



**Public Protection Joint Legislative Budget
Hearing**

2021-2022 Executive Budget Proposal

February 10, 2021

Testimony by Wayne Spence

Good afternoon Chairs Krueger, Weinstein, Salazar and Weprin and other committee members. My name is Wayne Spence and I am the President of the Public Employees Federation (PEF). I want to thank you for the opportunity to speak to you on behalf of our 52,000 members about the potential impact of the Executive Budget if adopted without modification.

Our union is made up of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Serving as the state's frontline essential workers during the COVID-19 pandemic, my members have risked their lives and those of their families to maintain the continuity and quality of services to New York's most vulnerable citizens. Our members care for the elderly, the sick and the infirm; they work to ensure the state's roads and bridges are safe and secure; they help to rehabilitate those who have violated the law and to counsel and provide safety net services for at-risk youth. Our members take a great deal of pride in their work because they are professionals and they care.

PUBLIC EMPLOYEES HAVE BEEN THE BACKBONE OF THE STATE'S COVID-19 RESPONSE

I would be remiss if I did not begin this discussion by highlighting the fact that PEF members have been at the forefront of the state's response to the COVID-19 pandemic. Despite chronic shortages of personal protective equipment, inaccurate guidance on appropriate safety protocols, a lack of off-site housing, and the imposition of mandatory overtime and forced redeployments, PEF members have filled the breach to keep New Yorkers as safe as possible during this crisis. It should be noted that our members who worked in congregate settings and directly with COVID patients have borne a disproportionate burden in serving the state's neediest citizens.

Unlike many of the essential employees in private industry, my members have received no recognition or remuneration for their selfless and dedicated service. In fact, this proposed budget seeks to privatize the critical public services they provide, relocate their jobs to other regions of the state and cut the health insurance benefits that they have earned as faithful and dedicated public servants.

New Yorkers learned the importance of government and the need for enhanced government capacity during this crisis. How many of the state's private service contractors were performing their contractual responsibilities or servicing taxpayers at the height of this pandemic? We need to learn a lesson from this experience. New York needs to develop greater capacity to deliver needed services and to address the current and future disasters in a timely, efficient and cost-effective manner—that cannot be achieved with private contractors performing public services.

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS)

DOCCS and COVID-19

The NYS Public Employees Federation represents nearly 5,000 DOCCS members, including those who work in the Division of Community Supervision. It also includes those who work within the prison health system, rehabilitative services, education, vocational training, drug treatment and many other titles that provide programs and services to inmates. These are all areas critical to help DOCCS fulfill its mission.

The department's COVID-19 response has had both positives and negatives. Early on, DOCCS was very open in regards to notifying staff about policy and procedures that continued to change almost daily. We asked to participate in assisting with planning as a new direction was evolving. We were not permitted to be directly involved, as this decision came from outside the department. I, along with PEF staff, continued to press the governor and we were denied that access.

The department did provide PEF members with the needed PPE and, eventually, visitation restrictions early in the pandemic. DOCCS allowed staff to either wear their own mask or one was provided upon entry. As the second wave hit in late fall, the department struggled to stop visitations, which may or may not have impacted the increase in COVID-19 cases among DOCCS staff as well as inmates.

The staff continues to provide the highest standard of care and programming in the country. We take great pride in the work PEF members do. There has been great concern that DOCCS was not allowed direct access to the vaccine for the staff. We know that the department developed a very comprehensive plan regarding vaccine delivery. Since we continue to hear from the public that the staff are the source of COVID-19 in our prisons, why would the state not allow the department to vaccinate their employees? We hope that the state will enhance its vaccination efforts as a means to mitigate COVID-19 in the DOCCS system.

PRISON CLOSURES

PEF vehemently opposes the governor's Executive Budget proposal to close as many prisons as he chooses across the state. These closures can happen with only 90 days' notice throughout the next two budget years ending on March 31, 2023. This proposal is found in Part M of the Public Protection and General Government Article VII bill (A.3005/S.2505).

Four days before Christmas 2020, the governor announced the closure of three facilities that were permitted to be closed as part of last year's enacted budget. The impacted facilities were Gowanda and Watertown and the Clinton Annex of the Clinton Correctional Facility. This led to the attrition of 1,247 individuals working in these facilities. While the governor likes to say that the budget does not include any layoffs, it will adversely impact more than a thousand state workers. The 2021-2022 DOCCS budget presumes the attrition of an additional 800 workers. While these 800 jobs aren't layoffs, per se, they are clearly forcing workers to either retire or otherwise separate themselves from state employment. Some employees will be offered a job that may pay less and could be located 80 or 100 miles away. This is a clear disincentive to remain with the state. If the employee accepts a new position at a different location, it may impact (or "bump") an employee with less seniority at that facility.

PEF implores the Legislature to keep the current law in place that requires 12 months' notice of a facility closure. This allows employees, local businesses, inmates and inmates' families adequate time to make life-changing decisions about moving, changing schools, selling a home, or expanding a business.

SAFETY

One positive development we have witnessed over the last year has been the elimination of double bunking in nearly all settings. There are some limited exceptions for specialized programs like shock and work release. However, this action was taken administratively and can be undone. We believe that the Legislature should pass A.702/S.2211, which would prohibit double bunking of inmates permanently.

DOCCS reports in its January 1, 2021, Prison Safety Data Factsheet there were 1,047 assaults on staff statewide by inmates in 2020. This represents an increase from 972 in 2018 and 895 in 2015.

The data is further broken down by Maximum vs. Medium security. Maximum security facilities saw a small increase since last year, and a 20% increase since 2015.

But what the data does not show is the number of near misses our members experience in facilities daily. Nor does it account for some actions by inmates that may not be recorded as assaults, such as threats or throwing of bodily fluids, which may contain infectious diseases. We have heard from our members there is an increase in the number of threats, threatening behavior, and outright assaults on civilian staff. Any civilian staff who is thrown at or spit on may suffer extreme anxiety not knowing what they have been exposed to, and they have to go through nauseating treatments to prevent illness from their exposure to bloodborne pathogens.

We have had numerous reports of throwing or spitting incidents on our members. Too many of our members think or are told that this is just part of the job – that they work with inmates and should expect it. That is unacceptable. Everyone should go home in the same or better shape as when they went to work. New York can and should do better to protect its workforce.

We continue to be disappointed in the fact that the department has not yet been able to settle an agreement with the vendor-based package program. This change greatly impacts the safety of all employees working inside facilities. One of the ways drugs are introduced into facilities is through the package rooms. PEF looks forward to working with the department to put forth the needed information to bring back this program.

Many new program initiatives put forward by the governor have reduced the population of our state prisons. Unfortunately, while smaller, the current population is more violent than ever before. The administrative changes regarding how inmates are charged with disciplinary violations have empowered and emboldened them to violently stand up against staff. The department continues to provide additional pepper spray as well as enhanced trainings with staff to assist in dealing with these situations.

Programs such as SDU, IASAT, and reduction in SHU time based on good behavior have enhanced inmates' abilities to transition back into the general population, or more importantly back into society for those long-term inmates. Proposed Legislation such as the HALT Bill will impact not only the overall safety of staff, but impose an "only the strong survive" environment for the inmates.

One area of concern with the proposed HALT legislation is the inability of the department to hold inmates to the acceptable standards of behavior not only in our community, but within the facilities where we house our population. Continuing to restrict a staff's choice of sanctions only allows inmates to develop more manipulative skills.

The SHU is a tool that the department uses to help reset and redirect inmates that have made poor choices within their programs or facility living. Through the years, the department has developed programs with the assistance of security and program staff that help inmates to progressively develop better choices related to their poor decisions. Many of the inmates have gone through our progressive discipline system and have been separated from the general population.

The department has continued to prove that direct programming, both through early intervention as well as post separation from the general population, has led to a safer environment for both inmates and staff. More resources would allow for the department to expand current programs so that it can front load the programs afforded to inmates. This would allow inmates to make better choices while they are incarcerated. This would be a better situation than what exists today, where inmates are being programed based on their earliest release dates. If inmates received programs such as Aggression Replacement Training or Alcohol and Substance Abuse Treatment as they enter into incarceration, it would give them the tools to make better choices both while incarcerated as well as after their release. This would be a better investment than simply allowing inmates to manipulate a law that only allows for 15 days SHU time.

Over the last year, we have continued to work with the department and brother and sister unions to reevaluate the risks associated with each work location and develop training relative to those risks. Almost all DOCCS facilities have received the training and locations such as Community Supervision offices and report stations will begin to roll out the program in the early part of the next fiscal year.

These security concerns lead me to reiterate the need to upgrade the aging personal alarm system within the department. The department is currently in the process of replacing four new personal alarm systems. The current system dates to pre-1994. The most recent upgrades, which started in 2009, have not reached 25% of facilities due to the continued stress on the department's budget and from expanded projects in Step Down Units, Adolescent Facilities, expanded Mental Health Facilities and the NYCLU lawsuit settlement. The department has continued to put in multimillion-dollar camera systems as well as many other changes. Meanwhile, we are still left with a personal alarm that has an operating system using Windows 97 and alarms and repeaters that can only be fixed by using parts found on eBay. I know we are in financially tough times, but I ask you how to quantify the cost of a life lost or a negative life changing event?

TRAINING

In the past, there have been questions regarding training and how best these can be funded. I believe if we sit down with our sister and brother unions and the department, as we have in the past, we could properly invest in much needed and enhanced trainings for DOCCS. This training would include

enhanced mental health and continuation of de-escalation training, creating a positive work-life balance.

STAFFING SHORTAGES

With the decrease in the prison population, we anticipate an increase in the number of parolees who are supervised by PEF Parole Officers. These officers are already overworked and most have caseloads that are much too high. They cannot possibly handle additional parolees with the current amount of resources provided to them. There needs to be adequate staffing to help the parolees transition back to life outside of prison and help them with all aspects of their lives.

PEF opposes the so-called “Less is More” legislation (S.1144/Benjamin) as it would remove all meaningful consequences for bad actors, tie the hands of parole officers and make it much harder for them to help parolees transition successfully back into society. With the number of violent crimes on law enforcement personnel on the rise, the timing of this proposal could not be worse. Eliminating the potential sanctions levied against parolees for violating the terms of their parole hurts the ability of parole officers to facilitate the rehabilitation process, reinforces negative behaviors and potentially puts the community at risk. Why would we want parolees to avoid sanctions for testing positive for alcohol or controlled substances, failing to report, failing to pay fines, violating curfew, driving a motor vehicle without a license or failing to notify of a change in employment or program status? Are these expectations so onerous?

The shortages within the DOCCS healthcare system remain a major concern. The vacancy rates in the titles of Nursing, Dental and Pharmacist have continued to increase over the last year. Vacancy rates for Nursing exceed 27%, Dental 31% and Pharmacy is now over 10%. While these numbers are bad, the reality is far worse. We have facilities managing 24-hour care for both inmates and staff that are at vacancy rates exceeding 50%. To name just a few: 58% at Cape Vincent, 62% at Green Haven, 64% at Sing Sing. We have 12 facilities (up from 5 last year) in total that have greater than 40% vacancies and 23 facilities with vacancy rates higher than 30% in nursing titles alone. An alarming percentage of our nurses are forced to work short-handed. These nurses not only attend to inmates’ needs, but just as importantly, they attend to all staff. They perform critical services related to medical emergencies, inmate fights, staff injuries and drug overdoses. At Elmira, there are currently more agency (traveling) nurses working at the facility than actual full-time state employed nurses.

The larger state agencies such as DOCCS have been forced to rely on geographic pay differentials to try to avoid staffing shortages. Unfortunately, these are short-term fixes that do not address the real need, which is higher salaries. Actual salary-based increases will help stabilize our staffing needs. If the state is serious about attracting and keeping skilled nurses, it is imperative that we begin to look at increasing the base pay for them. Increases are needed for all medical titles within the state workforce.

Chronic understaffing has caused overtime expenses at state agencies to spiral out of control. Reliance on overtime to provide adequate staff levels clearly demonstrates the need to reinvest in the state

workforce. The taxpayers' best interest is served by employing the proper number of state employees at state agencies.

Recent statistics have shown an increase in parole violations. Over the past several years, the prison population has dropped for a variety of reasons, mostly due to changes put forward by the state and with the department's progressive programs which have allowed inmates to be released earlier because of their participation. So naturally, as more inmates are being released, there are increases in parole violations. The state, along with the department, continues to make changes in the program services that these parole and parole violators receive. Currently, the department is expanding programs such as RESET, through the NYCLU settlement. The SDU also provides inmates with longer-term incarceration sentences the chance to develop changes to better prepare for their release back into society. We need to stay the course by investing in mental health, job training and other services for our entire inmate population and to hire additional parole officers to help the growing number of parolees' bridge the transition back into society.

OFFICE OF INFORMATION TECHNOLOGY SERVICES (OITS)

OUTSOURCING

Information technology is a highly specialized field. Our members have initiated and developed amazing things for the state and its citizens. For example, because of their efforts, there are shorter lines at the Department of Motor Vehicles and many of their functions continued online during the pandemic, even with higher demand for these services. Our staff has worked diligently to streamline access to services across the agencies despite the fact that the state has not adequately filled vacancies caused by attrition and retirement.

Despite the demonstrated excellence of our members, the state continues to privatize the state's IT services. The Executive Budget proposes to amend the technology and finance law to allow OITS to unilaterally enter into comprehensive technology service contracts (A.3005/S.2505 Part FF). This proposal would allow the same firm to design and implement IT systems for the state.

This proposal to allow for third-party turnkey outsourcing of IT systems will eventually reduce the state workforce and likely cause the outsourcing of these positions to other parts of the globe in the public cloud. The main benefit of "cloud technology" is the consolidation of systems and resources. After enormous investment, OITS has already built a world-class, highly available and secured T3 data center. This consolidation includes 50 different data centers into the private cloud for OITS and can be used for additional application stacks. However, there is no need to outsource this phase of IT service delivery to an outside vendor, as proposed. This work can be done in-house with appropriate hiring practices and by investing in training for existing OITS staff.

The public cloud hosted by these third-party vendors are not always cost effective; they often have problems enforcing federal, state and local regulations; maintain questionable data safety and security

protocols and protections; and have difficulty integrating cloud-based applications with on-premises applications and data. This proposal will empower a single person—the Director of OITS—to select preferred vendors. This process circumvents the existing Advisory Council for such decisions and eliminates the current preferred vendor bidding process.

The Public Employees Federation urges you to REJECT Part FF of the Public Protection and General Government Article VII budget bill (A.3005/S.2505).

TRAINING

Instead of increasing the state’s reliance on costly consultants, the most cost-effective option to enhance the state’s IT infrastructure is to invest in the state workforce at OITS. Currently, the Executive Budget proposes an appropriation of \$2 million at OITS to help staff achieve the specific certifications needed most to meet the state’s needs (A.3000/S.2500 p. 401). We must ensure that this money is allocated and, more importantly, spent on its intended purpose so that the state can meet its need with qualified, in-house professionals.

The Public Employees Federation urges you to support the appropriation for staff training contained in A.3000/S.2500 p. 401 and ensure that the funds are properly spent.

SUCCESSION PLANNING

As the current generation of workers enters retirement age, OITS is losing its institutional knowledge. However, the agency lacks any strategic workforce development plan for succession, knowledge transfer, skill development and/or using shadow titles.

There are many instances of erosion of the Civil Service merit and fitness system. While open competitive exams are being offered, there are already hundreds of employees on the current promotional lists who are not being provided any opportunity or consideration for advancement. This has negative effects on employee morale. If a promotional test is being offered, an open competitive test for the same position should not be held.

Recruitment and promotion is a major issue at the agency. Too often, the agency utilizes the selective certification process which actually targets an individual, not a position. We believe that this process should be severely curtailed and in instances where it is used, it should be more transparent.

In summary, the Public Employees Federation believes that the state and its taxpayers are much better served over the long-term by investing in OITS and its staff so that it can continue to deliver excellent and efficient IT services for the state agencies and the residents who utilize state services.

Thank you for your time and the opportunity to address you today.