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2023 Joint Legislative Budget Hearing on Public Protection
Testimony by Sumeet Sharma, Director, Correctional Association of New York
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About CANY

Established in 1844, the Correctional Association of New York (CANY), under §146 of New York's Correction Law, is charged with visiting and examining the state's correctional facilities to identify and report on prison conditions, the treatment of incarcerated individuals, and the administration of policy promulgated by the executive and legislature.

In 2021, CANY's existing ability to monitor state prisons was consolidated into state law with the passage of legislation codifying CANY's authority to visit, access, inspect and report on the state's prisons. Under this law, CANY is permitted to visit any state prison with 72 hours' notice to the Department of Corrections and Community Supervision (DOCCS), communicate confidentially with incarcerated individuals and department staff, operate a phone hotline for the reporting of prison conditions by incarcerated individuals, distribute surveys to incarcerated people, and disseminate reports and recommendations to the state's executive, legislature, DOCCS, and the public at large.

In 2022, CANY conducted in person monitoring of 11 state correctional facilities, completing over 700 structured interviews with incarcerated individuals and meeting with hundreds of state employees on site. CANY's in person monitoring of the state's prisons is bolstered by administrative data released by the department and obtained through the Freedom of Information Law (FOIL) as well as through significant contact with incarcerated individuals, family members and friends of incarcerated people, and advocate groups.

Since its inception, CANY's reporting has been integral in movements to end corporal punishment in state prisons, suspend the use of mandatory sentencing laws in New York, and abolish the death penalty in the state, among other reforms. Furthermore, the organization's advocacy has helped support improved access to medical and mental health care in prisons, improved quality of care for people diagnosed with HIV/AIDS, Hepatitis-C and other infectious diseases, and most recently, the limitation of the use of solitary confinement in New York.

We appreciate the opportunity to provide testimony on the FY 2023-2024 State Budget proposal and Article VII bills that have an effect on incarceration in state prisons in New York.

Overview

The New York State Department of Correction and Community Supervision, one of the largest agencies in the State, is slated to expend \$3.19 billion in FY2023 and \$3.16 billion FY2024. These funds continue to represent a significant investment in the agency and provide a wealth of resources for the department to fulfill its mission, objectives, and requirements under the law. From FY2015 to FY2023, DOCCS received an 8.5% increase in funding, reflecting a change from \$2.94 billion in FY2015 to \$3.19 billion in FY2023. In the same period, the department has seen a 40.1% decline in the population of incarcerated individuals: DOCCS held 31,088 incarcerated individuals as of January 1, 2023 compared to 51,890 incarcerated individuals as of January 1, 2015. (DOCCS Under Custody reports)¹

In the same period, the department has, to its credit and under the direction of the legislature and executive, implemented a wide range of reforms including Raise the Age, the HALT Solitary Confinement Act, MAT, Less Is More, a prohibition on double bunking in medium security prisons, the expansion of staff wellness and staff retention programs, like Desert Waters, and other needed measures to improve conditions for incarcerated people and staff in prisons.

CANY commends Governor Hochul for supporting increases to funding for Alternatives to Incarceration and Re-Entry programs in the state's budget, including means to provide for the recruitment of mental health and psychiatric staff for the Office of Mental Health, and especially the continuing the funding to install stationary cameras in correctional facilities. However, we have concern about suggested measures aimed at improving safety and security for both incarcerated people and staff in prisons. As a result, we encourage the executive, legislature, and department not to lower the age for correctional officers to 19 and to ensure the use of ionizing body scanners in state prisons is accompanied by comprehensive data reporting, analysis, and external input.

CANY furthermore recommends that policymakers across the state consider including additional measures in the state budget to improve the availability and administration of healthcare, mental healthcare, and educational and vocational programs, as well as the reissuance of items in the previous year's budget to increase the rate of pay for incarcerated individuals in state prisons.

Finally, CANY strongly recommends the executive and legislature invest in and create polices building on initiatives on transparency and accountability from previous years by continuing to create mechanisms for data collection and sharing of criminal justice statistics, including from the Department of Corrections and Community Supervision, and pass legislation strengthening oversight of the state's prisons and criminal justice agencies.

Article VII / Policy in the Budget

Lowering the Hiring Age of Correction Officers from 21 to 19

While it is positive that the Governor has identified means to recruit corrections officers from a larger pool, and CANY encourages the department to continue efforts to recruit a diverse workforce, we call into question the proposal to lower the hiring age for corrections officers.

¹ DOCCS Under Custody Reports 2015 – 2023, Acquired by CANY via the Freedom of Information Law (FOIL)

Data shows that correctional officers are affected by high levels of occupational stress relating to responsibilities of their position. Often responsible for making decisions that affect the well-being of incarcerated individuals, corrections officers must approach their work with high levels of impulse control and responsibility as well as suitable temperament and perspective – areas of the brain that evidence suggests are still being developed past the age of 18 and well into adulthood. The legislature recognized this fact in the HALT bill by including individuals under the age of 21 as a special population, with an understanding that people below the age of under 21 should have access to programs and services to support development well into adulthood as well as an acknowledgement that isolation is harmful to development.²

While data in New York on the effects of the working environment on correctional staff on mental health and health is scarce, it can be said that corrections officers in New York State work in a high stress environment. According to the CDC, protective service occupations including work in correctional facilities, consistently rank as one of the professions with the highest risk for suicide and a recent study by Natasha A. Frost, professor in the School of Criminology and Criminal Justice at Northeastern University, noted that corrections officers in MA, experience higher levels of psychological distress including post-traumatic stress, anger, depression, and suicidality, than individuals in the general range.³

In lieu of lowering the age of hiring for officers to increase the pool of recruitment, policymakers would be well advised to improve the job conditions for correctional staff by continued investments aimed at increased training and educational opportunities for employees, expanded use of stationary cameras throughout facilities, additional program opportunities for incarcerated people to improve institutional culture and safety, and additional wellness resources for staff that address exposure to violence and other traumatic events.

Allowing DOCCS Use of Body Scanning Equipment

In 2022, DOCCS implemented measures to restrict packages received by incarcerated individuals, photocopy personal mail, and increase the use of K9 units in visit screening areas and other areas of the prison, all in an effort to limit contraband and weapons in correctional facilities.

While the executive's intent of reducing illicit substances, weapons and other contraband in prisons and well as the use of physical searches of incarcerated individuals and visitors is worthy, the proposal to allow the department the use of body scanning equipment should include provisions to require the department to share results and analysis of the department's task force on violence, as well as the regular publication of data related to acts of violence, instances of contraband, and the success rate of already instituted programs on reducing the occurrence of violence and contraband.

² "Better Outcomes for Young Adult Men." UK National Offender Management Service, August 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/462169/Better_Outcomes_for_Young_Adult_Men__P1_1_.pdf.

³ Frost, Natasha, and Carlos Monteiro. The Impact of Correction Officer Suicide on the Institutional Environment and on the Wellbeing of Correctional Employees. Northeastern University, December 1, 2021. <https://cssh.northeastern.edu/sccj/wp-content/uploads/sites/5/2021/12/CO-Suicide-and-Officer-Wellbeing-Final-Report-to-the-MADOC-12-1-2021.pdf>.

Budget / Revenue

Continuing Investments in DOCCS capital to maintain aging facilities and infrastructure

CANY supports the Governor's continuation of \$40 million additional investment, as part of a total of \$355 million to maintain aging prison facilities and infrastructure and facilitate the installation of closed-circuit television systems (CCTV) systemwide and encourages the executive and legislature to target these investments to improve deteriorating physical plant conditions and expedite the introduction of stationery and body cameras into all correctional facilities.

In 2021 and 2022, CANY monitors observed deteriorating physical plant conditions and received numerous reports from incarcerated individuals related to aging infrastructure, especially in plumbing, heating, and electrical functions, affecting access to basic needs, programs and other services. For example, at Albion Correctional Facility, a women's prison in western New York, only 36% of respondents surveyed by CANY reported that the equipment and fixtures in their cells or living areas were working properly (n=64), with a significant number of respondents noting inadequate access to and functioning of showers, sinks, and toilets. Incarcerated Individuals at other prisons, including Elmira and Sing Sing Correctional Facilities, noted substandard conditions of living in responses to open-ended survey questions, including leaks in plumbing and broken ventilation adding to concern around infrastructure affecting quality of life.

Increased Funding for Alternatives to Incarceration and Reentry

As a member of New York's ATI/Reentry Coalition, CANY strongly supports the Governor's announcement of \$15.7 million in additional State funding, for a total of \$31.4 million, to support the alternatives to incarceration (ATI) programs as well as \$7.7 million in additional State funding, for a total of \$11.5 million for reentry services. According to the Legal Action Center, ATI and reentry programs save New York City and State over \$100 million each year and result in lower recidivism rates for program participants than those released from incarceration without access to programming. Money spent on ATI programs is a fraction of the amount spent on incarceration and has an added benefit of providing better outcomes for those enrolled in ATI services.

The executive and legislature should support the proposed increase in funding for ATI and reentry programs and further support efforts to support incarcerated individuals while preparing for release, especially following the closures of work release programs at Lincoln and Bayview in recent years, and the lack of current access to work release and educational release programs in prison.

Pay for Incarcerated Individuals

Incarcerated individuals in New York are paid between 10 cents and 65 cents per hour for industrial or other work for the state. In these jobs, incarcerated individuals use of heavy and/or industrial equipment to create license plates, grills, furniture for state offices, clothing for state institutions, and a host of other items for the state like the green garbage bins seen on NYC corners. Incarcerated Individuals also staff the state's DMV call centers, provide maintenance of prison facilities, and provide other services to the state of New York for nominal wages.

With the rising cost of goods in prison commissaries due to inflation, the introduction of new DOCCS' policy to restrict the mailing of packages from family members and friends (essentially requiring incarcerated individuals to order packages by mail at a higher cost) and new costs borne by incarcerated people to communicate by email through tablets, incarcerated people have little to no money to afford basic needs like food and access to communication.

While the Governor's attempt to create a jail to jobs program in 2022 was a commendable start to the discussion on increasing prison wages, we encourage the legislature and governor to continue to make efforts to increase wages for incarcerated individuals working in New York's prisons without wage garnishments and with measures to ensure incarcerated individuals are electing to participate in any jobs program (as opposed to being mandated to work). While CANY supports a minimum wage for all incarcerated workers, any increase from the pennies on the dollar received by incarcerated individuals currently would be a significant improvement and strongly benefit incarcerated individuals in New York. As a result, we encourage the legislature and governor to include some sort of increase in wages for people in prison in this year's budget.

Implementation of Existing Laws

In recent years, the governor and legislature have enacted a series of reforms to the state's prison and parole systems, in an effort to limit the use of solitary confinement, provide for medication assisted treatment in response to substance use and addiction, provide for incentives for the successful discharge of parole and prohibit incarceration for technical violations of parole, and facilitate proximity to family for incarcerated individuals with young children.

Each of these reforms has had a significant impact on improving the wellbeing and quality of life of incarcerated individuals, individuals in the reentry process, and communities impacted by mass incarceration. The policymakers who supported these measures should be commended for their leadership and commitment to enacting policies based on statistics and facts, in lieu of a focus on the occurrence of limited incidences reported in the press. We encourage the legislature and governor to continue to support these important reforms by ensuring that the department takes all necessary measures and uses all available resources to successfully implement the law, and thereafter is timely on the reporting of data related to the implementation of the different statutes.

HALT

The Humane Alternatives to Long-Term (HALT) Solitary Confinement Law was enacted on March 31, 2021 and took effect on March 31, 2022.

CANY has been observing the implementation of the HALT Law in state prisons through monitoring of special housing units (SHU), residential rehabilitation units (RRU), therapeutic behavioral units (TBU), residential mental health units (RMHU), and step-down programs (SDP), as well as general housing units at Upstate Correctional Facility in March 2022 and again in November 2022, Elmira Correctional Facility in April 2022, Albion Correctional Facility in June 2022, Orleans Correctional Facility in June 2022, Coxsackie Correctional Facility in July 2022, Marcy Correctional Facility in October 2022, Midstate Correctional Facility in October 2022, and Green Haven in December 2022.

Through a review of administrative data and based on interviews with incarcerated individuals and staff in prisons, CANY documented multiple departures from the provisions of the HALT Solitary Confinement Law in New York State prisons. These include holding people in solitary confinement for more than six times the legal limit, placing people in prohibited segregation, limiting out-of-cell time, denying access to mandatory programming, using restraints during programming, operating units outside of requirements, placing people in solitary for reasons not specified in the law, and holding individuals in pre-hearing confinement without meaningful representation.

CANY also observed and received reports of positive effects of the law change, including large reductions in the number of people in segregated confinement and the amount of time spent in solitary confinement, as well as access to more out of cell programs for individuals incarcerated in disciplinary units.

CANY is continuing the monitoring of the implementation of the HALT law through 2023 and is slated to issue a report, currently under DOCCS review, with additional findings and recommendations in March 2023. In the meantime, we encourage the state to take measures to achieve compliance with both the language and the intent of the law and encourage the department to continue to publish data related to the implementation of the act. Additionally, as the department has reported an uptick of violence following HALT, we encourage the department to continue to engage facility staff, incarcerated people, external experts, and other organizations with a vested interest in prison safety to explore causes and implement evidence-based solutions to promote safety.

MAT

As of October 2022, DOCCS Division of Health Services has been responsible for implementing access to Medication Assisted Treatment (MAT) for Incarcerated Individuals in prisons after the passage of a law in 2021 mandating access to MAT. MAT is a proven harm reduction tool that can reduce drug use, improving treatment outcomes, and lower the risk of overdose and other negative consequences of substance use disorders.

While CANY is in the process of finalizing reporting following visits to Coxsackie, Marcy, Mid-State, and Green Haven Correctional facilities after the implementation of the law in October, CANY monitors on visits noted that several state prisons have had success with an expansion of the program, with others offering limited access to MAT during the initial introduction of the program, with medical staffing vacancies possibly playing a role in a delayed implementation. At Marcy Correctional Facility, CANY observed incarcerated individuals receiving medication as part of the program and spoke with several individuals who noted that they had been placed in the program after request. On the other hand, as of December 2022, participation in the MAT program at Green Haven correctional facility was limited with less than 20 individuals enrolled in the program and approximately 180 incarcerated individuals on a wait list. During the visit, Green Haven staff reported 5 substance use deaths at the prison in 2022.

To further support the rollout of MAT in prisons, CANY supports recommendations made by the New York State Opioid Settlement Fund Advisory Board in November to support sustaining the statute to

provide MAT in all correctional facilities by expanding services in correctional settings as well as the recommendations supporting access to MAT for individuals during reentry and on parole.⁴

Proximity Law

In 2020, New York’s policymakers directed DOCCS to place incarcerated parents in facilities closer to their minor children and issue an annual report on the implementation of the statute.

It has now been over a year since the law has been in effect and the department has not issued an annual report on the status of the law’s implementation making it difficult to assess the success of the program, and whether DOCCS has exhausted all available measures to ensure proximity to families for eligible incarcerated individuals. We encourage the executive and legislature to ensure the department adheres to its reporting requirements under the law and continue to support efforts to successfully implement the proximity law.

Independent Oversight

In an article for the NYU Brennan Center for Justice, Michele Deitch, senior lecturer and director of Prison and Jail Innovation Lab (PJIL) at the University of Texas, notes independent oversight ‘as essential for a safe and healthy prison system’ with it being crucial for promoting accountability and transparency and building public trust in the criminal justice system.⁵

Since 2020, CANY has conducted 23 comprehensive prison monitoring visits, interviewed more than 3,000 incarcerated individuals, carried out three systemwide surveys, distributed vaccine education materials to approximately 20,000 incarcerated individuals, published 19 reports, responded to hundreds of requests for information and assistance, and held dozens of briefings with legislators, advocates, and other stakeholders – providing value and insight to policymakers, the department of corrections and community supervision, advocates and stakeholders in the public.

The vast majority—more than 90%—of CANY’s current budget is privately funded. Additional resources are urgently needed to respond to policy changes affecting the state’s prison system. CANY in the coming year will continue to fulfill its mandate to visit and report on the state prisons, continuing monitoring the implementation of the HALT Solitary Confinement Act, medication-assisted treatment (MAT) in prison for treatment of opioid disorders, the availability of programs and services in prisons, and the ongoing implementation of the Close to Home Act/Proximity Bill. CANY is also prioritizing monitoring in several areas where additional transparency is greatly needed: deaths in custody, the impacts of climate change (including extreme heat in housing units), and the disciplinary and grievance protocols. In addition, CANY provides rapid response to incarcerated individuals and their family

⁴ Pantin, Debra. “Opioid Settlement Fund Advisory Board Annual Report.” OASES. Opioid Settlement Fund Advisory Board, November 1, 2022. https://oasas.ny.gov/system/files/documents/2022/11/osfab_yearly_report_110122.pdf.

⁵ Deitch, Michele. “Independent Oversight Is Essential for a Safe and Healthy Prison System.” Brennan Center for Justice, November 3, 2021. <https://www.brennancenter.org/our-work/analysis-opinion/independent-oversight-essential-safe-and-healthy-prison-system>.

members who contact CANY with concerns about prison conditions and mistreatment and serves as a point of contact for incarcerated individuals across New York.

Independent civilian oversight is essential and CANY is well-positioned to carry out this work, given its long track record of prison oversight and advocacy and its unique authority under state law. We look forward to partnering with you to bring greater transparency, accountability, and humanity to our state prison system and encourage you to support investments in CANY's budget.