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ADDRESSING
KEY CRIMINAL
JUSTICE ISSUES
IN THE 21ST
CENTURY

A report by the Correctional Association of New York
February 2007

The Correctional Association of New York is a non-profit policy analysis and advocacy organization that focuses on criminal justice and prison issues. It is the only private entity in New York State with legislative authority to visit prisons and report its findings to policy makers and the public.

The Correctional Association's Public Policy Project develops proposals for practical and meaningful reform on critical issues such as conditions of confinement inside prisons and policies affecting the use of prisons. The Project's key purpose is to educate the press, policymakers, and the public regarding ways to make the criminal justice system more fair, effective and humane.

This report is an undertaking of the Correctional Association's Public Policy Project. Its principal author is Jackie Ross, who works at the Correctional Association as a consultant. Much of the report's content is based on position papers prepared by Robert Gangi, the Correctional Association's executive director; Jack Beck, director of the Prison Visiting Project; Mishi Faruquee, director of the Juvenile Justice Project; and Tamar Kraft-Stolar, director of the Women in Prison Project. John Brickman, Chair of the Correctional Association Board of Directors, provided valuable editorial input and review.

For more information about the issues covered in this report or about the work and plans of the Correctional Association's projects, please visit our website at www.correctionalassociation.org or call us at (212) 254-5700.

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ADDRESSING KEY CRIMINAL JUSTICE ISSUES IN THE 21ST CENTURY

Reforming the criminal justice system is often a long and challenging process. But after years of strategic effort by the Correctional Association and its allies, and with new leaders in Albany – Governor Eliot Spitzer and Lieutenant Governor David Paterson, who seem prepared to adopt a progressive stance towards law enforcement issues – we have a unique opportunity to make criminal justice practice in New York substantially more fair, effective, and humane. This special report presents some of our top reform proposals for the state’s new administration to consider and the benefits they will provide for people caught up in the criminal justice system and for society as a whole.

In New York State the juvenile justice system addresses offenses and charges involving youth 15 years and younger and the adult criminal justice system responds to the offenses and charges involving people aged 16 and older. For the purpose of concision and convenience, we have divided our presentation of needed reforms into two sections dealing with major issues corresponding with these two principal law enforcement areas.

ADULT CRIMINAL JUSTICE ISSUES

HIGHER EDUCATION IN PRISONS

In early 1994, President Bill Clinton signed the Violent Crime Control and Law Enforcement Act that banned inmates from receiving tuition assistance from the federally funded Pell Grant Program. The total percentage of the national Pell Grants then spent annually on higher education in prison was a meager one tenth of 1%. Furthermore, in 1995, Governor George Pataki withdrew New York State support for prisoner programs by banning inmate access to New York’s Tuition Assistance Program awards. Research and experience show that inmates who participate in higher education programs have lower recidivism rates than those who do not. In prison, college programs provide incentives for good behavior, bolster

inmate morale, and help officials maintain a manageable and safe prison environment.¹

Academic programs in prisons also present a significant opportunity for inmates to further their education and increase their chances for successfully reintegrating into society after release. About 50% of New York's prison population (roughly 30,000 people) has a GED or high school diploma, but a limited number of opportunities exist to obtain higher education degrees in the state's correctional facilities. Furthermore, most prisons that do offer academic programs have long waiting lists, vacancies in teaching positions, and insufficient materials and books.

As a result of the efforts of private colleges, inmates, correctional administrators and community members, a small number of college programs have been reintroduced into New York State prisons, though slots are limited and not all courses are for credit. Bedford Hills Correctional Facility has one such for-credit program and Sing Sing Correctional Facility has another.²

Correctional Association Recommendation to New York State Policymakers:

- **Reinstate funding for higher education programs in prison.** If New York State is serious about reducing recidivism and decreasing the prison system's enormous consumption of taxpayer dollars, it should restore the funds needed to support college programs in prison. Such a step is virtually guaranteed to create safer and more manageable prisons and more stable individuals and communities.

MENTAL HEALTH IN PRISON

State Office of Mental Health officials report that there are about 8,400 inmates with mental illness in New York's prisons, nearly double the number of patients in the

¹ See *Changing Minds: The Impact of College in a Maximum Security Prison*, New York: The Graduate Center of the City of New York and Bedford Hills Correctional Facility (hereinafter *Changing Minds*). See Wendy Erisman and Jeanne Bayer Contardo, *Learning to Reduce Recidivism: A 50-State Analysis of Postsecondary Correctional Education Policy*, The Institute for Higher Education Policy (November 2005).

² *Id.*

state's mental hospitals. At least 3,500 of the state's inmates are classified as having major mental disorders.³ Because of the limited number of residential treatment programs, most inmates with mental illness are housed with general population inmates in maximum-security prisons, where mental health services are woefully insufficient. Many correctional and mental health administrators report that mental health programs are understaffed and under-resourced, resulting in overburdened clinicians, untreated inmates and a revolving door of admissions to the Central New York Psychiatric Center (CNYPC), the state's sole psychiatric hospital for inmates in need of acute care. CNYPC opened in 1980 with 206 beds; the state has not expanded the facility since then, despite a tripling of the prisoner population.

Inmates suffering from mental illness often have a difficult time following orders and/or controlling their behavior and, as a result, wind up in punitive segregation units (officially known as Special Housing Units or SHUs) in disproportionate numbers. They are held there for 23 to 24 hours per day for weeks, months, and sometimes years, subjected to isolated and harrowing conditions that amount to a form of state inflicted brutality.⁴ Most New York "lockdown" units provide little treatment, few meaningful programs and little or no opportunity for socialization.⁵ Between 1998 and April 2004, 34% of prison suicides occurred in disciplinary lockdown, although inmates in these cells comprise less than 7% of the total prison population⁶. These statistics indicate just how hazardous these units are to the health of inmates suffering from mental illness.

Correctional Association Recommendations to New York State Policymakers:

- **Enact into law the Special Housing Units (SHU) Bill**, sponsored by Assemblymember Jeffrion Aubry, Chair of the Committee on Correction and Senator Michael F. Nozzolio, Chair of the Crime Victims, Crime and Correction Committee. The SHU Bill would ban housing mentally ill people in punitive segregation and allocate additional resources for the prison system to create alternative units that would provide therapy for mentally ill prisoners

³ Central New York Psychiatric Center, NYS Office of Mental Health, CNYPC Patient Demographic and Diagnostic Profile: Year 2007, January 29, 2007.

⁴ The Correctional Association of New York. Mental Health in the House of Corrections. The Correctional Association of New York, 2004.

⁵ Id.

⁶ Id.

unable to function in the general population. It would also provide additional training for correction officers on the symptoms and management of mental illness. During last year's legislative session, both New York's Assembly and Senate passed the SHU Bill, but unfortunately the legislation was vetoed by Governor George Pataki. The legislature should approve the bill again and New York's new governor, Eliot Spitzer, should sign it. Such an action on the part of our state's leaders would represent a major step forward in terms of appropriate and humane treatment of people with mental illness in the New York State prison system.

- **Expand Intermediary Care Programs (ICPs).** Located in eleven prisons throughout the state with a combined capacity of only 579 beds, ICPs provide intensive psychiatric treatment essential for inmates with mental illness. Research conducted on Correctional Association prison visits has shown a reduction in disciplinary infractions for inmates in ICPs, and inmates have reported high satisfaction with conditions of confinement and the therapy they receive there.⁷ With at least 3,500 inmates suffering from serious mental illness, ICP capacity must be significantly increased.
- **Expand the capacity of CNYPC** to 350 beds, enabling this well-regarded facility to provide greater continuity of treatment to the inmates in its care.

MEDICAID ELIGIBILITY

Each year thousands of inmates with serious health problems are released from prison with a two-week supply of medication, a shelter referral if they are homeless, and minimal attention from their assigned parole officer.⁸ Currently, correctional facilities provide no assistance to inmates with Medicaid applications and prisoners are not permitted to file Medicaid applications on their own behalf.⁹ In New York State, it takes a minimum of 45 days to activate Medicaid benefits after approval.

⁷ Id.

⁸ Id.

⁹ The Correctional Association of New York. Coalition for Women Prisoners: Proposals for Reform 2006. The Correctional Association of New York, 2006.

According to the U.S. Department of Health and Human Services, inmates who were receiving Medicaid benefits at the time of their incarceration should receive benefits immediately upon release unless they are determined ineligible.¹⁰

Correctional Association Recommendations to New York State Policymakers:

- **Enact the Medicaid Bill** sponsored by Assemblymember Jeffrion Aubry, Chair of the Committee on Correction, requiring state correctional facilities to ensure that an application for Medicaid is filed for each inmate not less than 90 days before the inmate's release. From a public health perspective, the failure to provide medical coverage for an eligible population with significant health problems makes little sense.
- **Pass the Transitional Medicaid Bill** sponsored by Senator Kemp Hannon, Chair of the Health Committee, and Assemblymember Deborah Glick, Chair of the Committee on Social Services. The legislation would create a new subdivision in the Social Services Law to allow inmates who were receiving Medicaid when they entered the system to remain eligible for Medicaid and to resume receiving Medicaid immediately after they are released. Inmate Medicaid eligibility would be *suspended* for the duration of their incarceration, instead of *terminated*, and would exclude inmates from having to go through the normal Medicaid recertification process.

New York State leaders should enact these Medicaid Bills to provide benefits to all eligible inmates in ways that would promote public health, save dollars spent on uncompensated health care, and bring the state into compliance with federal law.

HEALTHCARE OVERSIGHT IN NEW YORK PRISONS

Inconsistent standards of care, delays and insufficient medical attention are systemic problems in New York State prisons. At most facilities visited by Correctional Association representatives, healthcare was the most highly grieved issue by inmates.

¹⁰ Letter from then-U.S. Secretary of Health and Human Services Tommy G. Thompson in response to letter from Congressman Charles L. Rangel, October 1, 2001 (on file at Women in Prison Project).

Primarily due to inadequate access to medical services and high-risk behavior prior to incarceration, inmates have significantly higher rates of infectious disease than persons in the community. State officials estimate that approximately 4,500 inmates are HIV-infected, the highest HIV-positive prison population in the country.¹¹ There are also more than 9,500 inmates in New York's prisons infected with Hepatitis C, including nearly one-quarter of all female inmates. Many more inmates suffer from chronic diseases such as hypertension, diabetes and asthma.

Healthcare in prisons could be significantly improved if New York State's Department of Health (DOH) monitored the quality of prison healthcare, as it does for other providers of healthcare in the state, and if the Department of Correctional Services (DOCS) implemented a comprehensive quality improvement program in all its prisons.

Correctional Association Recommendations to New York State Policymakers:

- **Pass a package of healthcare oversight bills** introduced during the 2006 legislative session and sponsored by Assemblymember Richard Gottfried, Chair of the Committee on Health, which would require DOH to monitor prison medical care. The Governor, without additional statutory authority, could also accomplish this goal by directing DOH to oversee prison healthcare pursuant to its authority under Public Health Law, Article 28. Under any oversight system, the public would be informed about when DOH reviews would occur and be afforded the opportunity to provide the monitors with information about the facilities being evaluated. If DOH determines in its public report that the care at a facility does not meet generally accepted medical standards, DOCS authorities must prepare and implement a corrective plan, which would be monitored by DOH.
- **Require DOCS to enhance its quality improvement program** by ensuring that all prisons have a fully operational quality improvement committee that performs chart reviews at least four times each year and assesses healthcare systems. In addition, the Department should increase the activities of its Division of Health Services (DHS) Quality Improvement Committee, which

¹¹ Maruschak, L, Bureau of Justice Statistic Bulletin: HIV in Prisons, 2004. (November 2006)

oversees the reviews of prison healthcare by DOCS Central Office medical personnel, and require prison medical administrators to develop plans to address deficiencies.

SURVIVORS OF DOMESTIC VIOLENCE

New York State prisons are filled with women with domestic violence histories. A study conducted in 1999 found that 82% of women incarcerated at New York's Bedford Hills Correctional Facility had a childhood history of severe physical and/or sexual abuse and that more than 90% had endured physical or sexual violence in their lifetimes.¹² A New York State Division of Criminal Justice Services' study found that 93% of women convicted of killing current or former husbands, boyfriends or girlfriends had been physically or sexually abused by an intimate.¹³

When survivors of domestic violence defend themselves against their abusers – or commit other crimes as a result of abuse – they are often sent to prison for violent offenses, especially if they are poor or women of color. In prison, they frequently serve long sentences with little chance for early release, even though they pose virtually no threat to public safety. Women generally should not be incarcerated for committing crimes as a result of abuse they have endured, but if they are, they certainly should not be forced to serve long sentences.

Correctional Association Recommendation to New York State Policymakers:

- **Pass the Merit Time Eligibility Bill** sponsored by Assemblymember Helene Weinstein, Chair of the Committee on the Judiciary, and the corresponding Senate Bill sponsored by Senator Dale Volker, Chair of the Codes Committee. This bill amends New York State's Correction Law to permit DOCS to grant merit time eligibility and to increase time allowances to

¹² Browne, Miller and Maguin, "Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women," *International Journal of Law & Psychiatry* 22(3-4) (1999). Authors also state that lifetime prevalence rates of the types of violence studies may be underreported for a number of reasons.

¹³ New York State Division of Criminal Justice Services. Homicide by Women. Albany: State of New York, 1996.

inmates who have defended themselves against their abusers or who have committed crimes as a result of the abuse they have endured.

THE ROCKEFELLER DRUG LAWS

Enacted in 1973 under Governor Nelson Rockefeller, New York's drug laws are still among the most severe mandatory sentencing statutes in the country. Restricting judicial discretion at sentencing, the Rockefeller Drug Laws require harsh prison terms for the possession or sale of relatively small amounts of drugs, regardless of personal circumstance or the role the person played in the drug transaction. There are about 14,000 drug offenders incarcerated in New York State prisons, the vast majority of whom have no history of violent behavior. Over 91% of drug offenders in New York's prisons are African-American and Latino, yet research shows that the majority of drug users and sellers are white.¹⁴ Thousands of people from New York's inner cities have been transferred to prisons located in rural areas, isolating inmates from their families and neighborhoods.

The time is long past due for the state's leaders to remove the stain of these wasteful, ineffective, unjust, and racially biased statutes from New York's penal code. The recent and modest changes in New York's drug laws have reduced the length of some mandatory minimum prison sentences and increased the amount of narcotics that one must possess in order to be charged under the laws. These modifications are a step in the right direction, but a step so small that they can hardly be called "reform."

Correctional Association Recommendation to New York State Policymakers:

- **Enact the Drug Law Repeal Act** sponsored by Assemblymember Jeffrion Aubry, Chair of the Committee on Correction. This legislation would restore sentencing discretion to judges in all drug cases; make sentencing reform retroactive for all inmates convicted of drug offenses; significantly reduce sentence lengths for drug offenses; and, increase funding for alternatives to incarceration, including drug treatment and job training. Such an approach,

¹⁴ The Correctional Association of New York. "Drop the Rock: Repeal the Rockefeller Drug Laws Fact Sheet: February 2006." The Correctional Association of New York, 2006.

combining the restoration of judicial discretion with a significant expansion in the use of alternative programs, would save money, reduce recidivism and drug related crime, and help rebuild families and neighborhoods.

JUVENILE JUSTICE ISSUES

FUNDING FOR ALTERNATIVES TO DETENTION FOR YOUTH

Most young people awaiting trial in family court have been charged with low-level, non-violent offenses and pose no threat to public safety. New York State's practice of incarcerating many of them is costly and ineffective:

- Every year, New York State spends nearly \$150 million to confine youth in juvenile institutions.¹⁵
- On average, a child is locked up in a facility run by the Office of Children and Family Services (OCFS), the state agency responsible for incarceration or placement of juveniles, for 10 and half months at a total cost of \$125,000.¹⁶
- 81% of boys and 45% of girls released from OCFS custody are rearrested within 36 months.¹⁷

In contrast to OCFS confinement, alternatives to incarceration are much more effective in treating children's needs and preventing future crime. For example, the Urban Youth Alliance's BronxConnect program, a New York City community-based alternative to incarceration for court-involved youth in Bronx County, has a recidivism rate of 17%, versus the much higher recidivism rate for youth released from OCFS facilities. In New York City alone, the Mayor's Office of Management and Budget has projected \$43 million in savings over the next four years as a result of sentencing more youth to alternatives to incarceration in lieu of placement in OCFS-run facilities.¹⁸

¹⁵ New York State Division of the Budget. *Executive Budget*. Albany: State of New York, 2004.

¹⁶ Vera Institute of Justice. "Overview of Esperanza Program." www.vera.org

¹⁷ New York State Division of Criminal Justice Services. *Factors Contributing to Recidivism Among Youth Placed with the New York City Division for Youth*. Albany: State of New York, 1999.

¹⁸ New York City Independent Budget Office. *Alternative to Jail Programs for Juveniles Reduce City Costs*. New York City: State of New York, July 11th, 2006.

Correctional Association Recommendation to New York State Policymakers:

- **Enact Re-Direct New York**, a state-wide comprehensive, two-year plan developed by the Correctional Association's Juvenile Justice Project that would reduce the use of detention in New York State by 25% by the end of the second year. Currently, the state reimburses counties for 50% of the cost of detention – regardless of how many youth are confined. Re-Direct New York would reorient the juvenile justice system away from incarceration towards more cost-effective alternative-to-detention (ATD) programs by creating fiscal incentives for counties that develop ATD programs. Under this plan, New York State would reimburse counties at a higher rate for creating new ATD programs. Unlike jail, alternative programs help children obtain the tools and resources they need to stay out of trouble and become engaged in positive activities.

EXTERNAL OVERSIGHT FOR JUVENILE FACILITIES

No outside agency, public or private, is responsible for monitoring conditions in New York's juvenile jails. As a result, young people held in OCFS facilities are especially vulnerable to beatings and other forms of physical and verbal abuse and harassment. On November 18, 2006, a 15-year-old boy died after being restrained by two staff members at the Tryon Residential Center, a youth prison operated by OCFS. This fatality points to a systemic failure on the part of state policymakers in New York State. Over the past 15 years, OCFS has virtually dismantled its ombudsman's office, which is responsible for youth prison inspections and the protection of the legal rights of children in OCFS custody. Because OCFS facilities are closed institutions, regular independent inspections are needed to ensure young people are not mistreated or abused while in custody.

Correctional Association Recommendation to New York State Policymakers:

- **Enact the Office of the Child Advocate Act** sponsored by Assemblymember Barbara Clark. The act would create an independent state office, similar to the

agencies established in Connecticut and New Jersey, that has broad inspection and subpoena powers to oversee all juvenile justice and foster care facilities.

DISCRIMINATION AGAINST LESBIAN, GAY, BI-SEXUAL, AND TRANSGENDER YOUTH IN JUVENILE FACILITIES

It is estimated that up to 10 percent of the children who are currently incarcerated in OCFS facilities identify as lesbian, gay, bisexual, or transgender (LGBT).¹⁹ Despite the growing presence of LGBT children within OCFS facilities, there is no anti-discrimination policy regarding sexual orientation and gender identity, and no comprehensive training for staff on how to deal with homophobia and the specific issues that LGBT children face.

Correctional Association Recommendation to New York State Policymakers:

- **Pass the Safe And Fair Equal Treatment for Youth (SAFETY) Act.** The SAFETY Act would authorize OCFS to establish policies and procedures affording all children in its facilities an environment free of harassment and discrimination based on actual or perceived race, national origin, ethnic group, religion, disability, sexual orientation, gender identity, or sex. The act would also require OCFS to provide training and support for staff to raise awareness and sensitivity about these issues, as well as help them to develop appropriate responses to incidents involving harassment of LGBT children in state facilities.

CRIMINALIZATION OF SEXUALLY EXPLOITED YOUTH

New York State treats sexually exploited youth as criminals. Even though young people under the age of 17 are not old enough to legally consent to sex, they can be arrested for prostitution and sent to juvenile jails, where they receive virtually no

¹⁹ Randi Feinstein, et al., "Justice for All?: A Report on Lesbian, Gay, Bisexual and Transgendered Youth in the NY Juvenile Justice System," (New York: Urban Justice Center 2001); available online at www.urbanjustice.org.

counseling, psychological care, or help in finding a safe place to live. Sadly, when young people are released from detention centers, they usually return to their pimps. Experts agree that prosecuting sexually exploited youth re-traumatizes them and makes the process of leaving the streets more difficult.

Correctional Association Recommendation to New York State Policymakers:

- **Enact the Safe Harbor For Sexually Exploited Youth Act**, sponsored by Assemblymember William Scarborough, Chair of the Committee on Children and Families. This legislation would prohibit the prosecution of sexually exploited youth and create a range of community-based programs – such as community outreach, preventive services, short-term safe houses, and long-term housing. It is time for New York State to stop criminalizing sexually exploited youth and to create programs that will put them on the road to healing their lives

CONCLUSION

The Correctional Association proposals aim to create more accountable and transparent criminal justice and prison systems that treat the youth and adults in their custody more fairly and humanely and that operate more effectively to cut unnecessary costs and to reduce crime. Given the reform-oriented positions they urged during the recent electoral campaign and their histories as thoughtful and progressive public officials, we are hopeful that our new Governor and Lieutenant Governor will respond positively to our recommendations. All concerned groups – individuals caught up in these systems, professionals working in the field, and citizens in the general community – would benefit from the larger purposes our proposals seek to achieve: a more efficient and sensible law enforcement apparatus and a more safe and just society.

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