return to indeterminate sentencing.

In a subsequent meeting which took place in March, 2010 six experts presented lectures to Senate Staff and Members. Donna Hall, Deputy Director of the Forensic Division of the Office of Mental Health, along with Noel Thomas, SIST Compliance Specialist, of the Office of Mental Health, spoke about the special needs of the mentally ill and the complexities associated with their transition back to the community.

Corinne Carey, Public Policy Counsel, New York Civil Liberties Union commented on the conflicting statistical data submitted at the prior roundtable discussion and added insight by offering journals and research on "effective sex offender management policy." Dr. Richard Krueger, Medical Director of the Sexual Behavior Clinic of the New York State Psychiatric Institute, provided scientific data on the sex offender population as it related to race, ethnicity, gender, age, and demographics. Dr. Krueger also spoke about the consumption of internet child pornography. Josie McPherson, of the New York State Coalition Against Sexual Assault spoke from the victims standpoint and suggested that comprehensive legislation be enacted that would not force sex offenders underground where they could not be monitored, but would allow for sensible restrictions. JoAnne Page, CEO and President of Fortune Society enlightened those in attendance when she contributed that 93% of victims under the age of 17 were sexually assaulted by someone they knew. Overall, both roundtable discussions were informative. Assembly and Senate staff attended the discussions as did Assemblyman Jeffron Aubry (D-Queens) and Senator Martin Golden (R-Brooklyn).

21 William D. Gibney, Esq. served on the Commission sub-committee on Sentencing Policy. The sub-committee included, Paul Schechtman, Esq., Anthony J. Annucci, Esq., Mark R. Dwyer, Esq., William D. Gibney, Esq., Michael C. Green, Esq., Eric T. Schneiderman, Esq., Tina Marie Stanford, Esq., and Cyrus R. Vance, Esq.

IX. Division of Parole - Budget Legislation - 2010- 2011

In 2009, the Senate Standing Committee for Crime, Crime Victims and Correction, approved the nomination of Andrea W. Evans as Chairwoman of the Board of Parole and CEO of the Division of Parole. In June of 2009, Ms. Evans was confirmed by the Senate. Prior to her nomination and confirmation, Ms. Evans was Director of the Division of Parole for Region II, an area encompassing Brooklyn, Queens and Staten Island. In this position she was responsible for the operation of nine area offices, and the Queensboro Correctional Facility. Prior to this role, Ms. Evans served as Deputy Regional Director for Region I, where she managed the operation of field offices in Bronx County.

The 2010-2011 Executive Budget recommends $189.1 million for the Division of Parole. This is a $4.5 million decrease over the prior year which the Governor reported "primarily reflects the reduction in parolee population".[22] The Governor explained that parolee population is projected to decline by nearly 1,500; therefore fewer parole officers were needed. This decline is largely attributed to Rockefeller Drug Law Reform which permitted drug offenders who were presumptively released from State prison to be released earlier from parole supervision. In particular, pursuant to Executive Law 259j, A-1 felons were released from parole supervision after completing three years of uninterrupted parole supervision. Those sentenced under Rockefeller reform make up a significant part of parolees discharged early from parole because of a proven track record of good behavior. Savings are estimated at $3.7 million.

A Quick Profile of Parolees

In 2008, there were 42,972 men and women under parole supervision. 92% were men and 8% were women. The median age of the average parolee was 37 years of age. 52% were Black, 25% were Hispanic, 21% were White and 2% were classified as other. 71% needed services for drug abuse, 47% needed services for alcohol abuse and 14% reported a grade school education only and 48% needed assistance in gaining employment. 57% resided in New York City, 7% resided in Long Island and 36% resided upstate. 44.1% were on parole for violent felonies, 37.2% were on parole for drug related offenses and 10.8% were on parole for property related crimes and 7.8% were classified as "Other".

In broad strokes, the parolee population is largely minority, poorly educated, under employed and concentrated in urban New York.

The State's parole system involves three major activities: preparing inmates for re-entry into the community; assisting the Board of Parole in making release determinations and setting conditions; and supervising parolees released from prison while supporting their successful reintegration into the community.

The Executive Budget projects that the Division of Parole will have 1,995 filled positions by the end of the 2010-2011 to staff the process covering 42,972 men and women.

Ensuring Public Protection

The Senate Standing Committee for Crime, Crime Victims and Correction recognizes that field parole officers play the most important role in defining the success or failure of individuals placed on parole. The parole officer plays the dual role of social worker and law enforcement officer, on the one hand promoting successful re-entry efforts and on the other, responsible for policing individuals that fail to comply with the terms and conditions of parole. Field

22 2010-2011 Executive Budget, Division of Parole, at p. 387.

Officers are responsible for helping parolees find housing and employment. This has proven to be a difficult task as statewide parolee employment rates have trended downward so that in 2008, 52% were not employed, 25% were employed part time, 14% were employed full time at minimum wage and 9% were employed full time above minimum wage. Obviously, the bulk of men and women on parole cannot make a "living wage", meaning that 92% of the people on parole are unable under current conditions to earn enough money to be self sufficient.

Public Hearing to Investigate Parole Policy

In March 2010, the Committee conducted an investigatory hearing in response to news reports that the Division of Parole was short of drug testing kits, directed field officers to ration kits and was not sanctioning technical violators properly.

At the hearing the Chairwoman Evans[23] stated that new ordering practices and inventory control resulted in a delay of drug testing kits in response to allegations by the union that it was "rationing tests". She testified that the State spends three quarter of a million dollars a year on drug testing kits and that the problem was short lived and that testing was back on track. The Chairwoman pointed out that the Division of Parole conducts 150,000 drug tests every year and that drug testing in 2009 exceeded drug testing for the previous nine years by 14%.

Evans also stated that graduated responses was a policy still under development with the well respected VERA Institute of Justice. She presented statistics and graphs indicating that the number of parole technical rule violators returned to state prison were basically the same as the previous nine years. The Chairwoman also testified that parolees accounted for 3% of all arrests in the State of New York – down from the previous 8 years and that the number of "returns to prison" for parolees with new felony convictions decreased by 41% over the past decade. There was no serious challenge to her presentation.

Union officials dismissed the statistics and spoke about several egregious cases where parolees committed serious and violent crimes.

However, both sides agreed that parole officers had too many parolee cases to monitor effectively. Senator Ruth Hassell-Thompson, Senator Martin Golden, Senator Betty Little, Senator Velmanette Montgomery and Assemblyman Jeffron Aubry heard testimony from parole officials and union leadership.

Parole Commissioners Visit Albany

In March 2010, 9 of 16 commissioners of the Board of Parole met with Senator Ruth Hassell-Thompson. The commissioners stated that the Governor's executive proposal to reduce the number and terms of parole commissioners from 19 to 13 was not a misplaced idea. Despite lay opinion, the commissioners argued that caseloads were at the breaking point and that a reduction of commissioners would disrupt the parole process. They explained how the process requires three commissioners to work together when they hear the calendar. From experience they opined that work groups of three were the most efficient way to handle caseloads and resolve tie votes. The Commissioners and staff discussed the factors used when hearing applications for release, the difficulties of exercising discretion in difficult cases and the need for continuity. Within four weeks of the meeting between the Commissioners and Chairwoman Hassell-Thompson, the Governor withdrew his proposal to cut down the number of parole commissioners.

23 Andrea W. Evans is both, Chairwoman of the NYS Board of Parole and Chief Executive Office of the Division of Parole.

X. Prisoner Concerns

During our prison tours we spoke to inmates about their concerns. We have also conducted discussions with Prisoners Legal Services, the Osborne Association, the Fortune Society, the Correctional Association and the Legal Aid Society. We have also conducted extended conversations with NYSCOPA and DOCS Administrators regarding prison conditions. From these conversations we recommend:

1. Develop guidelines on the amount of time any inmate can be placed in solitary confinement. There is no time limit for the imposition of solitary confinement at Tier III disciplinary hearings within the New York State Department of Correctional Services. Confinement in the Special Housing Unit (SHU), commonly referred to as "box time" for Tier III offenses should carry an initial maximum limit of 90-days but a hearing officer would have the authority to make an upward departure based upon mitigating or aggravating circumstances. For instance, recidivism or the serious nature of the infraction

2. Such a sentencing structure would give DOCS some discretion in terms of imposing punishment while, at the same time, providing some legislative guidance for the imposition of solitary confinement. In addition, the bill should contain language that mandates that prisoners who are disciplined due to drug related misbehavior should be provided drug treatment while serving their disciplinary sentence and all prisoners should be released from SHU two months prior to being released from prison to enable them to prepare for re-entry into society.

3. Prohibit the use of the restricted "loaf" diet. Imposing a food related penalty for any misbehavior other than food related misbehavior is inconsistent with the American Correctional Association (ACA) standards and generally recognized correctional standards.

4. Amend Correction Law 803(1)(d) and section 30 of Chapter 738 of the Laws of New York (2004) to prohibit DOCS from aggregating multiple minor disciplinary infractions. Both statutes provide that merit time shall be withheld for any 'serious disciplinary infraction.' However, neither statute defines the phrase 'serious disciplinary infraction.' That phrase is defined in DOCS' regulations as behavior that results in: (1) any state or federal conviction while in DOCS' custody; (2) a finding, in a prison disciplinary hearing, that an inmate committed any of a list of specified offenses; (3) disciplinary sanctions which total 60 days or more SHU or keeplock; and (4) any recommended loss of good time. DOCS has a policy that a serious disciplinary infraction includes situations where an inmate receives 60 days of keeplock, which is not the result of any single disciplinary infraction that would be considered "serious," but is instead the result of aggregating multiple minor disciplinary infractions, each of which, individually, resulted in less than 60 days keeplock.

5. Restore Tap Grants for prisoners – All studies show that education is inversely proportional to recidivism rates – the more education an individual receives the less likely he/she is to engage in criminal activity. The cost of incarcerating an individual far outweighs the cost of educating him. If we want to be smart on crime and the economy we should restore Tap Grants for prisoners.

6. Reform DOCS Grievance Process – The federal Prison Litigation Reform Act, (PLRA) prohibits the filing of a federal lawsuit by a prisoner unless he/she has exhausted his administrative remedies. The DOCS grievance process is complex and complicated and difficult to navigate, especially for many prisoners who lack the education and expertise to understand the nuances of exhaustion. The result has been that numerous meritorious lawsuits have been thrown out of court due to the plaintiff-inmate's failure to exhaust. This was not the purpose or intent of the PLRA. New York State should pass legislation that mandates simplification of the DOCS' grievance process so that prisoners with valid constitutional claims are not barred from bringing those claims to court.

XI. Re-entry Grants: 2009-2010

Recognizing that job training and education are critical pillars of re-entry and public safety the Legislature worked to create an infrastructure to assist former offenders and to prepare them for a drug free and crime free life. From federal stimulus money the following grants were approved:

Center for Employment Opportunities (CEO): $5 million

CEO will receive $5 million to place approximately 675 parolees in transitional jobs over the next two years in New York City and several upstate counties. CEO will provide a full range of pre-employment training, job development, placement and retention services to all people enrolled in transitional jobs. Funds will allow CEO to create the infrastructure to bring its proven employment model to those in need of services in urban upstate counties while also preserving and creating employment capacity in New York City.

Mindy Tarlow, Executive Director and Chief Executive Officer, of CEO, said: "This investment will allow CEO to preserve and create jobs for people returning from prison and going on parole in New York City and, for the first time, will allow us to bring much needed employment services to parolees in urban upstate counties. Parolees in these counties need help getting jobs more than ever and we couldn't be happier to have this chance to serve them for the first time. Securing a job during the fragile period after release from prison is crucial, not just for these job-seekers, but for their children, families and communities. A successful employment reentry strategy benefits all New Yorkers by improving public safety and building the economic prosperity of communities by increasing the number of employed tax-paying citizens."

Ms. Tarlow noted that CEO will be bringing its full employment model to urban upstate counties, with first year efforts centered on Erie and Albany Counties.

The Doe Fund: $3 million

The Doe Fund (TDF) will receive $3 million to expand its Ready, Willing & Able program, with a focus on Rockefeller resentencing cases and violent offenders who have served long periods of incarceration. Known as the "men in blue" program, participants can be seen cleaning 160 miles of New York City streets and sidewalks each day and are paid above the New York State Minimum Wage for these transitional jobs. In addition, they are provided with comprehensive support services; random drug testing and onsite Alcoholics Anonymous/ Narcotics Anonymous meetings; anger management and financial literacy courses; occupational skills training; career development services; and lifetime graduate support. Those with special skills or high levels of motivation will be offered "fast track" employment options, and TDF will provide matching funds of $550,000 for the program. Statistics show that less than 5 percent of Ready, Willing & Able graduates are rearrested within the first year after their release from incarceration. George T. McDonald, Founder and President of The Doe Fund, said: "Most individuals leave incarceration with the simple desire to earn an honest living so that they never have to return. It is absolutely crucial – not just from a public safety standpoint, but morally – that we give new releasees the chance to build better futures for themselves and for their children. This funding will help more 'men in blue' leave behind lives of substance abuse and incarceration to become responsible parents and role models in communities that desperately need them."

The Fortune Society: $2 Million

The Fortune Society will receive $2 million over a two-year period to provide clients with job-readiness training and placement into stable full-time and transitional jobs. Over 500 new participants will be enrolled over the two year period and 256 will be placed in permanent jobs at wages above $9/hour. Simultaneously, Fortune will place 90 individuals into subsidized transitional employment to adequately prepare them for entry into the mainstream workforce. Each participant will also have access to Fortune's myriad wrap-around services, including access to housing, education, counseling, substance abuse treatment, family services, health services, mental health services, and rigorous follow-up. JoAnne Page, Fortune's President and CEO said, "Regardless of whom we are, each of us makes a difference – positive or negative – in the lives of our families and communities. Fortune's mission is to help men and women break out of the cycle of crime and incarceration by giving them a strong foundation and the tools they need. Getting and holding a job is a key step in that journey. Fortune is grateful to be awarded funding that will allow us to assist our clients to support themselves and those who rely on them through legitimate employment."

Osborne Association: $2 million

The Osborne Association was awarded $2 million over a two year period for the creation of a Green Career Center providing job opportunities and support services to 130 formerly incarcerated persons in the first year and 192 in year two. Enrollment will be followed by two weeks of soft skill training, 4 weeks of hard skill training in marketable skills (construction, energy efficiency, duct cleaning, bio-fuel conversion, building solar panels), and then placement in permanent jobs at an average starting wage of $12/hr. Career coaches will conduct vocational screening assessments, administer workplace readiness workshops, work with employers, monitor client performance and re-engage if needed. Elizabeth Gaynes, Executive Director of the Osborne Association, said: "With these funds, the Osborne Association will launch a new Green Career Center, providing formerly incarcerated men and women with the skills and jobs they need to succeed in careers within the emerging environmental sector. The fiscal and climate crises have forced us to recycle and reconsider how we use our precious resources, and there is no resource more precious than people. People leaving prison can re-purpose their lives and contribute to growing an economy that benefits all of us."

Department of Correctional Services: $2.8 million

DOCS is awarded $2.8 million over two years for two projects:

- The "Digital Literacy Program" ($1 million for each of the next two years) provides inmates within six months of release with hands-on training at special computer workstations using a software package that presents a simulated web-browser experience without compromising the state's interest in ensuring that inmates do not actually surf the net. The inmates are encouraged to use public libraries and other public resources upon release to conduct job searches with their new computer skills.
- A $397,336 allocation for each of the next two years will support the Department's Special Education programs, including the "Quantum Learning Program" to train DOCS Title I and Special Education teachers in methods to teach students of widely varying abilities in Special Needs Units and correctional facilities with inmates under age 21. This approach has produced high GED (General Educational Development, or high school equivalency) passing rates in DOCS' Shock Incarceration facilities. DOCS' Division of Education intends to use some of the funding for specialized educational hardware and software to assist young offenders who have visual and hearing disabilities.

XII. Troubling Concerns With NYC Marijuana Arrests

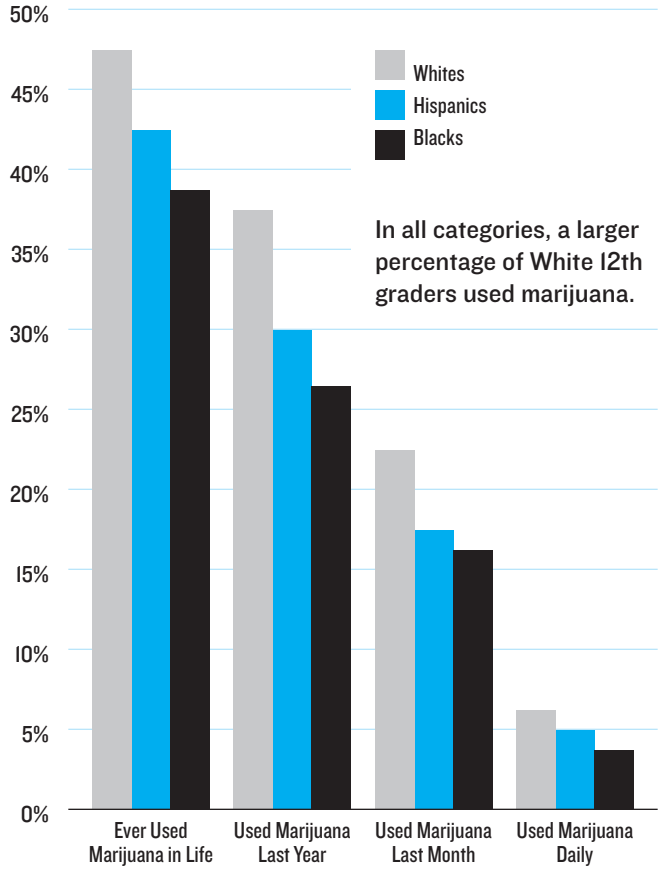
The New York Police Department (NYPD) arrested and jailed nearly 400,000 people for possessing small amounts of marijuana between 1997 and 2007, a tenfold increase in marijuana arrests over the previous decade and a figure marked by startling racial and gender disparities.

Marijuana Possession Arrests in New York City

1987	3,200
1988	2,100
1989	1,200
1990	1,000
1991	900
1992	900
1993	1,600
1994	3,400
1995	6,000
1996	9,800
1997	18,400
1998	33,200
1999	34,100
2000	51,500
2001	41,800
2002	44,400
2003	39,500
2004	28,200
2005	30,100
2006	32,400
2007	39,700

Source:
New York State Division of Criminal Justice Services, Computerized Criminal History System (April 2008). Includes all fingerprintable arrests for NYS Penal Law Article 221 misdemeanor offenses as the most serious charge in an arrest event. Ages 16 and older.

Marijuana Use by White, Hispanic, and Black 12th Graders in 2004-05



Source:
Johnston, L. D., O'Malley, P. M., Bachman, J. G., & Schulenberg, J. E. (2006). Monitoring the Future: national survey results on drug use, 1975–2005: Volume I, Secondary school students, From Table 4-9 (NIH Publication No. 06-5883). Bethesda, MD: National Institute on Drug Abuse. At: http://www.monitoringthefuture.org/pubs/monographs/vol1_2005.pdf

Between 1997 and 2007, police arrested and jailed about 205,000 blacks, 122,000 Latinos and 59,000 whites for possessing small amounts of marijuana. Blacks accounted for about 52 percent of the arrests, though they represented Only 26 percent of the city's population over that time span. Latinos accounted for 31 percent of the arrests but 27 percent of the population. Whites represented only 15 percent of those arrested, despite comprising 35 percent of the population.[24]

Surveys of high school seniors and young adults 18 to 25 consistently show that young whites use marijuana more often than young blacks and Latinos. The arrests also are heavily skewed by gender. About 91 percent of people arrested were male. These arrests, which cost taxpayers up to $90 million a year, are indicative of the NYPD's broken windows approach to law enforcement, in which police focus on minor offenses as a method of reducing crime. This approach, also called quality of life policing, has caused a dramatic spike in stop and-frisk encounters between police and city residents.[25]

In 2007, the NYPD stopped nearly 469,000 New Yorkers.[26] Eighty-eight percent were found completely innocent of any wrongdoing. The racial disparity in the stop-and-frisk encounters is almost identical to the disparity in marijuana arrests: Though they make up only a quarter of the city's population, more than half of those stopped were black.[27]

There is no discernable evidence that Marijuana arrests reduce serious or violent crime. These arrests only take police off the streets and divert them into nonessential police work. What they do succeed in is driving thousands of young men of color into the criminal justice system. The consequences of the arrests follow these children for the rest of their lives. It is particularly perverse that black and Latino youth are being targeted for violating a law that was passed to reduce the likelihood that young people would acquire criminal records for possessing small amounts of marijuana.

The majority of the nearly 400,000 people arrested for possessing marijuana were not carrying or smoking the drug in public. Most people simply had a small amount of marijuana in their possession, usually concealed in a pocket or backpack[28]. New York State decriminalized marijuana possession in 1977[29], making it a violation like speeding or driving through a stop light. When police officers coerce or intimidate people into showing marijuana in the open, though, they are able to classify it as a misdemeanor and arrest for it.

24 The Costs of Crime and Justice. New York: Routledge, 2005, pp.84-5; and Mark A. Cohen, "Measuring the Costs and Benefits of Crime and Justice." pp. 263-316 in Volume 4: *Measurement and Analysis of Crime and Justice*, National Institute of Justice, July 2000, NCJ 182411. Available at: http://www.ncjrs.org/criminal_justice2000/vol_4/04f.pdf. p. 297.

25 The Costs of Crime and Justice. New York: Routledge, 2005, pp.84-5; and Mark A. Cohen, "Measuring the Costs and Benefits of Crime and Justice." pp. 263-316 in Volume 4: Measurement and Analysis of Crime and Justice, National Institute of Justice, July 2000, NCJ 182411. Available at: http://www.ncjrs.org/criminal_justice2000/vol_4/04f.pdf. p. 297.

26 Baker & Vasquez, "Police Report Far More Stops And Searches. *The New York Times*, February 3, 2007; also: Aubrey Fox, "Who's Stopped? Who's Frisked?" Gotham Gazette, 17 Dec 2007. http://www.gothamgazette.com/article/crime/20071217/4/2382

27 *The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York*. From The Office of the New York State Attorney General, Albany, NY. Dec. 1, 1999. The text of the Attorney General's report is available online in sections, and in a downloadable pdf. Neither are user friendly though the web version is probably easier to read. At: http://www.oag.state.ny.us/press/reports/stop_frisk/stop_frisk.html.

28 Andrew Golub, Bruce D. Johnson, and Eloise Dunlap. "Smoking marijuana in public: the spatial and policy shift in New York City arrests, 1992–2003," *Harm Reduction Journal* 3:22, 2006. Available at: http://www.harmreductionjournal.com/content/pdf/1477-7517-3-22.pdf.

29 "Compromise Version Of Marijuana Bill Approved In Albany; Governor Is Certain To Sign," by Richard J. Meislin, *New York Times*, June 29, 1977. For a review of the problems created by a criminal record and the difficulties they pose, written at the time, see: Aryeh Neier, "Marked For Life: Have You Ever Been Arrested," *New York Times Magazine,* April 15, 1979.

Police did not focus on marijuana arrests from 1977 through 1996, arresting around 30,000[30] people total in both decades for possessing less than an ounce of marijuana. But police equaled or topped that 10-year arrest total in nine of the next 11 years. In 2007 alone, police made 39,700 arrests for marijuana possession.[31]

The arrests also succeed in dramatically expanding the NYPD's vast database of New Yorkers' personal information. Each marijuana arrest brings a new set of fingerprints and photos into the NYPD's extensive system.

Recommendations:

- Hold public hearings and thoroughly examine the costs, consequences, and racial, gender, age and class disparities of the NYPD's marijuana arrest practices;
- Ensure that law enforcement of marijuana offenses is consistent with the intent of New York State law;
- Substantially increase the pay scale of police officers to reduce the need for overtime;
- Require the NYPD to provide the City Council and State detailed, accurate and timely data on its arrests, citations and other practices, and make that information public.

30 "Albany Agreement Reached on Easing Marijuana Curbs," by Richard J. Meislin,New York Times, May 4, 1977.

31 "Anderson Scores Marijuana Plan: Opposes Carey's Proposal to Lift Criminal Penalties in Sale of Small Amounts," by Iver Peterson, *New York Times*, Feb. 10, 1976. See Legislative Memo from Assemblyman Richard N. Gottfried on *Marijuana laws and level of use*, dated June 9, 1977, included in bill jacket for S. 4481-A.

XIII. Stop, Question and Frisk

"There's no evidence that stopping and frisking hundreds of thousands of law abiding New Yorkers and then entering their personal information into a database (has anything to do) with effective crime-fighting, [and] it's hard to argue that when 90% (of those) who are stopped and frisked are let go because there is no evidence of criminal wrongdoing, that this practice is necessary."

– Assemblyman Hakeem Jeffries

New York City Police Department (NYPD) routinely stop, question, and frisk New Yorkers at alarmingly high rates. Most of those stopped are completely innocent of wrongdoing. And of the hundreds of thousands of law-abiding New Yorkers stopped every year, the vast majority are black and Latino. In 2009, for example, the NYPD stopped 574,304 individuals. Of those who were the subject of a police stop that year, nearly ninety percent were people of color; and nine of every ten persons stopped were released without any further legal action taken against them. NYPD data demonstrate that the police have conducted in 2.5 million stops since 2005.

The problem of excessive and unjustified street stops is exacerbated by the NYPD's practice of entering into a an electronic database the personal information - including names and addresses - of the millions of innocent people stopped by the police. These individuals are now permanently under police suspicion and surveillance.

There is no legitimate justification for such a database. According to the NYPD, the database is maintained for use in future investigations. But New York city Council Speaker Christine Quinn and Public Safety Committee Chair Peter F. Vallone, Jr., have pointed out in a letter to NYPD Commissioner Raymond Kelly that archiving in a database information about persons who are innocent of wrongdoing "raises significant privacy right concerns and suggests that these innocent people are more likely to be targeted in future criminal investigations."

The racial disparities in the population subject to a police stop suggest that it will be black and brown New Yorkers who will be implicated without legal justification in the those future criminal investigations. No police department in New York State should maintain a database of innocent New Yorkers. This bill would prohibit the police from entering into an electronic database personal information - such as name, social security number, and address - of innocent individuals who are stopped by the police and released without further legal action taken against them. This statutory prohibition is needed to protect the privacy and due process rights of the hundreds of thousands of innocent New Yorkers who are stopped and released each year.

Recomendations:

S.65 SAMPSON – Outlaw Racial Profiling

This proposed legislation prohibits law enforcement from engaging in racial or ethnic profiling. It requires every law enforcement agency to promulgate and adopt procedures for reviewing complaints of racial or ethnic profiling and taking corrective measures. A copy of each complaint and a written summary of the disposition must be forwarded to the division of criminal justice services.

The proposed law requires each law enforcement agency to collect and maintain data with respect to traffic stops and persons patted down, frisked and searched. It requires every law enforcement agency to compile the data collected and forward an annual report to the division of criminal justice services by March 1st of each year. The legislation requires the division of criminal justice services in consultation with the Attorney General to promulgate necessary forms; and requires every law enforcement agency to make documents required by this bill available to the Attorney General within 5 days of a demand. The bill requires law enforcement agency to provide all data collected from traffic stops to the division of criminal justice services. The division shall implement a computerized data system for public viewing of such data and shall publish an annual report on law enforcement. traffic stops without revealing the identity of any individuals. An action for injunctive relief and/or for damages may be brought by the Attorney General on behalf of the people against a law enforcement agency that has engaged in racial or ethnic profiling. A court may award costs and reasonable attorney fees to a prevailing plaintiff. The law provides that an action for injunctive relief and/or for damages may be brought by an individual that has been the subject of racial profiling against a law enforcement agency that has engaged in racial or ethnic profiling. A court may award costs and reasonable attorney fees to a prevailing plaintiff.

S.7945A ADAMS – Stop, Question & Frisk

This bill prohibits the police from entering into an electronic database the personal identifiers of individuals who have been stopped and/or frisked by police and released without any further legal action. This provision does not prohibit police from entering into an electronic database generic identifiers, such as gender, race, and location of the stop.

XIV. EFFECTIVE SEX OFFENDER MANAGEMENT IN NEW YORK STATE

In March 2010, the Committee conducted two roundtables which included experts in the field of effective sex offender management. Staffs of both parties were present and engaged in a question and answer period. From these meetings the following policy goals were suggested and we now share them with our readers.

1. Convene public hearings on effective sex offender management and public safety to begin to develop comprehensive legislation that will better facilitate the goal of improving public safety and reducing the risk of sexual assault. After fourteen years of sex offender registries and a growing list of restrictions in place in New York, there is little evidence that any of these measures have contributed to a decrease in sexual assault. There is, however, a growing body of research suggesting that some laws relating to registration, notification, and overly harsh laws restricting where sex offenders can be and how they can engage with their communities may exacerbate the risk that they will reoffend. We should engage in a conversation to consider developing a comprehensive sex offender management plan that embraces new research and is aimed at reducing recidivism.

2. Re-examine the method of assessing risk of re-offense among registered sex offenders currently used by the New York State Board of Examiners and appoint a commission to choose among the various assessment tools available today one that would provide the most reliable determination of risk. New York's Risk Assessment Guidelines were developed more than fifteen years ago, at a time when experts in the state knew far less about how to measure the risk that someone once convicted of a sex crime would reoffend. It is our belief—one shared by many experts—that there are far too many people in New York who are misclassified in the higher levels of risk, and therefore unnecessarily diverting limited resources away from likely re-offenders.

3. Reject additional further residency restriction proposals and instead reinforce the ability of individual probation and parole officers to assess whether there are residences that are inappropriate for certain individuals such that they would pose an unacceptable risk of re-offense. The legislature should also pass affirmative legislation that would require counties to create plans for safe and stable housing for sex offenders. All of the empirical research examining the effectiveness of residency restrictions shows that residency restrictions do not work to reduce the risk of harm to children. They have been shown to discourage offenders from reporting their whereabouts to law enforcement, and they destabilize offenders' lives, creating roadblocks to successful re-integration into society and increasing the risk of recidivism. Housing stability is a key to reducing recidivism, and a comprehensive sex offender management plan must include provisions to ensure stable housing for offenders.

4. Many states have declined to adopt the federal Adam Walsh Act that would expand community notification via the state's Internet registry to include registered offenders who pose the lowest risk of re-offense; require that anytime affirmative community notification is undertaken that law enforcement concurrently conduct community education to ensure that risk is communicated in a way that makes sense; monitor acts of vigilantism and take action against anyone found to have abused the use of the Internet registry to harass or harm a registered offender or his family. Community notification has been found to have no demonstrable impact on sexual recidivism. In fact, some studies suggest that community notification may aggravate stressors that lead to increased recidivism[32], and requiring broad community notification via the Internet may discourage some victims of sexual abuse from reporting incidents to the authorities. Victims may be reluctant to report offenses out of concern for a perpetrator who is close to them (a relative, a step-parent), or out of concern for their own privacy.[33] The Adam Walsh Act would take New York in a dangerously opposite direction, besides the fact that experts agree that it would cost more to implement than the state would stand to lose in federal grant money.

5. Pass the Healthy Teens Act,[34] a bill pending in both the Assembly and the Senate, which would establish an age-appropriate and medically accurate program of comprehensive sex education, including instruction on avoiding unwanted verbal, physical and sexual advances. Each year, New York adds another restriction on those already convicted of sex offenses as a means to prevent sexual violence against children. However, the overwhelming majority (around 95%) of sex offenses, including rape and child molestation, are committed by those who have never before been convicted of an offense. This means that New York concentrates all of its legislative efforts on preventing only 5% of all sex crimes against children, and completely ignores the threat posed by first-time offenders. The Healthy Teens Act would provide young people with age-appropriate comprehensive sex education that would include instruction about how to avoid becoming a victim—perhaps the most valuable and effective tool way to reduce the incidence of child sexual assault.

32 Naomi J. Freeman, The Public Safety Impact of Community Notification Laws, Crime & Delinquency (2009) ("Empirical research has suggested that sex offenders do not always commit crimes within their areas of residence and, thus, the areas in which notification occurs. Indeed, studies in Colorado and Minnesota found that sex offenders are unlikely to offend close to their homes and within the area that notification occurs; rather, sex offenders may travel, on average, 3 to 5 miles to gain access to victims.").

33 Jeffrey C. Sandler, Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law, Psychology, Contextualizing Sex Offender Management Legislation and Policy: Evaluating the problem of Latent Consequences in Community Notification Laws, International Journal of Offender Therapy and Comparative Criminology (2001).

34 Assembly Bill 1806A (Assemblyman Gottfried)/Senate Bill 3836 (Senator Duane).

XV. GETTING GUNS OFF THE STREETS

In 2009 and 2010, the Democratic Majority initiated a practical plan to get guns off the street - Operation SNUG (which is guns spelled backwards). The acronym explains the direction of the program:

- Street Intervention and Stopping the Violence.
  - Violence interrupters.
  - Support for police and law enforcement.
- National, State and Local funding support.
  - Funding for alternatives
  - Legislation that can implement solutions
- Use of celebrities and Community Centers.
  - Public relations and material
  - Existing community centers and community offices
- Gangs, guns, gainful employment
  - Real-world gang awareness and prevention.
  - Connection to employment and economic alternatives

Operation SNUG is modeled after Chicago's Ceasefire Gun Initiative. In this method, communities become involved in their own struggle for safe streets through their local leaders, specifically clergy, in tandem with outreach workers who mobilize the community to directly oppose gun violence. At night, there is also the use of "violence interrupters" who look to find emerging trouble and stop it in its tracks. These "violence interrupters" know the lay of the land and the nature of the streets. Many of them were former gang bangers and prison inmates and present a rough hewn approach to violent crime. "Violence interrupters " may attempt to convince drug cartels that a street war is bad business because it is a magnet for law enforcement., or perhaps a man who feels he was wronged or disrespected in some way that requires death in the code of the streets, just beat a man, as opposed to killing him. The main goal is always to reduce or stop violence. This method makes a difference in the areas where it is implemented. Indeed, the Ceasefire program has been recommended as a national model by the United States Justice Department. The program will send speakers to schools, churches and community centers to teach young people about the dangers of gangs and handguns. And of course, this program will be coordinated with the local police departments and state troopers. New York's model will also direct young men and women to educational and vocational programs and use celebrities as role models.

SNUG grants will launch projects in Brooklyn, Manhattan, Queens, Westchester, Albany, Syracuse, Rochester and Buffalo. Advisors from Chicago's program will provide guidance to ensure that New York is off to a positive start.

XVI. 2009-2010 New York State Senate Majority Task Force on Domestic Violence

Senator Ruth Hassell-Thompson, as **Chairwoman of the New York State Majority Task Force on Domestic Violence**, has led the Task Force in taking a leadership position on domestic violence policy for the New York State Senate. The legislation passed will provide significant increases in safety, services and rights for the survivors of domestic violence.

Domestic Violence is **still** a crime of enormous magnitude in New York. It affects people of all races, ages and economic status. Each year, an estimated 400,000 domestic incidents are reported to law enforcement in New York; approximately 300,000 calls are received by hotlines throughout the State; nearly 165,000 orders of protection were issued in domestic violence cases in family, criminal and supreme courts in 2007 alone.

- Rates of domestic violence across New York State hover around 85 criminal incidents per 10,000 residents, but vary across counties. By contrast, the rate of violent crime is about 59 incidents per 10,000 population and crimes against property is about 272 incidents per 10,000 population.
- Eighty-nine intimate partner homicides were reported in 2009; forty-three were in NYC. All victims were female. In 2008, 50% of females aged 16 and older who were victims of homicide were killed by an intimate partner. Four percent (4%) of male homicide victims were killed by an intimate partner.[35]
- In 2008, there were 86,805 assaults reported by police agencies outside of New York City, representing 11% of overall crime. Twenty percent (20%) of the total assaults outside of New York City were committed by intimate partners in 2008 (for a total of 17,777 assaults by intimate partners).
- In 80% of the intimate partner assaults outside of New York City, the victims were female.
- One in two teens report that they have been personally victimized by controlling behaviors from a boyfriend or girlfriend. According to a 2009 study commissioned by Liz Claiborne, Inc. and the Family Violence Prevention Fund, American teens across the country are experiencing alarmingly high levels of abuse in their dating relationships and the economy appears to have made it worse. Almost half of all teens whose families have experienced economic problems in the past year report having witnessed their parents abusing each other.
- 80% of teens know someone who has been a victim of controlling behaviors from a boyfriend or girlfriend.
- 60% of teens know someone who has been the victim of sexual abuse, physical abuse or threats of physical abuse by a boyfriend or girlfriend.

35 DCJS

These alarming numbers clearly show that although we have made great progress in the identification, education and awareness of domestic and family violence, we still have a way to go before we can declare victory and turn our attention away to other pressing matters.

The current economic stresses have not only increased the incidence of domestic violence but also make it potentially more difficult for victims to take the steps they need to stay safe. The economy does not cause domestic violence, but in abusive relationships, factors associated with a bad economy can increase the frequency and severity of abuse.

The New York State Senate Majority Task Force on Domestic Violence members includes **Senators Eric Adams, Darrel Aubertine, Neil Breslin, Liz Krueger, Suzi Oppenheimer, Kevin Parker, Eric Schneiderman, Jose Serrano[36] and Malcolm Smith**. They re-affirmed their Mission Statement and endorsed a legislative agenda for 2009-2010 in order to:

"Create policy that will end domestic violence and incest by building strong and healthy homes and communities through educating our families on the symptoms, societal and economic causes, and alternatives to family violence."

In addition, Task Force objectives were adopted to:

- Promote stronger state legislation that protects victims and their families.
- Foster a climate of justice for victims.
- Support programs that bring batterers to justice and re-education, and, where appropriate, to incorporate them back into society.
- Ensure sensitivity training for all professionals involved in the response to domestic violence and incest.

The Task Force named an **Advisory Committee** in order to create a network of people with a working knowledge of the causes and effects of domestic violence and incest that would help the Task Force in the development and implementation of its goals. This group includes diverse representatives from around New York State who have been involved in all aspects of crucial services and educational outreach to domestic violence survivors. Current members of the Advisory Committee are Roslyn Bacon (Brooklyn), Robin Braunstein (Oswego), Karen Cheeks-Lomax (White Plains), Laurel Eisner (NYC), Lisa Frisch (Albany), Shirley Gibbs Bryant (Mt. Vernon), Carlla Horton (Pleasantville), Beth Linderman (Watertown), Audrey Moore (Manhattan), Rosita Romero (NYC), Joyce Skinner (Queens), Dr. Shirley Smith(NYC), Melissa Cebollero (Bronx) and Michelle McKeon (Albany).

36 Senator Jose Peralta replaced Senator Serrano in 2010.

Matrimonial Law Reform

New York State, once the national leader in public policy, has faced a stalemate for almost 30 years with regard to matrimonial law reform.

No-fault divorce remains a controversial proposal in New York State even though **New York has been the only state in the United States without a no-fault divorce statute.** This legislation has had strong support from all of the Bar Associations[37] but had understandable opposition from the Catholic Church and aggressive opposition from the President of NOW/NYS. Victims of domestic violence do not have the means to move to an adjoining state with their children in order to obtain a divorce. This increasingly leaves them in abusive, often dangerous marriages – not good for them, for their children or for the entire community. Many advocates and attorneys who represent victims understood that requiring testimony in open court concerning "fault" as a victim of domestic violence was re-traumatizing, time consuming, expensive and often very dangerous.

The Lawyers Committee Against Domestic Violence had expressed concerns though about any legislation that would possibly disadvantage victims of domestic violence with regard to post-marital income (formerly called alimony or maintenance); although there were other advocates for victims of domestic violence who supported no-fault.

As negotiations over the legislation advanced, it became apparent that a broader examination of these interrelated aspects of **Matrimonial Law Reform** would be necessary. In addition to the new bill which added the additional ground of **no-fault divorce**, (sponsored in the Senate by Senator Hassell-Thompson, S3890) the issues of post-marital income ("PMI" formerly referred to as "maintenance") and the awarding of interim counsel fees in divorce litigation needed expert testimony and further discussion.

Senator Hassell-Thompson and Judiciary Chair Senator John L. Sampson, called a public hearing on May 6, 2010 in Albany to focus on policy changes enumerated in three new bills:

- No-fault divorce (S3890)
- The treatment of marital assets specifically the examination of post-marital income guidelines (S7740)
- The award of interim counsel fees to non-monied spouses in matrimonial matters (S4532)

The Senators, joined by Senator Liz Krueger, Senator Diane Savino, Senator Antoine Thompson and Senator Michael Nozzolio, heard extensive testimony from over twenty expert witnesses with many years of experience as Judges, matrimonial attorneys, Bar leaders, attorneys for domestic violence victims, Family court/child psychology experts as well as survivors of domestic violence and divorce litigation. The overwhelming consensus was that the time for New York State to reform the Domestic Relations law by adopting a no-fault divorce statute and some version of a post-marital income guideline, was long overdue.

37 New York State Bar Association, Women's Bar Association of the State of New York, American Academy of Matrimonial Lawyers – New York Chapter, NYC Bar

Senator Hassell-Thompson subsequently introduced **S7740A (AI0984/Paulin)** which established post-marital income guidelines for maintenance awards. It was amended and reintroduced as **S8390**; creating interim maintenance guidelines and directing the Law Revision Commission to study the economic effects of divorce and maintenance and report back to the Legislature within nine months. This bill, along with the No-fault legislation and with Senator Sampson's legislation requiring the awarding of counsel fees at the beginning of the divorce process[38], completed the three bills in the **Matrimonial Law Reform package**. Advocates of divorce reform ranging from the Women's Bar Association to the Lawyers' Committee Against Domestic Violence supported the package of bills sent to the Governor as passed by the Senate and Assembly. These bills were passed by the Senate on June 15th, 2010, by the Assembly on July 1, 2010 and signed into law by Governor Paterson on August 13, 2010. **No-fault divorce goes into effect in New York State on October 13, 2010.**

Chapter 384 of the Laws of 2010

S.3890-A **Hassell-Thompson, Adams, Breslin, Dilan, Espada, Huntley, Klein, Krueger, Montgomery, Oppenheimer, Parker, Peralta, Perkins, Sampson, Smith, Stavisky, Thompson /A9753-A Bing**

This bill would allow a divorce when a marriage is "irretrievably broken" for a period of at least 6 months, provided that one party has so stated under oath. The divorce is granted **only** after the issues relating to equitable distribution, support, counsel/expert fees, custody and visitation are resolved or determined.

Chapter 371 of the Laws of 2010

S.8390 **Hassell-Thompson, Oppenheimer/AI0984-B Paulin, Weinstein**

The amended bill provided for:

- **Guidelines for temporary maintenance**
- **Added domestic violence explicitly as a deviation factor**
- Adds **factors** for consideration with **final maintenance** – does **not** provide Guidelines
- Requires the Law Revision Commission to study maintenance
- Directs the Chief Administrator of the Courts to promulgate all rules necessary for implementation of the legislation
- Ensures that the court considers the provisions of the "Get law

38 S8391/Sampson, AII576/Weinstein both passed Senate and Assembly on July 1, 2010.

2009-2010 Domestic Violence Legislative Agenda[39]

The Task Force supported the Domestic Violence Omnibus bill (Governor's Program bill).

Chapter 476 of the Laws of 2010

S.5031-A **Hassell-Thompson*, Adams, Breslin, Krueger, Oppenheimer, Sampson, Schneiderman /A.9017 Weinstein**

The provisions of this new law will:

- require that attorneys for children be trained on the dynamics of domestic violence so they and better counsel and represent their clients;
- require courts to state on the record how the findings, facts and circumstances of domestic violence or child abuse were factored into the custody or visitation determination, where such abuse was established by a preponderance of the evidence;
- allow evidence of certain sex crimes committed against members of the same family or household to be heard in family court order of protection proceedings, while ensuring that mandatory arrest applies and that orders of protection are filed with the statewide registry;
- provide for transmission of domestic violence incident reports (DIRs) involving probationers or parolees to the relevant agency as soon as practicable;
- provide that records be made available to law enforcement when there is a conviction of the violation of harassment in the second degree against a member of the same family or household and;
- provide greater protections to victims by adding the length of incarceration to the maximum expiration date previously allowed for orders of protections issued in misdemeanor and violation cases.

Chapter 428 of the Laws of 2009

S.5036 **Hassell-Thompson*, Diaz, Huntley, Krueger, Onorato, Sampson/A.3843a(Rosenthal)**

A bill to amend the social services law to prohibit the state or any political subdivision (government office) from compelling a victim of domestic violence to contact her or his abuser in order to qualify for public benefits.

This bill would require the government office to provide a confidential intermediary in cases where the application for public benefits would require confirmation of a lease or documentation of residency and would therefore endanger the safety of the victim.

S.5037 **[S5993] Hassell-Thompson* Diaz, Huntley, Krueger, Onorato, Oppenheimer, Thompson / A4809-A**

This bill required that rehabilitation programs for female inmates in state correctional facilities be equivalent to those provided to male inmates of correctional facilities elsewhere in the state, provided that such rehabilitation programs shall include, but not be limited to, vocational, academic and industrial programs. There have existed, for years, a great disparity in the types and numbers of vocational and industrial programs and classes accessible to woman inmates during their incarceration; far fewer than are offered to men and for jobs that pay less than the hourly rate in 'traditional' male occupations.

39 *Denotes member of NYS Senate Task Force on Domestic Violence

S.5043 **Hassell-Thompson*, Adams, Diaz, Krueger, Montgomery, Oppenheimer, Perkins, Sampson, Savino /A455 (Jacobs)**
Senate passed on 6/17/10. Sent to Assembly.

This is a bill extend the maximum length of stay at residential programs for victims of domestic violence to a maximum of 180 days. Current law allows for emergency shelter reimbursement for 90 days; under special circumstances, victims of domestic violence can extend their shelter stay for another 45 days which brings them to the 135 day milestone. Extending domestic violence shelter stays will give the victims who have taken the important safety steps necessary to flee their abuse and enter shelter a real opportunity at securing permanent housing and economic self-sufficiency.

S5258-A **Hassell-Thompson*, Diaz, Duane, Huntley, Krueger, Oppenheimer, Perkins, Sampson, Savino, Thompson, Volker, A8675-A (Jaffee)**
This bill failed to pass either house.

This legislation requires the education commissioner to establish standards requiring that one hour of the three hours of coursework or training required of certain specific health care professionals regarding the identification and reporting of child abuse and maltreatment, now include information regarding the relationship between child abuse and domestic violence. Previously, the two hour training was for the reporting of child abuse and maltreatment – now the third hour will be added for the identification of behavioral and physical indicators of domestic violence as well. This bill died in committee in 2009 and was been re-introduced with some technical amendments by the sponsors in 2010.

Vetoed 8/13/10 memo 6760 of 2010

S.5999 **Hassell-Thompson*, Adams, Addabbo, Duane, Klein, Krueger, Montgomery, Oppenheimer, Perkins, Sampson, Savino, Schneiderman, Squadron, Stavisky, Volker/A.9020-A(Destito)**

This bill was originally part of the 2009 Omnibus Governor's Program Bill #14 that was split off from the larger bill which passed and was signed into law. It would amend the Human Rights Law (Executive Law Sec. 292) to prohibit discrimination against victims of domestic violence in housing. Many studies have indicated an increased risk of abusive conduct during difficult financial times. The stresses of an economic downturn might also make it more difficult for victims of domestic violence to take the steps they need to get and stay safe. By including victims of domestic violence as a protected class in the housing sections of the Human Rights Law as well as including provisions that allow a housing provider to inquire as to an individual's status as a victim of domestic violence so that they can be provided housing or additional services, this bill will provide further protections for victims of domestic violence. This bill, along with its companion, S6000, had been re-introduced and amended in 2010. The Governor vetoed both bills on August 14, 2010 objecting to the change in the definition of "victim of domestic violence."

Vetoed 8/13/10 memo 6759 of 2010

S.6000 **Hassell-Thompson*, Adams, Addabbo, Duane, Klein, Krueger, Montgomery, Oppenheimer, Perkins, Sampson, Savino, Stavisky, Volker/A.9018-A(John)**

S6000 is the companion to the original Governor's domestic violence Program bill. This bill would also amend the Human Rights Law (Executive Law Sec. 292) to prohibit discrimination against victims of domestic violence in employment. Furthermore, the bill would require the employer to provide, unless it would result in an undue hardship, a reasonable accommodation to a victim of domestic violence, limited solely to an absence, charged to leave or unpaid, for certain activities (attending court, seeking medical attention or counseling). It would further require an employee who must be absent from work for these reasons to provide reasonable advance notice, except where not feasible. This bill was re-introduced in 2010.

S.6650 **Hassell-Thompson*, Stavisky, Volker/A.456-A (Jacobs)**

This bill would adopt the family violence option (known as the Wellstone/Murray amendment) in the federal Social Security Act which permits the waiver of federal program requirements or penalty provisions for domestic violence services in the State of New York to provide full protection from losing public assistance benefits under the (not so)new federal welfare reform law. It also provides protection for battered immigrants, mandates domestic violence and sexual abuse training programs for employees and contractors who work for the office of children and family services and have contact with applicants and welfare recipients. This bill was originally introduced in 1998 and has never passed either house of the Legislature.

Chapter 446 of the Laws of 2010

S.8058 **Hassell-Thompson*/A.11100, Weinstein**

At the request of the Office of Court Administration, this legislation amends section 153-b of the Family Court Act and section 240 of the Domestic Relations Law to clarify that litigants have the option of using law enforcement to serve orders of protection and temporary orders of protection and any associated papers issued in the **later stages of family offense proceedings**, including service of extended orders and petitions.

The legislation also makes clear that service of orders of protection provided by peace or police officers under section 240 of the Domestic Relations Law shall be **free of charge for litigants**.

Chapter 363 of the Laws of 2010

S.8013 **Sampson, Hassell-Thompson/A10851-A, Weinstein**
(Formerly S.5033 Hassell-Thompson/A390 (John))

This bill was originally introduced in 2005 by Member of Assembly Susan John to extend use of judicial hearing officers or referees to determine ex parte orders of protection brought in all Family Courts, whether during the time that Court was in session or after hours. Over the years, the pilot projects that the Office of Court Administration supported proved to be effective in light of the severe shortage of Family Court judges. This bill extends for two years the authority of referees to determine applications for orders of protection in Family Court when such application is made ex parte or without the presence of all the parties except the applicant and it specifies that such provisions shall only apply during those hours that the family court is in session and after 5:00 p.m.

Chapter 380 of the Laws of 2010

S.8424 **Hassell-Thompson/A11612, Assembly Rules**

This emergency legislation, introduced and passed in the final hours of the legislative session, saves the funding for the rape crisis centers in NYS which had lost funding inadvertently in the rounds of budget negotiations.

Chapter 327 of the Laws of 2010

S5615-A **Parker*/ A6509-B , Rivera**

Would provide domestic violence survivors with the option to request an unlisted telephone number at no charge or use an altered name for the directory listing.

S5980-A **Klein/ A4052-B, Cymbrowitz**

Senate passed 6/16/10

Requires insurance companies to provide domestic violence survivors whose insurance is in the name of their abuser with the option to designate alternate contact information for the receipt of claims or billing information.

S7424-B **Foley/ A11014-A Gabryszak**

Senate passed 6/16/10

Would allow domestic violence survivors to petition to have their voter registration records kept separate from other voter registration records and be available for review only by election officials in the course of their duties.

Vetoed 8/13/10 memo 6764 of 2010

S7379 **Adams*/A10180 Weinstein**

This bill would direct the secretary of state to create an address confidentiality program whereby domestic violence survivors could have mail delivered to an address designated by the secretary of state, who would then forward the mail to the survivors' actual addresses.

Chapter 325 of the Laws of 2010

S2972-A **Sampson/ A6195-A, Weinstein**

Would allow a court, upon a showing of good cause, to extend the order of protection for a reasonable period of time without first requiring that the survivor have been abused again.

Chapter 341 of the Laws of 2010

S5696-A **Sampson/A8393-A. Weinstein**

This bill would clarify that judges can grant an order of protection even if the application was not filed immediately after an incident and that the duration of the temporary order should not be a factor in determining the final order.

Chapter 261 of the Laws of 2010

S7289 **Sampson/ A10410 Rosenthal**

Expands the pilot program currently in 8 counties which permits the transmittal of orders of protection by facsimile or other electronic means to local police agencies for service to the rest of the state, allowing quicker service of orders of protection on abusers.

Chapter 405 of the Laws of 2010

S6987-A **Schneiderman*/A A10161-A, LENTOL**

Strangulation bill – discussed in previous chapter

S7141-A **Schneiderman*/No same as**
Senate passed 6/16/10

Would strengthen the current crime of witness tampering to better address attempts to induce or coerce a domestic violence survivor into not seeking an order of protection or not testifying against her or his abuser.

S7856 **Stavisky/ A11441, Meng**
Senate passed 6/15/10

This bill would create the crime of persistent criminal contempt, which would create a remedy for addressing those abusers who violate an order of protection again after having already been found guilty of violating an order of protection.

Local and National Policy Initiatives

The Senator and members of the Task Force continued to work in partnership with community groups, educators, corporate groups, clergy and youth programs to combat the alarming increase in teen dating violence. They have collaborated with companies like Liz Claiborne, Inc. to bring **MADE: Moms and Dads for Education to Stop Teen Dating Abuse program** to schools in the community. This is part of the **Love Is Not Abuse** campaign to stop the violence before it happens.

Members of the Task Force joined many others on December 3, 2009 on the radio for **"IT'S TIME TO TALK DAY"** to focus national attention on domestic violence and teen dating abuse. Future efforts of this effort include a special focus on digital abuse – sexting, texting and teen dating abuse and control using cell phones as control objects - timely and important issues to explore in 2010 and beyond.

Budget 2010

The economic meltdown will continue to have dire ramifications on the ability of domestic violence providers to offer the critical services needed to help victims escape from their abusers, stay safe, and obtain the counseling and support services they need for themselves and their children.

Two proposed cuts in the Governor's budget were particularly harsh; a cut of the entire $609,000 amount funded for civil legal services for victims of domestic violence (funded by the Senate for the first time in 2009) and $3 million TANF (Temporary Assistance for Needy Families) dollars that was 'zeroed out' by the Executive. The TANF money is used to fund non-residential domestic violence services for the most underserved and hard to reach residents, including domestic violence victims who do not speak English, the disabled, LGBT victims and victims of sex trafficking.

Senator Hassell-Thompson had asked for these two programs to be restored.

Conclusion

Budget cuts made to programs for civil legal services and to non-residential services for victims of domestic violence will unfortunately have a direct effect on these programs' ability to achieve safety and stability for survivors and their children. The New York State Senate Majority Task Force on Domestic Violence will continue to closely monitor this situation and work with victims, providers and their advocates towards a safe and secure environment for all.

The Expulsion of Senator Hiram Monserrate

Senator Ephrain Paine was expelled from the New York State Senate in 1781 for "neglect of duty". Over two centuries later, Queens County State Senator Hiram Monserrate gained the dubious distinction of being the third Senator in history expelled from the New York State Senate.

Senator Monserrate had been indicted by the Queens County Grand Jury in a six count indictment for various offenses, including felonious assault against his girlfriend Karla Giraldo. Queens County District Attorney Richard A. Brown alleged that the Senator went into a jealous rage after he found a PBA card in Ms. Giraldo's purse. The prosecutor argued that Senator Monserrate intentionally assaulted Ms. Giraldo by smashing her face with a glass of water. Bleeding profusely, the Senator pulled Ms. Giraldo out of the building in an effort to get her medical assistance at a hospital at a time when she was resistant to going. A horrific surveillance video kept by building security showed the aggressive ex-police officer throw the PBA card down a compactor chute and then violently drag his petit girlfriend out of the building as a towel soaked with blood fell from her face. Advocates against domestic violence were enraged by the video tape and rebuked the Senator for by-passing eight Queens County hospitals to ultimately have Ms. Giraldo treated at Long Island Jewish Hospital, located in Nassau County. Advocates suggested that the Senator unsuccessfully attempted to keep the incident under the radar and away from New York City's turbulent press corps.

The defense countered that the incident was nothing more than an accident. The lawyers for Senator Monserrate argued that Ms. Giraldo was drunk and uncontrollable and that the Senator used reasonable aggression to get her to the hospital.

On October 15, 2009, after a three week bench trial, Justice William Earlbaum acquitted Senator Monserrate on all of the felony charges. The Judge found that the prosecution had not proved the first five counts of the indictment with proof beyond a reasonable doubt. The Judge noted that: (1) Senator Monserrate and Karla Giraldo were the only eye witnesses to the incident – and both of them maintained it was an accident; (2) Ms. Giraldo told her aesthetician that her wounds were accidental; (3) the downstairs neighbor's testimony about an argument was equivocal; (4) expert witnesses could not rule out the theory that the lacerations to the face were accidental; (5) the prosecution's expert was unable to rule out whether the glass was broken by accident; (6) Senator Monserrate lacked a history of domestic violence; and (7) testimony from every other prosecution witness was based on unreliable hearsay or conjecture.

However, based on the video tape, the Court found the Senator guilty of count six, of the indictment - misdemeanor assault. The Court found sufficient evidence that the defendant recklessly caused injury to Karla Giraldo by forcibly dragging her by the arm. The Judge admonished Senator Monserrate for failing to take Ms. Giraldo to Elmhurst hospital which was walking distance from his apartment building. The Judge sentenced Senator Monserrate to three years probation, 250 hours of community service and a $1,000 fine. An Order of Protection was issued by the court in favor of Ms. Giraldo despite protests from her and the Senator.

Once the Court found Senator Monserrate guilty, Democratic Leader John L. Sampson convened a Special Select Committee to look into the misdemeanor conviction to determine whether or not the criminal conduct merited disciplinary action by the New York State Senate. The Committee which included Senator Eric Schneiderman, Senator Ruth Hassell-Thompson, Senator Diana Savino, Senator Andrea Stewart-Cousins and Senator Toby Ann Stavisky, issued a lengthy report that opined that the court's verdict supported by sufficient evidence, that Senator Monserrate showed little remorse for injuring his companion and that he was more interested in preserving his political standing than the health and welfare of his companion.

The Committee Report stated that Senator Monserrate conviction was a crime of domestic violence and in direct contravention of New York's well established policy of "zero tolerance" in such matters. The Committee stated that the New York State Legislature had passed 108 pieces of legislation relating to domestic violence between 1995 and 2009. The Committee made clear that "zero tolerance" applied to everyone. The Committee found that Senator Monserrate was unfit to serve, and it recommended that the full Senate vote on a resolution to remove him from office.

In the New York State Senate 32 seats constituted a "majority". By expelling Senator Monserrate, the democrats would be one vote shy of this very critical swing vote until a special election was conducted. Notwithstanding, the loss of this very important vote, most members were so outraged by the domestic violence memorialized in the security surveillance video tape that the stage was set for expulsion.

In February of 2010, the New York State Senate voted 53-8 to remove Hiram Monserrate from the New York State Senate. The resolution to remove Senate Monserrate from office passed through the Senate without debate. Interviewed by the New York Times, Eric Schneiderman, Chair of the Special Select Committee stated "[t]he days of sweeping things under the rug are over."

XVII. Bills Signed Into Law 2009 – 2010

S.7068 **HASSELL-THOMPSON / A.9526 Aubry**
Signed into Law under S6606-B / A9706-C
Reuse Plans for Proposed Prison Closings

Signed into law by Governor Paterson, this bill requires the commissioner of economic development rather than the commissioner of the department of correctional services to issue an adaptive reuse plan for state prison facilities slated for closure. The bill also adds the commissioner of the office of general services and local government officials to the list of stakeholders that should be consulted in preparing such adaptive reuse plan.

S.4686 **HASSELL-THOMPSON / A 3770-A Aubry**
Signed into Law under S.6606-B / A.9706-C
Lift ABC Law Restrictions – Re-entry

Signed into law by Governor Paterson, this legislation removes the existing prohibition in the Alcoholic Beverage Control Law section 102(2) which disallows employment by those previously convicted of a felony or certain enumerated misdemeanors in certain licensed on-premises establishments unless that person has received a pardon, certificate of relief from disabilities or good conduct, or has obtained written approval from the state liquor authority.

The ABC Law's far-reaching prohibition prevents any employer with a liquor license, except those selling alcohol beverages retail for off-premises consumption, from hiring any individual in any capacity who has been convicted of a felony or an enumerated misdemeanor unless that person has obtained a pardon, certificate of relief from disabilities or good conduct or written approval by the State Liquor Authority. This means that employers such as restaurants, hotels, sporting arenas and catering establishments that have liquor licenses cannot hire busboys, waiters, chefs, maitreds, delivery persons or anyone else with these criminal histories unless those applicants have obtained the necessary approval or documentation. This restriction unnecessarily impedes access to thousands of jobs that could safely be made available to qualified people with criminal records. According to the New York State Department of Labor, there has been an increase (+14,600) in the number of jobs in the leisure and hospitality industries, including a number of entry-level jobs in the food service industry, from which people subject to the ABC Law's flat ban are excluded. This legislation places entry level "on-premises" job opportunities on the same footing as "off-premises" opportunities. Ultimately, only employers, that is, restaurants, hotels, sporting arenas and catering establishments that have liquor licenses would determine whether or not to offer a job to a qualified ex-offender.

S.4406-B **HASSELL-THOMPSON / A 9382 Kavanaugh**
Signed into Law under S.6606-B / A.9706-C
Clean Up DOCS Website – Re-entry

Signed into law by Governor Paterson, the New York State Department of Correctional Services (DOCS) website provides online access to a person's conviction information. Currently, there is no limit on how long a person's conviction information will remain posted on this online database. DOCS has a legitimate need to maintain a website of individuals incarcerated in state prisons. Victims of crimes may want to ascertain if people who committed crimes against them are still incarcerated and family and friends of people in prison may need a means of determining where their loved ones are being held. Once a person is released from prison and is no longer on parole or post-release supervision, however, those reasons disappear. Those individuals who need criminal record information can obtain it from New York State's Division of Criminal Justice Services, which provides comprehensive criminal conviction information to individuals and agencies that are authorized to conduct such requests, and from the Office of

Court Administration, which also provides statewide criminal conviction information.

Instead, the DOCS information database, available on the Internet as a free service, is being misused as an inappropriate criminal background check resource for employers and others. The result of this practice is that numbers of qualified job seekers are being denied access to employment and housing based on information that is often incomplete and potentially misleading. For example, it contains information about when a person is eligible for release from parole but, because the database is maintained by DOCS and not the Division of Parole, omits information that the person has been discharged from parole, leaving the impression that they are still under state supervision. Moreover, the DOCS database can be accessed by name alone, making it likely that a person with a common name but no criminal history might be confused with another person, currently or formerly incarcerated, with the same name. Old, incomplete and misleading information about a person's incarceration is simply irrelevant five years after that individual has been released from prison and is no longer on parole or post-release supervision. Given the other options in New York for individuals to obtain complete criminal history information, the time that a conviction history can be posted on the DOCS website will now be limited, at most, to five years after a person is released from prison plus any period of parole or post-release supervision. This bill would not apply to any violent offenders or sex offenders. Therefore, DOCS would continue to maintain information about violent offenders and sex offenders on their website and would not be required to remove such information after the expiration of the applicable period.

S.4689 **HASSELL-THOMPSON / A.3814 Aubry**
Signed into Law under S.6606-B / A.9706-C
Federal Probation and Expedited State Certificate – Re-entry

Signed into law by Governor Paterson, in order to seek relief from state-imposed disabilities, persons convicted of a federal offense residing within New York must apply to the state Board of Parole. The Correction Law provides that the Board of Parole has the power to issue a certificate of relief from disabilities to an eligible offender who resides within New York and whose judgment of conviction was rendered by a court in any other jurisdiction, such as a federal court. Therefore, a person with a federal conviction presently must apply to a state agency unfamiliar with his or her background for relief from the state imposed civil disabilities. This is an arduous and time-consuming process. Currently, the Board of Parole takes 12-15 months to process an application for relief. Since virtually every federal sentence includes a period of supervised release by the federal probation office following any period of incarceration, the federal probation office estimates that it would be able to provide recommendations to the Board of Parole in 6-8 weeks since the federal probation office will be more familiar with the federal offender and has easy access to his or her relevant records.

This change will reduce the backlog of applications at the state Board of Parole; place the decision about the issuance of certificates of relief from disabilities for persons with a federal conviction in the hands of more familiar probation officers; promote greater efficiency in granting said certificates from state-imposed disabilities; and save money for the overworked state Board of Parole. At the same time the legislation reserves complete control over the issuance of the certificate with the State Board of Parole.

S.6606-B **HASSELL-THOMPSON & VOLKER / Aubry**
Signed into Law under S.6606-B / A.9706-C
Access to Copy of Rap Sheet – Re-entry

Signed into law by Governor Paterson, upon request the Division for Criminal Justice Services will be required to send to an inmate in local or state custody a copy of all criminal history information on file with the Division. The intent if this bill is to provide an offender with a copy of his or her record so that any errors may be brought to the attention of the Division of Criminal Justice Services.

S.4365-A HASSELL-THOMPSON / A 3492-A Aubry
Signed into Law under S.6606-B / A.9706-C
Access to Pre-Sentence Reports Re-entry

Signed into law by Governor Paterson, this legislation now resolves any questions about the right of certain inmates to have access to their presentence reports. Cf. Matter of Gutkaiss, 49 A.D.2d 979, 853 N.Y.S.2d 677 (3rd Dept. 2008); Matter of Kilgore v. People, 274 A.D.2d 636, 710 N.Y.S.2d 690 (3rd Dept. 2000); Matter of Shader v. People, 233 A.D.2d 717; 650 N.Y.S.2d 350 (3rd Dept. 1996); Matter of Blanche v. People, 193 A.D.2d 991, 598 N.Y.S. 2d 102 (3 Dept. 1993).

The law requires the parole board to weigh the impact of the presentence report. Sometimes there is inaccurate information in the report or allegations not supported by fact. The inmate should be placed in a position where he or she has notice of the contents of the report and also has an opportunity to correct mistakes and make factual clarifications where the inmate deems it appropriate. Finally, confidentiality of the report is protected by the court. The court has the authority to review the report in camera and to disclose whatever portion of the presentence report it deems appropriate.

S.5395-A HASSELL-THOMPSON / A.3686-A Aubry
Signed into Law under S.6606-B / A.9706-C
Access to Birth Certificates – Re-entry

Signed into law by Governor Paterson. Persons being released from incarceration face many barriers to a successful reentry to the community. One significant barrier is the inability to obtain proper identification (i.e. driver's license, social security card). Securing proper identification is vital to an inmate's ability to find stable employment, housing and secure benefits. Providing each inmate with a birth certificate Upon release will allow inmates to more easily obtain the necessary identification. This bill will ensure that fees cannot be imposed for a birth certificate unless the law is repealed.

S.6606-B MONTGOMERY, ADAMS, HASSELL-THOMPSON / Aubry
Signed into Law under S.6606-B / A.9706-C
Voter Eligibility and Forms – Re-entry

Signed into law by Governor Paterson, the Department of Corrections shall inform inmates whose maximum term of imprisonment has expired that she or he may vote, Moreover, the Department shall provide a voter registration form to the inmate together with written material distributed by the board of elections. The Division of Parole is also required to advise individuals discharged from parole of his or her right to vote and provide the parolee a voter registration form, as well as written material distributed by the board of elections.

S.4366-B HASSELL-THOMPSON / A 3664-B Aubry
Signed into Law under S.6606-B / A.9706-C
Clarifying Eligibility for Certificates – Re-entry

Certificates of Rehabilitation provide an opportunity for ex-offenders to prove their rehabilitation for employment and licensing purposes. There are two types of Certificates of Rehabilitation, the: (1) Certificate of Relief from Disabilities, and (2) Certificate of Good Conduct. The Sentencing Court[40] or the New York State Parole Board generally issue certificates, at their discretion, to eligible applicants based on their favorable character or fitness to work. Certificates of Relief from Disabilities and Certificates of Good conduct provide a valuable way for people with criminal records to demonstrate rehabilitation. They restore rights and lift statutory bars to Jobs or licenses that result from a conviction history. These certificates, which carry

40 One may be convicted of a felony and, for example, be sentenced to probation or a conditional discharge. In this case the defendant would apply to the sentencing court for a certificate of relief from civil disabilities.

the same weight with regard to the restoration of rights, are essential resources to support the employment of individuals with criminal histories, thereby promoting public safety and saving tax dollars. A person can only apply for one type of certificate. The eligibility for each depends on the person's criminal record.

Some statutes imposing statutory bars mistakenly reference only one of these certificates as lifting the bar or restoring rights. As a result individuals who are eligible only for the other certificate are forever arbitrarily barred from lifting the statutory bar. This bill makes conforming technical changes to various provisions of law that create statutory bars and correctly identifies both certificates of relief and certificates of good conduct as lifting such bars.

Chapter 113 of the Laws of 2010

S.2233-A **MONTGOMERY, HASSELL-THOMPSON, KRUEGER**

Parental Rights & Prisoners - Reentry

Signed into law by Governor Paterson, this law to amends the social services law to allow a foster care agency to delay the filing of a termination petition when the parent or parents are incarcerated or participating in a residential substance abuse treatment program, or when the prior incarceration or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in care for 15 of the last 22 months, provided that the parent maintains a meaningful role in the child's life, and the agency has not documented a reason why it would otherwise be appropriate to file a petition.

This legislation would also allow the court to consider the special circumstances of an incarcerated parent or a parent in a residential substance abuse treatment program in determining whether a child is a "permanently neglected child" as defined in the social services law. The bill also would amend the social services law to allow the court to consider the circumstances of an incarcerated parent or a parent in a residential substance abuse treatment program when determining whether such parent has failed to keep the social service agency apprised of their location.

Additionally, the bill would amend the social services law to require social services agencies to provide parents who are incarcerated or in a residential substance abuse treatment program with information about and referrals to rehabilitative services available to such parent to aid in the development of a meaningful relationship between such parent and the child. Finally, the bill amends the social service law to allow meetings to create and review family service plans to be done through the use of technology, including video-conference and teleconference technology, where an in-person meeting is impracticable.

Chapter 411 of the Laws of 2009

S.1290-A **MONTGOMERY, ADAMS, BRESLIN, DIAZ, DILAN, DUANE, HASSELL-THOMPSON, KRUEGER, PARKER, SAVINO, SCHNEIDERMAN, STAVISKY /A 3373-A Perry**

Anti-Shackling of Women Giving Birth

Signed into law by Governor Paterson, this legislation amends the Correction Law to restrict the use of restraints in situations in which a pregnant female inmate is being transported to a medical facility for the purpose of giving birth, and during delivery and recovery. The new law prohibits the use of mechanical restraints such as handcuffs, leg restraints and wrist restraints on inmates during labor and delivery. However, during extraordinary circumstances, when it is necessary to prevent an inmate from injuring herself, medical or correction personnel, the inmate may be handcuffed by one wrist. This legislation passed the New York State Senate unanimously.

Chapter 478 of the Laws of 2009

S.1362-C **KLEIN, ADDABBO, AUBERTINE, BRESLIN, DIAZ, ESPADA, FOLEY, HUNTLEY, C. JOHNSON, MAZIARZ, ONORATO, SAMPSON, SAVINO, STAVISKY, THOMPSON /A 1242-B Lancman**

Sex Offender Registration & Automatic Updates

Signed into law by Governor Paterson, this legislation amends the Correction Law to provide New Yorkers free e-mail notification of changes or updates in the State's sex offender website. The primary purpose of the state sex offender registry is to provide information to help New Yorkers keep themselves and their families safe from known sex offenders living in their communities. While local law enforcement agencies may elect to distribute information about registered sex offenders to the surrounding community, many parents, schools, and community leaders also monitor the registry. A subdirectory of the highest risk (Level 3) sex offenders is available on the internet, but its information changes daily as new offenders are added or existing registrants change their information. Automated e-mail updates allow New Yorkers to keep tabs on a specific geographic area within New York, such as where they live or where their children attend school, and save them the time consuming chore of making regular visits to the subdirectory website. The update is free of charge and is limited to three geographic areas per e-mail account. This legislation passed the Senate unanimously.

Chapter 82 of the Laws of 2010

S.5774 **HASSELL-THOMPSON, PERALTA/ A8613 Jeffries**

Right of Election for Inmates

Signed into law by Governor Paterson, this new law permits an inmate a right to either go back to court for re-sentencing; or agree to a DOCS placement in an comparable and alternative program, when it is determined that Willard was not the appropriate program for the inmate. This new law will save the State money by reducing congested court calendars and reducing the number of trips between an upstate facility and the Supreme and County Courts should an inmate elect not to challenge the technical deviations of the sentence imposed by the judge.

Chapter 291 of the Laws of 2009

S.2072-A **HUNTLEY, ADAMS, HASSELL-THOMPSON, KRUEGER, PARKER, SAMPSON, SAVINO, STAVISKY /A606-A Destito**

Clergy Access to Inmates

Signed into law by Governor Paterson, this legislation amends the Correction Law, to expand the authority of clergy to provide religious counseling to inmates housed within the confines of their counties. Prior to changes in the law, ministers and pastors were only allowed "at pleasure" visits to facilities located in their congregational towns. The new law expands the opportunities of clergy to make much needed contact with inmates. Often, religious instruction and counseling plays a key role in successful rehabilitation. This new law recognizes the power of faith and encourages prisoners to reflect on their past and hope for a better future.

Chapter 271 of the Laws of 2009

S.3401 **HASSELL-THOMPSON, ADAMS, DIAZ, KRUEGER /A 7565 Aubry**

E-Justice

Signed into law by Governor Paterson, this legislation permits sheriffs and local commissioners of correction to expand the use of new identification technology in their county jails. Beginning in 2010, the Division of Criminal Justice Services, as part of the "E-Justice Program", will no longer accept traditional inked fingerprints cards for processing. Instead, all fingerprints will have to be submitted electronically through a system known as "Live Scan". Prior to the new law, there were serious legal questions as to whether county jail "Live Scan Units" could be used to electronically print people who had not been arraigned on criminal charges. The new law permits the Sheriff to bring civilians into county jail for fingerprints connected to pistol permits, licenses or other needs unrelated to criminal charges. The new law saved counties the expense of unnecessarily purchasing new Live Scan units and made it convenient for civilians and sheriffs to expedite security checks and job applications. The new law would also permit the local jails to electronically print arrestees prior to arraignment in a criminal or district court. This amendment will expedite the process of making arrestees "court ready", and save tax payers the cost of unnecessarily purchasing and administering duplicitous services. This legislation passed both houses unanimously.

Chapter 272 of the Laws of 2009

S.3402 **HASSELL-THOMPSON, KRUEGER / A 8060 Markey**

Crime Victims Awards for Children

Signed into law by Governor Paterson, this legislation permits certain kinds of awards that could be made to child victims in the absence of physical injuries. In particular, awards could be made for certain personal property damage, expenses of transportation to court, and counseling expenses. Prior to this legislation, the law required that a physical injury be sustained by a victim in order for a crime victim's award to be made. There were a few explicit exceptions for elderly victims, disabled victims, kidnapping victims and stalking victims. This law extended the exception to children who may be witnesses to crimes or crime victims which did not result in physical injury – but did result in property damage of emotional trauma. This legislation passed both houses unanimously.

Chapter 278 of the Laws of 2010

S.2490-E **KLEIN, ADAMS, DIAZ, HASSELL-THOMPSON, C. JOHNSON, KRUEGER, MAZIARZ, ONORATO, PARKER, SAMPSON, SAVINO, THOMPSON / A 3024-F Benjamin**

Provides notice to municipal housing authorities whenever a sex offender is released to public housing

Signed into law by Governor Paterson

In 1998, Congress banned subsidized housing for the most serious sex offenders after a convicted sex offender was charged with assaulting and molesting a 9-year-old neighbor girl who lived in the same public housing building. Also known as the Quality Housing and Work Responsibility Act, this new legislation prohibited housing authorities from admitting any household that includes a person subject to the lifetime sex offender registration requirement.

In March 2009, a report released by NYC Councilman Eric Gioia found 126 sex offenders living in New York city public housing facilities, up 12% from the. year before. 42 of the City's 3,432 registered sex offenders live in projects in Brooklyn, 37 in Manhattan, 26 in the Bronx, 8 in Queens and 3 in Staten Island.

More recently, a report by the Inspector General of the Housing and Urban Development (HUD) Department, estimated that roughly 2,100-3,000 households currently residing in federally subsidized housing include a serious sex offender. According to investigators, the primary

reason why HUD failed to meet the law's objective was that HUD failed to ask prospective residents if they were subject to a lifetime registration requirement and did not require housing authorities to check the national sex offender registry prior to recertifying the eligibility of its current residents.

Chapter 256 of the Laws of 2010

S.8317 **HASSELL-THOMPSON / A 10061 Aubry**

Allows Inmates to Voluntarily Work for Non-Profits

Signed into law by Governor Paterson

Allows prisoners to voluntarily perform work for nonprofit organizations. Non-profit organizations means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Prior to this law section 24 of article 3 of the New York State Constitution prohibited the "farming out, contracting, giving away or selling of convict labor." However, many localities had requested that an exemption be made for nonprofit organizations who are often underfunded and do not have the resources to adequately maintain their property. The law did permit inmates to work in state and public institutions and many of the nonprofit organizations engaged in public works and charities. This constitutional amendment was initiated by Senator Dale Volker during the first required session vote and taken to the finish line by Senator Ruth Hassell-Thompson, a republican and democratic member respectively. York State and was authorized by a favorable vote of the electorate. This proposed law was authorized by amendment to the state constitution.

Chapter 377 of the Laws of 2010

S.8228 **HASSELL-THOMPSON & LITTLE / A 10061 Aubry**

Expanding Eligibility for Shock Program

Signed into law by Governor Paterson

This legislation would expand eligibility for the Shock Incarceration Program. It would allow second non-violent offenders with no prior violent felony convictions to become eligible for the Shock Program. Initial and tentative estimates are that perhaps 200 inmates would actually be placed in Shock Programs at Moriah and Lakeview. If the inmate fails Shock or violates the terms and conditions of parole after they are released they will be sent back to prison to finish the unexpired term of their sentence.

Chapter 182 of the Laws of 2010

S.5570-A **HASSELL-THOMPSON, ONORATO & PARKER / A 8952 Weinstein**

Child Support May Be Suspended While In Prison

Signed into law by Governor Paterson

This bill would amend DRL § 236B (9) (b) to separate out the "substantial change of circumstance" threshold for modification of orders of child support into its own section for the sake of clarity and would provide two new bases for the modification of an order of child support: (1) the passage of 3 years since the order was entered, last modified, or adjusted; or (2) a 15% percent change in either party's income since the order was entered, last modified or adjusted provided that any reduction in income was involuntary and the party has made diligent attempts to secure employment commensurate with his or her education, ability and experience. The parties may specifically opt out of the two new bases for modification in a validly executed agreement or stipulation. The section would provide that incarceration would not be a bar to finding a substantial change in circumstance under certain conditions.

Chapter 412 of the Laws of 2010

S.7864 **HASSELL-THOMPSON & MONTGOMERY/ A 10611 Aubry**

Credit Time Allowance for Inmates

Signed into law by Governor Paterson

This bill would amend Correction Law § 803-b(1)(c) to add four new advanced skills programs as bases for the potential award of limited credit time: the Division of Correctional Industries, the Corecraft Optical Program, the Corcraft Asbestos Abatement Program, the sign language interpreter program, and the Puppies Behind Bars Program.

Chapter 249 of the Laws of 2010

S.6765 **FARLEY / A 9826 Amedore**

Authorizes the Montgomery County correctional facility to also be used for the detention of persons under arrest being held for arraignment in any court located in Montgomery county

Signed into law by Governor Paterson

Per the request of the Montgomery County Legislature, this legislation, would permit the use of the Montgomery County jail by various police agencies as a holding cell for pre-arraigned prisoners. This would allow for the best utilization of county resources and staff allocations.

Chapter 260 of the Laws of 2010

S.6658 **YOUNG / A 10233 Parment**

Authorizes the detaining in the Chautauqua county correctional facility of persons awaiting arraignment in any local court in the county of Chautauqua

Signed into law by Governor Paterson

Per the request of the Chautauqua County Sheriff's Department, this legislation would permit the use of the Chautauqua County Correctional Facility by various law enforcement agencies for the detention of persons under arrest and being held for arraignment. Several upstate counties are currently allowed to do this including: Allegany, Chemung, Cortland, Erie, Genesee, Monroe, Onondaga, Putnam, Niagara, Seneca and Warren counties.

Chapter 33 of the Laws of 2009

S.3744 **HASSELL-THOMPSON, DIAZ, MONSERRATE, THOMPSON / A 4039 Aubry**

Transfer of Civil and Pre-Trial Inmates to Hospital

Signed into law by Governor Paterson, this legislation permits civil and pretrial inmates to receive medical diagnosis and treatment in "outside" hospitals without a court order. Prior to this new law, the Correction Law permitted a sheriff to take a sentenced inmate to the hospital for diagnosis or treatment without a court order. However, with respect to civil or pretrial detainees, the sheriff needed the authorization of a county court judge or supreme court justice. The new law presumes that the protection of an inmate's health is the policy objective to be achieved. At issue, is whether the inmate's status as a sentenced prisoner, pre-trial detainee, or civil detainee should determine who is eligible to go to the hospital without a court order and when they should go. This new law states that if the sheriff believes an inmate needs hospitalization then the inmate should be taken to the hospital, regardless of their commitment status. This legislation passed both houses unanimously.

Chapter 337 of the Laws of 2009

S.5645 **HASSELL-THOMPSON / A 8521 Aubry**

Erroneous Sentences

Signed into law by Governor Paterson, this legislation requires the Department of Correctional Services ("DOCS") to notify the district attorney, the inmate's defense counsel and the sentencing court, whenever it is of the opinion that the sentence was illegal. Moreover, this bill authorizes the district attorney, at the court's direction to ensure the inmate is promptly produced in court to participate in the issue of re-sentencing. Prior to this law the New York Judiciary was in the middle of what was reported as the "post release supervision" controversy; that is, a situation where hundreds of defendants were not properly sentenced by the court. This new law provides a stated process, requiring the prison system to contact all parties; authorizing the court or district attorney to produce the defendant in court; notifying the defense attorney of the issues so that representation can be prepared; and constructs an avenue for the court to correct illegal sentences in an expeditious manner.

Constitutional Amendment

S.4124 **HASSELL-THOMPSON, DIAZ, MONSERRATE, VOLKER / A 5598 Aubry**

Passed to amend the State Constitution by referendum of the People of the State of New York, this joint Senate-Assembly resolution, passed in two distinct legislative sessions, allows a law to be passed to permit prisoners to voluntarily perform work for nonprofit organizations. Non-profit organizations means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Prior to this law section 24 of article 3 of the New York State Constitution prohibited the "farming out, contracting, giving away or selling of convict labor." However, many localities had requested that an exemption be made for nonprofit organizations who are often underfunded and do not have the resources to adequately maintain their property. The law did permit inmates to work in state and public institutions and many of the nonprofit organizations engaged in public works and charities. This constitutional amendment was initiated by Senator Dale Volker during the first required session vote and taken to the finish line by Senator Ruth Hassell-Thompson, a republican and democratic member respectively. This amendment appeared on the ballots during the 2009 statewide elections in New York State and was authorized by a favorable vote of the electorate.

Chapter 57 of the Laws of 2010

S.6725 **SCHNEIDERMAN, ADAMS, BRESLIN, DILAN, DUANE, ESPADA, HASSELL-THOMPSON, HUNTLEY, KRUEGER, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SAVINO, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS, THOMPSON**

Prison Gerrymandering

The purpose of this bill is to count people in prison at their addresses prior to incarceration for the purposes of redistricting.

Currently, 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 the Census block that contains the facility. The state's current reliance on the Census Bureau's flawed prison counts when drawing legislative districts, violates federal law in two ways: it dilutes minority voting strength in violation of Section 2 of the Voting Rights Act of 1965; and it violates the one person, one vote principle of the Equal protection Clause, which requires voting districts to have equal numbers of residents (because people in prison are not residents of the districts where they are incarcerated and counted).

In **Reynolds v. Sims, 377 U.S. 533 (1964)**, the Supreme Court held that state legislative districts must represent a roughly equal number of people. Affirming the "one person, one vote" principle, Chief Justice Warren minced no words in his celebrated opinion, writing, "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system." The Census Bureau's current methodology undermines the "one person, one vote" principle supported by prevailing public values as well as constitutional jurisprudence. The Census Bureau's current methodology also violates the New York State law in two ways: it runs afoul of the New York State Constitution which states in Article 2, section 4 that for the purpose of voting, "no person shall he deemed to have gained or lost a residence ... while confined in any public prison"; Similarly, subdivision 1 of section 5-104 of the New York Election Law directs that "For the purpose of registering and voting "no person shall be deemed to have gained or lost a residence...while confined in any public prison. In addition, the 1894 New York Court of Appeals decision in People v Cady, 37 N.E. 673 (N.Y. 1894), stated that people in prison could not be considered residents of the prison where they are incarcerated. Based on federal and state law, people in prison therefore remain legal residents of their address prior to incarceration. Unfortunately, the current Census Bureau's methodology disregards this, instead counting a significant proportion of the national population in the wrong place. Crediting the population of prisoners to the Census block where they are temporarily and involuntarily held creates electoral inequities at all levels of government.

These electoral inequities are apparent in New York State, where with a prison population of approximately 60,000, over 75% of people in prison are people of color and over 70% are from urban communities. Thus, urban communities such as Albany, Buffalo, New York City, Rochester, and Syracuse are being counted for the purposes of redistricting in rural communities, leading to vote dilution for urban communities of color across the state. The most significant vote dilution, however, in rural communities as most counties, cities, and towns use federal census data to draw their local legislative district and ward boundaries. St. Lawrence County, in northern New York, drew legislative districts with Census 2000 data that included more than 3,000 people in three correctional facilities as if they were actual residents of two small towns, Ogdensburg and Gouverneur. The increased voting power of Ogdensburg and Gouverneur residents diluted the votes in the many St. Lawrence County residents who do not live near those prisons. This inequity created a long-running and disruptive controversy in St. Lawrence, and a petition opposing the unequal representation gathered more than 2,000 signatures.

County legislators and supervisors in 13 counties in New York State hav subtracted the prison population from the official count prior to drawing county legislative districts or designing weighted voting systems to ensure equal representation and avoid creating a legislative districts that have more people in prison than actual residents. The counties that have corrected the census data to remove people in prison before redistricting include: Cayuga, Chemung, Clinton, Dutchess, Essex, Franklin, Greene, Orange, Orleans, Schoharie, Sullivan, Washington, and Wyoming.

In Essex County's detailed justification for the removal of people in prison, the County offered the following explanation:

"Persons incarcerated in state and federal correctional institutions live in a separate environment, do not participate in the life of Essex County and do not affect the social and economic character of the towns.... The inclusion of these federal and state correctional facilities inmates unfairly dilutes the votes or voting weight of persons residing in other towns within Essex County..."

These 13 counties in New York State have joined municipalities across the country, by taking matters into their own hands to address, on the local level, the redistricting inequities that result from relying on the Census Bureau's counting of people in prison. This removal of people in prison on the local level does not, of course, put incarcerated people back in their census blocks prior to incarceration. However, from the perspective of these rural counties, counting people at home and not counting them at all is the same thing. Either way, the data they use for county districts does not contain the prison populations. About 100 local governments exclude, for redistricting purposes, the Census Bureau's prison counts. A few states (Colorado, Mississippi, New Jersey and Virginia) require or encourage local governments to do so, but the majority of these counties do so on their own.

As awareness in the issue of prison-based gerrymandering has grown, so too has interest in state-level solutions. Currently, legislation is pending in Florida, Illinois and Maryland that would determine the home addresses of incarcerated people and count them at their addresses prior to incarceration. (Senator Shields in Oregon is also expected to re-introduce legislation in the special session during the week of February 1, 2010.) In Wisconsin, a constitutional amendment has been introduced that would prohibit the state and local governments from including prison populations in the redistricting data.

In addition to the above states, in the past, bills to count people in prison at their address prior to incarceration for state redistricting purposes have been introduced in Texas and Michigan. States and localities are addressing this issue because of the distorting effect that people in prison have on the drawing of legislative boundaries and because the population is distinguishable from other populations, such as students and those serving in the military, that are counted by the Census Bureau in what are referred to as "Group Quarters" for a number of reasons.

Most importantly, people who have been convicted of a felony and are incarcerated or on parole cannot vote in New York State, either in the district where the prison is located or using an absentee ballot at their address prior to incarceration. In contrast, college students and military personal can participate in elections and register to vote from either their local residence or by submitting an absentee ballot. In addition, people in prison do not interact with or benefit from the district where the prison is based. People in prison do not use the schools, hospitals, or other public facilities in the community where the prison is based The costs of the prisons are not borne by the community 'Where the prison is located, but rather by all New York State taxpayers. Costs that are not covered by the State, such as phone expenses and commissary bills, are paid for by the families of people in prison.

In terms of the amount of time people in prison are spending in the community where the prison is located, according to the Department of Correctional Services, in 2008, 15 people (or one tenth of one percent of all people admitted that year) had a sentence of life without parole; 60% of people admitted had minimum sentences between 1 year and 3 years; and 5.6% of people had minimum sentences of 10 years or more.

Until the Census Bureau provides the information necessary-to allocate people in prison to their address prior to incarceration, the way to address this issue is on a statewide basis. With this legislation, New York joins the ranks of states developing practical and effective solutions to count people in prison at their addresses prior to incarceration for the purposes of redistricting.

It is important to note that this legislation is limited to the drawing of legislative districts, and does not in any way revise or alter the underlying census data. Thus, the legislation has no impact on or effect on funding formulas and allocations given to states or within states that are based on federal census data. The Federal Census data will continue to include prison populations.

XVIII. Bills That Passed 2010 Senate and Awaiting Assembly Action

S.7705 **HASSELL-THOMPSON, ADAMS, ADDABBO, BRESLIN, DIAZ, DILAN, ESPADA, FLANAGAN, FOLEY, GOLDEN, HUNTLEY, C. JOHNSON, KRUEGER, KRUGER, LANZA, LEIBELL, LITTLE, MAZIARZ, ONORATO, OPPENHEIMER, PADAVAN, PARKER, PERALTA, PERKINS, RANZENHOFER, ROBACH, SAMPSON, SAVINO, SQUADRON, STACHOWSKI, STAVISKY, STEWART-COUSINS, VALESKY, YOUNG**
/ A 11035 Lentol
Child Protection Act of 2010
6/25/10 – Passed Senate

Referred to as the toughest child protection act in America, the child protection act of 2010; establishes the class A-I felony of aggravated murder of a child for which the sentence shall be life imprisonment without parole; aggravated murder of a child shall include intentional killing of a person under 14 while in the course of committing rape, criminal sexual acts, aggravated sexual abuse or incest against such child, or the depraved indifference or intentional killing of a person under 14 while being legally responsible for the care of such child; repeals provisions of murder in the second degree which mirror certain provisions of aggravated murder of a child; treats the offense of aggravated murder of a child in a manner similar to murder in the first degree; establishes the offenses of aggravated manslaughter of a child, aggravated abuse of a child in the first, second and third degrees, and aggravated endangering the welfare of a child. Systemically makes criminal recklessness the required mens rea for selected offenses.

S.5207 **HASSELL-THOMPSON, DIAZ, KRUEGER / A 8064 Aubry**
Correction Officers to Receive Notice of Subpoena
6/7/10 – Passed Senate

The Commissioner of the Department of Correctional Services is authorized to issue subpoenas compelling the production of books, writings and papers of any officer or employee of the department whose conduct is being investigated. The provisions of law governing the issuance of such subpoenas do not require that any notice be provided to the employee or officer who is the subject of such a subpoena. As such, officer and employees, for example, may have their personal telephone records subpoenaed without their personal knowledge. This proposed legislation would not in any way limit the authority of the Commissioner in terms of his or her ability to issue subpoenas. Rather, it would simply ensure that an employee or officer whose personal information is the subject of a subpoena receives some minimal notice with respect to such subpoena.

S.8229 **HASSELL-THOMPSON / A 11602 Lentol**

Public defenders to have access to DCJS Criminal History Databank

6/30/10 – Passed Senate

Agencies that are defined as "qualified agencies" under Executive Law § 835(9) have access to the criminal history records maintained by the Division of Criminal Justice Services. See Executive Law § 837(6); 9 NYCRR Part 6051. The proposed bill would add public defenders, legal aid societies, and administrators of assigned counsel programs to the list of qualified agencies. Public defense providers would then be able to enter into use and dissemination agreements with the Division of Criminal Justice Services that would govern their access to criminal history information.

In order to provide effective representation, including bail applications, case investigation, plea negotiation, and sentencing advocacy, public defense attorneys need to have ready access to criminal history reports of clients and witness. Currently, public defense providers rely on district attorneys, judges, and other members of the criminal justice community for access to criminal history reports; often, disclosure of these reports is not timely. Providing public defense counsel direct access to criminal history reports will help them provide effective representation to their clients and will improve the efficiency of the entire criminal justice system in New York State.

S.4688 **HASSELL-THOMPSON, DIAZ, KRUEGER / A8195 Lentol**

Updating Criminal Mischief Statute

6/15/10 - Passed Senate

The bill amends section 145.05 of the Penal Law to raise the monetary property damage threshold from ($250) to $1,000.

The bill also amends section 145.10 of the Penal Law to raise the monetary property damage threshold from ($1,500) to $3,000. The bill amends subdivision 6 of section 352-c of the general business to raise the monetary threshold from ($250) to $1,000.

Current monetary thresholds for criminal mischief in the second and third degrees (Penal Law sections 145.05 (2) and 145.10, respectively) are too low and should be raised to conform to the higher thresholds established by the Legislature in 1986 for comparable theft and stolen property-related felony offenses such as grand larceny, criminal possession of stolen property and insurance fraud.

Accordingly, this measure adjusts for inflation to reflect the realities of the monetary world of 2009. Present monetary thresholds are unrealistically low and unduly strain police resources. While felony arrests for low-level thefts are routinely reduced to misdemeanors by prosecutors and judges, the police must adhere to the law and process a three hundred dollar theft as a felony. This requires substantial allocation of resources and reduces the number of police officers available for patrol. In addition, this measure would correct a related anomaly in the law amending subdivision six of the General Business Law section 352-c to raise to $1,000 the current $250 threshold for the class E felony securities fraud offense.

S.1909-B **KLEIN, ADDABBO, DIAZ, DILAN, ESPADA, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KRUEGER, ONORATO, PARKER, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SMITH, STAVISKY**
/ A 180-B Latimer
Religious Crimes
5/12/10 - Passed Senate

Amends to include in the definition of grand larceny in the fourth degree the theft of religious property located outside and within 100 feet of the building or structure of worship. This bill would make it criminal interference with religious worship in the first degree, a class E felony, when one intentional damages the property of a place of religious worship in excess of one hundred dollars while committing criminal interference with religious worship in the second degree.

S.3119 **HUNTLEY, DIAZ, HASSELL-THOMPSON, C. JOHNSON, ONORATO, PERKINS / A1530-C Colton**
Funeral Processions
6/17/10 - Passed Senate

Prohibits disruption of a funeral procession by making it illegal for a driver of a motor vehicle to force his/her way into the line of said procession.

S.3764 **PARKER, HASSELL-THOMPSON, PERKINS / A5307 Rivera**
Protecting Transit Workers
6/15/10 - Passed Senate

An act to amend Chapter 598 of the Laws of 2002 and Chapter 607 of the Laws of 2003 relating to assaults against certain employees of the Metropolitan Transportation Authority. The intentional causing of physical injury to a station cleaner or terminal cleaner would be classified as a D felony.

S.5865 **HASSELL-THOMPSON**
Prison Contraband
6/15/10 Passed Senate

This bill would expand the definition of dangerous contraband to include telecommunications and electronic recording devices. A frightening and very real example of what can happen has in fact happened in Brazil. Cell phones were smuggled into prisons and used to organize riots at 29 prisons. The result: 15 people were killed and 8,000 guards and relatives were held hostage. In Ontario, an inmate was charged with running a drug ring from prison. Britain, Thailand, India, and Japan have all reported incidents of cell phones being discovered in their prisons. In the United States there are at least ten states that are contemplating enacting or have already adopted statutes making it a crime to possess or introduce electronic devices into their detention facilities: Arkansas, Colorado, Tennessee, Iowa, Pennsylvania, Mississippi, Ohio, Louisiana, Texas, and Illinois.

S.2554-A **STEWART-COUSINS, ADAMS, ADDABBO, BRESLIN, DIAZ, DUANE, HASSELL-THOMPSON, C. JOHNSON, KRUEGER, MONTGOMERY, ONORATO, PERKINS, SAMPSON, STACHOWSKI, STAVISKY**
/ A9250-A Kavanagh
Voter Fraud
6/15/10 - Passed Senate

This bill would criminalize as a misdemeanor deceptive practices in connection with any election. Additionally, this bill would create a new electoral crime of voter suppression, punishable as a misdemeanor. Finally, this bill would increase the penalties for violations of the electoral franchise statutes contained in Article 17 of the election law.

2009-2010 VETOED BY GOVERNOR Paterson

S.4405-A **HASSELL-THOMPSON/A 6532B Ortiz**
Crime Victims Transportation Reimbursement

Under existing law, the Crimes Victims Board (CVB) is authorized to make awards to cover the transportation costs associated with a crime victim attending a "necessary court appearance in connection with the prosecution of such crimes." The Governor's Office interpreted this language to mean that the prosecutor determined what is necessary and what is not necessary. The bill intended to expand the definition of the term necessary to allow the crime victim to obtain transportation reimbursement for the entire prosecution of his or her case. That is, the crime victim would be eligible for reimbursement for transportation for any proceeding between arraignment and sentencing, as well as parole hearings. The rationale of the bill was that the crime victim should have an absolute right to attend each and every proceeding regarding the prosecution of his or her case. The Governor's Office vetoed the bill stating that financial cost was a major factor for veto and that the staff of CVB was ill-equipped to handle the added paperwork.

S.8022 **HASSELL-THOMPSON /A 11330 Aubry**
Requires Detailed Reports on Impact of Prison Closings
Vetoed 8/13/10 memo 6767 of 2010

Existing law requires the department of correctional services (DOCS) to report security staffing information to the legislature each year. This bill expands the existing report by requiring additional information about security staffing ratios, bed capacity and the double-bunking and double-ceiling of inmates be included in such report. The bill also requires that such report be provided to the legislature by February 1st of each year. Additionally, this bill modifies the prison closure notice requirements of section 79-a of the correction law by requiring that a report, with specific information regarding the impact of any proposed closure, accompany the closure notice. Each year a prison closure has been proposed by the Governor, DOCS has provided the legislature with a report detailing the reason for the proposed closure and the anticipated impact. This bill will codify this practice and require DOCS to formally report on how a prison closure will impact staff, security, inmates, available bed capacity, and programs. This will ensure that the legislature continues to be provided with the information needed to make informed decisions regarding proposed prison closures.

S.4687 **HASSELL-THOMPSON, DIAZ, KRUEGER / A 08012 Jeffries**
State Human Rights Relief for Ex-Offenders – Reentry
Vetoed 8/13/10 memo 6756 of 2010

The purpose of this bill is to ensure that persons illegally discriminated against by a public employer due to a prior criminal conviction unrelated to the employment sought is able to seek redress with the New York State Division of Human Rights. New York State's Human Rights Law §297 enumerates the remedies available to a person with a claim of unlawful discrimination. This provision states that, "Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself- make, sign and file with the division a verified complaint." Inexplicably, under a separate provision of New York State law, one class of persons, those discriminated against by public agencies on the basis of their criminal record, have their remedies limited. 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 persuasive reason that only people who are discriminated against by a public agency because of their criminal record should be limited to fewer options.

If the jail is authorized to be used for the holding of arrestees prior to arraignment, deputies would then have the ability to bring defendants to jail where a standardized bail would be set for specific classes of non-felony arrests.

This bill would prevent the necessity of locating a town or village judge for an immediate arraignment, especially when arrests are made, for example, in the middle of the night and it is difficult to locate a judge and wait for their arrival. It can not only save time, but reduce the amounts of transports of arrestees and associated costs.

S.1538-E **STAVISKY, ADAMS, DIAZ, DUANE, HUNTLEY, KRUEGER, ONORATO, PARKER, SAMPSON, SAVINO / A 3923-C Mayersohn**
Requires dissemination by certain state agencies of information pertaining to social services and financial assistance available to crime victims
Vetoed 7/30/10 memo 6718 of 2010

The need for accurate information regarding victim assistance programs is extremely important. One who has been criminally victimized often suffers severe physical, psychological and/or financial impairment.

Adequate help from the very beginning can encourage "functional reconstruction" of the victim so that later psychological intervention is less likely to be necessary. This important assistance can often take place if the crime victim is given adequate information, especially since one who has been victimized may be in a state of shock or confusion and desperately needs support, but may be unable to get it unassisted.

This legislation provides that only information on those victim assistance programs funded by the CVB as well as those domestic violence programs licensed and approved by the OCFS shall be provided. The CVB carefully vets and continuously monitors the victim assistance programs that it funds to ensure that these programs provide accurate and useful information to victims in their time of need.

S.2923 **LAVALLE / A 2108 Benjamin**
Requires division of criminal justice services to provide additional information when sex offender is in violation of registration requirements
Vetoed 8/30/10, Memo 6789 of 2010

Provides information to victims, their families and the community as to the status of the sex offender when said offender in violation of registration requirements.

XIX. 2011 Reentry Legislative Agenda

S.2655 **VOLKER, HASSELL-THOMPSON, SCHNEIDERMAN**
Incorrect Arrest Warrant Information

This bill will create a procedure to validate and ensure the accuracy of a person's permanent criminal record as maintained by the Division of Criminal Justice Services (DCJS) as it relates to all warrants issued as part of a criminal proceeding. The proposed legislation adds a new subdivision 7 of section 530.70 of the criminal procedure law creating a process whereby DCJS is to verify criminal record information where certain arrest warrant information contains contradictory information. DCJS is required to contact various law enforcement entities and the courts in order to clarify the contradictions. In the event no information is forthcoming, the arrest warrant will be deemed recalled.

S.5223 **SCHNEIDERMAN**
Undisposed Case Information

This bill will require the Division of Criminal Justice Services and the Office of Court Administration to refrain from including undisposed case information on criminal history record reports except for law enforcement and other specified purposes.

The proposed legislation adds a new section 845-c to the Executive Law to Prohibit DCJS from including undisposed case information on criminal history record reports (i.e., rap-sheets) where the report is produced for non-law enforcement or non-criminal justice purpose. The bill defines "undisposed case" as a criminal action or proceeding or an arrest incident that appears on an individual's criminal history record for which no conviction, sentence or other final disposition (other than an apparently unexecuted bench warrant) appears and with respect to which no entry has been made on the DCJS record for a period of at least 24 months. The prohibition also would not apply to records produced by DCJS solely for bona fide research or internal recordkeeping purposes. The bill establishes a corresponding requirement for OCA. It adds a new paragraph (s) to subdivision two of section 212 of the Judiciary Law to require OCA to refrain from reporting undisposed cases on criminal history reports it produces except where the report is prepared for internal recordkeeping or bona fide research purposes. The bill provides that the act shall take effect 180 days after it shall have become a law, and further provides that, prior to such effective date, DCJS in consultation with OCA shall undertake measures to update its criminal history records with respect to cases that have no final disposition reported.

S.4368 **HASSELL-THOMPSON, DIAZ**
Toughening Article 23-A

The bill amends the correction law to revise the definition of "direct relationship" and to establish that a denial of employment or a license based on a criminal record, must be based on the connection between the specific duties or responsibilities of the job or license and the nature of the criminal conviction and such connection must create an unreasonable risk to property or public safety. Section 753 of Article 23-A requires a public agency or private employer to consider eight factors together when considering license or employment matters. These factors include the bearing, if any, the criminal offense for which the person was previously convicted will have on his fitness or ability to perform one or more duties and another factor is the seriousness of the offense. Thus, it is clear that the law mandates accountability and requires an employer to articulate a nexus between the job responsibilities and the nature of the crime and a nexus between the prior conviction and the public safety. This amendment seeks to clarify the operation of law.

S.4643 **HASSELL-THOMPSON**
You Can Vote When You Come Home

This bill would restore voting rights to parolees, to facilitate community reintegration and participation in the civic process, rather than requiring a parolee to wait until he or she has been discharged from parole or reached the maximum expiration date of the sentence.

The bill amends subdivision two of section 5-106 of the Election Law to restore voting rights to individuals who have been released to community supervision from New York state sentences imposed as a result of New York felony convictions. Election Law §5-106(2) bars a person convicted of a New York felony from voting or registering to vote, and also, as currently drafted, restores voting rights when the person is either discharged from parole or reaches the maximum expiration date of his or her sentence. This bill would restore voting rights while the person is serving the community supervision portion of the sentence, so that he or she can exercise the civic responsibility of voting. Sections two and three of the bill make similar changes to subdivisions three and four of EL§5-1 06, which deal respectively with federal felony convictions and felony convictions in other states. The bill requires the Division of Parole to make voter registration forms available to parolees.

S.I294 **MONTGOMERY, ONORATO**
College Discrimination

This legislation seeks to amend the education law, in relation to prohibiting colleges from denying formerly incarcerated individuals admittance to college based solely on their incarceration.

S.3438-B **MONTGOMERY, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, SCHNEIDERMAN, SERRANO, VOLKER**
Domestic Violence Merit Time

This bill allows inmates who can demonstrate that they are victims of domestic violence who were subjected to substantial physical, sexual or psychological abuse inflicted by a member of their same family or household as that term is defined in section 530.11 of the criminal procedure law or a member of the person's immediate family as that term is defined in section 120.40 of the penal law, and that the commission of the offense was a direct result of such abuse, to be eligible to earn a merit time allowance. The bill further allows such inmates who are serving an indeterminate term to be eligible for presumptive release. Inmates serving a sentence for a sex offense or an act of terrorism are not eligible for the merit time or presumptive release provided for in the bill.

This bill also makes a conforming change to the work release statute to allow inmates who are victims of domestic violence who commit their crime as a result of abuse to be eligible for work release. The bill requires the Department of Correctional Services to consult with the Office for the Prevention of Domestic Violence, in implementing the provisions of the bill.

S.4793 **MONTGOMERY, ESPADA, HASSELL-THOMPSON**
GED Legislation

This legislation requires the Department of Correctional Services to establish academic programs to prepare inmates to complete the General Equivalency Diploma (GED) and provides inmates with an opportunity to complete a GED prior to release on parole, conditional release, post release supervision or presumptive release.

S.1340-A **MONTGOMERY, DIAZ, DUANE, HASSELL-THOMPSON, KLEIN, ONORATO, PARKER, SAMPSON, THOMPSON**
Sexual Misconduct Commission

The primary duties of the commission will be to investigate, evaluate and make recommendations with regard to the Problems of sexual misconduct in state correctional facilities. As such, the commission will make recommendations concerning any additional rules and regulations may be necessary to reduce the risk that correctional employees engage in unlawful and prohibited sexual contact with inmates. The commission shall consist of nine members to be appointed as follows: the Commissioner of the Department of Corrections or his or her duly designated representative; the Commissioner of the Division of Criminal Justice Services or his or her duly designated representative; three members shall be appointed by the Governor; one member shall be appointed by the Temporary President of the Senate and one member by the Minority Leader of the Senate; one member shall be appointed by the Speaker of the Assembly and one member shall be appointed by the Minority Leader of the Assembly.

S.2932-A **MONTGOMERY**
Merit Time

This bill amends section 803 of the correction law to allow all inmates, except those serving a sentence imposed for murder in the first degree as defined in section 125.27 of the penal law, an offense defined in article one hundred thirty of the penal law, incest, an offense defined in article two hundred sixty three of the penal law, an act of terrorism as defined in article four hundred ninety of the penal law or aggravated harassment of an employee by an inmate.

The merit time allowance would be one-sixth of an indeterminate and one-seventh of a determinate sentence. This section of the bill also expands the criteria that a person in the custody of the Department of Correctional Services (DOCS) may meet in order to earn merit time. The Merit Time program allows inmates who excel, attain educational and vocational degrees, and maintain a stellar disciplinary record the opportunity to present their case to the Parole Board earlier than they otherwise would have. The program promotes the rehabilitation of inmates, and thereby provides several significant benefits. Specifically, the program improves discipline within prison, enables the Parole Board to make better evaluations of an inmate's ability to reintegrate into society, and saves the State millions of dollars. For these reasons the Governor's Commission on Sentencing Reform recommended the program be expanded to allow violent offenders to participate. This bill accomplishes that goal.

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S.132 **SAMPSON, DIAZ, HASSELL-THOMPSON, KRUEGER**
Gun Control

This bill provides for the suspension of a firearm license for up to a one year period where the licensee is found to be under the influence of alcohol or a controlled substance while in possession of a loaded firearm in a public place or where the licensee refuses to submit to a chemical test by a police officer who has reasonable grounds to believe that such a violation has occurred.

S.115 **SAMPSON, DIAZ, HASSELL-THOMPSON**
Identity Theft

Identity theft is an ongoing Crime in the State of New York. Some identity theft is overt such as using stolen identification at a local or online retailer. Other forms of identity theft rely on "phishing" or "social engineering". Individuals masquerade as someone else in order to gain information. They may, for example, contact a bank to learn if a potential victim has funds in their account. Or, they may contact a large computing institution pretending to be an executive who "forgot" his/her password. Merely pretending to be someone else, without more, does not constitute a crime. This legislation would address this gap in the existing identity theft law.

S.118-A **SAMPSON, DIAZ, HASSELL-THOMPSON, KRUEGER**
Imitation Handguns

An alarming trend of criminal activity such as burglaries, robberies, hostage situations and confrontations with police has employed the use of imitation weapons. Despite current state law which makes it illegal to manufacture or sell imitation weapons resembling actual firearms, New Yorkers continue to have access to them. As a result, individuals are dying needlessly at the hands of police officers who mistake these imitation weapons for actual firearms. This legislation not only encourages compliance by retailers and manufacturers, but empowers the State Attorney General to actively enforce federal standards. In addition, it provides individual consumers injured due to the sale of a nonconforming imitation gun a private right of action to sue the retailer for damages. In addition, this measure will help to reduce the threat of crimes committed using and incidents of fatalities by imitation weapons.

S.122 **SAMPSON, DIAZ, HASSELL-THOMPSON**
Theft Identity

Adds medical information and health information to the definition of identity theft in Section 190.78-79 of the penal law, Section 899-aa of the general business law, and Section 208 of the state technology law.

Defines medical information to mean "any information regarding an individual medical history, mental or physical condition, or medical treatment of diagnosis by a health care professional."

Defines health insurance information to mean "an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual or any information in an individual's application and claims history, including, but not limited to, appeals history.

S.I24 SAMPSON, DIAZ, HASSELL-THOMPSON
Domestic Violence and Destruction of Marital Property

This law corrects the holding in People v. Person, 658 N.Y.S.2d .372 (2nd Dep't 1997) that a husband cannot be charged with criminal mischief when he destroys the personal property of his estranged wife because the property was marital property in which the husband had a proprietary interest. In that case, Mr. Person forcibly entered Ms. Person's dwelling, assaulted her, and destroyed her clothing, toiletries, the contents of her handbag, and various items of household furnishings. Although convicted of criminal mischief in the fourth degree at the trial level, the Appellate Division reversed, holding that "because the defendant had an equitable interest in the items he was charged with damaging or stealing... he could not be charged with these crimes." The Person case misapplies the Domestic Relations Law, which defines marital property for purposes of equitable distribution, to a domestic violence crime under the Penal Law. As the New York State Commission on Domestic Violence Fatalities stated in its 1997 report to the Governor: "The court in Person appears to have equated marital property for purposes of distribution between the parties Upon divorce, with household property in which a spouse has at least a proprietary interest. The explanatory comment published with the Criminal Mischief sections of the Penal Law states: 'Property is that of another person...if anyone, other than the defendant, has a possessory or proprietary interest in such tangible property. The Commission recommended legislation to clarify that the criminal mischief sections of the Penal Law do apply when a person destroys marital or jointly owned property, committing a form of domestic violence. Aggressors in domestic disputes often commit domestic violence by destroying or damaging property of their victim with the intent to harass, annoy, or alarm. This type of behavior is a form of domestic violence which the Person case in effect sanctions. The case directly contradicts the strong public policy in this State of protecting the victims of domestic violence. The bill implements this policy by amending each count of criminal mischief to include sanctions where a person has a possessory or proprietary interest with the intent to annoy, harass or alarm that other person. Lastly, the bill includes the crime of criminal mischief in the 2nd, 3rd, and 4th degree in the list of crimes that can constitute a family offense under the Criminal Procedure Law and the Family Court Act so that victims of this form of domestic violence have the option of going to Family Court for an order of protection when a person commits domestic violence by destroying property.

S.I37 SAMPSON, DIAZ, DILAN, HASSELL-THOMPSON
Protection Against Spyware

The act aims to protect the privacy of computer users by banning the dissemination of computer spyware and software without the authorization of the owner of a computer. Computer users download information from the internet without truly understanding what functions the programs will have. Many times computer users will encounter the opportunity to download a computer program from the internet that they believe will give them an innocuous program that will help them organize their lives. However, it sometimes is not known to the computer user what other functions the computer program will actually have and these seemingly harmless programs may also send information to a third party such as a marketing firm, or worse a person who wishes to commit identity theft. Key-logging computer programs record all of the keystrokes that a computer user makes while using a computer. Because many use computers for banking and credit card transactions, these programs allow for criminals to commit identity theft. Therefore, this legislation includes (but is not limited to) key-logging within the spyware ban.

S.138 **SAMPSON, ADAMS, DIAZ, HASSELL-THOMPSON, KRUEGER**
Protection of the Elderly

This bill would add a new article 261 to the Penal Law entitled "Criminal neglect of a vulnerable elderly person or a person with a disability." It would be a class "A" misdemeanor for any caregiver to knowingly act, (or fail to act), in a manner likely to threaten the life of, endanger or injure the health of, or cause a deterioration of a previously existing physical or mental condition of, a vulnerable elderly person or a person with a disability. The term "Caregiver" is broadly defined. The bill would also criminalize (an "A" misdemeanor) the abandonment of such person, a growing practice in our society frequently referred to as "Granny-dumping". Neither of these areas are presently addressed by penal statutes in New York State. The provisions of this bill would apply only in non-institutionalized settings and would have no impact on health care providers licensed under the Education Law such as physicians, dentists, etc., rendering care in the normal course of his or her profession.

S.1082 **PERKINS, DUANE, HASSELL-THOMPSON, KRUEGER, PARKER, SMITH, THOMPSON**
DNA

Among many instances in the past including the case of the Central Park 5 (5 young men accused of raping a jogger in Central Park who were later exonerated by DNA evidence and a confession from the real rapist) recent findings report that New York State has had 23 wrongful convictions overturned through DNA evidence, 10 of which innocent people falsely confessed to. Though even one case is too many, considering how few cases involve DNA it is a safe assumption that these 10 cases only represent a fraction of the overall number of cases of wrongful convictions based on false confessions. Therefore any measure to improve the integrity of confessions and protect the accused as well as the police should be taken. Just taping confessions does not show what steps led up to the confession made. Videotaping interrogations in their entirety from beginning to point A to point B. This will help reduce the number of wrongful convictions which is not only helpful to those who are wrongly accused but also helps to increase public safety. In cases where the wrong person is behind bars, the actual criminal is still out committing crimes which puts us all at risk.

S.1178 **PERKINS, DIAZ, HASSELL-THOMPSON, C. JOHNSON, ONORATO, SMITH, THOMPSON**
Increasing Sentences for Crimes against Minors

Amends Articles 120, 125 and 260 of the Penal Law by increasing penalties for violent acts when the victim is under age 16 and the perpetrator is 18 years of age or older.

S.1598-A **SCHNEIDERMAN, ADAMS, BRESLIN, DIAZ, HASSELL-THOMPSON, MONTGOMERY, OPPENHEIMER, PERKINS, SAVINO, SERRANO, SQUADRON, STEWART-COUSINS**
Gun Control

Extends statewide, with the exception of the city of New York, the requirement that a license to carry of possess a firearm be renewed every 5 years.

Without a renewal system, certain criminal convictions obtained after the issuance of a firearm and/or development of mental illness by the licensee - changes in conditions that could result in a license revocation or denial of a license renewal - may go undetected.

Such information includes the licensee's current name and address, and the make, caliber and serial number of all firearms possessed. Without a renewal system, licensees who move out-of-state - a change in conditions that could result in license revocation or denial of a license renewal - may go undetected.

Without a renewal system, licensees are less likely to update their licensing information.

Without a renewal system, there is no opportunity for licensing officers to determine whether licensees remain in compliance with the terms of their license

S.1644 **THOMPSON, KLEIN**
Preservation of Evidence

Amends Section 1 of the criminal procedure law by adding a new section -section 60.27 by adding a subdivision that includes the following: Notwithstanding any other law, rule or regulation to the contrary, in any circumstance where evidence of an identification of a defendant by photographic array would be otherwise admissible in evidence, such identification shall not be admissible in evidence unless proof of the procedures used in the identification is introduced by videotape evidence of such procedures.

S.1708 **SAMPSON, ADDABBO, DIAZ, HASSELL-THOMPSON, MONTGOMERY**
Conditional Sealing of Misdemeanor Conviction

A misdemeanor offense can follow a person for the rest of his or her life. Even if he or she has fully reformed and committed no further criminal acts the record still exists and can for the basis for discrimination in employment or other areas. This bill would allow a person who has been convicted of a non-sexual, nonviolent misdemeanor offense to apply to the Court to have their record sealed. Once sealed, the former offender would have the right to legally indicate "no" when asked if he/she has ever been convicted of the sealed misdemeanor. However, if the individual is subsequently convicted of a subsequent offense the record is unsealed and may be used against him or her.

S.1870-A **KLEIN, HASSELL-THOMPSON, C. JOHNSON, ONORATO**
Recognition of Peace Officer Status

At one point, the Federal Protective Service Was a branch of the General Services Administration and the U.S. Immigration and Customs Enforcement Department. The responsibility of the Federal Protective Service was then and continues to be to guard and investigate threats against the more than 8,800 federal offices and facilities nationwide, including many high profile federal facilities across New York State. Under CPL section 2.15(3) the Federal Protective Service was granted peace officer status because it was a part of the U.S. Immigration and Customs Enforcement. However, in 2003, the Federal Protective Service was transferred to become part of the Department of Homeland Security, so CPL section 2.15 (3) and (11) does not apply to them any longer.

This bill merely adds a new Subdivision (28) to clearly add the Federal Protective Service, now under the U.S. Department of Homeland Security, back into New York State law and clearly restore the police powers that they once had. Examples of other Federal law enforcement officials that have this status include members of the FBI, Secret Service, U.S. Mars- halls, U.S. Postal Service police officers and inspectors, and the Internal Revenue Service. As with these other branches, this police force is a highly trained unit that should have the same peace officer status as the above named law enforcement agencies.

S2167 **PARKER, DIAZ, DILAN, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, ONORATO, PERKINS, SAMPSON, SCHNEIDERMAN**
Sealing Voided Arrests

The criminal procedure law is amended by adding a new section § 160.65 to read as follows: Expungement of voidable arrest references and records. "Voidable Arrest" means any arrest resulting in: Release of the person without the filing of formal charges, dismissal of proceedings against the person, or a determination that the arrest was without probable cause. Any reference in any state or municipal law enforcement agency record of an arrest of a person living after the effective date of this section, and any state or municipal law enforcement agency record generated pursuant to that arrest, shall be expunged: Not later than thirty days after the date on which that arrest becomes a voidable arrest of a person living after the effective date of this section.

Many good, law abiding people are mistakenly arrested and then released after it is determined that they are innocent. In New York City alone, the prosecutors declined to prosecute approximately 12,500 people who were arrested. When this happens, arrest records can be created that may unfairly prejudice opportunities for schooling, employment, professional licenses and housing. These are innocent individuals who have done nothing wrong. There is no reason they should be marked for life.

The bill defines a "Voidable arrest" as any arrest resulting in the release of the person without the filing of formal charges, dismissal of proceedings against the person arrested, or a determination that the arrest was without probable cause. The bill would require expungement of certain state and municipal arrest records and under legislation pending in the US Congress, New York could be eligible for financial benefits if the congress enacts the bill. Utah, Missouri, Indiana and Louisiana currently have laws on the books to expunge voided arrest records.

S2254 **SCHNEIDERMAN, ADAMS, BRESLIN, DIAZ, DUANE, KRUEGER, PARKER, SAMPSON, SERRANO, THOMPSON**
Notification of Deportation

Requires the court to advise a defendant that if he or she is an alien and he or she is convicted of a crime, whether by plea or trial, such conviction may result in his or her deportation; allows a withdrawal of a plea of guilty by an alien if such alien is threatened with deportation and such alien is not so advised of such threat of deportation.

S2556 **ADDABBO, DIAZ, HASSELL-THOMPSON, HUNTLEY, KLEIN, PARKER, SAVINO**
Granting Police Officer Status

Bridge and Tunnel Officers are highly trained, certified New York State Peace Officers. Bridge and Tunnel Officers are responsible for law enforcement duties at Metropolitan Transportation Authority (MTA) Bridges and Tunnels, in addition to: maintaining daily 24-hour security patrols; checkpoints; video monitor surveillance; anti-terrorism and traffic enforcement duties. Bridge and Tunnel Officers are the first responders to all emergencies and incidences to preserve the safety and structural integrity of the nine facilities of MTA Bridges and Tunnels.

By expanding the law enforcement powers of Bridge and Tunnel Officers from Peace Officer status to Police status, it would greatly enhance the safety and protection of the millions of motorists that travel on MTA's Bridges and Tunnels, surrounding roadways and communities. Bridge and Tunnel Officers perform virtually all police responsibilities with one exception: As the current law is written, the law enforcement powers of Peace Officers are limited when compared to Police Officers. The present law prohibits Bridge and Tunnel Officers, in their capacity as Peace Officers, from taking into custody individuals for merely having an arrest warrant. By granting Police status to Bridge and Tunnel Officers, it would allow them to arrest individuals with active warrants.

S2582 **ADAMS, DIAZ, DILAN, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KRUEGER, MONSERRATE, MONTGOMERY, ONORATO, PARKER, PERKINS, SCHNEIDERMAN, SERRANO, STEWART-COUSINS**
Gun Control

Will make it illegal to sell gun parts to any individual that does not possess a valid pistol permit. The part sold must be the same related to the pistol/firearm listed on the purchaser's pistol permit.

S2741 **ADAMS, KRUEGER, MONSERRATE, PARKER, SERRANO**
Tracking Ammunition

This legislation would require all manufacturers to use an Ammunition Coding System (ACS) on all handgun and assault weapon ammunition sold in New York State; establishes an ACS database containing manufacturer and vendor registries, funded through an ACS Database Fund under the control of the State Comptroller and the Department of Taxation and Finance; and provides penalties for unlawful sale of un-coded ammunition.

S2826-A **ADAMS**
Failure to Report Lost Firearm

Failure to report theft or loss of a firearm, rifle or shotgun in the third degree. A person is guilty of failure to report theft or loss of a firearm, rifle or shotgun in the third degree when he or she intentionally fails to report such theft or loss as prescribed in section 400.10 of this chapter. A person who violates the provisions of this section shall have any license validly issued, as provided under section 400.00 of this chapter suspended. Failure to report theft or loss of a firearm, rifle or shotgun in the third degree is a class D

Failure to report theft or loss of a firearm, rifle or shotgun in the second degree. A person is guilty of failure to report theft or loss of a firearm, rifle or shotgun in the second degree when he or she has previously been convicted of failure to report theft or loss of a firearm, rifle or shotgun in the third degree and he or she intentionally fails to report such theft or loss as prescribed in section 400.10 of this chapter. A person who violates the provisions of this section shall have any license validly issued, as provided under section 400.00 of this chapter, revoked. Failure to report theft or loss of a firearm, rifle or shotgun in the second degree is a class C felony.

Failure to report theft or loss of a firearm, rifle or shotgun in the first degree. A person is guilty of failure to report theft or loss of a firearm, rifle or shotgun in the first degree when he or she has previously been convicted of failure to report theft or loss of a firearm, rifle or shotgun in the second degree and he or she intentionally fails to report such theft or loss as prescribed in section 400.10 of this chapter. Failure to report theft or loss of a firearm, rifle or shotgun in the first degree is a class B felony. §2. Subdivision 3 of section 400.00 of the penal law, is amended by adding a new paragraph to read as follows: All applications and renewals of a license to carry or possess a firearm shall include a provision, to be approved as to form by the superintendent of state police, detailing the crimes prescribed in sections 265.21, 265.22 and 265.23 of this chapter.

S.3863 **STEWART-COUSINS, HASSELL-THOMPSON, C. JOHNSON, KRUEGER, MONTGOMERY, PADAVAN, STAVISKY, THOMPSON**
Regulate Push-polls

So-called "push-polls" are a deceptive campaign tool designed to influence public opinion. A typical "push-poll" uses a phone bank to call thousands of voters with questions that smear or denigrate the opposing candidate. Questions such as "if you knew that candidate A was a drunk (or a womanizer or tax evader or drug user) would you still support him/her" are typical of "push-polls". "Push-polls" are designed to persuade voters to vote against an opposing candidate. They invariably fail to identify the true source of the questioner, often masquerading as a legitimate survey company.

Legitimate polls may sometimes use questions to measure the potential impact of different, including negative, campaign messages but they are designed to measure the opinion of an electorate, not persuade. Legitimate polling provides voters with the correct name of the research firm conducting the poll. Legitimate polling only surveys a scientifically drawn small sample of voters. The bipartisan American Association of Political Consultants has condemned the use of "push-polls." This professional association has drawn a distinction between "push-polling" and the legitimate survey research.

"Push-polling" is the latest and most fashionable in a long line of political dirty tricks and has no place in New York State's political process. This legislation is designed to ban the practice of "push-polling" by requiring strict and comprehensive disclosure requirements to voters receiving calls or other contacts and to local board of elections. This legislation also codifies existing New York State Board of Elections regulations requiring the comprehensive disclosure of legitimate polling when the results of that polling are used to influence the outcome of elections.

S4041-B **DUANE, BRESLIN, DILAN, ESPADA, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, OPPENHEIMER, PARKER, PERKINS, SAVINO, SCHNEIDERMAN, SQUADRON, STAVISKY, THOMPSON**
Marijuana for Medicinal Purposes

Thousands of New Yorkers have serious medical conditions that may benefit from medical use of marijuana. The National Academy of Sciences' Institute of Medicine concluded in a 1999 report that "nausea, appetite loss, pain and anxiety ... all can be mitigated by marijuana." Doctors and patients have documented that marijuana can be an effective treatment -where other medications have failed - for at least some patients who suffer from HIV/AIDS, cancer, epilepsy, multiple sclerosis, and other life-threatening or debilitating conditions. Although other drugs are more effective than marijuana for some patients, The Institute of Medicine noted that "there will likely always be a subpopulation of patients who do not respond well to other medications." Medical marijuana must be available to those patients.

The active ingredient in marijuana, THC, has been approved for medical use by the Federal Food and Drug Administration and the Drug Enforcement Agency since 1986 in synthetic pill form. But consuming it in natural form - which many physicians say is more effective - continues to be illegal. In an editorial in the January 30, 1997 New England Journal of Medicine, Dr. Jerome P. Kassirer, editor of the Journal, explained that inhaling THC is more effective than taking the synthetic pill: "smoking marijuana produces a rapid increase in the blood level of the active ingredients and is thus more likely to be therapeutic." It also enables tighter control of the amount ingested. According to the Institute of Medicine, it is well recognized that (the) oral route of administration hampers its effectiveness because of slow absorption and patients' desire for more control over dosing."

Legalizing the medical use of effective medicine does not undermine the message that non-medical use of illegal drugs is wrong. Many controlled substances that are legal for medical use (such as morphine, valium and steroids) are otherwise illegal. In the same New England Journal of Medicine editorial, Dr. Kassirer argued that "it is also hypocritical to forbid physicians to prescribe marijuana while permitting them to use morphine and meperidine to relive extreme dyspnea and pain."

The bill amends the Public Health Law rather than the Penal Law because the Penal Law's controlled substances provisions all relate back to the Public Health Law. Thus, all the acts that the bill makes lawful under the Public Health Law would, by definition, be legal under the Penal Law.

S.425I **SCHNEIDERMAN, DIAZ, HASSELL-THOMPSON, PARKER**
Toll Collection Violations

This bill would: (1) add toll evasion to the theft of services crimes; (2) create a new Title XII entitled Toll Collections; (3) increase the monetary penalties for toll collection violations and provide that one- half of such penal ties collected be paid to the public authority whose toll collection violations were violated and would make the payment of lost toll revenue to the toll facility a mandatory part of the penalty when a toll collection violation is adjudicated in court; (4) clarify that a public authority may impose administrative fees on the owner of a vehicle that violated the toll collection regulations; and (5) revise the current mandatory vehicle registration suspension where the owner of a motor vehicle failed to appear, failed to pay any penalty

imposed, or failed to comply with the rules and regulations of an administrative tribunal in relation to five or more toll collection violations within an eighteen month period to apply to three or more violations within an eighteen month period.

S.4252 **SCHNEIDERMAN, DIAZ, HASSELL-THOMPSON, KRUEGER, PARKER**
Child Witnesses

This bill expands the number of cases in which closed circuit television may be used to present the testimony of child witnesses in court proceedings. This bill expands the definition of "child witness" by including witnesses in proceedings concerning offenses defined in Penal Law articles 120 (assault), 125 (homicide) and 135 (kidnapping), as well as §260.10 (endangering the welfare of a child).

4397-A **SCHNEIDERMAN, BRESLIN, ADAMS, ADDABBO, DIAZ, DILAN, DUANE, ESPADA, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KLEIN, KRUEGER, KRUGER, MONTGOMERY, ONORATO, OPPENHEIMER, PARKER, PERKINS, SAMPSON, SAVINO, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS, THOMPSON**
Crime Gun Identification - Microstamping

Requires all semiautomatic pistols manufactured on or after January 1st 2011 to be capable of producing a unique alpha-numeric or geometric code on at least two locations on each cartridge case expended from such pistol which can be used to identify the make, model, and serial number of the pistol.

S.4750 **SCHNEIDERMAN**
Courts Can Waive Surcharges

As a report by the Center for Community Alternatives points out, the financial consequences of a criminal conviction can present a significant roadblock to the successful reentry and reintegration of a convicted person. The report, "Sentencing for Dollars: The Financial Consequences of a Criminal Conviction," explains that when viewed in isolation, these financial penalties may appear to be a good source of revenue and a way to shift costs from the "taxpayer" to the "offender." Financial sanctions may also give the appearance of being "tough on crime." However, these penalties look quite different when considered in their totality and in the context of their impact on the person convicted and his or her family.

Before 1995, a court had the discretion to waive the mandatory surcharge for defendants who were unable to pay. However, current law does not allow for such a waiver even in cases where the defendant is indigent and unable to pay. Therefore, this bill would return the discretion to judges to waive certain fees and surcharges in cases where the defendant is unable to pay or when the imposition of such fees or surcharges would be incompatible with the defendant's successful reentry.

S.5372 **HASSELL-THOMPSON, DIAZ, KRUEGER**
Order of Protection Registry Expansion

This bill would permit courts to direct that orders of protection and temporary orders of protection of non-family domestic violence offenses be filed with the statewide computerized registry of orders of protection.

It would also require the Superintendent of State Police to include such orders of protection on the computerized registry.

Existing law only allows orders of protection and temporary orders of protection for family offenses to be entered on the statewide computerized registry.

The landmark Family Protection and Domestic Violence Intervention Act of 1994 created a framework to promote a more aggressive response to domestic violence. A statewide computerized registry was established to expedite communication between Family and Criminal Courts and law enforcement agencies. Only orders of protection for domestic violence offenses covered under the statutory definition of family offense, however, are put on the registry. At least half of the victims of domestic violence are persons outside the statutory definition of family. Orders of protection and temporary orders of protection issued to protect these victims, now covered under the 2008 legislation which expanded access to Family Court, should also be included on the computerized statewide registry.

S.5517 HASSELL-THOMPSON
Commitment Documents

This bill would correct and clarify inconsistent and ambiguous provisions in the Criminal Procedure Law and the Correction Law pertaining to the timing of the sentencing court's obligation to provide state and local correctional facilities and OCFS facilities with commitment documents, orders of protection and sentencing minutes. It also would make technical corrections to the statutes to reflect the proper name of the commitment documents that are used today. First, Criminal Procedure Law § 380.60 identifies a "certificate of conviction" as the legal document that confers the authority for the execution of sentence and serves as the order of commitment. In actuality, the technical title of the commitment document is a "sentence and commitment." As such, it is appropriate that this section of law, as well as a comparable provision in Correction Law § 601(a), be amended to include the title of the document that is routinely used.

Second, Criminal Procedure Law § 380.70 provides that in any case where a person receives either a determinate or indeterminate sentence of imprisonment, the sentencing minutes must be transcribed and separately sent to the institution to which the defendant has been delivered within 30 days of the pronouncement of sentence.

As part of the Sentencing Reform Act of 1995, the Legislature determined that the commitment document that accompanies an offender to his or her place of incarceration should contain greater specificity with regard to the crime of commitment. Specifically, it was determined that the commitment should also indicate, to the extent applicable, the subdivision, paragraph and subparagraph of the penal law or other statute under which the defendant was convicted. However, when the Legislature adopted this new requirement in 1995, the provision was mistakenly inserted into section 380.70, the same section of law that deals with sentencing minutes. This creates the misimpression that a commitment, like the sentencing minutes, may be separately delivered to the facility, even though Correction Law § 601(a) and Criminal Procedure Law § 380.60 make it clear that the commitment document must accompany the defendant when he or she is delivered to the institution to commence serving his or her sentence of imprisonment. This error was continued when the law was subsequently expanded to require orders of protection to be delivered to the institution with a defendant.

The new section of law that explicitly describes the documents that must accompany a defendant when he or she is delivered to an institution to commence serving a sentence of imprisonment will clarify the confusion that is caused by the existing, inconsistent statutory language. This will help to ensure that state and local correctional facilities have the necessary documentation when receiving offenders into their custody, including documents providing such basic information as the term of the inmate's sentence and whether multiple sentences run consecutively or concurrently.

At the same time, maintaining a separate section of law requiring that courts subsequently send the sentencing minutes to the facility should help to clarify the courts' continuing obligations after a defendant has been sentenced. These minutes assist DOCS and the Division of Parole with programming and release decisions. They provide additional background about the

crime, any recommendations by the judge and any statements by victims. By separating these provisions, it will clarify that the sentence and commitment documents are sent to the facility with the inmate, and that the sentence minutes must be sent later, helping to ensure that these critically important documents will become part of an inmate's correctional file.

S.5893 **HASSELL-THOMPSON, THOMPSON**
Child Victims Act

Section one of the bill amends the Criminal Procedure Law to increase the criminal statute of limitation for the prosecution of certain sex offenses committed against a child under the age of eighteen, for incest against a child less then eighteen years of age or the use of a child in a sexual performance. The period of limitation would not begin to run until the child reaches the age of 23 years or the offense is reported to a law enforcement agency or the statewide central register of child abuse and maltreatment.

Section two of the bill would extend the civil statute of limitation for causes of action to remedy injuries or conditions suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law. Such action would have to be commenced within five years after the child reaches the age of 23 years. Under current law, the criminal statute of limitations in child sexual abuse cases in which a victim does not report the crime to law enforcement is not applied until the victim reaches age 18. This bill would add five years to the statute; so that the five year statute of limitations in such cases would not begin to run until the victim turned age 23 (extending the time for prosecution until a child victim reached age 28).

Section three of the bill would revive expired civil causes of action based on conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law. Persons for whom the right to bring a civil action has been foreclosed because of the current civil statute of limitations bar would be given a one-year "window period" from the date of enactment of the bill. To recover damages for any past instance of child sexual abuse the civil claim must be commenced within thirty-five years of the effective date of this section or commenced within thirty-five years of such child reaching the age of eighteen years. Prior to the commencement of the action, the plaintiff must obtain a certificate of merit by a mental health expert that states in reasonable detail the facts and opinions relied upon for concluding that the plaintiff was a victim of sexual abuse. The complaint shall be accompanied by a certificate of merit as described in subdivision (c) of this section.

Sexual assault is a crime that is devastating and life altering. The emotional confusion and aftermath experienced by a victim of a sexual assault can manifest a number of obstacles delaying or possibly eliminating the process of healing. When the victims of sexual assault are children the process of healing becomes their childhood. When a crime of this magnitude is committed against a child, someone who cannot defend or fight for themselves we must fight for them. If we allow the perpetrators of child sexual abuse to continue to prey on the children of New York State, we are not only failing the children, but condoning the actions of these pedophiles. Due to the high number of unreported cases and the effect on the victim's quality of life, it has become very apparent that the current laws of New York State pertaining to child sexual abuse are glaringly inadequate and unable to address the many legal and ethical issues that exist.

The typical child sexual offender molests an average of 117 children, most of whom do not report the offense. Failure to report occurs often for a variety of different reasons. For example

children who are sexually abused do not always recognize that they are being victimized. Those who recognize what has happened fear that disclosure will bring consequences even worse than being victimized again. Most children who are victims of sexual abuse know their abuser; this violation of trust develops into an inability to trust leading to another unreported crime. Also the post traumatic stress that occurs from being repeatedly abused in childhood can result in disassociation, preventing memories from being integrated into consciousness and resulting a total denial of the abuse. This coping mechanism may lead to an altered sense of self and extend into adulthood. Many victims suffer from long term psychological disturbances and in extreme cases may develop a multiple personality disorder. Once the disassociation or post traumatic stress disorder develops treatment becomes very difficult and the victims resistant. Many times only as an adult can the survivors of child sexual assault recognize having been abused, confront their abuser and take action,

S.5961 **Schneiderman**
Speedy Trial for Traffic Infractions

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of her Advisory Committee on Criminal Law and Procedure. This measure would amend the Criminal Procedure Law to authorize a court to dismiss any traffic infraction that remains as the sole charge in an accusatory instrument the other charges of which were dismissed pursuant to CPL 30.30.Traffic infractions do not fall within the offenses for which CPL. 30.30 provisions apply (see People v Gonzalez, 168 Misc.2d 136 (App Term 1st Dept 1996)). As noted in the Commentary to CPL 30.30, speedy trial provisions do not apply to traffic infractions because CPL 30.30(1)(d) specifically applies to "offenses," and a traffic infraction is only a "petty offense.

S.6341 **Duane**
Guidelines for Informants

This bill is designed to provide guidelines, and to allow for more legislative, judicial and public scrutiny over the practice of using informants to solve crimes to ensure that it is truly benefiting society and creating safer neighborhoods for New Yorkers. It also attempts to provide for more continuity in the circumstances surrounding the creation and maintenance of informants. The bill does not intend to eliminate the practice, rather it seeks to set standards and achieve greater oversight of the entire process.

S.6980 **DIAZ, GOLDEN, HASSELL-THOMPSON, O. JOHNSON, KRUGER, ONORATO, PADAVAN, RANZENHOFER**
Gang Recruitment Prohibited

Gangs clearly pose a significant threat to community safety. From January to mid-October 2009, there were approximately 200 gang-motivated incidents in New York City: These incidents not only effect gang members but often involve innocent victims that are in the wrong place at the wrong time. In order to combat the influence that gangs have on our youth, it is time that we punish those that actively recruit new members. This legislation would target recruiters of street gangs by creating the crime of gang recruitment of a minor. A person that is found guilty of criminal street gang recruitment when he or she coerces, recruits or induces a person under sixteen years of age to join their gang will be charged with a class C felony.

XXI. Conclusion

We have made great advances this past legislative session. In no small feat, we have turned away from decades of overreliance on a punitive drug enforcement strategy, marred by racial bias. Based upon the rate of recidivism, incarceration as a mechanism to deter unlawful activity has largely proven to be counterproductive. The constant removal and return of prisoners compromises the economic stability of our neighborhoods, thereby leading to the further destabilization of communities. According to a study on the "spatial effects" of high incarceration rates by Jeffrey Fagan, "[i]ncarceration begets more incarceration, and incarceration also begets more crime, which in turn invites more aggressive enforcement, which then re-supplies incarceration."[41]

It is beyond dispute that the imposition of harsh criminal penalties is the wrong paradigm for addressing the problems related to chemical dependency, thus the necessity for reform of our drug laws. A new and more effective model based on a public health frameworks is a better course of action that has broad support among New Yorkers.[42]

To the extent that public policies, independent of other factors, can successfully effect and sustain reductions in crime, victimization and incarceration, both punishment and prevention — prisons and programs — are both necessary. As is the case in passing sex offender laws and residency restrictions, policymakers are doing their best to protect society — particularly its most vulnerable members, children. Yet many of these laws have been enacted without the benefit of evidence about which approaches work best. To get the best public safety outcomes, we must devote resources to stopping the most serious and repeat offenders from harming people and also work to rehabilitate those who are charged with less serious offenses and who objectively present less or no risk to re-offend.

Moreover, a fiscal crisis requires strict cost-cutting and creative ideas, all the more reason to implement policies that effect real reform and are not rooted in the status quo. Henceforth, New Yorkers can expect its legislative leader to address budgetary woes while performing a pivotal role in pointing criminal justice practices in a more constructive direction. Real reform means giving the judicial system the discretion and resources to view chemical dependency as a health problem and making efforts to address the cause of addiction and the criminal conduct that often follows such abuse.

To that end, we have redirected funds to provide individual and group counseling for persons with chemical dependency, and provided judges a flexible and broad range of programs that include outpatient and residential treatment programs. For those who require tougher sanctions, we have given judges the authority to place offenders in Shock Incarceration Correctional Facilities and the Willard Program. Both of these programs incorporate a "boot camp" curriculum, as well as intensive counseling. If treatment fails or if the defendant re-commits a crime while attending treatment programs, we made sure that stiff sentencing guidelines remained available to judges as a viable option.

Since attaining majority status, the Senate Majority Conference has taken a progressive approach to curbing criminal misconduct. Mental illness, chemical dependency, poverty, homelessness and hopelessness are all contributory factors to criminal behavior. The need to right-size our prison system is abundantly apparent, and as our policies continue to have a positive impact, we anticipate further prison closings in years to come. Mainly due to our drug law reform policies and imposition of stiff sentences for violent felony offenders, the crime rate and the prison population continues to decline. Yet, when we close a prison, there is a "ripple effect" that tears through the heart, economy and tax base of the local communities. The Sen-

41 Jeffrey Fagan, Valerie West, Jan Holland, Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods," 30 Fordham Urb. L.J. 1551, July 2002, at p. 1554.

42 Legal Action Center survey, June 2002.

ate Majority Conference has worked hard to develop a philosophy of not only "right-sizing," but "re-tooling" our correctional facilities, so as to not place our upstate communities at peril, while simultaneously offering incarcerated men and women with an opportunity to learn a skill that makes them an asset and not a liability to their community upon discharge from prison.

Investing taxpayer money into government programs that assist the re-entry efforts of formerly incarcerated persons is a smart investment: At the rate of approximately $60,000 a year, the cost of incarceration far exceeds the investment in re-entry programs. We worked hard to equip them with the skills necessary to stay out of prison by planting seed money for programs that assist the formerly incarcerated with job-training, interview skills and educational development, which includes education on – and awareness of – communicable diseases and infections. Our efforts are modest and mch more needs to be done, but we believe that it is better to have an ex-offender working and becoming part of the solution, than repeatedly becoming part of the problem.

The historical failings of New York's criminal justice policies are well-documented and widely recognized. We have attempted to alleviate the plight of every day New Yorkers as they traverse the civil and criminal justice systems. We have, for example, successfully made concrete efforts to provide state-appointed lawyers for people in civil court who cannot afford an attorney and confront foreclosure of their homes, eviction from their apartments, denial of unemployment benefits, denial of social security benefits, and scores of other civil legal actions. Chief Judge Lippman, and his associates in the Appellate Division have scheduled public hearings throughout the state of New York to assess the needs of millions of New Yorkers unrepresented in civil court every year. It is our hopes that our efforts will strengthen New York families and provide legal assistance when it is necessary for survival.

Paying very close attention to the needs of victims of crime, we have fought for continued funding of our rape crisis centers and passed important legislation regarding the prevention of domestic violence. We have also reformed the archaic Matrimonial Law, making New York State the last state in the Nation to adopt a "no-fault" divorce statute. Now, proper attention can be focused on the best interests and support of our children, who often suffer the most in the event of a divorce. Advocates in support of no-fault divorce predict reductions in tensions that lead up to domestic violence during and after divorce proceedings. We hope these predictions ring true.

So fervent is our support of victims of crime during the 2010 Legislative Session that we removed one of our own members from the New York State Senate because he was convicted of a domestic violence assault and found to be unfit to serve in the Senate. We have sent out a message that no one is above the law.

Looking ahead, The State of New York faces budget gaps of $30 billion over the next three fiscal years, even after the daunting task of closing last fiscal year's budget gap of approximately $9 billion. As the legislative leaders with direct responsibility for the Crime Victims, Crime and Correction Committee, we have a special duty to ensure the public safety on all streets, Walls Street and Main Street alike, and to ensure that there is justice in the civil and criminal courts. As your representatives in Albany, we will do everything we can to continue to reduce crime, continue to reform our drug laws, continue our efforts to make the court system fair and responsive to your needs, and continue to be sensitive to the needs of crime victims.

What should never be lost in the budget negotiation process is the stalwart belief that ensuring the safety of the public and continued access to justice for all are our greatest responsibilities as legislators. The Senate Majority Conference will continue to make certain that the safety of our communities throughout the state is never compromised, and that our court system is an institution that passionately protects our values of equal protection and due process of law for all.


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