

**HOW NEW YORK COULD SAVE MILLIONS:
THE POTENTIAL COST SAVINGS AND PUBLIC SAFETY
BENEFITS OF THE TEMPORARY RELEASE PROGRAM**

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The recent financial crisis on Wall Street and elsewhere has generated growing concerns about controlling government spending in New York. Anticipating a significant deficit in New York's budget, Governor Paterson has called on State lawmakers to make some "tough choices" to trim our State budget. His administration has already commenced the process of eliminating State funded programs, generating controversy by canceling \$8.6 million worth of State contracts with non-profit organizations that provide substance abuse treatment for individuals on parole.¹ Other human service providers also face sharp cuts in funding. No doubt these enacted and proposed budget cuts have forced New Yorkers to accept a basic reality – when it comes to State spending, we no longer have the luxury of adopting anything but the most cost-effective policies. This is no less true for the New York State Department of Corrections ("DOCS"), which accounts for approximately \$2.7 billion of New York's annual budget.

The need for thoughtful and cost-effective spending in corrections means that we must take full advantage of those correctional programs that require the least amount of dollars to enhance public safety. DOCS' Temporary Release program is one such program. By allowing people in prison who are nearing the end of their sentences to be released to the community for rehabilitative programming, this program not only facilitates a structured transition from incarceration to parole supervision (which is a "best practice" reentry principle), it also saves New Yorkers millions of dollars each year and generates millions more in federal, state, and local

¹ Leslie Kaufman, "To Save Money, State to Scale Back Drug Abuse Programs for Ex-Convicts," *New York Times*, November 6, 2008.

tax revenue. Nonetheless, despite the program's enormous financial and public safety benefits, the eligibility criteria have been severely restricted over the past 13 years; those convicted of a violent felony are all but barred from participating in the program. These restricted eligibility criteria have resulted in a dramatic reduction in the number of those in prison eligible for the program, and thus, a dramatic decline in the savings to New Yorkers. As a result, the Temporary Release program remains one of New York's most under-utilized resources for cost-savings and enhanced public safety.

Background of the Temporary Release Program

Initiated in 1970 as a pilot program, the Temporary Release program provides for a structured transition from prison to the community by allowing people in prison nearing their eligibility for release to leave DOCS' facilities for specific periods of time to engage in rehabilitation-related activities, such as work, education, volunteer and religious activities. There are several different types of temporary release programs, including: work release, which provides people in prison opportunities to obtain employment in the community; industrial training leave, which affords people in prison opportunities to engage in community-based vocational training; and educational leave, which allows people in prison to pursue academic goals in the community.² The most utilized program is work release, which in 2007 accounted for slightly more than 90% of those participating in the Temporary Release program.³

The Temporary Release program – particularly work release – saves state taxpayers money in two important ways. First, it costs significantly less to house work release participants than to house “traditional prisoners.” For example, in 2007 it cost state taxpayers \$31,000 per year to house each traditional prisoner, but only \$7,500 per year to house each work release

² DOCS' Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program incorporates work release as one of its critical phases, allowing inmates who have received six months of intensive prison-based substance abuse treatment to transition to the community through work release and community-based treatment.

³ See DOCS, *Temporary Release Program, 2007 Annual Report*, Table V (available upon request at www.docs.state.ny.us/Research/request2.asp).

participant, resulting in a \$23,500 per year savings for each work release participant.⁴ Second, because individuals involved in the work release program earn a taxable income, this program generates local, state and federal tax revenues.⁵

Tens of thousands of people per year apply to participate in the Temporary Release program, most seeking to participate in work release. In 2007 alone, DOCS received 34,798 applications for the Temporary Release, 33,441 of which were for work release. Of these, 2,515, or only 7%, were permitted to participate. The program was not always this restrictive. At its peak in 1994, 27,937 individuals participated in the Temporary Release program compared to only 2,515 in 2007 – a decline of just over 90%. On any given day in 1994, approximately 6,300 individuals were participating in the work release; by 2007, this figure had plummeted to only 787 individuals.⁶

The Temporary Release Program Fell Victim to “Tough on Crime” Policies.

This drastic decline in the program did not result from a thoughtful weighing of the program’s costs and benefits. Rather, it was a response to some high-profile arrests of individuals who committed new crimes while on work release – arrests which generated intense media scrutiny.⁷ The issue then became politicized during the 1994 gubernatorial election when then-Republican candidate George Pataki, seeking to overcome incumbent Mario Cuomo,

⁴ See *Temporary Release Program, 2007 Annual Report*, at 10. The \$31,000 figure in this report may be somewhat lower than actual costs. The 2008 state budget allocated approximately \$2.7 billion in state operations to the New York Department of Corrections. As of October 9, 2008, there were 61,260 people housed in DOCS’ facilities, which comes to \$44,000 per incarcerated person per year. Nonetheless, for purposes of this policy report, we use the conservative \$31,000 figure in DOCS’ 2007 report.

⁵ *Temporary Release Program: 2007 Annual Report*, at 10.

⁶ *Temporary Release Program: 1994 Annual Report*; a 9; *Temporary Release Program: 2007 Annual Report*, at 10.

⁷ See e.g., Richard Perez-Pena, “Inmate in Subway Stabbing Was in Work-Release Plan,” *New York Times*, May 26, 1993; Mireya Navarro, “New York Widens Work Release to Reduce Prison Overcrowding,” *New York Times*, March 28, 1994.

engaged in a “tough on crime” campaign.⁸ As part of this “tough on crime” plan, Mr. Pataki promised to abolish work release for all individuals convicted of a violent felony offense. For this seemingly “tough on crime” stance, New Yorkers continue to this day to foot a very steep bill.

Soon after he was sworn in to office, in January, 1995, the newly-elected governor issued Executive Order 5, which prohibits most people convicted of a crime categorized as a violent felony from participating in all Temporary Release programs, including work release.⁹ In his press conference announcing this Executive Order, Governor Pataki played on the fear that individuals would commit violent crimes while on work release and spoke of Clarence Prude – another high profile arrest of a person who was on work release when he was arrested in Rochester, New York for killing a 20-year old woman during a robbery attempt.¹⁰ As tragic as this case was, it was an aberration, and as discussed further below, the more common and real story of people on Temporary Release was successful compliance, minimal criminal behavior, and a successful transition from prison to the community. Nonetheless, the focus on aberrational cases such as Clarence Prude set the tone for strict eligibility requirements that bar a majority of incarcerated people from the program.

The severe restrictions on the program’s eligibility has led to a sharp decline in program participants. It follows that fewer program participants means fewer arrests of people involved in the Temporary Release program. However, by restricting eligibility and drastically curtailing the Temporary Release program, the State has essentially “thrown the baby out with the bathwater,” and is no longer realizing the program’s significant monetary and public safety benefits. Year

⁸ Ian Fisher, “The 1994 Campaign: Crime, Pataki Urging Longer Terms in Crime Plan,” *The New York Times*, October 12, 1994.

⁹ This Executive Order was subsequently replaced by Executive Order 5.1, which accomplishes the same goal. *See* 9 New York Code of Rules & Regulations (“NYCRR”) 5.5. The Temporary Release program saw further reductions in 2007, when Governor Spitzer issued yet another Executive Order further restricting eligibility for the program. *See* 9 NYCRR 6.9. Governor Paterson has extended this Executive Order.

¹⁰ Kevin Sack, “Pataki Prohibits Violent Criminals from Outside Jobs,” *New York Times*, January 25, 1995.

after year since 1995, New Yorkers have spent millions more than would have been spent on corrections had the program been reformed rather than restricted.

Failing to Realize the Program's Significant Monetary Benefits

The Temporary Release program's drastic reduction has cost state taxpayers millions of dollars per year in both unnecessary tax dollar expenditures and lost tax dollar revenue. As stated above, work release alone saves the state \$23,500 per participant per year in housing costs. In 2007, the average daily participation in work release was 787 individuals, saving New Yorkers \$18,494,500 for that year.¹¹ A more substantial savings could have been realized had participation in the program remained constant since the program's peak in 1994, when 6,300 individuals were participating in work release on a daily basis.¹² With 6,300 work release participants (at \$23,500 in savings per participant), New Yorkers could have realized a savings of over \$148,000,000. This means that the politically-driven drastic restrictions in the Temporary Release program have cost New York \$129,555,500.¹³ Stated another way, New York is losing over \$350,000 per day because of the under-utilization of the work release program. A conservative estimate of the cost to New Yorkers for failing to maintain the 1994 level of participation for the years 1995 through 2007 exceeds \$1.25 billion.¹⁴

In addition to the unrealized savings by under-utilizing the Temporary Release program is

¹¹ *Temporary Release Program: 2007 Annual Report*, at 10.

¹² *Temporary Release Program: 1994 Annual Report*, at 9.

¹³ Because this figure takes into account only work release participants, this is a very conservative estimate of the possible tax dollar savings of the Temporary Release program. In their 2007 report, DOCS calculates the per slot savings only for the work release individuals. But the savings of the day reporting individuals must be even more significant. Work release individuals return to a DOCS facility each night; in contrast, day reporting individuals reside in their own residences and report to a DOCS facility several designated times per week.

¹⁴ This figure takes into account a 25% reduction in the program per year from 1994 to present levels of 787 participants per year, and derives a yearly cost to house "traditional prisoners" from the average of the \$28,000 per year it cost to house incarcerated individuals in 1995 and the \$31,000 it costs in 2007 to house such individuals. The \$7,500 per year it costs to house work release participants has remained constant since 1994. This data is based on DOCS' temporary release program annual reports from 1994, 1995, and 2007.

the lost tax revenue caused by current Temporary Release policies. In both the work release and day reporting components of the Temporary Release program,¹⁵ participants earn an income and thus, pay taxes. In 2007, the 2,498 individuals who participated in the work release program throughout the course of the year paid \$1,500,793 in federal, state, and local taxes, which averages about \$600 per year per work release participant.¹⁶ In contrast, in 1994, 24,055 individuals participated in work release over the course of the year. Using this number as a gauge for the program's full participation level reveals a potential tax revenue of \$14,433,000 per year.¹⁷ This means that each year \$12,932,200 in potential work release tax revenue is lost.

The day reporting program generates even more tax revenue per participant. In 2007, the 188 individuals participating in day reporting paid a total of \$329,684 in federal, state, and local taxes, which is approximately \$1,750 per individual.¹⁸ In 1994, 7,312 individuals participated in day reporting. Again, using this number as a gauge for the program's full participation level reveals a potential of \$12,796,000 in federal, state, and local tax revenue from day reporting individuals.¹⁹ This translates to \$12,466,316 in lost tax revenue that could have been realized through the day reporting program.

Put simply, adopting policies designed to realize the Temporary Release program's full potential could save New Yorkers approximately \$137 million per year, with an additional revenue of \$17 million per year to the federal government in tax revenue.²⁰ More available tax revenue means fewer tough choices when it comes to New York's state budget. These savings

¹⁵ Work release allows individuals to leave a facility for up to 14 hours in a day to work in the community. Day reporting allows individuals who are within six months of their earliest release date to live and work in the community, though they must report to the work release facility several designated times per week.

¹⁶ *Temporary Release Program: 2007 Annual Report*, at 10.

¹⁷ *Temporary Release Program: 1994 Annual Report*, at 9.

¹⁸ *Temporary Release Program: 2007 Annual Report*, at 10.

¹⁹ *Temporary Release Program: 1994 Annual Report*, at 9.

²⁰ These figures assumes that only a portion (about 30%) of the tax revenue goes to New York State, with the remainder going to the federal government.

could be used to operate other programs that have been shown to effectively reduce crime, including the \$8.6 million for community-based substance abuse treatment for parolees that was recently stripped from New York's budget as well as other alternative to incarceration programs.

Failing to Realize the Program's Long Term Public Safety Benefits

A misplaced focus on the few people who commit new crimes while in the Temporary Release program ignores the fact that a significant majority of those involved in the program complete it and successfully transition to the community. Indeed, Temporary Release provides for a structured transition from incarceration to life in the community, helping participants to develop the work, educational, and basic life management skills they need to become law-abiding, contributing members of their communities. It is no surprise, then, that these programs are effective at reducing recidivism,²¹ which, of course, enhances public safety. To be sure, these net gains in public safety are achieved with some risk that program participants will abscond or re-offend; it simply is not possible to develop a prison release program that is completely risk-free.²² To fully realize the Temporary Release program's monetary and reentry benefits, however, we must accept some measure of risk that not all program participants will be successful.

Unfortunately, New Yorkers are not only losing over one-hundred million dollars per year in taxpayer savings and tax revenues, we are also failing to benefit from a program that could produce significant long-term gains in public safety if fully implemented.

²¹ Seiter Richard P., and Karen R. Kadela. 2003. "Prisoner Reentry: What Works, What Does Not, and What is Promising," *Crime and Delinquency*, 49(3): 360-88. This article summarizes several studies showing that work release programs are "effective in reducing recidivism as well as improving job readiness for ex-offenders." *Id.* at 373-74. Drug treatment programs that use work release as a transitional phase (as New York's CASAT program does) show particularly promising results. *Id.* at 375-76.

²² In his book, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (2005), at 93, Jeremy Travis cogently states this point: "Because reentry is inevitable for all but the few individuals who die in prison, and because the possibility of new crimes is high, all programs that oversee returning prisoners must accept the risk that a program participant may commit the crime that sparks a firestorm of public outcry."

Throwing out the Bathwater and Keeping the Baby

Much has changed since the initial restrictions were placed on the Temporary Release program in 1995. We have learned that the “tough on crime policies” of the 1990s have come at an extraordinarily high cost. The United States is now the world’s leading jailer, forcing states to commit a significant portion of their annual budgets to prisons. Since 2000, each year over 600,000 people leave prison; in 2007, this figure reached a high of 725,00 people leaving prison. All too often, people who are released from prison are ill-equipped to successfully reintegrate into their communities, contributing to high rates of recidivism. The effort to manage state budgets in a way that also enhances public safety has led to a shift from a “tough on crime” focus to a more thoughtful exploration of policies and practices that can reduce rates of recidivism and incarceration, and criminal justice professionals and policy makers have become much more reentry conscious. On a national scale, this shift is most evident in the recent passage of the Second Chance Act, which seeks to help states and localities better address the needs of people reentering the community from the criminal justice system. In New York State, this shift is evident not only in the creation of county-wide reentry task forces, but in the leadership and initiatives of DOCS Commissioner Brian Fischer who has, among other things, expanded opportunities for those in prison to obtain college-level programming and started the Reentry Unit at Orleans Correctional Facility, which serves individuals being released to Erie and Monroe Counties. With this forward-looking approach, Temporary Release can serve as a significant and supportive pathway to reentry for many more people as they approach the time for their return to the community.

Some public officials have noted that the Temporary Release program can play a critical role in furthering the successful reintegration of people released from prison. For example, Martin Horn, the Commissioner of the New York City Departments of Probation and Corrections, stated the following at a public hearing: “I believe very strongly that the state has to build its reliance on work release and halfway houses as a way out” of prison.²³ To make this

²³ Mr. Horn stated this before the New York State Commission of Sentence Reform, June 13, 2007 Commission meeting, the transcript of which is available at http://criminaljustice.state.ny.us/legalservices/sentencingreform/transcript_commission_20070613.pdf.

happen, however, New York must adopt a more thoughtful, inclusive, and effective Temporary Release program policy – one that strives to strike a balance between reducing the crime risk posed by inmate participation in the Temporary Release program and promoting the successful reintegration of program participants. Such a policy would eschew fear-based, quick-fixes and would instead look to the realities of the program itself to identify ways of reducing absconding and new arrests while reaping the program’s significant monetary and public safety benefits. As described below, such a policy would recognize that improved outcomes for Temporary Release can be achieved by greater emphasis on program readiness, transitional planning, intensive supervision, and community support while in the Temporary Release program.

The realities of the Temporary Release program’s absconding and new crime issues are described in a report that DOCS issued in May, 1995 entitled: *Comparison of Temporary Release Absconders and Non-Absconders: 1993-1994*. At the outset, this report dispels the perception that a large number of individuals commit new crimes while involved in the program. In reality, a very small percentage of people – approximately 3% to 4% – are arrested for new crimes while in the Temporary Release program.²⁴ This report also reveals that the crime for which the participant is serving time is a poor predictor of whether the person will abscond or be arrested for committing a new crime while involved in the program. Indeed, individuals convicted of a violent felony offense were slightly less likely than those convicted of non-violent offenses to abscond or commit a new offense while in Temporary Release.²⁵

In addition to documenting the efficacy of Temporary Release, the 1995 DOCS report also included data that suggests other, more effective ways to address the concerns about the Temporary Release program without diminishing the program’s benefits. Notably, the data shows that most incidents of absconding or new arrests occur within the first three months of participation in the program. “Once inmates were able to make it to their third month of

Mr. Horn’s comment is found on page 203 of this transcript.

²⁴ DOCS, *Comparison of Temporary Release Absconders and Non-Absconders: 1993-1994*, (May 1995), at 3.

²⁵ *Id.* at 20-21.

participation without incident, the odds of absconding or being arrested in the community substantially decreased.”²⁶ The higher rate of absconding in the early months of work release is likely related to the reports from program participants about the lack of resources available to help them obtain employment while in the program.²⁷

Thus, instead of severely restricting eligibility for the Temporary Release program and greatly limiting the number of eligible individuals, we could put more resources into:

- helping program participants find employment;
- enhancing supervision and community support during the first few months of the program, when the risk of failure is the highest; and
- improving preparation for program participation.

Such types of initiatives have proven to be effective in other jurisdictions; indeed, studies of work release initiatives in other states suggest the availability of relapse prevention services and other types of wrap around services to reduce violations while on work release.²⁸ The cost of adopting such initiatives will certainly be outweighed by the program’s long term monetary savings. Just as importantly, doing so will allow New Yorkers to reap the program’s significant long term public safety benefits.

Conclusion

The media’s focus on the failings of the Temporary Release program overshadowed the program’s successes and ignored the many individuals who used the program to transition from “prisoner” to law-abiding, contributing member of the community. Best practices are not derived from the isolated, high-profile incidents upon which the media focuses. Rather, best practices are based on the available evidence and data. The evidence and data about the Temporary Release program reveals that with some modest reforms – rather than the wholesale restriction of

²⁶ *Id.* at 5.

²⁷ Mireya Navarro, “New York Widens Work Release to Reduce Prison Overcrowding,” *New York Times*, March 28, 1994.

²⁸ *See e.g.*, Massarand, Monica G., Work Release Program Research Project Final Report June 30, 2004. Multnomah County Oregon, available at <http://www.lpscc.org/docs/WorkReleaseProgramResearchReportJune2004.pdf>

eligibility – the Temporary Release program can save New Yorkers millions of dollars every year while simultaneously enhancing public safety. New Yorkers have already lost over a billion dollars because of the decision to severely restrict program participation rather than reform the program. The time is way past due to enact policies that will take advantage of the program's incredible potential.