



**Testimony by Jack Beck, Director, Prison Visiting Project
The Correctional Association of New York
Before the Joint Legislative Hearings on the 2012-13 Proposed Budget for Public Protection
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I am Jack Beck, Director of the Prison Visiting Project of the Correctional Association of New York (CA), and I want to thank the Joint Legislative Committees for this opportunity to provide testimony detailing our observations and concerns about the Governor's Fiscal Year (FY) 2012-13 Proposed Budget for public protection, with a particular focus on the impact it will have on the incarcerated population in Department of Corrections and Community Supervision (DOCCS) prisons. I will focus on three issues: funding for prison healthcare; reductions in staffing for essential prison-based programs; and the Governor's proposal for expansion of the DNA databank. As many of you may know, the Correctional Association has had statutory authority since 1846 to visit New York's prisons and to report to the legislature, other state policymakers and the public about conditions of confinement. Our access provides us with a unique opportunity to observe and document actual prison practices and to learn from inmates and staff what they believe to be the strengths and weaknesses of a facility's operation.

INADEQUATE FUNDING FOR PRISON HEALTHCARE

The Governor's budget for DOCCS prison healthcare represents a substantial reduction in medical staffing and funding for medical supplies and outside contract services, including specialty care services. Providing quality medical care in prison is good public health policy because prisons provide an ideal opportunity to diagnose and treat individuals with chronic medical conditions that often go untreated in the population at large. New York prisons remain the epicenter of HIV in the U.S. prison system, representing almost 17% of all HIV-infected state inmates in the country. New York State prisons also have more than 8,000 inmates infected with hepatitis C, and many others who suffer from other chronic diseases such as hypertension (6,500), diabetes (2,500), and asthma (9,000). More than 95% of these patients will return to their communities, and the effectiveness of DOCCS's efforts to provide meaningful patient education and adequate care will determine not only the prisoners' medical future but also the health of their communities.

Although the prison population decreased by only 2% in 2011, medical staffing during FY 2011-12 was reduced by 13%, more than six times the population decrease; the proposed budget projects that these reductions will continue for the next fiscal year. Essentially, DOCCS

drastically reduced authorized medical positions this fiscal year so that it could permanently incorporate these staffing changes in the upcoming fiscal year. The FY 2011-12 reductions were imposed without adequate legislative oversight, and the new DOCCS budget obscures that these reductions were made.

Specifically, the FY 2011-12 budget indicated that as of the end of FY 2010-11, DOCCS was authorized to have 1,953 health services FTE employees. Furthermore, the FY 2011-12 budget projected that the health services staffing would actually increase during FY 2011-12 to 2,003 employees, even though FY 2011-12 funding for medical staffing was being reduced by 10%. Instead, DOCCS slashed authorized medical staff by 253 positions to only 1,700 FTE positions. Consequently, in the FY 2012-13 DOCCS budget, the agency presentation indicates that the medical staffing for the start of the fiscal year is only 1,700 employees, representing a decrease of 13% from the end-of-year FY 2010-11 figure, and only these 1,700 positions will be funded during the upcoming fiscal year.

We are particularly concerned because healthcare staffing is taking a greater reduction than other DOCCS operations. Overall, security staff reductions for the same time period are only 5.3%, which is not even half the rate of medical staff losses.

This 13% reduction in healthcare staffing is unacceptable and potentially dangerous for the prison population and the public. The majority of healthcare providers in the prisons are nurses, doctors, other clinic providers or pharmacists, primarily direct service personnel caring for the prison population. If the already overtaxed medical staff have to provide services to an increasingly older and sicker population, delayed and inadequate care is inevitable. It should be noted that in the last decade, the percentage of prisoners over 55 has doubled and their care is costly and demanding on the medical staff. During our prison monitoring visits, we repeatedly have found instances where prisons had vacant medical staff positions that went unfilled. Under the current budget proposal, we suspect these temporary vacancies will become permanent.

For example, last summer the CA was at Auburn Correctional Facility, where we learned that one of the four authorized clinic provider positions had been unfilled for nearly a year due to the lack of funding, resulting in a provider-patient ratio of one clinic provider for every 575 patients, a rate that was more than 40% higher than the department-wide ratio of one to 400 patients. Not surprisingly, patients experienced long delays in getting to see a doctor, and only 7% of the prisoners we surveyed thought physician care was good and two-thirds rated it as poor. We are very concerned that throughout the department, these types of staff shortages will become permanent, severely compromising patient care.

Moreover, healthcare funding cuts go beyond staffing reductions. According to agency data, funds for non-personal services will be reduced by nearly 4% this coming year, resulting in a 17% decline over two years, when the prison population has declined only 5.45% during that same period. As with medical staffing, healthcare is being hit particularly hard. Overall, non-personal services funding is declining only 1.65%, whereas healthcare funds are reduced by more than twice that rate.

The bulk of the healthcare reduction in non-personal services falls into two categories: contract services and supplies and materials. Contract services will be reduced by 4.9% in the next fiscal year for a total of 18% decline during the past two years. These funds primarily go to

specialty care services, an essential component of healthcare for the most severely ill patients in the prisons, and medication purchased through outside contract services. Although some savings will be realized by Medicaid reimbursements for hospitalization of prisoners, we seriously question whether these will offset the major cuts in medical costs for care provided by outside consultants. It must be noted that the Medicaid reimbursement DOCCS is receiving is based upon federal regulations in existence for several years, and these funds are not part of the federal healthcare reform recently enacted.

Similarly, DOCCS has substantially reduced the funds for supplies and materials, representing more than a 15% reduction during this and next year's fiscal budget. A significant portion of this item is for medications for the prison population. It is unclear how DOCCS can realize any substantial saving in this area without significantly compromising patient care. The CA noted in its 2009 report on prison healthcare that more than 60% of medication costs were spent on HIV medications, psychotropic therapies and treatments for hepatitis C. We are pleased to note in the Assembly's analysis of the DOCCS budget that additional funds have been allocated for hepatitis C care. These will certainly be needed, as recent developments in new hepatitis C treatment will result in many more patients being eligible for treatment. DOCCS will need additional funds to implement new treatment protocols that will be issued soon by state Department of Health officials. With much of the medication budget going to the treatment of prisoners infected with chronic illnesses, we seriously question how these reductions in funding can be absorbed by the prison healthcare system without reducing essential care.

We urge the legislature to fully investigate the reductions in healthcare staff and funding to ascertain how DOCCS will implement these cuts without compromising patient care. If essential medical services are to be reduced, not only will prisoner-patients suffer, the communities to which they return will suffer the burden of caring for individuals who are sicker and less able to reintegrate into society.

IMPORTANCE OF ADEQUATE FUNDING FOR PRISON-BASED PROGRAMS

The Governor's proposed budget will result in an 11.5% reduction in DOCCS staffing for program services compared to the staffing that existed at the end of FY 2010-11. As was the case with reduction in healthcare staffing, the diminution of DOCCS program staffing has been implemented during the current fiscal year, even though that budget did not include any program staff changes. Specifically, the FY 2011-12 budget indicated there were 3,132 DOCCS employees in program services as of the end of FY 2010-11 and specified that no reductions in program staffing were planned for that fiscal year, even though the budget contained a 0.9% reduction in personal service expenses for that year. In the current proposed FY 2012-13 budget, the agency's presentation indicates that there are only 2,772 FTE items in program services and specifies that this level of staffing will be maintained for the next fiscal year. Again, without legislative input, the executive budget is attempting to institutionalize a drastic reduction in program staff that will significantly impede the prison system's ability to meet the essential needs of the prison population. This is both inappropriate and counterproductive to the goals of increasing public safety.

Prisons programs, including education, vocational training, alcohol and substance abuse treatment, and other counseling and program services, are critical for the success of inmates while on the inside and after their release.

Through our prison monitoring work, we have observed firsthand the benefits that inmates experience from effective prison programs and the negative consequences they endure without them. Reducing the number of prison programs could negatively impact not only the inmates enrolled in these programs, but also the entire institution by fostering idleness, which inevitably leads to reduced prison safety. Uniformly, prison administrators and line staff tell us that the best way to reduce prison violence is to keep the population busy and engaged. Cutting staff and other resources from academic, vocational or transitional services programs robs inmates of the opportunity to learn some of the most basic skills they need in order to be successful once released from prison. Nearly half of the prison population do not have high school diplomas or GEDs, and many do not have the skills needed to obtain jobs upon release. During many of our prison visits, we have observed prisons with educational and vocational staff vacancies due to already existing limitations on the DOCCS budget. These vacancies result in hundreds of inmates waiting to enroll in school or to be assigned to vocational training programs.

For example, in 2010, the CA visited Coxsackie Correctional Facility, a maximum security facility with more than 1,000 prisoners. Although the prison was authorized to have 14 teachers, it employed only seven. Given the limited educational staff, only 191 prisoners were enrolled in any educational class, while 365 individuals were on a waiting list to get into the program. As of May 2011, when we last spoke to prison administrators, the prison still had not filled any of the educational vacancies. Many of the Coxsackie prisoners will be going home within a few years, and, unfortunately, many of those without a GED will be unable to obtain a degree in prison because of staff shortages.

In May 2010, the CA also visited Mt. McGregor Correctional Facility, a medium security facility with 429 prisoners. Although the prison was authorized to have five vocational instructors, it employed only two instructors and enrolled only 46 prisoners in a vocational class, representing just 11% of the prison population. When we last spoke with prison officials in June 2011, the facility still had only two vocational instructors. With more than 50% of Mt. McGregor residents scheduled to be released within 18 months, it is unfortunate that many will not have an opportunity to enroll in a meaningful vocational program that could better prepare them for a job when they get out.

Decreases in the level and quality of prison programming will also adversely affect public safety and lead to greater recidivism. Obtaining an education, vocational training and treatment for a substance abuse problem in prison are essential elements if formerly incarcerated persons are to succeed on the outside. When the approximately 26,000 inmates who are released annually return home and cannot obtain jobs or do not have the skills needed to function in their communities, not only is it more likely that they will be re-incarcerated, resulting in significant additional costs to the state, but also that their families and communities will suffer. It must be emphasized that the communities from which most inmates come are those most ravaged by poverty and most in need of community-based services. If recently released individuals do not have effective re-entry plans, it is unlikely that their communities will be able to step in and provide those essential services and support needed to keep these individuals free.

Additionally, the Department identifies 83% of the prison population as in need of substance abuse treatment services. Though we may not fully agree with DOCCS's assessment

of the high level of actual substance abuse treatment needed, we recognize that many individuals are incarcerated, either directly or indirectly, as a result of a substance abuse problem. The 2009 Rockefeller Drug Law reforms are predicated in part on the ability of DOCCS to provide meaningful substance abuse services to the incarcerated population. Research demonstrates that individuals with substance abuse problems are successful when they begin treatment in prison and then continue therapy once they are released. Providing these individuals with quality treatment addresses one of the many root causes that can lead to criminal behavior and contributes to lower recidivism rates.

Preserving current academic, vocational, transitional services, substance abuse, and other treatment services inside New York's prisons is of vital importance to the welfare of prisoners, their families, their communities and the state at large. Reductions in these program areas will deny much needed services and programs to this important population and will end up costing the state more money in the long run.

CONCERNS ABOUT THE EXPANSION OF STATE DNA TESTING

The CA has long been a proponent of measures that both increase fairness within the criminal justice system and decrease the number of wrongfully convicted individuals serving time within our prisons. The proposed expansion of DNA testing in Part A of the FY 2012-13 Article VII Bill raises significant questions and concerns that should be addressed by the Executive and Legislative branches prior to passing the FY 2012-13 Budget. Specifically, we urge state officials to assess the efficacy and fairness of substantially expanding DNA testing of many individuals convicted of low-level crimes, and we believe that several other measures could be adopted by the state that potentially would be more effective in enhancing public safety and fairness of the criminal justice system.

The CA appreciates the importance of the DNA databank in identifying potential perpetrators of crime and ensuring that innocent individuals are not wrongfully convicted. But it is unclear whether the fiscal and human costs associated with substantially expanding DNA testing to include all individuals convicted of any felony or misdemeanor will significantly enhance public safety. Clearly, the expansion will result in many more individuals being tested, more than doubling the number tested under the current law. We urge legislators to seek precise estimates of the number of individuals who annually will be tested and the financial costs for the expanded testing program, including all the local and state costs associated with collecting, processing and recording the data. Databank and law enforcement officials should be questioned about: (1) how many of the "cold hits," i.e., matches between crime scene data and an unidentified individual in the DNA databank, of individuals involved in all low-level crimes actually resulted in a conviction of that identified individual; (2) how many of these hits were not useful; and (3) how much of investigative efforts were needed to assess cold hits. A match does not solve a crime; it is only a lead that must be fully investigated. Law enforcement officials should confirm that they have sufficient resources to respond to increasing numbers of cold hits, while also investigating other leads. It is essential with expansion of DNA testing that it not become a substitute for proper detective work. It is also important to evaluate the nexus between individuals who participate in petty offenses and the more serious crimes for which law enforcement officials have DNA evidence. Although some have cited the link between burglary and more serious crimes, there are many other offenses being included in the DNA testing program for which there may be little evidence that those offenders are involved in serious

crime. Finally, several criminal justice experts have raised serious questions about the potential for error and fraud in the collection, handling, and analysis of DNA evidence because of possible mislabeling of samples, cross-contamination of samples, and misinterpretation and misrepresentation of results. These issues need to be fully analyzed before expanding the DNA testing program.

But fiscal resources and efficacy are not the only elements in the equation; privacy issues and other concerns also must be considered. Given the gross racial and ethnic disparity in our criminal justice system, we have significant concerns that the DNA testing will be an additional tool to further target people of color, who are already over-represented within the subset of individuals who are stopped, frisked, and convicted of these low-level misdemeanors. It also raises concerns whether an expansion of the DNA databank may lead to additional wrongful convictions of people of color, who are already disproportionately represented within the DNA databank. Since the vast majority of hits do not result in a conviction, it is reasonable to assume that many of the individuals identified by the DNA database are not involved in the crime; these innocent individuals will be investigated and they and their families and associates potentially will be subjected to questioning and other law enforcement inquiries. Lawmakers should weigh the impact of this process on these individuals before approving the significant expansion of the testing program.

Although the expansion of the DNA database to include misdemeanors has been put forth as a means to decrease wrongful convictions, it is not the most cost efficient or effective means to ensure the integrity of the criminal justice system. Legislators and several criminal justice organizations have proposed the following recommendations that could substantially improve the effectiveness of existing DNA data and enhance the integrity of criminal proceedings:

- Person charged with, or convicted of, a crime should be permitted to petition the court to establish their innocence through DNA and fingerprint evidence. Legislation should be enacted authorizing the court, pursuant to a motion by a defendant, at both the pre-trial and post-trial stages, to order the comparisons of DNA evidence and fingerprints obtained at a crime scene to DNA databank and state fingerprint data and to order searches of inventoried evidence for post-conviction testing. This should include the right of persons who have pled guilty to petition the court for post-conviction testing of evidence.
- Establish mandatory and uniform protocols for the collection and preservation of crime scene evidence and enact a moratorium on the destruction of biological evidence until the protocols are enacted.
- Enact measures to improve the reliability of eyewitness identification, including the adoption of best practices for identification procedures and documentation of statements.
- Mandate that all custodial interrogations be videotaped.

Given the serious questions about the efficacy and impact of a greatly expanded DNA testing program, we urge the legislature to carefully assess the implications of this amendment to determine whether it will significantly improve the operation of the criminal justice system or whether it will yield limited results, while adversely affecting thousands of individuals who primarily come from poor communities of color in our urban communities.