



NYS Assembly Correction Committee Newsletter



YEAR IN REVIEW, JANUARY 2014

Sheldon Silver, Speaker • Daniel O'Donnell, Chair

DISTRICT OFFICE: 245 W. 104th Street • New York, New York 10025 • 212-866-3970
ALBANY OFFICE: Room 526 Legislative Office Building • Albany, New York 12248 • 518-455-5603
Email: odonnell@assembly.state.ny.us

LETTER FROM CHAIR

Dear New York Corrections Stakeholder,

Last year I was honored to take over the role of Correction Committee Chair from my colleague, Assembly Member Jeffrion Aubry. Now that I have completed a year in the position, I'd like to take this opportunity to introduce myself, tell you what the Committee worked on in 2013, and share what I look forward to fighting for this legislative session.

Before I began my career as an Assembly Member, I spent seven years as a public defender in Brooklyn, working for the Legal Aid Society. I then opened my own public interest law firm in Manhattan, focusing on tenants' issues and civil rights litigation, among other priorities. I have long considered criminal justice reform an essential piece of New York's work to remain a progressive leader for the country, and I am proud to take on this challenge as the new Chair.

This year I have spent much of my time familiarizing myself with the Department of Corrections and Community Supervision (DOCCS) overall, as well as visiting a number of individual prisons. In my effort to maintain a dialogue with relevant stakeholders at every level of the state prison system, I will pursue meetings and further visits in 2014.

In the past year, the Committee focused on advancing progressive legislation to protect juvenile offenders, reduce recidivism, and promote common-sense reforms to shrink the prison population and improve the administration of the prisons. Read more about this legislation in the coming pages, and find additional information about my visits to twelve state prisons as well as one city correctional facility.

This past December the Correction Committee held a hearing on the work of the Board of Parole. The Committee asked experts and stakeholders from many fields to provide me and my colleagues with information on the current state of the parole process, and what could be done to improve it. Turn to page four to find details about the questions posed, the testimony heard, and plans for next year.

As we begin 2014, I know we have much work to do to improve the correctional system in New York State, but we also have achievements to praise. New York State's prison population has been declining over the last several years, unlike the rest of the country's, and I look forward to introducing and promoting legislation that will place New York even more firmly in the lead of states enacting criminal justice reform.

Very truly yours,



Assembly Member O'Donnell Presides Over an Assembly Correction Committee Hearing on Parole Reform, Joined by Colleagues Felix Ortiz (Left) and Luis Sepulveda (Center), on December 4, 2013.

Correction Committee Efforts in 2013 and 2014

In 2013 the Correction Committee advanced legislation addressing a number of top priorities, including expanding access to appropriate medical care and educational opportunities for prisoners, protecting vulnerable populations, and encouraging reintegration of formerly incarcerated individuals, as well as bills to promote the efficient and effective administration of DOCCS. In the coming year, Assembly Member O'Donnell will advance progressive legislation to build on his previous efforts and improve notable deficiencies in our criminal justice system. His particular emphasis in 2014 will be on improving parole practices, banning solitary confinement for prisoners under the age of 21, increasing access to higher education for prisoners, and removing barriers to re-entry into society.

In the following pages, you will find information, organized by topic, about individual pieces of legislation that were passed and/or signed into law in 2013, as well as related sections on how Assembly Member O'Donnell and the Correction Committee plan to advance these efforts further.

Parole and Preventing Recidivism

2013 BILLS

Authorizes Judicial Discretion in Establishing Terms of Probation Sentences and Pre-Sentence Reports (A.4582, Chapter 556 of the Laws of 2013)

Authorizes judicial discretion in certain cases in which judges order sentences of probationary supervision to determine the length of such supervision in consideration of the individual's prior criminal history, degree of culpability, and risk level they pose to public safety. Specifically, this legislation provides the court with the discretion to impose a probation term of three, four, or five years for certain felonies; a probation term of two or three years for a class A misdemeanor other than a sexual assault; and a probation term of two or three years for an unclassified misdemeanor, for which the authorized sentence of imprisonment is greater than three months. Additionally this

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bill no longer requires a pre-sentence report in New York City for persons receiving an agreed-upon sentence of less than one year.

Promotes the Employment of Former Inmates by Requiring a Substantial Connection between the Specific Job Duties and the Conviction to Deny Employment (A.4887, Passed the Assembly)

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

Prohibits Employment Discrimination (A.4589A, Passed Assembly)

Prohibits employers, creditors, and licensing agencies from acting adversely against a person whose criminal charges have been adjourned in contemplation of dismissal.

Alters Legislative Language to Ensure that All Individuals Who Satisfy Necessary Requirements Receive Certificates of Relief (A.2204, Passed Assembly)

Requires the court, as well as DOCCS, to issue a Certificate of Relief when it is satisfied that the necessary requirements are met in order to help promote successful reentry and reintegration.

2014 PAROLE REFORM EFFORTS

Since the adoption of more stringent prosecution policies in the 1970s, American prison populations have exploded. The U.S. now has the most citizens behind bars of any developed nation. But in New York, that population has shrunk by 26% since 1999. This declining population shows that, given the right supports and policies, most parolees can and do successfully re-integrate back into the community. In spite of this general decline in crime and recidivism, data received from the Board of Parole shows that in 2012-2013 SFY, initial Board interview releases dropped to a range of 14.1-16.4%. This is down from 19% in 2011-2012 SFY and 18% in the 2010-2011 SFY. Persons subsequently appearing before the Parole Board after an initial denial were similarly granted release at a lower rate in the 2012-2013 SFY than in the past. What is more, studies show that the majority of parolees return for technical violations of parole, not new crimes, raising questions about the efficacy of the current system. Assembly Member O’Donnell is committed to reducing these numbers by improving New York’s parole policies.

As described elsewhere in this newsletter, O’Donnell held a December hearing to consult with a wide variety of experts and stakeholders to evaluate current practices and procedures and devise improvements to the parole system. In 2014, he plans to continue that conversation. The Correction Committee will once again consider legislation to promote safe parole practices and permit increased parole release of inmates posing little risk to public safety.

Access to Education and Medical Care

2013 BILLS

Ensures Medical Care for Juveniles Incarcerated in Jails (A.5008B, Chapter 437 of the Laws of 2013)

Provides that where no parent or guardian is available, a court’s commitment order shall constitute consent to routine medical, dental and mental health care.

Provides Inmates an Opportunity to Obtain a GED (A.4106, Passed Assembly)

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

Authorizes Psychiatric Centers to Care for Mentally Ill Inmates Longer (A.4583, Passed Assembly)

Authorizes the Central New York Psychiatric Center to continue to provide appropriate treatment to inmates transferred to the Center due to a mental health emergency after the emergency for which they were admitted has been resolved. Current law requires inmates to be immediately returned to prison where they often decompensate.

Prevents HIV by Providing Inmates with Counseling and Other Information Upon Their Release (A.3496, Passed Assembly)

Requires the Department of Corrections and Community Supervision to provide information to inmates upon their release about the availability of free HIV testing, counseling, and treatment in the community to which they are being released.

Higher Education in Prison in 2014

Assembly Member O’Donnell is determined to increase the availability of higher education in prison. The majority of New York’s prison population has little education beyond high school. Yet, studies have consistently found that the higher the level of education attained, the more likely a former inmate will be to obtain gainful and stable employment, and the less likely he or she will be to engage in future criminal activity.

O’Donnell believes educational resources have not been made sufficiently available to inmates. In 1994, federal tuition assistance in the form of Pell Grants for individuals incarcerated in federal and state correctional facilities was terminated with the enactment of the Violent Crime Control and Law Enforcement Act. Then in 1995, New York prohibited inmates from accessing state funds normally available through the Tuition Assistance Program (TAP) for post-secondary education. Most college programs operating in prisons throughout the state shut down after TAP was discontinued. In the last few years, several new privately-funded college programs have been opened in state correctional facilities, but they still reach only a fraction of the inmate population compared to programs prior to 1995.

Many of these new programs have produced very promising results. The New York State Commission on Sentencing Reform reported that post-secondary correctional education programs have been shown to reduce recidivism by up to 40%. One program in Wyoming County, the Consortium of the Niagara Frontier, calculates that it has saved the state over \$13,000,000 in the last ten years because of the reduced recidivism of its students. Another program, Hudson Links, has never had a graduate recidivate. The Bard Prison Initiative reports that while nearly 40% of inmates statewide return to prison within three years for a new crime or a parole technical violation, only four percent of students who have spent any time in the Bard College program return to prison within three years.

The need for these programs is clear, but identifying sources (both private and public) to expand post-secondary education in prison is challenging. The Correction Committee will continue to seek public money for the support of these vital programs. For the last few years the Correction Committee advanced a bill (A.4109 of 2013, Aubry) to establish a commission on post-secondary correctional education to examine, evaluate, and make recommendations concerning the availability, effectiveness, and need for expansion of post-secondary education in the New York State prison system. In 2014, the Committee will also consider new legislation to prohibit discrimination against people with criminal histories in admission to New York’s colleges and universities.

Assembly Member O’Donnell is determined to increase the availability of higher education in prison.

Protecting Vulnerable Populations

2013 BILLS

Protects Victims of Domestic Violence (A.7690, Chapter 368 of the Laws of 2013)

Protects victims of domestic violence by giving certain employees of state prisons, as well as parole officers, access to the database of open warrants and orders of protection. This information will enable correctional staff to ensure the safety of individuals who have outstanding orders of protection against inmates and parolees. They will use the database to determine whom the inmate may telephone or e-mail, who can visit the inmate, and which inmates may participate in the Family Reunion Program and tele-visiting as well as other programs that promote contact with family members on the outside.

Extends the Interstate Compact for Juveniles (A.4105, Chapter 335 of the Laws of 2013)

Extends New York's participation in the Interstate Compact for Juveniles (ICJ), which governs the interstate management, monitoring, and supervision of juvenile delinquents, and provides for the return of non-adjudicated juveniles who have run away from home to another state.

SOLITARY CONFINEMENT FOR ADOLESCENTS

New York is one of only two states that prosecute 16- and 17-year-olds as adults in criminal court. As a result, we have over 2,300 young offenders under the age of 21 in our state prison system. Research has shown that people of that age do not have fully mature brains and use different neurological pathways for decision-making than do older people. Further, teenagers are even more vulnerable to damage from inactivity and isolation than adults. In spite of this, young offenders in our correctional facilities are subject to the same kinds of prolonged disciplinary sanctions as adults in the system.

At any given moment there are approximately 4,500 New York state prisoners, or 8% of the prison population, being housed in segregated disciplinary units, known as Special Housing Units (SHU). Inmates in those cells are locked into their cells 23 hours a day, with only one hour of recreation time. Out-of-cell recreation is usually spent alone in a bare outdoor cage. Inmates in SHU are denied commissary privileges, phone calls, most personal property, and most programming, including educational programming. They have restricted visitation privileges—or may lose visitation privileges entirely—and are unable to attend religious services. There

is no limit to the amount of SHU time an inmate may receive as a sanction for misbehavior in New York prisons; the average length of stay in SHU in New York is approximately five months, however some inmates may be in SHU for several years. According to an investigation by the New York Civil Liberties Union, only about 16% of the inmates in SHU are placed there for incidents involving assaults and weapons, so the majority of inmates in SHU are there for non-violent misbehavior and drug use.

Unfortunately, while the overuse of solitary confinement is being reexamined and questioned in much of the country, with resulting policy changes in states as diverse as Maine, North Carolina,

Wisconsin, Mississippi, and Colorado, New York seems to be increasing its reliance on such confinement. An October 2013 report by the New York City Board of Correction stated that 27% of the 16-, 17- and 18-year-olds at Riker's Island were in punitive segregation and that 71% of all inmates in punitive segregation were mentally ill.

In September 2012, DOCCS began an internal review of its SHU policies, and plans to produce a list of recommendations as to changes needed in placements and lengths of stay in SHU. In December 2012, the New York Civil Liberties Union filed suit in

federal court to challenge the constitutionality of the state's SHU practices and policies. With the Committee on Correction, Assembly Member O'Donnell will continue to explore the use of solitary confinement and consider recommendations on limiting SHU time in New York State jails and prisons for all inmates. However, the evidence for keeping adolescents entirely out of solitary confinement is particularly compelling. In 2014, the Committee will consider legislation banning solitary confinement for prisoners under the age of 21 in both jails and prisons.

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Administrative Bills Passed in 2013

Relates to Substitute Jail Designations (A.7695, Chapter 133 of the Laws of 2013)

Amends the Correction Law to authorize attorneys employed by the State Commission of Correction, not just the three Commissioners themselves, to issue substitute jail designations when a jail becomes unfit or unsafe for the confinement of inmates.

Authorizes Additional Personnel to Visit Correctional Facilities (A.7385, Chapter 234 of the Laws of 2013)

Authorizes a member of the legislature to invite any employee of the Department Of Corrections and Community Supervision to accompany him or her in a visit to a correctional facility, thereby permitting a broader range of correctional employees, including those not in prison leadership positions and those who may have concerns about certain facilities, to participate in legislative tours of prisons.

Specifies the Powers of the Chairman of the Board of Parole (A.7970, Chapter 135 of the Laws of 2013)

Clarifies that the Chairman of the Board of Parole is responsible for the day-to-day administrative functions and operations of the Board of Parole.

Increases the Internet Availability of Visitation Rules for Correctional Facilities (A.4606, Passed Assembly)

Requires DOCCS to make available on their website the individual rules and restrictions relating to visitation at each of its fifty-eight correctional facilities.

Expungement of Criminal Records and Collateral Consequences of Criminal Convictions

In 2014 Assembly Member O'Donnell is dedicated to reducing the policy barriers and stigma of incarceration that cripple many offenders upon their release. Despite having paid their debts to society, and in many cases having lived law-abiding lives for many years after completion of their sentences, past offenders can be prevented by their criminal records from accessing housing, continuing education, and training, and from finding jobs. New York State has long been a leader in providing fair employment opportunities for qualified individuals with criminal histories for the sensible reason that people with criminal records who are able to earn a living are much more likely to lead productive lives and much less likely to return to crime. Recognizing the wisdom of assisting qualified individuals who do not pose a threat to public safety in obtaining employment and housing, New York enacted a conditional sealing provision for certain drug offenders as part of the 2009 Rockefeller Reform legislation. Expansion of this legislation is necessary to allow more people who have completed appropriate treatment and/or remained crime-free an opportunity to rebuild their lives without the stigma of a criminal record. Further, in 2014 O'Donnell and the Correction Committee will consider bills to help law-abiding, formerly incarcerated people stabilize their lives by eliminating or reducing barriers to education, employment, housing, and public benefits.

O'Donnell Hosts Correction Committee Hearing on Parole Reform

On December 4th, 2013, Assembly Member O'Donnell chaired a Correction Committee hearing on parole reform in New York State. The purpose of the hearing was to examine the current practices of the Board of Parole and DOCCS during the parole process and to determine what changes, if any, are necessary to ensure that inmates who do not pose a public safety risk are released from prison in a timely and rational fashion. Specifically, the committee requested testimony on 1) the use of risk and needs assessments instruments in the parole decision process, 2) the role of offender rehabilitation counselors in supplying information to the Board, 3) the effect of the use of videoconferencing on the parole interview process, 4) how the commissioners balance the various statutory requirements to arrive at individual decisions and 5) what changes, if any, might improve the Board's ability to identify inmates who are suitable for parole release.

O'Donnell heard testimony from the Chairwoman of the Board of Parole, the Acting Commissioner of DOCCS, former parole commissioners, union leaders, prisoner family members, academics, advocates, and people who have been released to parole in the past. He was joined by Assembly Members Aubry, Giglio, Ortiz and Sepulveda. O'Donnell continues to believe that we must create smarter policies regarding the parole process, so that each inmate is assured of impartial treatment by the Board of Parole and of the opportunity for release once he or she has served their time, successfully completed rehabilitative programming, and no longer poses a threat to the public. Assembly Member O'Donnell is committed to achieving this goal, and looks forward to working with his colleagues to pass common-sense legislation on this issue in the upcoming Assembly Session.



O'Donnell confers with his colleague, Assembly Member Luis Sepulveda, during the Correction Committee Hearing on Parole on December 4, 2013.



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As the New Chair, O'Donnell Visited Thirteen Correctional Facilities in New York State

In 2013, Assembly Member O'Donnell visited twelve of New York State's prisons, including Bedford, Coxsackie, Eastern, Fishkill, Great Meadow, Hudson, Shawangunk, Sing Sing, Sullivan, Taconic, Washington, and Woodbourne, as well as one jail, Riker's Island in New York City. At the state correctional facilities, O'Donnell met with the superintendents, staff, and members of the Inmate Liaison Committee and/or other inmate associations, nurses, psychiatrists, and many other stakeholders. During 2014, he and his fellow committee members plan to tour more facilities throughout the State, as well as local correctional facilities, and attend several parole board interviews.

O'Donnell believes that visiting all of the state prisons periodically, as well as keeping up-to-date on the conditions and issues faced by current inmates, are integral pieces of his responsibility as Chair of the Correction Committee. He will continue to draw inspiration for his legislation and work on behalf of the committee from these visits and interviews with inmates. During his 2013 visits, he paid especially close attention to state facilities' available educational, vocational and medical care programs, as well as basic safety provisions and inmates' specific concerns. He expects to pursue various pieces of legislation based on his visits in the upcoming Assembly session.