



Public Protection Joint Legislative Budget Hearing

2022-2023 Executive Budget Proposal

January 25, 2022

Testimony by Wayne Spence

Good afternoon Chairs Krueger, Weinstein, Salazar, 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 50,000 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 and continue to risk their lives and those of their families to maintain the continuity and quality of services for 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.

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS)

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 incarcerated individuals. These are all areas critical to help DOCCS fulfill its mission.

We want to thank Governor Hochul for advancing a budget that puts New Yorkers first. While we have concerns about several different proposals, the Governor has advanced a plan that makes significant investments in state services and the depleted state workforce. This budget represents a clear and distinct departure from the previous Governor's Executive Budget proposals which over the course of the past decade sought to arbitrarily limit the ability of state agencies to deliver needed services to at-risk New Yorkers. We look forward to discussing the following items and other issues with you over the next several weeks so we can develop a final state budget that meets the needs of all New Yorkers.

FUND OUR FUTURE

PEF fully supports the effort to reduce the state's incarcerated population. However, we believe that the state must also do much more to meet its obligation to provide accessible state-operated supports and services for both the incarcerated and formerly incarcerated population, as well as every other New Yorker who needs safety net services. For example, while the state is saving over \$110 million by closing six separate correctional facilities, none of those resources are being reinvested into the state-operated programs and services needed to successfully re-integrate formerly incarcerated individuals back into their communities. The current over-reliance on private providers neither adequately addresses the continuum of care for this population nor the need to integrate services for those that have multiple needs – i.e., mental health, health and wellness, job training, housing, etc.

This year's budget surplus, combined with the savings achieved from right-sizing the state's correctional system, provides the state a unique opportunity to address public safety concerns around mental health, addiction and the continued effort to reduce the state's incarcerated population. PEF has initiated a campaign with its national affiliates, other unions and other community groups to encourage you, our legislators, to make needed investments in state-operated services so that we can provide quality, accessible services to all New Yorkers regardless of income, insurance, immigration status, or other factors that serve to limit the availability of services from the private provider network.

New Yorkers are watching crime, especially violent crime, increase across the state and nation. We need to recognize this reality and invest in the government-operated programs and services needed to help the incarcerated and formerly incarcerated population successfully re-integrate back into their communities, as well as to provide other at-risk individuals access to mental health, wellness, substance abuse and other treatment before they interact with the criminal justice system. Absent significant investments in these programs and services, New Yorkers will continue to see a surge of crime in their communities.

The following outlines some of the concerns that we have with the Executive Budget and the areas where we think the state needs to go further to build upon Governor Hochul's vision.

PRISON CLOSURES, EXPANDING PAROLE AND IMPACT ON STAFFING AND SERVICES

I. DOCCS Staffing:

A. **Staffing Reductions**: In 2020, DOCCS staff worked more than 4 million hours of overtime at a cost of more than \$224 million. However, in this year’s Executive Budget, the Governor is proposing a reduction in staff attributable to the previously approved closure of six different state correctional facilities. We note that while there are no reductions in the current census of administrative staff (815), DOCCS is eliminating 1,096 staff, including the elimination of 70 health-related staff and 70 program staff. These are the staff who provide direct health, wellness, education and other services to the incarcerated population. Given our mutual goal of reducing the incarcerated population, we believe the state has a responsibility to expand the number and types of support staff that render mental health, wellness, education, training and addiction services so that taxpayers can be comfortable knowing that the rehabilitation of incarcerated individuals is already happening in advance of what we all hope will be a successful release.

Budget Request: Reinvest closure savings into institutionally based, state-operated programs to address the mental health, wellness, education, and job training needed for the currently incarcerated population to maximize the opportunities for success upon release.

B. **“Nurses Across New York” Program** (Part A, Health and Mental Hygiene Art VII): We applaud the Governor for establishing this long-overdue loan forgiveness program for registered professional nurses. For years, we highlighted the growing shortage of nurses in DOCCS and the other state agencies. PEF supports this program but believes it should be expanded to cover the outstanding loans of licensed professional nurses and clinical nurse specialists as well. Additionally, we believe that the definition “underserved communities” may be overly restrictive.

New York’s correctional system can neither attract nor retain adequate nurses to care for the incarcerated population. This is not just bad public policy, it is inhumane. These professionals render direct care and treatment to these individuals. Throughout the pandemic, they worked under harrowing circumstances to care for this population. The state needs to invest the resources to maintain adequate staffing and this loan forgiveness program should be available to attract nurses into DOCCS and the agencies where there are chronic shortages.

Budget Request: Support and expand this program to cover all nursing titles and ensure that this benefit is available for DOCCS and other agencies that have difficulty attracting and retaining nursing staff.

- C. **Health Care and Mental Hygiene Worker Bonus** (Part D, Health and Mental Hygiene Art. VII): Again, we applaud the Governor for establishing this important program to provide bonuses to our front-line healthcare heroes and to provide a retention incentive for those workers to remain in service. While our health care professionals continue to care for the sick and infirm, all of the staff at DOCCS worked to protect the health and safety of the incarcerated and paroled population despite non-existent or inadequate personal protective equipment, inaccurate guidance from the former administration and the inability to maintain appropriate safety protocols within the state’s corrections system (i.e., masking of incarcerated individuals, appropriate social distancing). These staff continued to meet their obligations despite the challenges and health risks. The majority of these officers contracted COVID and many transmitted the disease to their families.

Budget Request: Support and expand this benefit to recognize the service of all “essential” employees who risked their lives and the lives of their families in meeting the needs of the state as ordered by the Governor.

II. **Community Supervision and the “Jails to Jobs” Program:**

PEF supports the Governor’s “Jails to Jobs” program. However, PEF believes that the \$4 million allocated to start the program is seriously insufficient. PEF supports providing additional training to parole officers so that they can assist formerly incarcerated individuals locate employment. PEF also believes that savings from correctional facility closures should be used to build a network of integrated government operated services and supports through the NYS Office of Mental Health, the NYS Office of Addiction Services and Supports and other state social service agencies. This would provide parole officers and others with a menu of government-operated programs and services readily available for formerly incarcerated individuals so they can access the free services and support they need to be successful.

In order to successfully operate this program, protect the public and ensure the continued de-institutionalization of the correctional system, the state needs to hire and retain more parole officers. DOCCS indicates the current staff census in the Department of Community Supervision is 1,365, but DOCCS' monthly staffing report indicates there are only 1,165 parole officers in service (See, Table 1). In actuality, PEF believes that there are only around 800 parole officers and senior parole officers working with parolees today.

According to DOCCS' own data the ratio of parolees to parole officers is 46:1.¹ The current ratio of managers to state employees is only 15:1.² This ratio doesn't support successful re-integration and doesn't adequately protect the public. We need to expand the actual pool of parole officers to do the work needed to successfully re-integrate formerly incarcerated individuals back into the community, to provide real, substantive services and oversight and to keep communities safe in anticipation of the effectiveness of the "Less is More" Law of 2021 (Chapter 427).

Budget Requests:

- (1) Pass the Jails to Jobs Program.
- (2) Fill vacant lines and hire 500 additional parole officers to reduce caseloads to ensure appropriate support and oversight for formerly incarcerated individuals.
- (3) Provide real training and provide real integrated state-operated wellness, mental health, addiction, job placement and other programs and services that parole officers can utilize to help the formerly incarcerated access needed services to maximize opportunities for success.

III. Amend "Less is More" Law and Provide Needed Resources:

PEF opposed this legislation, but we support the intent of this law. As it is currently constituted, we believe the law is seriously flawed, but correctable. The following issues need to be addressed before this law takes full effect on March 1, 2022:

- (1) **Resources to Implement the Law:** The biggest reason for PEF's objection to this law was that it constituted a significant unfunded mandate on local governments and unreasonable

¹ <https://doccs.ny.gov/system/files/documents/2022/01/doccs-fact-sheet-january-2022.pdf>

² <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2021.pdf>

demands on our members. There were no additional resources for alternative hearing locations, the increased number of parole officers and vehicles needed to transport parolees to hearings, no new government operated re-entry services, and no new parole officers to address the increased workload.

- (2) **Real Sanctions for High-Risk Parolees**: We believe this law should provide for immediate reincarceration of any individual who fails to register on the sex offender registry, threatens or engages in domestic abuse and/or purposefully absconds from custody. Determinations on the merits of re-incarceration should be subject to immediate judicial review. We believe these immediate sanctions should be authorized for these violations as they constitute a significant departure from the conduct needed for successful re-integration and an identifiable, immediate and unnecessary danger to the public.

- (3) **Reform Mandatory Sentencing Guidelines**: This law also neglected to change the mandatory sentencing laws to provide experienced, trained parole officers with the flexibility to manage their limited time on the most challenging cases and to provide successful parolees more independence and latitude to continue their successful rehabilitation.

- (4) **Institute a “Red Flag” Provision for At-Risk Parolees**: While we understand the intention of limiting re-incarceration, we should establish a “red flag” law that allows the state’s trained, experienced parole officers to seek an immediate judicial review and determination to reinstitute limited reincarceration for those parolees who commit a violation or violations that officers believe represent an immediate and dangerous threat to themselves or others (i.e., overdose, untreated addictions, gang activity, etc.). The fact of the matter is that parole officers interact with parolees regularly and they understand when the behaviors of parolees not only violate the terms of their parole, but also constitute a significant departure from that individual parolee’s path to long-term success and a potential threat to the parolee and/or the general public.

IV. Improve the Tier VI Pension Plan to Make New York a Competitive Employer:

A decade of agency budget cuts, hiring freezes and pension plan benefit reductions have significantly degraded the state’s competitive position in attracting and retaining talent. To meet

rising demand, private employers have increased compensation and benefits, expanded workplace flexibility and developed collaborative workplace cultures to attract and retain quality employees. Now that the labor market is so tight, the state is simply unable to attract or retain the staff it needs to maintain services.

While no one expects the state to provide the highest salaries, the state needs to improve the Tier VI pension plan in the following ways to attract and retain its highly skilled workforce:

- (1) **Re-establish the Standard 3% Employee Contribution**: The Tier 6 plan established employee retirement contribution bands of 3-6% based on salary. Last year, state employees worked more than 19 million hours of overtime, much of it mandated. These increased earnings are driving up workers' pension costs unnecessarily and unfairly. Under Tier 4, workers all paid a standardized 3% contribution. We believe this standardized contribution should be reinstated; and
- (2) **5-Year Vesting**: Private employers are covered by the Employee Retirement Income Act of 1974 which stipulates plan benefits must be made available after five years credited service. It is simply unfair and unreasonable for the state to require employees to work 10 years before accruing any benefit from their employment. Employees under Tier 6 contribute tens of thousands of dollars without accruing any benefits before their 10th anniversary on the job. We need to re-institute the five-year vesting rule to encourage workers to come and stay in state employment; and
- (3) **2% Final Average Salary Calculation at 20 Years of Service**: Tier 6 significantly reduced the benefits for career employees by reducing the pension factor upon the attainment of 20 years of credited service. This benefit keeps employees in state service so that they can accrue the time needed to maximize benefits. The erosion of this benefit in Tier 6 has provided private employers the opportunity to lure experienced, professional employees out of state service.
- (4) **Overtime Cap**: Tier 6 instituted an overtime cap of \$15,000 per year. Last year, in response to the pandemic and state hiring freeze, state employees worked 19 million hours of overtime at a cost of just over \$850 million, much of this mandated by their employer. In addition to the Tier 6 plan driving employees into higher employee contribution brackets as delineated in (1) above, this arbitrary overtime cap is penalizing employees who are mandated or volunteer to work during the pandemic. What employer does that? The overtime cap should be repealed or at least suspended during the course of the pandemic.

OFFICE OF INFORMATION TECHNOLOGY SERVICES (OITS)

Information technology is a highly specialized and competitive field. Despite the challenges of the pandemic, our members have continued to develop and implement important IT programs and services while also protecting the state's data. Our staff have worked diligently to streamline access to services across the agencies despite the fact that the state has been unable to attract and retain many highly skilled workers.

- I. Agency Staffing: This year's budget provides a more than \$50 million in increase at OITS to fill long-vacant positions. In 2021, OITS had 3,321 full time staff lines and under this proposal staff is projected to grow to 3,569 in 2022. 3,107 or 93% of the current staff at OITS are represented by PEF.³ We appreciate Governor Hochul making these long-overdue investments and hope that we can do more to create additional capacity at this important agency. That said, there are other areas of the Executive Budget that require additional refinement:

- II. Contracting Out: In addition to the \$50 million increase for OITS operations, this year's Executive Budget also commits more than \$76 million for the use of private contractors at OITS. According to the Executive's own supporting documents, this \$76 million expense of taxpayer dollars supports a total of 442 full-time equivalent private sector staff.⁴ Despite the demonstrated competence and high-quality work of our members, the state continues to privatize the state's IT services. While this work can be done in-house with appropriate hiring practices and by investing in training for existing OITS staff, the state continues to invest the state's limited resources on short-term solutions like the use of private providers.

- III. Fellowship Program: The Executive Budget proposes to expand the tech talent pipeline by increasing exposure to technical roles in government service in order to provide new graduates the opportunity to enter public service two years right out of school. This proposal would circumvent the state's Civil Service System, which is designed to eliminate cronyism and political influences in the state's hiring practices. PEF fully supports OITS utilizing every tool at its disposal to attract

³ See also, 2021 NYS Civil Service Workforce Management Report: <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2021.pdf>

⁴ See Also, NYS Executive Budget - State Operations, pp. 420; www.budget.ny.gov/pubs/archive/fy23/ex/approps/stateopsbudget.pdf

and hire the very best IT employees, but it makes no sense for the state to invest resources in a non-merit based employment practice when the agency is still significantly understaffed.

IV. Staff Training: The state is planning on spending \$76 million for private contractor services in 2022, but it also commits \$2 million for services and expenses related to training state employees to obtain IT certifications that are not currently held by employees of the state in sufficient quantities.⁵ We believe that this program should be expanded and tuition reimbursement should be offered to staff who seek such certifications.

In the procurement of hardware/software, a percentage of the contract must include training of the staff, in the use of the product. In the past, successful bidders for such contracts were required to provide training to staff. However, unlike past upgrades and purchases, neither the state nor the preferred vendor providing the hardware and software provided any training to staff on how to use the equipment and software. Moving forward, outside vendors providing equipment to the state must be required to provide training on any new hardware and/or software and contractors should not be awarded such contract if the training of existing staff is not explicitly provided for in the proposed bid.

V. Succession Planning and Civil Service Testing Reforms: Due to the stresses of the pandemic, OITS is losing its institutional knowledge. The agency needs to develop a strategic workforce development plan for succession, knowledge transfer, and skill development.

To address some of these issues, Governor Hochul advanced a proposal that allows continuous recruitment testing and a proposal to eliminate the requirement that promotional exams and open competitive exams be held simultaneously.⁶ PEF supports these two proposals.

Budget Requests:

⁵ See Also, 2022 Executive Budget Agency Presentations Consulting Service Contracts; <https://www.budget.ny.gov/pubs/archive/fy23/ex/agencies/pdf/consultingservicecontracts.pdf>

⁶ 2022 Public Protection and General Government Art. VII; pp. 33-34; www.budget.ny.gov/pubs/archive/fy23/ex/artvii/ppgg-bill.pdf

- **Limit Contracting Out of Public Services:** Limit the unnecessary and costly contracting out of public services when they can be rendered in-house and require bidders for new hardware and/or software to provide training to the staff as part of the bid.
- **Pass Cost Benefit Legislation (S.5356/A.8159):** Passing a Cost-Benefit Law will enable legislators and taxpayers to see what the overall calculations mean, what services are being provided at what costs and whether or not it makes more economic sense over the long term for the state to keep such services in house.
- **Reject the “Fellows Program:”** Reject this misuse of public resources at OITS and invest those resources on filling vacant civil service positions and retaining existing staff.
- **Increase In-House Training and Certification Opportunities:** Increase the proposed training funds for current OITS staff from \$2 million to \$5 million and require that such monies get spent on training existing staff at OITS. This will help attract and retain critically needed workers in the IT field into state service.
- **Support Proposed Changes to the Civil Service Law:** Support Governor Hochul’s proposed changes to the state’s Civil Service Law to allow continuous recruitment testing (S.8005/A.9005 Part R) and the proposal to eliminate the requirement that promotional exams and open competitive exams be held simultaneously. (S.8005/A.9005 Part S). In addition to these changes, we recommend the following:
 - (1) Exams should no longer expire at the offering of a new exam. Some people are at the top of their profession and being required to take and pay for recurring exams becomes overburdening. This can lead to recruitment friction as staff discontinue taking exams and are unable to advance in their career. This ultimately continues the loss of institutional knowledge that currently plagues the system. Instead of an entire exam list expiring, individual names could expire and be removed from the list every 3 to 5 years. As each exam is offered, the new names would be added to the master list. This would allow staff who have engaged in additional training and mentoring to retake the exams if they wish to demonstrate that growth. Otherwise, they could remain active in their current score.

Ultimately, this would reduce the number of staff needing to take the promotional exams every time and save money on testing.

- (2) The skills inventories for the exams need to be updated more frequently. The inventory for the lower level exams has not been updated in recent years due to the lack of an exam offering. This has resulted in an inability to recruit for modern skill sets, like mobile development. The lower level skills assessment should allow for an update every 6 months just like the Upper Level IT Skills Inventory.

In summary, the Public Employees Federation believes that the state and its taxpayers are much better served with the establishment and maintenance of a robust system of free and accessible state-operated programs and services provided by civil servants hired through the existing merit and fitness system. We look forward to engaging with you more directly on these items, as well as the various other items contained in the Executive Budget, so that we can forge a final budget agreement that meets the needs of New Yorkers struggling to make their way through this pandemic.

As always, I thank you for your service and your consideration of these concerns.

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

Wayne Spence

PEF President