

Returning Probation To Its Roots

Testimony Before
The Task Force
on the
Future of Probation

Jonathan E. Gradess
Executive Director
New York State Defenders Association

October 19, 2006
Buffalo, NY

I am Jonathan Gradess, Executive Director of the New York State Defenders Association. I was here when probation service was in the Judiciary, and I've been here during its entire stay in the Executive Branch. I knew the agency when it was called "Probation," and I was here when it took on the mantle of "DPCA."

On Where Probation Should Be Housed

What has governed the nature of probation during each of these periods has been money – its availability, and the lack of it. The lack of money has affected Probation's commitment to rehabilitation.

I don't feel particularly competent to address the ultimate venue for Probation, but I feel sufficiently competent to describe how it should land, wherever it lands.

I want Probation to return to its roots: rehabilitation, merciful intervention, and compassionate concern. I want to see restorative practices, not law enforcement. I want to see courage in the recommendations given to judges, and support for new ways of looking at supervision.

Right now, and for many years, Probation has been at war with itself. It has been squeezed financially. It has suffered at the hands of a public and political philosophy that has called a halt to the meaningful progression of rehabilitation. Cutbacks have interfered with innovation. In a system with a 97 percent plea rate, where human liberty is bartered over in our courts like fish in a marketplace, Probation is no longer valued as the meaningful system and sanction it should be.

This must change. We should return Probation to its proud tradition of client service and creative advocacy.

Our Clients

It has been my good fortune to have been around marginalized people my whole life. I have worked with them, represented them, served them and have been their advocate. From this I have learned at least one very important lesson: People, particularly the poor and vulnerable who break the law, need other people to help make them whole.

They need to have their dignity protected and their need valued. They need to be in relationship with someone who urges them to be the best self they can be. They need to be able to fail and to try again, and to know they will not be abandoned. They need to be able to test the waters of a relationship before they fully commit to it. A single person can change the life of another by being there for him or her and not giving up.

Said another way, there is a dramatic role for the probation service in this state, and it needs to return to that role – the service of people. A probation officer needs to see his or her role as social worker, not as peace officer.

When one human being comes into the life of another in the right way at the right time for the right reason, miracles happen; reformation begins; changes take place.

The more we make Probation into a bureaucracy, the more probation officers are like cops, and the more we cut Probation funding, the less likely this is to happen. The more we paint Probation with the dull green paint of institutional bureaucracy, the farther we remove it from the vibrant, potentially meaningful institution it should and can again be.

My vision for Probation has been receding in our state, ushered out by a period of intense heart-hardening. The last thing a client of mine needs is one more bureaucrat who lacks the vision of human liberation and reform.

This is the place from which I begin. And my perspective covers all the roles that Probation plays, all the tasks it performs, all the functions it fulfills.

I would ask first that this Task Force recommend strongly that Probation return to its roots.

On Watering the Roots: Real Funding and Meaningful Services

When I began as Executive Director of the New York State Defenders Association, the state reimbursement rate for Probation was 42.5 percent. In last year's Executive budget, the final reimbursement rate was 18.9 percent. The budget for Probation has been in a downward fiscal spiral for 30 years.

When pre-plea reports are weak or incomplete, judges are fearful about less restrictive conditions.

When pretrial services are cut back, people who should be free languish in jail. The indirect costs of their incarceration are monumental and often ignored. Their chance for conviction is magnified.

When probation departments are under-resourced, pre-sentence investigations (PSIs) have gaps in them that shouldn't be there. Or worse, when there is little money people suggest waiving probation reports to save resources. The single most important criminal justice document is then denuded of its content but not of its ultimate power.

When high caseloads prevent probation officers from performing adequate supervision, faith in rehabilitation is lost. And when caseloads are too high, we look for technology or bureaucracy to address the problem, but fail to see the cost of the lost relationship between client and probation officer. Then judges resist probation, prosecutors shun it, and defense lawyers worry about it.

The cycles are self evident; the solution is clear. Probation needs to return to a role of broad rehabilitative service delivery, and it needs to be funded adequately to perform that role. It needs to cast off other claims for its identity and become the goal setter and trend setter for innovations in release, assessments, evaluation, recommendations and supervision.

And Probation must be willing to do this in cooperation with grassroots and community-based organizations that can play a role in reforming and transforming the system of criminal justice.

Probation's Relationship to Community Organizations

Over the years, the relationships between local probation departments and community organizations and between DPCA and the not-for-profit community have shifted and changed, waxing and waning depending on the moment, the Director, the Governor, the temper of the times. In some places in New York, local probation departments shun outside groups; elsewhere they are embraced wholeheartedly by probation departments.

There is a real need to revisit the role of community-based organizations and their obvious value in functioning as full partners with Probation in pretrial release advocacy, ROR programs, alternatives programming, client specific planning, defender-based advocacy, defense presentence investigation, and post-dispositional community supervision. There is a role for community-based organizations in all these areas.

These programs will never threaten a probation department that is strong enough to use them well. They will always be a resource if incorporated intelligently. Much that needs to be accomplished in returning Probation to a position of authority and a role of respect can be done through giving up the fear of community-based encroachment. There is room for all, because every one of us knows the unspoken truth: "Prisons fail."

Importance of the Pre-Sentence Investigation

Let me ask you for the brief moments I am before you to imagine you are in a cell, on a tier inside the walls of Comstock or Attica or Auburn. Imagine being trapped in that cell with no communication with your lawyer, whose caseload has been ratcheted so high by government that you are a DIN number with a name rather than a person with a DIN. Six pieces of paper stapled together – the PSI that tells "your story" – are floating around the administrative offices of the prison. Under regulations of the Department, you can't read "your story" to rebut it, but it governs your life, a big chunk of which has just been taken by a judge. The judge in turn was too busy to find out much about you, so he read this summary report. You were briefly consulted when this was written but had been advised not to say anything that would hurt your chances on appeal. When it was completed, you were briefly consulted on it in court by your lawyer, but by that time it was pretty late. Your story, said the judge when he gave you the maximum, was "all in the PSI" that had been prepared by the Probation Department.

That PSI is the document used by DOCS at classification – a determination that sets the projectory for your prison programming, your facility placement and your housing. The PSI is used thereafter in other prison determinations assessing your risk. It is the governing document used to decide your parole release and your parole supervision.

The PSI is more powerful than a DD5, a felony complaint, or an indictment. For those convicted, it is more important than the pretrial discovery motion or the later-filed appellate brief. Its power is unique, all encompassing; next to the criminal history report, it is the single most important piece of criminal justice paper there is. It needs to be accurate. And in many, many cases, it is not.

A few years ago I was criticized by Probation administrators when I was quoted in a newspaper as stating:

“The probation report is one of the most powerful vehicles that follows the defendant through the system. It's the rare probation report that's accurate.”

But I meant what I said, and I want you to hear all that I meant.

I did not mean they are not *comprehensive*, which assuredly they are not.

I did not say they were not *thorough*, a proposition with which many probation officers would agree.

I did not call them *incomplete*, a less difficult word to swallow and one that no one could contest.

I was criticized for calling these reports inaccurate.

A PSI is a life story. When it is not comprehensive, thorough, or complete, it is “inaccurate” in the truest, purest sense of the word. It then portrays *a piece* of a human being in a system that is legally required to take into account *the whole person*. What this means on the tier at Greenhaven is, “I will always be known by the worst moment of my life, by the worst thing I ever did, but not by who I am.”

That is the document we are talking about when we talk about a PSI. PSIs are currently not up to the tasks they perform. Today, a lack of resources limits their scope, comprehensiveness and thoroughness. Worse, some judges would prefer that the recommendations in these independent reports be tailored to coincide with bargained sentence agreements. Others pay the reports little regard. Some voices would expand the waiver of probation reports, while in many cases defenders are fed up with the impoverished nature of the portrayal they provide.

I hope this Task Force will be a strong voice for the resources to do these reports well, comprehensively, thoroughly, and completely. I hope you will demand the procedures to assure their accuracy. We should make the process for correcting these reports a matter of important sentencing policy. Judges, Probation and the defense should cooperate in this endeavor, and the client should play a role in reviewing, discussing and amending the report.

The procedure whereby reports are made available on the day of sentence and adjournments to review them neither requested nor granted is a fundamental flaw in our process. The reports should be provided much earlier, time should be given for review by attorney with client, and the process for correcting and assuring that the amended report replaces the initial report should be taken seriously by all the people involved – judge, Probation, defense, and prosecutor. Due process demands greater protection for the information used to sentence, classify, program, and release people from prison.

There is an equal need to adequately portray with robust, rich information the lives of those who will be placed on probation or in alternatives.

Pro forma sentence bargaining needs to be constrained, and sentences imposed should be individualized, less restrictive and more creative.

A defendant is entitled under due process to the integrity of the procedures leading to his or her loss of liberty. Today, with regard to the information in PSIs, the procedures used to correct them, the hearing given to their content, and the time allowed for rebuttal, there is no such procedural integrity.

The Defense Should Have Much in Common with a Good Probation System

After listening to testimony delivered by the defense in New York City, I realized it might be helpful to share a perspective on the future, because at present I think we have a problem of great misunderstanding between the defense and Probation and a great need to repair damage that has occurred over recent years.

For many years, NYSDA advocated side by side with COPA to increase the probation reimbursement rate, worked with DPCA counsel, helped pass ATI legislation, moved in committee the NYSAC recommendation for a "permanent 39 percent" reimbursement rate, and most recently helped draft DBA standards.

We have done all that on the theory that improved probation services were good for our clients. We have believed that we can aspire to a rehabilitative model for penal sanctions. We have wanted Probation to help clients receive better service. We have believed that Probation could achieve client-centered goals. I do not believe that we were wrong, but I think there is much work to be done.

I think Probation can help encourage and fund community-based alternatives, can build meaningful bridges to and with the defense community, and, in returning to its rehabilitative roots, can restore the rift that has occurred between defense advocates and probation agencies.

But it will not happen without work. The complaints I listened to in New York are echoed elsewhere in the state. Defenders do not need one more adversary to join the long line of those who stand arrayed against their clients. They have enough police out to get their clients; they don't need another cop. They face enough prosecutorial firepower; they don't need another prosecutor. As their clients come to court from a correctional setting, riding on a bus with armed guards to a pen with court officers, they don't need another law enforcement officer to supervise their client. Defenders don't need another adversary in the form of a probation officer.

And today, too often, it feels that way, and in many cases it is that way.

I hope this Task Force can help heal the rift between defense and Probation by urging the return of Probation to its rehabilitative roots. Probation and the defense share the goal of keeping clients away from further involvement in the criminal justice system. If Probation and the defense can come together to better the lives of clients as a result of your work and the recommendations you make, you will have accomplished much.

THE TASK FORCE ON.....

THE FUTURE OF PROBATION

OCTOBER 19, 2006

BUFFALO, NEW YORK

Testimony prepared/submitted by:

George B. Alexander
Commissioner
Erie County Department of Probation

PREFACE

Since its initial inception in 1841 by John Augustus, probation has emerged as the most effective means of counteracting criminal behavior, more so than traditional and more costly imprisonment and parole.

Probation is an important part of a large complex and interdependent array of governmental, non-profit and private agencies that make up the criminal justice system. It is the link between the arresting officer, the jails, the prosecution, the courts, the prisons and the parole system, thus, probation work is not done in isolation as they are affected by and have an impact on many other parts of an otherwise disjointed system and process.

Probation enables all parties of the criminal justice system to make the decisions that they do, from bail (to no bail), from incarcerating (or to consider alternatives), from deciding the length of sentence (or time on community supervision), from classification all the way to and including whether to release someone to parole supervision (or to deny release). As there appears to be more focus on reentry, a term typically associated with release from prison, much of the information necessary to achieve more positive results is continued in the work generated by probation.

It has a dramatic affect on managing local jail populations and moving cases through the courts in an effective and expedient matter.

I have not even begun to talk about the supervision aspect, which I shall do later. There is, however, a misconception that probation only supervises misdemeanors. Nothing can be further from the truth. Probation virtually supervises the same population as parole with the exception of those class A and B felonies where incarceration is mandated.

In short, probation is the sentence of choice as it provides for the best opportunity for true rehabilitation, can provide a relief for other components within criminal justice systems and has a better ability for enhancing accountability.

STATISTICAL ANALYSIS

At the end of 2002, there were approximately 3,995,165 adults throughout the United States that were on probation supervision. Of that, 62% were discharged from probation successfully.

At the end of 2002, the number of adults on parole supervision throughout the United States totaled 753,141. Of that, 45% were discharged from parole successfully.

At the end of 2002, 2,019,234 adults were incarcerated in the United States.

PROBATION IN NEW YORK STATE

57 County Probation Departments and the City of New York

3,100 Probation Officers and 300 support staff

125,000 Adult offenders, 19,400 juveniles on supervision

125,000 Pre-Sentence Investigations

24,000 Pre-Dispositional Investigations

100,000 PINS and Juvenile Delinquency Intakes

PROBATION IN ERIE COUNTY

5,092 Adults on probation supervision - (2,550 felonies and 2,542 misdemeanors)

5,184 Pre-Sentence Investigations completed

68 Probation Officers

423 Juveniles on Probation

3,200 PINS and Juvenile Delinquency Intakes

New York State Probation Related Family Court Facts

Intake cases open in 2004

Juvenile Delinquent	24,873
PINS	19,635
Family Offense	15,598
Custody/Visit/Adopt.	16,300
Other(support/paternity/other)	12,614

Supervision cases open on 12/31/04

Juvenile Delinquent	6,235
PINS	3,523
Family Offense	140
Other	769

Juveniles Delinquents Received for Probation in 2004

<u>Age</u>	<u>Male</u>	<u>Female</u>
13 and under	12.9%	2.8%
14-15	48.2%	13.0%
16 and over	19.4%	4.3%
TOTAL	80.4%	19.6%

PINS

<u>Age</u>	<u>Male</u>	<u>Female</u>
13 and under	11.1%	7.4%
14-15	29.7%	25.8%
16 and over	13.6%	12.5%
TOTAL	54.4%	45.6%

Restitution collected in 2004 (family court only)

\$276,239

Investigations completed in 2004

JD	21,399
PINS	7,768
Cust/Visit/Adop	4,235
Other	4,733
	4,663

PURPOSE OF PROBATION

The purpose of probation is multifaceted. As indicated previously, it links all parts of the criminal justice system together.

- Through Pretrial or Release Under Supervision Programs it identifies, makes recommendations and supervises individuals who have been arrested, but not convicted.
 - a. Supervision is pre-adjudication
 - b. Can affect local holding centers by releasing individuals who might otherwise have to await bail, exoneration or conviction
- Through the preparation of Pre-Sentence Investigation reports, helps to resurrect the major aspects of a crime/criminal from a neutral party perspective.
 - a. Enabling judges to make appropriate assessments/decisions with respect to sentencing
 - b. Identifies for the courts various options and areas of concern
- Enables corrections officials to make appropriate assessments and classification decisions by identifying needs, causal factors, risk levels, criminal patterns of behavior
- Enables paroling authorities to make appropriate decisions with regards to whom and under what circumstances an individual may be released from state incarceration
- Provides victim services, giving them a face and a voice in the investigation and supervision process
- Actively collaborates with various police agencies in such initiatives as Operation Impact, Project Safe Neighborhoods, Project Exile
- Performs a host of services for regulatory concerns such as DNA collection, drug testing
- Active supervision of those criminal offenders sentenced to probation as an alternative to incarceration
 - a. Includes surveillance, office reports, home visits, employment checks, service referrals and follow-up

- Active supervision in the community of those criminal offenders sentenced to probation as an alternative to incarceration, to provide for rehabilitation and to reduce recidivism
 - a. This supervision involves:
 1. Monitoring – (compliance with conditions of probation, drug testing, electronic monitoring, monetary obligations, surveillance)
 2. Intervention – (counseling, job training, crisis management)
 3. Advocating – (education, obtaining treatment beds, training, budgeting, satisfying community concerns)
 4. Referring – (knowledge of community resources, effectiveness of resources, communicating with other agencies, case planning)

AREAS FOR CONSIDERATION

- Confidence of the Court – if the key decision makers have confidence in the supervision provided, they will be more likely to sentence to probation. As indicated, this can reduce jail overcrowding
- Demand for Other Justice Services – if probation is not effective in supervising and controlling their caseloads, the offenders will commit additional crimes and increase the demand on police, prosecution, defense, courts and corrections
- Smooth Functioning of the Justice System – as indicated previously, probation plays a role in almost every aspect of the criminal justice system. An effective and efficient criminal justice system is reliant on probation to carry out its role and work well with their partners
- Public Confidence and Expectations – the effectiveness of probation can generate public confidence and garner political support if they meet the expectations of the citizenry
- Community Safety – probably the most important aspect of the effectiveness of probation is that it can significantly impact on public safety when it is done properly

Overall, improved performance by probation will lead to less crime, increased safety, reduction in recidivism rates and a better chance at rehabilitation for the offender. This then leads me to my next point. Investment in increased capacity and capability to deliver effective probation services will provide a valuable return in justice and safety for the community.

STRENGTHENING PROBATION AS THE SANCTION OF CHOICE

In order for probation to be a meaningful sanction, it must be adequately funded. Probation is the sanction of choice in the criminal justice system. More offenders are under the supervision of county Probation Departments than are in state prisons and on parole combined. These are not just non-violent offenders. More and more violent offenders are under community supervision, including sex offenders and domestic violence offenders.

This increased demand for services has resulted in new, innovative initiatives being implemented across the state by County Probation Departments with the focus on keeping our communities safe. We cannot fulfill this mission alone. We must have the financial backing of the state.

However, over the years the state's financial commitment to fund County Probation Departments has dwindled. At the same time, new laws have been created that boasted of no cost to localities, when in fact there have been substantial costs to localities.

These unfunded mandates continue to "water down" the overall probation system. There are so many people going through the probation system, a system that is currently under-funded, that probation cannot continue to manage the present volume. This therefore makes probation a less meaningful sanction.

The New York State Council of Probation Administrators is requesting that state aid to local Probation Departments be funded at the maximum percentage allowable by law (50%). Further, we ask that there be a moratorium on any new legislation that creates any financial burden on counties unless sufficient resources are also included.

We stand ready to assist the legislature to effectively establish probation as the sanction of choice.

Probation Investigation Ratios – County Comparisons for 2005

For 8 large counties this chart shows the total number of staff, the total number of investigations completed and a ratio computed by dividing the total number of investigations completed by the number of staff. Included in the investigations completed are the total number of family court and criminal court investigations excluding ROR investigations. All counties do not conduct ROR investigations. Staff is defined as a total of Principal Probation Officer, Probation Supervisor, Sr. Probation Officer, Probation Officer, Probation Officer Trainee and Probation Assistant. The time it takes a department, on average, to complete PSI's for detained and non-detained offenders is also included. Completion Time is defined as the time from the date the investigation order is received by the probation department from the court to the time the completed report is submitted to the court.

<u>County</u>	<u>Number of Staff</u>	<u>Number of Investigations Completed</u>	<u>Ratio of Investigations to Staff</u>	<u>PSI COMPLETION TIMES**</u>	
				<u>Non-Detained Offender</u>	<u>Detained Offender</u>
Albany	99	2,127	21.48	6 to 8 weeks	6 to 8 weeks
Dutchess	90	1,494	16.60	4 to 6 weeks	10 business days
Erie	76*	5,184	68.21	12 weeks	12 weeks
Monroe	172	5,613	32.63	7 weeks	4 weeks
Nassau	222	6,604	29.75	6 weeks	4 weeks
Onondaga	89	4,183	47.00	6 weeks	10 business days
Suffolk	331	7,012	21.18	8 weeks	2 to 4 weeks
Westchester	193	7,558	39.16	10 weeks	3 weeks

Data Sources: NYS DPCA DP30 & DP30A's and Annual Probation Program Plans.

* current staffing level is 84

** Data obtained through telephone survey of the county Probation Directors/Commissioners conducted from July 12 through July 25th, 2006. Erie County information obtained from the Erie Probation Commissioner via letter prior to these dates.

Probation Investigation Ratios County Comparisons for 2005

For 8 large counties this chart shows the total number of staff, the total number of investigations completed and a ratio computed by dividing the total number of investigations completed by the number of staff. Included in the investigations completed are the total number of family court and criminal court investigations excluding ROR investigations. All counties do not conduct ROR investigations. Staff is defined as a total of Principal Probation Officer, Probation Supervisor, Sr. Probation Officer, Probation Officer, Probation Officer Trainee and Probation Assistant

<u>County</u>	<u>Number of Staff</u>	<u>Number of Investigations Completed</u>	<u>Ratio of Investigations to Staff</u>
Albany	99	2,127	21.48
Dutchess	90	1,494	16.60
Erie	76*	5,184	68.21
Monroe	172	5,613	32.63
Nassau	222	6,604	29.75
Onondaga	89	4,183	47.00
Suffolk	331	7,012	21.18
Westchester	193	7,558	39.16

Data Source: NYS DPCA DP30 & DP30A's and Annual Probation Program Plans.

* current staffing level is 84

Probation Supervision Ratios County Comparisons for 2005

For 8 large counties this chart shows the total number of staff, the total number of supervision cases and a ratio computed by dividing the total number of supervision cases by the number of staff. Included in the supervision cases are felony and misdemeanor criminal court supervision cases under supervision on December 31, 2005. Staff is defined as a total of Principal Probation Officer, Probation Supervisor, Sr. Probation Officer, Probation Officer, Probation Officer Trainee and Probation Assistant

<u>County</u>	<u>Number of Staff</u>	<u>Number of Supervision Cases</u>	<u>Ratio of Cases to Staff</u>
Albany	99	3,072	31.03
Dutchess	90	1,570	17.44
Erie	76*	4,460**	58.68
Monroe	172	5,426	31.54
Nassau	222	6,368	28.68
Onondaga	89	2,685	30.17
Suffolk	331	10,002	30.22
Westchester	193	6,366	32.98

Data Source: NYS DPCA Integrated Probation Registrant System and Annual Probation Program Plans.

*Current staffing level is 84

**Current number of supervision cases is 5,634

Probation Staff To County Population Ratios County Comparisons for 2005

For 8 large counties this chart shows the total number of staff, an estimate of the 2005 county population from the U.S. Census Bureau and the number of probation staff per 100,000 population. Staff is defined as a total of Principal Probation Officer, Probation Supervisor, Sr. Probation Officer, Probation Officer, Probation Officer Trainee and Probation Assistant.

<u>County</u>	<u>Number of Probation Staff</u>	<u>County Population Estimate</u>	<u>Number of Probation Staff per 100,000 population</u>
Albany	99	297,414	33.29
Dutchess	90	294,849	30.52
Erie	76*	930,703	8.17
Monroe	172	733,366	23.45
Nassau	222	1,333,137	16.65
Onondaga	89	458,053	19.43
Suffolk	331	1,474,927	22.44
Westchester	193	940,807	20.51

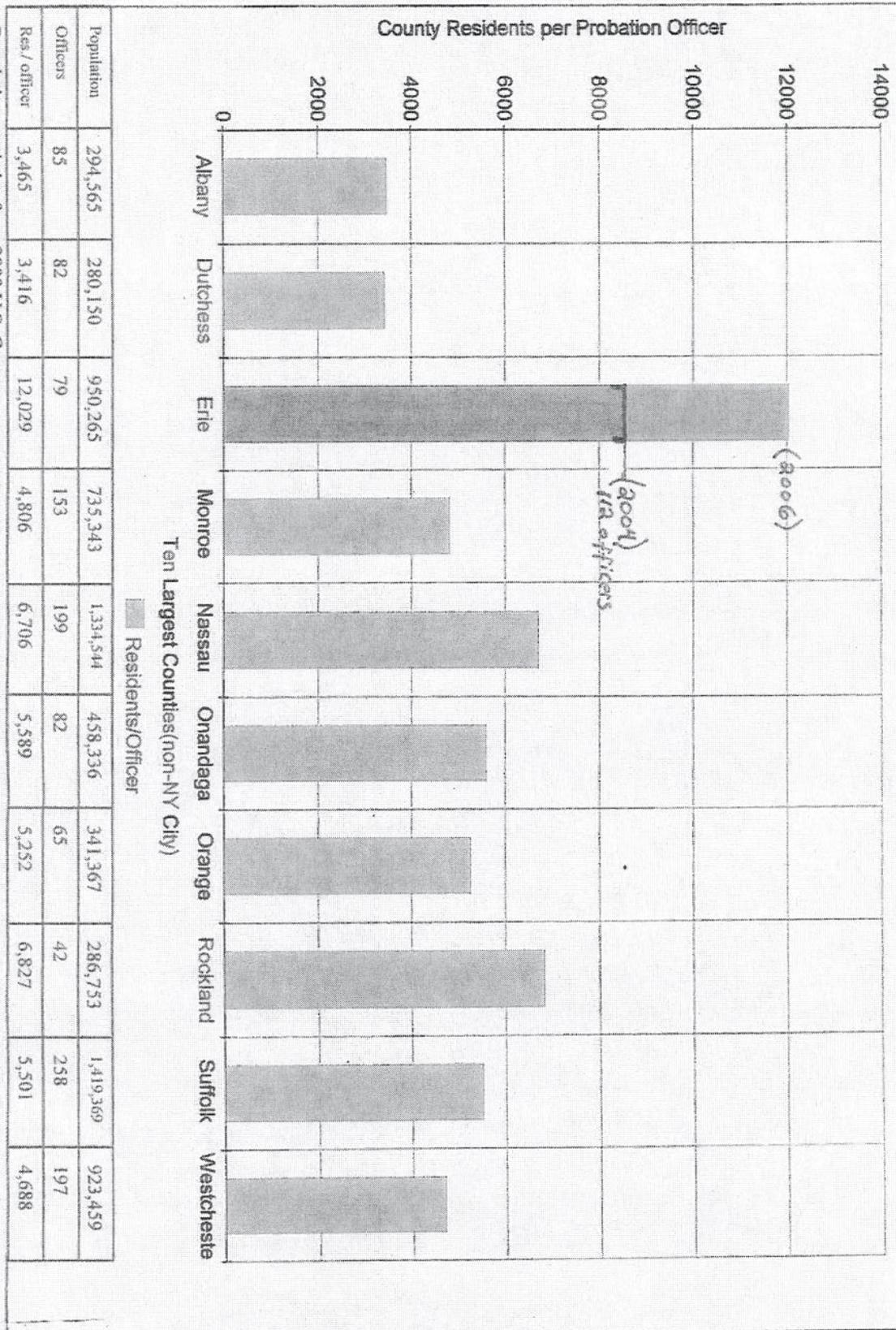
Data Sources: # of Probation Staff -2005 Probation Program Plans
County Population Estimates-U.S. Census Bureau

* Current staffing level is 84

From: Gretchen Walsh
To: Amodeo, John
Date: 10/24/2006 3:58:07 PM
Subject: Fwd:

This was submitted by William Pitts (Probation Officer) at the Buffalo Hearing.

PROBATION OFFICER STAFF COMPARISONS
 large counties (over 250,000 residents)



Population statistics from 2000 U.S. Census
 Probation Department staffing from 2005 New York State Probation Officers Association website; Research Information Section; comparisons of firearm authorized officers/ Department size, 1998 & 2005, Francis M. Timko, PhD, Chairperson NYSPOA Standards and Practices Committee. (updated 12/31/05)



LOCAL 815

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October 24, 2005

Members of the Erie County Legislature;

Erie County had the fewest Probation Officers per capita of any of the six largest counties in New York State even prior to the lay offs which occurred earlier this year. This was extensively detailed in January 2004 by the Buffalo News. Later that year the Erie County Legislature issued a resolution that recognized public safety was being jeopardized by high probation caseloads and additional costs borne by the taxpayer due to adult incarceration and juvenile detention.

In March 2005, there were 34 Probation Officers laid off as a result of the adopted budget. In addition, six Probation Officer positions that had remained vacant but funded since 2002 were also eliminated. While most if not all departments have had staff restorations since March, no Probation Department personnel who were laid off have been recalled to date.

Each year the current administration ignored or minimized the staffing needs of the Probation Department in their proposed budgets. As a result, supervision caseloads in the Juvenile and Adult Divisions were more than twice the size recommended. Since the March 2005 layoffs the size of many caseloads has increased to over 300. Additionally, understaffing has caused delays in preparing Pre-Sentence Reports for the courts. This delay raises the costs of local incarceration and contributes to jail overcrowding. Routine home calls made by Probation Officers have been discontinued, limiting the ability to monitor adult and juvenile offenders in their living environment.

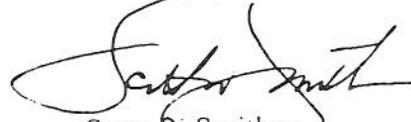
Last month the Legislature approved the County Executive's request to create six Probation Officer positions and one Probation Supervisor Position. In the proposed 2006 budget the Director of Probation and County Executive request an additional eight Probation Officers. While being mindful of the necessity to fund staff positions I implore the Erie County Legislature to restore the number of Probation Officers, Supervisors, and support staff to the 2004 levels. While not offsetting the additional cost of restoring these positions, the Legislature should carefully review the proposed addition of a Senior Budget Examiner and Billing Account Clerk in 2006. These 2 positions are likely connected to a larger revenue recovery unit whose total salaries are estimated to be \$300,000/year. Probation Officers have historically collected fines, mandatory surcharges, and restitution. Since the Local Laws were passed they have also been collecting "user fees" for probation supervision, drug testing, and electronic monitoring.

Local 1000 AFSCME, AFL-CIO

Erie County does not need a collections unit with bloated salaries to take credit for collecting monies that are already being effectively received by Probation Officers. Under the Giambra administration the Principal Probation Officer position was created and filled. At that time the Probation Department and Youth Detention were combined. The Legislature should consider the necessity of filling the Principal Probation Officer position in the 2006 budget given the significant reduction in the Department's overall size and reduction in administrative duties resulting from the move of Youth Detention to the Division of Children and Families.

Once again, while being mindful of the financial state of Erie County I ask you to strongly consider the restoration of additional probation staff.

Yours truly,

A handwritten signature in black ink, appearing to read "Scott R. Smith". The signature is fluid and cursive, with a large loop at the end.

Scott R. Smith
Probation Section President
CSEA Local 815
858-8249

JOB TITLE	2004 (Numbers taken from 2006 proposed budget)	2005 (Numbers taken from 2006 proposed budget)	2006 Proposed
Principal Probation Officer	1	0	1
Probation Supervisor	14	8	9
Spanish Speaking Probation Supervisor	1	1	1
Probation Officer	94	62	72
Spanish Speaking Probation Officer	3	0	0
Grant Specialist	1	1	1
Probation Assistant	6	4	4
Principal Clerk	2	2	2
Sr. Clerk Stenographer	10	7	7
Sr. Clerk Typist	5	2	2
Clerk Typist	4	3	3
Clerk Typist RPT	0	0	1
Account Clerk RPT	0	0	1
Cashier	1	1	1
Jr. Cashier	1	1	1
Community Service Assistant	2	2	2
Victim Advocate	1	1	1
Investigative Aide PT (RUS)	0	0	2
Investigative Aide (Pre-Trial)	3	3	3
Investigative Aide RPT (Pre-Trial)	1	0	0
Investigative Aide PT (Pre-Trial)	2	0	0
Casemanager Pre-Trial Spanish Speaking	1	1	1
Receptionist	3	2	2
Sr. Budget Examiner	0	0	1
Billing Acct. Clerk	0	0	1
TOTAL POSITIONS	156	101	119

58 currently filled PO / Spanish speaking PO positions.
8 currently filled supervisor positions
1 currently filled Spanish Speaking Supervisor position.

**Erie County Probation Department
Budgeted Supervisor and Probation Officer positions**

Budget Year	Juvenile		Adult	
	Supervisors	Probation Officers	Supervisors	Probation Officers
2005	4	17	6	45
2004	6	31	9	65
2003**	6	33	9	63
2002	4	30	10	60
2001	4	27	10	56
2000	4	28	10	57
1999	4	27	10	59
1998	3	24	10	56

**Individual position codes were not correct when 2003 budget was prepared. Correct numbers were taken from the 2003 column of the 2004 budget.

Y&R Region

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LAW ENFORCEMENT

Probation officers say caseload is crushing

By SANDRA TAN
News Staff Reporter

William Pitt has worked as an officer with the Erie County Probation Department for 17 years. In that time, he said, he has never had a partner reach retirement without being treated for a serious heart condition. One colleague died on the job.

When the state offered early retirement this year, 15 probation officers took it.

"And there are people here now who are actively looking for other employ-

ment just because of the stress of the situation," Pitt said. "There's more here to do than anyone in the world can do."

The officers say they're desperate for more people to handle their overwhelming caseloads, which they believe threaten public safety, hurt the county financially and keep the wrong people in jail.

Union members say they hope county legislators will fill the vacant positions and add even more probation officers to the county's proposed budget for 2003 to make up for a serious staffing shortage that dates back to the early 1990s.

Local judges support their request. "How can you monitor and rehabili-

late 150 people? It's inconceivable," said County Court Judge Timothy Drury, referring to the average caseload for a probation officer. "In the long term, it's financial stupidity. If the people aren't being monitored and rehabilitated, probation is violated and incarceration follows."

According to the county and state Probation Officers Association, Erie County has more residents per officer than any of the top 10 counties in the state. And while annual adult offender cases have nearly tripled since 1975 — from 2,600 to more than 6,600 — the number of officers handling them has re-

mained fairly level.

This has a direct impact on the amount of time a person spends in jail at taxpayer expense, judges say, in part because probation officers must conduct presentencing investigations for each criminal a judge sentences.

It used to take four weeks for probation officers to complete a report. Now, they say, it takes eight. During that time, a person otherwise eligible for probation is waiting in the Erie County Holding Center at a cost of nearly \$100 a day, judges and probation officers said.

See Probation Page B22

"These adoption cases are cases made for angels." Kevin M. Carter, Family Court judge



CRIME

Kidnapped children in car found;

Probation: County plans to fill vacancies created by retirements

Continued from Page B1

"You have people sitting in jail longer than they should be sitting, only to bear a cost the county need not bear," said Buffalo City Court Judge James McLeod.

Republican county legislators introduced a budget amendment Thursday that would add one new probation officer to the department. The Democrats have proposed adding several positions. A final vote on the budget is scheduled Monday.

Probation Director George B. Alexander said the county intends to fill all the vacancies created by early retirements.

He also has requested that the Legislature fund five new probation officers and a supervisor's position to handle an anticipated increase in juvenile probation cases next year because of changes in state law. The cost for these positions would be offset by grant money, he said.

While union leaders support this increase, they said it does not change the ratio of probation officers handling the ever-growing number of adult cases, which have more serious public safety implications.

"The only way to protect the community is to know what's going on," said Pitt, an officer with the Civil Service Employees Association Probation Section. "If you have a caseload of over 100, it's difficult to know what's going on."

Dale Larson, R-Lancaster, vice chairman of the public safety committee, said he's interested in following up next year with a comprehensive review of adult probation caseloads.

While some probation officers have specialized job requirements, most are required to perform a number of tasks: interviewing and drug-testing probationers, making trial appearances, conducting presentencing investigations and processing violations.

Juvenile probation officers have some similar responsibilities, though those cases typically involve schooling requirements and more

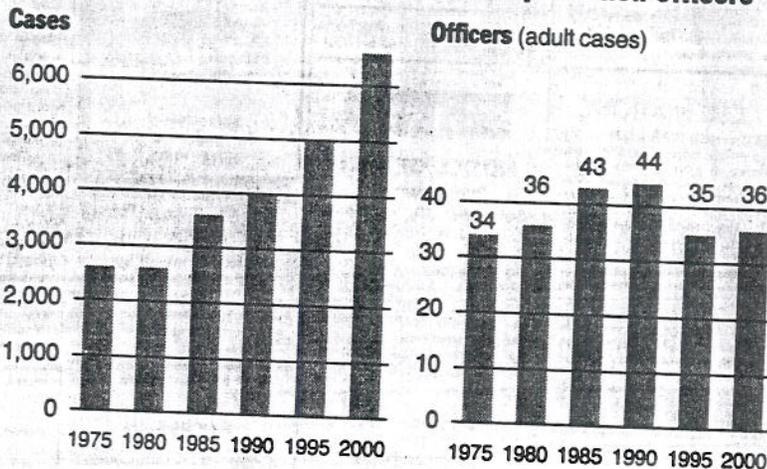
Probation officer shortage

Erie County has more residents per probation officer than comparable counties across the state:

Number of Erie County residents per probation officer

County	Officers	Population	Residents per officer
Erie	102	950,265	9,316
Nassau	232	1,334,544	5,752
Westchester	185	923,459	4,992
Suffolk	296	1,419,369	4,795
Monroe	158	735,343	4,654

Number of adult probation cases versus probation officers



SOURCES: New York State and Erie County Probation Officers Association and 2000 census data

contact with family members. These youths are often troubled but not necessarily delinquent.

Alexander said that as a responsible administrator, he couldn't justify an increase of 12 adult probation officers and two supervisors a year for the next three years, as has been recommended by union leaders.

"I do not see a compelling reason to increase staffing as it has been proposed," he said.

Gregory Noyes, co-president of the Erie County Probation Officers Association, said the department is missing great opportunities for crime prevention and intervention because staffing remains tight.

He and Pitt pointed to the potential of having a probation unit specializing in domestic violence monitoring and prevention, as oth-

er counties in New York State have.

"We do whatever we can do," Noyes said, "but with more staff, there are some great things the department could do."

As it is, most domestic violence cases are spread among probation officers who already are working lots of unpaid overtime, he said.

Pitt said that because of this hard work, the proportion of people who violate parole and are sent back to jail in Erie County is only 20 percent.

"But with the stress the staff is under, personally, physically, emotionally, we're really reaching a breaking point," Pitt said. "We need to see something happening."

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- Residential servi censed group homes, su apartments and a suppor program. Services include ing skills training, medical agement, crisis intervent vice linkages and follow 852-5065.

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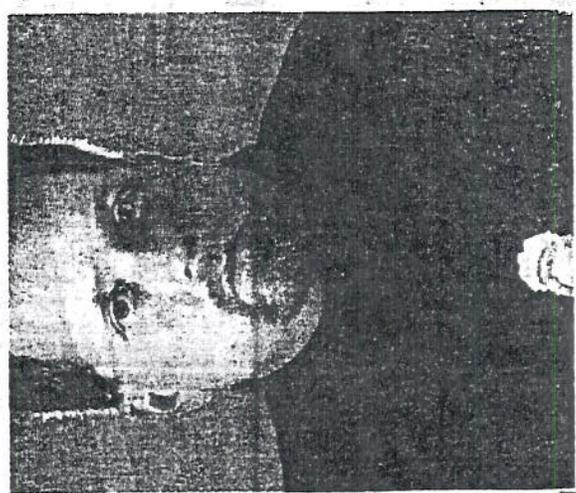
THE BUFFALO NEWS

N I A G A R A E D I T I O N

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CHARLES LEWIS/Bufalo News
Richard Carter says he and other probation officers try to get out of the office at least one day each week to do home visits.

FOCUS: COUNTY GOVERNMENT

A case for probation

Probation officers play an important role in protecting the public. Budget cutbacks and rising caseloads are jeopardizing that role and, some say, putting the community at risk.

By SANDRA TAN
News Staff Reporter

The heavyset, middle-aged man told his probation officer he fantasized about the bondage and rape of adolescent boys.

He had been convicted of a misdemeanor three years ago for downloading child pornography and was sentenced to three years' probation, according to Probation Depart-

ment officials. Without naming names, his probation officer said, he admitted to molesting children in the past without being caught.

During a surprise home inspection last spring, officers discovered cutouts of child images that he had pulled from magazines and fliers. With a marker, they said, he had tied the arms and legs of the two-dimensional images together and drawn little gags over their mouths.

But it wasn't until they opened his laundry

bag — and found rope, gloves and a stocking cap — that the officers concluded this seemingly mild-mannered man was preparing to kill.

Every time Officer Shelley Miller tells the story, it's riveting. And terrifying.

Miller's story highlights the important role probation officers play in protecting the public. But according to union, state and criminal

See Probation Page A9

Probation: 6,000 cases are open

Continued from Page A1

Justice officials, Erie County's lack of investment in its Probation Department is putting lives at risk.

The number of criminal offenders who have been rearrested in Erie County while on probation has more than doubled in recent years, according to the most recently available Probation Department statistics — from 206 to 480.

In addition, Erie County continues to experience the highest ratio of county residents to probation officers among comparable counties statewide.

"What is the county saving by allowing a 12-year-old girl to get raped or a house to get burglarized?" said Francis Timko, chairman of the Standards and Practices Committee for the New York State Probation Officers Association. "Are they really saving money or just spreading around a lot of pain and heartbreak?"

The county's number of adult probation cases reached nearly 6,000 in 2003, an all-time high, according to department figures. More than 6,000 adult cases are currently open, spread among fewer than 60 officers. The number of cases some general probation officers handle has cracked the 200 mark.

No widely accepted industry standard exists regarding the probation caseload ratios because cases can be distributed among officers in many different ways, Timko said. But county-to-county comparisons and local rearrest rates are obvious signs that Erie County has a problem, he said.

County administrators recognize the need for better staffing, Probation Director George B. Alexander said, but they are hampered by the tough economy and the growing burden that the county faces as state and federal support for probation declines.

"I would not turn down any opportunity to add more (probation officer) positions," he said. "But before we start making a case for more PO positions, we should know how many positions we can attract by other means."

Alexander pointed out that the county has won grants that will allow the department to add officers to both the adult and juvenile probation divisions this year.

Though union officials pressured the County Legislature into adding one more probation position in 2003, department employees say they still don't have enough time to check on the criminals they need to monitor in the community.

"We're becoming more and more office-bound," said William Pitt, vice president of the probation section of the Civil Service Employees Association.

One of the most high-profile areas in need of immediate attention appears to be in the county's sex offense probation unit, which typically monitors child molesters and other sex offenders who have been convicted of inappropriate dealings with minors.

During November budget hearings, Alexander told legislators the ratio of sex offenders to officers was about 25-to-1. He later conceded he had underestimated the number of cases.

The county's two sex offense officers are actually splitting a caseload of about 130, which is far higher than the state guideline of 35 cases per officer.

Changes in state law

And with recent changes in state law, that caseload will continue to grow because sex offenders sentenced to probation are now required to serve longer, nondiscretionary terms. Felony offenders, for instance, receive an automatic 10-year probation sentence with no early release.

"We're swamped," said sex offense officer Richard Carter.

Both he and Miller say they try to get out of the office at least one day each week to conduct home visits that span the county, they said. But the vast majority of their time is still spent in the Family Court building — writing reports, making court appearances, keeping office appointments with offenders and talking with victims.

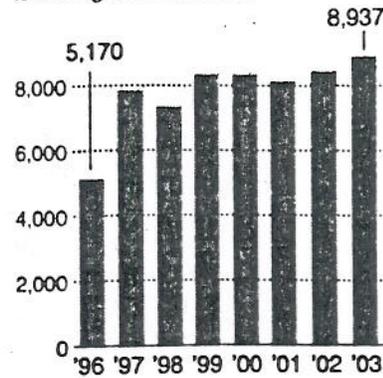
"That's where we spend a lot of time," Carter said.

As a result, even the high-risk sex offenders are typically seen at their homes about once a month, they said.

In the laundry bag incident last year, Probation Officer Miller may

Probation cases rise

Adult probation cases handled in Erie County have risen to the highest level ever:



SOURCE: Erie County budgets and Probation Department

have saved lives by surprising her probationer at home.

Not only did she find children's videotapes and handmade collages, she said she also read through the fantasy log he was required to keep.

He had written about an actual boy with skinny, "tent pole" arms and legs that he had seen on his trips to the local coin laundry. In this fantasy, he abducts the child, ties him to a tree, rapes him and leaves him for dead.

Knowing the police would be looking for him, the sex offender prepares to kill the officers who pursue him because he knows he'd be headed for jail.

Fantasy versus reality

That was supposed to be the fantasy. But when officers searched his laundry bag, they found tools for abduction.

"He was preparing for sexual homicide," Miller said.

Probation officers prevented that from happening. But because the man could not be jailed for a crime he hadn't committed, he was sentenced instead to a year in prison for violating the terms of his counseling program.

"You can't arrest someone for their fantasies," said Probation Supervisor Betty Klomp.

His jail time was reduced to eight months for good behavior. He was released on Christmas Eve and is now a free man.

Citing confidentiality constraints, the Probation Department would not release the name of the man or provide any information on his whereabouts.

But other sources, including the state's searchable Sex Offense Registry (www.criminaljustice.state.ny.us/nsor or (900) 288-3838) identified the man as James Setlock, 44, of the Kensington-Bailey neighborhood. Setlock did not deny his actions but said that the counseling he received during probation was not helpful and that he has paid his debt to society.

Klomp pointed out violent rapists and sex offenders aren't sentenced to probation, but to prison. Those given probation tend to be those who have taken advantage of a family member, neighbor or acquaintance.

By sentencing these offenders to long probation terms that require regular meetings with officers and counselors, Klomp said, probation can do more to prevent new offenses than shorter jail terms.

"As far as protecting the community in the long run," she said, "it's much more effective."

But that effectiveness will decline without more sex offense officers to do the job, she acknowledged.

Union officers argue the Probation Department needs more officers all the way around.

In late 2002, Probation Director Alexander told the County Legislature that he expected state grant money to fund several additional officer positions in 2003. But the state turned down the county's grant applications, and those positions were never filled.

CSEA Section President Scott Smith said a survey of his fellow probation officers covering suburban districts shows that at least five have caseloads of 170 or more. The majority of cases involve drunken drivers.

The highest-risk adult criminal offenders are given to one of four probation officers who specialize in intensive supervision cases. Their caseloads are capped at 25 each, but any overflow requires general probation officers to share the load.

Alexander said that to reduce caseloads, two additional adult probation officers are being hired through federal grants this year, as well as more probation officers handling juvenile cases.

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THE BUFFALO NEWS

Opinion

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The probation problem

Inadequate number of officers to supervise felons poses a risk

Erie County is part of a national problem: There aren't enough probation officers to adequately monitor the number of people who are convicted but released under terms of official supervision. The question is: What can be done when so many criminals are being released on probation and there isn't enough money to hire a sufficient number of officers to supervise them?

The easy answer, of course, is to expand correctional facilities. But that would be far more costly than putting people on probation, said James Alan Fox, the Lipman family professor of criminal justice and former dean at Northeastern University in Boston. But not having enough probation officers on the streets essentially means there's no probation at all.

This is the mirror image of the problem faced in mental health circles, when the state deinstitutionalized thousands of mental health patients but failed to provide enough money to treat them in the community.

But where the lack of resources in the mental health system is harmful mostly to the patient, the lack of probation officers threatens the public at large, especially when it involves sex offenders, who have high recidivism rates.

As noted by News reporter Sandra Tan, the number of

criminal offenders in Erie County rearrested while on probation has more than doubled in recent years. And a large number of those on probation are former sex offenders.

In fact, as reported by Tan, a probation officer making a surprise visit discovered the probationer in possession of such items as children's videotapes, handmade collages, a fantasy log that referred to an actual boy and tools for abduction.

He was arrested before he could act out, but how many others slip through the cracks of a system that is staffed to razor-thin levels? There are few probation officers who are able to make home visits because of their incredible workload. For example, the county's two sex offense officers are splitting a caseload of about 130, far higher than the state guideline of 35 cases per officer.

The problems afflicting the county Probation Department are only going to get worse, as recent changes in state law that provide longer probation for sex offenders push the number of probationers higher. That makes it all the more important that county officials find some way to make sure that there are enough probation officers to closely supervise those probationers who pose the highest risk to society.

Erie County Probation Department Budgeted Supervisor and Probation Officer positions

Budget Year	Juvenile		Adult	
	Supervisors	Probation Officers	Supervisors	Probation Officers
2007	2	22	9	53★
2006	2*	22	8	49★
2005	2	17	7	44★
2004	6	31	9	65
2003**	6	33	9	63
2002	4	30	10	60
2001	4	27	10	56
2000	4	28	10	57
1999	4	27	10	59
1998	3	24	10	56

**Individual position codes were not correct when 2003 budget was prepared. Correct numbers were taken from the 2003 column of the 2004 budget.

★ Includes 5 PO's for Release Under Supervision not designated in budget as juvenile or adult division.

* One Probation Supervisor position deleted mid budget year and Principal PO position created. There were 3 Supervisor positions at beginning of 2006 and no PPO.

New Adult Supervision Cases Prepared

Year	Estimated	Actual
1996		4380
1997	7900	3503
1998	4000	4832
1999	4700	3500
2000	4900	3500
2001	4900	3888
2002	5990	5127
2003	6100	
2004		
2005		4500
2006	3500	
2007	3500	