

CURE-NY *Newsletter*

To Reduce Crime and Uplift Society

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Women in Prison

From the Women in Prison Project, Correctional Assoc. of NY

Editor's Note: Few are really aware of the impact on women, the destruction of families, and the sacrifice of the lives of children resulting from criminalization and excessive rates of incarceration. Some of that reality, and who these women are, and their many problems, are perceived in the following.

- ◇ As of January 2007, 2,859 women were incarcerated in New York's prisons. An additional 26,600 were on parole (about 3,100) and probation (roughly 23,500).
- ◇ From 1973 to 2007, the number of women in New York's prisons increased by 645%.
- ◇ Almost 69% of the state's female inmates are women of color: New York's general public is 30% women of color and almost 69% Caucasian.
- ◇ 84% of women sent to New York State prison in 2006 were convicted of non-violent offenses. More than 86% of women sent to prison for violent felony offenses in 2006 were first time felony offenders,
- ◇ As of January 2007, 33% of New York's female inmates were incarcerated for a drug offense. Almost 80% of women drug offenders were women of color.
- ◇ About 82% of New York's women inmates report having an alcohol or substance abuse problem prior to their arrest.
- ◇ An estimated 82% of women at New York's Bedford Hills Correctional Facility have experienced severe abuse as children and over 90% have endured physical or sexual violence in their lifetimes.
- ◇ As of January 2007, more than 42% of women in New York's prisons have been diagnosed with a serious mental illness, compared to nearly 12% of male inmates.
- ◇ Almost 40% of women inmates have been diagnosed with a major mood disorder (which includes depression, psychotic depression, and bipolar disorder), and 15% have been diagnosed with

schizophrenia or another psychotic disorder.

- ◇ Almost 60% of women under state custody are from New York City and its suburbs. Roughly 41% are incarcerated at Albion Correctional Facility, about eight hours away from Manhattan.

- ◇ Almost 74% of New York's women inmates report being mothers; at least 5,600 children have a mother incarcerated in a New York State prison.
- ◇ Nearly 60% of women prisoners lack a high school diploma; 40% read at an 8th grade level or below.
- ◇ Almost 32% of New York's female inmates have either never been arrested or convicted of any crime prior to their current offense. More than 61 % are first felony offenders.
- ◇ More than 14% of women in New York's prisons are known to be HIV positive, a rate of infection more than double the rate for male inmates (6.7%) and almost 100 times higher than the rate in the general public (.15%).
- ◇ Over 23% of female inmates are infected with Hepatitis C, a rate nearly double that for male inmates (13.6%).

Notwithstanding the extraordinary challenges facing female inmates, if women who commit crimes are given the chance to access resources, confront underlying personal issues, and build skills, they can become healthy individuals and strong role models and advocates for themselves, their families, and their communities.

Instead of spending millions of dollars on incarcerating women – an ineffective and inhumane response to the social ills that drive crime – government officials should increase resources for community-based, gender-specific, alternative programs that give women the opportunities and support they need to rebuild their lives and contribute to society in a meaningful way.



“He Ain’t Heavy”
by Gilbert Young

NYS Parole Policy

Excerpts from report "An Analysis of Current NYS Parole Policy", by Cheryl I Kates, Esq.

Based on former Governor Pataki's unwritten parole policy regarding, "end parole for violent felons", there has been an increase in arbitrary and capricious decisions rendered by the NYS Parole Board in denying parole to otherwise qualified individuals. The current statistics for parole releases for A-I felons in 2005, were 3% as reported by John Caher in the NY Law Journal (Caher, 2006). The rate is astonishingly lower in people that took charges that probably were reached by a plea bargain, i.e.; manslaughter. at a shocking 2% (Caher, 2006). The rates for the year prior to Governor Pataki taking office were 2/3rd of people appearing for an initial appearance, meaning 1 of 4 (McCarthy, 2002). The rate now is 1 of 25 (McCarthy, 2002).

These denials are being rendered using only one part of the statutory scheme intended to govern parole release found in NYS Executive Law 259 (i). The Parole Board is ignoring the entirety of the statute and basing their decisions solely on the offender's serious nature of the crime. This is a factor that does not change and often occurred decades before the inmate underwent rehabilitation in the NYS Department of Corrections.

The American system of Criminal Justice relies heavily on the concept of plea bargaining and would cease to function without it. The plea bargain allows all involved to reach an agreement that settles the case and implicates a spirit of fairness (Wikipedia, 2006). Ninety percent of all criminal convictions occur when a defendant waives the right to trial and pleads guilty (Olin, 2002).

Criminal pleas are considered contracts of a sort in which the defendant enters with the State or Prosecutor. These bargains entitle the defendant specific performance, *Santobello v. New York* 404 US 257. Generally the terms of a plea bargain are entered into the record when the defendant accepts the plea. Judicial recognition of a plea bargain is concluded by entry on the record, *People v. Hood*, 62 NY 2d 863 (1984).

The NYS Board of Parole in their practices have ignored these factors and have taken it upon themselves to violate the law and become a re-sentencing authority which they are not, ignoring the benefit the defendant entered into as part of their plea bargain. This is a travesty of justice. In essence, it renders the plea bargain invalid.

The rate of recidivism is approximately 63% (Keel, 2005). [However, recidivism does not well correlate with the

parole-board's prime criteria – the nature of the crime.] In 2004, of all of the individuals on parole in NYS, only 5% had been paroled with a murder or manslaughter charge (NYS Division of Parole, 2007). The other 95% of parolees had been incarcerated for other offenses such as robbery or drug charges. Statistics have shown that only 1% of people aged 50 or older who are released, return to prison (Ry_2006). Long-termers incarcerated for decades have the lowest recidivism rate of any group of prisoners. (Ryan, 2006). According to the Department of Justice, in looking at recidivism rates in 1994, the lowest re-arrest rate was in individuals who had been in prison for homicide (Langan and Levin, 2002).

Recommendations:

- ◇ Parole legislation must be amended to reduce the discretion of the Parole Board so as to allow for A-I felons to be released.
- ◇ Implement increased programming, including preparation skills for employment, drug treatment, and education for inmates.
- ◇ Continue programming for re-entry upon release.

Editor's note: We now have a new government in New York State – particularly Governor Eliot Spitzer and Parole Director George Alexander. There now is real hope that a more just balance will be achieved in future parole board decisions.

Second Chance Act

The Second Chance Act of 2007 has been introduced in the U.S. House of Representatives and Senate and is moving through the legislative process. The Second Chance Act (H.R. 1593 and S. 1060) would reduce recidivism and increase public safety by addressing the needs of people preparing to return to communities from the criminal justice system.

Among other things, the Second Chance Act would provide reentry funding on the state and local level to support the needs of formerly incarcerated people for housing, mental health and substance abuse treatment, education, employment and rebuilding family and community ties.

The need for better reentry programs has never been more urgent than today. Every year, in the U.S., approximately 650,000 people leave prison unprepared for the transition into society. It is no surprise that nearly two-thirds of them will be rearrested within three years. They deserve a better second chance, and H.R. 1593 and S. 1060 are said to be designed to help give them that.

Merit Time Changes?

Advocates say that the new Merit Time proposed in Bill S.3578 is a big improvement, in that it extends merit time to more incarcerated persons. However, new questions ask if it needs further tuning as per the abstract from the note below from Gabriele Shakeri.

While I am very supportive of the concept of extending "good time" to those with life, determinate sentences, etc., I think that the drafting of the bill presents some problems.

At line 14-15, the bill states that prisoners "may receive merit time against the MAXIMUM and minimum terms", but prisoners with an indeterminate sentence are already receiving a 1/3 time cut off their max date under the current system. In my view, that language seems to indicate that this new merit system might stand in place of the CR system, and so, prisoners who are now receiving a basically automatic time cut of a 1/3 off their max date under the CR system would now be required to "earn" that time via a vis the new merit system every 6 mos. I would be deeply troubled to see a bill, that we propose as prisoners' advocates, used against the CR system down the road.

Mission Statement

We all struggle to understand our true purposes. Citizens for Restorative Justice (CRJ) is an organization of families of incarcerated persons, in the Mid-Hudson Valley, and they are also refashioning their own mission statement. Their interim statement below could be useful to all of us.

The mission of CRJ is to encourage communities, states, and nations around the world to use Restorative Justice practices in their justice systems and in their correctional institutions and to assist legislators in the writing of laws that put such practices in place.

CRJ will advocate for laws that insist on human rights for all individuals, including the incarcerated and the formerly incarcerated..

CRJ will promote restoration of all to wholeness, including incarcerated and formerly incarcerated persons.

CRJ will advocate for laws that mandate treatment for the addicted and the mentally ill, the traumatized, tortured, or abused, and laws that guarantee restorative health coverage, education, and job preparation.

CRJ will participate in helping victims of hate or vengeance, and fight the discrimination or injustice practiced against them.

CRJ will assist those persons who have encountered disrespect and abuse in a correctional system.

CRJ will work for incentives to rehabilitation such as merit time and work release, for legal and fair parole board practices that recognize and value rehabilitation, and for discharge from parole after years of a parolee's successful reentry.

DNA to Clear 200th person

By Richard Willing, USA TODAY, 20070423

A former Army cook who spent nearly 25 years in prison for a rape he did not commit is scheduled to become the 200th person exonerated by DNA evidence, underscoring the quickening pace of overturned convictions, according to the Innocence Project.

The New York-based legal group says the 100th exoneration occurred in January 2002, 13 years after the first exoneration. It took just more than five years for the number to double.

"Five years ago, people said that the number (of exonerations) was going to dry up because there just weren't many wrongful convictions," said lawyer Barry Scheck, who co-founded the Innocence Project in 1992 to help prisoners prove their innocence through DNA evidence. "But clearly, there are plenty of innocent persons still in prison. There's no way you can look at this data without believing that."

David Lazer, a Harvard University public policy professor who specializes in DNA issues, says improved testing technology and an increase in the number of lawyers who are taking on DNA cases should result in a continued increase in the number of wrongful convictions set aside.

Convicting an innocent person is "every prosecutor's nightmare," said Joshua Marquis, vice president of the National District Attorneys Association. The "tiny number" of exonerations suggests that the "epidemic of bad convictions" that Scheck suggests is "fiction," said Marquis, chief prosecutor in Clatsop County, Ore. There were 1,051,000 felony convictions in state courts in 2002, up from 829,300 in 1990, according to the federal Bureau of Justice Statistics.

Editor's Note: These 200 exonerations are obviously only the tip of the iceberg. Only the relatively few capital cases with outstanding potential for exoneration are ever examined. This leaves the many thousands of lesser crimes un-examined.

Drug Reform Bill A.6663 Passes

Analysis by the Drug Policy Alliance

This bill contains the following main features:

1. Makes first time non-violent class B drug defendants (possession and sale) "Probation Eligible."

2. Makes multiple non-violent class B drug defendants (possession and sale) "Probation Eligible" if the defendant is found to be drug dependent and if the crime involved less than 1/8th ounce of narcotic drugs. If the defendant is found to be drug dependent, the bill requires mandatory drug treatment as well.

3. Increases the weight thresholds for certain A,B,C, and D level drug offenses, thus lowering possible sentences (including A-II sales).

4. Creates or expands numerous "second chance" programs for low-level drug defendants such as CADAT (Court Approved Drug Abuse Treatment) where, upon successful completion, the case is dismissed or reduced to a misdemeanor; "shock" (six months of behind-bars, military-style "boot camp" programming followed by one year of mandatory treatment upon successful completion); "Willard" (90 days behind bars, followed by parole and one year of mandatory treatment); CASAT (prison-based Comprehensive Alcohol and Substance Abuse Treatment) which this bill makes available 3.5 years prior to parole eligibility instead of 2.5 years.

5. Places "drug courts" in every county of the state.

6. Allows re-sentencing in cases of class A-II and certain class B drug offenses. Inmates would be eligible to apply to the original sentencing court for a conversion of their sentence to a new term consistent with the sentencing reforms enacted in 2004 and those contained in this bill.

7. Contains disqualifiers for all of its provisions where defendants were involved in crimes dealing with violence, sales to children, etc.

8. Contains penalty elevators regarding drug "kingpins", use of firearms, sales to children, etc.

9. Directs the State Comptroller to review and certify the monetary savings with regard to decreases in inmate admissions and length of stay. The accumulation of

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monetary savings will be known as "Crime Reduction Fund."

10. When fully implemented, it is estimated that reduced prison admissions and drug related crime reductions which would result from this bill would save the state approximately \$123 million annually.

11. Transfer savings from "Crime Reduction Fund" to effective drug treatment curriculums (government and non-profit organizations) and community programs for individuals with substance abuse dependency.

Editor's note: This Bill, though passed in the Assembly, is similar to the NYS Senate version, S.4352, now in Senator Nozzolio's Crime, Victims, and Corrections Committee.

U.S. Found Guilty

Excerpt from the Sentencing Times, Fall, 2006

Little noticed by the U.S. press, the U.N. Human Rights Committee, last July, charged that the U.S. practice of denying the right to vote to people with felony convictions is *discriminatory and violates international law*. The Committee called for the restoration of "voting rights to citizens who have fully served their sentences and those who have been released on parole."

New York State is in violation of this judgment, as it still denies the right to vote to those on parole. If the U.S. abides by its treaty obligations, and implements this reform, nearly four million Americans would have their rights to vote restored.

