

# NEW YORK STATE GAMBLING POLICIES

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*February 2000*



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**State Comptroller**

*State of New York*  
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STATE OF NEW YORK  
OFFICE OF THE STATE  
COMPTROLLER

February 4, 2000

*To the People of the State of New York:*

Faced with increased gambling over the Internet and in casinos, as well as proposals for new lottery games, New York State is on the brink of making major policy decisions about the future of gaming in the State. It is making those decisions without an overall plan, allowing expediency to crowd out good sense. Sound policy cannot be created under such circumstances. For these and many other reasons, this report calls for a moratorium on the expansion of gambling in New York State.

A moratorium will give New Yorkers the opportunity to carefully consider the issues surrounding Internet gambling and take action to address the concerns that we all have with the risks associated with ready access to adult games of chance by children and young adults. This issue has been given little attention, yet the power of the Internet will place gambling in the household of every New Yorker who owns a computer.

A moratorium will allow New Yorkers to carefully consider and take action to address the expansion of the Lottery. It does not make sense to add a Powerball game when serious concerns with the impact of existing Lottery games have yet to be addressed. For example, Quick Draw has been identified by a federal commission as the most pernicious form of gambling. In this time of fiscal prosperity, there is no need to rely on bad policy choices to raise new revenues.

A moratorium will further give New Yorkers the opportunity to carefully consider whether or not the State can afford to go forward with Indian casinos in the absence of legislative authority to effectively regulate this type of gambling, and to determine if casinos and prisons are the State's best response to local economic development concerns in our troubled upstate economy.

I believe a moratorium should remain in place until State leaders address unresolved policy issues related to gambling — the most important being how the State addresses the rise in problem gambling that will occur as new gambling opportunities take hold. State leaders must keep in the forefront of the decision-making process the fact that New York State registers above the national average in the area of problem and pathological gambling.

State leaders have many resources to resolve these issues. Last year, the National Gambling Impact Study Commission challenged states to adopt a moratorium on gambling expansion. The body of work they produced is an invaluable, practical tool for decision-makers. In addition, the 1996 Governor's Task Force on Casino Gambling set forth major policy choices before the State, highlighting concerns such as regulatory authority, dedicated funding for problem gambling treatment

and prevention, and the effects casino gambling may have on other forms of legalized gaming. Both of these important documents charge our leaders to make informed, serious choices.

For most New Yorkers, gambling is an enjoyable form of entertainment, perhaps part of a night out or a harmless chance to pick up a few bucks and boast a little. However, harmless participation in games of chance must be balanced with the needs of those individuals for whom gambling is a problem that can lead to financial and family ruin. Like alcohol addiction, gambling addiction has affected people regardless of race, gender or economic status. And, like alcohol addiction, gambling addiction can be addressed through prevention and treatment programs.

Particular emphasis needs to be placed on young people. A March 1998 survey of young people in New York State found that 75 percent had gambled in the past year, 15 percent on a weekly basis. The average age that these youths began gambling was age 12. Researchers for the National Gambling Impact Study Commission termed access to Internet gambling by youth a “danger.” Furthermore, the New York State Lottery’s advertising methods need to be constantly challenged on the issue of targeting young people.

The critical element for a successful moratorium is the creation of a focal point for leadership. Although the projected expansion of the Lottery, Internet gambling, casino gambling and other games of chance are proceeding apace, there is no comprehensive philosophical approach to gambling being discussed; nor is there any individual who is in charge of “pulling all the pieces” together.

A moratorium, productively used, can leave the State with better policies and a more secure direction for the future of gambling. The public discussions that I envision as a part of any moratorium should also leave us with a better informed and more aware public: better informed about the real trade-offs between the expansion of problem gambling and the fiscal and economic benefits that have been promised; and more aware of the need for prevention and treatment alternatives for problem gamblers and support for the family and friends of those who are afflicted.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Carl McCall", written in a cursive style. The signature is positioned to the left of a vertical line that extends downwards.

H. Carl McCall  
State Comptroller

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	1
<b>PROBLEM GAMBLING: THE NATION AND NEW YORK STATE</b> .....	6
Overview .....	6
National and State Prevalence Estimates .....	7
National Study Highlights .....	9
New York State Overview .....	12
Priority Policy Areas for Action .....	16
<b>GAMBLING POLICIES: THE NATION AND NEW YORK STATE</b> .....	23
Overview .....	23
Casinos Nationally .....	23
Casinos in New York State .....	24
Native American Casinos in New York State .....	27
Lotteries Nationally .....	34
The Lottery and Games of Chance in New York State .....	34
Convenience Gambling in the Lottery .....	38
Horse Racing in New York State .....	40
Internet Gambling .....	41
<b>ELEMENTS OF A SOUND GAMBLING PLAN FOR NEW YORK STATE</b> .....	44
A Policy Moratorium .....	44
<b>APPENDIX A</b> .....	49
<b>APPENDIX B</b> .....	51
<b>APPENDIX C</b> .....	54



## **EXECUTIVE SUMMARY**

State leaders should follow the recommendations of the National Gambling Impact Study Commission and adopt a moratorium on gambling. A moratorium will allow State decision-makers and the public the opportunity to balance the economic and fiscal benefits of gambling expansion with the increase in problem and pathological gambling that will occur. To date, the State has not given the issue of problem gambling serious attention, nor has it taken the necessary actions to manage an expansion of gambling in the State.

### **Policy Problems Plague New York State's Move to Increase Gambling**

In 1996, Congress passed legislation creating the National Gambling Impact Study Commission (NGISC). The NGISC was created to examine the social, economic and political implications of gambling, a major concern in many states around the nation, including New York.

The principal finding of the NGISC's 1999 report is that states are expanding gambling opportunities without much regard for the public welfare. Most states, including New York, are moving forward with new gambling initiatives based on the pressure to compete for investment and revenues. Consistent with the findings of the NGISC, New York State should adopt a moratorium on the expansion of gambling to ensure that as the State advances new initiatives, it does so with an overall plan and public support.

An examination of each of the principal areas of gambling in the State shows an intent to expand initiatives amid a series of significant unresolved policy issues. The failure to resolve these questions leaves the State vulnerable to: the negative impact of more problem gamblers, more lawsuits, poorly managed responses to normal industry changes, ineffective regulation, loss of public confidence and a weakened position from which to identify and capitalize on new opportunities.

### **Casino Gambling**

The area of casino gambling is beset by numerous unresolved policy issues. The implications of these issues are profound, as they have an impact not only on state government operations but also on the economic vitality of the communities where casinos may be located. Support for both Indian and commercialized gambling is grounded in job and business creation and as a potential revenue source for local and state government. These arguments are particularly strong in upstate New York — an area that has lagged the nation in job creation.

State leaders have failed to resolve the following public policy issues:

- The New York State Constitution prohibits commercialized casino gambling. Only a vote of the people can remove that prohibition. The Legislature and the Governor have not moved forward to place the issue of commercialized casino gambling before the public. Pressure is exerted in each legislative session to resurrect the issue, but no consensus has been reached.
- Several lawsuits have been initiated challenging the Governor's authority to act unilaterally on the establishment of Indian casinos. Indian casino gambling has moved forward in the State because of the existence of the federal Indian Gaming Regulatory Act. Opponents of casinos have argued that certain provisions of the Act serve to undermine the role of the Legislature and the need for a public vote on casinos in New York State.
- Regardless of how the courts decide, the State is unprepared to conduct effective oversight of casino gambling. Former Governor Mario Cuomo's counsel and Governor George Pataki's 1996 Task Force Report on Casino Gambling both pointed to a host of fundamental problems with the current delegation of authority to state agencies regarding casino gambling. A reorganization of agency responsibilities including statutory delegation of authority to a specific agency(s) is required for the efficient regulation of gambling. Such a reorganization requires legislative approval.
- The National Gambling Impact Study Commission documented numerous problems for state governments as they have attempted to implement the federal Indian Gaming Regulatory Act, including job creation, coordination and enforcement of federal and state gaming and criminal codes, regulating management of casinos, and revenue agreements.

### **Lottery**

The State raised \$1.44 billion from the Lottery in 1998-99. Individual games have declined in revenue in the past few years, pressing officials to create new games and variations on old ones. The volatility within any one game is a reflection of the tenuous nature of gambling revenue. Just as pari-mutuel betting has declined in favor of other forms of gambling like the Lottery, so an expansion of casino gambling could reduce the revenues going to the Lottery. Recent indications that the State is considering joining Powerball (a multi-state, mega lottery) represents another initiative without a clear plan.

The State's 1996 expansion of Lottery to include Quick Draw highlighted the willingness of State officials to proceed with a program solely for revenue purposes and without regard for its impact on the incidence of problem gambling. Quick Draw is a form of "convenience gambling," one of the most pernicious kinds of gambling, according to the NGISC. When Quick Draw was reinstated in the

1999-00 Budget, it was done without the benefit of a mandated evaluation of the impact of Quick Draw on problem gambling. The study that was completed and released after the Legislature re-authorized the program was poorly presented. The untimely release and poor quality of the evaluation sent a clear message that problem gambling is not seen as a serious concern. Although recent actions by the Legislature and the Executive are moving to correct the poor quality of the first study, the basic message remains.

### **Internet and Crossover Gambling**

The NGISC called for a federal prohibition on Internet gambling. It cited the particularly high risk of abuse by young people, problem gamblers and criminal elements. As this paper documents, the Attorney General has successfully fought the expansion of gambling over the Internet to New York residents because the gambling form did not comply with State laws. Capital District OTB is poised to offer betting on horse races over the Internet to people in other states. Other forms of gambling are likely to be offered from other states and countries, and the State is moving to exploit such opportunities. There has been no effort to develop an Internet gambling policy at the State level and no leadership to help State residents decide if a prohibition should be supported by New York State. A coherent direction is needed as new federal laws evolve.

Similarly, race tracks have been looking to benefit from crossover gambling by placing video slot machines at race tracks or creating broader entertainment packages as envisioned by the addition of casino gambling at the Monticello Raceway. These initiatives are being considered in order to reverse declining interest in pari-mutuel betting.

There are also overarching concerns that require State leaders to look not only at the specific issues involved with any individual gambling initiative, but also at the impact of each game on the viability of all games. As the State has become more involved with various forms of gambling, it has become clear that specific gambling industries rise and fall over time. The pari-mutuel industry has been in a state of decline for several years and, while Lottery continues to meet its budget targets, revenue declines continue to drive program changes. While casino gambling and other attempts to shore up these other forms of gambling promise new revenue, at some point New York's gambling initiatives as a whole face the prospect of diminishing returns.

### **Problem Gambling Needs Direct Attention**

For most New Yorkers, gambling is an enjoyable form of entertainment. For others, gambling is a problem that can lead to financial and family ruin. Like alcohol addiction, gambling addiction has affected people regardless of race, gender or economic status. And, like alcohol addiction, it is a problem that can be addressed through prevention and treatment programs.

Research on this topic suggests that New York State decision-makers must pay more attention to the prevalence of problem and pathological gambling in New York State:

- New York State registers above the national average in the areas of problem and pathological gambling. 7.3 percent of the State's population will experience a problem with gambling during their lifetime. For the nation as a whole, the number is 2.7 percent.
- Between 1986 and 1996, the prevalence of problem gambling increased by 74 percent in New York State.
- There are a minimum of 328,000 New York State residents aged 18 or over who are currently experiencing difficulties related to gambling. At a minimum, 118,000 of these individuals have problems severe enough to require treatment.
- 14 percent of New York's youths ages 13-17 are at risk of developing problems with gambling, and 2.4 percent are currently experiencing severe difficulties.

The State's efforts to address problem gambling do not meet the test of sound public policy. Despite the recommendation of the 1996 Governor's Task Force on Casino Gambling to expand funding for prevention and treatment of problem gambling, New York's funding effort has been essentially flat since fiscal year 1995-96.

### **Recommendations: A Policy Moratorium**

This call for a policy moratorium on gambling in New York State is designed to prevent the State from moving too far, too fast. With the rise of the Internet, the move to locate casinos in New York State communities and the introduction of Quick Draw, the stakes for state and local government and State residents have increased exponentially.

The critical element for a successful moratorium is the creation of a focal point for leadership within the administration. Although the projected expansion of the Lottery, Internet and casinos pose a series of challenges for the State, there is no overall plan or organization that is in charge of "pulling all the pieces" together. A moratorium would help New York State to:

#### **1. Settle issues related to casino gambling consistent with the public interest.**

Legislators and the Governor need time to focus on the full range of questions related to casino gambling and how they should be addressed in the context of all other gambling initiatives. It would also allow the State time to create a fully comprehensive program for the prevention and treatment of problem gambling.

## **2. Set a course for the future of the Lottery.**

Lottery and other State officials need an opportunity to think clearly about the implications for Lottery games as the State expands other forms of gambling. The State would be able to streamline Lottery operations to maximize realistic revenue streams. Further, it can be an opportunity to devise a set of marketing guidelines that discourage young people from gambling and encourage responsible participation in the Lottery's games of chance. A moratorium would also allow the Legislature the opportunity to digest and act, if necessary, on the results of the Quick Draw study being done by the Office of Mental Health.

## **3. Plan and coordinate any initiatives related to Internet and crossover gambling.**

We are in the early stages of the Internet's impact on gambling. The federal government will need to be a partner with the states in this area. A moratorium would allow State leaders the time to focus on federal legislation in this area, and to develop State legislation to address the issue.

## **4. Increase funds for treatment and prevention.**

New York must increase the funding available for the treatment and prevention of problem gambling. It needs to do this in direct relation to the type of gambling it approves and the intensity with which it goes forward. A moratorium affords State leaders the opportunity to decide how and at what level prevention activities should be funded and what kind of treatment programs should be supported.

## **5. Restrict access to gambling for young people.**

According to the National Gambling Impact Study Commission, early-age gambling leads to a high lifetime risk of developing problem gambling. A moratorium would allow the State to develop a comprehensive uniform policy on adolescent gambling.

# PROBLEM GAMBLING: THE NATION AND NEW YORK STATE

## Overview

Problem gambling directly and indirectly affects millions of Americans and New York State residents. In addition to as many as 6 million Americans and more than one-quarter million New Yorkers sick and suffering from gambling-related problems, millions of other citizens are adversely affected by such gamblers' activities. Further, gambling problems have widespread impacts from individuals to families, to the workplace, to the public and private sectors, to society as a whole. Such difficulties, ranging from financial in scope (e.g. bankruptcy, loan defaults, and credit card fraud) to treatment related issues (e.g. lack of professional treatment, absence of health insurance coverage and high incidence of co-addictive disorders)<sup>1</sup> are also presenting new and ongoing challenges to local, state and national governments.

Although pathological gambling was first recognized as a psychiatric disorder in 1980 by the American Psychiatric Association (APA), the seriousness of this condition has yet to receive the level of public attention necessary to push local and state governments into providing sufficient avenues for prevention, education and treatment. In fact, recent initiatives, including those at the federal and state levels, are providing the impetus for government officials and regulatory authorities, as well as gambling industry operators, to take notice and action in response to the expansion of gambling opportunities and resulting impacts.

In 1996, President Clinton and Congress responded to the urgent need for more information about gambling's impact on people and places by mandating the National Gambling Impact Study Commission (NGISC). The NGISC's charge, to be completed within a two-year period, was to "conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States."<sup>2</sup> A specific goal of the NGISC's research was to provide reliable, solid numbers on the prevalence of problem and pathological gambling in the national population and to better define the behavioral and demographic characteristics of gamblers in general.<sup>3</sup> The only previous national prevalence study was completed in 1975 by the Commission on the Review of the National Policy Toward Gambling, five years prior to the APA's development of diagnostic criteria for pathological gambling.

In completing its mission, the NGISC contracted with the National Opinion Research Center (NORC) at the University of Chicago<sup>4</sup> to conduct a national survey of gambling impacts and behavior which

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<sup>1</sup> Laura M. Letson, "Problem and Pathological Gambling: A Consumer Perspective", *CNS Spectrums - The International Journal of Neuropsychiatric Medicine*, Volume 3, Number 6, June 1998, pp. 49-57.

<sup>2</sup> National Gambling Impact Study Commission, *Final Report to the President, Congress, Governors and Tribal Leaders*, June 18, 1999, Executive Summary, p.2.

<sup>3</sup> *Ibid*, p.4-5

<sup>4</sup> The National Opinion Research Center collaborated with Gemini Research, The Lewin Group, and Christiansen/Cummings Associates in doing the survey.

included questions on problem gambling. The NGISC further contracted with the National Research Council (NRC)<sup>5</sup> of the National Academy of Sciences for the purpose of conducting a thorough review of the available literature on the impacts of pathological gambling. It is worth noting the confusion sometimes generated by the very acronyms of the two organizations with which the NGISC contracted. It is also important to note that the NORC effort was wider ranging and looked at positive and negative impacts associated with all types of gambling while the NRC was asked to look only at the impacts of the pathological gambling disorder.

Also during 1996, under contract with the New York State Office of Mental Health, the New York Council on Problem Gambling (NYCPG) initiated and funded a study that examined the extent of gambling and problem gambling in New York State and compared the findings to an earlier study conducted in 1986. The study, *Gambling and Problem Gambling in New York: A 10-Year Replication Survey, 1986 To 1996*, was conducted by Dr. Rachel Volberg of Gemini Research.<sup>6</sup> The primary purposes of the study were to examine changes in the prevalence of gambling-related problems among adults in New York during the 10-year period and to identify the types of gambling causing the greatest difficulties for the citizens of New York.<sup>7</sup>

### **National and State Prevalence Estimates**

The national prevalence figures for problem and pathological gambling reflected in this report include the findings from the National Research Council (1999) and the National Opinion Research Center (1999). On a state level, this report relies on data from the 1996 prevalence study completed by the New York Council on Problem Gambling.

Tables 1 and 2 provide problem and pathological gambling prevalence data for the nation and New York State in whole numbers and as a percent of the population at large. The use of the term “problem gambling” in this context of reporting *total* prevalence figures, refers to a range of individuals experiencing a continuum of gambling related difficulties (i.e. pathological gamblers and those falling short of diagnostic criteria).

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<sup>5</sup>National Research Council, *Pathological Gambling: A Critical Review*, National Academy Press, Washington D.C., April 1999. This report reviewed, analyzed and summarized the full range of contemporary research on pathological and problem gambling. It was presented to the National Gambling Impact Study Commission and prepared by the joint efforts of the Committee on the Social and Economic Impact of Pathological Gambling, Committee on Law and Justice, Commission on Behavioral and Social Sciences Behavior, and the National Research Council.

<sup>6</sup> Dr. Volberg is a renowned expert in the problem gambling field and is also co-author of the prevalence study completed by the New York State Office of Mental Health in 1986. Dr. Volberg is also one of the lead authors of the NORC report to the National Gambling Impact Study Commission.

<sup>7</sup> Rachel A. Volberg, “Gambling and Problem Gambling in New York: A 10-Year Replication Survey, 1986 to 1996”, *Report to the New York Council on Problem Gambling*, 1996, Executive Summary, p. vi.

**TABLE 1**

**National Data:**

Prevalence Category	NRC <sup>8</sup>		NORC <sup>9</sup>	
Lifetime Rate of Pathological Gambling	1.5%	3 million	1.2%	2.5 million
Lifetime Rate of Problem Gambling	3.9%	7.8 million	1.5%	3 million
<b>Combined Lifetime Prevalence Rate</b>	<b>5.4%</b>	<b>10.8 million</b>	<b>2.7%</b>	<b>5.5 million</b>
Current Rate of Pathological Gambling	0.9%	1.8 million	0.6%	1.2 million
Current Rate of Problem Gambling	2.0%	4 million	0.7%	1.4 million
<b>Combined Current Prevalence Rate</b>	<b>2.9%</b>	<b>5.8 million</b>	<b>1.3%</b>	<b>2.6 million</b>

**TABLE 2**

**New York State Data:**

Prevalence Category	NYCPG Study <sup>10</sup>	
Lifetime Rate of Pathological Gambling	2.6%	257,000 - 457,000
Lifetime Rate of Problem Gambling	4.7%	512,000 - 778,500
<b>Combined Lifetime Prevalence Rate</b>	<b>7.3%</b>	<b>769,000 - 1,235,500</b>
Current Rate of Pathological Gambling	1.4%	118,000 - 266,000
Current Rate of Problem Gambling	2.2%	210,000 - 394,000
<b>Combined Current Prevalence Rate</b>	<b>3.6%</b>	<b>328,000 - 660,000</b>

These numbers, provided by the National Research Council, the National Opinion Research Center and the New York Council on Problem Gambling, clearly indicate that problem and pathological gambling affects millions of Americans and thousands of New York State residents. It is also important to note that when comparing New York’s data with prevalence studies conducted elsewhere throughout the United States, New York has the highest percentage of lifetime problem gambling prevalence and the second highest rate of current prevalence in comparison to states having

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<sup>8</sup>NGISC, p. 4-5 and NRC, p. 72-76. (Data based upon a meta-analysis of 18 surveys among adults in the general population in the United States between 1989 and 1996.)

<sup>9</sup>NGISC, p. 4-5 and NORC, p. 25. (Data based upon a national telephone survey of 2,417 adult respondents, supplemented with data from on-site interviews with 530 patrons of gambling establishments.)

<sup>10</sup>Volberg, “Replication Survey,” p. 18. (Data based upon a statewide telephone survey of 1,829 respondents, 18 years of age and older.)

similar studies conducted. New York's data also documented a 74 percent increase in problem gambling prevalence between the ten-year period of 1986 and 1996.

As data from the national and state studies do not reflect the millions of persons adversely affected by the gambler's activities (e.g. family members, significant others, friends or others), to properly place these numbers in context it is necessary to look at the impact problem and pathological gamblers have on the greater society.

## **National Study Highlights**

### **Comparison of National Studies**

The last national survey of gambling behavior conducted in 1975, and published the following year by the Commission on the Review of the National Policy Toward Gambling, reviewed participants' lifetime and past-year gambling behavior. The 1999 NORC study noted the following:

*“In 1976, when the Commission on the Review of the National Policy Toward Gambling issued its final report, only 13 states had lotteries, 2 states (Nevada and New York) had approved off-track wagering, and there were no casinos outside of Nevada. The gaming industry has grown tenfold since the “Review” Commission sponsored this first national survey on gambling behavior in the United States in 1975. Today, a person can make a wager of some sort in every state except Utah, Tennessee, and Hawaii, 37 states have lotteries, 21 states have casinos, and slightly more have off-track betting. Furthermore, between 1976 and 1997, revenues from legal wagering in the United States grew by nearly 1,600 percent and gambling expenditures more than doubled as a percentage of personal income.”<sup>11</sup>*

The NORC study further identified the following changes in gambling behavior:<sup>12</sup>

- The widespread increase in gambling opportunities has influenced gambling behavior in that adults are gambling more often and with more money than ever before.
- Since the 1975 survey, the ratio of adults who have never gambled has dropped from one out of three to one out of seven.
- Gambling patterns among women have grown more like gambling patterns among men.
- Gambling expenditures have increased from 0.30 percent of personal income to 0.74 percent of personal income.

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<sup>11</sup> NORC, p. 3.

<sup>12</sup> NORC, p. iii.

- Lotteries and casinos are now the most common forms of gambling. The proportion of adults who played the lottery in the past year has doubled to about one adult in two, and the proportion who gambled in a casino in the past year has more than doubled, to one adult out of four.
- Past-year bingo has declined by two-thirds and past-year horse race betting has declined by 50 percent.

### **A National Portrait of Problem and Pathological Gamblers**

Problem and pathological gambling transcends the marketplace and does not discriminate based upon a person's age, gender, ethnicity, education or income. Impacts, varying from minor to severe, were documented in the recent NORC study, confirming that each year problem and pathological gamblers in the United States cost society approximately \$5 billion. The study further documented that an additional \$40 billion is expended in costs for productivity reductions, social services and creditor losses over the duration of problem and pathological gamblers' lives.<sup>13</sup> This figure does not however, include the costs of divorce and family disruption associated with problem and pathological gambling, which is difficult to quantify.

As with any compulsive or addictive behavior, there are certain predictors and indicators that identify individuals with a problem, or at risk of a problem. Many of the following indicators are a consequence of the disorder:<sup>14</sup>

- Pathological and problem gamblers are more likely than other gamblers or non-gamblers to have been on welfare, declared bankruptcy, or to have been arrested or incarcerated.
- Pathological and problem gamblers are much more likely than low-risk gamblers to gamble for the excitement, to have been troubled by mental or emotional problems including manic symptoms and depressive episodes, and to have received mental health care in the past year.
- Pathological gambling is found proportionately less often among people who are over 65, college graduates, and in households with incomes over \$100,000 a year; however, college graduates are more likely to be at-risk gamblers than those at other education levels.

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<sup>13</sup>NORC, p. 53.

<sup>14</sup> NORC, p. 24-29.

- Pathological, problem, and at-risk gambling are proportionately higher among African Americans than other ethnic groups, although African Americans still represent a minority of all pathological gamblers.
- The availability of a casino within 50 miles (versus 50 to 250 miles) is associated with double the prevalence of problem and pathological gamblers.
- While 29 million adults have never gambled, approximately 148 million people are low-risk gamblers and 15 million are at-risk of developing problems due to gambling.
- Pathological and problem gamblers, who represent about 2.5 percent of adults, account for 15 percent of casino, lottery, and pari-mutuel receipts.
- Based upon the patron survey alone, consisting of 530 gambling establishment patrons, 8.8 percent of casino customers were problem (3.4 percent) and pathological gamblers (5.4 percent), 9.2 percent of lottery patrons fell within this category (5.5 percent pathological and 3.7 percent problem) and a “remarkable” (emphasis used by NORC) 39 percent of race track patrons were defined as problem (14 percent) and pathological (25 percent) gamblers.

Finally, the report concluded that at least 5 percent, and more likely 15 percent, of gambling revenues are due to problem and pathological gamblers. These figures well exceed the percentage of problem and pathological gamblers in the general population and indicate that this population seems accustomed to a high level of fantasy about the games they play.<sup>15</sup>

### **Adolescent Gambling**

Youths, 16 and 17 years old, gamble less often and differently from adults, primarily betting on private and unlicensed games, especially betting on games of skill (card games in particular), sports pools and instant lottery tickets. Based upon a NORC telephone survey of 534 adolescents ages 16 through 17, the estimated prevalence of pathological and problem gamblers combined was 1.5 percent. As this estimate was based upon responses by youth who reported they had lost \$100 or more in a single day or as a net yearly loss, when this financial limitation was removed, the percentage increased to about 3 percent with at-risk gamblers rising to 15 percent.<sup>16</sup>

While the rates of problem and pathological gambling among 16- and 17-year-olds are similar to those for adults, the rate of at-risk gambling is approximately double the adult rate.<sup>17</sup>

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<sup>15</sup> NORC, p. 32.

<sup>16</sup> NORC, p. 59-60.

<sup>17</sup> For a more detailed discussion of why adolescents are more at-risk than adults, see NRC study, pp. 84-94.

## New York State Overview<sup>18</sup>

In 1996, the New York Council on Problem Gambling (NYCPG) initiated and funded a study that examined the extent of gambling and problem gambling in New York State in 1996 and compared the findings to an earlier study completed in 1986. The study, *Gambling and Problem Gambling in New York: A 10-Year Replication Survey, 1986 To 1996*, was conducted by Dr. Rachel Volberg of Gemini Research.

According to the NYCPG study, by 1996, OTB had grown to include simulcasting, as well as teletheaters. In addition to Atlantic City, there were casinos in Montreal, Canada, Connecticut (Foxwoods) and Central New York (Turning Stone). The Lottery had expanded to include instant “scratch-off ticket” games as well as Quick Draw, a rapid-play Keno-style game available in thousands of outlets around the State.

The New York Council on Problem Gambling is a not-for-profit independent corporation, under contract with the State Office of Mental Health.<sup>19</sup> The NYCPG’s mission is dedicated to increasing public awareness about problem and compulsive gambling and advocating for support services and treatment for persons adversely affected by gambling. NYCPG operates the State’s 24-hour problem gambling Helpline in addition to evaluating State-funded problem gambling programs; training health care professionals to assess and treat individuals; assisting government, industry and others in establishing responsible problem gambling programs and policies; and sponsoring/conducting research. The Helpline’s primary purpose is to provide supportive intervention, information on gambling addiction and referral assistance to local self-help and professional treatment organizations.<sup>20</sup>

According to the NYCPG’s 1998 Annual Report,<sup>21</sup> the Helpline received 3,819 calls in 1998, an increase of 12 percent from the previous year. More than 20 percent of the calls received were placed by persons calling in the midst of a gambling crisis (21.7 percent). The nature of the crisis most identified by respondents was: (1) substantial loss, (2) overextended debt, and (3) relationship issues.

Of the 2,774 callers identifying their place of residence, nearly half of the calls were received from downstate residents (49.4 percent) with the highest percentage of contacts coming from the counties of Kings (10 percent), Queens (9.1 percent), New York (8.6 percent), Nassau (6 percent), and Westchester (4.4 percent). Upstate, the largest number of calls received by the Helpline were from Erie (2.7 percent), Monroe (2.5 percent), and Albany (1.9 percent) counties.

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<sup>18</sup> Volberg, “Replication Survey”, p. 1.

<sup>19</sup> For additional information on the NYCPG’s structure, funding and programs, see their annual reports beginning in 1996.

<sup>20</sup> The NYCPG maintains a neutral stance on gambling, is governed by a volunteer Board of Directors and is an affiliate of the National Council on Problem Gambling.

<sup>21</sup> Op. cit., p. 6.

The majority of calls received were from the gamblers themselves (64.7 percent) and of the callers identifying themselves as the gambler, 78.3 percent were male. Of the 2,329 contacts responding to the question inquiring about the primary gambling problem, the top four responses were casino gambling, State-sponsored lottery games, sports betting, and horse racing.

Helpline statistics were also consistent with the findings of the NYCPG's 1996 prevalence study which revealed that casino gambling, State-sponsored lottery games and sports betting were among the top three forms of gambling presenting the greatest risk to New York's adult population.

While these numbers solidify the importance for policymakers and others to be attentive to and concerned with the impacts of problem and pathological gambling on State residents, the findings from the NYCPG's 1996 and 1998 prevalence studies among adults and adolescents respectively, further supported this outstanding and ongoing need.

### **Replication Study Highlights**

The NYCPG 1996 prevalence study among adults was a replication of the survey completed in 1986 by the State Office of Mental Health. The 1986 survey assessed lifetime gambling and problem gambling in the State. At that time, legal gambling consisted of charitable bingo, horse racing, Off-Track-Betting (OTB), and the Lottery. New York residents also had easy access to casino gambling in Atlantic City, New Jersey. Major differentials identified between this ten-year period include:<sup>22</sup>

- In 1996, 4.7 percent of the respondents scored as lifetime problem gamblers and 2.6 percent as lifetime probable pathological gamblers. In 1986, 2.8 percent of respondents scored as lifetime problem gamblers and 1.4 percent as lifetime probable pathological gamblers. Overall, this represents a significant increase (74 percent) in problem prevalence within the ten-year period.
- In 1986, while the majority of lifetime problem and pathological gamblers were men, in 1996, current problem and pathological gamblers are just as likely to be women.
- Problem gamblers in 1996 are significantly more likely to have graduated from high school and to have annual household incomes over \$25,000 than respondents in the 1986 sample.
- In 1986, eight out of ten respondents in New York acknowledged participating in one or more types of gambling in their lifetimes. In 1996, nine out of ten respondents acknowledged participating in a gambling activity. Lifetime participation in 1996 is highest for the Lottery, charitable wagering and casino gambling.

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<sup>22</sup> Volberg, "Replication Survey," Executive Summary, pp. vi-vii.

- Comparison of the 1986 and 1996 studies shows significant increases in participation in Lottery play and casino gambling. There are significant decreases in participation for bingo and wagering on dice games.
- The lifetime prevalence rate (7.3 percent) in New York is higher than in any other state while the current prevalence rate (3.6 percent) in New York is higher than in any other state except Louisiana.
- More than three-quarter million New York residents have had serious to severe problems due to gambling at some point during the course of their lives (i.e. “lifetime prevalence”). While there are 328,000 residents aged 18 or over who are currently experiencing such difficulties, it is estimated that, at a minimum, 118,000 of these individuals are encountering severe difficulties that require treatment.
- In 1996, the three forms of gambling presenting the greatest risk to New Yorkers were casino gambling, State-sponsored lottery games and sports betting.

### **A State Portrait of Problem and Pathological Gamblers<sup>23</sup>**

In reviewing the New York State portrait for problem and pathological gamblers, similarities, as well as differentials with the national prevalence study can be identified.

- Men in New York estimate that they spend twice as much money on gambling as women, while respondents between the ages of 21 and 29 assess that they spend significantly more than older respondents. Caucasian respondents in New York estimate that they spend more on gambling than non-Caucasian respondents and never married, separated and divorced respondents spend more than married respondents. Unemployed respondents spend slightly more than working respondents and both of these groups spend more than respondents who are retired, going to school or keeping house.
- Lifetime problem gamblers in New York are significantly more likely than other respondents to be male, under the age of 30, non-Caucasian and unmarried. Current problem gamblers are even more likely than lifetime problem gamblers to have low education and income and are just as likely to be men as women.
- Problem gamblers in New York are most likely to gamble weekly on Lottery games, Quick Draw and sports. Problem gamblers spend the most on casinos, sports and pari-mutuel wagering. Problem gamblers are also more likely than non-problem gamblers to spend six or more hours gambling at a time, to have lost \$1,000 or more in a single day and to travel 60 or more miles to gamble.

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<sup>23</sup> Ibid.

- Problem gamblers are more likely than non-problem gamblers to use alcohol, tobacco and marijuana on a weekly basis, and typically to have five or more drinks in a day. They are also more likely to have felt somewhat or very unhappy as well as depressed or anxious most of the time in the past 12 months.
- Problem gamblers are significantly more likely to incur debts in order to get money to gamble or to pay gambling debts (e.g. charge credit cards to the limit, secure second mortgage or home equity loan, or cash in life insurance policy).
- Prevalence rates are lower for legal types of gambling such as the Lottery, casinos, bingo and horse racing. The one exception is Quick Draw, the video Keno game operated by the New York State Lottery. The prevalence of lifetime problem and pathological gambling for Quick Draw is closer to prevalence rates for illegal types of gambling such as wagering on card games and sports than to prevalence rates for legal types of gambling in New York State. All of the types of gambling associated with higher prevalence rates in New York can be classified as continuous forms of gambling, with rapid cycles of stake, play and determination.
- Research shows that the prevalence of problem gambling is higher in jurisdictions where legalized gambling has been available for longer periods of time and where the population is ethnically heterogeneous.
- The survey in New York has identified an increase in the prevalence of problem gambling that does not appear to be related to the introduction of one specific type of gambling but, rather, to the expansion of opportunities to gamble regionally.

### **Adolescent Gambling**

A recent study, *Gambling and Problem Gambling Among Adolescents in New York*,<sup>24</sup> was the first of its kind in New York State. The study's main purpose was to examine the prevalence of gambling-related problems among adolescents in New York and further to identify the types of gambling causing the greatest difficulties for adolescents. Following are highlights of the findings:

- The study revealed that 14 percent of New York's youth aged 13-17 are at risk of developing problems due to gambling and 2.4 percent are currently experiencing severe difficulties. That translates into as many as 193,000 adolescents at risk and

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<sup>24</sup>Rachel A. Volberg "Gambling and Problem Gambling Among Adolescents in New York," *Report to the New York Council on Problem Gambling*, March 1998. (Data based upon telephone survey of 1,103 adolescents, ages 13-17).

41,000 who already are problem gamblers (i.e. the most severe classification among the adolescent population).

- Despite the legal gambling age of 18 in New York State, with the exception for bingo, nearly one-third of survey respondents indicated they have been able to purchase lottery tickets, 9 percent have been able to wager at horse races, 6 percent have been able to participate in Quick Draw, and 5 percent have been able to gamble at a casino.
- The three forms of gambling presenting the greatest risk to New York's adolescent population are games of skill (e.g. playing basketball or pool), State-sponsored lottery games, and, sports betting.
- There is concern that lottery gambling may be an experience that encourages young people to engage in other, less broadly sanctioned types of gambling as well as in other risk-taking behaviors, such as illicit drug use. A significant increase in lottery play by age was identified among New York adolescents. The increase in lottery play is correlated with increases in other types of gambling and in the use of alcohol, tobacco and marijuana.
- Adolescent problem gamblers are significantly more likely to have problems with family members or friends due to gambling, to have neglected their obligations for two or more days in a row, to have had trouble at school or work or to have skipped school or work. They are also more likely to have shoplifted, sold drugs or engaged in other illegal activities to get money to gamble or to pay gambling debts.
- Seventy-five percent of survey respondents indicated they had gambled in the past year and 15 percent on a weekly basis. The study also revealed that the average age that respondents began gambling was 12 and that adolescents who have gambled are most likely to have started with friends or parents.

### **Priority Policy Areas for Action**

If New York State is to mitigate the numbers of new problem gamblers in the State, as well as provide help for the existing at-risk and pathological (i.e. compulsive) gambling populations, sound public policies are needed. There are three policy areas that would benefit from immediate action: raising the legal age to play bingo, restricting Lottery promotions aimed at youth, and strengthening funding for problem gambling treatment, prevention, education and research programs.

## **Legal Bingo Age**

Unlike any other gambling activity in New York State, bingo can be played by persons under the age of 18 if they are accompanied by an adult.<sup>25</sup> New York's General Municipal Law, Article 14-H, section 486 states:

*“No person under the age of eighteen years shall be permitted to play any game or games of bingo conducted pursuant to any license issued under this article unless accompanied by an adult.”*

Thirty-eight states allow bingo; nine follow the same guidelines as New York, and two, Maine and Maryland, have the legal bingo age set at 16. The remaining states have the legal age set at 18 and above.

Beginning gambling at an early age increases the likelihood that the adult will have a gambling problem. The NGISC stated, “available evidence indicates that individuals who begin gambling at an early age run a much higher lifetime risk of developing a gambling problem.”<sup>26</sup>

The NGISC recommended “that all legal gambling should be restricted to those who are at least 21 years of age and that those who are under 21 years of age should not be allowed to loiter in areas where gambling activity occurs.”<sup>27</sup> The NRC report, *Pathological Gambling: A Critical Review*, submitted to the NGISC found “the proportion of pathological gamblers among adolescents in the United States could be more than three times that of adults.”<sup>28</sup>

## **Lottery Promotions Aimed at Youth**

Underage gambling is a problem in New York: “...despite restrictions on underage gambling in New York, 75 percent of adolescents in the March 1998 survey indicated they have gambled in the past year. One-third of the respondents reported that they had been able to purchase lottery tickets.”<sup>29</sup>

In June 1999, the New York Council on Problem Gambling was critical of the Lottery for utilizing newly developed relationships with Hollywood's Warner Bros., Monty Hall, and others to link State-sponsored lottery games to an upcoming movie and a popular television show. The Council called upon the Legislature to review the Lottery's role in linking its games to casino gambling in Las Vegas, as well as to popular movies or television programs geared toward persons under 18. The

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<sup>25</sup> Every other form of legalized gambling in New York State, including the Lottery, pari-mutuel wagering, charitable games of chance, and casinos, requires a legal age of 18 to participate.

<sup>26</sup> NGISC, p. 4-12.

<sup>27</sup> Ibid, p. 3-13.

<sup>28</sup> NRC, p. 89.

<sup>29</sup> Volberg, “Adolescents,” Executive Summary

NYCPG asserted that the new *Wild Wild West* lottery ticket was based upon the upcoming release date of the PG-13 movie and that the Lottery's "Let's Make a Deal" games were tied to a land-based casino establishment in Las Vegas when such gambling is prohibited in New York on non-native American territories.<sup>30</sup> (See Appendix C for instant "scratch-off ticket" game examples.)

As a means of advertising lottery games and its linkage to education, the Lottery utilizes a made-over school bus to carry its message to residents throughout the State. However, the presence of such a bus on the road or parked in prominent locations, which is typically associated with the transport of children, clearly links the message of the Lottery which is gambling and education to children and the general public. Identifying the inappropriate use of this advertising means, Assemblymember Sam Hoyt issued a March 1998 press release demanding the termination of the school bus.<sup>31</sup> To date, such promotion continues.

The issue of Lottery advertising is not a new one in New York State. As recently as 1996, Governor Pataki responded to critics and ordered the Division of the Lottery to end its "All it takes is a dollar and a dream" ad campaign, as well as Quick Draw advertisements. The Governor said, "the Lottery's advertising campaign would be to try to sell more tickets by showing New Yorkers how the lottery goes to helping education."<sup>32</sup> Former Lottery Director Jeff Perlee stated, "We'd come to the conclusion that the lottery had lost its way."<sup>33</sup> Critics of the Lottery's advertising methods, including the New York Council on Problem Gambling, applauded the Governor's actions.<sup>34</sup>

Lottery advertising was a very important issue for the NGISC, especially if the advertisements were even remotely directed at children. "Betting on a miracle is not the formula for success we usually teach to our children. Indeed, one straightforward test of the acceptability of the message might be to imagine using the lottery ads in the public school curriculum. Few school boards across the country would endorse teaching children lessons such as 'Play your hunch. You could win a bunch'."<sup>35</sup>

The NGISC found that the style and aggressiveness of advertising varied widely among the 37 states with lotteries. But some states, including Virginia, Minnesota and Wisconsin, do have explicit

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<sup>30</sup> New York Council on Problem Gambling, "Before Legalizing Casinos, Council Urges State Officials to Protect Children from Becoming Victims of Public Policy", Press Release, June 10, 1998.

<sup>31</sup> Sam Hoyt, "Hoyt Demands End to Lottery School Bus", New York State Assembly, Press Release, March 25, 1998.

<sup>32</sup> Tom Precious, "Lottery Ads Stop Selling the Dream," Albany *Times-Union*, July 24, 1996.

<sup>33</sup> Ibid.

<sup>34</sup> New York Council on Problem Gambling, "Council on Problem Gambling Welcomes 'Quick Draw' Ad Change, Lauds New York Racing Association on Public Service Help at Tomorrow's Belmont Stakes," Press Release, June 7, 1996.

<sup>35</sup> Charles T. Clotfelter, P. J. Cook, J. A. Edell, and M. Moore, *State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission*, Duke University, April 23, 1999, p. 21.

restrictions on advertising content including advertising directed at minors. For example, Indiana has the following advertising creative code of conduct:

*“Commercials will treat the talent, players, and customers with class and dignity. No children will be used in advertising nor will advertising be directed towards them. The lottery will not be promoted as an alternative to work and terms like checking account, savings account, and references to financial institutions will be avoided. Ads will be careful not to sell the dream of a “way out” of their current financial situation or flash big signs of extreme wealth.”*<sup>36</sup>

The North American Association of State and Provincial Lotteries (NASPL), of which New York State is a member, approved a list of advertising standards for their members on March 19, 1999. According to the NASPL, its members will conduct their advertising and marketing practices in accordance with the provisions of the standards. Among the provisions dealing with minors are the following:<sup>37</sup>

*“Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.”*

*“Celebrity or other testimonials should not be used that would primarily appeal to persons under the legal purchase age.”*

The NGISC recommended “that all relevant government gambling regulatory agencies should ban aggressive advertising strategies, especially those that target people in improvised neighborhoods or youth anywhere.”<sup>38</sup>

A survey commissioned by the Consumer Federation of America and Primerica asked “[what is your] best chance to obtain half a million dollars or more in your lifetime?” Twenty-seven percent responded that winning a lottery was their best chance. For those with incomes below \$35,000, more thought winning a lottery was more promising than saving and investing a portion of their income. For households with incomes of \$25,000 to \$35,000, 41 percent chose a lottery. For those with incomes of \$15,000 to \$25,000, 45 percent chose a lottery.<sup>39</sup>

Lotteries have choices in the way they advertise, market, and promote their products. Does the New York State Lottery ask itself these questions: “How heavy should advertising be? Should it be coordinated with times of the day and week, or focused on the media to maximize its impact on sales,

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<sup>36</sup> Ibid, p. 15

<sup>37</sup> NGISC, p. 3-23.

<sup>38</sup> Ibid, p. 3-18.

<sup>39</sup> Consumer Federation of America and Primerica, “Typical American Household Has Net Financial Assets of \$1,000,” Press Release, October 28, 1999.

no matter what groups end up being targeted? Should there be any limits on the themes used in making the appeal?"<sup>40</sup> New York State must ask if the increase in revenues is worth the long-term consequences of enticing people to gamble.

### **Funding Treatment, Prevention, Education and Research**

The federal government's role in funding for problem and pathological gambling has been one of research rather than actual dollars for treatment, prevention and education. The federal government funded three studies in the last 25 years: the 1975 prevalence study by the Commission on the Review of the National Policy Toward Gambling, the National Institute of Mental Health's prevalence rates in selected states from 1988 to 1990, and the current National Gambling Impact Study Commission's efforts.

The NGISC looked very briefly at state funding for problem gambling and found that state efforts primarily focus on education, prevention and treatment, not research. Most states contribute to non-profit organizations that deal with problem and pathological gambling. NGISC noted that state efforts are small when compared to funding for other mental health and substance abuse services and even smaller when compared to what states take in from legalized gambling activities. Amounts appropriated by states for problem gambling ranged from \$100,000 to \$1.5 million annually, although most states are on the low end of the range.

To provide a meaningful perspective for the money allocated for problem and pathological gambling, the National Council on Problem Gambling (NCPG, of which the NYCPG is one of more than 30 affiliates) reports the combined resources to treat gambling disorders by states. In 1998, such resources were recorded as slightly below \$20 million, which reflects a mere .01 percent of the total \$18.5 billion states received from legalized gambling revenues.

New York was one of the first states to fund treatment services for problem gamblers, however, New York spends just \$.09 per capita addressing gambling disorders. These services reach only a fraction of the thousands of New York residents with severe gambling related difficulties. Comparatively, Delaware spends \$1.37 per capita; Iowa, \$1.05; Oregon, \$0.79; Minnesota, \$0.48; Connecticut, \$0.36; and Massachusetts, \$0.18.<sup>41</sup>

The amount spent on services to assist persons with gambling problems in New York State is small, compared to over \$1 billion in tax revenues generated by legal gambling. Groups such as Gamblers Anonymous, and Gam-Anon have been active in the State for decades, but professional treatment programs were only established in 1982, when a budget of \$200,000 was provided to the Office of Mental Health to develop public education, outpatient treatment and research initiatives. Two treatment programs for problem gamblers and their families, the Health Association of Rochester and St. Vincent's Hospital on Staten Island, were established and the National Council on Problem

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<sup>40</sup>Clotfelter, p. 23.

<sup>41</sup> See Appendix B for 1998 total allocations by state.

Gambling was funded. Funding to these programs was increased to \$500,000 in FY 1983-84 and to \$750,000 in FY 1985-86. The increase in funding allowed for a third treatment center run by Jewish Family Services of Buffalo and Erie County. In FY 1988-89, funding was increased to \$776,000 where it remained for three years.

Since 1990-91, annual spending levels have fluctuated but generally increased. Given strong support from private sources, the funding increases have allowed for modest service expansion.

This year New York State will spend \$1.65 million<sup>42</sup> for the ongoing treatment, prevention and education of problem gambling, while appropriating over \$250 million for the treatment and prevention of alcohol and substance abuse. This is an annual appropriation and not from a dedicated revenue source. Therefore, it is subject to year-to-year uncertainty. Given the increasing numbers of persons in need, coupled with additional costs of providing ongoing outreach and associated services, the \$1.65 million is insufficient to fund the work of the NYCPG and the seven existing State-funded treatment, education and prevention programs. Further, this level of funding does not provide the resources to adequately serve the more vulnerable populations such as adolescents, minorities, senior citizens and women.

New York State currently has a statewide policy<sup>43</sup> that requires the placement of information where consumers can obtain help for gambling addiction and treatment services on the back of Lottery play slips and on signs in all race tracks and OTB establishments. According to the New York Council on Problem Gambling, the procedure is ad hoc at this time, extremely limited in scope and not required to be implemented in all establishments where State-approved gambling is conducted and/or disclosed on all receipts, tickets and other materials routinely distributed to customers by these organizations. Simply stated, it is not mandatory to display the toll-free Helpline number in every location where gambling occurs. This policy also lacks a dedicated funding stream.

The NGISC recommended the following:

*“The Commission recommends that warnings regarding the dangers and risks of gambling ...should be posted in prominent locations in all gambling facilities.”*<sup>44</sup>

*“The Commission recommends that each state run or approved gambling operation be required to conspicuously post and disseminate the telephone numbers of at least two state-*

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<sup>42</sup>OMH granted \$150,000 in July 1999 that is to be appropriated annually to the eight State-funded programs – NYCPG and 7 local providers. Therefore, beginning in the year 2000, the annual appropriation will be \$1.65 million. Moreover, in 2000, the State is again appropriating a one-time grant [i.e. \$500,000] that is divided among programs based upon an OMH formula. However, ongoing treatment and other services cannot be provided via one-time grants.

<sup>43</sup> Mental Hygiene Law, Section 7.09(g).

<sup>44</sup> NGISC, Recommendation 3.4, p. 3-17.

*approved providers of problem gambling information, treatment and referral support services.”*<sup>45</sup>

A comprehensive policy that secures funds and increases coordination among the New York State Racing and Wagering Board, the Office of Mental Health and the Division of the Lottery is needed to make the posting of help signs effective throughout the State. Within the policy, some consideration should be given to requiring employee education on problem gambling in State-sanctioned gambling facilities (e.g. training employees to recognize warning signs, and to appropriately direct gambling clientele to available treatment and prevention resources).

On a State level, the Governor’s New York State Task Force on Casino Gambling in 1996 also recommended increased funding:

*“Compulsive gambling imposes costs on society, not the least of which are the costs of treatment and rehabilitation programs. If we choose to expand gambling opportunities, New York has a moral and economic obligation to implement measures that will limit any increase in problem gambling and afford effective treatment to those for whom gambling is not a form of entertainment but a disease...the Task Force recommends that if casino gambling is authorized, implementing legislation provide a full range of remedial and education services for problem gamblers and that a generous portion of casino gambling revenues be allocated to such programs. Indeed, the Task Force recommends enhancement of current programs to treat problem gamblers, even if casino gambling is not legalized.”*<sup>46</sup>

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<sup>45</sup> Ibid., Recommendation 4.6, p. 4-20.

<sup>46</sup> New York State Task Force on Casino Gambling, *Report to the Governor*, August 30, 1996, p. xi. (Emphasis by Task Force as appears in document.)

# GAMBLING POLICIES: THE NATION AND NEW YORK STATE

## Overview

Gambling opportunities in the nation and New York State have ebbed and flowed in many forms throughout many generations. In this section we give a brief synopsis, from horse racing to casinos, of some of the policies that have shaped the forms of gambling we know today.

According to the National Gambling Impact Study Commission, the problem for most states, including New York, is in the government decision-making process:

*“Decisions generally have been reactive, driven more by pressures of the day than by an abstract debate about the public welfare.”<sup>47</sup>*

*“Virtually every aspect of legalized gambling is shaped by government decisions. Yet, virtually no state has conformed its decisions in this area to any overall plan. Instead, in almost every state whatever policy exists toward gambling is more a collection of incremental and disconnected decisions than the result of deliberate purpose.”<sup>48</sup>*

*“Rivalry and competition for investment and revenues have been far more common factors in government decision making regarding gambling.”<sup>49</sup>*

As a result, policymakers have made available to the general public bingo, horse racing, lotteries, and casinos. Convenience gambling, which includes New York State’s Quick Draw as well as instant “scratch-off ticket” games, is a more recent form of gambling.

## Casinos Nationally

The Indian Gaming Regulatory Act of 1988 (IGRA) created a regulatory structure for gambling on Native American lands. The Act allows tribes to establish bingo halls and casinos in any state where charitable or social gambling takes place. The Act “provides a statutory basis for the regulation of Indian gambling, specifying several mechanisms and procedures and including the requirement that the revenues from gambling be used to promote the economic development and welfare of tribes. The legislation requires tribes to negotiate a compact with their respective states, a provision that has been a continuing source of controversy.”<sup>50</sup>

Many states are dissatisfied with the way in which the IGRA has played out. “In testimony before the Commission, representatives of the states have raised a number of areas of concern regarding Indian

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<sup>47</sup>NGISC, p. 1-5.

<sup>48</sup>Ibid., p. 1-7.

<sup>49</sup>Ibid., p. 1-5.

<sup>50</sup>Ibid., p. 2-9.

gambling, including: (1) the federal government does not actively and aggressively enforce IGRA on the reservations, and the states are unable to enforce it on their own; (2) IGRA requires states to negotiate in good faith but does not place the same requirement on tribes; and (3) the scope of gambling activities allowed to tribes is not clearly defined under IGRA.”<sup>51</sup>

From 1988, when IGRA was passed, to 1997, tribal gambling revenues have grown from \$212 million to \$6.7 billion. “In 1988, approximately 70 Indian casinos and bingo halls were operating in a total of 16 states; in 1998 approximately 298 facilities were operating in a total of 31 states.”<sup>52</sup>

Until the 1970's casinos were confined to Nevada and Atlantic City, New Jersey. More recently, casino gambling has spread across the country, partly in response to the Indian Gaming Regulatory Act of 1988 and partly in response to state and local governments looking for additional revenues. In the early 90's casino gambling came to South Dakota and Colorado, where rather small casinos opened in old mining towns as a way to preserve the historic character of the towns.

Riverboat casinos soon followed, spreading rapidly in the 1990's. This is a contemporary revival of an old entertainment form and the first of these modern riverboats was legalized in Iowa in 1991. Iowa placed strict limits on both wagers and losses. But as riverboat casinos spread to other states, including Illinois, Indiana, Louisiana, Mississippi, and Missouri, the limits disappeared. In theory these riverboat casinos must be located on facilities that look like boats, but few if any actually leave shore. In Mississippi and Iowa a more accurate description is “dockside casino,” since the minimum requirement is that the gambling occur above a body of water which may pre-exist or be dredged for the purpose.

### **Casinos in New York State**

Support for casino gambling in New York State has been based on the jobs it creates and stimulus to local economies.<sup>53</sup> “The economic benefits of casino gambling have been especially powerful in economically depressed communities where opportunities for economic development are scarce...Unlike many industries, casino gambling creates full-time, entry-level jobs, which are badly needed in communities suffering from chronic unemployment and underemployment ...Within the casino industry, destination resorts tend to create more and better quality jobs than other kinds of casinos.”<sup>54</sup> The revenue potential for state and local governments of casino gambling has not, as yet, been clearly defined. During the 1990's the “jobs argument” has taken on increased urgency as most economic indicators show New York State lagging the nation in job creation. This is particularly true for many communities in upstate New York where job growth has been stagnant.

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<sup>51</sup>Ibid., p. 6-10.

<sup>52</sup>Ibid., p. 2-10.

<sup>53</sup>Comptroller McCall released a report, *Gambling: To Stake Something of Value Upon an Uncertain Event*, in 1994 that looked at the economic development and fiscal effects of casinos.

<sup>54</sup>NGISC, p. 7-8.

Although casino gambling has moved forward in other states, it has not done so in this State because commercial casino gambling cannot operate in New York State without a Constitutional amendment. “Article 1, section 9 of the Constitution bans all forms of gambling not expressly authorized by the Constitution. As originally enacted, the Constitution of 1894 banned all forms of gambling. The sweeping ban on gambling has been amended four times since 1894; to allow pari-mutuel betting on horse racing (1939); to give cities, towns and villages the power to authorize religious, charitable and certain non-profit groups to conduct bingo or Lotto (1957); to allow for the establishment of the State lottery (1965); and to expand the ‘bingo’ exception to allow eleemosynary [charitable] groups to run other games of chance (1975).”<sup>55</sup>

The Attorney General of the State of New York has reviewed proposals for new forms of gambling and variations on existing games. Based on a reading of those reviews, this Office concluded, “it would appear that any attempt to expand the forms of gambling available in the State as a source of revenue for the State or local governments would require a Constitutional amendment, and any attempt to mechanize or computerize traditional games authorized by the Constitution would require amendments to the enabling legislation and the regulations governing such games.”<sup>56</sup>

This means that a resolution would have to be passed by two successively elected legislatures and then presented to the voters of the State for their approval. For example, should a resolution pass sometime in the spring of 2000 in the 223<sup>rd</sup> Session, and if it were to pass a second time by the newly elected Legislature in the 224<sup>th</sup> Session, it could be presented to the voters as early as November 2001.

New York State has taken steps to allow commercialized casino gambling through the Constitutional process. Most recently in 1996, a casino constitutional amendment was approved by the Legislature but failed to win second passage in 1997 in the New York State Senate.<sup>57</sup>

The Governor, in response to the first passage of the casino amendment, created by Executive Order<sup>58</sup> the New York State Task Force on Casino Gambling. The Task Force issued a final report on August 30, 1996.<sup>59</sup>

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<sup>55</sup>Division of Legal Services, *State Finance Opinion SF - 1193/105*, Office of the State Comptroller, January 11, 1994.

<sup>56</sup>*Ibid.*

<sup>57</sup>Tom Precious, “Senate Says No Dice to Casino,” *Albany Times-Union*, January 29, 1997 and “Silver Says Casino Bill Looks Dead for ‘97,” *Albany Times-Union*, February 4, 1997.

<sup>58</sup>Executive Order #36, 1996.

<sup>59</sup>NYS Task Force on Casino Gambling, 1996.

The Task Force report warned of the potential adverse effects that casinos would have<sup>60</sup> on the horse racing industry<sup>61</sup> and on the Lottery<sup>62</sup>. The report recommended an increase in funding for problem gambling as well as a dedicated funding source<sup>63</sup> and the establishment of a Commission on Indian Gambling.<sup>64</sup>

The Task Force also pointed out that the current reliance on the New York State Racing and Wagering Board for oversight and monitoring would need to be changed legislatively should additional casinos be added. The Task Force report states that a new, independent agency should be created to regulate both Indian and commercialized gambling in order to provide a rational system for casino regulation.<sup>65</sup> The Task Force report discussed specific areas for legislative analysis. The Task Force recommended “that prior to the enactment of enabling statutes the Legislature carefully analyze and debate the issue of regulatory organizational structure. Such legislative analysis and debate could include the several types of organizational structures which have evolved in the different jurisdictions with legalized casino gambling, and estimates of relative cost-effectiveness of the various regulatory organizations.”<sup>66</sup>

The Task Force received criticism from New York State Senator Frank Padavan (R-Queens). “Despite its stated mission to determine the effects casino gambling would have on the State, the Task Force included no expert on gambling, no economist nor anyone with professional economic credentials. The result was that the Task Force relied heavily on economic data and models provided by the casino industry itself.”<sup>67</sup>

The New York Council on Problem Gambling was also critical of the Task Force because, while it included the heads of supposedly affected state agencies, no one from the Office of Mental Health was appointed. Laura Letson, Executive Director of the New York Council on Problem Gambling said, “while the Task Force’s mission is to comprehensively examine the impact casino gambling will have on New York State and its local governments, it fails to include a representative from the New

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<sup>60</sup>An earlier report, *Gambling: To Stake Something of Value Upon an Uncertain Event*, issued in March 1994 by the Office of the State Comptroller, also warned of the potential adverse effects casinos would have on other forms of gambling revenues.

<sup>61</sup>NYS Task Force on Casino Gambling, Introduction, p. viii.

<sup>62</sup>Ibid., p. 131.

<sup>63</sup>Ibid., p. 144.

<sup>64</sup>Ibid., Introduction, p. xii.

<sup>65</sup>The need for a legislative action to create regulatory oversight was also emphasized by Elizabeth Moore, counsel to former Governor Cuomo, in a June, 1993 memo quoted in *Saratoga County Chamber of Commerce et. Al vs. Hon. George Pataki et. Al*, State of New York Supreme Court, Albany County, Index No. 5507-99

<sup>66</sup>NYS Task Force on Casino Gambling, p. 252. For a more detailed discussion see Section V of the report, *Regulation of Casino Gambling*.

<sup>67</sup>Frank Padavan, New York State Senator, *The Dice are Rolling: Gambling with New York State’s Future*, January 6, 1997, p. 8.

York State Office of Mental Health, the only organization and member of the Executive Cabinet specifically authorized in the State of New York by statute for overseeing pathological gambling issues.”<sup>68</sup>

Governor Pataki, in 1998, tried to revive interest in a Constitutional amendment by writing to Senate Majority Leader Joseph Bruno and Assembly Speaker Sheldon Silver requesting that the Legislature again pass an “amendment which would allow a public referendum on the question of legalized casino gambling in New York State.”<sup>69</sup> The Legislative leaders failed to act on the Governor’s request.

### **Native American Casinos in New York State**

“On July 8, 1992, the Oneida Indian Nation formally requested negotiations with New York State on a gambling compact. The Governor (Mario Cuomo) responded by appointing a task force of individuals from the various Executive Branch agencies and departments with an interest in Indian gaming issues. After seven months of negotiations, the Oneida Nation and the State reached agreement. The Oneida Nation’s representative, Ray Halbritter, signed the Compact on April 1, 1993.”<sup>70</sup> The Governor signed the agreement on April 16, 1993.

The Oneida Nation’s Turning Stone casino, located in Verona, New York, opened in July 1993. As part of the compact signed with the State, Turning Stone officials make annual payments to the State for expenses incurred by the State Police and the New York State Racing and Wagering Board for their respective oversight functions.<sup>71</sup> The State, however, does not derive any direct revenue from the casino.

Native American casinos are not required to report earnings because the Internal Revenue Service classifies tribal governments as non-taxable entities.<sup>72</sup> There is evidence, however, that Native American casinos have been generally successful. The NGISC estimated that from 1988 to 1997, tribal gambling revenue grew from \$212 million to \$6.7 billion. Turning Stone by many measures has been a success. For example, in 1998 almost 3,000 people were employed and the Oneida Indian Nation payroll grew by 55 percent from 1997 to 1998. More than 3.3 million people visited Turning Stone in 1998, a 35 percent increase over 1997.<sup>73</sup>

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<sup>68</sup>New York State Task Force on Casino Gambling, Public Hearing, June 4, 1996.

<sup>69</sup>Letter from Governor Pataki to Senate Majority Leader Bruno and Speaker Silver dated May 13, 1998.

<sup>70</sup>New York State Senate Research Service, “Indian Casinos in New York,” *Issues in Focus*, #93-90, p. 3.

<sup>71</sup>See “State Assessment for Costs of Oversight,” *Nation-State Compact Between the Oneida Indian Nation of New York and the State of New York*, Appendix D. (For State fiscal year 1997-98, Turning Stone reimbursed the State of New York a total of \$3,103,136: State Police operations were reimbursed \$1,813,367 and the Racing and Wagering Board was reimbursed \$1,289,769.)

<sup>72</sup>NGISC, p. 6-20.

<sup>73</sup>Oneida Indian Nation, *1998 Annual Report*.

The Oneida Indians, although not required to, provide grants to six local school districts. In 1996, the Oneidas established the Silver Covenant Chain Education Grants. The quarterly grant amount for each school district is based upon a calculation that factors in the cumulative acreage of reservation land which the Nation has reacquired in that school district. Since 1996, \$1,116,597 has been given to the local school districts.<sup>74</sup>

In February 1995, the Turning Stone casino introduced a slot machine-like game called Instant Multi-Game. The Oneidas received approval from the New York State Racing and Wagering Board for the game.

In April 1995 Attorney General Dennis Vacco filed a lawsuit on behalf of Governor Pataki to block the Oneidas from offering the new electronic game. The suit also challenged whether the new game violated State law prohibiting slot machines. The Attorney General said that the Oneidas violated their 1993 compact with the State by failing to get the proper approval. The Oneida Indian Nation filed a motion to dismiss the suit in October 1998. According to the New York State Attorney General's Office, the State opposes the motion to dismiss. The issue has not been decided to date.

On June 2, 1993, Governor Cuomo signed a compact with the St. Regis Mohawk Indians located near the Canadian border that would allow the opening of a casino. The Akwesasne Mohawk Casino finally opened April 11, 1998 in Hogansburg, New York, on the Canadian border. On May 27, 1999, Governor Pataki amended the compact with the Mohawks that allows for electronic video slot machines, similar to those used by the Oneidas at Turning Stone, and provides the State with a portion of revenues from the video slot machines. Under the Mohawk agreement, the State will receive revenue based on a sliding scale ranging from 10 percent to 25 percent, with the amount growing as gross revenues from the electronic slot machines increase.<sup>75</sup>

The electronic video slot machine agreement could prove to be the savior for the Hogansburg casino. Barbara Lazore, a St. Regis tribal legislator, told the *New York Times*, " 'It's a fact. We're losing money every day.' She added that 'without the video terminals it would be just a matter of time before we would end up closing.' ”<sup>76</sup>

Governor Pataki is reportedly in the process of negotiating a compact with the St. Regis Mohawk Indians to build and operate another casino next to Monticello Raceway in Sullivan County. The terms and conditions of the compact have not been disclosed. Before a casino can be approved, the U. S. Department of the Interior must place the land in trust for the Mohawks.<sup>77</sup>

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<sup>74</sup>Oneida Indian Nation, "Nation Awards Quarterly Grants to Six Area School Districts," Press release July 15, 1999.

<sup>75</sup>Governor Pataki, "Compact Amendment with St. Regis Mohawks Signed," Press release May 27, 1998.

<sup>76</sup>Paul Zielbauer, "Mohawk Casino Allowed to Begin Video Gambling," *New York Times*, May 28, 1999.

<sup>77</sup>For a detailed discussion of the "land trust" issue, see the U.S. Department of the Interior's web site at [www.doi.gov](http://www.doi.gov).

On July 12, 1996, the Assembly passed a Resolution<sup>78</sup> “calling on the Secretary of the Interior of the United States to refrain from acting upon or approving any Tribal-State Compact offered on behalf of New York State.” The resolution clearly stated where the Assembly stood on the constitutionality of a compact that would allow casino gambling.

*“The New York State Constitution Article 1, Section 9 strictly limits casino gambling in New York State and reserves the decision making power regarding casinos to the State Legislature and the voters of the State.”*

The St. Regis Mohawk Indian Nation and the Catskill Development Corporation, which owns Monticello Raceway and has been helping the Mohawks submit a land trust application, received preliminary approval from the Eastern Area Office of the Bureau of Indian Affairs in December 1998.

In February 1999, the United States Department of the Interior (DOI) rejected the recommendation from the Eastern Area Office and returned the application to the area office. In the February 10<sup>th</sup> letter, Deputy Commissioner of DOI’s Bureau of Indian Affairs Hilda Manual wrote, “we have completed our review of the documentation submitted by your office, and are unable to concur in your recommendation that a gaming establishment is in the best interest of the Mohawk tribe and not detrimental to the surrounding community.”<sup>79</sup> The letter went on to say there were also several environmental and technical questions to be answered.

The St. Regis Mohawks sent a revised application to build a casino at Monticello Raceway to the Bureau of Indian Affairs Eastern Area Office for their approval before sending it on to the Department of the Interior. On June 25, 1999, the New York State Coalition Against Casino Gambling wrote a letter to the United States Department of the Interior seeking information about the “Land-to-Trust application” process that would lead to a St. Regis Mohawk Tribe casino at Monticello Raceway.<sup>80</sup>

The Land-to-Trust application process is somewhat unique, with off-reservation lands being taken into trust by the United States Department of the Interior. A long and detailed application must be approved, first by the Interior Department and then by the governor of the state.

*“Since the enactment of IGRA in 1988, only ten applications (this does not include the St. Regis Mohawk’s application for Monticello) to take off-reservation land into trust for gambling purposes have been forwarded to the Department of the Interior for their consideration. Of these ten applications the Secretary of the Interior approved only five.*

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<sup>78</sup>State of New York Legislative Resolution, Assembly no. 2413, adopted July 12, 1996.

<sup>79</sup>Kenneth Lovett, “Casino Application Rejected,” *The Times Herald Record*, Ottawa News Service, March 18, 1999.

<sup>80</sup>New York State Coalition Against Casino Gambling letter sent on June 25, 1999 to Secretary Babbitt, Assistant Secretary Kevin Gover and George Skibine, Office of Indian Gaming Management, all of the U.S. Department of the Interior.

*They involved the requests of the Forest County Potawatomi Tribe of Wisconsin to take land into trust in Milwaukee, Wisconsin; the Sault Ste. Marie Tribe of Michigan to take land into trust in Detroit, Michigan; the Coushatta Tribe of Louisiana to take land into trust in Allen parish, Louisiana; the Siletz Tribe to take land into trust in Salem, Oregon; and the Kalispel Tribe of Washington seeking gambling on off-reservation land already held in trust for the tribe in Airway Heights, Washington. Of these five approvals, only the Forest County Potawatomi Tribe in Milwaukee was approved by the respective state's governor. In the other four instances, the governor did not concur with the Interior Department and those lands cannot be used for gambling purposes.”<sup>81</sup>*

In early November 1999, the St. Regis Mohawks' revised application to build a casino at Monticello Raceway was re-sent for final approval to the United States Department of the Interior. Earlier the Bureau of Indian Affairs Eastern Area Office approved the revised application. The Department of the Interior has said the application could be ruled on within three months. If DOI rules favorably, it will be the first Land-to-Trust approval in New York State.<sup>82</sup> The application would next require Governor Pataki's approval.

The New York State Coalition Against Casino Gambling's June 25, 1999 letter to DOI also “challenges the Governor's authority to unilaterally bind the State of New York to any gaming compact without legislative approval.” The letter goes on to say, “both state and federal courts have stated that state law and not IGRA determine who may act on behalf of the state when entering into a compact with an Indian tribe to operate a casino. With respect to the New York State Constitution and the time-honored doctrine of separation of powers, our constitution mandates that it is the Legislature that creates the law. The role of the Governor is to execute the law.” The Interior Department has not responded to the Coalition's letter.

Senator Padavan sent a similar letter to United States Secretary of the Interior Bruce Babbitt on June 29, 1999 making the same point that any compact needs legislative approval.<sup>83</sup> Senator Padavan did not receive a response to his letter.

More recently, in a lengthy letter from U.S. Senator Robert Torricelli of New Jersey to Secretary of the Interior Babbitt, dated August 19, 1999<sup>84</sup>, the Senator questioned the Mohawks' land trust application as well as Governor Pataki's authority to approve a compact without legislative approval

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<sup>81</sup>Statement of Kevin Gover, Assistant Secretary - Indian Affairs, Department of the Interior, before the Committee on Indian Affairs, United States Senate on proposed amendments to Section 20 of the Indian Gaming Regulatory Act of 1988 in S. 1870, the Indian Gaming Regulatory Improvement Act of 1998, May 12, 1998.

<sup>82</sup>There have also been public discussions to use the Land-to-Trust process for a casino in Catskill and Buffalo. See Paul Brooks, “St. Regis Mohawks Seek a Second Casino,” *The Times Herald Record*, January 23, 2000.

<sup>83</sup> Letter from NYS Senator Frank Padavan to U.S. Department of the Interior, Secretary Babbitt dated June 29, 1999.

<sup>84</sup> Letter from U.S. Senator Robert Torricelli to U.S. Department of the Interior, Secretary Babbitt dated August 19, 1999.

and a constitutional amendment. Senator Torricelli was roundly criticized by Governor Pataki for trying to intervene in New York State affairs on behalf of Atlantic City casino interests.<sup>85</sup>

### **Upstate Citizens for Equality vs. Pataki**

On March 2, 1999, Scott Peterman, President of Upstate Citizens for Equality, filed a lawsuit against Governor Pataki, the New York State Racing and Wagering Board, Division of State Police, the Counties of Oneida and Madison and Ray Halbritter and the Oneida Indian Nation.<sup>86</sup>

Upstate Citizens for Equality is a citizen organization working to fight Indian land claims in Central and Western New York. The group was organized in 1998 and has about 5,100 members.<sup>87</sup>

The lawsuit basically seeks to have the 1993 compact, signed by Governor Cuomo, invalidated “pending renegotiation and/or proper authorization” by the New York State Legislature. The suit has been caught up in the land claim issue in Central New York. The Oneida Indian Nation asked the court for a stay claiming the action was a “duplicative proceeding”<sup>88</sup> of the federal court litigation regarding the land claims. The stay was granted pending resolution of the land claims issue.

### **Saratoga County Chamber of Commerce vs. Pataki**

On September 23, 1999, another lawsuit was filed in the Supreme Court of the State of New York against Governor Pataki, Judith Hard, Deputy Counsel to the Governor and the New York State Racing and Wagering Board. The suit seeks to declare “unconstitutional, illegal, null and void an agreement entitled Tribal-State Compact Between the St. Regis Mohawk Tribe and the State of New York.”<sup>89</sup> The suit also seeks to declare as unconstitutional the May 27, 1999 amendment to the 1993 compact. The amendment allowed the Mohawks to introduce electronic video slot machines.

The other plaintiffs to the suit include: Joseph Dalton, president, Saratoga County Chamber of Commerce; New Yorkers for Constitutional Freedoms; Lee Karr, individually and as Chairman of the Coalition Against Casino Gambling; G. Stanford Bratton, individually and as Coalition Coordinator for the Western New York Coalition Against Casino Gambling; New York State Senator Frank Padavan (R-Queens); and New York State Assemblyman William Parment (D-Jamestown).

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<sup>85</sup>James Odatto, “Pataki Raps Senator for Casino Comments,” *Albany Times-Union*, August 28, 1999.

<sup>86</sup> *Scott Peterman et. Al vs. Hon. George Pataki et. Al*, State of New York Supreme Court, Oneida County, Index No. 533-99.

<sup>87</sup>For more information on Upstate Citizens for Equality see their web site at <http://www.madisoncountyny.com/uce>.

<sup>88</sup>See *Plaintiffs Memorandum of Law in Proceeding To Defendants Oneida Indian Nation of New York’s and Ray Halbritter’s Motion to Stay the State Proceedings*, Index No. 533-99.

<sup>89</sup>*Saratoga County Chamber of Commerce et. Al vs. Hon. George Pataki et. Al*, State of New York Supreme Court, Albany County, Index No. 5507-99.

The lawsuit alleges that both Governor Cuomo, by signing the 1993 compact, and Governor Pataki, by signing the amendment to the 1993 compact, “had no constitutional authority to unilaterally negotiate a compact with the Tribe on behalf of the State, especially where, as here, the Compact as amended, would purport to authorize gambling that is specifically prohibited by the New York State Constitution.”<sup>90</sup>

The suit alleges that the Compact and the amendment are unconstitutional because they were not authorized by two separately elected legislatures and the voters of the State. The suit also claims that the Legislature, by itself, could not approve a compact because the State Constitution specifically forbids casino style gambling and therefore the Constitution itself would have to be amended.

The suit quotes a 1993 memo from the counsel to former Governor Cuomo, regarding the need for legislative approval to implement any compact, although the counsel did not go so far as to recommend a Constitutional amendment.

*“We have long recognized the need for legislative action to implement the compacts. The Governor has consistently taken the position that the Legislature would have to authorize the State to implement compacts that require the State to regulate and oversee Indian gaming. That is why the Governor submitted a program bill in 1990 and 1991, seeking authority from the Legislature to negotiate and enter into compacts with any Indian tribe or nation. And, that is why, from the outset of negotiations with the St. Regis-Mohawk Tribe in 1990, and with the Nation last summer, the State’s negotiators told their Indian counterparts that legislative approval would be required before the State could enter into effective compacts.”<sup>91</sup>*

The suit also quotes a 1984 Formal Opinion by Attorney General Robert Abrams (No. 84-FI, 1984, N.Y. Op. Atty. Gen. 11). The opinion was in response to a Lottery Division request to conduct betting on sporting events. The Attorney General said this could not be done without an amendment to the Constitution, stating the ban on gambling had been constitutionally amended only four times since 1894 (see above) and that “each of these amendments has been narrow in scope and none has been viewed as a repeal of the ban on ‘pool-selling, book-making, or any other kind of gambling’ which the Constitution by specific reference proscribes.”<sup>92</sup>

The lawsuit also seeks to stop any further action regarding the development of a casino at Monticello Raceway. It asks the court to “permanently enjoin the Defendants ... from carrying out or otherwise undertaking any further actions whatsoever to implement the compact or its amendment, including,

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<sup>90</sup>Ibid., p. 4.

<sup>91</sup>Ibid., p. 17.

<sup>92</sup>Ibid., p. 15.

but not limited to, undertaking any acts to permit the types of gambling specific herein from being conducted at the Monticello Raceway.”<sup>93</sup>

### **Seabrook/Wright vs. Pataki**

On September 24, 1999, a third lawsuit<sup>94</sup> was filed by New York State Senator Larry B. Seabrook (D-Bronx) and New York State Assemblyman Keith L. Wright (D-New York) against Governor Pataki and the State of New York.

Their suit alleges that “Governors Cuomo and Pataki exceeded their delegated powers under the New York State Constitution when they entered into the 1993 Tribal Compact and the 1999 Amendment.”<sup>95</sup>

It goes on to allege that “the 1993 Tribal Compact impermissibly expands and creates new duties of departments and divisions of state government. Only the Legislature can do this.” This refers to the oversight functions of both the New York State Police and the New York State Racing and Wagering Board.

The suit seeks to: (1) declare the 1993 Tribal Compact and the 1999 Amendment void; (2) declare that New York State has not yet “entered into” any compact or amendment with the Mohawk Tribe; (3) prevent the Governor from “entering into” any gaming compacts without the full participation of the Legislature; and (4) prevent the Governor from doing anything that would expand Indian gambling within New York State without the full participation of the Legislature.

According to the *Albany Times-Union*, Governor Pataki will argue “that both the Senate and Assembly have indeed allowed the casino compacts because the Legislature passed budgets to pay for State Police and Racing and Wagering Board policing and regulation of the casinos. In addition, in 1993 the Legislature passed a bill requiring fingerprinting of prospective employees at Indian casinos.”<sup>96</sup>

The issues will take time to be resolved by the courts. However, in November 1999, the Saratoga County Chamber of Commerce vs. Pataki suit and the Seabrook/Wright vs. Pataki suit were consolidated and both cases will be heard by the New York State Supreme Court in Albany.

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<sup>93</sup>Ibid., p. 24

<sup>94</sup> *Keith L. Wright and Larry B. Seabrook vs. George E. Pataki*, Supreme Court of the State of New York, County of New York Index No.119714-99

<sup>95</sup>Ibid. p. 7

<sup>96</sup>James Odató, “State Readies Gambling Defense,” *Albany Times-Union*, September 25, 1999.

## **Lotteries Nationally**

Modern day lotteries started in 1964 when New Hampshire established a state lottery. New York followed in 1966, implementing it the following year. In 1999, 37 states and the District of Columbia operate lotteries. With relative ease, states found a way to access an increasing source of revenue. “In 1973 lotteries were found in 7 states and had total sales of \$2 billion. In 1997 lotteries existed in 37 states and the District of Columbia and garnered \$34 billion in sales. Nationally, per capita sales have increased from \$35 in 1973 to \$150 in 1997.”<sup>97</sup>

The NGISC found that “the lottery industry stands out in the gambling industry by virtue of several unique features. First, it is the most widespread form of gambling in the United States. It also is the only form of commercial gambling that a majority of adults report having played. Furthermore, the lottery industry is the only form of gambling in the United States that is a virtual government monopoly. State lotteries have the worst odds of any common form of gambling, but promise the greatest potential payoff to the winner in absolute terms, with prizes regularly amounting to tens of millions of dollars.”<sup>98</sup>

## **The Lottery and Games of Chance in New York State**

The New York State Lottery officially began in 1967. It is overseen by the New York State Division of the Lottery,<sup>99</sup> which has primary oversight responsibility for other games of chance as well. The games collectively produce approximately \$1.44 billion in revenue for the State annually. The brief description of each game offered below and the respective revenue contributions they make demonstrate that: (1) gambling produces considerable revenue for the State; and (2) as these games have proliferated in recent years, many have experienced revenue declines and have been the subject of programming changes in order to maintain the public’s demand.

New York State Lottery sales totaled approximately \$3.77 billion in FY 1998-99, with \$1.44 billion in net receipts to the State. In 1998, New York State led the nation in lottery sales. The New York Lottery offers several types of games: daily numbers, Lotto, instant cash games (i.e., “scratch-off tickets”), and Quick Draw. Among the 37 states with lotteries, New York ranks 5<sup>th</sup> in per capita sales with each person in the State spending an average of \$220 per year. Only Massachusetts with \$525, Washington, D. C. with \$366, Georgia with \$238 and Connecticut with \$235 rank higher. The average per capita sales for the 37 states is \$150.

The Lottery is the most lucrative form of gambling for the State. For comparison purposes, the pari-mutuel tax brought in just \$36.92 million in net receipts in 1998-99.

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<sup>97</sup>NGISC, p. 2-1.

<sup>98</sup>Ibid., p. 2-3.

<sup>99</sup> For a description of the operational structure and mission of the New York State Division of the Lottery, see their various annual reports.

Net receipts from the Lottery are, in theory, designated for education in New York State. While funds from the Lottery are deposited into a special fund that is used for education, in actual impact the funds are treated like general revenues with no direct relationship to education funding.<sup>100</sup> Overall, Lottery programs generated \$1.53 billion in net revenues in 1997-98 and declined slightly to \$1.44 billion in 1998-99. The Governor's budget proposal estimates a further decline to \$1.345 billion for 1999-00, and projects under current law the net revenues will be approximately \$1.373 billion for 2000-01.<sup>101</sup>

The Lottery's consistent, substantial contribution to the State budget has taken place despite six of its eight programs experiencing revenue declines in 1998-99. The Lottery Division is constantly introducing new games and utilizing several marketing techniques in order to replenish fluctuating receipts and meet financial targets.

Below is a brief description and sales receipts from the individual games that the New York State Lottery Division offers.

### **Lotto**

In Lotto, the player picks any six numbers from 1 to 51. On Wednesday and Saturday nights, 6 winning numbers and a bonus number are randomly selected from 51 numbered balls. If the numbers picked match the numbers drawn, the player can win anything from the first prize for matching 6 numbers down to a free play for matching 3 numbers. If the jackpot is not won in any drawing, the first prize pool money is carried over to the next drawing. A first prize winner can choose to be paid in 26 annual payments or receive a lump sum cash payment. The overall odds of winning any prize are 1 in 60.25, but the chances of winning the first prize are 1 in 18,009,460.

The Lotto game was recently revamped from Lotto 54 to Lotto 51. The cost to play was increased from \$.50 per game to \$1.00 per game and the overall number of prizes awarded was increased. The changes were made in hope of increasing the value of the first prize jackpot; as the jackpot increases, more people play the game. Lotto has shown continued weakness in sales over the past few years, with receipts falling from \$399.0 million in 1996-97 to \$338.3 million in 1998-99. The gradual weakening in Lotto sales stems from several factors: low jackpot levels, increased competition from multi-state Powerball lotteries, and lack of interest in a game that basically has been the same for ten years.<sup>102</sup>

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<sup>100</sup>For a full discussion, see the *New York Lottery Role in Financing Education*, Office of the State Comptroller, April 1998.

<sup>101</sup>George Pataki, Governor and Robert King, Director of Budget, 2000-01 New York State Executive Budget Appendix II, p. 266, January 6, 2000.

<sup>102</sup>Tracey Tully and William Sherman, "New Lotto a Dud," *New York Daily News*, August 9, 1999.

## **Numbers**

The daily Numbers game is fairly straightforward. The player simply picks a three-digit number. If the number is picked by Lottery officials, the person wins. There are nine different ways or combinations (from straight to boxed) to play the number and an individual can bet from \$.50 to \$5.00. A number is drawn every day.

The Numbers game has remained a popular game with receipts increasing from \$233.7 million in 1996-97 to \$249.2 million in 1998-99.

## **Win 4**

Win 4 is the same game as Numbers, except an individual picks a four-digit number. There is a drawing every day.

Win 4 has also remained popular with receipts increasing from \$149.0 million in 1996-97 to \$157.0 million in 1998-99.

## **Take Five**

A player picks five numbers between 1 and 39. Each Monday, Tuesday, Thursday and Friday, five winning numbers are randomly selected from 39 numbered balls. The game costs a minimum of \$1.00 to play. A player who matches five numbers wins from the jackpot, on down to matching two numbers for a free play. The overall odds of winning anything are 1 in 8.7 while the odds of winning the jackpot are 1 in 575,757. Prizes are awarded on a pari-mutuel basis.

Take Five receipts have increased from \$118.3 million in 1996-97 to \$133.9 million in 1997-98 but declined to \$128.9 million in 1998-99.

## **Pick 10**

An individual picks ten numbers between 1 and 80. A game costs \$1. Every night, 20 winning numbers are randomly selected from 80 numbered balls. If ten numbers are matched, the individual wins a cash prize of \$500,000. Prizes are also allotted for matching nine numbers down to six numbers while matching zero numbers returns \$4.00. The odds of winning any prize are 1:17 while the odds of winning the top prize are 1 in 8,911,711.

Pick 10 was revamped in 1990-91. Pick 10 has never generated much in net receipts and those receipts have been decreasing from \$20.2 million in 1996-97 to \$17.0 million in 1998-99. Pick 10

sales have never met expectations. For example, in 1990-91, sales were projected to be \$117 million but totaled just \$91 million. In 1998-99, sales totaled only \$49 million.

## **Powerball**

Early in 1999, State Lottery officials, with Governor Pataki's support, looked into joining several other states in a one-time Millennium Powerball game with a jackpot of \$300 million. New York would join twelve other states including Texas, Georgia, Illinois, and Ohio. The odds of winning would be 1 in 225,862,560. Legislation authorizing New York's participation in the Powerball lottery game was introduced but not acted upon by the Legislature in 1999.<sup>103</sup>

The 2000-01 proposed Executive budget authorizes New York State to join a multi-state Powerball game. Powerball, a twice weekly Lotto style game, is sponsored by twenty states and the District of Columbia. Powerball jackpots start at \$10 million and have climbed as high as \$296 million in August 1998.

States share operating and advertising costs and then keep half the proceeds from ticket sales while the other half goes back for prizes.

The Pataki administration estimates that about 16 percent of New York residents play Powerball or other multi-state Lotto games. The Governor projects that Powerball will produce an additional \$124 million in net Lottery receipts in 2000-01 and \$166 million in 2001-02. The net revenue projections assume a 15-20 percent reduction in Lotto and Take Five revenue as a result of introducing Powerball.

Assembly Speaker Sheldon Silver openly disapproved of the Powerball proposal, while Senate Majority Leader Joseph Bruno said he was not optimistic about its chances.<sup>104</sup> In the January 11, 2000 New York State Assembly press release, "Statement on Proposed 2000-2001 State Budget," Speaker Silver stated, "I also am troubled the budget seeks to boost our state's lottery performance through the re-emergence of Powerball. And this year, there isn't even a proposal to tie Powerball revenue to an education scholarship."

The New York Council on Problem Gambling was critical of the Governor's Powerball proposal stating, "it appears the Governor has a plan to expand gambling via lottery games. However, it is clear that no comprehensive effort is being made to investigate impacts, develop a plan of action or establish a dedicated fund to support problem gambling prevention."<sup>105</sup>

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<sup>103</sup>See A.7509 introduced by Assemblyman Alexander Gromack and S.3975 introduced by Senator William J. Larkin, Jr.

<sup>104</sup>Winnie Hu, "Pataki's Powerball Push: High Odds, but Don't Count it Out", *The New York Times*, January 15, 2000.

<sup>105</sup>New York Council on Problem Gambling, "Council Criticizes Governor for Lack of Comprehensive Gambling Plan," January 20, 2000.

## Convenience Gambling in the Lottery

### **Quick Draw**

Quick Draw is the newest game in the Lottery, starting in 1996. An individual picks from 1 to 10 numbers between 1 and 80. A bet can be anywhere from \$1.00 to \$10.00. An individual wins based on how many numbers are matched to a drawing of 20 numbers randomly selected from a field of 80. Drawings are held every day, every five minutes between 10:00 am and 3:00 p.m. and 4:00 p.m. and midnight in approximately 3,200 bars and restaurants throughout the State.

Since Quick Draw's inception, receipts have declined from \$140.7 million in 1996-97 to \$123.5 million in 1998-99.

Governor Pataki, in his 1999-00 Executive Budget, presented to the Legislature a proposal to expand Quick Draw that would have deleted the requirement that at least 25 percent of a facility's sales must result from food sales and permitted an increase in the number of hours Quick Draw could be played from 13 to as many as 24 hours. It was estimated that these proposals would make Quick Draw available in as many as 800 to 1,000 additional bars, restaurants, and corner convenience stores,<sup>106</sup> which in some cases are open 24 hours a day, making the game available continuously. It was projected that the expansion of Quick Draw would have resulted in additional receipts of \$45 million to the State.

When Quick Draw was originally enacted in 1995, it contained a March 31, 1999 sunset provision and a requirement that a study be conducted in conjunction with the State Office of Mental Health on the impact of Quick Draw on compulsive gambling.<sup>107</sup> The report was to be presented to the Governor and the Legislature with the Lottery Division's 1998-99 Annual Plan.

Quick Draw did sunset on March 31, 1999 and was not re-authorized until August 1, 1999 due to the late State budget. Quick Draw is currently scheduled to sunset on March 31, 2001.

New York State Comptroller H. Carl McCall wrote the Legislature on July 16, 1999 citing the NGISC's recommendations that games such as Quick Draw "provide fewer economic benefits and create potentially greater social costs by making gambling more available and accessible. Therefore, the Commission recommends that states should not authorize any further convenience gambling operations and should cease and rollback existing operations."<sup>108</sup>

The Comptroller went on to note that the Lottery Division failed to produce the required study on time leaving no opportunity for a public discussion on the merits of re-authorizing Quick Draw. "Quick Draw was justified as a revenue raiser at a time when the State had more limited options than

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<sup>106</sup>George E Pataki, Governor, *Executive Budget Proposal FY 1999-2000*, State of New York, Appendix II, p. 208.

<sup>107</sup>See Section 94-f of Chapter 2 of the Laws of 1995.

<sup>108</sup>NGISC, p. 3-18.

it has today. This year we enjoy a budget surplus in excess of \$2 billion. We have an opportunity to correct a bad policy choice.”<sup>109</sup>

The Division of the Lottery’s report, Quick Draw Research,<sup>110</sup> was not released until August 13, 1999, after the State budget was passed and Quick Draw was already re-authorized without modification.

The New York Council on Problem Gambling (NYCPG) asked Dr. Rachel Volberg, President of Gemini Research, LTD., a recognized international expert on problem and pathological gambling, to analyze the Lottery’s report. According to Dr. Volberg:

*“There are deficiencies in the Goldfarb Consultants’ report that make it difficult to assess the reliability and validity of the results of the Quick Draw study. The Lottery’s report was flawed in four areas. First, the report misrepresents the characteristics of the problem gambling screen used in the Quick Draw survey. Second, the report disregards baseline data on Quick Draw participation from the NYCPG (New York Council on Problem Gambling) 1996 survey of gambling and problem gambling in New York State. Third, the comparison of prevalence rates from the 1996 and 1999 surveys presented in the report is misleading. Fourth, the report does not examine less severe levels of gambling-related difficulties associated with Quick Draw or consider the likely impacts of the association between Quick Draw and alcohol consumption.”*<sup>111</sup>

The NYCPG analysis raises several substantive and methodological issues concerning the Goldfarb report. An initial review by the Office of the State Comptroller staff found that the report was so poorly presented as to offer little in the way of substantial evidence or analysis that could be used by policymakers who sought to understand the impact of Quick Draw for problem or pathological gamblers. Either way, the report came too late to be of help to lawmakers as they decided to re-authorize Quick Draw.

Included in the legislation re-authorizing Quick Draw was a provision for another report evaluating the impact of Quick Draw. This report, to be produced by the New York State Office of Mental Health (OMH), will partially rely on the research data gathered under the Goldfarb report and compare it to the baseline data provided in OMH’s 1996 replication study. This new contract for \$34,000, with Rachel Volberg’s Gemini Research, has been reviewed and approved by this Office after receiving assurances from OMH regarding the usefulness of the research data developed by Goldfarb Consultants.

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<sup>109</sup>New York State Comptroller H. Carl McCall’s letter to the New York State Legislature, July 16, 1999.

<sup>110</sup>Goldfarb Consultants, Inc., Quick Draw Research, *Report From Goldfarb Consultants to the New York Lottery*, August 13, 1999.

<sup>111</sup>*Ibid.*, p. 17. (This report contains a much more detailed description of the flaws in the Lottery Division’s report both from a contractual and analytical point of view.)

## **Instant Cash Games**

The Lottery has at least 20 games, at any one time, in which an individual scratches off a play area on a ticket to match scores, get bingo numbers or reveal slot machine symbols or some variation of such. For example, one of the most popular games was “Win for Life,” in which the top prize was \$1,000 a week for life. The odds of winning that was 1 in 7,560,000. The overall odds for the scratch off games are about 1 in 5.

Net receipts from the Instant Cash Games were \$298.4 million in 1996-97 and \$298.5 million in 1997-98. For 1998-99, those receipts declined to \$283.2 million.

## **Horse Racing in New York State**

Pari-mutuel betting is a system whereby winnings are divided in proportion to the sums individually wagered. Pari-mutuel horse racing is legal in 43 states with annual gross revenues, in 1998, approaching \$3.25 billion. There are over 150 racetracks in operation. Most betting today takes place away from the actual race track through off-track betting. Races are simulcast allowing for larger betting pools by increasing access to many race tracks. “Several companies are broadcasting races through 24-hour racing channels. Furthermore, one U.S. company is presently broadcasting races through the Internet. Through the process of setting up accounts at racing venues, patrons in eight states (including New York) can telephone their wagers from anywhere, including their home. Approximately \$550 million was wagered through account wagering in 1998.”<sup>112</sup>

Nevertheless, the harness and flat tracks throughout New York State continue to face a long and steady decline. Despite tax changes, receipts from pari-mutuel taxes continue to sink. Flat track tax receipts have declined from \$44.4 million in 1990-91 to \$18.6 million in 1998-99. Harness track tax receipts have gone from \$5.6 million in 1990-91 to just \$.92 million in 1998-99. Off Track Betting receipts have fallen from \$28.8 million in 1990-91 to \$17.4 million in 1998-99.

The decline of horse racing is not just a New York State problem; it is nationwide. Except for Nevada casinos, horse racing had a near monopoly on legalized gambling in much of the nation until the 1970's. Over the past thirty years, competing forms of gambling, especially casinos, have proliferated while other non-gambling leisure time pursuits have also expanded rapidly.

More recently, the pari-mutuel industry has lobbied for, and in the case of Delaware, Rhode Island, South Carolina and Virginia, won the right to place electronic gaming devices, i.e., slot machines, in their facilities. The industry contends that such initiatives level the playing field by allowing them to compete with casinos and lotteries.

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<sup>112</sup>NGISC, p. 2-11.

New York's race tracks have begun to push for slot-like machines at their facilities.<sup>113</sup> Legislation that was introduced during the 1999 session would have allowed the State's harness and thoroughbred tracks to operate video lottery terminals. Under the bill introduced by Assemblyman Alexander Gromack (D-Rockland County), up to 13 percent of the revenues derived from the terminals would go to the State for a new dedicated program for the rehabilitation and construction of school buildings. Gromack estimated that the State might generate up to \$500 million annually. Under the bill, each racetrack could have 1,000 terminals operating.

OTB, with the approval of the State Racing and Wagering Board, has begun installing *Easy Bet* in restaurants. *Easy Bet* is a betting terminal that allows persons to place bets on harness and thoroughbred horse races simulcast on television screens in the restaurant.

OTB set up its first *Easy Bet* terminal in 1998 in Columbia County. In 1999, another was installed in Troy and a third was installed in Frankfort, just outside of Utica.

### **Internet Gambling**

Gambling over the Internet is a new phenomenon. Revenues from Internet gambling more than doubled from 1997 to 1998, growing to over \$919 million.<sup>114</sup> In a report to the NGISC, Sebastian Sinclair, a researcher for Christiansen/Cummings Associates, Inc., estimated that Internet gambling revenues will reach \$2.3 billion by 2001.

The Internet offers every type of gambling from bingo to casinos to sports betting, which is illegal in most places in the United States. The web site *Rolling Good Times* offers links to over 1,000 sites that offer some form of gambling.

Internet gambling is very difficult, if not impossible, to regulate. The NGISC found that twenty-five countries around the world license or have passed legislation permitting Internet gambling, thus making it extremely complicated for any one country to regulate it.

NGISC identified the "danger" that is posed by young people's access to the Internet: young people are particularly active users of the Internet for entertainment and personal finance. NGISC pointed out that there is no mechanism in place to prevent youths from using their parents' credit cards to establish gambling accounts. NGISC researchers also expressed concern that the potential existed for abuse of the Internet by problem gamblers and by those involved with criminal activity.

NGISC recommended that the President, Congress and the Department of Justice should prohibit Internet gambling not already authorized in the United States. NGISC recommended, where appropriate, that state governments pass legislation prohibiting wire transfers to known gambling sites

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<sup>113</sup>Tom Precious, "Electronic Gambling State's New Bet," Albany *Times-Union*, February 27, 1997.

<sup>114</sup>For a complete discussion on Internet gambling issues, see NGISC, Chapter 5.

or the banks that represent them, declaring any credit card debts incurred while gambling on the Internet unrecoverable.

On July 26, 1999, New York State Attorney General Eliot Spitzer won a case involving an Internet gambling casino located in Antigua. The operators of the site, Suffolk County-based World Interactive Gaming Corporation (WIGC), had claimed that because their computer servers were located and licensed in Antigua, they were not subject to New York gambling laws.

The central issue was whether the State of New York could stop a foreign corporation legally licensed to operate a casino offshore from offering gambling to Internet users in New York. The New York State Supreme Court ruled that under New York Penal Law, if the person engaged in gambling is located in New York, then New York is the location where gambling occurred. The act of entering the bet and transmitting the information from New York via the Internet is adequate to constitute gambling activity within New York State. The World Interactive Gaming Corporation was forced by the courts to stop accepting wagers from residents of New York State.<sup>115</sup>

The Attorney General is monitoring the Internet gambling issue, and representatives from his office have recently testified before the Public Sector Gaming Study Commission (PSGSC).<sup>116</sup> The Public Sector Gaming Study Commission is a national commission made up of state and local government leaders who are studying the role of state and local government as it relates to a public policy on gambling. Internet gambling is just one area they are studying.

New York State Assistant Attorney General Joel Schwarz testified before the PSGSC on Internet gambling. He testified that there already exist a number of statutes that prohibit the transmission of gaming information in interstate or foreign commerce, including the Federal Interstate Wire Act and the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act. He said “it was concluded by the New York Attorney General’s Office that gambling activities are presumed illegal in a state unless there is explicit legal authorization to the contrary...[T]his means,” he said, “that Internet gambling is illegal unless specifically allowed under a state’s laws, a position in opposition to the claims of the Internet gaming industry that Internet gaming is legal unless prohibited by law.”<sup>117</sup>

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<sup>115</sup>Salvatore Arena, “Judge Nixes Internet Gambling,” *New York Daily News*, July 27, 1999.

<sup>116</sup>See *Public Sector Gaming Study Commission Minutes*, Charlotte, North Carolina, June 18 and 19, 1999. A final report is due in January 2000. The Public Sector Gaming Study Commission (PSGSC) was formed by the National Council of Legislators from Gaming States to address concerns of the gaming states regarding the research conducted by the federally appointed National Gambling Impact Study Commission. The NGISC had no state representative and therefore lacked an important component. The PSGSC’s purpose is to provide as comprehensive an evaluation as possible on gambling from the state government perspective. Its members include seven state government leaders, representatives from both the Indian gaming and state lottery industries, a local law enforcement officer and a city leader.

<sup>117</sup>*Ibid.*, p. 3.

Others have testified before the PSGSC as to the difficult issue of regulation of Internet gambling and the problems it may pose for state governments.<sup>118</sup> The emergence of these issues in New York State will require careful attention. In the long run, a piecemeal approach to regulating Internet gambling will not serve New York nor any other state well. This is clearly an area where the federal government must take a lead role.

New York State is in the forefront of its own version of Internet gambling. The Capital District Off-Track Betting Corporation advertises on its Internet web site<sup>119</sup> a new Cyber-Mutuel Internet Wagering System. The system would allow anyone, including those from out-of-state and across the world, to open an account with Capital District OTB and place wagers on horse races over the Internet. The system is not up and running yet and needs the approval of the New York State Racing and Wagering Board.

The New York State Racing and Wagering Board has not yet received a formal request from Capital District OTB to begin Internet wagering, but discussions have taken place. In any event, according to the Racing and Wagering Board, it will not act until U.S. Senator Jon Kyl's (R-Arizona) bill, which would prohibit Internet gambling, is acted upon. The bill (S.692) was voted out of the Senate Judiciary Committee on June 17<sup>th</sup> and reported to the full Senate. A vote has not been scheduled to date.

Senator Kyl's bill, the Internet Gambling Prohibition Act of 1999, has 23 co-sponsors from both parties in the Senate. The bill would amend the Federal criminal code to make it unlawful for any person in a gambling business to use the Internet or any other interactive computer service to: (1) place, receive, or otherwise make a bet or wager; or (2) send, receive, or invite information assisting in the placing of a bet or wager.

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<sup>118</sup>The New York State Task Force on Casino Gambling report, released August 30, 1996, did not address the potential impact of the Internet on casino gambling.

<sup>119</sup>See Capital District Off-Track Betting web site at [www.capitalotb.com/test.html](http://www.capitalotb.com/test.html)

## **ELEMENTS OF A SOUND GAMBLING PLAN FOR NEW YORK STATE**

New York State's biggest policy failing on gambling is that expansion has taken place without taking the requisite steps to combat its negative impacts — impacts that are known and recognized by professionals. The State is currently poised to initiate new Lottery and Internet games and casino gambling. As this paper has demonstrated, the State of New York, not unlike its counterparts in other states, is facing fundamental questions regarding gambling while pressures to allow its expansion are mounting.

There are several questions that the State must answer before moving forward with new gambling initiatives, beginning with a commitment from the Governor and Legislature to forge an overall policy in New York State. Such an exercise would subject all forms of gambling to the following questions:

1. Is the direction we are taking good for all the people of the State?
2. Are we satisfied that the economic and fiscal benefits promised will be delivered, and that we have taken steps to responsibly address the rise in problem gambling?
3. Are the safeguards of our State Constitution and laws serving to inform and protect the public, or are they being circumvented to respond to pressures for investment and revenues?
4. What forms of gambling do we want to see grow, and are we handling that growth in a responsible manner?
5. Is our State government prepared to properly manage the challenges ahead?
6. What have we learned from our own experience and from those of our counterparts in other states?
7. Have we applied those lessons well?

These questions are not easily answered, but they would be more responsibly addressed if the State decided to slow down its approval of gambling in several major areas.

### **A Policy Moratorium**

This call for a policy moratorium for gambling in New York State is designed to prevent the State from moving too far, too fast.

In prior years, the State moved forward with gambling initiatives such as the Lottery and Quick Draw strictly as a revenue source. The Lottery now accounts for \$1.44 billion annually.

Recently, gambling has been advanced by its proponents as a stimulus to the economy, a job creator, and a potential revenue source for local and state government. The argument for casino gambling as an economic development tool has been particularly strong in upstate New York — an area that has lagged the nation in job creation.

As New York's involvement with various forms of gambling has evolved, it has become clear that gambling can be a volatile business. The pari-mutuel industry has been in a state of decline for several

years, and, while Lottery continues to meet its budget targets, revenue declines continue to drive program changes. While casino gambling and other attempts to shore up these other gambling forms promise new revenue, at some point New York's gambling industry as a whole faces the prospect of diminishing returns.

Competition for entertainment dollars is stiff. The gambling industry competes with books, movies, the Internet, travel, theater, museums, libraries, restaurants and hobbies for attention and loyalty. Technology has revolutionized the entertainment industry, as it has the rest of our economy. Capital and consumer markets are worldwide in perspective. The State's direct revenue interests have placed pressure on it to preserve its current market share, and to seek even greater returns through expansion and innovation.

Faced with these pressures, it is small wonder that some State officials counsel a full speed ahead policy. It would be a mistake to blindly heed this counsel.

The current State budget surplus has provided an opportunity for the development of a sound, long-term plan for the future of gambling without resulting in short-term financial penalties. Instead, the imposition of a moratorium would allow the State's legal and Constitutional processes to ensure the creation of a balanced plan.

The critical element for a successful moratorium is the creation of a focal point for leadership within the State administration. Although the projected expansions of the Lottery, Internet and casino gambling pose a series of challenges for the State, there is no comprehensive philosophical approach to gambling being discussed; nor is there any individual who is in charge of "pulling the pieces" together.

The elements of a moratorium would:

**1. Settle issues related to casino gambling consistent with the public interest.**

Casino gambling is beset by a host of unsolved issues. The Legislature has not moved forward to place the issue of commercialized casino gambling before the public. In part, the lack of action has stemmed from the inability of State leaders to settle on a fair way to determine which communities would be eligible for casino gambling and which ones would not. Several lawsuits have been initiated challenging the Governor's authority to act unilaterally on the establishment of Indian casinos. NGISC documented numerous problems for state governments as they have attempted to implement the federal Indian Gaming Regulatory Act. Among them are: job creation, coordination and enforcement of federal and state gaming and criminal codes, regulating management of casinos, and revenue agreements.

Former Governor Cuomo's counsel and Governor Pataki's 1996 Task Force Report on Casino Gambling pointed to a host of problems with the current delegation of authority to state agencies regarding casino gambling. The problems range from conflicts of interest to police protection to

broader policy questions related to casino gambling, (e.g., economic development, entertainment, criminal justice, and local government). Once these problems are assessed comprehensively, State decision-makers can better determine a clear delegation of authority.

A moratorium would give Legislators and the Governor time to focus on the full range of questions related to casino gambling and how they should be addressed in the context of all other gambling initiatives. It would also allow the State time to create a comprehensive program for the prevention and treatment of problem gambling.

## **2. Set a course for the future of the Lottery.**

The State's \$1.44 billion in Lottery proceeds is raised through five games. Individual games have declined in revenue in the past few years, pressing officials to create new games and variations on old ones. The volatility within any one game is a reflection of the tenuous nature of gambling revenue. Just as pari-mutuel betting has declined in favor of other forms of gambling like Lottery, so an expansion of casino gambling could reduce the revenues going to Lottery. The Governor's proposal for New York to join Powerball — a multi-state, mega Lottery — is another initiative without a clear plan.

The State's 1996 expansion of Lottery to Quick Draw, a form of convenience gambling, highlighted the willingness of State officials to proceed with a program solely for revenue purposes and without regard to its impact on the incidence of problem gambling. According to the NGISC, "convenience gambling" is one of "the most pernicious kinds of gambling." When the State re-instated Quick Draw in the 99-00 Budget it did so without considering the results of an evaluation study it had commissioned. This sent the message that the issue of problem gambling was not being taken seriously. The study that was ultimately completed was poorly done and the procurement was shrouded in controversy.

A moratorium would give the public, Lottery and other State officials an opportunity to think clearly about the implications for Lottery games as the State expands other forms of gambling. It would give an opportunity to streamline Lottery operations to maximize whatever revenue streams that are realistic. And, it can be an opportunity to devise a set of advertising guidelines that discourage young people from gambling and encourage responsible participation in Lottery's games of chance.

## **3. Internet and crossover gambling require careful planning and coordination with other levels of government.**

As this paper documents, the Attorney General has successfully fought the expansion of gambling over the Internet because the gambling form did not fit New York's laws. Capital District OTB is poised to offer betting on horse races over the Internet to people in other states. No clear policy formulation has taken place at the State level to guide such ventures into Internet gambling. A clear policy is needed if the State is to move in one unified direction with regard to State laws and any new federal laws regarding Internet gambling.

Similarly, race tracks have been looking to benefit from crossover gambling — placing video slot machines at race tracks, or creating broader entertainment packages as envisioned by the addition of casino gambling at Monticello Race Track.

As these initiatives are considered, a moratorium would allow time to focus on which forms of gambling State residents will permit, how much and where.

#### **4. Increase funds for treatment and prevention.**

New York needs to increase the funding available for the treatment and prevention of problem gambling. It needs to do this in direct relation to the type of gambling it approves and the level at which it goes forward.

The opportunity to gamble has increased over the past twenty years and will probably continue to increase over the next twenty. People who suffer the consequences should have access to treatment alternatives. Such treatment and prevention programs need to be assured of a steady revenue source if they are to have the capacity to grow as additional need grows. The Governor’s Task Force recommended the “...funding of problem gambling awareness and treatment organizations to be continuous, rather than experience the year to year uncertainty that the present system affords.”

#### **5. Strengthen the Statewide policy on the posting of gambling addiction information.**

The ad hoc existence of the State’s policy on the posting of gambling addiction information and its sporadic oversight makes it unlikely that at-risk and problem gamblers are being reached. Gambling addiction information should be spread across the State consistent with the types of gambling that are allowed. The presentation of gambling addiction information should be presented in a fair and objective manner.

#### **6. Raise the legal age to play bingo to 18.**

According to the NGISC, early age gambling leads to a high lifetime risk of developing problem gambling. One report cited earlier in this paper states that there may be three times as many adolescent pathological gamblers as adult pathological gamblers. New York State must do everything possible to eliminate youth gambling, including raising the legal age to play bingo to 18.

#### **7. Analyze problem gambling.**

The State must maintain ongoing studies of problem gambling in New York State. As shown in the tables in the beginning of this paper, New York State already exceeds the national average in pathological and problem gambling trends.

Gambling is a form of entertainment for most people. Yet for many, the relaxation and release that comes with it can be transformed into a self-destructive obsession with dire financial and emotional consequences for the gambler and for those involved with the gambler. Our society has made great strides in combating the problem of the negative effects of alcohol and tobacco use. Similar concerns need to be addressed and actions need to be taken if the State and nation continue to increase its embrace of gambling as an entertainment form and source of revenue.

#### **8. Evaluate the fiscal and economic impact of gambling.**

Each year annual and three year gambling revenue projections should be made. These would be measured against actual revenues and allow the State to know which forms of gambling are measuring up and which are not. In addition, tracking revenues allows for longer-term planning and budgeting.

A casino gambling economic model should be developed to forecast such factors as job and business creation, local government tax and revenue projections, the impact on existing businesses, the impact on surrounding communities, crime, and social costs.

## APPENDIX A

### Definitions

According to the American Psychiatric Association in 1994,<sup>120</sup> understanding the extent and nature of pathological gambling requires a clear, discrete, acceptable definition based on a nomenclature applicable in a wide diversity of contexts. The following terms, compiled from various primary sources by the National Research Council, are used frequently throughout this report:<sup>121</sup>

*Pathological gambling:* A mental health disorder characterized by a continuous or periodic loss of control over gambling, a progression in gambling frequency and amounts wagered, a preoccupation with gambling and with obtaining money with which to gamble, irrational thinking, and a continuation of the behavior despite adverse consequences.

*Compulsive gambling:* The original lay term for pathological gambling, it is still used by Gamblers Anonymous and throughout much of the self-help community.

*Probable pathological gambler:* A common reference in prevalence research studies and other gambling literature to a person who is suspected of being a pathological gambler on the basis of some criteria, but who has not been clinically evaluated as such.

*Problem gambling:* Gambling behavior that results in any harmful effects to the gambler, his or her family, significant others, friends, co-workers, and others. Some problem gamblers would not necessarily meet the criteria for pathological gambling.

The use of the term “problem gambling” has been used in different ways by the research community to describe a range of individuals, including those who fall short of the diagnostic criteria for pathological gambling<sup>122</sup> and persons whose gambling behavior compromises, disrupts, or damages personal, family or vocational pursuits. This term is also used as a more inclusive category that encompasses a continuum of gambling difficulties, with pathological gambling at one end of the spectrum,<sup>123</sup> as in Tables 1 and 2.

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<sup>120</sup>NRC, p.15.

<sup>121</sup>Ibid. p. 21.

<sup>122</sup> H. R. Lesieur and R. J. Rosenthal, “Pathological Gambling: a Review of the Literature,” *Journal of Gambling Studies*, 1991, 7:5-40. (prepared for the American Psychiatric Task Force on DSM-IV Committee on Disorder of Impulse Control Not Elsewhere Classified)

<sup>123</sup> National Council on Problem Gambling, *Problem and Pathological Gambling in America: The National Picture*, Research and Public Policy Committees of the National Council on Problem Gambling, Columbia, MD, 1997.

The following terms are widely used in the problem gambling research community, and are merely defined by this Office as they are used within this report:

*Lifetime problem or pathological gamblers:* Individuals who have at some time in their lives met the criteria for problem or pathological gambling.

*Current problem or pathological gamblers:* Persons who have met the criteria in the past year.

*Low-risk gamblers:* Social or recreational gamblers who gamble for entertainment and typically do not risk more than they can afford.

*At-risk gamblers:* Those individuals whose lifestyles, personality traits, close proximity to gambling venues or other environmental factors give them a higher risk of becoming a problem gambler than low-risk gamblers.

*Past-year gambling:* Refers to gambling venues in which a person has participated in the past twelve months.

## APPENDIX B

### 1998 Allocations for Problem Gambling Programs by State

The National Council on Problem Gambling (NCPG) has produced this report with the assistance of the American Gaming Association (AGA), National Indian Gaming Association (NIGA), and North American Association of State and Provincial Lotteries (NASPL).

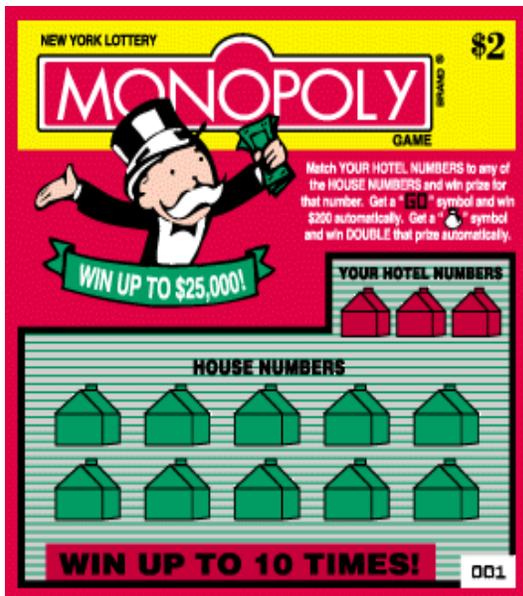
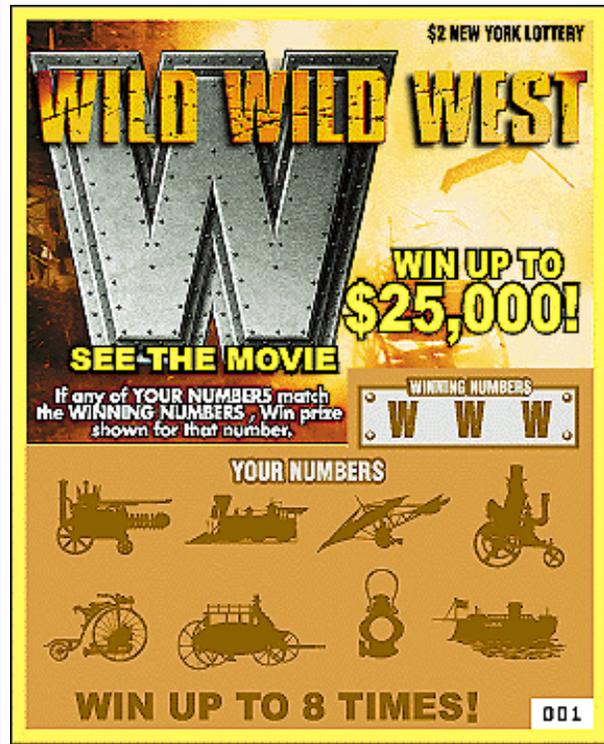
State	1998 Funding	Source	Amount
Alabama	None		
Alaska	None		
Arizona	\$170,000	Casinos Other	\$153,000 \$17,000
California	\$89,000	Native American Casinos Racetracks Card Club Association	\$59,000 \$25,000 \$5,000
Colorado	\$25,000	Colorado Lottery	\$25,000
Connecticut	\$1,190,000	Native American Casinos State of Connecticut Connecticut Lottery Client Fees Parimutuel Tax Other	\$310,000 \$115,000 \$500,000 \$20,000 \$235,000 \$10,000
Delaware	\$1,025,000	State of Delaware	\$1,025,000
Florida	\$124,000	Florida Lottery Casinos Racetracks	\$100,000 \$10,000 \$14,000
Georgia	\$200,000	Georgia Lottery	\$200,000
Hawaii	None		
Idaho	None		
Illinois	\$500,000	Illinois Casino Gaming Association	\$500,000
Indiana	\$813,000	25% of Riverboat Admission Tax Sheriffs Association Racetracks	\$800,000 \$5,000 \$8,000

<b>State</b>	<b>1998 Funding</b>	<b>Source</b>	<b>Amount</b>
Iowa	\$3,015,000	.3% of gross revenues from Lottery, Riverboat Casinos, and Slots at Racetracks	\$3,015,000
Kansas	None		
Kentucky	\$104,000	Kentucky Lottery Other	\$90,000 \$14,000
Louisiana	\$880,000	Casinos Office of Drug & Alcohol Abuse Louisiana Lottery	\$280,000 \$100,000 \$500,000
Maine	None		
Maryland	None		
Michigan	\$133,000	Michigan Lottery Casinos Other	\$87,000 \$15,000 \$31,000
Massachusetts	\$1,100,000	Dept. Of Public Health	\$1,100,000
Minnesota	\$2,280,000	Minnesota Lottery General Fund Casinos Native American Casinos Other	\$1,525,000 \$220,000 \$10,000 \$125,000 \$400,000
Mississippi	\$270,000	Casinos General Fund	\$170,000 \$100,000
Missouri	\$1,020,000	Casino Municipalities Casinos Dept. Of Mental Health Missouri Lottery Donations	\$165,000 \$100,000 \$695,000 50,000 10,000
Montana	None		
Nebraska	\$185,000	Nebraska Lottery	\$185,000
Nevada	\$345,000	State of Nevada Casinos Donations	\$150,000 \$10,000 \$185,000
New Hampshire	None		

State	1998 Funding	Source	Amount
New Jersey	\$720,000	General Fund Casinos Racetracks Dept. Of Public Health Other	\$500,000 \$100,000 \$17,000 \$100,000 \$3,000
New Mexico	\$36,000	New Mexico Responsible Gaming Committee	\$36,000
New York	\$1,564,000	Office of Mental Health	\$1,564,000
North Carolina	None		
North Dakota	\$50,000	State of North Dakota	\$50,000
Ohio	\$350,000	Ohio Lottery	\$350,000
Oklahoma	None		
Oregon	\$2,600,000	Oregon Lottery	\$2,600,000
Pennsylvania	\$72,000	Pennsylvania Lottery Racetracks	\$65,000 \$7,000
Rhode Island	\$15,000	Rhode Island Lottery Rhode Island Legislature	\$12,000 \$3,000
South Carolina	\$50,000	Turner Gaming	\$50,000
South Dakota	\$200,000	Not Available	\$200,000
Tennessee	None		
Texas	\$475,000	Texas Commission on Alcohol and Drug Abuse	\$475,000
Utah	None		
Vermont	None		
Virginia	\$36,000	Virginia Lottery	\$36,000
Washington	\$159,000	State Gaming Commission Washington Lottery Other	\$100,000 \$10,000 \$49,000
West Virginia	None		
Wisconsin	\$135,000	Native American Casino Wisconsin Lottery	\$35,000 \$100,000
Wyoming	None		
<b>TOTAL</b>	<b>\$19,950,000</b>		

APPENDIX C

Examples of Instant Cash Game “scratch-off” lottery tickets



**This report was prepared by the State Comptroller's  
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