

TESTIMONY OF
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HEARING: "*U.S. DRUG POLICY: AT WHAT COST?*"
CONGRESSIONAL JOINT ECONOMIC COMMITTEE
WASHINGTON, D.C.
THURSDAY, JUNE 19, 2008

Mr. Chairman and members of the Committee -- Good morning and thank you for the invitation to testify today about two innovative prosecutor-run programs that seek to reduce drug abuse, improve public safety, and save money.

My name is Anne J. Swern. I am the First Assistant District Attorney in Kings County (Brooklyn), New York. I have served the public as a prosecutor in Brooklyn for almost 28 years under three elected district attorneys, the most recent being Charles "Joe" Hynes, who has been in office since 1990 and is Brooklyn's longest serving DA. By way of brief background, our county has a population of 2½ million people. It is the most populous county of New York State's 62 counties, and the seventh largest county in the United States. Last year our office prosecuted over 6,400 felony cases. Approximately 2,100 were for the possession or sale of drugs. Clearly, Brooklyn, like so much of the U.S., is still tackling the serious problem of drug crime. However, we have made great strides since the late eighties and early nineties when drug crime was rampant. (For example, in 1989, there were a record number of 12,640 felony drug arrests in Brooklyn.)

In those days, New York State principally dealt with drug crime through enforcement of the notoriously tough Rockefeller Drug Laws, which mandated long prison sentences for the possession or sale of even small amounts of drugs. The so-called “revolving door” phenomenon became the unhappy metaphor defining our criminal justice system -- addicts committing crime so that they could get money to get high, then being arrested and sent to prison for a few years, only to come back out of prison still desperate for drugs, and renewing the cycle of addiction, crime, and imprisonment. Clearly, as DA Hynes repeatedly asserted, we could not prison-build ourselves to a safer society.

I’ll be focusing today on two programs that DA Hynes created to combat this “revolving-door” of substance abuse and drug-related crime. The first program, the Drug Treatment Alternative-to-Prison program, called “DTAP,” diverts addicted offenders into long-term community-based substance abuse treatment in lieu of incarceration. The second program, Community and Law Enforcement Resources Together, called “ComALERT,” focuses on recidivism reduction through effective re-entry for former prison inmates returning to their Brooklyn communities.

These two programs -- one addressing offenders entering the criminal justice system; the other addressing former inmates re-entering their communities -- have had profound positive impact on individuals and communities. With me today is Norma Fernandes, who is a graduate of DTAP and also the current Community Coordinator of

our ComALERT reentry program, and she will be able to provide a unique insight into that impact. These prosecution-run programs—DTAP and ComALERT—also make sound fiscal sense. Monies are invested in changing lives and nurturing a strong economic base for communities, rather than just poured into prisons to house a revolving-door population of addicted offenders.

There are two aspects of these programs that I want to emphasize because they are integral to their success.

First, these programs are run by the District Attorney's Office. Prosecutors can and should be involved in programs that go beyond a reactive approach to crime. Ultimately, a district attorney's responsibility is to ensure and, if possible, improve public safety. Programs that effectively treat the underlying causes of an offender's criminal behavior fulfill that mission by reducing recidivism. By spearheading these programs, prosecutors enhance community safety and gain the support of those whom they serve. Furthermore, because the community knows that the district attorney's foremost concern is public safety, the community trusts prosecutors to run these programs in a responsible manner and minimize any danger. This aspect distinguishes prosecutor-run programs from many other models, including certain drug court models, and makes these programs especially suitable to repeat offender or more serious offender populations.

Second, these programs, while prosecution-run, are nevertheless based on collaboration with entities normally outside the criminal justice sphere. Prosecutors are

not clinicians. They do not have the expertise to evaluate or treat the disease of drug addiction. However, by joining forces with drug treatment providers, prosecutors can successfully address the root causes of an addict's criminal behavior. Furthermore, collaboration with other social service agencies, for example those dealing with employment, housing, education, mental health, and family-related issues, ensures that the many additional needs of these forensic clients are met. In a nutshell, these programs embody a holistic approach to the individual, while never forgetting the paramount importance of protecting the public.

DTAP

In 1990, DA Hynes launched DTAP in Brooklyn. This prosecution-run treatment diversion program targets non-violent repeat felony offenders with serious drug addictions—a population almost entirely overlooked for diversion in 1990, and one which, even today, is still considered by many jurisdictions as too high-risk or difficult to divert from incarceration. DTAP has achieved significant success in reducing drug abuse and criminal recidivism in its target population, and it offers jurisdictions a cost-efficient option for tackling the twin scourges drug addiction and addiction-motivated crime in their communities.

As of June 1, 2008, 2,594 defendants have been accepted into Brooklyn's DTAP since the program's inception. Of those participants, 349 are still in treatment and 1,095 have completed the program and have had their charges dismissed. In 2003, the National

Center on Addiction and Substance Abuse (CASA) at Columbia University completed a five-year federally-funded study of DTAP and issued a White Paper summarizing its findings. (National Center on Addiction and Substance Abuse at Columbia University, *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-to Prison (DTAP) Program* (2003)). In the accompanying statement to the CASA White Paper, former United States Secretary of Health, Education and Welfare Joseph A. Califano, Jr., now CASA's chairman and president, hailed Brooklyn DTAP as a "promising example of what law enforcement can do to reduce the number of addicted drug offenders." (*Id.* at ii).

There are two key premises behind DTAP (and behind drug courts for that matter): (1) that the criminal recidivism of addicts can be reduced if the addiction is effectively treated; and (2) that legal coercion can be a powerful motivator to get addicts to succeed in treatment. In 1990, these premises were not widely accepted in the law enforcement community; however, now, over a decade and a half later, research has confirmed that legal coercion can help addicts enter and stay in treatment, and extended treatment can successfully address their debilitating disease and reduce criminal recidivism.¹ The

¹ The National Institute on Drug Abuse has recognized, as one of its principles of effective drug addiction treatment that treatment does not have to be voluntary to be effective; rather, sanctions and enticements in the criminal justice system can "increase significantly both treatment entry and retention rates and the success of drug treatment interventions." Nat'l Institute on Drug Abuse, Nat'l Institute of Health *Principles of Drug Addiction Treatment: A Research-Based Guide* 5 (1999).

proliferation of drug courts, which now exist in all 50 states, confirms the popularity of treatment diversion.

However, if *chronic* drug offenders are going to be diverted into community treatment, it is imperative that the safety of the public at large and of those within the drug treatment program themselves (the non-forensic clients, the counselors, and staff) not be jeopardized during the diversion period. The concern over the risk to public safety naturally increases with the severity of the criminal offender's pending charges, of his or her criminal history, and of his or her addiction. The chronic drug user, who is a serious, albeit nonviolent, repeat felony offender, combines the desperation of the hard-core addict with the demonstrated propensity to repeatedly engage in criminal behavior despite previous periods of incarceration. Such an individual poses a higher risk to public safety than an offender charged with drug possession as a misdemeanor or a first felony. At the same time, it is *precisely* from this group of individuals that society stands *the most* to gain if treatment is successful.

In order to reap these benefits without sacrificing public safety, DA Hynes created DTAP, the nation's first *prosecution-run* treatment diversion program aimed at prison-bound repeat felony offenders. DTAP is based on a deferred-sentencing model—that is, the sentence is deferred while the defendant undergoes treatment. A defendant, who has been charged with a felony offense, pleads guilty to a felony with the following understanding: If the defendant successfully completes a residential substance abuse treatment program, the

defendant will be allowed to withdraw the plea of guilty and the case will be dismissed by the court, with the prosecutor's consent, in the interest of justice. However, if the defendant fails to complete the program (for example, he absconds from the program), the court will impose upon the defendant the previously negotiated prison sentence applicable to the felony.

So what are the core elements of DTAP? Essentially, there are seven elements:

- **First**, DTAP targets repeat non-violent felony offenders who, if convicted, face mandatory imprisonment under the State's predicate offender sentencing laws. DTAP accepts both defendants charged with drug offenses and defendants charged with other non-violent offenses such as larcenies and commercial burglaries, so long as the defendant is truly drug addicted and his conduct was motivated in large part by that addiction. In carefully screening candidates with regards to violence, we look beyond the charges appearing on the rap sheet, because a DTAP candidate may have serious violence issues that haven't made it into his or her criminal history—for example, a history of domestic violence or gang-related violence. For that reason, our warrant enforcement team does a background check on each candidate. It's crucial that we don't compromise the safety of the clients and staff of the community-based treatment facilities when we send them DTAP clients.

- The **second** key element of DTAP is that the eligible offender must be drug-addicted and in need of substance abuse treatment, and the offender's addiction must

have been a significant contributing factor to his or her crime. In Brooklyn, we use the experienced clinicians at TASC to assess the treatment needs of DTAP candidates. Spending treatment dollars on those who are not addicted is not just a waste of money but it also compromises the treatment of those who are addicted.

●A **third** element of DTAP is that the offender is diverted into long-term, intensive residential substance abuse treatment which includes educational and vocational training, employment assistance, and a period of aftercare. Defendants with extensive drug histories who have repeatedly engaged in criminal activities to finance their drug habits, i.e., DTAP's target population, require intensive intervention and rehabilitation to support re-integration into society. For many DTAP participants, the environment in which they were living (the people with whom they were associating and the places that they frequented) bolstered their drug addiction. The participants need to be removed from that environment for a significant length of time (usually 15 to 24 months) to begin the process of recovery and re-socialization.

●**Fourth**, in DTAP, the prosecution carefully monitors the offender's progress in treatment. While the DTAP participant is in treatment, TASC receives regular updates on the participant's progress from the treatment provider. These updates include assessments of the participant's compliance with the provider's rules, the participant's psychological and mental status, and the results of drug tests (urinalysis). TASC, in turn, provides constant updates to the District Attorney's Office and to the court about each

defendant's progress. Close monitoring by the prosecution helps satisfy the criminal justice concern of not compromising public safety.

●**Fifth**, if the DTAP participant fails the program, either by violating the treatment provider's rules or by absconding, the offender faces a set term of imprisonment that was clearly conveyed to the offender prior to diversion into treatment. Up until 1998, DTAP used a deferred prosecution model -- that is, the charges were held in abeyance while the defendant underwent treatment, and if the defendant failed treatment, the case would proceed to trial or plea. In 1998, we switched to a deferred-sentencing model, under which the defendant enters a guilty plea up front. Thus, the risk associated with failure shifted from a strong probability of a prison sentence under the old model, to a virtual guarantee of a prison term under the new model. The switch in models in 1998 significantly increased treatment retention rates. For those defendants admitted to DTAP under the deferred-prosecution model, the one-year treatment retention rate was 64%. Under the deferred sentencing model, the current one-year retention rate has risen to 76% -- a difference of 12 percentage points.

Why is this substantial increase in the one-year retention rate so important? Because research shows a positive correlation between the length that a defendant stays in treatment and the likelihood of that individual not re-engaging in drug use and criminal activity. That is, if an offender stays in treatment for at least 12 months, there is a greater likelihood that drug treatment will be effective in the long term.

In short, certainty of punishment plays a crucial role in a drug-addicted defendant's successful rehabilitation. Although we recognize that relapse is part of the recovery process, and evaluate applications for readmission on a case-by-case basis, every DTAP participant knows that he or she faces a sentence of imprisonment if, after being given a reasonable chance to succeed he or she absconds from treatment or fails to complete the program. The prison alternative—the external motivation—is the extremely valuable incentive for defendants to enter and stay in drug treatment.

- The **sixth** key element of the DTAP program is the prosecution's warrant enforcement team that investigates the background of each DTAP candidate, quickly apprehends any offender who absconds from treatment, and returns that absconder to court for sentencing. Maintaining this enforcement team allows us to minimize the risk in diverting repeat felony offenders. Indeed, as a result of these precautions, 90% of DTAP participants who abscond from treatment are returned to court in a median time of 21 days.

- And finally, the **seventh** key element-- if the offender successfully completes the DTAP program, the felony charge or charges are dismissed and the graduate continues to have at his or her disposal the employment assistance services of the DTAP job developer. To graduate from the DTAP program, a participant must have successfully completed all phases of the drug treatment plan. The participant also must have housing and a job or comparable means of subsistence (for example, the defendant is in funded vocational

training or, if seriously ill, on some kind of medical disability). These conditions are fully explained to the defendant prior to entry of the guilty plea, and they are integral to the DTAP agreement.

So, in sum, those are the seven key elements of DTAP.

The researchers at CASA (National Center on Addiction and Substance Abuse) at Columbia University conducted a five-year evaluation of DTAP which was sponsored by the federal government. CASA concluded that DTAP did indeed reduce recidivism. An analysis comparing those who graduated from DTAP to those of the matched comparison group who served time in prison revealed these dramatic findings: DTAP graduates had rearrest rates that were 33 percent lower (39% vs. 58%), reconviction rates that were 45 percent lower (26% vs. 47%), and were 87 percent less likely to return to prison (2% vs. 15%) two years after completing the program than the matched comparison group two years after leaving prison.

CASA's research also revealed that DTAP graduates are three and one-half times likelier to be employed after completing the program than they were prior to the arrest that caused them to enter the program (92% v. 26%).

Finally, the CASA team concluded that DTAP's results were achieved at about half the average cost of incarceration. CASA calculated that the average cost for a DTAP participant was \$32,975, and compared that to the average cost of \$64,338, if that same person had been sent to prison. We've conducted our own analysis of the economic

benefits derived from the implementation of the DTAP program. Our analysis of the savings realized o correction, health care, public assistance and recidivism costs combined with the tax revenues generated by the DTAP graduates indicates that diversion to DTAP has resulted in economic benefits of about \$44 million dollars per the 1,095 graduates thus far.

These statistics amply demonstrate that diversion to DTAP doesn't just make sound sense from ethical and criminal justice points of view, but also from a basic fiscal point of view as well. For these reasons, DTAP has been embraced by all five district attorneys in the counties that make up New York City, and has been implemented by several other district attorneys throughout New York State. Over the years, DTAP has attracted the attention of researchers, criminal justice practitioners, and lawmakers concerned about reducing drug-related crime and the high costs of incarceration.

Federal criminal justice and public health agencies that promote best practices in substance abuse control have repeatedly endorsed and disseminated the success of DTAP, and as early as 2000, federal lawmakers began introducing legislation that would fund DTAP programs across the country. The day of federal DTAP legislation finally arrived on April 9, 2008, when President Bush signed into law the Second Chance Act. A key section of that legislation authorizes Congressional appropriations of \$10 million dollars to be used for grants to state and local prosecutors creating and implementing DTAP

programs. The seven key DTAP elements which I previously discussed would distinguish these prosecution-run programs.

Now, the question is -- will Congress follow through and appropriate the funds that the Second Chance Act has authorized? I would urge it do so.

B. ComALERT

Just as diverting addicted offenders from prison into drug treatment can be an effective means of reducing recidivism and thereby promoting public safety, so too can making sure that ex-offenders receive substance abuse treatment and transitional employment and other social services once they return to the community. Because successful re-entry can have such a positive impact on an individual's and, by extension a community's, well-being, DA Hynes created, in close collaboration with Counseling Service of EDNY (an out-patient drug treatment provider), the Doe Fund (a provider of transitional employment and housing), the New York State Division of Parole, and numerous community-based social services providers, ComALERT--Community and Law Enforcement Resources Together--a re-entry partnership program for Brooklyn residents who are on parole and who have been mandated to engage in substance abuse treatment.

The program started in 1999, but underwent several changes, until it assumed its present structure in October 2004. There are currently approximately 150 active participants in ComALERT. For most clients, the program last three to six months.

From October 1, 2004, to May 31, 2008, 743 clients graduated the program, and the program graduation rate is 55.7%.

Most ComALERT clients are recently released from prison and are referred to the program by Parole. At ComALERT's downtown Brooklyn location, clients receive outpatient substance abuse treatment from licensed counselors and attend individual counseling and group sessions. They are regularly tested by for drug use. Once drug testing results verify that a ComALERT participant has been drug and alcohol free for at least 30 days, he or she can begin engaging in other services, and, per the referral of the primary counselor, will meet with ComALERT's Community Resources Coordinator.

Approximately one-third of ComALERT clients receive a referral to, and preferential placement in, the Doe Fund's Ready Willing & Able (RWA) program, which provides transitional employment, transitional housing (if needed), job skills training, 12-step programs, and courses on financial management and other life skills. RWA participants work full time in manual labor jobs, primarily street cleaning, and are paid \$7.50 per hour. A portion of the salary is deposited directly into a savings account for the client. After nine months of transitional employment, participants begin the search for a permanent job. During this process, they continue to receive a stipend. Once RWA participants secure permanent employment and housing, they graduate from the program, and the Doe Fund continues to provide them with \$200 per month for five months. ComALERT's weekly individual and group counseling sessions and periodic drug testing

help clients maintain sobriety and their enrollment in RWA, which enforces a zero-tolerance policy for drug and alcohol use.

In addition to providing referrals for RWA and other transitional employment, ComALERT's Community Resources Coordinator also links participants to a wide range of other social services offered by community-based providers, such as transitional housing, vocational training, GED test preparation, family counseling, and job readiness programs. Service referrals are specifically tailored to meet the needs of the individual clients.

On site, at the ComALERT Re-Entry Center, participants may attend HIV/STD/hepatitis, and meet with an on-site doctor who conducts physical health assessments and provides referrals as necessary. ComALERT participants who need mental health treatment, but only at a moderate level, may receive such treatment from their ComALERT primary counselor. If the client has a serious and persistent mental illness and needs treatment involving medication, the primary counselor or the on-site doctor will refer the client to an outside mental health treatment provider. ComALERT plans to augment, in the near future, the range of wraparound services offered on site.

Professor Bruce Western of Harvard University recently completed research evaluating ComALERT. Professor Western analyzed the recidivism rates of ComALERT graduates from July 2004 to December 2006, and compared those rates to all ComALERT attendees for that period (i.e., for all participants regardless of whether

they graduated or were discharged) and to those of a matched control group of Brooklyn parolees who did not participate in ComALERT. Outcome percentages for ComALERT graduates were *substantially* better in all categories when compared to those of a matched control group. One year after release from prison, parolees in the matched control group (who did not have the benefit of ComALERT) were over twice as likely to have been re-arrested, re-convicted, or re-incarcerated as ComALERT graduates. Even two years out of prison, ComALERT graduates showed far less recidivism than the parolees of the matched control group. Twenty-nine percent of ComALERT graduates were re-arrested, 19% re-convicted, and only 3% re-incarcerated for new crime.² By contrast, 48% of the matched parolees were re-arrested, 35% re-convicted, and 7% re-incarcerated on a new crime. Even re-incarceration based on parole violations occurred much less frequently for ComALERT graduates (16%) than for parolees in the matched control group (24%).

As to employment, ComALERT graduates were nearly four times as likely to be employed as the parolees in the matched control group, and they also had much higher earnings than parolees in the control group.

² Although the comparison is imperfect, the recidivism rates of ComALERT graduates were dramatically lower than for prisoners released from state prisons in general. A study conducted in 2002 of inmates released from state prisons in 1994, concluded that, two years after release, approximately 59% had been re-arrested, 36% re-convicted, and 19% re-incarcerated for a new crime. P. Langan & D. Levin, *RECIDIVISM OF PRISONERS RELEASED IN 1994* at 3, table 2 (U.S. Dep't of Justice, Bureau of Justice Statistics, NCJ 193427, June 2002).

These results validate ComALERT as an effective collaborative model for ensuring that ex-offenders make a successful transition from prison to the community. In light of its success at reducing recidivism and increasing employment, the ComALERT re-entry model should continue to garner fiscal support.

New York taxpayers pay over \$2.5 billion a year to maintain prison operations. In New York City, it costs \$67,000 per year to house an inmate in jail.³ Each time a person is re-arrested and sent to jail, it costs \$183 a day to house the person. In contrast, providing a person with ComALERT's drug treatment and case management services costs only \$10 a day and providing a person with wages for the Doe Fund's transitional employment costs only \$44 a day. These figures show that an effective re-entry program targeted at reducing the number of parolees returning to prison has the potential to save New York a significant amount of money.

Thus, not only does ComALERT meet the long-term goal of reducing crime to increase public safety, but this enlightened approach to law enforcement also makes sound economic sense. The New York State government has wisely decided to invest funds in ComALERT. On a national level, the recently enacted Second Chance Act of

³ According to the New York City Independent Budget Office, this figure does not include a multitude of additional costs attributable to jail operations, including, but not limited to, pension and health care costs of jail employees and debt services costs associated with jail construction and renovation. If all those additional costs are taken into account, the average annual cost per city jail inmate vaults to \$113,276 per year, or \$310 per day.

2007 offers hope that prosecutors throughout the country could implement their own ComALERT re-entry partnership programs. Of course, once again, it is up to Congress to now appropriate all the federal funding authorized by the Second Chance Act.

Both the ComALERT and DTAP models offer jurisdictions cost-effective means for reducing drug-addiction related crime -- one of our nation's most pernicious social problems. Despite decades of well-meaning state and federal efforts to tackle the problem, our country is still facing a drug abuse crisis. In a report released in March, the Office of National Drug Control Policy noted that there were over 20 million drug users and approximately 7 million chronic drug users (drug dependent or drug abusers) in the U.S. in 2006 (Office of Nat'l Drug Control Pol'y, Exec. Office of the President, *Current State of Drug Policy: Successes and Challenges*, at 5 (2008)). The same group estimated the economic cost of drug abuse to be \$180.9 billion in 2002 (Office of Nat'l Drug Control Pol'y, Exec. Office of the President, *The Economic Costs of Drug Abuse in the United States, 1992-2002* at vii (2004)). Of that overall sum, an estimated \$107.8 billion were crime-related costs (*Id.* at xii). In fact, the most rapid growth in drug abuse costs from 1992 to 2002 came from "increases in criminal justice system activities, including productivity losses associated with growth in the population imprisoned due to drug abuse" (*Id.* at xiii).

The precise nature of the nexus between drugs and crime continues to be investigated and debated, but that such a nexus exists appears beyond dispute. According to the Arrestee

Drug Abuse Monitoring Program (ADAM) Annualized Site Report for Manhattan, New York, among samples of adult males arrested in 2002, over three-quarters (81%) tested positive for at least one kind of illicit drug, and over a quarter (26%) tested positive for multiple drugs. Among males and females arrested for drug offenses, almost all (91% and 92%, respectively) tested positive for some kind of illegal drug. Nationwide in 2000, in half the 35 ADAM sites, urinalysis indicated that 64 percent or more of adult male arrestees had recently used at least one of five drugs: cocaine, marijuana, opiates, methamphetamine, or PCP (phenocyclidine). (Nat'l Inst. of Justice, U.S. Dep't of Justice, *Arrestee Drug Abuse Monitoring 2000 Annual Report 1* (2003)).

According to a 1997 survey of inmates in state prison, 83 percent reported past drug use and 57 percent were using drugs in the month before their offense. (Christopher J. Mumola, U.S. Dep't of Justice, Bureau of Justice Statistics, *Special Report: Substance Abuse and Treatment, State and Federal Prisoners, 1997*, at 1 (1999)). A third of state prisoners said that they had committed their current offense while under the influence of drugs. Drug offenders (42%) and property offenders (37%) reported the highest incidence of drug use at the time of the offense. (*Id.* at 3). Nineteen percent of state prisoners said that they had committed their current offense to obtain money for drugs. (*Id.* at 5). Tragically, statistics tell us that when these drug-abusing inmates leave prison, they are likely reoffend. Recidivism rates for drug offenders are depressingly high. In a 15-state study of prisoners released in 1994, 66.7 percent of the drug offenders were rearrested

within three years and 47 percent were reconvicted of a new crime within that period (Patrick A. Langan & David Levin, U.S. Dep't of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, NCJ 193427, at 8 table 9 (2002)).

While community-based treatment and other wraparound social services carry a price tag, their cost is much less than that of incarceration in prison, especially when one considers the effectiveness of diversion and re-entry programs at reducing recidivism. Many states throughout the country are now confronting the crippling costs of an exploding prison population.⁴ The DTAP and ComALERT models that we have used so successfully in Brooklyn transform lives, improve communities, and save money. These programs deserve to be replicated in jurisdictions around the country, and Congress should ensure that adequate funding is appropriated for that goal.

⁴ As of June 30, 2007, the state prison population in the U.S. had swelled to 1,395,916 inmates. William J. Sabol, U.S. Dep't of Justice, Bureau of Justice Statistics, *Prison Inmates at Midyear 2007*, NCJ 221944, at 3 table 2 (June 2008)