

TESTIMONY OF THE LEGAL ACTION CENTER

ON BEHALF OF THE ATI AND REENTRY COALITION

Assembly Ways and Means and the
Senate Finance Committees
Joint Public Hearing on Public Protection
Executive Budget FY 2015-2016

February 26, 2015

Presented by

Sebastian Solomon
Director of NYS Policy
Legal Action Center

Endorsed by

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

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

The Legal Action Center is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. The Center works to combat the stigma and prejudice that keep these individuals out of the mainstream of society. The Legal Action Center helps people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

We also run a national center to promote the employment of individuals with convictions, the national H.I.R.E. network. H.I.R.E.'s goal is to increase the number and quality of job opportunities available to people with criminal records by changing public policies, practices and public opinion. H.I.R.E has worked for the last four years to serve as a national clearinghouse for information and technical assistance for non-profit and government agencies working to improve employment prospects for the formerly incarcerated across the country.

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

sums of money by reducing prison costs, preventing recidivism and stabilizing these individuals and their families.

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

New York State is nationally known for its highly effective network of alternative to incarceration (ATI) and reentry programs. These programs have been critical to the State's success in simultaneously reducing crime, reducing the prison population and saving taxpayers many millions of dollars, and are essential to successful implementation of Rockefeller drug law reform and ending the cycle of addiction and crime. It is no coincidence that New York, with an effective network of ATI programs, has seen both crime and incarceration rates plummet simultaneously, without compromising public safety, all while saving New York money. We applaud Governor Cuomo and the legislature's decision to maintain baseline funding for ATI and reentry programs in last year's budget. We urge the Legislature to take the following steps to continue these critically important initiatives:

- **Maintain funding for ATI and reentry programs and offer a full spectrum of services based on individual needs;**
- **Add \$3 million to expand those programs to underserved populations;**
- **Add \$2 million in capacity building to enable ATI and reentry programs to work more closely with the health care system to divert more people, promote successful reentry and reduce criminal justice and health care costs, and add funding to develop a health IT system in DOCCS;**
- **Support the Executive Budget proposal to dedicate \$5 million in Medicaid funding to help link those in the criminal justice system to the health care services they need through health homes, and ensure that Medicaid payments for health home services provided to the criminal justice population are adequate and the caseloads are appropriate;**
- **Support the Executive's proposals for raising New York's age of criminal responsibility for most crimes and increasing the use of diversion for this population;**

- **Support the Executive's proposal to authorize the DOCCS Commissioner to make the final determination regarding medical parole release for individuals convicted of certain crimes;**
- **Build on Rockefeller Drug Law reforms to expand diversion opportunities for additional crimes and additional populations, such as additional non-violent B and C felonies (e.g. grand larceny in the first and second degrees) and those with mental health diagnoses;**
- **Expand criminal record sealing to allow people who enter treatment voluntarily to have their convictions conditionally sealed;**
- **Support the Executive Budget's proposal to require annual reporting from law enforcement agencies to DCJS regarding arrests made and tickets issued for low-level charges;**
- **Support the Executive Budget's request of \$50 million to create a nonprofit infrastructure capital investment program and the additional funding for this program requested by the Human Services Council.**

Maintain funding for ATI and reentry programs and offer a full spectrum of services based on individual needs.

We are truly grateful to the Governor for maintaining the funding that he institutionalized two years ago for the first time in the history of this initiative. Placing the money in the budget in this way relieves our programs of much of the continuous pressure that we had faced in previous years to find additional funds beyond the Executive Budget to ensure our survival.

We look forward to working with the Executive and the Legislature to ensure that this funding is allocated in the most effective and efficient ways and captures the complexity and full range of services delivered by the ATI/reentry programs, and that these services continue to be provided without interruption. While we strongly support the state's evidence-based strategy of targeting high-

risk and high-need individuals with more intensive services, we also must serve other populations. In providing alternative to incarceration services, risk of recidivism cannot be the sole eligibility criteria. Instead, services must be targeted at any individual who is at risk of being incarcerated, thereby maximizing the financial savings to the state and localities through reduced incarceration. Eliminating ATI for those at lower-risk would not only result in increased incarceration of the least likely to recidivate, studies show it can actually increase recidivism.

Furthermore, while lower risk populations do not require as intensive services, they still confront barriers arising from having a criminal record which may prevent their successful reentry into the community and lead to a return to crime. If these individuals do not receive access to basic services, they will not be as successful in reintegrating into the community and may end up returning to crime. Serving individuals who are not currently high-risk may well result in preventing these individuals from getting deeper into the criminal justice system where their risk and needs scores may increase.

Additionally, if programs only serve high-risk, high-need populations, they will have much greater difficulty placing individuals in employment and housing since. Many employers and housing providers are unwilling to provide jobs and housing to this population. In order to develop and maintain relationships with employers and others, programs must have a full range of candidates to place.

Therefore, the Legislature must ensure that funding for ATI and reentry programs gives them the flexibility to determine what level of services an individual needs and enables them to provide a full spectrum of services to people at every level of risk and need. As demonstrated by the State's highly

successful Work for Success program, the goal must be to get the right person the right services and opportunities at the right time to maximize success. In order to do so, services to meet all levels of need must continue to exist.

Add \$3 million to expand those programs to underserved populations

As much as ATI and reentry programs are currently doing to improve public safety and save the state millions of taxpayer dollars, they could do much more if given sufficient funding and opportunity.

We urge the Legislature to add \$3 million to allow programs to develop innovative strategies for addressing the emerging and underserved client and community needs, including:

- **Underserved geographic areas** – Large swaths of the state, especially the upstate urban areas responsible for much of the state’s crime and incarceration, remain acutely underserved by ATI and reentry services;
- **Women** receive few of these services, with the main source of state funding specifically targeting this population focused solely on those with HIV;
- **Young people** are significantly underserved, while even more would benefit from these services if the state raises the age of criminal responsibility;
- **Elderly** – Between 2007 and 2014, the proportion of the prison population over the age of 50 increased by 61%. Caring for the aging can be very expensive; providing targeted funding for ATI/reentry programs to serve them, including enhanced rates or bridge payments, would be more cost-effective without compromising public safety;

- **Mentally ill** – Serving the mentally ill in the community, instead of incarcerating them, improves public safety and reduces costs;
- **Addicted individuals convicted of property crimes** – Many individuals eligible for diversion under drug law reform are still being incarcerated. Additional funding would increase capacity to divert more, especially in upstate counties;
- **Individuals charged with violent offenses** – Diverting more individuals charged with violent offenses who can be safely diverted from incarceration would decrease recidivism, improve community involvement, and save taxpayer dollars;
- **Access to housing support services** – Investing in case management, referral and advocacy services to help individuals find housing increases sobriety, improves health, saves money, reduces reincarceration and helps fill the gap left by federal rules rendering recently incarcerated individuals ineligible for certain types of housing support;
- **Criminal record and collateral consequence counseling** – Very few providers outside of New York City counsel people on how to obtain and correct criminal record information and overcome barriers to employment, housing and education. These services help individuals sustain their reintegration into society and avoid rearrest and reincarceration;
- **Maintaining connections between those incarcerated and their families** -- Few resources are available despite its demonstrated impact on successful reintegration.

We therefore call on the state to provide new funding for ATI and reentry services in order to allow programs to develop innovative strategies for addressing emerging and underserved client and community needs.

Add \$2 million in capacity building to enable ATI and reentry programs to work more closely with the health care system to divert more people, promote successful reentry and reduce criminal justice and health care costs, and add funding to develop a health IT system in DOCCS.

New York State is at the forefront of efforts to link those in the criminal justice system to the health care services they need in a coordinated and effective manner. States around the country are watching New York closely to see how it carries out efforts to enroll its criminal justice population in health care insurance and links these individuals to the care that they need. Such connections provide opportunities for reducing institutionalization in both the criminal justice system through reduced recidivism and incarceration, and health care through the reduced use of emergency rooms and detox facilities. Furthermore, through the increased federal Medicaid match being provided to the State as part of health care reform, there is the potential for the State to realize significant financial savings.

Community-based ATI and reentry programs understand the criminal justice population and are well positioned to deliver services that can be provided and funded by Medicaid. However, for this effort to be successful, and to maximize both the potential health benefits and financial savings, programs need \$2 million to build institutional capability to participate in Medicaid and work with insurers. ATI and reentry programs have little or no prior experience working with managed care organizations, and some have not dealt with Medicaid at all. They will need to build those relationships; market their ability to provide services and to reduce costs; develop contracting, billing, information technology and corporate compliance ability, and train their staff to perform all those tasks if they are to work in this new environment.

We also support providing IT infrastructure for DOCCS to support a pilot electronic health records program, including exploring opportunities for DOCCS to utilize the newly built OMH EHR infrastructure to engage with health homes. This also has potential for modeling EHR capacities within county correctional settings.

Support the Executive Budget proposal to dedicate \$5 million in Medicaid funding to help link those in the criminal justice system to the health care services they need through health homes, and ensure that Medicaid payments for health home services provided to the criminal justice population are adequate and the caseloads are appropriate.

Health homes provide care for New Yorkers with two or more chronic conditions, HIV/AIDS, and severe and persistent mental illness, which includes many in the criminal justice system. The State has developed a number of health home pilots focused on the needs of those involved in the criminal justice system. These pilots are identifying protocols that would enhance the connection to care for this population, starting with those leaving local and state correctional facilities. The goals are improving public health, increasing public safety and reaping substantial cost savings. The resources included in the budget are needed to help the pilots succeed in achieving these goals by:

- Developing a liaison service to connect health homes with the criminal justice system – beginning in state and local correctional facilities, and then extending to DWI/drug courts, probation and parole offices, arraignments, and central booking. The most effective strategy for connecting people to care during reentry is to engage them as early prior to release as is

feasible. Because federal Medicaid will not reimburse care for incarcerated individuals, resources are needed to facilitate the transition by enabling health homes to place staff in various criminal justice settings and teleconference with incarcerated individuals.

Community-based ATI/reentry programs can also play an important liaison role helping health homes connect with a clientele with whom they have limited experience and understanding.

- Criminal Justice and Health Homes Learning Collaborative for the provision of training and technical assistance and sharing of best practices so the 6 pilots can receive technical assistance and share their knowledge with each other as well as the more than 40 other health homes across the state.
- Intensive engagement with CJ/health homes enrollees for up to 6 months post-release. The period immediately following release from incarceration is critical. Research shows that individuals at this stage have an increased risk of dying. They are also at heightened risk for recidivism. Health homes must be paid a sufficient rate during this period to allow them to keep caseloads small enough to provide an appropriate level of services to prevent these negative outcomes.

Additionally, the State should amend the eligibility criteria for health homes to treat recent incarceration as an eligibility factor for those with only one diagnosed chronic condition. Many people who are recently incarcerated may be unable to document that they have two qualifying

chronic conditions but would benefit greatly from the coordination and range of services offered by health homes.

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

New York State is one of only two states that still consider 16 year olds to be adults who are fully criminally responsible for their actions – the other is North Carolina. Decades of research have shown that adolescent brains are not yet fully formed and that, as a result, adolescents are less able to understand the consequences of their actions than adults.

The Governor's Commission on Youth, Public Safety and Justice, which was comprised of a number of experts from law enforcement and from the community, spent nine months researching how New York could most effectively and safely go about raising the age of criminal responsibility. The Commission examined the current system, looked at best practices from around the country and developed recommendations around every step of the criminal justice system from arrest through reentry as well as the collateral consequences of a criminal record. Their final report includes 38 discrete recommendations for how New York could best accomplish the goal of treating 16 and 17 year olds who are arrested in a developmentally appropriate way. Significantly, these recommendations recognize the effectiveness of alternatives to incarceration, recommending the diversion of young people from incarceration whenever possible. These recommendations also do not increase the age of criminal responsibility for all offenses, focusing instead on non-violent felonies, misdemeanors and violations.

The Governor's budget includes legislation necessary to enact these recommendations. The Legislature should include the full packet of legislation in the final budget and put an end to New York's outdated and counterproductive policy of treating 16 and 17 year olds as adults in the criminal justice system.

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

- **Maximizing diversion of young people from incarceration at as early a point as possible**
– Diversion is not only cost-effective, it can reduce the risk of recidivism. But resources must be sufficient since youth can be especially difficult to serve, as many do not stick with programs and they often confront a large number of issues. Therefore, in addition to increasing funding to serve this population, outcome goals must be realistic and programs must be given the funding necessary to encourage them to serve this population and to develop the necessary expertise through experimentation. Without this level of funding and flexibility around the use of this funding, the reforms will be unable to reach their full potential for reducing recidivism, saving money and increasing public safety.
- **Raising the upper and lower age of juvenile jurisdiction** – In addition to raising the upper age of juvenile jurisdiction to 18, the Commission recommended raising the lower age of juvenile jurisdiction to 12 from the current age of 7, except for homicide offenses, which would be raised to 10.
- **Barring the confinement of any minor in adult jails or prisons regardless of where their case is heard** – Research has shown that juveniles are much more likely to be victimized and

to commit suicide when they are held in adult jails. Furthermore, keeping youth in adult jails could put New York at risk of losing access to federal funding under the Prison Rape Elimination Act.

- **Increasing the age of eligibility for youthful offender adjudication from 18 to 21 –**

Research has shown that brain development continues well into an individual's mid-twenties. The Legislature should also consider increasing the maximum age at which an individual is eligible for youthful offender status. Avoiding the stigma and the collateral consequences of a criminal record is in the best interests of all involved because it increases the likelihood of an individual's successful reintegration into society, thereby decreasing the likelihood of recidivism. Furthermore, eligibility for youthful offender status does not require the judge to give the individual a youthful offender adjudication. It merely gives a judge the discretion to do so.

- **Keeping confidential the proceeding of most cases in which an individual is eligible for youthful offender status –**

The purpose of the Youthful Offender Law is to protect an eligible youth from being stigmatized by a criminal record. However, youth currently suffer the consequences of court involvement for felony charges (but not misdemeanors) while their cases are pending, even when they will ultimately be granted youthful offender status. The intent of the youthful offender law's confidentiality is negated if information from the court records are obtained while the case is pending, a particularly pernicious problem in today's world with the permanency of the internet.

- **Investing in evidence based support services for those charged with status offenses and their families -**

In October 2007, New York opened Family Support Centers (FSCs) in the four jurisdictions with the highest numbers of status offense complaints. IDuring the first six

months after the 2007 implementation of FSCs, the number of status offense court referrals fell by 41 percent, and more than one year later no youth charged with a status offense had been securely detained. From 2007 to 2009, 81 percent of youths who successfully completed an FSC program had no further involvement in the juvenile justice system. The Commission recommended that a portion of the resources currently used to detain and place youth should be reinvested to establish FSCs in other high-need communities New York in order to end the costly and ineffective practice of removing youth who have committed no crime from their communities.

- **Conditional sealing** - The Commission proposed allowing courts to conditionally seal convictions for individuals convicted once of certain crimes when they were under the age of 20. Research has shown that those convicted only once, who go three to four years without committing a new crime, have a lower likelihood of committing a crime in the future than the general population. Sealing records for such individuals is a targeted way to limit the collateral consequences of a criminal conviction without undermining public safety.

Support the Executive's proposal to authorize the DOCCS Commissioner to make the final determination regarding medical parole release for individuals convicted of certain crimes.

The proportion of individuals over the age of 50 incarcerated in New York State prisons increased by 61% between 2007 and 2014. To qualify for medical parole, an individual must be suffering from a terminal condition and so debilitated or incapacitated as to be incapable of presenting any danger to society. Under current law, all individuals seeking medical parole release must appear before the Board of Parole for a final determination, a process that can be so time-consuming that many eligible

individuals die in prison. Allowing the DOCCS Commissioner to make the final determination regarding medical parole for individuals convicted of non-violent crimes would significantly expedite decision-making. The Legislature should support this proposal. Keeping individuals in prison who are so seriously ill that they are incapacitated costs the state huge amounts of money and provides no public safety benefit.

Build on Rockefeller drug law reforms to expand diversion opportunities for additional crimes and additional populations, such as additional non-violent B and C felonies (e.g. grand larceny in the first and second degrees) and those with mental health diagnoses.

The expanded use of diversion from incarceration through drug law reform has resulted in significant decreases in the number of addicted individuals sent to state prison. Between 2008 and 2014, the number of individuals under the custody of DOCCS for drug crimes decreased by more than 46%, with particularly significant decreases in the number of individuals being incarcerated from upstate communities. According to the most recent DCJS report on the reforms¹, published in May 2014, “drug court participants had significantly lower recidivism rates than similarly situated offenders who were sentenced to prison...Results suggest that drug court could be a safe and cost-effective option for high risk offenders facing prison sentences.” Additionally, a study released this year by the Vera Institute of Justice found that the reforms led to a 35% rise in the number of eligible individuals diverted to treatment in New York City, and cut racial disparities in who was sentenced to incarceration by half.²

¹ <http://www.criminaljustice.ny.gov/drug-law-reform/documents/dlr-update-report-may-2014.pdf>

² Vera Institute of Justice, *End of an Era? The Impact of Drug Law Reform in New York City*, <http://www.vera.org/pubs/drug-law-reform-new-york-city>

However, there remain a number of individuals whose convictions are related to an addiction who remain ineligible for diversion, including a number of non-violent B, C, D, E felonies, as well as certain violent felonies where individuals could be safely diverted. Furthermore, there are a number of individuals who have a mental health diagnosis which played a role in their conviction.

Additionally, the Vera study found that only one out of five eligible individuals in New York City was actually enrolled in treatment. Many of these individuals would benefit significantly by being diverted from incarceration to treatment in the community. The Legislature should expand on prior reforms to make more individuals eligible for diversion, including those convicted of additional offenses and those with a mental health diagnosis.

Expand criminal record sealing to allow people who enter treatment voluntarily to have their convictions conditionally sealed.

The 2009 law authorizing greater diversion of individuals with addictions from prison to treatment included a provision allowing courts to conditionally seal certain convictions if an individual successfully completed a “court mandated” treatment program, Criminal Procedure Law § 160.58. No provision was made, however, for sealing records of individuals who successfully completed treatment without being mandated by a court. As a result, tens of thousands of individuals who sought treatment and achieved recovery on their own are ineligible for the employment and licensing benefits that are available to those who were court-mandated. The Legislature should allow all individuals who successfully recover from addiction to apply to have their convictions conditionally sealed.

Support the Executive Budget's proposal to require annual reporting from law enforcement agencies to DCJS regarding arrests made and tickets issued for low-level charges.

The Executive Budget includes legislation that would require all state law enforcement agencies to annually report to the Division of Criminal Justice Services (DCJS) the number of arrests made for violations and misdemeanors, the number of instances where police conduct may have resulted in the death of a person during an arrest for a violation or a misdemeanor, and demographic information about individuals who receive appearance tickets or summonses. This proposal would increase transparency, allowing the public greater access to important information by providing statistics that would inform discussions about policing.

Support the Executive Budget's request of \$50 million to create a nonprofit infrastructure capital investment program and the additional funding for this program requested by the Human Services Council.

The Executive Budget includes \$50 million to create a nonprofit infrastructure capital investment program to make targeted investments in capital projects that will improve the quality, efficiency, and accessibility of non-profit human services organizations. The ATI/Reentry Coalition strongly supports the Governor's proposal. We also call on the Legislature to provide the increased funding for this initiative proposed by the Human Services Council, as the state's highly effective alternative to incarceration and reentry programs are among the non-profit agencies that could make good use of such a timely, prudent, and appropriate use of a projected non-recurring State surplus.

