



CENTER FOR COMMUNITY ALTERNATIVES
INNOVATIVE SOLUTIONS FOR JUSTICE

**Testimony of the
Center for Community Alternatives
before the
Assembly Committee on Correction
Regarding Merger of the Department of
Correctional Services and the Division of Parole**

*FURTHERING THE MERGER'S PURPOSE THROUGH
A REVITALIZED TEMPORARY RELEASE PROGRAM*

**Albany, New York
November 10, 2011**

**CENTER FOR COMMUNITY ALTERNATIVES
ALAN ROSENTHAL
PATRICIA WARTH
CO-DIRECTORS, JUSTICE STRATEGIES
115 E. Jefferson St., Suite 300
SYRACUSE, NY 13202
(315) 422-5638
39 WEST 19TH STREET, 10TH FLOOR
NEW YORK, NY 10011
(212) 691-1911**

The Center for Community Alternatives is grateful for this opportunity to address the Assembly Standing Committee on Correction regarding the merger of the Department of Correctional Services (DOCS) and the Division of Parole into the new Department of Corrections and Community Supervision (DOCCS). This merger provides a unique opportunity to enhance eligibility and utilization of the Temporary Release program in a way that will further the merger's purpose, provide fiscal benefits to the State and serve as a critical resource to programmatically support the transition from prison to the community.

Over the past sixteen years, the Temporary Release program has devolved from a vital program with a significant participation to a dwindling program that turns away thousands of eligible applicants each year. At its peak in 1994, 24,055¹ individuals participated in the work release program. By 2010, program participation had plummeted to 1,910.² In the two year period from 2009 to 2010 alone, the number of new admissions to the program was halved – in 2009, 416 applicants were accepted in to the program while in 2010, only 201 applicants were accepted.³ This low admission rate is not for lack of inmate interest in the program. Indeed, in 2010, about 24,269 incarcerated people applied to participate in the program, but only 702 people were accepted into work release as a stand alone program or work release as part of the Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program.⁴ This means that only 4% of all Temporary Release program applicants are accepted into the program. Comparing this acceptance rate to that of the most prestigious law schools in the nation (Yale with a 7.3% acceptance rate, Stanford with a 9% acceptance rate, and Harvard with a 11.8% acceptance rate) reveals just how limited the Temporary Release program has become. The incredibly limited and “exclusive” nature of today's Temporary Release program must certainly be demoralizing for incarcerated people who view the program as a significant opportunity to positively work toward their eventual release and successful reentry into the community.

Now is an opportune time to revitalize the Temporary Release program. Senator Velmanette Montgomery has introduced legislation, Bill No. S5920, intended to roll back the

1 See Department of Correctional Services, *Temporary Release Program: 1994 Annual Report*, at 1.

2 See Department of Correctional Services, *Temporary Release Program: 2010 Annual report*, at 1.

3 See Department of Correctional Services, *Temporary Release Program: 2009 Annual Report*, at 2 and DOCS, *Temporary Release Program, 2010 Annual Report*, at 2. These numbers do not include admissions to the Comprehensive Alcohol and Substance Abuse Program (CASAT), which includes participation in the Temporary Release program as one program component. According to the DOCS annual reports, the number of admissions to this program dropped dramatically as well, from 756 in 2009 to 501 in 2010.

4 See DOCS, *Temporary Release Program: 2010 Annual Report*, at 2.

restrictions to Temporary Release program eligibility that have contributed to the program's demise over the past sixteen years. However, this legislation in and of itself will not be enough to fully revitalize the program because, as the above data reveals, even now many statutorily eligible applicants are being denied program participation. The merger of DOCS and Parole into one agency with a uniform mission provides the impetus for a renewed commitment to the Temporary Release program. A revitalized Temporary Release program is fully consistent with the goals underlying the merger. Moreover, as a result of the merger, the mechanics of the Temporary Release program are now seamless as a person transitions from incarceration, to participation in the Temporary Release program, to release to the community under supervision, and ultimately to successful reintegration as a law-abiding, contributing member of society.

Below, we identify and briefly discuss the four primary ways in which a revitalized Temporary Release program promotes the underlying goals of merging DOCS and Parole into one organization. These points are more fully discussed in CCA's working paper, *How New York Could Save Millions: The Potential Cost Savings and Public Safety Benefits of the Temporary Release Program*⁵ and CCA's article "In Search of Workable Sentencing Model," which was published in the New York State Association of Criminal Defense Lawyer's quarterly magazine, *Atticus*. Both are attached and incorporated by reference into this written testimony.

1. The Temporary Release Program Promotes the Successful Reentry and Reintegration of Program Participants.

Enhanced public safety through the promotion of individuals' successful reentry and reintegration into the community is a core purpose of the merger of DOCS and Parole, as set forth in the merger's implementing legislation.⁶

The Temporary Release program has limitless potential to further this purpose. 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.⁷ The

⁵ This report is available at www.communityalternatives.org/pdf/TemporaryReleasePolicyPaper.pdf.

⁶ See 2011 Budget Bill, Subpart A, Section 1, which discusses the State goal of promoting successful reentry and reintegration, as set forth in Penal Law § 1.05(6), and how this shared mission of DOCS and Parole is best accomplished through merging the two agencies, thereby providing for a "seamless network for the care, custody, treatment, and supervision of a person from the day a sentence of state imprisonment commences, until the day such a person is discharged from supervision in the community."

⁷ See Justice Policy Institute, *How to Safely Reduce Prison Populations and Support People Returning to the Community*, June 2010, available at: http://www.justicepolicy.org/images/upload/10-06_FAC_ForImmediateRelease_PS-AC.pdf. (recommending implementation of or expanded use of work release programs because such programs "allow people to stay in the community and begin to build positive social ties and contribute to the economy instead of expending scarce public resources while incarcerated.")

evidence has shown that programs like Temporary Release are effective at reducing recidivism, which of course, enhances public safety. In their research article, “Prisoner Reentry: What Works, What Does Not, and What is Promising,” Richard Seiter and Karen Kadela summarize several studies showing that work release programs are “effective in reducing recidivism as well as improving job readiness for ex-offenders.”⁸ Drug treatment programs that use work release as a transitional phase, as New York’s CASAT program does, show particularly promising results.⁹ It is research like this that has prompted the Justice Policy Institute to recommend that states either implement or expand already-existing work release programs.¹⁰

Today, there is a growing focus on “smart-on-crime” and evidence-based approaches to crime and to reentry. Given this focus, it is inexplicable that New York fails to fully utilize the Temporary Release program, which has a proven track record for reducing recidivism, enhancing public safety and, as discussed further below, saving scarce resources. Viewed through the lens of evidence-based reentry, the Temporary Release program is best thought of – and should be renamed – the “Reentry Transition Release” program.

2. The Temporary Release Program Promotes Informed Decisions About Readiness for and Supports Needed Upon Release.

This past year Executive Law § 259-c was amended to require that the parole board “establish written procedures for its use in making parole decisions” and that these procedures “incorporate risk and needs principles to measure the rehabilitation of persons appearing before the board, the likelihood of success of such persons upon release, and assist members of the state board of parole in determining which inmates may be released to parole supervision.”¹¹ Use of a risk and needs assessment is certainly preferable to trying to gauge readiness for release based solely on the crime of conviction, an overriding factor in many parole decisions.¹² The use of risk and needs assessments would be significantly enhanced if coupled with “real world”

8 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 at 373-74.

9 *Id.* at 375-76.

10 See Judicial Policy Institute, *How to Safely Reduce Prison Populations and Support People Returning to Their Communities*, (June 2010), at 6, available at: http://www.justicepolicy.org/images/upload/10-06_FAC_ForImmediateRelease_PS-AC.pdf.

11 See Executive Law 259-c(4).

12 See e.g., *Huntley v. Evans*, 77 A.D.3d 945, 947 (2nd Dept. 2010) (“Here, the Parole Board cited only the seriousness of the petitioner’s crime, and failed to mention in its determination any of the other statutory factors, including his record of achievements, training of animals while incarcerated for use by law enforcement, the physically challenged, and veterans of war, good disciplinary record, and the positive recommendation made by the sentencing court.”) Unfortunately, while it is common for the Parole Board to ignore post-conviction evidence of rehabilitation and rely solely on the crime of conviction to deny parole release, it is less common for courts to intervene, as the court did in *Huntley*.

transitional opportunities available through a robust reentry transition release program such as the Temporary Release program.

Participation in the Temporary Release program provides a sound and accurate picture of a person's readiness for release to the community as a law-abiding citizen. Indeed, this State has long recognized the value of Temporary Release participation in making release decisions and has included a person's participation in this program as one of the factors the parole board must consider in making parole decisions.¹³ Today, however, because so few inmates are afforded the opportunity to participate in the program, the parole board is usually denied the benefit of considering this factor in making release decisions.

Participation in the Temporary Release program not only aids the board in making decisions about readiness for release, it can also be an invaluable resource to help DOCCS staff identify the supports a person needs while being supervised in the community. Participation in the Temporary Release program, for example, can help identify the need for better job skill development, the need for more education to further career advancement, or the need for ongoing after-care to address a substance abuse problem.

The real-life experience to be gained from Temporary Release program participation is of far greater value than relying solely on the artificial construct of a risk and needs assessment in helping the parole board and DOCCS staff make informed decisions about release and supports upon release, providing another reason for revitalizing the program.

3. The Temporary Release Program Provides a Much-Needed Reentry Release Valve as Indeterminate Sentencing is Abandoned in Favor of Determinate Sentencing.

As noted in Subpart A, section 1 of the 2001 Budget Bill, New York is moving "steadily from an indeterminate sentencing format to a determinate sentencing format." While determinate sentencing promotes the goal of simplicity, it fails to promote the goal of successful reintegration and reentry by providing incarcerated people opportunities well in advance of their maximum sentence to be evaluated for early release. These early release opportunities provide natural incentives for self-improvement through programming and pro-social behavior; they also increase the likelihood that individuals will be released when they are ready to live a law-abiding life in the community and not needlessly held beyond that point at the cost of about \$44,000 per year.¹⁴

¹³ See Executive Law 259-i (2)(c)(A)(ii).

¹⁴ See Legal Action Center, *Drug Law Reform 2008 – Dramatic Cost Savings of New York State*, available at: www.lac.org/pdf/RDL08_Cost_Savings_Report_12_08.pdf. (noting that based on DOCS 2008 budget and the number of people incarcerated, it costs approximately \$44,000 per year to incarcerate a person in a New York State prison). This is a conservative measure of costs. According to the Correctional Association of New York, by 2011, the cost per year of incarcerating one person

A revitalized Temporary Release program can compensate for the shortcomings of a determinate sentencing format in promoting the successful reentry and reintegration of imprisoned people. Like the prospect of being released to parole, the opportunity to participate in Temporary Release provides incarcerated people incentives to engage in positive programming and behavior throughout the course of their incarceration. Moreover, as explained above, participation in the Temporary Release program in and of itself is a best reentry practice. The benefits of a vibrant Temporary Release program are discussed more fully in the attached article, *In Search of a Workable Sentencing Model*.

4. The Temporary Release Program Can Provide Significant Cost Savings.

Temporary Release is an exceptionally cost-effective program; indeed, a robust Temporary Release program is a sure way to reduce the staggering cost of our prison system. The Temporary Release program – particularly work release – saves taxpayers in two important ways. First, it costs significantly less to house work release participants than to house “traditional prisoners.” Second, because individuals involved in work release earn a taxable income, this program generates local, state and federal tax revenues.

CCA’s 2008 working paper, *How New Yorkers Could Save Millions: The Potential Cost Savings and Public Safety Benefits*, which is attached, discusses these cost savings in more depth. Notably, in this paper we concluded that between 1995 and 2007, the diminished use of the Temporary Release program cost New Yorkers at least \$1.25 billion. Given New York’s continued fiscal crisis and the need for cost-effective correctional policies, there is little justification for our continued failure to take full advantage of the Temporary Release program.

CONCLUSION

The Temporary Release program is a “smart-on-crime” program that is not merely cost-effective, but also fosters informed decision-making and sound reentry practices. Thus, the program can and should be renamed the “Reentry Transition Release” program. In considering the benefits of a revitalized program it is helpful to consider the sage advice of Hon. Michael A. Wolff, who has lectured and written on sentencing policy. In a 2008 Brennan Lecture, Judge Wolff noted that while “we must acknowledge that the reason for sentencing is to punish,” we must also acknowledge that “if we choose the wrong punishments, we make the crime problem worse, punishing ourselves as well as those who offend.”¹⁵

had reached \$55,000. See www.correctionalassociation.org/publications/download/pvp/factsheets/sa_fact_sheet_2011.

15 The speaking draft of this lecture is available at:

As the Department of Corrections and Community Supervision moves forward as one agency with a shared mission of enhancing public safety by reducing recidivism, the “Reentry Transition Release” program can play a profound role in helping DOCCS to strike the balance between too little and too much punishment within the determinate sentencing model, supporting and preparing individuals for their transition back to the community while simultaneously realizing dramatic cost-savings.