

NEW YORK STATE
PROBATION COMMISSION MEETING

Minutes of May 22, 2019 Meeting

Members Present: Robert Maccarone, Deputy Commissioner and Director-OPCA
Paul McDonnell, Counsel to Chief Administrative Judge Lawrence Marks
Rocco Pozzi, Commissioner Westchester County Probation
Linda Shields, Community Member, Retired Probation Director
Andrew Sicherman, Commissioner Onondaga County Probation

Members Not Present: Wayne D'Arcy

NYS Executive Staff Present: Marta Nelson, Executive Director for Reentry and Special Counselor for Criminal Justice Initiatives

DCJS Staff Present: Mike Green, Commissioner, DCJS
Mark White, First Deputy Commissioner, DCJS
Jeff Bender, Deputy Commissioner, OPDF DCJS
Terry Salo, Deputy Commissioner, OJRP DCJS
John H. Adams, Executive Deputy Commissioner, OPCA
LaTrenda Buchanon, Executive Secretary, OPCA
Cynthia Blair, Community Corrections Rep 3, OPCA
Matthew Charton, Interstate Compact Unit Manager, OPCA
Patty Clements, Training Unit Director, OPCA
Gary Govel, Adult Operations Unit Manager, OPCA
Teresa Scanu-Hansen, Community Corrections Rep 3, Juvenile Unit, OPCA
Kimberly Schiavone, Criminal Justice Prog. Rep. 4, OPCA
Margaret Chretien, Senior Policy Analyst, Re-Entry Unit, OPCA
Jennifer Cox, Community Corrections Rep 2, OPCA
Lisa Karam, Community Corrections Rep 2, Juvenile Unit, OPCA
Michele Melendez-McKearin, Corrections Rep 2, Adult Operations, OPCA
Kelly Palmateer, Community Corrections Rep 2, OPCA
Leonard Price, Community Correction Rep 2, OPCA
Daniel Robertello, Community Correction Rep 2, Training Unit, OPCA
Alden Saddlemire, Community Corrections Rep 2, OPCA
Colleen Thorn, Community Correction Rep 2, Adult Operations, OPCA
David Lewis, Community Corrections Rep 1, Adult Operations, OPCA

Probation Department Representatives: Scott Glueckert, COPA President and Delaware County Probation Department
Steve Bayle, Saratoga County Probation Department
Joy Bennett, Tioga County Probation Department
Patricia Buechel, Tompkins County Probation Department
Vincent Doto, Columbia County Probation Department
Mary Frascello, Westchester County Probation Department
Robert Iusi, Warren County Probation Department
Jeffrey Rougeux, Ontario County Probation Department
Andrew Sicherman, Onondaga County Probation Department

Welcome and Introductions

Robert Maccarone welcomed the members of the NYS Probation Commission and asked them and various probation directors and staff to introduce themselves. He then asked members of the Commission to review the minutes of the November 18, 2018 meeting. Commissioner Rocco Pozzi made a motion to accept the minutes, Commissioner Andrew Sicherman seconded the motion, and the minutes of the November 18, 2018 Probation Commission were approved.

Robert Maccarone asked the members of the Commission to review the Agenda for today's meeting. He noted that several changes were made to today's agenda. Marta Nelson, the Executive Director for Re-Entry and Special Counsel for the Criminal Justice Initiative with the Executive Chamber, would be joining the Commission at 11:15 a.m. to provide a presentation on Bail Reform in New York State. Robert Maccarone indicated his appreciation to Commission members for their flexibility.

Overview of PINS Law Reform: John Adams

Executive Deputy Director John Adams provided an overview of the PINS Reform Law that will become effective on January 1, 2020.

The current definition of PINS (Person in Need of Supervision) is a youth who does not attend school in accordance with the provisions of Part 1 of Section 65 of the NYS Education Law--the truancy component. Also defined as PINS are youth who are ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child care or other lawful authority; this also encompasses run-away youth. Another provision under the definition of PINS is that they violate the provisions of the Penal Law, Section 221.05, which is Unlawful Possession of Marijuana, or Section 230.00 which is Prostitution. PINS youth also include youth who appear to be sexually exploited children as defined in the Social Services Law, provided the youth consents to filing a petition under the article.

One of the new changes to the PINS law is that the designated lead agency must screen the youth to determine whether or not he/she is a sexual exploited child, and whether he/she should be referred to a safe house. In New York State, there are 34 probation departments that perform PINS intake functions. Social services departments perform as lead agencies in the remaining counties. One of the first things that needs to be determined by January 1, 2020 is which screening tool will be used for assessing sexual exploitation. Possible assessments include the Rapid Indicator Tool to identify children who may victims or at risk of being victims of sex trafficking. Importantly, DCJS' OPCA had earlier worked with DCJS' Human Trafficking Prevention Office, OCFS, and OTDA in developing State Director's Memorandum # 2017-1, entitled Probation Guidance on Human Trafficking in New York State. This policy memorandum informed probation departments of the provisions of the Safe Harbor Act and referenced three screening tools. Some probation departments have implemented these tools already. John Adams advised the Probation Commission and those present, that the tool that DCJS selects will be made available to Probation Departments through the Caseload Explorer Assessments and Case Planning Suite, which is one of the products that DCJS will be providing to departments, and that tool will be made available for that screening process.

Probation Departments that are the lead agencies will need to work with their local Departments of Social Services to ensure the availability of Safe Houses, which are defined under the Social Services Law Title 8-A, the Safe Harbor for Exploited Children Act. DCJS Probation Regulation Part 357 Intake for Article 7, will need to be amended adding these statutory requirements. DCJS is in the process of convening a probation workgroup to review the rule and make sure it is updated in advance of January 1, 2020. In terms of supervision and treatment, the statute that defines program eligibility for use of Supervision and Treatment Services for Juveniles Program (STSJP) funding was amended to address the needs of youth engaged in PINS diversion services. In the past, this funding was limited to cases at petition or thereafter, but it has now

been expanded to allow for the PINS diversion population. A significant change in the recently enacted PINS Law removes the ability of the Family Court to place the youth in detention and replaces it with the term pre-dispositional placement. Effective January 1, 2020, non-secure detention will no longer be an option for the Family Court to place a youth. If a youth is placed, it must be a pre-dispositional placement in the form of foster care. References to detention in Regulation Part 357 will need to be removed. Probation departments will need to work with the local Departments of Social Services to determine the availability of foster care for pre-dispositional placement purposes. Probation officers can advise the courts if petition has been recommended for pre-dispositional placement. Each county will have to determine how PINS youth who are runaways or have been apprehended on a Family Court PINS warrant will be managed by law enforcement when family court is not in session. DCJS will be working with OCFS to obtain further guidance on how youth that run away from other states and come to New York State will be managed and where they will be placed until returned.

The new PINS law regarding truancy will also require lead agencies to review the efforts undertaken by schools to avoid the need to bring a PINS petition, and the opportunities that have been pursued for diversion for any petitioner alleging truancy in school related matter before the petition can proceed. When the school district or the local educational agency is not the petitioner, the designated lead agency shall contact such district or agency to resolve the truancy or school behavioral problem with the youth in order to avoid the need to file a petition or to remediate the educational related allegation of the proposed petition. In relation to PINS applications that include an allegation of truancy, where the school district is not presently a party to the action, and where the school district is not the petitioner, the statute provides for the court at any time, where it believes the assistance of the school district would be helpful in resolving the underlying issue, to notify the school district and provide it with an opportunity to be heard on the matter.

The only primary change to the statute is for PINS petitions filed after January 1, 2020; the statute prohibits any out of the home PINS placement --pre-or post-disposition in instances where the only allegation or finding against the youth is truancy. DCJS Regulation Part 357 included these protections: For school- based referrals, the Probation Directors shall develop a procedure, by which schools shall report the steps undertaken to improve the youth's attendance and/or conduct at school, and before accepting a school referral, the Probation Department shall determine that "acceptable efforts" have been made, taking in to account the availability of school and community resources. Disciplinary actions alone, shall not suffice as acceptable efforts. For youth with special education needs, probation shall gather information from the Committee on Special Education regarding the use of behavior and any relationship to the youth's disability. At present, probation today may require a Manifestation Determination before accepting a school file complaint. Probation can ask the school district to certify the allegations in the PINS complaint are not related to the youth's disability; otherwise they will need to take a look at the Individual Education Plan (IEP) and make necessary modifications to the plan before proceeding to petition.

The new PINS Law also provides for family support services or community-based supports to prevent youth from being adjudicated a Person in Need of Supervision. However, no funding was included in the current state budget to support family support centers. Services include case management, crisis management referrals, social services and more. According to the statute, these services will only be approved for the highest need's youth in the municipality. Following adjudication, the new PINS Law also allows for the placement of the youth in a foster boarding home, available long-term safe house for sexually exploited children or within an authorized agency or a class of authorized agencies. Probation Departments will need a better understanding of the Foster Care System. DCJS will continue to work with OCFS to support the goals of this Bill.

Lastly, there is work to be done in addressing Section 3205 of the New York Education Law, wherein a youth can be prosecuted in a court of criminal jurisdiction for non-compliance with the mandatory provisions of the Education law.

Standard Specifications for Professional Probation Position: Gary Govel

The Standard Specifications for Professional Probation Positions or “H-10” as it is commonly referred to has been in effect since 1973. Some 12 years ago, DCJS’ Office of Probation and Correctional Alternatives, in cooperation with the NYS Department of Civil Service, local probation departments, the NYS Council of Probation Administrators (COPA) and the NYS Probation Officers Association (NYSPOA) began a comprehensive review of the skills, knowledge and experience comprising the professional qualifications for probation positions in New York State. The “Standard Specifications” were advanced through formal rule-making, including the opportunity for public comment, and the Notice of Adoption was published in NYS Register on December 19, 2018. The new regulations became effective May 28, 2019.

The new regulations provide increased flexibility to localities to recruit, promote and appoint individuals with probation experience and the required knowledge and skills to lead and perform the important work of probation departments. In addition, the regulations provide a more achievable career path for probation professionals aspiring to leadership positions.

Director Maccarone acknowledged the work of Co-Chairs Robert Burns and Wayne D’Arcy whom he appointed to lead the Probation Qualifications and Recruitment Committee, the NYS Department of Civil Service, Probation Directors, Supervisors and Officers, the NYS Council of Probation Administrators (COPA), the NYS Probation Officers Association (NYSPOA), the DCJS Office of Legal Services, and Gary Govel of the Office of Probation and Correctional Alternatives for their diligence and many contributions. .

Raise the Age: Teresa Scanu-Hansen

DCJS’ OPCA formed a probation workgroup in September of 2017 to examine a number of probation regulations that would be impacted by the Raise the Age law. The members of the workgroup completed the review of seven DCJS regulations moving six regulations forward in 2018. The six regulations went through minor amendments after public comments. On March 28, 2019, the OPCA distributed State Director’s Memorandum #2019-2, outlining the regulation amendments to Parts 348 -- case record management, Part 350--Investigation and Reports, Part 352—Graduated Response, and Part 356—Family Court Services. Part 359 was also developed to address probation’s role in providing voluntary assessment and case planning services.

OPCA also provided in-depth trainings on the new regulations to probation officers through a series of WebEx trainings between May 30 and June 14. On May 10th, we sent a memo out to Directors and Staff Development Officers regarding this series to go over these regulations:

May 30 th	Regulations 348, 350, 351 and 352
June 6 th	Regulation 356
June 14 th	Regulation 359

Also in that memo, we invited Probation Directors to submit any questions or areas that we may need to focus on during these trainings.

Raise the Age-DCJS Contract Execution and Processing: Deputy Commissioner Jeff Bender

Jeff Bender stated that DCJS is making progress with RTA Plan review. He explained that once the Division of the Budget issues plan approval letters, his Office of Program Development and Funding (OPDF) works with the New York State Comptroller's Office to develop a plan for the execution of contracts. Reimbursement contracts are developed to provide for eligible expenses. Jeff explained that his team is using a high-level budget structure, wherein overtime will be a separate category on personal service, and for non-personal service expenses we are taking things at a high level categorically. Jeff's team is going to try to avoid contract amendments as much as possible, but stated he expects they are inevitable. If a county's total eligible expenses exceed what was included in the RTA Plan, DCJS will accept amended plans and do the necessary contract amendments. He reported that OPCA, OJRP and OPDF meet every week-- twice per week to advance these plans as quickly as possible.

Raise the Age—Status of RTA Plan Review: Kimberly Schiavone

Kimberly Schiavone stated that 29 county RTA Plans had been reviewed and approved by the Division of Budget; 24 plans were currently under review, and a number of plans were prepared for submission to the Division of the Budget for approval. She reported further that 4 counties had not submitted any RTA Plan at this time.

Raise the Age—Comments on population: Deputy Commissioner Terry Salo

Terry Salo reported that OJRP has been working hard to keep their website up-to-date. Sometimes the answers are not easy to find, but if you do have a question, please call OJRP office and they will assist anyone with questions and will send the information needed.

She noted that the Juvenile Justice System overall is down 60-70% over the past 8 years. Which means 60-70% fewer arrests, and 66% fewer family court petitions for juvenile delinquency. The numbers for Juvenile Delinquency sentences to probation is down around 66% in the last eight years. Huge decreases within the last 2-3 years.

She explained that in preparing for the implementation of RTA on October 1, 2019, OJRP worked very closely with the Office of Court Administration to make sure that we had all the data that we needed; that we could make sure that the data collections were working correctly; and we knew what was going on. Many of the probation departments have seen the update of youth part court activity, that is now up on the web by counties. The first quarter is up and OJRP just posted the second quarter. You will be able to see the number of arrests reported by your county, adolescent and juvenile offenders, because Raise the Age statues did move the juvenile offenders over to the Youth Part of Superior Court, as well as arraignments and number of removals.

Terry further explained that what we are seeing in the trends is that 16-year-old felony arrests are down 36% below our 2017 baseline year or about 244. Since October 1, we have seen 150 arrests per month. She stated there was some good news in that we knew there was a presumption of release at arraignment for this population, but 73% are being released at arraignment-- almost three out of four, which is a higher rate than we previously saw when the same individuals were going to court. One of the things that we assumed was that four out of five of those arraigned in the youth court would be removed to family court, and those assumptions were spot on. We are seeing about 80% of those arraignments being removed to the family court process with most of those going to probation intake. That breakdown of the numbers going directly to probation intake verses going directly to family court are posted on the web for your county. She indicated that if something doesn't look consistent with your county, please let us know. In the coming months, we will have more available with what's happening on the probation intake and adjustment side.

Bail Reform Statue: Marta Nelson, Executive Director for Reentry and Special Counsel for Criminal Justice Initiatives

Marta Nelson distributed handouts on NY Bail Reform Law—a Summary of Major Components: She indicated that effective January 1, 2020, all misdemeanors will be released, upon arraignment (93%). The only misdemeanors that will not be released are sex offense misdemeanors and criminal contempt with domestic violence.

Most non-violent crimes will be released as well. A list of non-violent crimes is on the handouts.

When bail is allowed, judges are required to consider a defendant's financial circumstances in the current bill as of January 1. Judges are also required to set three forms of bail including an unsecured or secured bond. The statute is very clear, that Judges must set the least restrictive alternative when making a release determination. Release on Recognizance (ROR) is what a judge is supposed to do, unless there is a risk of non-return to court. Drug treatment or drug testing is not mentioned, but that does not mean that it can be added into the bail reform.

The bench warrant grace period requires an 8-hour period to wait before re-issuing a bench warrant. Data for 2018 arraignment shows that 90% of individuals have been released due to pre-trial release requirements.

Questions on Bail Reform:

Joy Bennett, from Tioga County Probation asked, "Will counties lose money and waivers for the 13-A?" Commissioner Green answered, your counties will still get the money, they will just need an extra step of recertification from OCA.

OCA Counsel Paul McDonnell added "We are planning to make this work. We want to engage in this discussion with stakeholders on what should be done."

Robert Maccarone added that the Classification/Alternatives to Incarceration Law--Article 13A remains unchanged at this time. Provided a county has an approved Article 13A approved service plan, and contract, funding will remain in place.

Onondaga County Probation Commissioner Andrew Sicherman said that he is trying to get his clients to get Identification before they get arrested and detained. We should work together with DCJS on this matter.

OPCA Unit Re-Configurations:

John Adams reported that Michele Clarke—the Manager of the Vocation, Employment and Re-entry Unit is not with us today, she is out in the field.

The following managers reported to the Probation Commission the work being undertaken by their staff:

Teresa Scanu-Hansen--Juvenile Justice Operations Unit

Juvenile Justice Operations Unit has grown by four staff members. Lisa Karam, Ian Grugan, and Jennifer Cox all joined the Unit. Teresa explained that the Unit would be providing training and technical assistance to probation departments to assist youth in achieving more successful outcomes.

Patricia Clements—Training Unit:

Training Unit has had some transitions, Daniel Robertello has moved to the ATI Unit and Ian Grugan has moved to the Juvenile Operations Unit. David Lewis has recently joined the Training Unit through a promotion from a position in the Adult Operations. Patty Clements commented on the development of the four-week Fundamentals of Probation Practice Curriculum being accomplished with the assistance of Orbis Partners. She indicated that she expected we would receive the new curriculum in September and that she would be working on developing a schedule to implement the new curriculum here in Albany, as well as for the six regional training sites throughout the state. She also addressed training that was being planned with the University of Massachusetts for probation officer training in the use of the MAYSI2—the Massachusetts Youth Screening Instrument, as all youth will be screened for mental illness and referral for possible evaluation at probation intake.

David Lewis—Training Unit:

David Lewis described OPCA's progress in implementing the use of the Domestic Violence Screening Instrument-Revised (DVSI-R) which includes 13 questions. The purpose of the DVSI-R is to assist probation officers in the supervision of domestic violence batterers. He explained that DCJS had conducted a training in September of 2018, using a train the trainer program. A total of 34 probation officers and staff from DOCCS and DCJS were trained. He explained that to date 373 probation officers had been trained. OPCA's goal is to have at least one Probation Officer in each county trained in the use of the DVSI-R by December of 2019. He reported that a number of regional trainings were planned in coming months.

Kelly Palmateer—Interstate Compact Unit (Juvenile Probation):

Kelly Palmateer serves as the Deputy Compact Administrator for the Interstate Compact for Juveniles (ICJ). She reported that the NYS DCJS Interstate Unit was recently audited by the national ICJ Office. She reported that the Compliance Audit examines performance in five areas of practice. They include the following:

- 1) Home Supervision
- 2) Submitting progress reports
- 3) Responding to violation reports
- 4) Submitting foil packets, permission to travel 30 calendar day)
- 5) Use of juvenile data system

The Interstate Unit performed very well with 98% in 1 category and 100% in all others.

Matthew Charton—Interstate Compact Unit (Adult Probation):

Matt Charton serves as the Deputy Compact Administrator for the Interstate Compact for Adult Offender Supervision (ICAOS) for New York State. He reported that the Unit has conducted training for probation officers in the use of the automated case management system –the Interstate Compact Offender Tracking System (ICOTS) through a series of Quarterly Webex meetings, as well as Bi-monthly ICOT trainings and workshops. We have over 100 supervisors trained.

Director Maccarone reported that last year the DCJS Interstate Unit processed over 10,000 reports.

Gary Govel—Adult Probation Operations:

Gary Govel reported that currently in criminal court there may be 95-96,000 probationers under supervision at any time. Of those, 4300 cases of those are Interim Probation Supervision. He indicated that there appear to be different practices in the state with respect to conducting a pre-sentence investigation when it comes to Interim Supervision, and that his unit would be examining these practices, the impact on community safety, and any need for legislative change that would be recommended to the Commissioner.

Colleen Thorn—Adult Probation Operations:

Colleen Thorn reported on the implementation of the Women Risk Needs Assessment (WRNA) in pilot jurisdictions. She indicated that DCJS, working with the Vendor had worked to make the WRNA available electronically to probation departments and ATI Programs. She reported that to date: Dutchess, Oswego, Allegany, and Niagara Counties were going to participate in the program, as well as two ATI programs.

John Adams--Technology/Automation Projects:

John thanked the probation departments that have participated on the Caseload Explorer Workgroup and assisted in the development of the case management system and program integrations through the years.

He reported our priority right now is to get CE Sync in place and roll-out the self-installations so that the CE sync will function in all departments. The installation will soon occur in Dutchess County. We will then take a look at CE Programs, and so there is a lot of work underway to integrate this product and make sure they work well for Probation Departments in New York State.

He explained that Probation Case Review (PRCR); will not go away. This is a document or snap shot that is taken every 90 days for juveniles and every six months for adults. This provides a relationship between the probation officer and supervisor. We are keeping that in mind. The Case Plan helps strengthen the relationship between the probation officer and probationer and should be reviewed at every probation appointment. The main thing is that we need to have a central place, or a central process for probation officers to do the planning functions. We will be bringing over the YASI and NYCOMPAS assessment information so it can be incorporated into the uniform case plan. This will bring great uniformity to case planning process—essential to implementing successful supervision strategies.

No New Business

Last Item of Business: Probation State Aid

Commissioner Green and Deputy Commissioner and Director Maccarone talked about the NYS Executive Law, which includes a provision regarding the distribution of probation state aid. The law refers to the role of the Probation Commission and seeking its advice on how state aid is distributed. Commissioner Green asked how often have we asked the Commission about the distribution of State Aid? Does the distribution of state aid through the block grant work for Probation Departments? OR should we be looking at something else?

Commissioner Pozzi stated he believes probation departments do not express concerns about this and he questioned trying to fix something that was not broken. Commissioner Sicherman said he too had not heard any concerns from probation directors and Saratoga County Probation Director Steve Bayle commented similarly.

A motion to conclude the meeting was made by Commissioner Rocco Pozzi, and second by Commissioner Andrew Sicherman. The meeting was adjourned at 2:30 PM.