



Division of Criminal Justice Services

New York State Probation Commission Meeting

Minutes of April 19, 2016 Meeting

Members Present: Robert M. Maccarone, Chair, Deputy Commissioner and Director DCJS-OPCA
Robert Burns, Chief Probation Officer, Monroe County Probation
Rocco Pozzi, Commissioner, Westchester County Probation
Linda Shields, Community Member, Retired Probation Director
Paul McDonnell, Counsel to Chief Administrative Judge Lawrence Marks
Dr. Alan Lizotte, Dean, School of Criminal Justice, SUNY Albany
Wayne D'Arcy, Retired Probation Supervisor

DCJS Staff Present: John H. Adams, Executive Deputy Director, OPCA
Matthew Charton, Interstate Compact Unit Manager, OPCA
Patricia Donohue, Training Unit and Juvenile Justice Manager, OPCA
Gary Govel, Adult Operations Unit Manager, OPCA
Bernard Wilson, Special Programs Unit Manager, OPCA
Cynthia Blair, ATI Unit Manager, OPCA
Leonard Price, Ignition Interlock Unit, OPCA
Linda Valenti, Counsel, DCJS
Cindi Smith, Secretary 2, OPCA

Visitors/Presenters: Maria Kenneally, NYS Civil Service
Ellen Bradley, NYS Civil Service
Michelle Mulligan, DCJS, Sex Offender Registry
Lisa Lee, DCJS, Office of Public Safety
Roy Wright, U.S. Marshals Service

Meeting called to order at 10:07 AM by Deputy Commissioner and Director Robert Maccarone.

Welcome and Introductions

Deputy Commissioner and Director Maccarone welcomed everyone. We went around the room and everyone introduced themselves and additional DCJS staff and visitors were introduced.

Old Business

Approval of Minutes: Motion to approve November 9, 2015 Probation Commission minutes by Robert Burns and seconded by Rocco Pozzi. Minutes were accepted and approved.

New Business

Approval of today's Agenda: Motion to approve April 19, 2016 agenda – Deputy Commissioner and Director Maccarone stated that if there are other items that members want discussed, time will be added for that. Motion to approve by Linda Shields and seconded by Wayne D'Arcy. Agenda was accepted and approved.

Probation – General

Update on Ignition Interlock Related Activities:

Personnel Changes – Deputy Commissioner and Director Robert Maccarone advised that Leonard Price recently joined the Office of Probation and Correctional Alternatives (OPCA) from the Schoharie County Probation Department and has been assigned to the Ignition Interlock program. Maureen McKeown recently left OPCA accepting employment with the NYS Office of Alcoholism and Substance Abuse Services. OPCA expects to hire a second person who will be assigned to Impaired Driver Management and the Ignition Interlock program in the near future.

Gary Govel provided an update on the proposed revision to Part 358 of Title 9 NYCRR, “Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.” The proposed revision to the existing regulation is intended to reflect changes in law, NHTSA standards, and certain best practices. Among the proposed changes, the revision: will allow medically reduced breath samples with court approval, recognizes court ordered in advance of sentence installations, allows monitoring of intrastate conditional discharge Ignition Interlock Device (IID) cases by the sentencing county, and reemphasizes the requirement for period servicing of ignition interlock devices to circumvent tampering. The proposed revision has been reviewed here at DCJS and is now with the Deputy Secretary for Public Safety. Upon the proposal entering the formal rule making process, a 45 day period for public comment would commence.

Discussion ensued with Paul McDonnell regarding IID installation prior to sentencing. He offered that it looks like most judges are waiting for conviction to order an in advance of sentence IID. He added that defense attorneys like to get their clients on the IID to show sincerity and to demonstrate that their client is now living on the straight and narrow in order to better advocate for their clients with the Court prior to sentencing, particularly since the change in the law which offers “credit” for time that the IID is installed in the defendant's car prior to sentencing. Questions remain regarding who is monitoring the in advance of sentence cases – the county designated monitor, or some other persons/entities. Deputy Commissioner and Director Maccarone advised that OPCA is conducting a survey regarding the monitoring of in advance of sentence cases and will distribute the results to probation directors, commission members, conditional discharge monitors, and other interested parties upon all responses being received. Additionally, Nassau County ADA Maureen McCormick is surveying prosecutors across the state regarding the same issue.

In the near future, the Division of Criminal Justice Services (DCJS) will be releasing a Request for Applications (RFA) for Manufacturers of Ignition Interlock Devices. The currently qualified manufacturers are under contract until August 15, 2016. Manufacturers qualified under the forthcoming RFA process will enter into three year agreements with New York State.

DCJS Office of Public Safety

Lisa Lee from the Office of Public Safety and Leonard Price of OPCA are working on a new program related to Ignition Interlock Device enforcement that is in the process of being implemented and they provided a brief overview. This program came out of the New York State Impaired Driving Advisory

Council of which Deputy Commissioner and Director Maccarone is the team leader for probation and Lisa is the team leader for enforcement. The purpose of this council is to bring together the experts (probation, enforcement, prosecution, and forensics) to address all aspects of impaired driving. Given the numbers of persons not installing IIDs and the numbers of Aggravated Unlicensed Operation (AUO) arrests, it was clear that there is a need to focus upon and address the issue of non-installation of Ignition Interlock Devices.

Lisa Lee advised that overtime and focus upon this issue are the two components necessary to address non-compliance with IID installation. After identifying this public safety issue, Maureen McKeown, and Lisa Lee worked collaboratively to write a grant to find funding for overtime for enforcement actions and to provide training for probation officers and police officers on this issue within three targeted counties. Since this is a pilot project, three middle sized counties were selected. For this year, the counties are Oneida, Onondaga and Dutchess. It was also identified that police needed to be trained in the complexities of NYS Vehicle and Traffic Law 1198, learning how to properly investigate and charge those motor vehicle operators found not to have installed an IID as required and to ask them the right questions is ultimately important. Additionally, a card explaining VTL §1198 was developed for police officers which can be carried by them for quick reference in the field. All three counties are going to be going through a training that has been developed for probation, prosecution and police. Each county will be provided overtime funding for a one month period of time so they can conduct local enforcement activities. They can decide which activities are best for their community - they have a lot of leverage in building their own program as long as they report back on four basic measurables. At this time, the strategic planning meetings have already been held with each of these counties. The message to the community is that enforcement is taken seriously and police, prosecutors and probation officers throughout the state will be looking at this issue.

Update on the Revision to Title 9 NYCRR Appendix H-10 “Standard Specifications for Professional Probation Positions”

Commission Member Robert Burns serves as co-chair of the Probation Professional Qualifications, Recruitment, and Retention Workgroup. He commented that the revision to Appendix H-10 has been a long, thorough process as confirmed by Maria Kenneally and Ellen Bradley, both of NYS Civil Service. Commissioner Burns commented that an early product of the workgroup was the publication of pre-employment practices guidance, which includes background screenings and psychological exams which help ensure that probation departments are hiring appropriate candidates. Commissioner Rocco Pozzi stated that in Westchester they are doing extensive background check on potential employees and even interns.

Maria stated that the next probation officer exam is scheduled for June 25 and there has been an excellent response. She commented on how well the collaborations between DCJS and Civil Service has worked and they hope to use this experience as a model with other agencies going forward.

Commission Member and co-chair of the workgroup Wayne D’Arcy recognized moving the Probation Series exams to June as another early accomplishment of the workgroup. He noted that previously, candidates often missed taking the exam by a month as it was held in early May, prior to meeting a minimum qualification of college graduation. A healthy discussion took place on the amount of hiring that is taking place.

Gary Govel reported that OPCA sent out all the proposed job specifications and qualifications to probation directors. There was feedback from some individual directors and also the NYS Council of Probation Administrator’s (COPA) PARC committee. COPA PARC had specific questions regarding span of supervision. Robert Burns said most feel comfortable with the ratio of one to seven. The

group also discussed the recent change to Executive Law which allows non-competitive appointment of probation directors in counties of 300,000 or more (previously 400,000). The group expressed concerns regarding this change in law. Despite the change to the Executive Law, the group felt that the departments of counties/NYC with populations over 400,000 should remain a separate group in the revision to Appendix H-10

A lot of staff are retiring and as a result there are a lot of new hires. Patty Donohue said the last Fundamentals Training class was the biggest group ever – a class of 39. She said they will never have that big a class again but they successfully made it through.

Interstate Unit

Matthew Charton introduced Roy Wright from the US Marshals Service. The US Marshals have been great partners with OPCA for over eight years in locating and returning level 2 and 3 sex offender absconders throughout Operations 1 and 2. Operation Return involves reviewing Level 2 and 3 sex offender probation absconders that have active violation of probation warrants. Operation Return 2 initially started with 40 probation absconders, but after review, targeted 21, as 19 of the original 40 absconders were confirmed deportees or had voluntarily left the country and there was no indication of their return. Operation Return also collaborates with NYS District Attorney's Offices to ensure those absconders who are returned are prosecuted on the violation of probation as well as any other new crimes such as failure to register or failure to provide an updated photograph. Operation Return works to hold registered sex offenders who abscond from probation accountable and has shown that no matter where they abscond to they can be located and returned. At this time, the US Marshals Service and Interpol are working to locate and return a registered level 2 sex offender who absconded from Dutchess County to the country of Greece. Roy Wright provided the council with other case examples where the US Marshals located and returned probation absconders, including one case where he worked in collaboration with DCJS-OPCA and Crime Stoppers to locate a registered level 3 absconder to Oswego County. Operation Return 2 has returned 11 of the 21 level 2 or 2 sex offender absconders to their sentencing jurisdictions. Many of those 11 have received state prison sentences on their violation of probation charges. Gary Mattison and Roy Wright have recently met with Matt Charton to review possible Operation Return 3 cases.

Sex Offender Registry

Michelle Mulligan, Director of DCJS' Office of Sex Offender Management (OSOM), who oversees the NYS Sex Offender Registry and a staff of 16 explained their operation of the Sex Offender Registry. Level 1 offenders are not on the website but Level 2 and 3 are. Level 1 offenders come off the registry after 20 years, Level 2 and 3 are on for life. Michelle indicated that she is happy to be here to discuss a pilot sex offender information change automation program. OSOM plays an extensive part in keeping track of where offenders are once they are off probation, out of jail, out of state prison release. Summers are extremely busy due to requests for information from summer camps. Gary Govel asked whether major social network websites are held responsible for having offenders on line. Michelle said how well that is working is hard to say. The state registry sends updates to these sites every 40 days and if they find someone who is a sex offender they are required to remove that person from the site. Robert Burns inquired if there is any license plate readers used to get a "hit" on a sex offender? Michelle said some counties may be using these but not as a rule of thumb. She talked about the statute that takes Level 1 sex offenders off the list after 20 years. The first twenty year point was reached on January 21, 2016 and there are approximately 1,359 Level 1 offenders who will "age" off the registry this year. As an offender nears his removal date, a thorough investigation is conducted to ensure that the offender has not been charged with any other offense and is actually eligible to be removed.

Probation Officers check addresses of sex offenders, about 4,700 per quarter, and upload or enter this information into the Integrated Justice Portal. Probation is the number one disposition for SORA eligible offenders. Submission of Changes of Address and 48 hour forms have been all done manually in the past but OSOM, ITS, and OPCA have been working on a pilot program that will automate this process for probation departments. It is going to come in two versions. Phase One would be sending the new form which is signed digitally using a signature pad and emailed to DCJS and Phase Two will include the transmission data electronically in addition to sending the digitally signed Change of Address/48 hour form. They have started with four counties (Albany, Onondaga, Ulster and Warren) with the new form and signature pad. John Adams created a combined 48 Hour/SORA Change of Address Form; if offender is not available, the department can send it without the offender's signature as a 48 Hour form. A Topaz Signature Pad, similar to what you see in groceries stores, has been provided to those four pilot departments. It is hooked up to a computer and the probation officer first signs it and it date stamps automatically and then the offender signs it and it will also date stamp automatically. The form is then saved as a PDF in Caseload Explorer and subsequently emailed to DCJS. The registry has received many of these forms already. The DCJS Commissioner Michael Green has requested funding for two signature pads for each county probation department. The goal for the registry is to go paperless.

Juvenile Justice Discussion

Patricia Donohue provided an overview on the forthcoming Pre-Dispositional Risk Assessment Instrument. This new assessment will be informative for judges to review before deciding on the right course to take. The risk score is one element they take into consideration before deciding what is the best place for the probationer.

Training

Patricia Donohue also informed us that for the first time the OPCA's Training Unit has been provided funding for training within the 2016 - 2017 budget. The training unit is in the process of determining out what training will be offered. Since 2014, the unit has also been responsible for ATI and Re-Entry training along with probation throughout the state. She provided a listing of all the various training that happened in 2015 along with the number of participants. They are in the process of rolling out additional regional Motivational Interviewing training which will be held regionally in Buffalo, Syracuse, Albany and NYC areas. It was discussed that OPCA provides a lot of training for a small office.

Deputy Commissioner and Director Maccarone and Patti advised the Probation Commission regarding OPCA's efforts to develop Probation Supervisor training. Chief Probation Officer Robert Burns recommended that OPCA reach out to DCJS' Office of Public Safety to review police supervisor training which may help to inform probation supervisor training. Commissioner Rocco Pozzi strongly stressed the importance of probation supervisor training acknowledging that probation supervisors are an important, first level of management within probation departments. Rocco advised there is a transition process that occurs for new supervisors as they move from being line probation officers into their role as a probation supervisor. Therefore, he stated that the supervisor training should not be limited to a few days and, in fact, a week may be more appropriate. He reiterated that supervisor training is extremely important and the time invested in such a training is very worthwhile. He advised departments must make the time for new supervisors to attend such a training to ensure that they are trained properly to do the work now required of them in their new role.

Caseload Explorer

John Adams gave an update on the Caseload Explorer Work Group and provided information regarding some program changes and enhancements to the Caseload Explorer case management program. Both Deputy Commissioner and Director Maccarone and John Adams were given a demonstration on Caseload 6.0. There are a lot exciting changes coming. Both Westchester County and NYC have also been working with AutoMon and are bringing exciting new changes that will be shared statewide. In May, a demonstration of the current Caseload Explorer will be provided to DOCCS for their information.

New Business

Paul McDonnell announced the appointment of his new supervisor, Chief Judge Janet DiFiore as Chief Judge of the Court of Appeals. He had many positive things to say about what she brings to the Unified Court System.

Wayne D'Arcy had some topics he would like to see addressed at a future meeting. One topic is regarding the amount of data collected and submitted. Is there a better use for all of this data? What is the practical application of this data for the probation officer today? He asked that these questions be contemplated. He had spoken with members of the NYS Probation Officer's Association before the meeting and there is a concern about the lack of available services. He indicated there are concerns about a lack of services for sex offenders and services to address the heroin epidemic. Deputy Commissioner Maccarone said that he was going to address the issue of the heroin epidemic in a few minutes. In response to Wayne's initial comments, Bob Burns suggested that at the next meeting we could look at how the data is being used in the annual plan and what services are lacking for departments. Additionally, Wayne expressed a concern that he had heard a lot at today's meeting that was enforcement related. He acknowledged the importance of enforcement, but asked is it not our primary job to assist probationers to be successful? Wayne said that he hopes that enforcement, although essential, is not all that we are doing.

Discussion continued on the heroin epidemic. Rocco Pozzi said a lot of training is going on in Westchester County and Bob Burns indicated the same with Monroe County – most staff are trained in administering Narcan. Rocco suggested that departments reach out to their Health Commissioners for training on this issue. Deputy Commissioner Maccarone attended the Governor's Opioid Task Force last week in regard to the opioid epidemic. One issue that came up is the presence of Fentanyl in opioid deaths which is under reported. Probation Director Joy Bennett had also brought the issue of Fentanyl in opioid deaths to the attention of OPCA – her husband is a Coroner. Deputy Commissioner Maccarone had a conference call yesterday (April 18, 2016) with Commissioner Michael Green and the Chamber regarding this issue. Deputy Commissioner and Director Maccarone also met with Sean Burns, Commissioner at OASIS, and Jerry Mollen, former District Attorney from Broome County and former President of the District Attorney's Association. Mr. Mollen and Deputy Commissioner and Director Maccarone had a conversation earlier in the day with Dr. Turzan, a Pathologist from Lordes Hospital in Binghamton. Much more needs to be done to address physicians that are writing multiple scripts. OPCA is working with the Department of Health to provide opioid training to probation officers in four or five regions throughout the state. Patti Donohue has been surveying the various counties and found that many of them have already had some type of training. Some pharmacies are starting to sell Naloxone over the counter. OASIS is establishing an online dashboard of treatment which we are including information in OPCA's eFocus newsletter that is going out next week. Also, we are planning on having a webinar with OASIS on the opioid issue but also on Vivitrol which may offer some promise in people dealing with opioid addiction.

Robert Maccarone and John Adams are working on a proposal to automate the submission of probation plans and the data analysis associated with it. The data that we provide on both juvenile and adult probation is very informative and we will share with the departments statewide. We recently sent out the cohort recidivism statistics for ten years that OJRP puts out every year. Additionally we have the Percent of Arrest Report that shows dramatic reduction in arrests of misdemeanors and felonies by departments. This shows a dramatic reduction in the arrests in the communities. Probation has made some amazing progress in the last six to eight years in this area. We are partnering with Juvenile Justice to make available training throughout the state with Kansas City Model on diversionary programs for youth who are acting inappropriately in a sexual way in an attempt to try to maintain them in the community under supervision vs placement.

Bob Burns asked that at the next meeting we address, "The State of the Probation Workforce," such as the number of probation officers and the number of new Deputy Probation Directors and Probation Supervisors. Additionally, he would like us to discuss if there are any issues related to probation officer recruitment. He also would like to discuss the issue of probation officer wellness considering the suicide issues that have occurred. Chief Probation Officer Burns also asked Deputy Commissioner Maccarone to provide a brief overview on the state of the budget that was just passed.

Deputy Commissioner Maccarone reported that the budget is flat but no decrease. In regards to Raise the Age, there seems to be no real indication that anything is going to happen this year. He believes it probably will be more likely addressed in 2017 and noted there is some resistance from some members of the Legislature. He reported that there was an additional million dollars put into the budget this year for Re-Entry. We are hoping to establish a new County Re-Entry Task Force (CRTF) in Queens to address the needs of a large number returning from state prison and enhance funding depending on the need and performance of each of the CRTFs. There is an additional million dollars for defendant screening which is something we are looking to do outside of the City of New York (they do their own) – this is a model that is under development. An extensive conference call was held with Craig McNair of the Monroe County Pre-Trial Services, to learn about what this program is doing. A meeting is being held next week with Steve Giordano, the Albany County Commissioner of Mental Health along with a scheduled call with the EAC TASC Program as they do a lot of defendant screening. Looking towards late 2016, expect to see a competitive Request for Proposal (RFP) for four to five Defendant Screening Programs. In addition, we will be circulating in the next several weeks a large employment RFP as well. This is to address the employment needs of individuals returning from state prison, persons under probation supervision, and individuals who are court ordered to participate in Alternatives to Incarceration programs.

Alan Lizotte reported that Robert Jones, President of University of Albany, is deeply committed to doing big data projects and to lead the charge for merging data sets together for various places and making them work and talk to each other. They have a new Dean in the School of Criminal Justice – Bill Pridemore. They are also working with DCJS in forming a Juvenile Justice Institute which will faculty member Associate Professor Megan Kurlychek who has a lot of experience in this area and is an expert on Raise The Age and the work being done throughout the country. The institute would be an important resource. Deputy Commissioner Maccarone agreed that this is wonderful news and that they will be following in the steps of Connecticut in doing work with Juvenile Justice Reform. Regarding Raise the Age, the hope is it will get passed, noting that New York State is only one of two states that still hasn't passed this law. A lot of research has been done on brain science and development of the 16-18 year old brain and sees that it is not fully developed which affects their decision making and reasoning, so this is something important we really need to get passed.

Rocco Pozzi expressed his appreciation to the Governor, Counsel Alfonso David and his staff regarding the Raise the Age proposal. The majority of the suggestions that made were made by COPA were included in this year's legislation. Commissioner Pozzi said COPA greatly appreciates

the Governor's Office listening and including so many of these suggestions. Deputy Commissioner Maccarone said he will give Commissioner Green that feedback to pass on.

Adjournment

Motion to adjourn at 1:45 PM by Rocco Pozzi, seconded by Alan Lizotte.

Next Meeting: Tuesday, November 3, 2016