The New York State Conference of Local Mental Hygiene Directors, Inc.
Testimony to the Joint Budget Committee on Mental Hygiene
Regarding the 2012-2013 Executive Budget Proposal

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Members of the Senate and Assembly Joint Committee on Health and Mental Hygiene, I want to thank you for having us here today to provide you with our feedback and recommendations on the Governor's Executive Budget Proposal.

My name is Kelly Hansen and I am the Executive Director of the New York State Conference of Local Mental Hygiene Directors. I am joined by Katherine Maciol, who is the Commissioner of Mental Health for Rensselaer County.

The Conference of Local Mental Hygiene Directors is established in Article 41 of New York State Mental Hygiene Law and a statewide organization comprised of the Commissioners or Directors of the 57 county departments of mental hygiene, and the New York City Department of Health and Mental Hygiene. Each of these Commissioners is responsible for the planning, development, implementation and oversight of treatment and services to individuals with mental illness, substance use disorder or developmental disabilities at the county level.

2012-13 APPROPRIATION LEVELS

Overall, this year's Executive Budget proposal for mental hygiene and for OMH, OASAS, and OPWDD spares localities from the deep cuts we sustained over the past two to three years.

While flat-funding came as somewhat of a relief to the Conference, the current proposal for year-to-year flat funding reflects net reductions to local mental hygiene services across the state, and the impact is apparent to us at the local level.

I am not raising this to ask the Legislature for additional funding; we know that nearly everyone was flat-funded. Rather, it is our obligation to make you aware of issues facing the public mental hygiene system as you move forward in budget negotiations.

As county directors of community services, we too have had to make tough decisions on which programs will be cut, and by how much - so we fully understand the State's difficult position.

What is important to recognize, however, is that access to mental health, substance abuse, and developmental disability treatment and support services (such as outpatient clinics and rehab

settings) translates into savings by preventing hospitalization, emergency room use , and crisis interventions – all major cost-drivers for Medicaid

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ARTICLE VII PROVISIONS

The Health and Mental Hygiene Article Seven bill includes a few issues that would have significant impacts on local services.

1. **We oppose the continued "notwithstanding" of community reinvestment. (Part O)**

This is a timely subject given that just last week, the Office of Mental Health announced bed closures in four state psychiatric centers to satisfy current fiscal year budget gaps: Bronx, Creedmoor, Mohawk Valley, and Sagamore Children's Center.

Using similar authority for bed closures proposed in the Executive Budget, the state will continue to close wards and people will be moving into the community or to other state hospitals with only a 30-day notice and no funding committed for reinvestment into community services.

This year's Executive Budget recommends the closure of Kingsboro Psychiatric Center, a State OMH Hospital in Brooklyn, and also proposes that the Office of Mental Health "close, consolidate, reduce, transfer or otherwise redesign" OMH-operated services, and to implement any other measures necessary for more cost-effective and efficient state-operated care of people with psychiatric disabilities.

While the budget states that the intent of such downsizing of state psychiatric beds "is to reinvest appropriate levels of funding for community based mental health services;" the section contradicts this intent by subsequently "notwithstanding" the community reinvestment law requirement that a portion of savings from state bed closures be reinvested through localities to support those leaving State hospitals.

The requirement of such reinvestment was enacted in the Community Mental Health Reinvestment Act (CMHRA) of 1993. This law mandates that savings achieved from the closure or downsizing of State psychiatric institutions be directed to community-based programs in order to ensure that funding and resources are available in the community to maintain the availability of services for people being discharged from costly state psychiatric centers into a life in the community.

This law was recently renewed- from 2010 to 2013- however this has become practically irrelevant when the State continues to notwithstand the chapter and sweep the funds.

The Conference strongly opposes the State exempting itself from the community reinvestment law, particularly given that this year's budget language gives the Executive blanket power to sweep 100% of the savings from every bed closure.

Localities have for years subsidized the transitions of former state facility residents with local dollars. While some people coming into the community are Medicaid recipients, many of the services required to transition them appropriately into independent or supportive community living are not reimbursed by Medicaid.

Instead, the local mental hygiene director must channel a greater portion of the very limited discretionary funds to coordinate these necessary transitions to housing, services, and community supports at the expense of other priorities in the local services systems.

The 2% property tax cap, coupled with increasing local pension, healthcare, and Medicaid costs is putting increased pressure on local tax levy liabilities. The resources to prop up the public mental hygiene system are simply not there.

We *strongly urge* the Legislature to stand up for mental health consumers, stand up for localities, and hold the State accountable- and **reject** the Executive's proposal to once again exempt itself from community reinvestment of OMH facility closures and reductions.

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2. Provide for outpatient capacity restoration of felony defendants. (Part Q)

We are pending a formal position at this time given that sufficient information on the proposal has not been provided in order to develop a position.

In the Health and Mental Hygiene Article VII bill, the Governor proposes changes to Criminal Procedure Law Section 730 (Mental Disease or Defect Excluding Fitness to Proceed) that would have a significant impact on both localities and the state; however there is insufficient detail in the bill for the Conference to have a position at this time.

We are still raising this issue because this section of Criminal Procedure Law already involves a significant role of county directors of community services – and consequently significant costs to counties. We have a major stake in this issue, along with the local criminal justice systems and the State OMH and OPWDD.

The section of law being amended relates to defendants who have been determined to "lack capacity" due to mental illness or development disability to understand the charges against them and aid in their own defense at trial.

Under current law, a person deemed not competent to stand trial is ordered by the judge into the custody of the Office of Mental Health or the Office for People with Developmental Disabilities- depending on the impairment.

At that point, the state agency will admit the person to an OMH operated forensic unit or an OPWDD developmental center in order to "restore" that person to competency. Upon restoration, the person will continue the original legal proceeding.

The Executive Budget proposes to amend the Criminal Procedure Law to allow OMH or OPWDD to direct such persons to alternative settings for restoration, to include:

- a local jail with a mental health unit,
- a general hospital psychiatric unit,
- or to be treated on an outpatient basis.

Counties are required to pay 50% of the costs of a CPL 730 custody and localities collectively spend around $10 - $12 million dollars per year subsidizing the custody of CPL 730 orders in state-operated facilities.

The OMH believes that 100% cost of a county jail day is cheaper than 50% county share of state psychiatric hospital bed. We appreciate the exploration of less costly alternatives and we understand that non-institutional restoration has been successfully implemented in other states.

However, there are a several major questions that have been unanswered thus far, including A) whether this is a sound policy, and B) whether or not it would simply shift additional costs to counties.

The major considerations that the Legislature must weigh in assessing this proposal include:

1. <u>Cost liability for jail services:</u>
   The Office of Mental Health has indicated that payment for persons committed to a local jail mental health unit would be shifted entirely to localities. OMH believes that the county cost shift is still favorable to localities because 100% of a jail day is still cheaper than the current 50% county share of a state hospital bed.

   We cannot say with certainty whether this is in fact the case for all localities; and even if so – this is not a legitimate rationale for going from a 50/50 cost-sharing arrangement to a 100% county share.

   Moreover, the Conference has for years supported legislation that would only require county share of CPL 730 costs for the first thirty days of treatment. Given that it is still the state's

responsibility and authority in overseeing CPL 730 custody, there is no rational reason that localities should be held to account for costs that are completely out of their control.

2. Authority and responsibility for CPL 730 treatment:
   A second question arising from this recommendation is who will be responsible for overseeing people "committed" to restoration of competency in the additional proposed settings? Also, and no minor distinction, is who will have authority over directing treatment and determining when a person is restored to competency?

   These questions are crucial, since currently the State has both the responsibility and the authority over the course of treatment in a State facility. However, if a person will be treated in a local jail or an outpatient setting in the future - will the State continue to have authority and responsibility for this person? Will the locality have responsibility and no authority? And which local entity would be responsible for such persons- the sheriff, the local commissioner of mental health, someone else?

   There are many variables in this regard, and none are contemplated in the budget bill as currently written.

3. Will jails or providers be mandated to participate:
   A final unaddressed concern is whether a local jail, hospital, or provider will have the authority to refuse persons directed to these settings under CPL 730 orders. Either due to capacity, public safety, or other concerns, it is likely that such situations will arise and the budget language does not address this potential conflict.

   The Office of Mental Health has noted that judges will be the arbiter in determining the course of custody and/or treatment for a 730 order- and that judges would not order anything that the locality does not agree with.

   While we wish this could be the case, there is nothing in the bill that suggests that a judge needs permission from any local entity or provider prior to ordering custody and treatment in any setting. Further, as the overseer of the entire local mental hygiene system, the local director of community services should have a role in determining a person's course of treatment.

The Conference and its members have wrestled with the CPL 730 issue for years. Just last month, Senator McDonald graciously moved a bill from committee that he and Assemblyman Ortiz are sponsoring, (S.3883 – A.6147) which would limit this cost of county chargebacks to the first 30 days of a person's stay at a state facility. We thank them both for sponsoring this measure.

We hope the Legislature will continue to support us in relieving localities from these types of mandates- both in this budget measure and in the future.

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3. The OPWDD 1115 Waiver Proposal:

The budget proposes a pilot for a new 1115 waiver for people with developmental disabilities. The "People First Waiver" is an ambitious undertaking, which will allow for OPWDD to hold providers accountable for all services and supports necessary, following a person-driven and person-centered process aimed at integrating care and enhancing quality of life for people with developmental disabilities.

If successful, the People First Waiver will help break down the barriers between health, behavioral health, habilitative, housing, and other systems by making all of these options available to people with developmental disabilities under the waiver.

Given the major stake that consumers, families, providers, and the State of New York have in the 1115 overhaul, we support the piloting and careful study of this program to make sure it is truly person-centered and truly beneficial to people with developmental and intellectual disabilities.

Ultimately we hope to see better integration of healthcare, housing, employment and community support services- to allow people with developmental disabilities to lead more independent, healthy, and richer lives and we will do all that we can to ensure that this is the case.

We support integrated state mental hygiene plans but oppose the proposed amendment to Section 41.16 of Mental Hygiene Law.

The Executive Budget (Part N of the Health and Mental Hygiene Article VII bill) includes a large section that would streamline the planning process for the three mental hygiene agencies: the Office of Mental Health (OMH), the Office of Alcoholism and Substance Abuse Services (OASAS), and the Office for People for Developmental Disabilities (OPWDD).

Basically, this section proposes that instead of each agency developing their own annual planning document as in the past; that they create an integrated service plan for all three agencies. For your reference, these are called the agencies' "5.07 Plans."

This proposal reflects what counties have been doing at the local level for years. Each local governmental unit, or county, develops an integrated service plan which takes into

consideration local needs and resources and incorporates input from the local Community Services Board which has a broad membership including consumers and families. The local plans are then used by each of the three agencies to develop their statewide 5.07 plan.

We support the integration of the OASAS, OMH, and OPWDD state plans- not only does it reflect the current local planning process, but this will help lead the State toward more thoughtfully integrated care for people with multiple disabilities.

We have seen the problems facing those with co-occurring substance abuse and mental health disorders, and the difficulties for people with developmental disabilities who are dually diagnosed with a mental health condition.

We must stop allowing the barriers in regulations and admission processes to be the consumer's problem – and the integrated 5.07 plans are one step toward addressing this issue.

However, one problem with this section of the budget is that at the very end of the 5.07 planning proposal, the Executive also made an unexpected proposition to amend the section of Mental Hygiene Law that regulates local mental hygiene service plans. This specific provision [in Section 7 of Part N], would require that the local directors of aging participate in the development of the local plans.

On the face of it, this proposal seems rather benign. However, we have great concern over a state mandate to include one individual person representing one carved out demographic – older adults- in each locality in the planning process, when local planning has always been inclusive of all.

Local service plans developed under Article 41 of Mental Hygiene Law are not developed exclusively for specific demographic groups; they are created for the purpose of planning for the needs of **all populations**.

To specifically mandate the involvement of one local department dealing with one demographic group, suggests that other groups such as children, veterans, or the physically infirm have a lesser importance in the development of a local services plan.

Furthermore, there has never been any indication that any group's interests have been excluded from the local planning process or that the mental hygiene needs of the aging population are unaddressed at the local level.

The appropriate forum to address any issues is through the County Director of Community Services or the Mental Hygiene Planning Committee of the Conference that includes representatives from all of the relevant state agencies and works tirelessly throughout the year to improve local planning, and state-local cooperation in the mental hygiene planning process.

While certainly well-intentioned, we ask you, the Legislature to reject this particular provision.

Thank you for allowing us to provide testimony to you today and we are happy to take any questions you may have at this time.