

**Testimony of
The Legal Aid Society**

at a public hearing on

**Community Reentry of Persons with Alcohol and/or
Drug Dependency Released from Incarceration and Progress
with Collaboration between Parole, Corrections, and OASAS**

Presented to:

**Assembly Standing Committee on Alcoholism and Drug Abuse
Assembly Standing Committee on Correction**

Presented by:

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Good morning, my name is Shreya Mandal. I am employed as an in-house sentence mitigation specialist for The Legal Aid Society, Criminal Appeals Bureau. I have had extensive forensic experience and training in the criminal justice field and in the field of psychotherapy for the past ten years.

The Legal Aid Society is the nation's oldest and largest provider of free legal services to the poor, and since 1876 has provided free legal services to New York City residents who are unable to afford private counsel. The Legal Aid Society also serves as the City's primary public defender for individuals accused of criminal conduct, as well as for individuals accused of parole violations in New York City. Over the past year, our staff provided legal assistance to New York residents in some 295,000 individual cases that addressed a full range of clients' civil, juvenile rights, and criminal needs in all five boroughs of the City.

Given our dual role as both the primary public defender and the largest provider of civil legal services for poor people throughout New York City, work related to diversion and reentry makes up a large and growing part of Legal Aid's practice. From a client's first contact with the criminal justice system through successful community reintegration, the Society's legal and social work staff jointly offer a broad array of services that include (for example) consultation and advising on collateral consequences; exploration of diversion options and alternatives to incarceration; advice and representation to ensure appropriate services during incarceration and to mitigate the effects of prison conditions on reentry; advice and representation to preserve and restore housing, public benefits, and other services during and after release; and a variety of other projects that bring to bear more than a century's worth of multifaceted expertise.

When the Legislature enacted the Drug Law Reform Act, L. 2004, C. 738, the Assembly commented that the long-standing "Rockefeller Drug Laws" served to "warehouse offenders in state prison who could more productively be placed into effective drug treatment programs" and to waste valuable tax dollars "which could be used more effectively to provide drug treatment to addicts and harsh punishment to violent criminals." Noting that "drug treatment is more effective and cost effective than incarceration in eliminating substance abuse and its associated criminality," the Assembly said the Act would expand access to prison-based drug treatment, but emphasized that further action was needed to expand opportunities for community-based treatment for many drug-dependent offenders.

More recently, the Legislature amended the Penal Law to emphasize that an important element in ensuring public safety was the promotion of offenders' "successful and productive reentry and reintegration into society." L. 2006, c. 98, amending P.L. § 1.05(6).

This hearing appropriately seeks to assess how far the State has come in providing treatment and reentry assistance to offenders in need of it, and how far the State still has to go. Our testimony draws on the experience of Legal Aid Society staff members who assist clients in meeting their treatment needs at several stages in the criminal justice process. We hope we can assist your Committees in the challenging but vital tasks of evaluating the effectiveness of existing programs, identifying gaps and inefficiencies in the treatment network, and securing the resources necessary to achieve our common goals of reducing drug abuse and drug-related crime.

Our Experience with Rockefeller Drug Law Reform

Following the passage of the Drug Law Reform Act of 2004 and continuing with the 2005 amendment allowing the re-sentencing of A-II drug offenders, The Legal Aid Society recognized that it was important to identify and address the substance abuse re-entry needs of

drug offenders who had the opportunity for re-sentencing. In spite of the fact that no resources were legislatively allocated, we created a re-sentencing project centered on developing sentence mitigation and clinical assessments, which could bring client stories to the courts through both written and oral advocacy. This served as a pilot project allowing me to use the mitigation process as a path to identify the need for critical substance and mental health re-entry services for A-I and A-II drug offenders.

The Legal Aid Society's Criminal Appeals Bureau has supported my three-year effort in advocating for approximately 100 drug offenders thus far, clearly understanding that the only viable way to address recidivism among these discrete number of clients is through holistic advocacy—integrating defense practices with clinical social work perspectives when working with substance abusing offenders. The project assisted almost 20% of the entire population most affected by the Rockefeller Drug Laws. I have helped approximately 70% of this discrete pool of Rockefeller clients successfully gain placement in both outpatient and in-patient drug programs, allowing them to rebuild their lives outside of prison. I am thoroughly familiar with places like Green Haven, Eastern, Auburn, Great Meadow, Clinton, and Attica—to name a few. Face to face interviewing, upstate prison visits, and extensive review of prison programming, were the only ways to ensure that many ex-prisoners received adequate re-entry planning. I spent considerable amount of time assessing and collecting data on life histories of those most affected by our drug laws.

This re-sentencing project allowed me to expand the range of our post-conviction services that are desperately needed by long-term drug offenders. Most of my clients have had long battles with substance abuse—and have taken on the challenge of recovery and healing their addictions in prison. The problem of substance abuse is rarely an isolated experience and is

often preceded with a wide range of mental health issues. But substance abuse treatment in prison is often not effective. In my experience, A.S.A.T and C.A.S.A.T programs are often arbitrarily applied to prisoners who have been misdiagnosed in some fashion. More often than not these programs inadequately address critical treatment issues that drug offenders have. Prison based treatment programs fail to consider drug offending populations in a comprehensive manner, preventing drug offenders from achieving recovery.

Not surprisingly, prison drug treatment programs are also sorely lacking in providing effective treatment models for former prisoners with ongoing addictions. This allows offenders to fail in treatment despite their wishes to change addictive behaviors. When my clients were successfully re-sentenced and then released from prison, I made it a regular practice to screen for ongoing addictions and to refer clients to proper drug treatment. Most of my clients needed quite a bit of counseling when they first came out of prison, so that they could maintain their motivation to stay clean and to stay off the streets.

In working with so many drug offenders, I found that re-entry providers such as parole and probation officers and substance abuse treatment programs often lacked proper re-entry planning and coordination. There is such a great need for these providers to work in tandem so that drug addicted ex-prisoners have higher chances of success and recovery. Ex-prisoners needed not only individual and group drug treatment, but they also needed mental health services, housing, employment, job training, and other types of emergency assistance. Without the proper coordination of all these other critical re-entry needs, I saw that drug offending clients often relapsed under the stress of having to think about where they were going to live and how they would legitimately pay for the costs of living. In addition, I found that disorganized re-entry planning and coordination, primarily on the part of parole officers who failed to realize the

comprehensive needs of a client, often duplicated re-entry services that were no longer needed.

In my practice I have frequently observed that parole officers often seem to reinvent the wheel of plugging ex-prisoners into limited drug programs without proper follow up and understanding of substance abuse treatment models.

The pilot re-sentencing project provides us with a holistic re-entry model that has been effective when it comes to substance abuse issues. 70% of my clients that had ongoing substance abuse problems succeeded in their drug treatment because The Legal Aid Society provided me with the unique opportunity and resources to offer clients pre-release reentry planning, diagnostic assessments, short-term counseling, and clinical coordination with relevant treatment providers. Although we achieved positive results with this discrete number of drug offenders during the past three years, my work has broader implications for Legal Aid's general client population. The Legal Aid Society continues to have a critical need to offer the same individualized attention and comprehensive re-entry services to thousands of other "non-Rockefeller" drug offenders that we serve each day. Offices such as The Legal Aid Society could greatly benefit from more allocation of resources so it can continue to expand this holistic model which champions ideal substance abuse and mental health treatment for all drug offenders within the criminal justice system. In addition, more resources should be allocated to existing in-patient and outpatient drug treatment programs so that such facilities could provide more services to larger numbers of people. Resources are also necessary to provide more professional training for best treatment practices in drug treatment programs. This ensures that mental health and drug treatment professionals have updated knowledge and education on how to best treat drug offenders.

Based on my experience, it is in everyone's interest that we develop new ways to adequately help drug offenders. If it is done correctly, our state will be spared high rates of recidivism among substance abusers.

Our Experience with Correctional-Based Treatment

The State Department of Correctional Services reports that 72% of its inmate population is self identified substance abusers.¹ Yet, in spite of the obvious need, State agencies have been slow in realizing the potential of drug treatment. For example, it took litigation on the part of The Legal Aid Society and others to force the State Department of Correctional Services (DOCS) to honor the quite specific provision of the Drug Law Reform Act of 2004 that permitted sentencing judges to order drug law offenders into the in prison CASAT substance abuse treatment program.² Just this year further litigation forced DOCS to honor the Drug Law Reform Act's requirement of expanded CASAT drug treatment eligibility to account for supplemental merit time.³

Our experience with the Division of Parole shows that the Willard Campus is the almost exclusive one size fits all treatment placement option for drug addicts who have violated parole. Unfortunately, there are significant deficiencies in the use of this facility. For many parole violators the relatively short drug treatment at Willard is insufficient to meet their addiction problems. Often these parolees really need and are willing to commit to a longer term (12-24

¹ Department of Correctional Services, *Identified Substance Abusers*, December 2006.

² E.g., Matter of Grant v. Goord, N.Y. Co. Index 06-400022.

³ Matter of Phillip St. Louis v. Commissioner, Albany Co. Index 7845-07

months) in a recognized community based program. Nevertheless, the parole specialist and the Administrative Law Judge almost invariably mandate drug treatment at Willard.

It makes no sense for the Division to mandate a shorter, less effective drug treatment program when a longer more effective one would both better assist the parolee and protect our communities. Certainly, the community program is less costly to the State. But even more importantly, longer community based treatment programs with extended aftercare and reintegration services often work better. While Willard's short, bootcamp experience away from the community and its subsequent release with minimal or no aftercare may be appropriate for some, it condemns many addicts to a revolving door of relapse and recidivism.

For some violators Willard is clearly inappropriate. Many parole violators with mental health problems cannot withstand its stressful in your face bootcamp modality of treatment. In addition, Willard refuses to accept pregnant women, or those with such medical conditions as cancer, cardiac problems, advanced diabetes, orthopedic problems, severe asthma, HIV with other opportunistic diseases, or those on a pain management program. For these people other treatment options are a necessity.

Some violators are forced into Willard despite the fact that it does not meet their needs. Division regulations mandate placement at the Willard Program for all parole violators under supervision for a drug offense (other than A-1 felonies) whether or not they are currently using drugs. 9 NYCRR §8005.20 (2). This results in parolees being sent to complete the Willard drug treatment programs when other services, such as job training, would be more appropriate.

The Division of Parole announced several months ago that, effective 11/1/07, a new 90-day drug treatment scheme would be available as a violation disposition that would not be built on the boot camp model. This alternative would then be available to those who could not have

their medical or psychiatric needs met at Willard, including pregnant women. After some weeks of explaining this to our clients, we learned (from clients and from the Division of Parole) that this new program was, in fact, still Willard. We understand that the Division of Parole and New York State Department of Correctional Services are looking forward to expanding the program to other, non-boot camp facilities – but in the meantime, many of our clients do not have this disposition available to them.

The Reentry Experience

Our clients experience reentry not only at the initial release from state incarceration to supervision, but for far too many, also upon their release from Riker's Island or state prison at the conclusion of their parole violations. The reentry system they experience is not supportive.

People released from correctional facilities often come from and return to families and communities with few resources. Some struggle to find employment and need a temporary source of income that will pay for rent and other necessities as they move towards their first paycheck; many others have lasting disabilities and are eligible for ongoing supports, including federally funded disability benefits.

For each of these men and women, adequate health care and subsistence-level income provide the necessary precursor to a successful community reentry. Without public benefits to help them find housing, those without resources are released to costly and chaotic shelter placements or even held in prison past their scheduled date of release. Without the means to pay for needed medical care, many suffer needlessly or are forced to use expensive emergency services. Those with infectious diseases such as HIV or hepatitis C may unintentionally place their families and communities at risk as well.

Applying for public benefits, however, can require individuals to undergo a lengthy and sometimes arduous bureaucratic process that is particularly difficult for people with disabilities or limited literacy or language skills. Applications for Medicaid, public assistance, and Food Stamps can entail a 45-day wait and multiple mandatory appointments before a case is opened. The wait for SSI or Social Security disability benefits is even longer: the Social Security Administration tells claimants that disability benefits applications take 3 to 5 months, not including appeals. Each program also requires extensive documentation that is sometimes impossible to obtain immediately upon release. Not surprisingly, people transitioning out of prison often find that they need to pay for food, housing, and medical care well before their applications are complete.

Pre-release planning is, therefore, critical to ensure a successful transition for individuals during the vulnerable first weeks after their release. This should include timely in-prison applications for public benefits, health care, and housing so that eligible individuals can have access to needed services immediately upon reentry into the community. In many instances, particularly for individuals with mental illnesses, agreements or regulations already exist that would allow for appropriate planning and submission of needed pre-release applications for benefits and other services. These agreements should be enforced, and the State should work with localities to establish procedures for accepting and processing applications in time for benefits to be available upon release.

People leaving prison are typically entangled in many different bureaucracies, including parole, income support programs, child welfare agencies, and others. These systems should be streamlined wherever possible. Local social services districts should be instructed to work with the Division of Parole to create a list of substance abuse programs that will be deemed to fulfill

both parole requirements and welfare work rules.

When individuals with a history of substance abuse apply for public assistance, they may be required to attend a treatment program in order to be eligible for benefits. The same individuals may also be required to attend a treatment program as a condition of their parole. We have had clients report being told to attend two separate programs because neither agency would accept the other's program as sufficient. The agencies should also be careful to accommodate parolees' job schedules when individuals do find employment: one client who was told to attend two programs was not allowed to switch even when he found a job that required more hours than were possible while attending both programs. If needed, Social Services Law § 132(4) or other appropriate statutes should be amended to discourage duplication of parolee reporting requirements.

Each year, far too many parolees with psychiatric disabilities and substance abuse problems (also known as co-occurring disorders) are returned to state prison or forced to spend additional time in city jails, simply because the State does not provide them with the same access to community based treatment alternatives as parolees who do not have psychiatric disabilities. These are people parole officials believe deserve to be in the community, in residential or structured treatment programs, but who are instead returned to our "hospitals of last resort," i.e. city jails and the state prison system, solely because the State chooses to spend its resources on incarceration instead of community-based treatment. Since it generally costs at least \$100 more per day for incarceration vs. community based treatment, the net cost to state taxpayers for this wrong-headed and discriminatory practice runs in the millions of dollars each year. The State should therefore divert funding from incarceration-related costs to residential and other

community-based treatment programs for individuals with co-occurring disorders who are under parole supervision.

Recent Developments

In light of the importance of support immediately after release, we applaud the legislature's recent passage of S.5875/A.8356, which allows individuals' Medicaid coverage to be suspended rather than terminated during incarceration. Because of this new law, people who enter prison or jail with Medicaid coverage will be able to resume that coverage immediately upon release. This is an important first step toward ensuring that clients have access to the medical services they need, without the costly interruptions in care that would otherwise be created by the need for a new application.

The Assembly should build on this important new law by working to ensure that applications for Medicaid are submitted for all eligible individuals prior to their release from prison. Without pre-release applications, individuals leaving correctional facilities must apply on their own once they reach the community. This typically entails a delay of at least 45 days, and some clients (particularly those with disabilities and those who are most in need of services) may never complete the process. The resulting interruption in care can mean the difference between success and failure as an individual struggles to maintain sobriety and to avoid rearrest.

We were also pleased to see that this year's Assembly budget included the outline of a Medicaid pilot project to submit pre-release applications for prisoners at reentry units. Although that language, unfortunately, was not included in the enacted budget, we are encouraged by the appropriation of \$200,000 that can be used for the project and believe that the goal of ensuring needed pre-release applications for all eligible prisoners is worthy of vigorous pursuit.

On behalf of The Legal Aid Society I appreciate your interest in these issues. We remain available should you have any questions.