Center for Community Alternatives'
ANALYSIS
OF THE
2009-10 NEW YORK STATE EXECUTIVE BUDGET
PUBLIC PROTECTION AND GENERAL GOVERNMENT

The Center for Community Altenatives offers this analysis of the parts of the Executive Budget Bill which are of particular interest to the criminal defense bar, ATI's, and criminal justice policy advocates.

Part A – Expand the use of funds deposited into the Criminal Justice Improvement Account
Purported Purpose:

This bill would expand the use of the Criminal Justice Improvement Account to enable funding to be used for local criminal justice programs which support efforts to prosecute and reduce crime, and clarifies that the account may also be used to support the operation of the Crime Victims Board.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Subdivision 3 of Section 97-bb of the State Finance Law is amended to allow funds deposited into the Criminal Justice Improvement Account (CJIA) to be used for expanded purposes, which closely relate to the current uses of the account. Under existing statute, funds in the CJIA are used exclusively to fund crime victims programs.

This bill will expand allowable uses of the Criminal Justice Improvement Account, thereby allowing available resources to be used to continue programs which might otherwise be reduced due to fiscal constraints. All existing crime victims programs already supported by this source remain fully funded.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget, providing $15 million in support for criminal justice and victims services programs, which would otherwise require General Fund support in 2009-10.

Effective Date:

This bill takes effect April 1, 2009.

Comment on Part A

The "criminal justice improvement account" is funded by all of the fees, mandatory surcharges, and other surcharges required by Penal Law §60.35 and VTL §1809 and all other fees, fines, grants, bequests or other monies credited, appropriated or transferred to that account from any other account and also from all funds received by DCJS pursuant to Correction Law §168-b(10). Initially use of the funds in the criminal justice improvement account was limited to programs and services for victims of crime. This proposal expands the use of the funds for law enforcement. This expansion provides the opportunity to raise the question which we tend to shy away from – that, is if the purpose of the account is to improve the criminal justice system, why does funding for the defense, ATI's and reentry get left out? Defense counsel, ATI's and other

service providers are an integral part of the criminal justice system and should insist on inclusion at every turn, particularly since it is our clients' money that is being used.

Part F – Require applicants to be licensed as an insurance agent, broker, adjuster, consultant, or intermediary, to submit their fingerprints to the Division of Criminal Justice Services as part of a background check

Purported Purpose:

This bill requires any person who is seeking a license pursuant to Article 21 of the Insurance Law to submit their fingerprints to the Division of Criminal Justice Services (DCJS) as part of a background check.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill will enable the Insurance Department to perform more thorough background checks when considering the issuance of an insurance-related license to an individual by requiring that any individual who is applying for a license under Article 21 of the Insurance Law (agents, brokers, adjusters, consultants, intermediaries) submit their fingerprints for the purposes of a state background check as performed by DCJS, and a national background check as performed by the Federal Bureau of Investigation.

DCJS is statutorily required by subdivision 8A of Section 837 of the Executive Law, to process criminally and civilly remitted fingerprints and to charge a corresponding fee. Currently, the fee for fingerprint processing is $75 -- $50 of which is deposited into the General Fund, and $25 of which is deposited into the Fingerprint Identification and Technology Account.

This proposal adds a new section 2113 to the Insurance Law, and is similar to a provision in a 2008 bill (S.7369-A, sponsored by Senator Seward). As stated in that bill, a fingerprinting requirement will allow more accurate determination of the trustworthiness of licensees, and thereby enhance insurance consumer protection in New York State.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget as this bill will generate additional revenue for the General Fund, while simultaneously increasing public safety. DCJS has estimated that this new requirement will likely result in an additional 125,000 fingerprints processed during the first two years of implementation and 35,000 per year each year thereafter. Accordingly, the Financial Plan reflects $6.25 million in revenue in both 2009-10 and 2010-11, and $1.75 million each year thereafter. This bill will also generate additional revenue into the Fingerprint Identification and Technology Account which is used for technology projects that are critical to public safety.

Effective Date:

This bill takes effect immediately.

Comment on Part F

This proposal adds to the growing list of occupations that are subject to criminal background checks and fingerprinting by subjecting all persons applying for a license to act as an insurance agent, broker, adjuster, consultant or intermediary to fingerprinting and criminal history record check by both DCJS and the FBI. Adding to the onerous nature of this proposal is the

requirement that the applicant bear all of the fees and costs associated with the fingerprinting and the criminal history record check. This proposal requires these background checks despite the fact that there is no reliable data to support the proposition that background checks improve public safety. In fact, it is not unreasonable to assume that the costs incurred with these background checks dissuades qualified applicants from applying and that excluding capable and willing workers from these occupations, in the long run, undermines public safety by making it more difficult for those with a criminal record to find gainful employment.

Part G – Establish fees for new and renewal certification of security guard instructors and security guard training schools operating in New York State

Purported Purpose:

This bill would establish fees for the initial certification and certification renewal of security guard instructors and security guard training schools operating in New York State.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill amends Section 837 of the Executive Law to allow DCJS to charge certification and certification renewal fees to security guard instructors, and security guard training schools operating in New York State. An individual applying for security guard instructor certification would pay an initial fee of $500 and pay a renewal fee of $250 every five years. An organization applying for security guard training school certification would pay an initial fee of $1,000 and a renewal fee of $500 every two years.

DCJS expends administrative resources to process and approve security guard school and instructor applications. This proposal would allow the State to recoup some of the funds it spends on this service. Additionally, there are a number of inactive schools on which the State spends resources to keep certified, even though they are not actively involved in training. Charging for the applications and renewals will provide a market-based solution to this issue, allowing the State to increase revenues and help DCJS to more efficiently allocate limited resources in this area.

There are 11 other states that have a formalized security guard training program. States such as California, Illinois, Vermont, Washington, Arizona, Ohio, Michigan and Oklahoma all currently charge fees for security services certification and renewals.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget as this bill will help offset General Fund costs associated with security guard certification by charging a fee for certifications and renewals. Imposing a $500 fee on instructors for initial certification, and a $250 certification renewal fee every five years, would generate $120,000 in annual revenue for the General Fund. Similarly, imposing a $1,000 fee on schools for initial certification, and a $500 certification renewal fee every two years would generate $326,000 in annual revenue for the General Fund. These fees will provide General Fund revenue of $446,000 in 2009-10, as well as each year thereafter.

Effective Date:

This bill takes effect immediately.

Comment of Part G

Many individuals who have a criminal record find employment in the security guard field. Increased fees for the training schools and instructors will likely be passed along to those who apply to this field, which will make it that much more costly to be trained and certified as a security guard. These enhanced costs will likely render security as yet another occupation that has needlessly high barriers for those with a criminal record.

Part I – Delay the expansion of mental health programs authorized by the SHU Exclusion Bill and curtail or modify other provisions of the bill relating to the Department of Correctional Services (DOCS) facilities that do not generally house inmates with serious mental illnesses and the training of DOCS personnel

Purported Purpose:

This bill reduces the cost of implementing the Special Housing Unit (SHU) Exclusion Bill by delaying the effective date of the bill by three years from July 2011 until July 2014, limiting the scope of the bill to level 1 and level 2 mental health designated correctional facilities, and re-configuring the mental health training requirements for Department of Correctional Services (DOCS) personnel.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

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

The PSA required the expansion of several existing mental health programs and creation of a new 100-bed Residential Mental Health Unit (RMHU) at the Marcy Correctional Facility for inmates who are in disciplinary housing but have been assessed as having a serious and persistent mental illness. The SHU Exclusion Bill included provisions that could add additional RMHUs beyond the one at Marcy. Delaying the effective date of the bill by three years will allow DOCS and OMH to evaluate the effectiveness of the new RMHU program, refine their approach, and reevaluate the need for expanded RMHU capacity.

Additionally, this proposal would eliminate the application of the SHU Exclusion Bill requirements to level 3 and level 4 DOCS correctional facilities. There are currently five designated levels for mental health services (1, 2, 3, 4, and 6) at DOCS correctional facility. Level 1 and 2 facilities generally house inmates who have the most serious mental health conditions, and OMH and DOCS mental health related staff and programs are concentrated at these level 1 and 2 facilities. Because level 3, 4 and 6 facilities should not be housing inmates with serious mental health needs, it is arguably excessive – and costly – to require mental health services in these facilities. Moreover, there is little danger that inmates in these facilities would be at risk of decompensating if they are placed in disciplinary housing, because inmates who have long terms of disciplinary housing are transferred to S-blocks in level 1 and 2 facilities with

appropriate levels of mental health staff.

Finally, this proposal also sets appropriate levels of training for DOCS staff that are transferred into residential mental health units. Instead of participating in sixteen hours of initial specialized mental health training, the amount of such training will be reduced to eight hours plus an orientation program that will allow staff to receive hands-on experience in the units. Furthermore, the requirement for an additional eight hours of annual training for such staff is modified to two four-hour sessions during which the out-of-cell mental health programming and treatment for inmates may be suspended or decreased. This level of training is adequate based on existing DOCS training standards.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget as this bill will increase savings by $19 million in 2009-10, and $27.4 million in 2010-11 for both DOCS and OMH.

Effective Date:

This bill takes effect immediately.

Comment on Part I:

As many will recall, as a result of substantial advocacy over many years, in 2008 the SHU Exclusion Bill was enacted to address the need for therapeutic rather than punitive housing for people with mental illness who are confined in disciplinary housing (SHU). This proposed Budget Bill uses the budget crisis and a Private Settlement Agreement (PSA) that DOCS and OMH reached with Disability Advocates Inc. as justification for delaying by an additional 3 years the creation of this much needed therapeutic housing. Unfortunately, the PSA allows for the creation of only a 100-bed therapeutic housing unit, which is far short of the housing needed to accommodate inmates who are seriously mentally ill and locked away in the harsh and punitive SHU environment which exacerbates their mental illness. Indeed, on any given day, nearly 5,000 inmates are confined to the SHU, and at least one quarter of these inmates are on the mental health case load. See Correctional Association, *Lockdown New York: Disciplinary Confinement in New York State Prisons*, 2003. In the long run, delaying construction of this alternative housing for people in prison with serious mental illness will continue to create a public safety risk as people will be leaving prison with even worse mental health problems and ill-prepare and in no condition to reintegrate into the community. In addition, the proposed bill eliminates application of the SHU Exclusion Bill to OMH level 3 and 4 correctional facilities ignoring the fact that many people in prison are not appropriately identified as suffering a serious mental illness upon reception and therefore, inappropriately placed in a facility with limited mental health services. Like people housed in OMH level 1 and 2 facilities, these people are at-risk for experiencing disciplinary problems because of their mental illness and are in need of a therapeutic rather than a strictly punitive response.

Part J – Expand eligibility criteria for state inmates to qualify for medical parole and streamline the medical parole application process

Purported Purpose:

This bill expands the eligibility criteria of medical parole for terminally ill inmates and permits chronically ill inmates to utilize the current medical parole law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Medical parole was implemented for terminally ill State inmates in 1992. It is predominately utilized by inmates over the age of 50 who also have the lowest recidivism rates.

Over the past decade the number of inmates over the age of 55 who are incarcerated in state prison has more than doubled from approximately 1,500 inmates to over 3,600 inmates. These older inmates are generally the most seriously ill, suffering from both terminal illnesses and chronic illnesses that leave them seriously incapacitated and disabled. In particular, these chronically ill inmates not only require the most expensive medical care, but they also fill many of the available Regional Medical Unit beds in Department of Correctional Services (DOCS) facilities. As a result, inmates suffering from less serious illness must often be treated at outside hospitals, which is both costly and a higher security risk.

To address these problems, this proposal expands the number of inmates who are eligible for consideration for medical parole, but no inmate may be released unless both the Commissioner of DOCS and the Board of Parole (BOP) determine that such a release is compatible with public safety. The bill:

- ★ authorizes the release of inmates who suffer from significant and non-terminal conditions that render them so physically or cognitively debilitated that they do not present a danger to society. In evaluating the threat posed by these inmates, the BOP must consider certain criteria, including the position of the victim;
- ★ allows inmates who have been convicted of certain violent felonies to be eligible for medical parole consideration if they have served at least one-half of their sentence, except that inmates convicted of first-degree murder or an attempt or conspiracy to commit first-degree murder are not eligible;
- ★ allows inmates who are ambulatory, but who suffer from significant disabilities that limit their ability to perform significant normal activities of daily living to be eligible for consideration.

Because a number of inmates die each year before a determination has been made on their application for medical parole, this proposal also improves and streamlines the process for consideration by the Board of Parole by: (1) allowing an inmate's spouse, relative or attorney to initiate a request for medical parole on the inmate's behalf; (2) requiring the examining physician to recommend the types of care the inmate would require if released, and the types of settings where that care should be provided; and (3) requiring the Division of Parole, the Department of Health and the county in which the inmate resided and committed his crime to assist in formulating and implementing a medical discharge plan.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget as this bill will result in savings of $2 million in 2009-10.

Effective Date:

This bill takes effect immediately.

Comment on Part J

An expansion of medical parole for people in prison who are terminally ill or are suffering significant debilitating illness is long overdue. Whether proposed for humanitarian purposes or simply as a cost-savings measure saving $2 million dollars a year, this is a step in the right direction, and opens the door for further reform in the future.

Part K – Authorize the Department of Correctional Services to sell its cook-chill products to not-for-profit organizations (food kitchens and shelters) at the cost to produce and deliver the products

Purported Purpose:

This bill will allow the Department of Correctional Services (DOCS) to sell food products made at its Food Production Center to charitable organizations for the cost of the food, production and transportation.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill allows DOCS to use its excess production capacity and may reduce food costs through economies of scale. This authorization will help New Yorkers in need by supplying food kitchens and other charitable organizations with low cost food products during these hard economic times. The Food Production Center currently has available capacity that can be used to help these charitable organizations.

The bill authorizes the Commissioner to enter into agreements with homeless shelters, food kitchens and other eleemosynary organizations funded in whole or in part by Federal, State or local funds. It ensures that all proceeds from these transactions will be used only for the continued operation of the DOCS Food Production Center. This legislation protects these charitable organizations by requiring that the fee charged for these products will not exceed the cost of food, production and transportation. Finally, it allows the Commissioner to notify these organizations of the availability of these products.

Budget Implications:

Enactment of this bill will allow charitable organizations to take advantage of the excess capacity in the DOCS Food Production Center. The costs of this action will equal the revenues.

Effective Date:

This bill takes effect immediately.

Comment on Part K

The proposal offers help in providing food to the hungry and homeless and on these grounds will likely bring quick support for this proposal. These laudatory purposes notwithstanding, there are questions about whether this proposal will result in displacing paid workers who otherwise provide food for charitable organizations. There are specific questions with respect to terms of labor costs, fair competition, and driving down wages in employment related to food production when people who have been in prison return to their communities seeking jobs. Will this proposal further limit the opportunities for people re-entering the work force from the criminal justice system?

Part L – Expand eligibility for the Shock Incarceration Program and establish a new limited credit time allowance for inmates

Purported Purpose:

This bill implements some of the recommendations made by the Commission on Sentencing Reform (CSR) by allowing inmates from general confinement facilities as well as reception centers to participate in shock programs and raising the age of inmates who are eligible to participate in the program. In addition, the bill provides a limited credit time allowance for inmates serving indeterminate or determinate sentences imposed for specified offenses.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Although the final report from the CSR will not be released until 2009, Commission members have identified certain proposals upon which they have agreed, which will produce immediate savings if enacted expeditiously. These proposals would create merit time eligibility for certain violent offenders and broaden eligibility for the shock program.

Since its inception, the merit program has generated more than 24,052 early releases with lower return-to-custody rates, and has saved the State in excess of $372 million. Merit time encourages inmates to engage in beneficial programming that aids in their preparation for successful re-entry into the community. However, it is important when establishing new criteria for merit time that they are not just simply superficial, but rather reflect successful completion of a meaningful program. This bill achieves that end.

On average, shock graduates are released one year earlier than their court determined minimum period of incarceration and have better success rates upon release. Since the program's inception in 1987, the State has saved an estimated $1.48 billion. By expanding this program to older offenders and those already in general confinement, the shock program could provide additional savings at little or no risk to public safety.

This bill will make the following specific changes to these programs:

★ Expanding the Eligibility for the Shock Incarceration Program: While the average daily cost per inmate is higher for shock, the number of days spent under custody by a released shock graduate is substantially less than if that inmate had served his or her full sentence. Under current law, to be eligible for shock, an inmate must be within three years or less of his or her parole eligibility or conditional release date when received in a DOCS reception center.

This bill allows inmates for the shock incarceration program to be selected from general confinement facilities as well as reception centers. A general confinement inmate will be eligible for the program if he or she is within three years of parole release for an indeterminate term of imprisonment or will become eligible for conditional release within three years for a determinate term of imprisonment. Additionally, the age of inmates allowed to participate in shock incarceration will be raised from 40 years of age to 50 years of age.

★ Establish a Credit Time Program: Merit time allows inmates serving prison sentences for certain non-violent crimes to earn a possible one-sixth reduction off their minimum term if they have achieved significant programmatic objectives, such as two years of college programming, obtaining a masters of professional studies degree, successfully

participating as an inmate program associate for at least two years, receiving a Department of Labor certificate for successful participation in an apprenticeship program, or successfully working as an inmate hospice aid for at least two years, and have not committed any serious disciplinary infractions.

★ Under existing law, offenders serving sentences for class A-I (non-drug) or violent felony offenses are not eligible to earn merit time. This bill provides for a limited credit time allowance for certain of these inmates. Offenses not eligible for the credit time allowance include murder in the first degree or any sex offense. A single six-month allowance may be earned.

Budget Implications:

Enactment of this bill during the 2009-10 Executive Budget will result in a savings of $4 million and an annualized savings of $16 million.

Effective Date:

This bill takes effect immediately.

Comment on Part L

Expansion of Shock Eligibility

This proposal improves and expands the shock eligibility requirements. First, it expands the age limit of eligibility for shock from 40 to anyone who has not reached the age of 50 years. Under existing law, a person's eligibility for shock is determined once - at the time of reception. Under this proposal a person will be continually evaluated for eligibility so that while in general population, when the person is within 3 years of his or her parole release date or conditional release date, they will become eligible for shock if they meet the other eligibility criteria.

Creation of a Limited Credit Time Allowance

While merit time would be expanded through this proposal, the operative word here is "limited". This proposal does not address advocates longstanding call for the expansion of the merit time program so that people in prison serving non-drug determinate sentences could earn merit time in the same way as others serving indeterminate sentences and drug determinate sentences. It was also hoped that people whose controlling sentences were non-violent ones, would not be determined ineligible to earn merit time because of a non-controlling sentence for a violent felony.

Eligibility for this new "limited credit time allowance" is limited to only a specific group of people convicted of violent offenses. Unlike their merit time counterparts who may earn 1/6 off their indeterminate sentence or 1/7 off their determinate sentence, the amount that can be earned for this new limited credit time allowance is restricted to 6 months. Significantly the programmatic accomplishment for this lesser allowance are much greater. To earn the old traditional merit time one must complete one of the following goals: obtain a GED, obtain an alcohol and substance abuse treatment certificate, obtain a vocational trade certificate following at least six months of vocational programming or perform at least 400 hours of service as part of a community work crew. It was hoped that any expansion of the merit time program would require the same goals. This proposal does not do that.

The new proposed requirements which will be very difficult for most people to achieve are: participate in no less than two years of college programming; or obtain a masters of

professional studies degree; or successfully participate as an inmate program associate for no less than two years; or receive a certification from the state department of labor for his or her successful participation in an apprenticeship program; or successfully work as an inmate hospice aid for a period of no less than two years.

For all those who advocated for an expansion of eligibility for merit time, this proposal is a significant disappointment.

Part N – Encourage the adoption of graduated sanctions for parole violators and the use of a risk and needs assessment instrument (and expands the protections of New York Human Rights Law §296(16))

Purported Purpose:

This bill encourages the adoption of graduated sanctions for parole violators and the use of a risk and needs assessment instrument; protects the confidentiality of information about arrests and prosecutions that were terminated in an individuals favor.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The Commission on Sentencing Reform has signaled their support of graduated sanctions for technical parole violators. Inherent in graduated sanctioning is the principle of providing swift and appropriate punishment based on the gravity of the offense and an assessment of the potential risk of re-offending. Graduated sanctions may take a number of forms, including: (1) increased use of curfews; (2) home confinement; (3) electronic monitoring; or (4) weekend incarceration in a local jail.

In addition to graduated sanctions, the Division of Parole, along with other criminal justice agencies, has been working towards using a validated risk and needs assessment instrument that can assist supervising agents to more accurately estimate the risk posed by an offender, identify the personal deficits that have contributed to an offender's criminality, and capitalize on an offender's strengths during the re-entry process. The purpose of using such instruments is not to replace professional judgment but, rather, to maximize the effectiveness of programming and supervision and, thus, improve public safety. These risk assessment tools guard against the use of intensive interventions for low-risk cases, which is critical because numerous studies have shown that intensive intervention in low-risk cases can actually increase recidivism.

This proposal would amend Penal Law § 1.05 and Executive Law § 259-a to allow the Chairman of the Board of Parole to consider the implementation of a graduated sanctions program for parole violators that utilizes a risk and needs assessment that is administered to all inmates eligible for parole. Such a graduated sanctions program could include more intensive supervision immediately after an inmate's release, alternatives to incarceration and the use of enhanced technologies. Section 259-c of the Executive Law would also be amended to allow the Parole Board to utilize a risk and needs assessment in determining which inmates may be released to parole supervision.

Parolees leaving State prison are confronted with several obstacles to their re-integration back into the community. These barriers make it difficult for parolees to secure a job, obtain supportive assistance, and avoid being permanently labeled as an offender or a danger to society. Executive Law § 296 would be amended to establish that individuals are not required to divulge information about arrests or prosecutions terminated in favor of the accused, youthful offender adjudications and sealed violations. This provision will especially aid job applicants.

Budget Implications:

Enactment of this bill during the 2009-10 Executive Budget will result in a portion of the savings of $11 million for SFY 09-10 and an annualized savings of $44 million.

Effective Date:

This bill takes effect March 1, 2009.

Comment on Part N

As described below, this proposal includes two distinct and separate changes, each of which should be considered based upon their individual merits and implications.

Amendment of Executive Law §296(16)

This proposal provides that no person shall be required to divulge information pertaining to any arrest or criminal conviction of such individual not then pending which was followed by a termination of that criminal action in favor of such individual, a youthful offender adjudication, or a CPL §160.55 sealing of a violation. It certainly will help to support reintegration efforts and therefore should be of interest to advocates and others who work to help people successfully return to community after criminal justice system involvement.

Graduated Sanctions and Use of Risk Assessment Instrument

While it certainly makes sense to consider alternative sanctions to parole revocation, it may be that this proposal imposes too much discretion in parole officers. What procedures will be put into place to ensure that parole officers do not abuse this discretion by, for example, incarcerating a person for a weekend based upon an unfounded suspicion or hostility towards a person on parole? Absent such protections, providing parole with the judge-like authority to impose punishment may raise questions about due process.

Part O – Credit probation sentences for time served under interim supervision; and implement a one-time $25 probation registration fee with the revenue to be retained by local probation departments

Purported Purpose:

This bill amends the Interim Probation Supervision (IPS) Law to credit individuals' final probation sentences for the time served under successful IPS; and establishes a one-time probation registration fee.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill credits probation sentences for time successfully served under IPS. IPS is a trial probation period that assists prosecutors and the courts in determining whether a defendant who is at risk of incarceration would be suitable for a probation sentence. When a court orders a period of IPS, it may adjourn the sentencing for up to one year, during which time it can assess the defendant's prospects of success if sentenced to a term of probation supervision.

When the court subsequently sentences a defendant to probation, it is reasonable that the period of probation should be reduced by the period of time that the defendant satisfactory complied with the interim probation supervision. This bill would allow interim probationers to receive such credit, which would provide them with an incentive to comply with the interim probation conditions, and deter volatile behavior while the defendant is under IPS.

This provision also addresses management issues that probation departments face in handling over 3,000 IPS cases. It will allow certain statutory provisions that apply to those under probation supervision to apply to those on interim probation.

This bill also mandates a $25 fee for adult probationers registering with the Statewide Integrated Probation Registrant System (I-PRS). This one-time fee, which may not be imposed as a condition of probation, would be used to support local probation departments.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because the one-time $25 probation registration fee collected by the City of New York and county probation departments would generate approximately $1 million in revenue each year to support their costs. Allowing defendants to receive credit for time served under the period of successful IPS towards any probation sentence that is subsequently imposed is expected to reduce probation officer workload. This new revenue stream and the interim probation credit, which would reduce probation officers' caseloads, would help to offset the six percent reduction to county probation departments that is recommended as part of the 2009-10 Executive Budget.

Effective Date:

The probation registration fee will be applied immediately and will be deemed to have been in full force and effect on and after March 1, 2009. The section related to interim probation will take effect on the sixtieth day after it becomes a law. However, a defendant serving a sentence of probation supervision on the date this act becomes effective, may, at the discretion of the court having legal custody of the defendant, have his or her probation sentence credited with any period of interim probation supervision that he or she satisfactorily completed prior to the imposition of that probation sentence.

Comment on Part O

Again, we find two proposals in this part that should not be linked but should instead rise or fall on their own merits.

Credit for Interim Probation

This proposal which meets standards of fairness by allowing for credit against a probationary sentence for any time successfully served under Interim Probation Supervision.

$25.00 Probation Registration Fee

The Governor's Budget Bill proposes to add a new section to the Executive Law, § 257-b that would require every individual sentenced to probation or released under interim probation to pay a $25.00 probation registration fee. CCA's previous work on the consequences of the effect of piling on financial consequences of criminal convictions (see *Sentencing for Dollars* online at

http://www.communityalternatives.org/pdfs/financial%20consequences.pdf), including the 2007 increase in mandatory surcharges, this proposal raises concerns.

However, there are also opportunities in this proposal. It requires that this $25.00 registration fee go to local governments – revealing the legislative and executive intent to insure that localities refrain from charging probationers additional fees, which is a practice in some counties. Notably, this practice has been criticized by the Attorney General's Office in Op. Atty. Gen. (Inf) 03-4. Adding the following language to this proposal will make it even more clear that local governments are not to impose additional fees that may impede successful reentry and reintegration:

> 4. The probation registration fee authorized by this section and the probation administrative fee authorized by Executive Law §257-c shall preempt the area of fees for the provision of probation service. No county may enact or enforce local legislation for any other probation services except as specifically authorized by this section, Executive Law §257-c and Family Court Act §252-a.

This additional language simply makes it clear that this proposal is consistent with the Attorney General's opinion in Op. Atty. Gen. (Inf) 03-4.

Additional language is suggested for a subdivision (5) to provide for a waiver of the fee for indigency, to make the waiver provision consistent with the waiver contained in Executive Law §257-c.

> 5. The department shall waive all or part of such fee where, because of the indigence of the person sentenced to probation or released under interim probation, the payment of said fee would work an unreasonable hardship on the person, his or her immediate family, or any other person who is dependent on such person for financial support.

Part Q – Modify the responsibilities of the State Commission of Correction and provide options to administrators of local jails to reduce their operating costs

Purported Purpose:

This bill limits the State Commission of Correction's (SCOC's) mandates in order for the Agency to perform more effectively its core responsibilities with regard to the oversight of State and local correctional facilities. Additionally, the bill will provide county jails with options to reduce their operating costs.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

A recent Comptroller's audit revealed several areas where SCOC has fallen short of its statutory mandate. For many years, SCOC's primary focus has been the oversight of local correctional facilities, including mandating the creation or expansion of local jails, often raising significant fiscal concerns for counties.

While SCOC has constitutional and statutory authority to visit, inspect and appraise the management of correctional facilities with regard to security and safety, this bill will provide that routine SCOC oversight will not be necessary if either a Department of Correctional Services or a local correctional facility is accredited by the American Correctional Association. SCOC will retain the right to visit, inspect and appraise such facilities if it has reason to believe the facility is not meeting accreditation standards or if the health, safety and security of staff or inmates is being jeopardized. This bill also preserves SCOC oversight of Office of Children and Family Services secure facilities.

In order to create operational efficiencies, several of SCOC's functions will be eliminated, limited or transferred to the Division of Criminal Justice Services (DCJS). First, the Municipal Police Training Council and DCJS will assume responsibility for establishing and overseeing a basic correctional training program for personnel employed by correctional facilities. Second, SCOC's data analysis obligation will be eliminated, because for many years it has been handled by DCJS. Third, SCOC will now only provide the rules and regulations establishing the minimum standards for the review of the construction or improvement of correctional facilities and will only approve or reject plans for the construction or improvement of correctional facilities that directly affect the health, safety, and security of staff and inmates. It will not be necessary for SCOC to approve more minor construction or improvement projects.

To assist local correctional facilities to operate more safely and efficiently, the bill will implement a proposal recently advanced by Chief Judge Judith S. Kaye in her 2008 State of the Judiciary Report. It will allow a judge in any criminal case in any county to dispense with the need for a personal appearance by a defendant, except for an appearance at a hearing or trial, and instead allow the defendant to appear electronically. This will allow counties to save on transportation and personnel costs, and will enhance security and lower the risks of escapes.

Finally, the bill will clarify the circumstances when the Commissioner of DOCS can exercise his or her discretion to accept inmates from local facilities that have become unfit or unsafe for the confinement of some or all of the inmates, including specifying that DOCS can accept such inmates if a local facility is unable to provide one or more inmates with essential services such as medical care. If the Commissioner of DOCS accepts these inmates, the bill gives the Commissioner the discretion to determine whether or not a county shall reimburse the State for any or all of the actual costs of confinement, subject only to the approval of the Director of the Budget.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget because it will avoid costs and allow SCOC to operate within the same level that they have been doing for the last decade.

Effective Date:

This takes effect immediately, provided, however, that the sections 2, 4, 5 and 6 of this bill relating to the transfer of the training function shall take effect 180 days after they shall have become a law.

Comment on Part Q

Oversight of local correctional facilities is necessary, and the State Commission of Correction is mandated to perform that function. Unfortunately over the years, this agency has been underfunded to perform an important and challenging responsibility. The Commission has found itself unable to perform at optimum efficiency with limited resources and limited staff. In the name of fiscal necessity the *coup de grace* to the very important work of this agency is delivered by this proposal.

Part T – Increase the Motor Vehicle Law Enforcement fee applied to the purchase of vehicle insurance to support the cost of state police operations

Purported Purpose:

This bill raises the Motor Vehicle Law enforcement fee from $5 to $10 dollars. It also makes permanent the fee and related programs that would otherwise expire in 2009.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill increases the fee from $5 to $10 dollars, and dedicates $4.7 million annually to the Motor Vehicle Theft and Insurance Fraud Prevention Fund and the remaining balance to the State Police Motor Vehicle Law Enforcement Account. This fee was last increased from $1 to $5 dollars in FY 2003.

This bill also makes technical amendments to the Insurance Law and State Finance Law to simplify the flow of these revenues into dedicated State accounts and eliminates the requirement that the Superintendent of Insurance distinguish between fees collected from passenger and commercial vehicle policies.

The bill also makes permanent all provisions related to the Motor Vehicle Law Enforcement Account, as well as the New York Motor Vehicle Theft and Insurance Fraud Prevention Program and related provisions.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget as it will generate $48.4 million in additional revenue and $65.5 when fully annualized. This bill is necessary to support the proposed budget for the Division of State Police.

Effective Date:

This bill takes effect March 1, 2009 except that the fee increase takes effect June 1, 2009.

Comment on Part T

More indirect taxes, this time doubling the fee one pays on their annual automobile insurance for the Motor Vehicle Law Enforcement Fee.

Part U – Extend various criminal justice programs that would otherwise sunset

Purported Purpose:

This bill extends for five years various criminal justice programs that would otherwise expire in 2009 and 2010. It also makes permanent statutes related to medical parole and merit termination of parole.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

This bill extends the authorization of various sections of law to ensure the continuation of criminal justice programs.

Key programs and statutory provisions continued by this bill include: determinate sentencing ; inmate work release and furlough; provisions related to substance abuse treatment for inmates; alternatives to incarceration; ignition interlock program for those convicted of alcohol-related violations; mandatory arrest in cases of domestic violence; protective measures for child witnesses; and transfer of adult offenders between states.

This bill also makes permanent certain statutory provisions related to medical parole and merit termination of parole.

Budget Implications:

Enactment of this bill is necessary to implement the 2009-10 Executive Budget which relies on continuation of these programs to support the Financial Plan projections.

Effective Date:

This bill takes effect immediately.

Comment of Part U

This part of the bill extends various criminal justice programs that would otherwise sunset. While not all of these programs are equally effective, several have critical value to the clients we serve.

Part X – Modify the maintenance-of-effort (MOE) requirement for counties and the City of New York to receive funds from the Indigent Legal Services Fund and the formula for distribution of such funds

Purported Purpose:

This bill ensures that counties and the City of New York do not forfeit all allocations from the Indigent Legal Services Fund in the event that they are unable to meet the stringent maintenance of effort (MOE) requirements set in current law.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

The Indigent Legal Services Fund (ILSF) is a dedicated fund, which provides support to counties and the City of New York for the cost of indigent defense services. The ILSF was created in 2003, as defined in Section 98-b of the State Finance Law. The first distribution of funds occurred in March 2005.

In 2007 three counties did not receive any funds from the ILSF, which led to substitute funding being provided from the General Fund as part of the 2007-08 enacted budget. In 2008, nine counties had not met the MOE requirement as of the statutory date for distribution of ILSF funds, which led to enactment of two bills. Statute held certain ILSF funds, attributable to those nine counties, in temporary reserve while allocations were made to the other counties and the City of New York; and modified the MOE test and the fund distribution formula, but only for distributions from the ILSF made in 2008.

This bill includes similar provisions, but would make them permanent. These provisions establish a less stringent MOE requirement and provide for a reduced award, but not a complete elimination of funding from the ILSF in the event that a county does not meet the MOE requirement.

Under this bill, the Office of the State Comptroller (OSC) would consider the MOE to be met in circumstances where a county's expenditures for indigent legal services during the calendar year was greater than the average expenditure for such services over the preceding three calendar years. Averaging three years of spending to determine the "base" used to measure whether a county has maintained the level of local funding would serve to smooth out the effect of significant swings in spending driven by caseload.

In the event that a county or the City is unable to comply with the MOE requirement, it would nonetheless receive an allocation from the ILSF, but in an amount that has been reduced in proportion to the county's MOE shortfall.

Further, this bill allows OSC to make adjustments in ILSF payments to account for audit findings regarding local spending on indigent legal services.

Budget Implications:

This proposal is cost neutral for the State, but provides for an alternative distribution of funds from the ILSF to counties and the City of New York for the cost of providing indigent legal services – one which ensures each county receives some benefit, in order to better protect the provision of indigent legal services.

Effective Date:

This bill takes effect March 1, 2009.

Comment on Part X

This proposal forces us to ask the question – is *Gideon* an empty promise if there is nothing to ensure the quality of indigent defense?
