

SAFE STREETS - SAFE CITY: AN ANALYSIS

**Committee on Criminal Justice Operations and Budget
of
The Association of the Bar of the City of New York**

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The committee has closely followed the evolution of the "Safe Streets - Safe City" initiatives since the original City Council proposal of September 6, 1990, through police Commissioner Brown's report of October 1 and the Mayor's initiative of October 2, 1990, and the final joint proposal of the Mayor and City Council of December 5, 1990. The proposal is currently before the State Legislature with respect to financing measures. The committee has assumed, for purposes of this report, that the plan as proposed to the Legislature will be funded. The committee did not evaluate the feasibility of funding the program as proposed. However, the committee has recommended that certain aspects of the program which might be at risk for budgetary reasons, be preserved as ultimately cost effective. The committee has evaluated, in a general way, the feasibility of the police, criminal justice, and crime prevention aspects of the proposed program, both in terms of the plan's probable impact on the courts and in the stated relationship of its various components. The committee leaves it to others to assess the educational component of the plan. Due to time constraints and in deference to the Criminal Law Committee, the committee has not evaluated the legislative gun control initiatives.

In issuing this report, the committee is acutely aware of the current fiscal limitations facing the State and the City. The committee is equally aware of the current crisis in law enforcement presented by the drug epidemic. The committee believes that this

dual crisis compels a new look at the criminal justice system, with a view to increasing its cost effectiveness and its responsiveness to the public safety and public welfare.

After a careful review of the joint proposal of the Mayor and the City Council to the State Legislature interviews with the City's commissioners of probation and corrections, representatives of the deputy mayor for public safety, the City's office of management and budget, the New York County OCA arraignment coordinator, representatives of the police department and the executive director of the Correctional Association, the committee's principal finding is that the alternatives to detention and alternatives to incarceration set forth in the Safe Streets plan are essential to an effective and fiscally sound response to the current drug crisis and must be preserved despite the current budget crisis.

SUMMARY

The committee finds as follows:

1. That the proposed program is commendable in its scope, in its objectives, and in its priorities.

The program represents an effort at coordinated planning in all aspects of the criminal justice system, on a scale never heretofore attempted. Initiated by the perceived need for a significant increase in the number of police officers available to patrol the streets, the program as developed addresses not only the numbers of police required to ensure the public safety, but

also reevaluates the role that the police are assigned in the community. It attempts to integrate better the police with the community, and to enable the police to better understand the community's specific concerns. The program also attempts to assess the means by which crime can be prevented through timely intervention in the lives of children by education and counselling; as well as through the delivery of preventive services both to families at risk economically, and to potential offenders at risk due to substance abuse or to other disabilities.

The committee also finds:

2. The proposed program will result in a substantial increase in the number of cases filed with the Criminal Court of the City and in the criminal term of the State's Supreme Court. This increase will have a disproportionate impact upon the courts and upon the Department of Corrections.

3. The proposed program will require a substantial infusion of resources into the court system both in judicial and nonjudicial personnel and in physical facilities, exceeding the already overburdened and inadequate resources committed to the court system to date. This infusion of resources is primarily the responsibility of State agencies beyond the control of the City. The costs of this increase are not reflected in the program.

4. The infusion of resources into the Department of Corrections required in order for that department to cope with new case filings seems to be beyond the means of the department by any realistic measure. Therefore, in order for the program to

function, alternatives must be found to the incarceration of those brought into the criminal justice system, particularly those detained pending trial and/or those arrested in connection with minor controlled substance offenses.

DISCUSSION

THE PROGRAM IS COMMENDABLE IN SCOPE

In the past, when the numbers of police on the street have been substantially increased, as with the TNT program, the resulting influx of new cases has threatened to overwhelm the remainder of the criminal justice system. The system is notoriously underfinanced and operates at its maximum capacity at all times. In the past five years case loads in the local criminal and family courts have increased several fold without proportionate increases in funds, personnel or facilities. This plan recognizes the need to coordinate any new increases in police with proportionate increases in the operating budgets of all other agencies system wide. While, as indicated below, some of the specific proposals seem to the committee to be inadequate to enable some sectors of the system to cope with the anticipated infusion of new cases, the approach is commendable.

THE PROGRAM IS COMMENDABLE IN ITS OBJECTIVES

The "CPOP" program calls for restructuring the Police Department to assign to civilian employees those functions that are not directly law enforcement, at significant cost savings; to

eliminate what has been called the "tyranny of 911" by screening radio calls so that patrol cars will respond only to those in need of police assistance and will thus be able to spend more time addressing the problems they encounter; and to decentralize the force so that individual commands have greater flexibility in addressing the concerns of the community where they are sited. This last principle is one aspect of a larger concept called community policing, which seeks to involve members of the community with the police by cultivating daily contact between patrol officers and law abiding citizens in the community. Several results are intended: the police will develop greater sensitivity to the individual character of the community in which they operate and thus be better able to determine law enforcement priorities; the members of the community will be empowered through access to the police in their community as individuals, instead of as an anonymous presence; the police will have greater discretion in dealing with the young offender, will make use of alternatives to arrest and will develop crime prevention strategies to involve the young members of the community in constructive activities in a friendly relationship with members of law enforcement. Regardless of the actual impact the CPOP strategy has upon crime rates, the committee finds a community oriented approach to police work commendable.

THE PROGRAM IS COMMENDABLE IN ITS PRIORITIES

It is universally acknowledged that the current crisis in law enforcement and in the courts is attributable to drugs. Family court neglect and abuse petitions, the record setting homicide rate, felony filings and dispositional delays, and the overburdening of the correctional systems are all directly related to drugs. The program seeks to address the plague of drug addiction directly through medical intervention and alternatives to incarceration where possible, and by early intervention through education to divert the young from the paths to drug abuse. Finally, the program proposes economic assistance, particularly through employment of the young in an effort to provide motivation to avoid the destruction of drugs. These proposals recognize that criminal justice correction is limited in its ability to address the underlying causes and the conditions stimulating criminal behavior, and that a broader social strategy is needed if we are effectively to reduce crime rates.

THE COMMITTEE'S OBJECTIONS

In general, the Committee finds that the development of the plan was skewed by assumptions about the benefits of increased police presence intended to reassure the public frightened by an increase in crime rates. While the committee does not pretend to have expertise in policing strategies, the following assessment is based upon representations to the committee made by persons who do

have such expertise. These experts informed the committee that there is no basis for assuming that this strategy will have any impact upon the rate of crime in the streets. In fact, the committee was told by police department sources that the plan itself may have no appreciable impact upon street crime. In other jurisdictions where the concept of community policing has had an actual impact upon the crime rate in targeted areas, the community policing strategy has been preceded by police saturation tactics whereby an area is saturated with reinforced uniform patrols backed up by increased detective and fugitive apprehension units. In this strategy, the reinforced uniformed presence has a dramatic immediate impact upon the rate of street crime. The detective units remove the robbery, homicide, drug recidivists and fugitives from the community. The uniform patrols are maintained for a period of time and then gradually reduced as the community policing strategy is implemented. This method is similar in design to "Operation Takeback", which was effectively employed during 1990 in seven target precincts using 200 police officers on overtime. It was the opinion of experts before the committee that this strategy would be too costly to implement citywide.

The committee also finds that the motivation to augment the numbers of police on the street determined the formulation of the balance of the plan, without careful regard to whether the other components of the criminal justice system could adequately cope. The committee was informed that the plan was formulated solely upon the basis of deploying a stated number of police officers. This

results in a number of unfortunate consequences for the courts, for corrections, and for other components of the criminal justice system.

Perhaps the most glaring deficiency in the plan is the failure to relate its proposals to the capital expenditures necessary to implement them. This failure seems extraordinary in view of the current financial crisis.

The plan does not address the dilemma of the courts. It is universally recognized that the court system, which is largely State financed, is burdened to the point of marginality. It has been inordinately difficult to obtain adequate resources, especially in terms of physical facilities and judicial personnel, from the State Legislature to enable the courts to cope with the present record levels of arrests and prosecutions. In fact, the courts along with every other State agency are being required to cut back. Without increased facilities, the judiciary will simply be unable expeditiously to address the additional influx of cases that will result from the criminal justice initiative. The plan makes no provision for this increase. The City's Commissioner of Corrections has been found in contempt by a federal judge for failure to comply with outstanding judicial orders in regard to conditions of postarrest detention. The Appellate Division, First Department, has unanimously held that arraignment within 24 hours is presumptively required. Many courts throughout the city are convened in courtrooms of closet dimensions, and the absence of available space is one reason for the inability to increase the

size of the judiciary to keep pace with ever increasing case loads. The failure to provide resources to enable the judiciary adequately to address the influx of new cases will inevitably result in greater delay at all stages of the processing of these cases. This will eventuate in increased numbers of pretrial detainees within the city correctional system which, as explained herein, may lead directly to the endangerment of the lives of correctional officers and inmates.

The Director of the Correctional Association characterized the corrections aspect of the plan as "a march of folly". The current city inmate population stands at a record high of 21,000. This represents a 300% increase in the past decade, and exceeds the current capacity of the corrections system by 1,000 inmates. The State correctional system has increased its population by 90% in eight years. It now stands at almost 60,000, or 125% of capacity, despite a 1.5 billion dollar prison building program over the past ten years. In response to the record increase in jail population, the City Department of Correction recently obtained permission to reduce the minimum square footage per bed in dormitory style jails [to 40 sq. ft.] in order to create space for 750 new beds, and is in the process increasing the ratio of inmates to guards to more than 60:1. Moreover, the committee was informed that dormitory style housing is unsafe both to inmates and to corrections officers.

Single cell jails construction on the scale contemplated by the proposed plan will cost approximately 200 million dollars.

This capital cost is not reflected in the program, and no provision is made for raising the necessary revenue. The committee was informed that there is doubt about locating the necessary space for additional construction on Riker's Island, raising the prospect of long delays in finding and obtaining approval of alternative locations; that the construction the proposal would require is "physically and bureaucratically impossible" to attain with safety to officers and inmates; that the proposed operating costs for correctional facilities under the plan were significantly under estimated; and that the necessary speed with which new facilities would have to be brought on line would not allow for adequate training of corrections personnel and the pressure to recruit new guards would likely result in less qualified candidates.

The committee concludes that to implement this proposal without significant revision will result in jail overcrowding on a scale not heretofore seen. The result will likely be a deterioration of conditions of incarceration with resultant danger to inmates and to corrections personnel. The committee was informed that limitations of the facilities, inadequate training and understaffing of guards and the increased delay in processing cases will very likely result in group violence.

THE COMMITTEE'S RECOMMENDATIONS

Based upon the foregoing information, the committee urges the State , in reviewing the City's initiative, to find ways to reduce the population of State and City corrections facilities by all

means consistent with the public safety. To this end, the committee encourages the Legislature fully to fund the alternatives to incarceration aspects of the City's program.

In formulating its further recommendations, the committee has considered the foregoing and the following:

Until crack hit the streets in 1985, the crime rate in our city was significantly declining, including the bellwether robbery rate, which declined 20% from 1981 to 1984. Since 1987, the robbery rate has increased 14%, and homicide is at record levels. Nonetheless, the percentage of State inmates convicted of violent crime actually declined from 70% of the prison population in 1982 to only 30% of the population in 1989, while the percentage of inmates convicted of drug offenses increased by 800%. It is estimated that 60% of the City jail population and 80% of the State prison population is drug or alcohol addicted. Currently 22,000 inmates of the State prison system receive drug treatment. The State Commissioner of Correction has stated that approximately 15% of all inmates are nonviolent drug offenders who could be treated in residential drug treatment facilities at 60% of the cost of imprisonment and substantial reduction in the need for new prison construction. The City is commendably in the process of developing 21,000 new drug treatment slots over a five year period.

The existing law makes the sale of any amount of crack a felony. The average processing time for felonies is 193 days, during which time the defendant is detained in a city facility.

Mandatory sentencing laws require that any person twice convicted of a felony be sentenced to State prison. One impact of the TNT program has been to create predicate drug felons, with view to removing as many sellers of crack from the streets as possible. According to the Correctional Association, the average TNT "turn around time" between the first and second felony sales is 13 days. The result has been the 800% increase in the nonviolent drug offender population of State prisons. An analysis by the Assembly Corrections Committee indicates that there are as many as 600,000 drug users in New York City who sell small amounts of crack to support their own drug habits. Many of these sellers are otherwise employed. Assemblyman Daniel Feldman, chairman of the committee, has proposed reforming the second felony offender law to give judges greater flexibility in sentencing small scale drug sellers, who are also addicted, to alternatives to incarceration. State Commissioner of Corrections, Thomas Coughlin and Chief Judge Sol Wachtler have made similar proposals.

Of the City jail population, 70% are pretrial detainees. Of these, 56% are under bail of less than \$2500. This happens to be the annual per capita cost of operating day centers for intensive supervision of probationers under a pilot project being implemented by the City Department of Probation. This pilot project, in keeping with the priorities of the proposed criminal justice initiative, includes the coordination of access to social, educational and employment services for probationers within the

program. Enrolles are required to report to the program daily and to spend eight hours on the premises.

Therefore the committee makes the following recommendations:

1. That future policing strategies follow a community policing model. The committee believes that more effective use can be made of preventive strategies and that mass arrest techniques tend to overburden the criminal justice system without having a concomitant long-term impact on crime rates and, therefore, are ultimately counterproductive.

2. That the drug epidemic be confronted squarely as a medical as well as a criminal justice problem, and that consideration be given to strategies to divert the nonviolent drug addicted offender from the criminal justice system. The committee urges that the City's initiative to provide 21,000 drug treatment slots be fully funded, and that these slots be made available in residential facilities to those who would otherwise be incarcerated. The committee suggests that consideration be given to amending the second felony offender laws with regard to small scale drug addicted sellers.

3. The committee suggests a project similar to the Department of Probation model to serve as an effective alternative to pretrial incarceration. Facilities would be maintained for daily reporting and the presence of those not otherwise employed or who might otherwise be at risk of nonappearance could be required. Failure to report would be a violation of the conditions of release and could result in incarceration. The "detention"

centers might at the same time function as resource referral centers for those in need of employment, medical or psychiatric, social, housing or other services that might have an impact upon criminal behavior. Other alternatives might include an intensive pretrial supervision program under the auspices of the Criminal Justice Agency.

Committee on Criminal Justice Operations and Budget

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