

# CURE-NY Newsletter

To Reduce Crime and Uplift Society

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## Changes for CURE-NY

Amy Oliveras

There are some changes going on at CURE-NY that we are happy to share with you. George and I have ended our term as co-presidents and will continue as editors of the newsletter. Jim Murphy and Joy Pujals are the new co-presidents. Both Joy and Jim have been leaders in CURE-NY since the beginning and have the knowledge and strength to guide us through these turbulent times in the New York political scene. We are looking forward to continuing our work under their leadership.

## Paroling A1 Felons: a case for reform

— Jim Murphy

*“discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.”* **Executive Law 259 i (2)(c)(A)**

For years, CURE NY has been advocating for reform of parole in New York, particularly for A1 felons. We have argued that the law governing parole release **is vague and as applied to A1 felons leads to arbitrary decisions and serves to resentence individuals two years at a time** rather than determining a person's readiness to reenter society.

We've been noting that after serving their minimum sentences of 15, 20, 25 years to life, most A1 felons are denied parole, not because they are likely to violate the law or harm the welfare of society, but because of the crime that put them there – something that will never change.

In an article in the Sunday NY Times (June 6, 2010 “On Parole” by Trimaime Lee) former Parole Board Chairman Robert Dennison

underscores the issue on resentencing. Mr. Dennison is quoted as saying:

*“It’s a real hard issue: how much time should you do for taking a life? Many times, the parole commissioners feel differently than the judge and probably say to themselves or say to one another, ‘I don’t really care what the judge gave the person. I don’t feel comfortable letting this person out. And I am going to hold him for two more years’...And that can go on and on and on forever.”*

After noting that appointment to the Board is a political appointment, he goes on to say:

*“The way it works is that you are free to make whatever decision you feel is the right decision.... However, if you were sponsored by a particular state senator and you made a decision he didn’t like, it is conceivable that the next time you are up to be reappointed, he may not push your name to the governor.”*

Mr. Dennison’s refreshing candor comes in the article which focuses on the release of Diana Ortiz after 22 ½ in prison. Diana, 18 at the time and an addict, played the part of a prostitute so that her boy friend could rob the “John”, an off duty policemen, who came to her for sex. The robbery went bad. The off duty officer was killed. Diana was sentenced to 17 years to life. By the time she was eligible for parole, she had overcome her addiction, earned high school, college and a master’s degree. She was denied three times.

Before that fourth hearing, she reflected, *“I felt it doesn’t matter what I say, it doesn’t matter who I am or what I’ve done.... It’s never going to change; the crime will never change. The hard part about it was that I changed.”*

Diana’s life did change however. After those 22 ½ years, the Board that Mr. Dennison chaired released her in 2005. It wasn’t that Diana had



“He Ain’t Heavy”  
by Gilbert Young

changed during the 5 ½ years since her first appearance, but she had a different board with Mr. Dennison as its chair. Ironically, both Mr. Dennison and Ms. Ortiz now help at Exodus Transitional Services, a not for profit, helping released inmates reenter society.

As good as the story and the outcome are, Diana's case is relatively rare. The article notes that on the day she was released the Board would spend 10 minutes or so reviewing about 30 cases for the first time. In that year, only 9 of the 263 A1 violent felon offenders (3%) were released. That rate has gone up to 14% since Governor Pataki has left, but the Law itself and its application continue to add a 2 year sentence extension to individuals who are not a risk and who, like Diana, can contribute to society.

## **Delaware House passes bill to count incarcerated people at home.**

According to Peter Wagner and the Prison Policy Initiative, the 2010 census will count more than 2 million people in the wrong place... their county of incarceration instead of their county of residence. Last month Maryland made history by being the first state to pass a law requiring the state to adjust the U.S. Census and count incarcerated people at home for state and local redistricting purposes.

Since then the Delaware House of Representatives unanimously passed a bill that will count, for redistricting purposes, incarcerated people at their actual home addresses, not where they happen to be incarcerated. The bill now goes to the Senate.

The U.S. Census counts incarcerated people as residents of the prison location. Prison-based gerrymandering happens when state and local government bodies use Census counts to draw legislative districts, and they unintentionally enhance the weight of a vote cast in districts that contain prisons at the expense of people residing in all other districts in the state. If the bill is passed by the Senate and signed in to law, Delaware would be the second state – after Maryland-- to eliminate prison-based gerrymandering in their state.

New York and Rhode Island have similar bills pending for this legislative session. Other states are preparing to introduce legislation in the next legislative session just in time for the start of

redistricting next year. The prompt and unanimous passage of Delaware's bill in the House is a strong signal that prison-based gerrymandering is an unacceptable stain on American democracy.

## **Facing Reality in Right-Sizing New York's Prison System**

*By Brian Fischer*

*(Commissioner Brian Fischer outlined his position in the debate over prison downsizing and responded to a March 2010 display by the New York State Correctional Officers & Police Benevolent Association in Albany's Legislative Office Building in an Op-Ed article.)*

The cost of incarceration in New York State has raised legitimate concerns. While I welcome honest criticism of my management of the Department of Correctional Services, the leaders of the correction officers' union are sidestepping the most significant issue and spreading misinformation as they fight the right-sizing of the State prison system.

State correctional facilities hold 2,250 fewer inmates than they did just a year ago. More than 5,400 beds sit empty. We simply do not need the level of staff we have. Since uniformed employees make up more than two thirds of our work force, it is only logical that they see the largest overall decrease.

The leaders of the New York State Correctional Officers & Police Benevolent Association (NYSCOPBA) largely ignore this population loss as they fight consolidation. Meanwhile, a 'fact sheet' they distributed in Albany recently claims 10,170 offenders are double-bunked in single cells in medium and minimum security prisons. That's impossible; those prisons are made up almost exclusively of dormitory-style housing. Combined, they hold just 21 cells. The union leaders' 'fact sheet' also cites double-bunked cells at three of our maximum security prisons without explaining that those cells were built and designed to hold two offenders in the first place, and in accordance with all State regulations. And the union's display in the Well of Albany's Legislative Office Building included a photograph of a prison dormitory overcrowded with inmates in orange uniforms. New York bans orange for security reasons; all inmates here wear green.

NYSCOPBA's solutions - to reduce Central Office staffing and streamline individual prison management - are equally misguided.

Ninety-eight percent of Department employees work at correctional facilities across the State. To manage a \$3 billion-plus annual budget, a Central Office team that accounts for just two percent of the agency's staff – and that despite being cut by more than nine percent in the last three years produced nearly \$300 million in savings - is hardly excessive.

To combine individual prison management teams wherever there are two facilities in close proximity would invite trouble. Prisons operate best when staff and offenders alike know who's in charge and see and talk to those leaders as they regularly walk through galleries, dormitories, yards and mess halls. **At the core of every serious prison incident nationwide is a lack of firm, knowledgeable leadership and neglect of the needs, moods and problems of the institution.** (*emphasis by editor*) Our prison system has remained free of any major incidents for 13 years, and our rate of violence has stayed at historic lows. Let's keep it that way.

We must control costs, generate savings and – in the face of a projected drop of yet another 1,000 offenders in the coming year - close prisons. No private business would continue operating empty facilities. State taxpayers simply cannot afford to maintain the status quo.

(The author is Commissioner of the New York State Department of Correctional Services)

## **Administrative Appeals on Parole Denials**

As soon as a person is denied parole it is always recommended that they file an administrative appeal. Using the Freedom of Information Law (FOIL) a CURE-NY president was able to obtain the following statistics for administrative appeals from the NY State Department of Parole

**2007/** submitted: 982; affirmed: 896; moot (re-appeared at board or submitted an Article 78) or overturned: 86

**2008/** submitted:1249; affirmed:1220; moot or overturned: 29

**2009/** submitted: 1985; affirmed: 1942; moot or overturned: 43

**2010/** (January to March) submitted: 437; affirmed: 424; moot or overturned: 13.

With such overwhelming odds against getting a decision overturned, you still might just be one of the few to benefit from the exercise.

## **Limited Credit Time Allowance**

"Effective February 17, 2010, two changes to the Limited Credit Time Allowance (LCTA) screening criteria were implemented.

- Eligible inmates will not be screened for LCTA reviewability until they have been in DOCS custody for two (2) years.

-Eligible A-1 or persistent offender inmates serving an indeterminate sentence with a life term maximum whose LCTA dates are in the past and have previously appeared before the Parole Board will be considered reviewable when there is no recommended loss of good time sanctions within the five (5) years prior to the present or future review date, rather than within the five years prior to their LCTA date.

The satisfaction of an LCTA program requirement requires two years of participation. Therefore, it is not possible for inmates with less than two years in the Department's custody to be granted an LCTA certificate. To implement this change, the Department's computer system will remove all LCTA reviews for inmates who have been under custody for less than two years based upon original admission date. This includes those whose names currently appear on the list, those with a review in progress, and those who have applied and been denied. When the two-year custody requirement is satisfied, your name will again appear on the list if you are eligible.