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**Testimony Before the
Joint Assembly Standing Committees on
Codes, Judiciary, Correction, Health, Alcoholism and
Drug Abuse, and Social Services**

Regarding the Impact of the Rockefeller Drug Laws on drug addiction, drug-related health problems and drug-related crime, and to explore the suitability and effectiveness of treatment as a possible alternative to mandatory incarceration

Thursday, May 8, 2008
Assembly Hearing Room
250 Broadway, Room 1923, 19th Floor
New York, New York

Good morning, I am Robert Maccarone, the State Director of the Division of Probation and Correctional Alternatives (DPCA)—the state agency charged with providing funding, program oversight and regulation of the State’s 58 county and the City of New York Probation Departments. DPCA also provides funding and sets statewide standards for alternatives to incarceration/community correction programs. Our agency also manages the interstate transfer of 5,000 offenders between New York and other states pursuant to the Interstate Compact for Adult Offender Supervision (ICAOS).

The goal of probation and community corrections is to reduce recidivism (offender re-arrest) by assisting offenders to change their behavior and lead productive and law-abiding lives. Probation and Community Correction Agencies do this through supervision, treatment and services designed to assist offenders obtain and retain employment.

As we examine our criminal justice system, I think it is important that we do so in the context of how New York fares with other states. New York State is now the 5th safest state in the nation

and the safest of all large states. New York State has successfully reduced the number of Part One Crimes including Murder, Rape, Robbery, Burglary, Larceny and Motor Vehicle Theft to their lowest levels in more than 30 years. And it has done so while continuing to reduce its reliance on incarceration—the state prison population has been reduced from 70,000 to fewer than 63,000 inmates today. In comparison, California (38 million residents) has 170,000 in its state prison system and Texas (24 million residents) has 150,000 in prison. California residents are now considering an \$8 Billion Plan to build 50,000 new prison cells. By committing these resources to prison construction and operation, states diminish their fiscal capacity to invest in education and health care.

This morning, I will not be addressing sentencing reform as it concerns our state's drug laws per se. Rather, I will be addressing probation, drug treatment models and the need for other statutory change. As you know, New York State has a Commission on Sentencing Reform that is studying this very issue and it is being very capably led by Assistant Deputy Secretary for Criminal Justice and Commissioner of the NYS Division of Criminal Justice Services, Denise O'Donnell. The Commission has conducted extensive hearings and deliberations on this subject and has undertaken a daunting task performed by full-time Commissions in other states. During 2007, I served as one of four subcommittee chairpersons. My charge was the study of probation, alternatives to incarceration, parole and victim and community services. In August of 2007, my Committee produced its final report containing 30 recommendations for improving these systems in New York State. And in November of 2007, I testified before the Commission and read into the public record, the Subcommittee Report, a copy of which can be obtained by visiting our agency website (www.dpca.state.ny.us).

New York State's 57 County and the City of New York Probation Departments supervise 125,000 adult offenders—a population that is twice the size of the State's prison population and larger than the State's prison and parole populations combined. Half of the adult probationers are convicted of felony offenses; 11% are Violent Felony Offenders; 26,000 are DWI Offenders and an equal number of offenders are convicted of drug offenses. Probation departments also supervise 6,000 sex offenders, 4,000 of whom are Sex Offender Registry Act (SORA) cases. In the Family Court, Probation departments supervise 17,000 juvenile delinquents and persons in need of supervision (PINS) during the course of a year. Drug and alcohol use and mental illness are prevalent in the juvenile population as well as the adult.

Probation supervision, when combined with quality treatment can assist offenders address their dependency and go on to lead law-abiding lives. Years ago, drug and alcohol treatment providers in New York State and throughout the Country, doubted whether individuals referred to treatment through the courts and criminal justice system could effectively address their dependency and succeed in treatment. Treatment professionals widely believed that criminal justice referral, often deemed as coercive, affected the drug dependent individual's commitment to treatment goals. Years and many research projects later, we now know that criminal justice referral and the structure offered through supervision can assist the drug dependent individual succeed in treatment. We also know that employment is a very important component of a person's capacity to recover and succeed in the community. This is why DPCA is working with

the National Institute of Corrections to implement in probation and alternatives to incarceration programs, the federally certified Offender Workforce Development Specialist (OWDS) Program.

Drug treatment works and numerous studies have now documented and measured the return on investment in quality treatment. Structured supervision based on case plans that are developed with the aid of fully validated risk and need assessments, quality treatment and cognitive behavioral interventions that address criminal attitudes and thinking, criminal associates and peers, drug dependency and family dysfunction all help the drug dependent offender recover. Sustained involvement in supportive treatment and community-based recovery programs, along with sustained employment that can bring financial independence are all important to offender rehabilitation.

New York State has an impressive record of success in addressing the needs of drug dependent offenders. One such example is the Drug Treatment Alternative Program (DTAP), commenced in Kings County by District Attorney Charles Hynes and replicated throughout the New York City area. The DTAP or District Attorney driven model has achieved great success in New York State over the years. It is largely responsible for diverting large numbers of second felony offenders from state prison AND has resulted in thousands of offenders achieving sobriety and being able to reconstruct their lives. I believe the DTAP should be a statewide model program so a drug dependent second felony offender living anywhere in New York State, has the same opportunity for diversion and treatment as the offender living in Kings County. Admittedly, NYS is facing one its greatest financial challenges in years and program expansion is costly. But, while statutory change is being discussed--its outcome largely uncertain, we have a program model that can offer an equitable and effective solution.

Another such example is the Office of Court Administration's success with the Drug Court Model, now operating in nearly 200 localities throughout the State. The authority of the Court combined with access to quality treatment can provide a powerful incentive to offenders to change their behavior, participate in treatment and recover. The key to the success of the Drug Court model is the Judge's capacity to respond swiftly and certainly to offender violations. Research has demonstrated that responding to offender violations swiftly, even with the use minor admonitions and graduated sanctions can be very effective in changing offender behavior and producing positive outcomes.

In Probation, we are working to improve offender outcomes as well. Included among several departmental legislative proposals this year to improve probation practice, is DPCA Departmental #226, a copy of which I have appended to this written testimony. If passed into law, it will ensure the Court's swift and certain response to probation violations. DPCA proposes statewide standards for judicial review of probation warrants (within 3 business days from receipt of the declaration of delinquency) and the arraignment of the offender for the probation violation hearing (within 10 business days). We believe these proposals will assist probation to replicate the most effective aspects of the Drug Court Model, produce better outcomes for offenders and reduce recidivism. Thank you for this opportunity.

Attachment: DPCA #226

Memorandum

AN ACT to amend the executive law and the criminal procedure law, in relation to issuance and entry of probation warrants, declarations of delinquency, court appearances with respect to violation of probation hearings, and authority to arrest and detain interstate offenders

Purpose:

This bill would enhance the State's ability to respond swiftly when probationers violate the conditions of their probation sentences.

Summary of Provisions:

Sections 1 and 2 of this bill amend Executive Law § 221 to include within the electronic database of criminal justice information that is maintained by the New York State Police, information concerning the issuance of probation warrants.

Section 3 of the bill adds a new Executive Law § 259-n, entitled "Interstate arrest and detainer," to authorize the arrest and detention of offenders who are under supervision pursuant to the Interstate Compact For Adult Offender Supervision (ICAOS) and who violate the terms and conditions of their supervision.

Section 4 of the bill amends Criminal Procedure Law (CPL) § 410.30 to establish that when a court receives, from a probation officer, a request for a declaration of delinquency for a probationer, it shall make a determination on the request within 72 hours of receipt of the request.

Section 5 of the bill amends CPL § 410.40 to require that when no warrant has been issued, but a probation officer has submitted a violation of probation petition and report, the court shall promptly order a notice to appear and direct that the defendant appear in court within ten business days of the court's issuance of the order. Additional language requires that when a probation officer has requested that a warrant be issued, the court shall act on that request within 72 hours from its receipt of the request.

Section 6 of the bill amends CPL § 410.60 to require that when a violation of probation petition and report has been filed with the court, and the person has not been taken into custody nor has a warrant been issued, an initial court appearance shall occur within 10 business days of the court's issuance of a notice to appear.

Section 7 of the bill similarly amends CPL § 410.70(2) to require that a defendant must appear before the court for a violation of probation hearing within 10 business days of the court's issuance of the notice to appear.

Section 8 of the bill establishes an effective date of November 1st next succeeding the date on which this bill shall become law.

Existing Law:

Executive Law § 221 is currently entitled, "System to carry information on felonies." Specific provisions relate to the entry of complaints and certain warrants relative to felonies as well as missing children information and prompt entry of all such documents and information.

CPL § 410.30 governs declarations of delinquency with respect to probation or conditional discharge cases. CPL § 410.40 sets forth parameters and the necessary content of notices to appear and procedures governing warrants in probation and conditional discharge cases. CPL § 410.60 contains the parameters governing court appearances with respect to such cases, and CPL § 410.70 governs hearings on violations of probation or conditional discharge.

Legislative History:

This is a new proposal.

Statement in Support:

For probation supervision to be an effective sanction, probationers must understand that violations of the conditions of their release will prompt a swift and certain response. This bill would facilitate such a response in several ways. First, it requires that violation of probation warrants are timely entered into the law enforcement notification system. This is important as probationers with pending violation warrants have demonstrated contempt of court in not adhering to their conditions and pose a greater public safety risk. Timely entry of warrant information also will ensure that law enforcement agencies are made aware of the warrants and can promptly take probationers into custody.

Second, it establishes timeframes for the courts in the handling of declarations of delinquency and warrant requests. This will guarantee prompt judicial attention to alleged violative behavior.

Third, it sets timeframes for probationers' appearances before the court, in order to ensure that probation violation proceedings are conducted and the violations adjudicated in a timely manner. These measures are consistent with sound probation practice, recognize that priority should be paid by the judiciary to alleged violations of

their court orders and imposed conditions, promote offender accountability, and should prove an effective deterrent to future misconduct by probationers.

Lastly, adding a new section to the Executive Law authorizing the arrest and detention of an ICAOS offender under supervision in New York State who is in violation of his or her conditions of supervision will greatly assist probation departments in New York State to comply with specific ICAOS governing rules with respect to ICAOS violations (see ICAOS Rule 4.109-1 and Rule 5.108).

Budget Implications:

This bill should have no State or local fiscal impact.

Effective Date:

This bill would take effect on the first day of November after enactment.

DEPARTMENTAL BILL # 226

S.

Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

RECELA *Division of Probation and
Correctional Alternatives 1*
(Relates to issuance/entry of
probation warrants, declarations of
delinquency, court appearances for
violations, authority to arrest and
detain interstate offenders)

Exec. probation warrants

AN ACT

to amend the executive law and the
criminal procedure law, in relation
to issuance and entry of probation
warrants, declarations of delinquen-
cy, court appearances with respect
to violation of probation hearings,
and authority to arrest and detain
interstate offenders

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

220 Adams	232 Golden	239 Larkin	211 Padavan	214 Smith
255 Alessi	233 Gonzalez	291 LaValle	221 Parker	258 Stachowski
242 Bonacic	247 Griffo	248 Leibell	239 Perkins	218 Stevisky
246 Braalin	246 Hanson	222 Liboue	261 Roth	238 Stewart-
243 Bruno	216 Kaneell-	245 Little	264 Soboch	Conains
225 Cumber	Thompson	215 Maltase	219 Saknai	250 Thompson
230 DeFrancisco	218 Bentley	205 Marcellino	241 Saland	203 Trunzo
232 Diaz	297 Johnson, C.	262 Mariam	218 Sempson	249 Valodky
217 Dileo	294 Johnson, O.	218 Montgomery	223 Sevin	259 Volter
229 Deane	214 Klein	238 Morahan	231 Schmalzerman	213 Winnac
244 Farley	226 Kroeger	254 Rosollio	228 Serrano	257 Young
242 Flanagan	227 Kruger	212 Onorato	221 Seward	248
202 Fuschillo	214 Lunza	227 Oppenheimer	229 Shalom	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

2949 Abbate	2047 Calton	2098 Omtner	2130 Markey	2992 Rivera, N.
2991 Alessi	2218 Conte	2129 Masley	2027 Meyersohn	2976 Rivera, P.
2921 Alfano	2232 Cook	2148 Noyes	2112 McDonald	2956 Robinson
2105 Amadore	2127 Crouch	2083 Neerlie	2019 McDonough	2967 Rosenthal
2984 Arroyo	2043 Cusick	2028 Noveck	2104 McIlwain	2912 Salandino
2118 Ambertine	2043 Cyborowitz	2948 Niskind	2017 McKerritt	2113 Sayward
2028 Amey	2138 DalMonte	2918 Hooper	2122 Miller	2929 Scarborough
2126 Bacallao	2116 Davito	2144 Hoyt	2082 Millman	2916 Schmal
2999 Bell	2986 Diaz, L.	2928 Eyer-Spencer	2103 Mullinar	2149 Schlimminger
2124 Bertley	2985 Diaz, R.	2042 Jacobs	2122 Murville	2145 Schroeder
2016 Barra	2981 Diawita	2098 Jaffee	2027 Nelan	2122 Scodaslava
2922 Benedetto	2116 Degrey	2927 Jaffrice	2129 Oaks	2929 Seminario
2075 Benjamin	2965 Boddington	2121 John	2949 O'Donnell	2964 Silver
2073 King	2994 Haglebright	2074 Kavanagh	2127 O'Mara	2993 Speno
2925 Boyland	2130 Kzrigo	2065 Kallmar	2021 Ortiz	2121 Stirpe
2928 Boyka	2072 Kapelliat	2106 Kirvan	2100 Parkmat	2911weeney
2029 Bradley	2071 Parrall	2129 Kold	2028 Pealin	2119 Tedesco
2946 Brownan	2028 Pardo	2125 Koon	2111 Peoples	2022 Thiele
2922 Brodsky	2129 Vlach	2924 Lafayetta	2029 Peralta	2061 Titow
2046 Brook-Krassy	2927 Fitzpatrick	2025 Lepowan	2028 Perry	2031 Titus
2147 Burtling	2143 Gaboyeak	2091 Letimer	2023 Pfeiffer	2962 Tobacco
2117 Butler	2029 Galat	2513 Levine	2029 Powell	2024 Tones
2191 Cahill	2133 Gantt	2929 Lantol	2027 Pretlow	2118 Townsend
2926 Calhoun	2025 Giamaris	2128 Linton	2142 Quinn	2915 Walker
2943 Camara	2149 Giglio	2127 Lopez, P.	2927 Robbitt	2941 Weinstein
2126 Casartrari	2966 Glick	2023 Lopez, V.	2029 Sala	2920 Weisenberg
2926 Carrozza	2948 Gordon, D.	2126 Lopardo	2926 Sano	2926 Magrin
2119 Christensen	2128 Gordon, Y.	2111 Magro	2126 Nailich	2970 Wright
2022 Clark	2078 Gettfried	2120 Magaralli	2109 Neilly	2922 Young
2124 Cole	2977 Green	2929 Mihal	2078 Rivers, J.	2924 Zebrowski, K

1) Single House Bill (introduced and printed separately in either or both
houses), Uni-Bill (introduced simultaneously in both houses and printed as one
bill). Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The section heading of section 221 of the executive law, as
2 amended by chapter 338 of the laws of 1996, is amended to read as
3 follows:

4 System [to carry] of criminal justice information [of felonies].

5 § 2. Subdivision 2 of section 221 of the executive law, as added by
6 chapter 338 of the laws of 1996, is amended to read as follows:

7 2. Any warrant of arrest, bench warrant or superior court warrant of
8 arrest, as such terms are defined in section 1.20 of the criminal proce-
9 dure law, relating to any offense defined as a felony in subdivision
10 five of section 10.00 of the penal law, or a probation warrant issued
11 pursuant to section 410.40 of the criminal procedure law, must be
12 entered into the [New York statewide police information network] system
13 no later than forty-eight hours from the time it is received by the
14 police officer or peace officer to whom it is addressed if the subject
15 of the warrant has not been apprehended prior to that time.

16 § 3. The executive law is amended by adding a new section 259-n to
17 read as follows:

18 § 259-n. Interstate arrest and detainer. An adult offender who has
19 been accepted for supervision or continued under supervision in accord-
20 ance with section two hundred fifty-nine-aa of this article who is in
21 violation of the terms and conditions of such supervision may be
22 arrested, taken into custody by the supervising authority and detained
23 in the local correctional facility pending retaking by the sending
24 state.

25 § 4. Section 410.30 of the criminal procedure law is amended to read
26 as follows:

27 § 410.30 Declaration of delinquency.

1 If at any time during the period of a sentence of probation or of
2 conditional discharge the court has reasonable cause to believe that the
3 defendant has violated a condition of the sentence, it may declare the
4 defendant delinquent and file a written declaration of delinquency.
5 When the court receives a request for a declaration of delinquency by a
6 probation officer, it shall make a decision on such request within
7 seventy-two hours of its receipt of the request. Upon [such] filing a
8 written declaration of delinquency, the court must promptly take reason-
9 able and appropriate action to cause the defendant to appear before it
10 for the purpose of enabling the court to make a final determination with
11 respect to the alleged delinquency in accordance with section 410.70.

12 § 5. Section 410.40 of the criminal procedure law, subdivision 2 as
13 amended by chapter 115 of the laws of 1996, is amended to read as
14 follows:

15 § 410.40 Notice to appear, warrant.

16 1. Notice to appear. The court may at any time order that a person who
17 is under a sentence of probation or of conditional discharge appear
18 before it. Such order may be in the form of a written notice, specifying
19 the time and place of appearance, mailed to or served personally upon
20 the defendant as the court may direct. In the absence of a warrant
21 issued pursuant to subdivision two, where a probation officer has
22 submitted a violation of probation petition and report, the court shall
23 promptly order a notice to appear and direct that the defendant appear
24 within ten business days of the court's order. When the order is in the
25 form of such a notice, failure to appear as ordered without reasonable
26 cause therefor constitutes a violation of the conditions of the sentence
27 irrespective of whether such requirement is specified as a condition
28 thereof.

1 2. Warrant. Where a probation officer has requested that a probation
2 warrant be issued, the court shall, within seventy-two hours of its
3 receipt of the request, issue or deny the warrant. If at any time during
4 the period of a sentence of probation or of conditional discharge the
5 court has reasonable grounds to believe that the defendant has violated
6 a condition of the sentence, the court may issue a warrant to a police
7 officer or to an appropriate peace officer directing him or her to take
8 the defendant into custody and bring the defendant before the court
9 without unnecessary delay; provided, however, if the court in which the
10 warrant is returnable is a superior court, and such court is not avail-
11 able, and the warrant is addressed to a police officer or appropriate
12 probation officer certified as a peace officer, such executing officer
13 may bring the defendant to the local correctional facility of the county
14 in which such court sits, to be detained there until not later than the
15 commencement of the next session of such court occurring on the next
16 business day; or if the court in which the warrant is returnable is a
17 local criminal court, and such court is not available, and the warrant
18 is addressed to a police officer or appropriate probation officer certi-
19 fied as a peace officer, such executing officer must without unnecessary
20 delay bring the defendant before an alternate local criminal court, as
21 provided in subdivision five of section 120.90. A court which issues
22 such a warrant may attach thereto a summary of the basis for the
23 warrant. In any case where a defendant arrested upon the warrant is
24 brought before a local criminal court other than the court in which the
25 warrant is returnable, such local criminal court shall consider such
26 summary before issuing a securing order with respect to the defendant.

27 § 6. Section 410.60 of the criminal procedure law is amended to read
28 as follows:

1 § 410.60 Appearance before court.

2 A person who has been taken into custody pursuant to section 410.40 or
3 section 410.50 for violation of a condition of a sentence of probation
4 or a sentence of conditional discharge must forthwith be brought before
5 the court that imposed the sentence. Where a violation of probation
6 petition and report has been filed and the person has not been taken
7 into custody nor has a warrant been issued, an initial court appearance
8 shall occur within ten business days of the court's issuance of a notice
9 to appear. If the court has reasonable cause to believe that such person
10 has violated a condition of the sentence, it may commit him to the
11 custody of the sheriff or fix bail or release such person on his own
12 recognizance for future appearance at a hearing to be held in accordance
13 with section 410.70. If the court does not have reasonable cause to
14 believe that such person has violated a condition of the sentence, it
15 must direct that he be released.

16 § 7. Subdivision 2 of section 410.70 of the criminal procedure law is
17 amended to read as follows:

18 2. Statement; preliminary examination. The court must file or cause to
19 be filed with the clerk of the court a statement setting forth the
20 condition or conditions of the sentence violated and a reasonable
21 description of the time, place and manner in which the violation
22 occurred. The defendant must appear before the court within ten business
23 days of the court's issuance of the notice to appear and the court must
24 advise him of the contents of the statement and furnish him with a copy
25 thereof. At the time of such appearance the court must ask the defendant
26 whether he wishes to make any statement with respect to the violation.
27 If the defendant makes a statement, the court may accept it and base its
28 decision thereon. If the court does not accept it, or if the defendant

1 does not make a statement, the court must proceed with the hearing.
2 Provided, however, that upon request, the court must grant a reasonable
3 adjournment to the defendant to enable him to prepare for the hearing.
4 § 8. This act shall take effect on the first of November next succeed-
5 ing the date on which it shall have become a law.