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Jason T. Garnar, County Executive · Michael T. Baker, Public Defender

**Testimony of Michael T. Baker, Public Defender for Broome
County**

New York State Assembly Standing Committees on Codes and
Correction

Hearing to examine the adequacy of Alternatives to Incarceration
(ATI) and pretrial services in light of recent criminal justice reform
initiatives

November 14, 2019

Good afternoon. My name is Mike Baker and I am the Chief Public Defender for Broome County. I am also a current vice- president of The New York State Association of Criminal Defense Lawyers (NYSACDL). NYSACDL was formed in 1986 by a group of defense attorneys who felt it was time to speak in a unified voice about criminal defense issues in New York State. We are a statewide organization with over 1000 members, responsive to the needs of both private practitioners and public defenders and dedicated to assuring the protection of individual rights and liberties for all. I want to personally thank the members of both committees and especially Chairpersons Joseph Lentol and David Weprin for holding this hearing to discuss the pre-trial Alternatives to incarceration in the light of the recent criminal justice reforms.

At the outset, on behalf of NYSACDL and the Chief Defender's Association of New York, we all thank you for taking the lead in passing much needed pretrial justice reforms, including bail reform as well as finally bringing discovery laws in line with the rest of the country. Your efforts will result - not in the hysteria and tales of doom some have recently mischaracterized for political gain- but in assuring fairness and justice to every person in New York accused

of a crime; especially those who languish in jail – while presumed innocent - waiting for their day in court only because they could not afford bail.

For too long our local jails have acted not as places for those convicted to serve their sentences, but as detention centers for those too poor to post bail, for those with significant mental health issues and for those fighting substance abuse addiction – and in many cases, a combination of all three. Our local jails were never meant to be hospitals – never meant to be detox or rehabilitation centers – debtor’s prisons – nor warehouses for people who cannot adequately live on their own - but, sadly, over the years as these problems proliferated that is exactly what they have become. But, thanks to the courage and foresight of the men and women of this body – no more.

My colleagues from the metropolitan area cited to certain statistics regarding the impact of pre-trial incarceration. Sadly, the numbers of those held in upstate county jails have increased at a far higher rate than downstate. For example:

- In 2018, 62% of those behind bars in Warren County Jail were there “unsentenced”, mostly on unaffordable bail. The Warren County unsentenced jail population increased nearly 20% from 2017 to 2018!
- In 2018, 55% of those in jail in Chenango County were there pre-trial, and the pre-trial population had increased by 55% from 2009 to 2018.
- Cortland County’s pre-trial jail population increased 54% from 2009 to 2018.
- Delaware County’s pre-trial jail population increased 78% from 2009 to 2018.
- Madison County’s pre-trial jail population increased 59% from 2009 to 2018.

- Oswego's pre-trial jail population increased 45% from 2009 to 2018.

And, finally, in 2018, in my own county of Broome County, 76% of the average daily jail population are being held pre-trial. Since 2000, while the number of sentenced prisoners has remained constant, the number of those held presentence has doubled.¹

One factor not often discussed is the length of stay for those incarcerated prior to conviction. Most, if not all, upstate counties have local town and village courts which meet very infrequently. While the busier courts may convene weekly, it is not uncommon for some courts in more rural areas to meet just once a month. So, if someone accused of a crime is remanded to jail with bail from one of these courts, he or she may not appear again in that court for a few weeks, all the while being held in jail simply on an accusation.

Thankfully, as of January 1, 2020 most people who are accused of crimes will be released without the burden of an onerous bail.

While New York State evolves from a culture of pre-trial incarceration, it is paramount that we do not become a culture of pre-trial supervision. The law makes it abundantly clear that judges should seek the "least restrictive conditions" necessary to ensure a person returns to court. In keeping with the letter and spirit of the law, it is our hope that the utilization of pre-trial services will be the exception rather than the rule.

Unlike those who have waited until the last minute to criticize the efforts of this legislature by fear mongering and devising ways to undermine the law as a means to keep people incarcerated prior to conviction, indigent defense organizations began to prepare when the budget was passed in April in anticipation that more of our clients will be released upon arrest or arraignment. Specifically, the Broome County Public Defender's Office has already instituted

¹Empire State of Incarceration, Vera Institute of Justice, 2018. <https://www.vera.org/state-of-incarceration>

procedures to refer our clients into substance abuse programs and other programs to address their problems during their initial intake interviews. Likewise we have begun working with the local courts to ensure not only that we will have counsel at the initial appearance but also initiating contact with arrestees as soon as possible when they are issued an appearance ticket. We will have the flexibility to assist our clients in obtaining community-based services which they desperately need – services unavailable to them while incarcerated or, perhaps, outside the scope and jurisdiction of the agency charged with their supervision.

In summary, many of us who defend people for a living view success not as what occurs inside the courtroom, but what we can achieve for our clients outside of the courtroom. It's our ability to be able to find the root causes of what led them to our doorstep and help them address those issues and therefore lead a law abiding life. Success, for us, is not having a repeat client and these reforms will help us achieve these goals.

Again, in conclusion we thank you for the opportunity to address these committees and we look forward to working with you the future.