

**NOTES FOR PRESENTATION TO THE COMMISSION ON THE FUTURE OF
PROBATION**

OCTOBER 11, 2006

Jerome E. McElroy

Good Morning Mr. Chairman and members of the Commission. I want to begin by thanking Judge Kaye for creating this Commission, and for your invitation to offer my views on the current status of probation and the need to enhance its efforts in the future.

I have long believed that probation is the most neglected and overlooked component of the criminal justice system, so I welcome a serious effort to study its functions, identify its needs, and plan for effectively addressing those needs in the future.

We need to stop the cynical practice of sentencing ever-increasing numbers of offenders to probation, expecting the service to prevent their recidivism and assist their integration to law-abiding society, while never carefully assessing effective strategies to pursue those objectives, and never providing remotely adequate resources to implement those strategies.

I suggest that this is a propitious moment for such an assessment and planning process. I expect that probation will continue to be the most frequently used sentence for convicted offenders. It is obvious to everyone that probation is a far less costly option than incarceration. And I believe that we now know a great deal about the principles and programs that can reduce recidivism and place probationers in needed service programs.

The last dozen years or so have produced a great deal of research on approaches that do work to reduce recidivism. Researchers in Canada, California, Cincinnati, and Wisconsin, among other places, have produced a series of recommendations for agencies to adopt Evidence-Based Practices (known as EBP). The principles that have emerged from this work include:

- the need to create or adopt validated risk and need assessment schemes that effectively distinguish among defendants presenting low, moderate, and high risks of failure if placed on probation;**
- the need to develop guidelines that tie the levels of supervision and services to the risk level identified;**
- the need to avoid imposing high levels of supervision on low risk defendants. Indeed, the research clearly indicates that excessive**

supervisory requirements increase, rather than decrease, failure rates for such offenders;

- the need to structure 50 to 70% of high risk offenders' time for the first several months of supervision;
- the need to concentrate on addressing the most criminogenic needs of offenders such as, drug or alcohol dependence, associations with known offenders, securing and sustaining employment and stable residence, using cognitive behavioral techniques to change criminogenic values and perspectives;
- the need to create a range of responses to probation violations rather than having to choose between ignoring the misbehavior and violating the offender;
- the need to create a range of rewards for positive behaviors that move the offender toward realizing the objectives of his supervision;
- the need for probation services to develop a knowledge of neighborhood cultures and institutions, and networks of local persons and organizations that can facilitate the integration of the offender into the community;
- the need to create a system for monitoring compliance with the conditions of probation, the services provided either by the probation department or outside referral agencies, and case outcomes in terms of recidivism or probation violations; and
- the need to develop a capacity for using these data to identify and analyze successful and unsuccessful strategies, and for feeding this information back to operational staff.

These are promising approaches to enlivening a service thought by some to be ineffective at present. I believe that some of the agencies within this state are actively attempting to restructure their organizations and retrain their officers around these principles. But even in those agencies, much needs to be done and much technical assistance is required to bring about such dramatic restructuring. The State Division of Probation and Correctional Alternatives (DPCA) has been encouraging this movement by developing guidelines, standards, grants to assist in planning and re-design efforts, technical assistance, and conferences to facilitate inter-departmental sharing of experience as they struggle to turn themselves around. And still more assistance is needed for those agencies which are not yet familiar with the EDP movement, or too intimidated to know how to begin implementing

those principles. DPCA can be an important force in leading this movement, but the recent pattern of cutting funding to that agency and reducing resources provided to it must be reversed.

It must be obvious that affecting significant improvement in the probation service will require a significant increase in funds for local agencies. It is unlikely that the counties will be unable to meet that need by themselves, and yet the level of state re-imbusement to local probation agencies has been falling for several years. I can recall a time when the State was seriously considering assuming all costs for probation services. That may not be feasible at this time, but movement toward, rather than away from, that goal is surely called for.

I am the Director of the NYC Criminal Justice Agency, the pretrial services agency for the City's Criminal Courts. We are a non-profit agency as are the agencies servicing Monroe County, and Westchester County. But to the extent that pretrial services are available in other counties in the State, they are provided by probation department. These programs facilitate the release of accused, but unconvicted, persons, reduce reliance on money bail, and reduce crowding pressures on local correctional facilities. Working with DPCA, we have recently completed a revision of the State's Standards for Pretrial Services, but training and technical assistance is needed in nearly every county to monitor and encourage the implementation of those standards. And unlike many other states, New York lacks a statutory framework requiring the establishment of pretrial services and defining the confidential nature of pretrial investigations.

In this regard, I would also note that when pretrial services are provided by probation departments, the costs incurred are included in a county's calculation of costs subject to State re-imbusement. However, when the service is provided by a non-profit agency such as my own, those costs are not eligible for re-imbusement. Thus, NYC which expends over 11.5 million for our services must shoulder that entire expense by itself. I suggest that if the State deems this to be a needed and appropriate service, it should be eligible for re-imbusement regardless of how the municipality decides to implement it.

In the interest of efficiency, I suggest that the requirement for conducting pre-sentence reports in all felony, and some misdemeanor, cases be reconsidered. In cases in which the sentence is virtually mandated, and in cases in which the plea and accompanying sentence has been negotiated, the court should have the discretion to order a PSI whenever it suspects that the agreed upon plea may be inappropriate. Such a change would free up some number of investigative officers to participate in implementing the evidence-based supervisory practices called for above.

Finally, I would remind the Commission that there are literally hundreds of non-profit service agencies that are capable of providing a wide range of community-based services for offenders in the form of diversion programs, or alternative sentencing options either to the courts directly, or in some form of collaboration with probation departments. Twenty years ago, relations between probation departments and these community based service agencies were genuinely competitive and hostile. As a result of efforts initiated by Probation Officer Associations, DPCA, and representatives of the community-based service agencies, both sides came to recognize the many ways in which those agencies can complement and extend the probation service, and the probation departments can facilitate the system's access to those agencies. It is crucially important now to encourage this spirit of collaboration, and support programs that embody it.

Mr. Chairman, members of the Commission, I thank you once again for giving me the opportunity to offer my views on your very important mission, and I am happy to offer the resources of the Criminal Justice Agency to assist you in any way you may think appropriate.

TASK FORCE ON THE FUTURE OF PROBATION

Good Morning, My name is Juan Sierra and I have been a probation officer in New York State for over 15 years. I began as an officer in NYC and am currently employed as an officer in Westchester County. I am a dues paying member of NYSPOA, an executive board member of WCPOA and a shop steward of CSEA local 9200.

My testimony will focus on the four outlined topics for consideration and one other very important topic, which I will discuss at the end of my testimony.

A. What is the fundamental purpose of probation in the criminal justice system?

For this I look no further than the mission statement of WCDOP which states:

"The Westchester County Department of Probation is a law enforcement agency committed to the protection, safety and quality of life in the communities we serve. As highly skilled and dedicated professionals, we employ a balanced approach through the use of prevention, intervention, and control strategies utilizing a continuum of comprehensive services. We provide information, access, and recommendations to the courts and other authorities, enforce court ordered sanctions, respond to the needs of victims, assist families in crisis, and help offenders to change."

The mission statement for NYC Probation::

"The business of the New York City Department of Probation is protecting the community by intervening in the lives of offenders, holding them accountable and serving as a catalyst for positive change. We act in collaboration with the community and other justice partners. We provide information and services to the courts, give victims a voice in the justice system and help strengthen families"

Ulster County mission statement:

The Probation Department works to insure public safety for the community and all crime victims by utilizing an aggressive 24-hour community control supervision of the offender with the latest technology and community partnerships.

Through a victim-centered approach, and complete offender accountability, the agency provides comprehensive crime victim's services to all members of the community, including a 24-hour sexual assault/domestic violence hotline. This provides all crime victims a voice in the Criminal Justice System.

Probation prevents nonessential incarceration of low risk adult offenders and placement options for juvenile delinquent/persons in need of supervision (JD/PINS) by providing all Ulster County courts with effective community justice sanctions and treatment alternatives. It also assists in competency development for all offenders to become productive members of the community.

Monroe County Mission Statement:

The Monroe County Office of Probation—Community Corrections is a division of the Monroe County Department of Public Safety. Through the dedicated efforts of all our staff and volunteers, we provide Intake, Assessment, Investigation and Supervision services, including counseling and referral, for the community, clients, victims, the judicial system and public and private agencies. We are committed to protecting the public, assisting in judicial decision-making and promoting law-abiding behavior in a cost effective manner.

Our mission statement is clear, to the point and most important in practice. To me protection of the community involves local governments having the political will to provide their probation officers with the necessary tools, as they do to their police officers and correction officers, in order to protect the community and themselves, while holding offenders accountable.

In Westchester County and in other counties this is happening on a daily basis. This is not to say that we as Probation officers are police officers or correction officers, but we are LAW ENFORCEMENT OFFICERS. My question to the Judiciary is "Will you view us as law-enforcement officers as well?" Less than 2 miles from here in New Jersey, state judiciary spokeswoman Winnie Comfort, has stated that probation officers "have very specific work to do for their clients, but they are not law enforcement officers." In neighboring Connecticut, Federal Probation, which is under localized judicial control, does not allow officers to carry weapons based on the judicial ideology of the chief judge for Connecticut at the time, even though The United States Judiciary allows officers to be armed nationwide. Is this what we can expect here in New York State?

In the closest example of what may yet come, the Probation's Task Force Subcommittee on the Proper Placement of Probation has stated in a report that prior to 1974 probation was viewed as a social work agency and since that time many departments have armed probation officers for self protection when going into the community in order to garner information for Judges. They also seemed to share the NJ state judiciary belief that Probation Officers are not law-enforcement officers. They insist that there must be a balance between public protection and rehabilitating offenders, and believe that the judiciary can achieve this balancing act.

Local county governments that have the political will have armed their probation officers for the same reasons that police officers have been armed; they are providing the necessary tools, not arming for mere self protection.

I have been an armed officer for over 14 years and have never used my firearm to garner any information for a judge. My gun has been no different than the handcuffs, flashlight, pen, rubber gloves, vest and any other piece of equipment that I have carried as a law-enforcement officer.

As to the judiciary's ability to carry out a balanced plan for probation, I wouldn't know. They haven't released any detailed information or judicial ideology. Once again I'll ask the question "will the judiciary view probation officers as law enforcement officers or are we to be viewed as the social workers of the early 70's?"

B. If the purpose of probation is to reduce the risk of recidivism, which probation practices or policies have been shown to actually reduce recidivism?

While not the only purpose of probation, reducing the risk of recidivism is a major goal of probation. As we hear everyday from our elected officials crime in New York State is on the decline. Since 1994, the violent crime rate per 100,000 population in New York State has decreased by 53.8 percent, property crime has decreased by 48.6 percent and motor vehicle thefts have decreased by 73.8 percent. In 2005, the violent crime rate (murder, rape, robbery and aggravated assault) slightly increased from 2004 by 1.2 percent, compared to an increase of 1.3 percent in the rest of the U.S.

Why has this happened? Sure police departments are cracking down on crime, sure technological advances in surveillance and tracking systems have helped, but I'm here to tell you that a balanced probation department is key to reducing crime.

This is evident in NYC, where the probation department has made tremendous strides in the way they have dealt with offenders. NYC government has taken the necessary steps over the last 15 years to get the officers who were once held hostage in their own offices by their caseloads out into the community as a more proactive fully functioning law enforcement agency, an agency where officers are expected to execute their own warrants, arrest offenders for new offenses thereby increasing offender accountability, all the while utilizing community resources to help offenders change. Commissioner Horn should be applauded for finalizing the change of an agency that once only operated within its fortress to one that has officers in the field tackling the arduous job of being a probation officer. It is without a doubt that the NYC DOP has been a major player in NYC's drastic reduction in crime.

In Westchester County my Commissioner Rocco Pozzi, with the backing of County Executive Spano and the dedication and hard work of my fellow officers has turned our department into a national model. In 1999 Governor Pataki issued a Governor's Proclamation singling out our department as a model probation department in New York State.

Proclamation

WHEREAS, the citizens of the Empire State recognize the challenging work performed by persons who help to ensure the smooth operation of our State's criminal justice system: among the entities that strengthen the legal process in our State, are local probation departments which administer the terms of probation for persons convicted of certain crimes; today, New Yorkers proudly recognize the work of the Westchester County Probation Department, which supervises more than 10,000 probationers and represents an organization that works hard in remain at the forefront of innovative probation and community corrections approaches; and

WHEREAS, the Westchester County Probation Department continuously strives to meet the goals of community correction agencies; by identifying suitable non-violent offenders for probation and correctional alternative programs, appropriately monitoring those under supervision, and implementing graduated sanctions consistent with public safety, these agencies affirm our State's commitment to making our streets and cities more safe and secure; and

WHEREAS, to further enhance its effectiveness, the Westchester County Probation Department expanded and updated its investigation unit; by creating specialized caseloads designed to provide more aggressive monitoring, the Department is more responsive to the needs of the people living in communities throughout Westchester County; and

WHEREAS The Westchester County Probation Department has implemented both adult and juvenile community service programs to promote offender accountability and address victim needs; they include a graffiti removal program for juvenile offenders, automated economic sanctions units, a domestic violence program and an enhanced victim outreach services; recognizing the importance of early identification of at-risk youth and probationers, officials at the Westchester County Probation Department have also undertaken various initiatives within school districts, mental health agencies and other social service and treatment providers; and

WHEREAS, the Westchester County Probation Department is truly a model agency, which has established a successful and efficient system of correctional programs that shows a healthy respect for the legal system and the needs of our communities; it has furthermore, fostered a sound State and local partnership to achieve meaningful systemic changes and maintain public safety; it is fitting to acknowledge the efforts of those individuals who work each day to achieve positive effects for all of society through this important tool of law enforcement and public security;

NOW, THEREFORE, I, George E. Pataki, Governor of the State of New York, do hereby proclaim official recognition to

THE WESTCHESTER COUNTY PROBATION DEPARTMENT

in grateful acknowledgment of its outstanding achievement in community correction.

George E. Pataki

GOVERNOR

February 24, 1999

In April 2005 the department's DWI Enforcement Program received a designation of "Best Practice" from NHTSA and in April 2006 it received one of 15 Public Service Awards from NHTSA at its annual Lifesavers Conference for the work being done by its DWI Unit which utilizes a balanced approach of treatment, education, surveillance and enforcement. Some of the highlights cited by NHTSA was the unit's 4% rate of rearrest (compared to the national rearrested rate of 16%) for another DWI between the years 2000 and 2005. During this period 1,781 offenders were supervised and only 67 were rearrested and convicted of a new DWI offense.

It is the unit philosophy that the probation officer must be the leverage between the offender and treatment. The officer must also be readily capable of taking law-enforcement action when necessary in order to let the offender know that any transgressions will be dealt with immediately and effectively, thereby increasing offender accountability. This balanced approach is utilized with other units in the department. Our sex offender program has officers working around the clock, supervising offenders with the most modern technology available in the form of GPS monitoring, as well as officers playing the role of group facilitators with our on site sex offender treatment program. Our domestic violence program in partnership with the county police regularly conducts unannounced and uninhibited residence checks to offenders to ensure that they are in compliance with orders of protection. This unit also partners with an on site batterers program on a weekly basis.

The success of these units aside from the dedication and hard work can be directly attributed to utilizing this balanced approach on a reduced caseload.

C. What role should victims play in the probation process? Should probation departments take a more active role in integrating victims and victim concerns into that process?

Victims should have an active role in the Probation process to insure that they are not victimized again by a system that has neglected them in the past. Our department has a full time probation officer/victim advocate in our own Victim Services Outreach Program. In addition there are two full time probation officers who specialize in dealing with victims of domestic violence. Granted not all probation departments may be able to dedicate three officers to victims but every effort should be made to reach out to local victim agencies that traditionally have a history of volunteering their services. In Westchester County we have long standing relationships with The Westchester County Office for Women, My Sister's Place (a shelter for victims), The Pace University Women's Justice Center, the Integrated Domestic Violence Court (IDVC), and the Mental Health Association of Westchester as well as other victim advocacy groups like VAS (Victims Assistance Services) who have offices on site.

D. What legislative changes or other proposals could be implemented immediately to improve the delivery of probation services in the State?

The single most important legislative change has to be the workload standards, in particular the reduction of the current caseload. As a practitioner in the field I can attest that there is no other aspect of the probation job that affects community safety as that of the caseload carried by an officer. As a young probation officer in NYC in 1990, my caseload was 140 criminals that were unsupervised for one reason or another for over 2 years. You want to talk about helpless. Mind you that other officer's had up to 300 cases. How can someone protect the community when you don't even know the people you have to protect them from!!!! In every other field there are ratios. In corrections the number of officers assigned to a facility is dictated by the number of inmates. The America Probation and Parole Associations has come up with a workload/caseload formula that can be used:

Supervision Caseload

Case Risk level	Hours Per Month	Total Caseload
High	4 hours	30 cases
Medium	2 hours	60
Low	1 hour	120

One caseload officer = 120 hours per month

If the maximum number of hours available to the caseload officer is 120 per month, the caseload can be made up of 30 high priority cases, 60 medium priority cases, or 120 low priority cases. In all three instances, the officer would have a full workload, i.e., one where the number of hours needed to fulfill the minimum requirements on all the cases (demand) is equal to the amount of hours available to the officer (supply).

As the table illustrates, there are three caseloads where the total **number** of cases is very different, but the total **workload** is equal. When there is a mixture of all three priority level cases in one caseload, there are almost endless possibilities (between 30 and 120 in the example) as to the total number of cases in a given caseload that would equate to a full workload.

Setting standards is not easy but it is a must. A set caseload/workload can only increase offender accountability thereby enhancing community safety.

The final topic is that of conflict of interest in the handling of Violations of Probation.

If the Judiciary assumes control of Probation, who will "prosecute" the Violations of Probation? In NYC the office of General Counsel within the probation department handles violations. With judicial control, general counsel in effect becomes a subordinate of the judiciary who will be deciding the case. If it seems to be a conflict of interest to me, imagine what it looks like to a defense attorney. The district attorney in NYC does not handle the vop's so why would they in the future. In Westchester County, the prior district attorney, on a whim, refused to handle vop's, luckily the county attorney's office readily and quite capably handled our vop's. Would they do it again for a non-county agency? Probably not. The current District Attorney Janet DiFiore is handling our vop's, but who is to say that it is set in stone. Will the court have to contract out vop's at an exorbitant cost?

Right now in Westchester, the probation officer is an equal partner in the criminal justice system, working with the DA, the Judge and the defense Attorney and the people of Westchester are safer for it. Probation belongs in the executive branch as a separate function who works in conjunction with the Judiciary.

Judges should be involved in the Probation process, but they shouldn't become probation officers. Why re-invent the wheel.

SUFFOLK COUNTY PROBATION DEPARTMENT

October 11, 2006

John K. Desmond, Director
Thomas J. Porter, Deputy Director

The Suffolk County Probation Department is celebrating its 100th Anniversary in 2007. Since its inception, it has expanded exponentially both in size and function. Its original role of assisting in the rehabilitation and supervision of adult offenders has continued as a vital constant. However, a varied array of responsibilities has been added over the decades to our original focus.

When an individual is arrested in Suffolk, before he is arraigned, he is interviewed by a Probation Department employee and a quick bail investigation and recommendation is done for the Court. Simultaneously, a check with the Federal Immigration Clearing House is performed. Screening is also done for eligibility and appropriateness for pre-trial release programs.

The Probation Department offers a wide range of alternative to incarceration programs, especially working with individuals with substance abuse and/or mental health problems.

Following a plea, a Pre-sentence Investigation is normally ordered by the involved Court. In 2005, the Suffolk Probation Department completed 6,300 investigations. Supervision, as noted above, continues to be a vital component. Each year, we supervise approximately 14,000 adults, including 700 Interim cases, and 2,000 juveniles.

Suffolk makes extensive use of specialized caseloads. We have two entire adult units devoted to the mentally ill, a large sex offender unit, a domestic violence unit and a generalized intensive supervision unit. Similar caseloads exist within our juvenile operation. One-third of our Adult Probation Officers and two-thirds of our Juvenile Probation Officers have specialized caseloads.

In addition to regular supervision, Suffolk was one of the first jurisdictions in the Country to create a Day Reporting Center, with probation, mental health, health, educational, and substance abuse staff on hand to provide a full array of services. We have also provided a Juvenile Day Reporting Center for the last five years which works with youth with a myriad of problems who are unable to function in a school setting. This program provides a hands on non-traditional outdoor setting which is very conducive to the learning patterns of these children, almost all of whom suffer from severe ADHD.

What is the result from the provision of all of these services to the Suffolk Community? A fair way of comparing results is to examine our recidivism rates. We are currently supervising approximately 350 designated sex offenders. Their overall recidivism rate is only 11.7%, their felony rate is 3.1% and the rate of sexual re-offense is only 1.3%.

Prior to the creation of our mental health caseloads, this population of severely mentally ill had yearly recidivism rates of more than 30%. With specially trained Probation Officers and cooperative efforts with our Community Mental Health programs, the overall individual recidivism rate has been reduced to 8.4% and violent felony recidivism to 1.4%. Similar successes can be found throughout our programs. Our Probation Alcohol Treatment Program, aimed at repeat DWI Offenders, has an individual recidivism rate of 9.1% and a DWI re-arrest rate of 1.2%. Our Domestic Violence Program has an individual recidivism rate of 14.9%, and a Criminal Contempt Violation rate of 8.3%. Our regular Probation Supervision recidivism rate is 11.3%, our Felony

rate is 3% and our Assault recidivism rate is 0.8%. Complete Recidivism statistics are attached to this presentation.

The question arises as to the reason for the success of these programs. One obvious answer is that the Suffolk County Probation Department has received adequate funding from the Suffolk County Executive and County Legislature, even while State reimbursement has steadily declined.

But, there are other important reasons for our achievements.

The first is our reliance on continuing research and statistical development. We emphasize the use of “best practices” and constantly review our programs to ensure that they are attaining their goals.

However, what I believe to be an essential component of our continuing performance is our close ongoing relationships with the County Departments and Agencies. This is a crucial element to the successful development and implementation of programs and approaches.

I have been a member of the Probation Department for over thirty-four years. Throughout my career, even when first on the job, I was encouraged to make contact with other agencies, understand their roles and meet with appropriate staff on a regular basis.

Now, more than three decades later, I am continuing to meet with many of these same individuals, in their current roles, as Senior Administrators and Policy Makers. The level of trust and mutual understanding of situations, policies and procedures that we share make both effective team work and program implementation possible.

As Probation Director, I am part of the County Executive’s Cabinet and meet frequently with the Deputy County Executives and Budget Staff. I have direct access to

the other County Department and Agency Heads, and we frequently form joint Task Forces to resolve complex problems that reach across organizational boundaries.

An example of this approach is Suffolk's response to the April 2005 PINS Law. This legislative change caught municipal criminal justice systems totally by surprise as it mandated diversion efforts for PINS and reduced the use of non-secure detention for children.

In Suffolk, a task force composed of Probation, Social Services, Health Department, Youth Bureau, County Attorney, and County Executive's staff were able to quickly implement new programs. Taking advantage of the change in the law, Suffolk County was able, by committing additional resources and reassigning existing personnel, to more quickly meet the needs of PINS children and their families, and to reduce our residential placement of these youth by 40%. Such a rapid and positive response would not have been possible without the long term relationships and familiarities that have been developed over the years.

Suffolk County continues to have an efficient and highly functioning Criminal Justice Coordinating Council. Budgetarily, it, and its staff, resides in the Probation Department. This permits the sharing of resources, grant applications, research and the administration of an extensive intern program.

Without being located within County government, I firmly believe that the Suffolk County Probation Department would not be the effective instrument of community rehabilitation that it is.

Suffolk County, as a percentage of the total State population, only sends to the State Correctional System half of what would be expected. I believe this is due, in part,

to the excellent teamwork that is the hallmark of every facet of Suffolk County's Criminal Justice System. Considering the amount that Suffolk doesn't cost the State Correctional System, one would reasonably expect that New York would invest heavily in Suffolk Community Corrections. As you are aware, this has not been the case historically.

In closing, I would strongly recommend maintaining the Probation Service as it currently exists, but returning State funding to a much more rational, and productive level. We do a great deal with very little.

**TASK FORCE ON THE FUTURE OF PROBATION
PUBLIC HEARING
October 11, 2006
NEW YORK CITY**

**STATEMENT OF JOHN J. CARWAY, L.M.S.W.,
DIRECTOR OF PROBATION,
NASSAU COUNTY PROBATION DEPARTMENT**

Ladies and gentlemen of the Task Force; thank you for the opportunity to appear before you today to discuss the Future of Probation in New York State. I am most grateful to Judge Judith Kaye for having the foresight to recognize the contribution of Probation to the criminal justice system in New York. There is probably no other institution or organization within the entire criminal and juvenile justice systems that has the most impact on crime and criminals today. It is my hope that in my brief statements that I and my colleagues are able to provide you with sufficient information for you to make recommendations that will bring new health and vitality to this essential, but under-funded and misunderstood service. In Nassau, I have often referred to Probation as the "Secret Service" of the Criminal Justice System, as few know who we are and what we do. Probation is a lot of things. We are a unique blend of sworn law enforcement officers who often use social work and educational techniques to make the system work. From the time when Boston shoemaker John Augustus first took responsibility for the town drunk Probation has always been about one human being interacting with another in an attempt to help them change their behavior. That of course

responsibility and what is a local or county problem. The police are certainly the most visible. Since felons go to state prisons, they and the State police are seen to have the most priority. State prisons are well known to their customers and are closely linked to the health of the upstate economy. County Jails get virtually nothing and County Probation Departments get only what is left over because they are considered local problems. State legislators are accountable to their customers, most of whom have very little awareness of what Probation does.

Probation's customers also include our probationers. They are the customers most in need of our help and assistance. But they are virtually powerless and most of our other customers, our local communities would just as soon see them behind bars. Confidentiality restrictions often preclude advocacy for them, despite the fact that the community should be our partners in advocating for our probationers because the probationers success is closely tied to the health of the community in which they live. Community support is often one of the areas in which we as Probation Departments have failed to develop a good customer rapport.

Finally we come to what is Probation's most important customer, the Courts. If they are not our most important customer, they are at least the customer with whom we have the closest relationship. The Courts rely upon our ability to present them with clear cogent and accurate pre-sentence reports to assist them in dispensing justice. The Pre-Sentence Report is probation's most visible concrete product. It is the product upon which we are often judged as professional or not, effective, or not and caring, or not.. We are judged by the Judges, the DA and the defense counsel and often, as well by the defendants who also see our

reports. Unfortunately, the PSI is sometimes the first casualty in the under funding category as pressures to produce them quickly and in greater numbers often deteriorate the quality.

Nevertheless, it is the courts who most and must rely upon the Probation Departments of New York State to assist them in carrying out their mission of dispensing and managing justice. They are the ones who are most visibly effected by the under funding that denies the services so sorely needed for Probation to carry out the missions so closely allied to that of the courts.

In closing let me say that I do not pretend to have all the answers to ails the Courts and the Probation System. I do know, however, that our fates are closely allied and I congratulate, once again, Judge Kaye for taking the leadership to convene this task force and bring us together. Thank you for your time.

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Testimony of Marsha Weissman
Executive Director, Center for Community Alternatives
before the
**THE NEW YORK STATE COMMISSION
ON THE FUTURE OF PROBATION**

**New York, New York
October 11, 2006**

Good afternoon. My name is Marsha Weissman and I am the Executive Director of the Center for Community Alternatives or CCA. CCA is a not-for-profit agency whose purpose is to reduce the use of incarceration in ways that are consistent with public safety. CCA undertakes this mission through direct services, including sentence planning and advocacy services, treatment, employment, health and reentry services, research, training and technical assistance.

Before I begin, I would like to thank you for the opportunity to speak to you this afternoon and commend Judge Kaye for her concern about this issue evidenced by the creation of this Commission.

It is an opportune time to consider the future of probation services in New York State. Just four months ago, on June 7, 2006, to be exact, Governor George Pataki signed into law an important change in New York's law of sentencing. Penal Law §1.05(6) has been amended to include among the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation, the new goal of "the promotion of their (defendant's) successful and productive **reentry and reintegration into society . . .**" (Chapter 98 of the Laws of 2006) (emphasis mine). This amendment became effective immediately.

I am proud to say that CCA played a significant role in helping to craft this legislation. We consider it a crucial shift in sentencing policy and practice. The new law recognizes that reintegration is the best way to achieve public safety. It will require every judge who presides in a criminal case to

CENTER FOR COMMUNITY ALTERNATIVES
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weigh carefully at sentencing what kind of sentence will best promote the defendant's reintegration into society. In our view, it will also require every actor in the criminal justice system from prosecutors to defense counsel to take up new roles and responsibilities in helping judges determine what kinds of sentences best forward community reintegration.

The probation system in New York will play a critical role under the new sentencing law. The presentence report prepared by probation officers currently has significant influence over sentencing decisions. Probation departments around the state currently prepare more than 100,000 presentence reports each year. Currently, the scope of those investigations is limited to the defendant's legal history, social circumstances, and victim information (Part 350 Investigations and Reports <http://dpca.state.ny.us/350.htm#3505>). The information gathered through the presentence investigation (PSI) is used to assess need and risk which then results in a sentencing recommendation - probation or custodial placement.

Implicit in the new law is the expectation that presentence investigations in the future include an assessment of what type of sentence will best achieve the goal of community reintegration for the specific defendant. While related to an evaluation of needs and risks, the issue of community reintegration has distinct features. Reintegration refocuses the purposes to be served by sentencing, changing the emphasis from punishing or "fixing" the offender to a more complex recognition of shared responsibility that requires an active role by community institutions and organizations. Community reintegration requires a thoughtful analysis of what kinds of sentences are most likely to promote long term public safety.

The recently released report of the Special Committee of the New York State Bar Association, "Re-entry and Reintegration: the Road to Public Safety," concludes that the issues of

public safety, high recidivism rates and prisoner reentry and reintegration are inextricably entwined. If people returning home from prison are not successful in their reintegration back into the community, public safety suffers.

Identifying reintegration as a sentencing goal promises not only to restore the person's well-being as a focus of decision-making but also to extend that consideration, by implication, to the well-being of the community as a whole. The question of community safety encompasses a reduction in recidivism and an examination of how families and communities are affected by the removal of a person from the community. The questions to be asked and answered in future probation presentence reports include: Will a community-based sentence better serve the goal of reintegration? How can we best promote public safety now and in the future with a reintegration plan for this defendant? In order to incorporate reentry and reintegration into the sentencing equation, what length or type of sentence should be imposed?

Currently the probation presentence report is persuasive with respect to the "in/out" decision, i.e., the question of whether to incarcerate a defendant or afford him or her an opportunity for a community-based sentence. Presentence reports focus heavily on a discussion of the offense behavior. The new sentencing law would require PSIs to consider the offense behavior within the context of how to advance the goals of community reintegration. For defendants recommended for probation, the PSI will become more concerned with developing an individual plan for a community-based sentence: what specific resources, programs, services, accountability and supervisory methods will best forward the individual's immediate reintegration into the community.

While less obvious, the same standards apply to presentence reports prepared in cases where a defendant is recommended for a custodial sentence. Unlike current practice, under the new

sentencing law, reentry and reintegration are concerns at the moment of sentence, not just at the time of release. This prompts new questions to be addressed through the PSI including how the length of sentence is likely to affect community reintegration and what issues should be addressed during incarceration so that reentry can be effective. Even where the defendant will be incarcerated, the PSI must now reflect an individual approach to sentencing and set forth what issues need to be addressed during incarceration in order to prepare for reentry and reintegration. The PSI becomes a road map for the defendant, correctional officials, parole and family alike to guide how the defendant serves his or her sentence.

The presentence report plays and will continue to play a major role at time of parole. In its current iteration, the report emphasizes the offense behavior. As Parole Board members rely on the probation presentence report, the parole hearing tends to focus almost exclusively on a revisiting of the crime. In our experience, this is one of the most counterproductive experiences in an inmate's prison sentence. We have seen people who have made the best use of their time in prison . . . participating in every rehabilitative program available, taking advantage of any educational opportunity, and amassing a positive record. Yet these achievements or commendations are dismissed at the hearing, and they are not considered as evidence on someone's readiness for reintegration. Rather, following the PSI, the hearing focuses on the offense behavior, no matter how long in the past and no matter how much the individual has tried to change for the better.

However, a prescriptive PSI that sets forth skills that the prisoner should learn while incarcerated will dramatically change how readiness for release is evaluated. A PSI that instead sets forth the kinds of positive changes to be demonstrated by the prisoner will give the Parole Board benchmarks by which to evaluate the extent to which the individual has used his or her time in prison

productively to prepare for release. Instead of reviewing the crime, the facts of which cannot be changed and the sentence for which has been served, under the new law, the role of probation in preparing the PSI is to create ways to evaluate the prisoner's readiness for reentry.

To take up their new responsibilities in furthering reintegrative justice, Probation will have to be retooled and probation officers provided with additional training. The retooling will help probation to collect and evaluate data that show the efficacy of one sentence over another. Sentences will no longer be evaluated based upon how punitive they are but rather on the extent to which they promote reintegration. Which sentences reduce recidivism? Which sentences are most likely to result in the defendant gaining employment? What kinds of sentences best promote family stability? What information should be provided to the judge so that a person convicted of a crime resume his or her civic responsibilities as soon as possible?

Under the new law, it is imperative that probation begin to address the collateral consequences of a conviction. This can be accomplished by including in the PSI information that informs the judge about which consequences apply to what kinds of convictions and sentences. Probation should inquire as to the defendant's ability to pay fines, fees and other financial penalties and ensure that defendants are not saddled with financial consequences that they will not be able to satisfy. The PSI should also contain information about certificates of relief from civil disabilities so that the defendant can assume a law abiding and productive lifestyle as soon as possible.

Probation must be adequately funded to ensure that it can properly discharge these new responsibilities. Public protection is a public good and thus must be adequately funded by the general tax fund. The underfunding of probation over the last decade has created situations where probation departments have come to rely on fees charged to defendants in order to sustain operations. Some

of the fees imposed exceed those authorized by the Legislature. The over reliance on fees also puts probation departments in the position of exacerbating the financial collateral consequences of conviction rather than helping people to overcome these barriers. The majority of people in the criminal justice system are poor with little ability to pay for these ever increasing financial penalties. These unpaid financial penalties then show up on an individual's credit history, standing in the way of one's ability to buy a car, a home and even get a job, the basic ingredients of community reintegration.

Adequate funding for probation is one part of ensuring that in the future probation can take up the tasks required under New York's new sentencing law. Effective partnering with community organizations and agencies is another. Community organizations can help in developing sentence plans that best meet the goals of the new law and community agencies and resources are essential to the effective implementation of reintegrative sentences. For example, organizations like CCA provide sentencing advocacy services and can help probation as it gathers information used in preparing the presentence report. CCA's direct services including treatment, employment, recovery and social supports can help make reintegrative sentences effective in meeting the goals of public safety, community building and individual rehabilitation.

In closing, the future of probation is upon us. It began on June 7, 2006, We have an opportunity in New York State to pioneer a new paradigm of criminal justice. Probation is one of the key actors in making the new law successful. To do so, it needs training so that it can be an effective resource for the court, adequate funding and an open door policy to partnering with the community.

Thank you for this opportunity to appear before you today.

**Testimony of
The Legal Aid Society
Criminal Defense Division**

**At a Public Hearing on
Strengthening Probation in New York State**

Presented before:

The Task Force on the Future of Probation

Presented by:

**Timothy B. Rountree, Attorney-in-Charge
The Criminal Defense Division, Queens Office**

October 11, 2006

The Task Force on the Future of Probation

Introduction

The Legal Aid Society welcomes the opportunity to testify before The Task Force on the Future of Probation concerning proposals to improve probation services in New York State. Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices, our staff handles about 275,000 cases for poor families and individuals. The services we provide reflect the entire gamut our clients' needs, from immigration representation for the newest arrivals, to health care benefits for the oldest New Yorkers.

By contract with the City, the Society also serves as the primary defender of poor people prosecuted in the State court system. The Criminal Defense Division ("CDD"), which represents more than 210,000 clients each year on charges ranging in seriousness from first degree murder to low-level violations of the New York City Administrative Code, has been at the forefront of efforts to reduce recidivism. Not only have we worked collaboratively with judges, prosecutors and other criminal justice agencies to develop specialized court parts focusing on drug treatment, domestic violence and juvenile crime, but CDD has also developed innovative, defense-based initiatives that have been proven successful at diverting clients from crime, without compromising the delivery of zealous legal representation. For example, CDD's Juvenile Offender Project has a remarkable track record of changing clients' lives for the better. In a study done of our youngest clients three years after their sentencing at which time 80% of them were diverted from incarceration, only 10% of them had been convicted for re-arrests for felony offenses. Similarly, the Division's MICA Project, which

is funded by a federal grant, assists seriously mentally ill, substance-abusing clients to secure community-based psychiatric and drug treatment services, housing, vocational training and benefits following release from jail. Clients who work with the project have a forty percent reduction in recidivism over those who refuse services or who withdraw from the program.

Given the breadth of legal services that we provide, the Society is in a unique position to testify about proposals to improve probation. Many of our cases result in a sentence of probation. We also represent many of the people who are accused of violating the terms of probation.

Purpose of Probation

As it has been traditionally defined, there is no small measure of contradiction in the function of probation. It serves as an extension of the police department through such activities as monitoring for criminal activity, mandatory reporting, home inspection, and revocation of probation when there is evidence of criminal activity or a violation of the probation rules. It also serves as a kind of social services provider as it interacts with a very needy population for which access to essential services is often the best way to prevent future crime. Probation supervision provides the critical opportunity to link individuals with social service programs, such as drug or mental health treatment, and educational and vocational training.

The New York City Department of Probation Mission Statement reflects these competing goals. That mission statement says:

The business of the New York City Department of Probation is protecting the community by intervening in the lives of offenders, holding them accountable and serving as a catalyst for positive change. We act in collaboration with the community and other justice partners. We provide information and services to the courts, give victims a voice in the justice

system and help strengthen families.

www.nyc.gov/html/prob/html/about

We recognize the inherent challenges the Probation Department faces in attempting to meet wide ranging goals with limited funding. Many of the recent developments of the law have added to the responsibilities of the police function of the Department of Probation. In addition to monitoring and reporting, the Department now requires DNA samples of its eligible population, performs drug testing of probationers and participates in sweeps, such as the recent “Operation Predator” which, together with the Department of Homeland Security, targeted and arrested people on probation eligible for deportation. These developments have further entrenched the probation police function.

Our experience, unfortunately, has been that the enforcement role is emphasized at the expense of service provision. It is our belief, however, that service provision enhances enforcement. We have seen that, through referrals to social service providers, our clients have addressed significant problems, such as substance abuse, homelessness, mental illness and lack of education and job training, that put them at risk for re-offending. Stabilizing our clients with social services greatly decreases their likelihood to re-offend, which is beneficial to them, their families and the larger community. We urge the Probation Department to reclaim its mission of “serving as a catalyst for positive change” by focusing on accurate needs assessment and training of its officers in available services and provider systems.

Delivery of Client Services

Our clients at The Legal Aid Society who receive a sentence of probation are very similar to

our general client population. They are, above all, poor. Many are without what most people would consider the prerequisites to a quality life: a job, a home, decent medical care, a functional family. A disproportionate number are mentally ill (which is often the undiagnosed, underlying reason for drug and alcohol abuse), or have other special needs, such as mental retardation, teen pregnancy, a learning disability, serious medical conditions, low educational levels, or drug or alcohol addiction. Because of the high level of stress inherent in their lives, our clients tend to rebuff directives provided to them in an antagonistic setting and are more likely to respond when they believe they are being treated respectfully. For many probationers, the provision of appropriate services or treatment is the cheapest and most effective way to prevent future crimes. Sound reasons of fiscal policy, public safety and simple humanity dictate that treatment should be provided within the community based health and human services system rather than waiting for a violation and admission to the more expensive and less effective correctional system.

We would like to share a few stories which highlight some of the problematic experiences our clients have had with the probation department. These, unfortunately, are representative of a much larger number of similar experiences.

1. A teenage client reported to her probation officer on her assigned day. She brought her two week old baby with her because she could not locate child care services. Her probation officer told her to leave because it was against their rules for her to bring her newborn to the office. She was told that she would be marked as having missed her probation appointment. An agency that cared about providing services would have seen this as an opportunity to help the mother and child and perhaps even inquire about artificial barriers to service within the Probation Department itself. The Department could only see a rule violation.
2. It is often difficult to get a probation officer to help even when services are

requested. A mildly retarded client was recently put on the kiosk hand reporting system. He aged out of a special needs school and was having trouble accessing services at home. His father repeatedly reached out to probation but no one responded to his requests. The client was violated and incarcerated until a plan could be worked out by defense counsel.

3. An HIV+ client was sentenced to probation for drug possession, his first conviction. He lived in California and probation was transferred there. He enrolled in a residential supportive living program and provided monthly reports to his NY probation officer until he was assigned a probation officer in California. After his California probation officer retired he continued to send reports to New York. Four years and ten months into his five years probationary period, the New York City Department of Probation filed a violation of his probation on his failure to report and verify his residence. His social security and disability payments were stopped because New York had issued a warrant for his arrest. He contacted the New York probation officer to whom she had been sending his reports and she said she could do nothing. He borrowed money to come to New York. After asking for a one month adjournment to write an updated report for the court, the new probation officer assigned to the case refused to speak with defense counsel and did not corroborate the written information provided by the client about his residence or the services he was receiving in California before the hearing. Despite the information provided by the client that he was in a stable residence, receiving services and had remained crime-free, the probation officer still recommended incarceration for failure to report. The court disagreed and terminated probation.

4. Sometimes the Department does try but the effort shows a lack of commitment and good planning. The Manhattan Probation Department in Supreme Court, set up a specialized program to work with juveniles, 13-15 years old. We found that our young clients who had succeeded in complying with the rules in private alternative to incarceration programs reacted poorly to the antagonistic environment of the probation program. Our clients reported feeling that the probation officers were hostile and not addressing their needs. This program disbanded after one year.

Reporting Function

In the preparation of its pre-sentence reports the Probation Department should play the role of neutral reporter to the court. It does not. In too many cases, the Department fails to explore

service alternatives to incarceration and it is increasing the recommendation of incarceration. The reports themselves often fail to address any mitigating circumstances of a crime. The presumptive penalty is incarceration. For mentally ill clients, probation officers sometimes justify their recommendations that they will be “safer” in jail. In a recent case, incarceration was recommended for a seventeen year old young man who had a sexual relationship with a sixteen year old girl three months before her seventeenth birthday. In its role of neutral evaluator, Probation needs to step back from the presumptive sentence and consider the individual circumstances of each case.

Additionally, 9 NYCRR Section 350.9(a)(1)(I) provides that “[i]n the absence of a court requested date for submission, for all adult criminal cases, the probation report shall be submitted to the court sufficiently in advance of one court day prior to disposition except if waived by the parties.” This mandate is rarely, if ever, followed by the New York City Department of Probation. The importance of the probation report is not fully recognized in the lives of our clients. For those of our clients who serve periods of incarceration, the pre-sentence report affects which facilities they are sent to, which programs they are allowed to participate in while incarcerated, and release decisions that are made. In addition to providing victim impact statements, probation officers should include any mitigating circumstances that bear upon the manner in which the crime was committed. Probation officers should be open to receiving and incorporating information provided by defense attorneys about clients. It is critical to the Courts, and future programming decisions by the Department of Correctional Services and the Department of Parole, that the information in probation reports provided is accurate and complete so that our clients are not prejudiced by them after sentence.

When used as a sentence disposition in a criminal case the best use of probation is as an

alternative to incarceration. Probation must be a viable disposition in cases where incarceration is a real possibility. For example, we have advocated for Rockefeller Drug Law reform that would allow first time offenders convicted of “B” level felonies, often a street sale of cocaine or heroin, to receive a sentence of probation conditioned on completion of a drug treatment program. Greater sentencing flexibility for the courts designed to get more people into treatment will necessitate greater responsibility for the Department of Probation. We would like to see a Department that is more willing and able to assume such responsibility.

Suggestions for Change

We recognize that the Department has taken steps to provide quality services. A good example in the New York City Family Court is the Esperanza Program, which provides an alternative to incarceration rather than placing children in facilities run by the Office of Children and Family Services. The challenge is to expand such alternatives beyond this small program to more juveniles and to the adult court system. We should make this approach an integral part of probation and not the rare exception. The delivery of or referral to essential services must become a higher priority within the entire Department which has lagged far behind more modern innovations, such as the drug courts, in the delivery of services.

We have found that over the last ten years, our client base presents with greater needs than in the past. The recognition of many of these problems as outlined above, require education in specific fields, training and experience. We encourage the Probation Department to emphasize the needs assessment component of its work so that probationers can be referred to appropriate services allowing them to get on the right track. Probation also needs to learn about the complex systems,

e.g. school, housing, benefits, that support poor people in order to enable it to make appropriate service referrals. The Department of Probation should work collaboratively with service providers, defense counsel and the courts in creating service plans for probationers.

The Department needs people whose specific mission and training are the delivery of and referral to quality services. One recent effort that ended in failure, the Manhattan program for the mentally ill, was probably the right idea staffed by the wrong people. It might have worked if it were staffed by MSW social workers and mental health professionals with experience in working with mentally ill people. Other states have managed to accomplish this. In Arizona, for instance, specially trained probation officers are a part of the team in the local mental health court and often assist the court in making appropriate referrals.¹ With such a large percentage of mentally ill people under probation supervision, this type of expertise should be available as needed to every probation officer.

Referral to appropriate drug treatment providers would occur far more frequently by Probation if the referral were done by MSW trained social workers whose job is to know the services available in the local community of the probationer. Training should make them aware that one drug treatment program is not the best choice for everyone. These experts could refer the client to the best available program to suit his or her needs.

We agree that more resources for the Department are essential. Without a change of priorities, however, these resources will be wasted.

¹ Arizona State Legislature, Ad Hoc Committee on Jail Diversion for the Seriously Mentally Ill, Minutes of the Meeting, December 16, 2004, www.azleg.state.az.us/iminute/house/ill1216.doc.htm.

Probation Revocation: A Legislative Proposal

In the course of our representation Legal Aid Society lawyers and social workers become a part of the support network for our clients. Often defense counsel and a social worker have been in a relationship with the client and the client's family for months and sometimes years and, as a result, have some insight which could aid the probation investigation at both the pre-sentence report stage and in cases where problems with supervision develop. Despite this, Probation seems to view us as an enemy. Officers refuse to take our calls, decline to call us back, and in some cases hang up on us.

The refusal to recognize the important role of defense counsel is nowhere more apparent than in the revocation process. When a decision is made to revoke probation defense counsel receives a notice of a date for a hearing. In a clear violation of due process, the Department routinely fails to provide any specific notice as to the reason for the hearing. It is only when defense counsel gets to the hearing that actual notice is given. We have repeatedly requested notice of the charges and have been advised that it is too cumbersome for the Department to send both the notice of the hearing and of the specific charges. Our calls requesting notice before the hearing are often ignored.

Lack of notice works to the detriment of everyone. Many cases can be resolved with some work by defense counsel, e.g., by finding a more appropriate program that is acceptable to the court. In the current practice defense counsel is often forced to choose between requesting an adjournment, thereby allowing the client to go to jail, and accepting some quicker disposition.

We propose that Criminal Procedure Law 410.40 be amended to include a requirement of notice of the charges to the defendant and counsel. The present statute requires only a notice to appear. The statute would read:

Criminal Procedure Law 410.40

1. Notice to Appear. The court may at any time order that a person who is under a sentence of probation or of conditional discharge appear before it. Such an order may be in the form of a written notice, specifying the time and place of appearance *and providing notice of the reason for the belief that a condition of the sentence has been violated*, mailed to or served personally upon the defendant as the court may direct. When the order is in the form of such a notice, failure to appear as ordered without reasonable cause therefore constitutes a condition of the conditions of the sentence irrespective of whether such requirement is specified as a condition thereof.

Thank you for the opportunity to share our comments with you.

Statement Before
THE TASK FORCE ON THE FUTURE OF PROBATION

October 11, 2006

by

Peter C. Kiers

Director of Operations, NYC Criminal Justice Agency
Immediate Past President, NY Assoc. of Pretrial Services Agencies
VP National Association of Pretrial Services Agencies

Good Morning, and thank you for allowing me to speak before the committee today. My name is Peter Kiers. I am the Director of Operations for the New York City Criminal Justice Agency, and I am also the Immediate Past President of the New York Association of Pretrial Services Agencies, and the current Vice-President of the National Association of Pretrial Services Agencies. And it is as a member of the Board of these two associations that I address you this morning.

I would like to speak about three issues and their relationship to each other: 1) considerations for pretrial programs that are housed in Probation departments. 2) the support that those pretrial programs need, and 3) the need to have pretrial programs in every jurisdiction.

In New York State, the locus of the pretrial program varies. The older programs in jurisdictions with larger populations such as New York City, Monroe County, and Westchester County as well as a smaller county such as Wayne Co., are not-for-profits that are contractors for those services. This form has served those jurisdictions well. Other pretrial programs have been placed in probation departments, such as Dutchess Co., Rensselaer Co., and most recently Nassau County. This has become the favored locus for pretrial in most jurisdictions (not only in New York) in recent years. The reason for situating pretrial in a particular setting may vary, and most often relate to budgetary and administration considerations and concerns. The locus of the program is not as important as a jurisdiction having a pretrial program. Approximately 5 counties in the state do not have a pretrial program at this time.

In 2002 the American Bar Association issued Standards on Pretrial Release. In 2004, the National Association of Pretrial Services Agencies issued their third edition of *Standards on Pretrial Release*, which draws heavily on the ABA

Standards. Both sets of standards call for every jurisdiction to have the services of a pretrial agency or program. The reasoning was simple and clear: these programs assist the court in making release decisions, provide monitoring and supervisory services, work with other agencies and social service programs to provide services to defendants, operate and share pertinent information within the Criminal Justice system, remind persons of upcoming court appearances, and work with the court to assist persons who cannot communicate in written or spoken English. In short, such programs ensured the equal, timely, and just administration of the laws governing pretrial release.

One can take a look at jurisdictions that do not have pretrial—either in New York or around the country. Jail overcrowding is a common result. It happened in Nassau where, it is hoped, a new pretrial program will assist in identifying defendants who can safely be released with non-financial conditions. Putnam County, where there is no pretrial services program, approved a new jail to accommodate the increase in jail population. In 2003, the NYS Division of Probation and Correctional Alternatives also issued a set of standards for pretrial release services in the State recognizing the need for universal screening and determination of a defendant's community ties. Those standards state that *the Division seeks to reduce disparities in the delivery of these services, to maximize the effectiveness and to increase fairness and equity with regard to pretrial release and detention while insuring public safety.* It was significant for the Division to recognize that disparities exist, and that it is not important for a jurisdiction simply to have some type of pretrial program, but that the method of service delivery and services offered are most important for full and maximum effect in the pretrial process.

Having been involved with these Standards and talking to people from around the state and country who are involved in pretrial work, it has become clear to me that Probation Departments, who are suddenly given the task of pretrial, need assistance. They need to determine the mission of the pretrial unit within the larger agency. They are struggling to staff adequately those units. They are hungry for training in the proper role and practices of pretrial, and they are looking for technology to assist in productivity and data-collection support to substantiate and audit the program.

It is extremely difficult to accomplish these goals and objectives when left to their own devices. Probation managers, policy makers, and Judges do not see, or get the full benefit of, Pretrial without such assistance and coordination. For example, when Probation Managers must use existing staff to start and staff a pretrial program, they must rotate Probation staff through the pretrial unit. The focus can center on simply covering the position—"let's just get it covered." This affects morale, causes confusion among Probation Officers as to their role vis-à-vis the defendants—(They are defendants, not offenders at this point!)—and can jeopardize the ability of the program to function effectively. Perhaps there is no substantial or verified screening instrument to assess risk of flight, and if there is, it may not be used to full advantage. Court reports may be heavily subjective, and may, or may not, be predictive of "defendant flight." Lack of reliable information or appropriate assessments of defendants can lead to either of two undesirable outcomes: the unnecessary detention of too many defendants who pose no significant risk of non-appearance, or, conversely, the release—without appropriate conditions—of defendants who do pose such a risk.

This, of course, relates to funding, but also to professional and competent oversight and technical assistance. Over the past years, the Division of Probation and Correctional Alternatives has had to cut staff several times. This is unfortunate. The Division is in a unique position to support pretrial efforts and best practices around the state, and to contract out for technical assistance to ensure that programs flourish. To date, they have exerted a Herculean effort developing standards, fashioning objective assessment instruments, and imposing reporting requirements, *but* without the ability to provide effective, on-site follow-through and program monitoring, the goals that I have been speaking about will be delayed, or even unrealized. This committee should look closely into the role that DPCA can play in fostering maximum service and assistance.

Pretrial programs provide critically important functions in the effective administration of criminal justice. a) They gather and present information about newly arrested defendants and available release options for use by judges in deciding

what (if any) conditions are to be set for a defendant's release prior to trial; b) they supervise the defendants released from custody during the pretrial period by monitoring their compliance with release conditions; and c) they provide programs such as failure-to-appear units that reach out immediately and get defendants to return to court, and bail-expediting programs that call family and friends immediately after the arraignment to see if they can come to court to post bail thereby eliminating the need for unneeded detention, and helping to ensure appearances.

When performed well, jurisdictions can minimize unnecessary pretrial detention, reduce jail crowding, increase public safety, ensure that defendants appear for scheduled court dates, and lessen invidious discrimination between rich and poor in the pretrial process with overuse of cash bail.

I would entreat this committee to support and recommend the need for appropriate staffing, training, and support for these pretrial initiatives through direct funding of pretrial programs, and more extensive use of DPCA. I would also encourage the committee to promote the establishment of pretrial programs in all jurisdictions (perhaps through the legislative process, and state funding directly for the implementation of such pretrial initiatives.) In those jurisdictions where Probation houses pretrial, Pretrial should not be an after-thought. It needs its own identity. It cannot be expendable during a time of budget cuts. There is a cost if this is done. And, it should never be something squeezed into an existing culture without resources or assistance. Training and technical assistance is vital for staff assigned to work in such programs.

I want to thank you for your time and for allowing me this opportunity to address the Task Force.