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Mr. John Amodio, ESQ.  
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10/12/06

Re: Task Force on the Future of Probation  
(October 18<sup>th</sup> Hearing / Syracuse, NY)

Dear Mr. Amodio,

I appreciate the opportunity to submit the following testimony to assist the Task Force in better understanding the multifaceted roll of Probation and in strengthening Probation services in New York State.

My personal experience in Probation dates back to 1970 when I was hired as a Juvenile Probation Officer under the auspices of the New York State Judicial Conference. Over the 36 years in Oneida County Probation I have been part of significant positive change in our profession. At my point of entry Probation was a stagnant practice adhering to principles and practices carried over from the former Children's Court to the newly formed Family Court. Much at the direction was at the discretion of the local judges. The day to day operation of the adult Probation system was also heavily influenced by our then County Court Judges.

Probation's major roles of Intake, Investigation and Supervision have remained the cornerstones of our profession to this day. The evolution and refining of these practices under an independent authority, the Executive Branch, has placed Probation at the "hub" of the Juvenile and Criminal Justice systems. We strive to provide our courts with the most relevant information for their decisions and to enforce their orders. The balance of power, being under the Executive Branch, ensures that Probation does not just rubber stamp the thinking of the courts. Probation is an integral partner in many interagency ventures with OMH, Social Services, schools, law enforcement agencies and the various community service providers. These collaborative ventures

help provide an added layer of protection to our communities and rehabilitation of offenders. The third and equally important triad is sensitivity and advocacy Probation provides to victims.

*Probation's positive evolution has been made despite ever increasing case load sizes (over 100 cases p/PO), unfunded mandates and increased commitment to our interagency partners.*

However, we are reaching a saturation point that without more fiscal support we cannot continue to grow and provide additional layers of public safety. Over the many years I have been in Probation State Aid has been reduced from approximately 50% of most expenses to less than 20% of targeted costs. Local governments are feeling the strains of raising property taxes and are less sensitive to funding gaps in Probation, especially where there are unfunded mandates. The relocating of Probation under OCA will not solve this problem due to the spiraling costs of the existing court system as well as the loss of an independence Probation brings to the table not being part of the Judicial Branch.

Therefore, I respectfully recommend that the Probation remain under the Executive Branch and that its value be recognized with increased State Aid to local Probation Departments. Such a conclusion by this Task Force will lead to enhance "mission-oriented", "customer-driven" Probation practices rather slipping back to a bureaucratic "constraint-oriented" system.

Respectfully submitted,



Thomas J. Marcoline Sr. MA (PA)  
Acting Probation Director

*Testimony*  
*by*  
*Francine Perretta,*  
*Director of St. Lawrence County Probation,*  
*Before the*  
*Task Force on The Future of Probation*  
*Public Hearing*  
*October 18,2006*  
*Syracuse, NY*

Good afternoon. My name is Francine Perretta and I am the Probation Director from St. Lawrence County, Canton, NY.

I would like to start by saying that I too thank you for this opportunity to speak on the future of Probation and offer suggestions on how Probation in NYS can be strengthened. Over the past twenty years that I have served as a Probation Director, I can only remember one other time that we were asked to offer testimony on any issue facing Probation and that was regarding PINS 18.

I am sure that you have heard the passion in others voices as we discuss this very important issue, for this is not a job to us, it is our career, and for many of us a huge part of our lives have been devoted to ensuring probation is a meaningful sanction that helps protect our communities.

In a round about way, my testimony today will address some of your questions, but more important I hope is that it gives you a clear picture of what I think probation really is in NYS and how together we can strengthen it.

I think that the most important point I can impress upon you is that without Probation, the criminal justice system would crumble. We are the hub of the system. We are the sanction of choice. As our chart clearly depicts, there are more persons currently under probation supervision than the combined total of those in DOCS and on Parole. This could easily be interpreted as “incarceration is an alternative to Probation”, not the other way around.

So you ask what the purpose of probation is as we see it. Well I see Probation as having multiple purposes as we provide services to the courts, offenders, juveniles, families and our communities. Our purpose is not just in the criminal justice system, we provide many services to the Family Courts. In those roles as one of my colleagues said last week, we can be seen as the “conscience of the criminal justice system”. We provide the objectivity in the system. In a system where the prosecutor is there to convict; the defense counsel is there to get the offender off or the best

sentence; and the judge is there to pronounce sentence, we, Probation, are there to provide objectivity; and to provide a impartial evaluation of the facts. We obviously have been and continue to do this well as is evidenced by the huge percentage of times that the courts follow our recommendations.

As you have already heard, in this book called Probation, the cornerstone of modern correctional care published in 1964, the purpose of Probation is defined as “a planned program designed to protect the community by reeducating the offender to the acceptance of responsibility for his actions, teaching him to live with others with minimum of friction, and guiding him in his conduct so that he will become a responsible citizen. It provides support in assisting him to conform to the demands of society. In Family Court the emphasis is upon trying to preserve family life”. I would submit to you that our mission and purpose today is very similar: to protect our communities by providing quality intake, supervision and investigation services to all the courts.

These remain our three core functions: intake, supervision and investigation. Granted some of the way we carry out these functions have been redefined

over the years by new legislation, with things like DNA, SORA, Domestic Violence, Interim Supervision, but the core remains the same.

How do we then define our success?

As I have said, I believe that judges follow the recommendations of Probation in well over 80% of the cases. That must mean that we are doing a very good job of objectively evaluating the case and providing a recommendation that is both just and protects our communities.

I personally do not consider a VOP as a failure and therefore believe that using "recidivism" rates is not a valid measure of success or failure. There are times when a technical VOP is necessary to protect the community and acts as the impetus for change for the offender. While some may see that as a failure, I see it as a tool to both protect my community and help the offender.

Supervision, coupled with treatment is best practice. I do not know a single Probation Department in this state that does this job alone. We are the best collaborators despite the reduction of funding for direct probation services.

Even with the diminishing of state financial support for Probation, we remain the sanction of choice. We have however been stretched as far as possible in an effort to carry out our mandates for good public policy. With every piece of legislation, come more unfunded mandates to our profession. Let me be clear, I am not opposed to good public policy changes, but we need the resources to carry out the intent of laws.

You have already heard about how Probation has suffered from the lack of adequate funding. You will hear tomorrow from our friend and colleague, George Alexander about the severe cut backs in his department. You have heard about skyrocketing caseloads, the cut of non-mandated services, how Probation has to “chase the grant funds” which may not even be for a priority area, but may save jobs; and you have heard how our mission may suddenly change depending on the “political climate and the hot topic of the day”.

So now let’s talk about what we could do with adequate funding.

Caseloads could be at a workable level. 60 instead of 120.

- All counties would have access to available services not just those who have legislators of the “right political party” or with ties to the pork barrel funds.
- We could provide needed services as identified by our communities.
- We could apply for grants based on our county needs not based on trying to save jobs.
- We could be proactive and assist with new meaningful legislation that improves the criminal and family court systems.

And I think there are a number of things your Task Force can do to help us strengthen Probation.

**Advocacy:** we need to be heard and you can help us to that.

**Resources:** we need adequate funding and with you as our advocates, maybe we can turn the corner on restoring the states share of Probation reimbursement.

**Workload standards:** there is no way for individual officers to provide quality services when you can not keep track of all your offenders because

you have too many of them. COC regulates jail staffing, Parole regulates parole officer caseloads, DSS regulates caseworker caseloads. So why can't DPCA regulate Probation caseloads. There is no good reason why this can not be done.

**Speedy resolutions of VOP:** The advent of boutique courts helps put this into perspective. The boutique courts, which have Probation on their teams, are successful mainly because of the immediate consequences for failure to comply with the directive of the courts. So OCA could and should issue a directive to their courts that a Declaration of Delinquency and/or application for a warrant must be signed within 24 hours. Probation Directors should be given the power to issue warrants when the court is not in session in cases where the protection of the community is in jeopardy.

**Reform of Family Court Law:** Speaking of the forgotten child...is Family Court even represented on the Task Force. Probation Departments across the state provide services to over 90,000 youth and adults involved with Family Court issues. I have attached a number of specific suggestions as recommended by the Probation Director's recently.

Other Issues:

It is my understanding that one of the recommendations from one or two of the sub committees is that DPCA and eventually Probation will be under the jurisdiction of OCA. I would hope that after hearing all the testimony across this state that the task force will look carefully at the recommendations from those of us who do this work everyday. History has a way of repeating itself and often times not in a positive way. "Been there done that" is a saying worth exploring carefully in this case.

Personally, I would need a whole lot of convincing that Probation would be better off under OCA. From my personal experience, having a justice court system that encompasses 32 towns and villages and has 70 local justices, I know only too well the problems associated with that system. I have probationers placed under supervision of my department and, in some cases, I have not been notified by the court for up to a year; and not being notified for several months is normal. I have VOP and DOD pending for months with no action. If OCA can not adequately address those issues, which as outlined in a recent NY Times article appear minor, then I do not think they

have any business trying to take over another system. What's that saying "people who live in glass houses should not throw stones".

Further, what about the checks and balances? Probably, a week does not go by when I do not receive an illegal sentence from a local court. Is it really thought that local justices, many who are not lawyers or even have legal training, should have jurisdiction over probation practices? In NYS, unlike Arizona, we supervise misdemeanors. For many of us, local courts play a significant role in our day to day operations. You can not disassemble the probation system by having superior courts supervise felony probation and leaving out Family and local justice courts.

From my perspective, this task force can make a number of excellent recommendations as outlined by those of us speaking here and throughout the state. This Task Force is about strengthening probation and moving Probation to the future not back to the past. I am hopeful that you have heard some concrete steps that can be taken to move us to the future. And I am hopeful that collectively you will see fit to do so.

Thank you for listening.

# **Priority List of Probation Issues from the NYS Council of Probation Administrators**

**Produced for Senator John Dunn**

## **1. Resources:**

Probation reimbursement has decreased from 46.5% to less than 17% over the past decade. This has left localities to either pick up a larger share of Probation costs or to cut Probation services. At the same time more mandates have been placed on Probation such as DNA collection, sex offender regulations, and interim supervision to name a few. Without proper funding, probation departments can not fulfill their obligations to help to protect the community, while providing good supervision to offenders.

## **2. Workload Standards:**

In many instances where an agency must comply with state mandates, such as rules and regulations, there are also workload standards. For instance the Commission of Corrections mandates how many CO's are needed in every correctional facility in NYS. In Probation there are no workload standards. We have the majority of PO's supervising 100+ offenders and in some counties up to 200 offenders. This is not in the best interest of public safety. If DPCA has the ability to regulate us, they should also have the ability to ensure appropriate caseload sizes.

## **3. Speedy resolution of Violation of Probation:**

In many courts, the violation of probation cases linger without a speedy resolution. The advent of boutique courts helps to put this into perspective. The success of the boutique courts is mainly due to the speedy consequences offenders experience when they do not comply with court directives. For Probation, the lack of response by the courts to violation of probation cases undermines the very nature of supervision. It must be corrected. The solution would be to allow probation to issue detainer warrants. This is a power parole officers already possess.

**4. Upward Modification of conditions of Probation without a further Court hearing:**

This option would allow Probation the ability to ensure that an offender was receiving the appropriate services for the duration of a sentence. Often times following sentencing, as Probation Officers begin to understand the probationer, they will see the need for other conditions. With the court system as backlogged as it is, it is cumbersome to return to court for a modification. The Probation Department would confirm with the court any such action that it has taken. The Court always has the option to place the matter back on the schedule if it so desires.

**5. Require mandatory Pre-sentence Investigations (PSI) on all cases:**

It is good public safety policy to require a PSI on all cases. Many times the PSI uncovers information that is not known to the prosecutor, defense or the court. The PSI allows the court to have adequate information about the offender for proper sentencing. Especially where Probation is being sought, a PSI helps ensure that the supervising department has basic knowledge about the offender to ensure a proper supervision plan is in place.

**6. Advocacy:**

Probation Directors have been attempting for more than a decade to voice their concerns about the state of Probation in NY. Mostly it has fallen on deaf ears. We continue to have our funding cut or remain stagnant when we are, at the same time, asked to do more. We agree with many of the good public safety initiatives that have been recommended but we can not fulfill the responsibilities placed upon our profession without the resources to carry out the mandates. We need to be heard.

# COPA Recommendations for Family Court Act Reform and Other Issues

## Family Court Act Reform

### 1. Orders of Protection

- Make Orders of Protection mandatory in both Article 3 and 7
- Remove the language “may” from current OP
- Increase sanctions for VOP under Article 3 and 7
- Allow Probation to recommend language for OP

*Justification: Many case involving PINS and JD's stem from dysfunctional families. In order to help “treat” the child you must also “treat” the family. Orders of Protection will allow Probation some authority to direct parents' participation in needed services.*

### 2. Language for case closing is no longer relevant. Need a way to do data collection so new way of tracking closings is necessary.

*Justification: Without some mandated case closing categories, Probation will never be able to track the results of cases.*

### 3. There should be consideration for temporary foster care vs. temporary detention.

*Justification : There are times where detention is not needed but a temporary removal form the home is . This would allow for the temporary placement of youths in foster care.*

### 4. Insert language that will require Probation/Family Court jurisdiction to cease at 18 years of age.

*Justification: This will ensure that juvenile resources are being used for the under 18 population.*

### 5. Allow for the registration of juvenile sex offenders through some sort of SORA process.

*Justification: There are many juvenile sex offenders that pose serious risk to communities. This would allow for the dissemination of information for public safety of the most dangerous of those offenders.*

### 6. Allow Probation to modify conditions of Probation without returning to court.

*Justification: This would allow some leeway for Probation to modify conditions of probation as necessary. For example mandate treatment if that became an issue during the term of supervision.*

7. Modify section 252 (c) of the Family Court Act.

*Justification: This section says that probation officers should be assigned based on the same religious faith of the probationer. This section is outdate.*

8. Allow for the use of electronic monitoring as an acceptable condition of Probation and diversion services.

*Justification: There are many instances where detention or out of home placement could be avoided if electronic monitoring was available both for post adjudication and diversion services. It is good probation practice and is a recognized sanction in the adult system.*

9. Look into possibility of Family In Need of Supervision (FINS) vs. PINS. This may be able to be combined with Article 10. This would allow the court maximum flexibility to deal with all family issues.

*Justification: There are many cases where family dysfunction has created the situation that brings the PINS or JD youth before the court. Instead of labeling the youth, dealing with the whole family in need of supervision makes good sense. There are also many Child Protective Cases which get referred as PINS. This allows the parents to escape responsibility while holding the youth accountable, in many cases, for behaviors beyond their control. (An example is the youth who does not attend school because the parents party all night and no one gets them up for school. With a PINS referral, we now shift the responsibility from the parent to the child)*

### **Other Issues**

1. If Probation is the lead agency, make it mandatory that the 65/35% funding go directly to probation.

*Justification: The lead agency should be able to tailor the program needed to ensure the provision of services. If the funding stays under the auspices of DSS when Probation is the lead agency then Probation has to jump through all of DSS regulations which often times means unnecessary duplication of work. (example YASSI vs. Connections)*

2. Allow for the photographing of juveniles for identification purpose for both diversion and adjudication.

*Justification: This will allow for the proper identification of juveniles.*

3. Mandate that PINS case not be open on current CPS case as a way to resolve neglect charges.

*Justification: As stated in number 9 above, this would eliminate shifting the responsibility from parent to child.*



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WARREN GREENE, Director

## FULTON COUNTY TESTIMONY REGARDING THE FUTURE OF PROBATION

October 18, 2006

Presented by

WARREN GREENE  
FULTON COUNTY PROBATION DIRECTOR II

By way of introduction, my name is Warren Greene and I have worked for the Fulton County Probation Department in various capacities for a bit over 30 years. The first five years of my employment was actually for Fulton and Montgomery Counties as we were combined with Warren County under Direct Services as it was called at that time. I have been the director of Fulton County Probation since 1988.

I would like to take this opportunity to thank Judge Judith Kaye for being the catalyst for this discussion. In her state of the OCA speech earlier this year, her remarks concerning probation as a whole I felt were, for the most part, accurate and insightful. I would also like to thank her for establishing the task force which is looking into the future of probation and how it can best serve the communities it represents.

I would also like to thank and acknowledge the distinguished panel in general and would like to further acknowledge a few specific members. I have only had the pleasure of meeting the task force chairman, former Senator John Dunn, on one occasion but found him to be thorough, considerate and every bit the gentlemen that, by reputation, I had heard him to be. Four of my colleagues serve on the task force, three of which I have come to know very well over the years. Pat Aikens, Rocco Possi and Bob Burns are all directors/commissioners for whom I have the highest regard. I had the pleasure of meeting Marty Horn several weeks ago for the first time, and it was interesting to hear his views from the New York City perspective. Last but not least, over the past several years I have come to know Bob Maccarone, the executive director of

DPCA. I have found him to be a passionate leader with the best interests of probation at the center of his approach while at the same time being open and accessible to the needs of the individual probation departments.

Regardless of Judge Kaye's motivation in forming this task force, I am grateful for the opportunity to both speak and to submit written testimony regarding the future of probation. I fully realize that one of the elements under consideration is the possible acquisition of probation by OCA over an extended period of time for the purpose of regulatory control. I hope to address my thoughts regarding this later in my testimony but I feel strongly that the fundamental, systematic, inadequacies plaguing probation at the current time outweigh who may serve as our regulatory agency.

As you are aware, probation is a little known and less understood agency within the criminal and juvenile justice system. I believe that part of our overall problem has stemmed from our own inability to adequately define ourselves as the result of the various roles we play in both systems. As New York's justice system currently exists, we play an integral part in both the criminal and juvenile justice systems. Intake, supervision and investigations are the cornerstones of our work. We gather information for the courts, supervise offenders who are court ordered and play a significant role in various family court matters.

Probation's mission is somewhat bifurcated in that on the one hand its about rehabilitating the offender while on the other hand insuring the public safety of our communities. One thing seems intuitively obvious and that is you can't have one without the other. In that regard, probation at all times strives to have a balanced approach as to how we deal with offenders under our supervision.

Because of some of the concerns and issues that have been raised, I sense that there is a premise that probation is broken. I strongly believe that this premise is totally false. I further believe that what is broken is the State bureaucratic system that should have been supporting us over the past 15 years. By surviving what I consider to be this dysfunctional State system only serves as proof as to how resilient, although admittedly inconsistent, probation has shown itself to be. Due to the lack of State commitment, we have found ourselves in the unenviable and uncomfortable position of chasing money through various grants and in so doing we have become reactive rather than proactive. This in turn I believe has led to more pronounced differences from county to county than existed in the past. In my opinion, the Division of Budget policy regarding probation being a local and not a joint state/local concern has eroded us to the point where we are today. All one needs to do is refer to Governor Pataki's first few budgets to see where, in consecutive years, his administration attempted to totally eliminate all reimbursement to probation. Only due to the fact that local probation directors/commissioners aggressively contacted their local state assemblyman and senators were we restored, albeit at an ever-declining rate. As you can see from the chart which we have submitted to the task force,

our reimbursement rate has declined from an ongoing 46.5% through the 1980's and early 90's down to approximately 17% today. As a result, we have been forced to live with lower revenues every year while at the same time having increased mandates placed upon us. The most accurate analogy I have heard that conveys our present state is that we are like a rubber band that has been stretched to the point of breaking. All one needs to do is to look at the position NYC, Nassau County and Erie County find themselves in today to know this to be true. Around the State counties have been faced with the choice of increasing local property taxes to pay for the continuation of existing probation services or layoff personnel or find grants to supplement/supplant funding shortfalls.

As a result of probation having to live with lower revenues and increased mandates on a yearly basis, we have been forced into a couple of inescapable realities.....A) What don't you want me to do? .....B) What kind of consistent outcomes would you expect from an agency that has been allowed to languish behind other entities in both the criminal and family court systems? I believe it was in the third grade that I learned why there was a need for government. Primarily the need is for the whole to be greater than the sum of its parts. One of the other things we learned in elementary school is that among the top priorities of any government is, and should be, the protection of its citizens. In this regard, I believe it has been unconscionable for the State of New York to allow an integral cog in our justice system to erode to the point where we need a task force such as this to address this issue today.

One of the topics which appears to be important to the task force is the question of whether or not a purpose of probation is to reduce the risk of recidivism. This has been a question for as long as I have worked in this profession, and in truth, I have yet to hear a common definition that everyone can agree upon. At one end of the extreme would be that recidivism only happens while a person is currently serving their sentence while the other extreme would be that the term recidivism can mean any rearrest during the person's lifetime. I believe it would be fair to say that, depending on your definition, a certain percentage of recidivism will occur irrespective of what type of sentence is imposed by the court be it a conditional discharge, probation, specialty courts or incarceration. Until there is a consensus as to the true meaning of recidivism, I believe that it is time to move forward in what should be the true role of probation. My belief is that recidivism no matter how it is defined is only one reason for our existence. Between conditional discharge and incarceration there is an obvious need for a "just" sentence that takes into account both the offender's and the community's well being. This is the balanced approach that probation provides.

Like recidivism success or failure for someone under probation supervision is not always the black and white issue it may appear to be. As an example, a probation officer learns that a convicted sex offender serving a probation sentence is "grooming" a potential victim. If the officer finds grounds to violate the offender's probation on a technicality, the probationer may very well have his probation revoked and be incarcerated. Although probation in this case did not change the offender's behavior, it did possibly prevent a person from being victimized.

Some members of the public would see this incident as a success for probation while others might view it as a failure since the offender's behavior did not change. I personally would view this case as a success due to the fact that probation was able to intervene and protect the community.

I believe that there is a strong need for probation to be an autonomous entity within the criminal and juvenile justice systems. As stated previously, I understand that part of the task force's mission is to consider whether OCA acquisition of probation would have the desired effect of strengthening probation. At the present time, I believe it is impossible for anyone to accurately predict what may occur since we have very little information in this regard. I have seen no organizational charts or descriptive commentary on how this would be achieved. I fully understand where various probation departments may differ on this aspect of the task force's mission. We all see things through the lenses of our own experience, and therefore what may be seemingly appropriate for NYC may be different from Fulton County's perspective.

From my perspective I believe that there is an inherent conflict of interest with OCA assuming regulatory control over probation. A prime example of this would be in the area of investigations whereby the criminal justice system is best served having probation be an independent third party as per our recommendations to the court. As an example, as it currently stands, probation can make recommendations which may differ from plea agreements made by the court, the district attorney and the defense attorney. Although these disagreements do not

occur often, I believe they are an integral part of the balance within the system which may not occur if we are under the auspices of OCA. Furthermore, I believe it is interesting to note that there is no discussion concerning OCA acquiring district attorneys or public defenders under their umbrella for some of the same conflicts of interest I believe exist between the courts and probation.

From my perspective there are several solutions short of regulatory control in which OCA could play an important part. For example, I believe that OCA could offer probation much support by prioritizing areas such as violations of probation (VOP) and detainer warrants. For example, by promulgating standards and goals for VOPs that include more efficient timelines within which these cases are disposed, offenders would have a similar experience to those presently served by OCA's specialty courts. In my experience, I have developed what I like to refer to as my 20/60/20 rule. In this rule, the top 20% of probationers in all probability will not find themselves in legal difficulties again regardless of what experience they have under supervision. The middle 60% are those people who have areas of need such as employment issues, substance abuse issues, mental health issues, and etc. which if addressed properly have the potential to assist these individuals in leading law-abiding lives. The bottom 20% are those individuals who appear to be criminally oriented and are very likely to offend again regardless of what court ordered sentence was imposed. Unfortunately, these are the individuals who take up a great majority of our time to the detriment of the 60%, where our focus should be. If OCA

promulgated more stringent standards and goals as to the time required for VOP dispositions, this would be a tremendous help towards strengthening probation.

In addition, OCA could act as an advocate by strongly indicating to the executive and legislative branches of State government that probation is an integral part of the justice system and that we are in dire need of more adequate funding in order to carry out our responsibilities. More funding could address two primary needs of probation, those being smaller caseloads, particularly in those counties that have had a significant number of layoffs over the past several years, and a better opportunity to provide programming in individual counties which makes sense for their populations.

In addition, I believe that OCA could be the catalyst for a revision of the Family Court Act which has not had a complete examination since its inception in the early 1970s. In recent years there have been some changes in areas such as PINS law in order to more adequately reflect the times within which we live. I believe it is apparent to most people who deal with the Family Court Act on a daily basis that there are other areas of this important act that need to be reviewed.

I believe that in addition to the previously mentioned possibilities of an OCA response, a legislative response to our dilemma would be in the area of Section 246 of the Executive Law. As the law now stands, probation can be reimbursed up to 50% by the State but apparently has

no minimum amount associated with this law. My recommendation would be that a floor be established at 33 1/3% contingent on agreed upon caseload standards. In this way, local probation departments would at least know what the reimbursement rate could not fall below while at the same time realize higher amounts if they chose to go into specialized areas authorized by our regulatory authority.

In conclusion I would argue that all one needs to do is to look at the numbers of people who are incarcerated or serving a sentence of probation to conclude that incarceration is the alternative to probation and not the other way around as is customarily presented.

If the task force should have further questions regarding this testimony, please feel free to contact me.

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**TESTIMONY  
OF  
THE NYS COUNCIL OF PROBATION ADMINISTRATORS  
BEFORE THE  
TASK FORCE ON THE FUTURE OF PROBATION  
PUBLIC HEARING  
OCTOBER 18, 2006  
SYRACUSE**

**Introduction**

On behalf of the NYS Council of Probation Administrators (COPA), allow me to commend Judge Kaye for her vision in establishing this Task Force on the Future of Probation, and for supporting that vision with the necessary human and financial capital. The topic of probation is not politically sexy nor does it generate the media-mania of many of the other aspects of the criminal justice system. Catching and convicting sex offenders captures the fancy of the public and elected officials alike. Supervising offenders on probation does not.

Indeed, over the past 50 years, the New York probation system has hovered in an administrative netherworld somewhere between the judiciary and the executive. A function of the local government, subject to State mandates, and funded partially by the State Legislature and partly by the County. With more people on probation than imprisonment and parole combined, we are no longer certain whether we are an alternative to incarceration, or whether incarceration is an alternative to probation. In many ways, probation has evolved to become the backbone of the criminal justice system -- providing objective pre-sentence information to the courts and supervising more than half of all persons sentenced for crimes, yet still toiling in virtual anonymity, caught somewhere between both levels and branches of government, scraping the bottom of the pot looking for adequate funding as caseloads increase and new responsibilities are doled out, seemingly without the slightest consideration for the effect on the quality of service.

Nevertheless, here we are today, addressing an esteemed panel of public officials, committed to excellence in the administration of probation services; and for that we are grateful. Thank you for providing us with this opportunity.

**History**

Historical accounts of the roots of probation vary slightly. John Augustus is considered the "Father of Probation" for his personal intervention in the lives of common drunkards and petty criminals, more than 1,800 by all accounts, whom he rescued from squalid houses of correction as far back as 1841, the true seeds of the probation concept may have been sown a decade earlier when, in 1830 Benjamin Salmon and Daniel Chase

intervened in court matter. In February of that year, Jerusha Chase was charged with what would now be considered burglary. Defendant appeared in Boston Municipal Court where she withdrew her "not guilty" plea and pled guilty, subject to the imposition of a \$200 bond put up by Messers Salmon and Chase to guarantee good behavior. The case was then put "on file" (probably similar to an adjournment in contemplation of dismissal today) and lay dormant subject to defendant's good behavior. This appears to be the first recorded example of the use of a rehabilitative probation as an alternative to incarceration.

Nevertheless, it was, indeed, John Augustus who provided the model for probation as we know it today. And there is more than a rudimentary connection. He developed the ideas of pre-sentence investigation, supervision conditions, social casework, reports to the court, and revocation of probation. Augustus reportedly bailed out over 1,800 persons from the Boston courts, selecting his candidates carefully, offering his assistance "mainly to those who were indicted for their first offense, and whose hearts were not wholly depraved, but gave promise of better things." He chose well, as, only one of the first 1,100 probationers, only one forfeited bond. Those public officials who scoffed at the idea that offenders be provided with an avenue other than incarceration for their misdeeds ultimately came to accept that not all offenders need be incarcerated. With that tacit recognition came a patchwork of legislation that began in Massachusetts in 1878 (juveniles), New York in 1893 (adults) with all of the remaining 48 states adopting some form of statutory probation system by 1956.

### **Primary Functions**

Probation has been defined as "a planned program designed to protect the community by reeducating the offender to the acceptance of responsibility for his actions, teaching him to live with others with minimum of friction, and guiding him in his conduct so that he will become a responsible citizen. It provides support in assisting him to conform to the demands of society. In Family Court the emphasis is upon trying to preserve family life." That definition, coined in 1964 remains accurate if one is willing to cull through the myriad of complex tasks and responsibilities that have been heaped upon our member departments over the past 20 years and strip those tasks to their bare essence. No one, in 1964 could have envisioned collection of DNA, monitoring of data from ignition interlock devices, verifying the addresses of sex offenders, and doubling the terms of probation for certain misdemeanors and felonies.

Despite the rash of new responsibilities and programs, the historical cornerstones of probation remain: intake, investigation; and supervision.

The concept of intake remains essentially unscathed over the past 40 years. Probation becomes the gateway for juvenile delinquents and Persons in Need of Supervision referrals, as well as other cases involved in Family Court.

The concept of investigation is essential to the proper evaluation and sentencing of offenders as well as for certain matters associated with Family Court proceedings. As a

neutral fact-finder, probation compiles the most comprehensive information and, as such, acts as a neutral evaluator of the facts. Clearly, it is in this function that probation is seen as an extension of the court, providing it with comprehensive and accurate information, with recommendations. Our members produce more than 130,000 investigations annually.

Supervision is the function by which probation is best recognized. As an alternative to incarceration, probation serves both as a rehabilitative tool and protects the community. It is often the hub of a coordinated community response. You heard last week from the Nassau and Suffolk County departments which provided you with a snapshot of the types of coordinated community responses that assist probation in the delivery of a uniquely-tailored, comprehensive plan designed to minimize the likelihood of recidivism by a certain class of offenders while protecting the community. Furthermore, probation, as part of the supervision function, is charged with the collection of restitution for victims - - usually in the area of \$16 million annually. And, as we will see below, the scope and duties associated with supervision have expanded exponentially with the additional requirements associated with DNA collection, DWI, sex offenders, domestic violence, and interim supervision.

#### **Addressing Systemic Inadequacies: Caseloads and Funding**

The most vexing challenge facing the future of probation is derived from the dichotomous variables of increased duties (mandates, actually) and a vastly insufficient funding scheme. The elephant in this room may be the issue as to what branch of government should administer the State Probation agency, but that debate, while clearly important, does not, in and of itself, address the fissures appearing around the very foundation of the probation concept.

Section 256 of the Executive Law reads as follows: "Each county shall maintain or provide for a probation agency or agencies to perform probation services therein, including intake, investigation, pre-sentence reports, supervision, conciliation, social treatment *and such other functions as are assigned to probation agencies pursuant to law.*" [Emphasis added.] While the first portion of this provision outlines the cornerstones of probation: intake, investigation and supervision, it is the effect of the last clause that circumscribes the challenges that must be addressed.

Over the years, the courts have increasingly relied on probation as the sentence of choice. Indeed, the number of probationers alone now exceeds those incarcerated and on parole combined. And that does not include the duties associated with Family Court, where our job is to "help preserve family life." As a result, the average caseload per officer has risen to 120 probationers. Now, add to those extreme caseloads "such other functions as are assigned to probation agencies pursuant to law" and you have a system that is bursting at the seams with unmanageable caseloads and annual expansion in the scope of duties.

Legislative initiatives over the past 10-15 years have significantly impacted the probation system in a disjointed manner and with next to no consideration of the "real world" effect of these mandates on an already overstrained system. We have set forth some key illustrations.

- **DWI Legislation: Repeat Offenders**

Chapter 691 of the Laws of 2002 established additional requirements for repeat DWI offenders which included extensive community service (as an alternative to jail) and the use and monitoring of the ignition interlock device. In the case of community service, where the average amount of community service for a DWI offender was 80 hours, the new mandate required either 240 or 480 hours, depending on the number of prior offenses. This requires a 34% increase in worksite capacity.

The overall impact of this mandate alone was significant. In addition to the increase in community service caseload, there was an increase in felony DWI pre-sentence investigations and felony supervision cases. Furthermore, to the extent that ignition interlock is available, probation includes the monitoring of the data logs from each device.

And there is more coming. Chapter 732 of the Laws of 2006 represents the most sweeping reform of New York's DWI laws in 25 years - - the full impact of which will not be known for several months. However, establishment of the new offense of Aggravated DWI alone will move considerably more offenders into the probation system . . . most of whom will be subject to the ignition interlock program.

- **Interim Supervision**

One of the most costly of the recent mandates is Interim Probation Supervision (IPS) - - a temporary disposition which can be imposed when a plea agreement results in an adjournment of sentence to a specified date (not exceeding one year) and the defendant is placed on IPS. This will affect caseload in several respects. First, there is the additional costs associated with an updated PSI. Second, IPS tends to result in a higher level of supervision. Third, with IPS, Probation may be supervising a misdemeanor defendant for four years instead of three and a felon for six years instead of five. And, the cost savings that result from a successful IPS will accrue to the State if the offender is able, as a result, to avoid incarceration and be placed on normal probation instead.

- **Sex Offender Registry**

This law requires courts to classify offenders as to level of risk and fit them into an appropriate category. The information for this decision is provided by

Probation - - which involves much more detailed PSIs. The law further requires offenders to report change of status to the registry on a regular basis and Probation officers are required to facilitate change of status from completion for those under supervision who enter into or change employment or educational status, move, or change vehicles. More recently, probation has been required to complete quarterly address verifications on Registered Offenders and report this activity to the State. All of these activities add considerably to the per-offender duties imposed on the probation system.

- **Sexual Assault Reform Act**

This law increases the offenses classified as sex offenses; increases the length of probation sentences for specified misdemeanor offenses from 3 to 6 years and the length of probation sentences for felony offenses from 5 to 10 years; and prohibits convicted offenders on probation on Local Conditional Release from entering any school or other child care facility without the written authorization of the probation officer and the chief administrator of the school or facility. The time and costs associated with doubling of the probation periods and the extra monitoring and oversight have a dramatic effect on caseload.

- **DNA Collection**

Any offender convicted of an enumerated offense must submit to fingerprinting and produce a buccal swab sample for DNA identification purposes. When the offender is sentenced to probation, the samples must be taken and paperwork must be completed using precise instructions so as to create a valid specimen for mailing.

The impact of these requirements, in the real world setting, has been significant. First of all, the percentage of crimes requiring DNA is approaching 50% - - so these are not a few isolated cases. Second, tracking down offenders in multiple jurisdictions and the associated paperwork represents a huge time commitment. Third, some courts require probation to collect the \$50 DNA court fee.

- **Reentry & Reintegration (Ch. 98 of 2006)**

This recent measure amends the Penal Law to provide that, in addition to the four traditional goals of sentencing (deterrence, rehabilitation, retribution and incapacitation) the new goal of *the promotion of the successful and productive reentry and reintegration into society*. This law contains the implicit recognition that pre-sentence investigations (defendant's legal history, social circumstances, and victim information) include an assessment of what type of sentence will best achieve the goal of community reintegration for the specific defendant. IT is anticipated that this will mean that PSIs will be required to

focus on developing an individual plan for a community-based sentence, including such things as: what specific resources, programs, services, accountability and supervisory methods will best accommodate the offender's immediate reintegration into the community.

We have enclosed a summary of some of these mandates, which include the estimated financial impact, in the folder appended to this testimony.

Now, in light of these snapshots of recent expansion of responsibilities, consider the following:

- The number of adult offenders on probation exceeds the combined total of those incarcerated and on parole: 122,000 - 110,000.
- 2005-2006 State funding for probation services comprised 3% of the total funding for DOCS, Parole and Probation services.
- In 2005-2006 the State spent an annual average of \$554 per probationer, while spending \$4,170 per parolee and \$34,546 per inmate.
- The proportion of State Aid reimbursement for probation services has been reduced from more than 45% in 1990 to approximately 17% in 2004 (including the cost of the NYSDPCA).
- New State mandates (over the past 15 years) now consume 25% of the duties of a probation officer.

As you can see, it appears that the State depends on the Probation departments to carry out its philosophical approach to criminal justice - - an approach that relies heavily on alternatives to incarceration for all but the most heinous offenses. As new responsibilities flow from Albany like water from a spout, the probation system is creaking under the weight of added caseloads, expanded responsibilities and dwindling funding. Thus, by far, the most significant challenge facing the probation system is that of inadequate funding and manpower in the face of increased duties, expanded periods of probation, and caseloads bursting at the seams. Average caseloads of 120 adult offenders (up to 200 in some counties) and a notable increase in Family Court matters do not lend themselves to the delivery of quality services.

The costs associated with neglect are already mounting. Probation officers have been laid off, shifting the additional burden to those remaining. Caseload size continues to increase with no caps. Non-mandated services to Family Court have been cut or reduced. We have been forced to chase grant money, often which is earmarked for specific aspects that are at odds with priorities. And, our mission is continuously changing depending on the Legislature's reaction to political hot buttons.

Thus, the most important result that could come out of this Task Force is the development of a State funding methodology that reflects reality. We believe that State participation of 50% (the maximum allowed by law) will be necessary in order to restore a semblance of rational caseload distribution to the system. Rearranging the administrative deck chairs yet again will not, in and of itself, address the simple but real issues: (1) probation is easily as much a State responsibility as it is a local one; and (2) probation departments are being asked to do too much with too little and needs an infusion of State dollars. Period.

#### RECOMMENDATIONS:

(1) Require that the State be responsible for a 50% reimbursement of costs associated with the delivery of probation services.

(2) Set clear standards and guidelines for determining caseloads and reimbursable expenses. A responsible caseload standard would be 60:1.

#### Addressing Systemic Challenges: Other Legislation

- **Speedy resolution of Violations of Probation.**

In many courts, the violation of probation cases linger without a speedy resolution. The advent of boutique courts helps to put this into perspective. The success of the boutique courts is mainly due to the speedy consequences offenders experience when they do not comply with court directives. For Probation, the lack of response by the courts to violation of probation cases undermines the very nature of supervision. It must be corrected. The solution would be to allow probation to issue detainer warrants. This is a power parole officers already possess.

- **Upward Modification of conditions of Probation without a further Court hearing.**

This option would allow Probation the ability to ensure that an offender was receiving the appropriate services for the duration of a sentence. Often times following sentencing, as Probation Officers begin to understand the probationer, they will see the need for other conditions. With the court system as backlogged as it is, it is cumbersome to return to court for a modification. The Probation Department would confirm with the court any such action that it has taken. The Court always has the option to place the matter back on the schedule if it so desires.

- **Require mandatory Pre-sentence Investigations (PSI) on all cases.**

It is good public safety policy to require a PSI on all cases. Many times the PSI uncovers information that is not known to the prosecutor, defense or the court. The PSI allows the court to have adequate information about the offender for proper sentencing. Especially where Probation is being sought, a PSI helps ensure that the

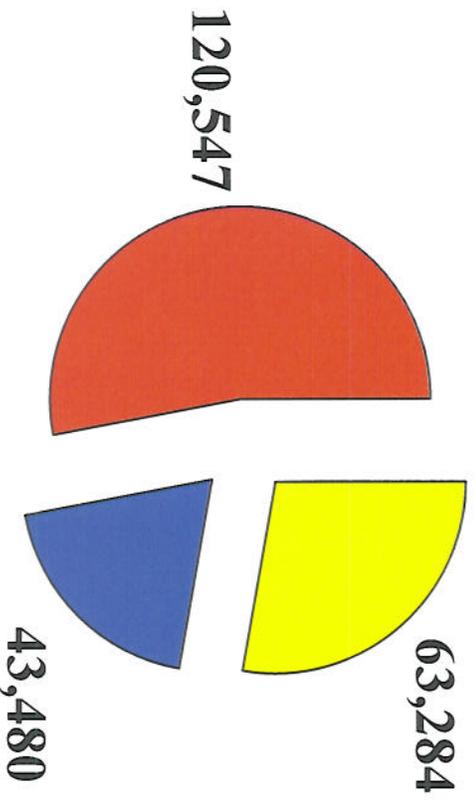
supervising department has basic knowledge about the offender to ensure a proper supervision plan is in place.

Thank you again for providing us with the opportunity to express our views. We trust they will be viewed in the most constructive and collaborative light. We are all in this together, and we need to ensure that Probation is administered in the most professional manner possible, and with the same commitment as demonstrated more than 150 years ago by John Augustus.

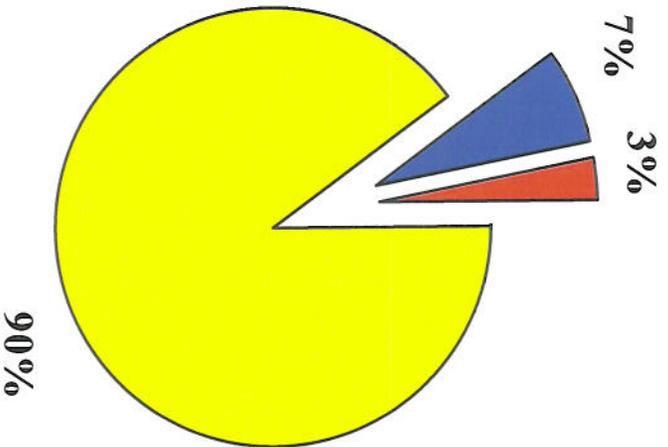
**RESPECTFULLY SUBMITTED,**

**ROBERT IUSI  
WARREN COUNTY  
ON BEHALF OF  
NYS COUNCIL OF PROGRAM ADMINISTRATORS**

# Adult Offenders Served



# 2005-2006 State Funding



# Overall Impact of Unfunded Mandates on a Probation Officer's Time

