



**New York State Public Protection Budget Hearing:
Testimony of
The Correctional Association of New York**
Regarding the New York State Executive Budget Proposals
State Fiscal Year 2018-2019
January 30, 2018

The Correctional Association of New York (“the CA”) is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the CA strives to make the administration of justice in NYS more fair, efficient and humane. Our unique access to NYS’s prisons and the information garnered from incarcerated persons and prison staff, combined with our policy and legislative expertise, informs our perspective today. Following an analysis of the budget details for the Department of Corrections and Community Supervision (DOCCS), our testimony will discuss various other specific issues within the budget proposal and Article VII bills that have an impact on incarceration in New York.

Overall, with nearly \$3.3 billion dollars proposed for DOCCS’ budget, the continued large and ever-increasing expenditure on incarcerating people raises concerns about the use of New York’s taxpayer dollars on prisons rather than on education, health, and other human services that actually help make our communities safer and thriving. There are also serious concerns regarding the allocations to the various divisions within DOCCS, and specifically the continued under-funding of program and medical-services. Moreover, while the Governor has proposed changes related to solitary confinement, geriatric parole release, temporary release, merit time and limited credit time allowance, and reentry, the substance and scope of these changes are grossly inadequate and need vast expansion. In addition, while it is positive the Governor has allocated substantial funds for Raise the Age implementation, other aspects of the proposed budget undermine the ability for effective implementation (including defunding of Close to Home). Further, the Governor has proposed some positive changes related to jail and pre-trial issues of bail, speedy trial, and discovery, though these proposals also must be revised and expanded.

Ultimately through this 2018-2019 budget and/or current legislative session, New York must make a number of urgent inter-connected policy changes. Among other changes, New York must

end the torture of solitary confinement, protect domestic violence survivors facing abusive prosecution/sentences, and effectively implement Raise the Age and Close to Home. New York must expand parole release and ensure decisions are based on applicants' current risk and readiness, implement more meaningful and progressive pre-trial reforms, reduce sentences and promote diversion and alternatives to incarceration. New York must close abusive prisons and jails and stop all staff brutality. New York must enhance family and community ties, restore full access to voting rights and higher education for people inside, enhance medical and mental health care and support, and provide greater support for people returning to outside communities and eliminate all reentry barriers. New York must also take serious steps to undo and repair the structural racism underlying the entire system.

DOCCS Overall Budget and General Operations

Overall, the proposed DOCCS FY 2018-19 (FY 2019) budget (\$3.295B) is an increase of \$16.2 million, representing a 0.5% increase from the previous year, though this increase is entirely due to a \$26 million increase in capital appropriations, which is somewhat offset by a reduction of \$9.8 million in operational funding. The reduction in DOCCS state operations budget for FY 2019 is in part due to closing some solitary confinement units and reductions in pharmaceutical costs associated with hepatitis C treatment. We are concerned, however, that the reductions in operational funds and the allocation of expenditures to the various divisions of the Department are not even and reflect some positives and some concerns about the adequacy and use of funding for the next fiscal year. While there are some positive funding initiatives, such as electronic medical records, we have serious concerns about the continued underfunding of program and medical services. Also, the continued large expenditure on incarcerating people raises concerns about the use of NY's taxpayer dollars on prisons rather than on education, health, and other human services that actually help make our communities safer and thriving.

Medical Services – The FY 2019 operational budget for DOCCS health services is nearly \$400M and includes a \$4.6M decrease from the previous year's budget, with no changes in staffing expenditures and all the reductions attributable to non-personal services. Although the budget projects the Department will maintain 1,651 health services FTE positions authorized in the previous FY, the reality is that DOCCS is not filling many of these positions. As the CA reported in its testimony before the Assembly's Correction and Health Committees last October,¹ the Department has exceptionally high vacancy rates for prison providers (doctors, physician assistants, and nurse practitioners), nurses, pharmacists and dentists. Although the CA submitted a Freedom of Information request in September 2017 for documentation concerning medical staff, DOCCS has still not provided any information about its staffing levels. Fortunately, the CA regularly visits DOCCS prisons so it can assess the adequacy of healthcare in the Department. As indicated in **Table 1 – DOCCS Medical Staff at CA-Visited Prisons 2012-17**, we found that at the 25 facilities we visited in the past five years, 24% of the clinician positions were vacant, 16% of the nurse items were vacant and the vacancy rate for pharmacists and dentists was 14% and 16%, respectively.

¹ Testimony of Jack Beck before the NYS Assembly Committees on Correction and Health: Healthcare in NY State Prisons, October 30, 2017, *available at*: <http://www.correctionalassociation.org/wp-content/uploads/2017/10/CA-Testimony-10-30-17-re-Prison-Healthcare-Text-Only1.pdf>.

² For a more extensive analysis and critique of the proposed jail regulations and the issue of solitary in New York

Table 1 - DOCCS Medical Staff at CA-Visited Prisons 2012-2017			
POSITION	# of Staff Items	# of Vacancies	Percent Vacant
Physician	55	14.25	25.9%
Phys. Assist/ Nurse Practitioner	26	5	19.2%
<i>Total Clinicians</i>	81	19.25	23.8%
RN/ Nurse 2s	354.5	55	15.5%
LPN	18.5	4.5	24.3%
<i>Total Nurses</i>	373	59.5	16.0%
Nurse Administrator	26	4	15.4%
Pharmacist	18	2.5	13.9%
Pharmacy Aides	16	0	0.0%
Dentist	44	7	15.9%
Dental Assistant/Hygienist	43	3	7.0%

This situation has been a chronic problem for the Department, and the vacancy rates have not improved and may well have deteriorated during the past two years. Moreover, during the seven-year period from FY 2012 to FY 2019, the **authorized** staffing levels for health services has also been reduced by 18% while the DOCCS population has only declined by 12%. This is particularly disturbing because during the same seven-year period, the number of security staff positions only declined by 2.6%, a rate **seven times less** than the rate for health services. We believe that many of these reductions in authorized medical staff have been imposed because the prisons were unable to fill long-standing vacancies, and the reductions do not represent any diminution in medical staff needs. Taken together, the reduction in authorized positions and the vacancies that exist in DOCCS medical staff translate into significant deficiencies in healthcare.

During our prison visits, we have found that with current medical staffing there were unacceptably high rates of staff to patient ratios at many prisons. With an average clinician-patient ratio of 450 persons for each clinician at the 25 prisons we visited in 2012-17, it was extremely difficult for clinicians to properly monitor and promptly treat each patient. Of even greater concern, there were six prisons with a ratio of one clinician for more than 600 patients, and three facilities had ratios over 800 patients. These ratios make it nearly impossible for the prisons to provide effective and timely care, and patients regularly experience extensive delays for even routine services. At Willard DTC, when we visited in early 2017, there was no doctor present at the facility and only one PA for the nearly 800 residents. Less than 3% of the survey respondents assessed their medical care as good, and 64% reported it as bad. At Clinton CF, there were only four clinicians for more than 2,800 patients, a ratio of over 700 patients per provider. In reviewing the survey responses from Clinton residents, 82% of the respondents said they experienced delays in seeing a clinician, less than 6% reported the care they received was good, and 73% said that the follow-up to a specialist's recommendation was not good. Overall, with surveys from 4,500 patients at 23 prisons from 2012-2017: only 11% of residents in the general prison population rated healthcare as good and 47% assessed it as poor; for those in some form of solitary confinement, only 9% found medical care good and 54% reported it as poor.

We have a crisis in medical staffing in our prisons, and the Governor, legislature and DOCCS must take action to remedy the situation. The information we have obtained from the prisons suggests that the medical salaries within the Department often are not competitive with those in the community for comparable positions. Moreover, the high staffing ratios and the challenges medical staff encounter in providing care in a correctional setting add to the reluctance some medical professionals have in deciding to work in DOCCS. We urge the legislature to require the Governor and DOCCS to undertake a comprehensive review of its medical staffing needs in the prisons and determine why the Department has chronically experienced challenges in filling essential medical positions. In order to address the current crisis, however, alternative strategies must be undertaken to address critical shortages. One proposal is to authorize prisons to employ clinicians from outside private agencies to fill existing vacancies. This has been done for nurse vacancies to some degree, but has not generally been utilized for prison clinicians. Moreover, efforts should be made by the Governor, legislature and DOCCS to determine if other mechanisms are available to increase compensation for DOCCS medical staff and whether other incentives can be provided to encourage medical professionals to work for the Department. We also urge the Governor and DOCCS to consult with the NYS Department of Health concerning ways to recruit and retain quality medical staff.

The proposed health services budget also contains reductions in non-personal services expenditures. The \$4.5M decrease is contained in the supplies and materials portion of the healthcare budget and is explained as arising from savings related to hepatitis C (HCV) therapy. We noted in our October 2017 testimony before the Assembly's Correction and Health Committees that DOCCS has become a national leader in the number of DOCCS patients receiving the highly effective, but costly, HCV treatments. During the past two years, DOCCS has been treating more than 500 patients per year. We hope that reduction in per-patient costs will account for all the decrease in the proposed budget; it would be a tragedy to reduce the number of patients getting this extremely effective care.

We commend the Governor for including funds for the development of electronic medical records for DOCCS. This initiative has been needed for more than a decade and will hopefully permit better coordination of care among the prisons and particularly when patients are returning home from prison. It is crucial that any electronic medical record be designed to facilitate communication among both DOCCS and community providers.

We also believe that additional non-personnel medical services funds will be needed to fill in for missing DOCCS medical staff. The current budget proposal for medical contract services is essentially the same as the previous year and would be unlikely to be used to hire contract clinical staff. Funds should be added to this component of the budget to fill the vital vacancies.

Program Services –The Governor's budget indicates that DOCCS program staff will increase from 2,957 to 2,970 positions, effectively adding only 13 program staff items in FY 2019. These increases are related to the creation of an alcohol and substance abuse treatment (ASAT) program at Lakeview and Upstate CF as part of the implementation of the *Peoples* settlement, which requires the Department to provide some limited programming to some persons confined to solitary confinement in certain DOCCS Special Housing Units. These specific programs at Lakeview and Upstate will apparently be initiated during FY 2019. Although we applaud

creating some programming for residents of solitary confinement, these additions are grossly inadequate to address the needs of the approximately 4,000 persons currently in some form of solitary confinement in DOCCS.

More generally, the programming staff in DOCCS is insufficient to meet the needs of the entire population. Even with the minor increases proposed in FY 2019, the amount of program staff will be 16% less than it was in March 2009, representing declines much greater than the 9% reduction in security staff during the same time. Also, during that nine-year period, DOCCS program staff had to assume the duties of the prison parole staff who were transferred from parole to DOCCS. But more importantly, as is the case with health services staff, we also have observed numerous vacancies in program staff. Specifically, we have found frequent vacancies in educational and vocational programs, missing substance abuse treatment providers, and vacancies in Offender Rehabilitation Coordinators positions. As a result of these vacancies, incarcerated persons are not getting the vocational and educational training and other essential programs they need to be eligible for merit time or other release consideration, and many residents experience long waitlists to get into basic mandatory programs. The lack of comprehensive programming results in incarcerated persons not being sufficiently prepared to successfully return to their home communities. As described below, there is clearly inadequate program staff to serve the population being offered expanded merit time or limited credit time allowance eligibility; these programs are not functioning at levels that would permit participants to stay in programs the length of time required to make them eligible to be released early.

A related area of concern is the overall decrease in the program services budget. The amount of funding for non-personal expenses has been fixed for the past seven years and is 22% less than it was in FY 2012. During our prison visits we are told by program participants and sometimes even by program staff that the supplies they need are limited and that equipment is sometimes outdated and in need of replacement. Moreover, as the educational system continues changing to incorporate the new Common Core curriculum for New York State schools within the prisons, the need for new educational written materials and more and updated computers in the prisons is critical. The current non-personal service program budget would not appear to be adequate to meet the program needs for the incarcerated population.

Supervision of Incarcerated Population – The FY 2019 DOCCS budget for supervision of people in prison contains a 0.86% reduction in funding (\$13.13M), all of which is directed to staffing reductions. Concerning staffing, the listed reduction of 87 FTE items reported in the proposed budget is actually a smaller decrease since the FY 2018 projection; the current number of security staff listed in this budget is 19,417 items whereas in the FY 2018 proposal, it was projected that there would be only 19,378 items at the end of FY 2018. In fact, the number of security staff in FY 2019 will be slightly higher than the number of DOCCS security staff that were employed in March 2012, when the DOCCS population was 10% higher than it is now. As noted above, the reduction in DOCCS security staff since FY 2012 is only 2.6%, one half the reduction in program staff and one-seventh the reduction in health services staff. This contrast is particularly disturbing because during this time, 13 prisons have closed and many other housing units have been vacated, requiring less security staff to monitor the incarcerated population. The closing of housing units and prisons should have a larger impact on the security staff than for

other services, which are primarily impacted only by reductions in prison census, but not reductions in building security.

Support Services – The FY 2019 funding for support services (\$354.95M) is 0.86% less than the amount proposed for last year’s fiscal budget. Both the number of staff and resources for non-personal services have remained essentially flat for the past two years, but prior years contained greater overall spending for these services. During our prison visits, we uniformly hear concerns raised by staff and incarcerated people about the vacancies and reductions in clerical and maintenance staff and the consequent problems the Department is experiencing with completing necessary records and repairing the aging facilities in which many persons are incarcerated. We are concerned that the long-term reductions in funding for support services has resulted in a lessening of DOCCS ability to adequately maintain its records, process papers in a timely manner, and maintain the physical plants of the 54 prisons in the state.

Solitary Confinement

Governor Cuomo and the New York Legislature must do much more than what is proposed in the Governor’s budget in order to end the torture of solitary confinement in New York’s prisons and jails and implement more humane and effective alternatives. In the Governor’s proposed budget (and as further elaborated upon in his state of the state book), the Governor has not outlined any new proposals or policy changes to limit the use of solitary, and instead plans to carry out the limited changes in the state prisons required under the *Peoples* litigation settlement and the deeply flawed proposed regulations for local jails.²

Much bolder leadership and fundamental changes are required to bring New York State in line with the average state in the country, let alone what is required by international standards and what some states have already implemented. Governor Cuomo touts the 29% reduction in the number of people in Special Housing Units (SHU) and the fact that on any given day around 5% of people incarcerated in the state prisons are in SHU. However, the 5% of people in SHU in NY prisons the Governor applauds (which according to the most recent data available of Jan. 23, 2018 is closer to 5.8%: 2,899 people in SHU out of 49,635 people in prison) is still worse than the national average (of roughly 4.4%) and much worse than many states around the country with less than 1-2%. Moreover, while NY has supposedly reduced the use of solitary in prisons by 29% other states have reduced solitary by 75% - 90%. Colorado reduced the number of people in solitary on a given day from around 1,500 people to 18 people. Also, the 5% is the number of people in SHU at a snapshot in time on a given day; over the course of the year many more thousands of people are sent to solitary and during the course of incarceration the vast majority of people in prison spend at least some time in solitary. Further, DOCCS will not release the number of people who are held in keeplock in their own cells – another form of 23-24

² For a more extensive analysis and critique of the proposed jail regulations and the issue of solitary in New York more generally, see *Correctional Association Public Comments for Proposed Solitary Confinement Regulations*, Dec. 12, 2017, available at: <http://nycaic.org/wp-content/uploads/2017/12/Correctional-Association-Comments-re-Proposed-Solitary-Regs-2017.pdf>.

hour a day solitary confinement – and whether that number has changed in any way.³ As such, it is hard to assess the full impact of the reduction in the number of people in SHU.

Beyond the limitation of these claimed reductions, the larger problem is that thousands of people remain in solitary each day – in conditions that amount to torture, and people continue to spend months, years, and even decades in solitary. Specifically, on any given day there still remain nearly 2,900 people in Special Housing Units (SHU) in the state prisons alone, and an additional estimated 1,000 people in keeplock. After a reduction in the number of people in SHU in the prisons in 2016 and early 2017, the number of people in SHU has remained relatively stable over the last few months. Black people, and other people of color, are specifically targeted and sent to solitary confinement at racially discriminatory rates to the extent that the *New York Times* referred to the disparities as a “scourge of racial bias.”⁴

Further, people regularly are sent to solitary for petty or minor, non-violent rule violations or even as a way to cover-up officer misconduct or as a tool for officer oppression of people who are incarcerated. “Disobeying a direct order” is one of the more common reasons that people are sent to solitary. Contrary to popular belief, isolated confinement is not primarily used to address chronically violent behavior or serious safety or security concerns, but often comes in response to non-violent prison rule violations, even retaliation for questioning authority, talking back to staff, or filing grievances,⁵ or even because staff have brutalized an incarcerated person.⁶

Also, there is still no total limit on how long a person can spend in solitary confinement in New York prisons or jails. People regularly spend months and years in solitary, and some people have spent decades (upwards of over 30 years)⁷, despite the fact that international standards state that no person should be held in solitary beyond 15 days because it otherwise can amount to torture.

³ The Correctional Association has, through the Freedom of Information Law (FOIL), made requests for information on the number of people held in keeplock in the state prisons. DOCCS refuses to provide that information, indicating that it does not have records responsive to the request. The CA makes the estimate of around 1,000 people in keeplock based on older data the CA collected through individual prison visits to prisons around the state. Particularly at a time that the Governor is stating that there is a substantial reduction in the use of solitary confinement in New York’s prisons, it is imperative that DOCCS or other state officials report on the number of people who are held in keeplock – one form of solitary – and any other form of solitary confinement. Otherwise, it is difficult to assess the full significance of the reduction in the number of people held in SHU in New York’s prisons. While people in keeplock are often able to retain their property while in keeplock, conditions are otherwise almost identical to conditions in SHU – with people held 23-24 hours a day without any meaningful human contact or out-of-cell programs. Are the number of people in keeplock and people’s length of stay in keeplock also declining? Or are they increasing? Or remaining the same? Since keeplock is another form of 23-24 hour a day solitary confinement that can also cause devastating harm, the answers to these questions are necessary to understand if, and how much, solitary is being reduced in the state prisons.

⁴ Michael Schwartz, Michael Winerip and Robert Gebeloff, *The Scourge of Racial Bias in New York State’s Prisons*, *The New York Times*, Dec. 3, 2016, available at: https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html?_r=0.

⁵ See, e.g., Correctional Association of NY, *Voices from Attica*, 2014, p. 24-25, 32-40, available at: <http://www.correctionalassociation.org/wp-content/uploads/2014/10/Voices-From-Attica-2014.pdf>.

⁶ See, e.g., Correctional Association of NY, *Clinton Correctional Facility: 2012-2014*, p. 10, available at: <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Clinton-Correctional-Facility-Final-Draft-2.pdf> (documenting how incidents involving alleged assaults on staff resulted in no injury to staff in 72% of the UIRs and only minor injury in just under 25%, while resulting in injury to incarcerated persons in 87% of the incidents).

⁷ See, e.g., William Blake, *Voices from Solitary: A Sentence Worse than Death*, *Solitary Watch*, Dec. 24, 2014, available at: <http://solitarywatch.com/2014/12/25/voices-from-solitary-a-sentence-worse-than-death-2/>.

The Mandela Rules – adopted by the entire United Nations General Assembly, supported by a US delegation consisting of corrections administrators, and voted for by the US government – prohibit solitary beyond 15 consecutive days. Given that the UN Special Rapporteur on Torture has defined any use of solitary beyond 15 days to amount to torture or cruel, inhuman or degrading treatment,⁸ and the entire United Nations (including the US) thus supported a ban beyond 15 days of solitary in the Mandela Rules,⁹ 15 days should be the absolute limit for isolated confinement in New York prisons and jails. Colorado has already implemented a 15-day limit on solitary and has seen positive results.¹⁰

The devastation wrought by these conditions on thousands of New Yorkers is horrific and unacceptable. Whether for disciplinary confinement, administrative segregation, or protective custody reasons, people in either SHU or keeplock in NYS prisons and jails generally spend 22 to 24 hours per day locked in a cell, without any meaningful human interaction, programming, therapy, or generally even the ability to make regular phone calls, and often being allowed only non-contact visits if they receive visits at all. The sensory deprivation, lack of normal human interaction, and extreme idleness that result from the conditions in solitary confinement have long been proven to lead to intense suffering and physical and psychological damage,¹¹ and to increase the risk of suicide and self-harm.¹² Moreover, solitary is also recognized as causing a deterioration in people’s behavior, while restrictions on the use of solitary have had neutral or positive effects on institution safety.¹³ Incarcerated women face additional special issues related

⁸ United Nations General Assembly, *Interim Report of the Special Rapporteur of the Human rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, p. 21, 23, Aug. 2011, available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (The United Nation’s Special Rapporteur on Torture has concluded that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment” and called for “an absolute prohibition” on isolation beyond 15 days for all people).

⁹ United Nations Standard Minimum Rules for the Treatment of [Incarcerated Persons] – otherwise known as the “Nelson Mandela Rules” or “Mandela Rules”, Rules 43-45, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf. These rules are the product of five years of negotiation and deliberation involving UN member countries (including the United States, whose delegation included corrections commissioners), intergovernmental organizations, civil society groups, and independent experts.

¹⁰ Rick Raemis, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

¹¹ See, e.g., <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>; James Gilligan and Bandy Lee, *Report to the New York City Board of Correction*, p. 3, Sept. 5, 2013, available at: <http://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf>; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, *Journal of Law & Policy*, Vol. 22:325 (2006), available at: <http://law.wustl.edu/journal/22/p325grassian.pdf> (“*Psychiatric Effects of Solitary*”); Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, 49 *Crime & Delinq.* 124 (Jan. 2003), available at: <http://www.supermaxed.com/NewSupermaxMaterials/Haney-MentalHealthIssues.pdf>; Stuart Grassian and Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, *Correctional Mental Health Report*, Vol. 13, No. 1 (May/June 2011); Sruthi Ravindran, *Twilight in the Box: The suicide statistics, squalor & recidivism haven’t ended solitary confinement. Maybe the brain studies will*, *Aeon Magazine*, Feb. 27, 2014, available at: <http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/>; Joseph Stromberg, *The Science of Solitary Confinement*, *Smithsonian Magazine*, Feb. 19, 2014, available at: <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RsSWaQ.email>.

¹² Homer Venters, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *American Journal of Public Health*, Mar. 2014, Vol. 104, No. 3, available at: <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>.

¹³ http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

to solitary confinement¹⁴ and its impact on emotional and physical health,¹⁵ including issues related to exacerbated impacts on survivors of domestic violence and abuse, triggering of Post-Traumatic Stress Disorder (PTSD), limitations on access to children and loved ones, and infringements on reproductive health care (including limitations on access to sanitary pads, toilet paper, obstetrical services, exercise and movement).

Governor Cuomo and the New York legislature must go much further in limiting the use of solitary in the current budget and/or otherwise. The HALT Solitary Confinement Act, A.3080/S.4784 would ensure that *no* person is subjected to the torture of solitary confinement beyond 15 days and would create more humane and effective alternatives. For any person that needs to be separated from the general prison population for more than 15 days, HALT would create separate, secure, rehabilitative and therapeutic units providing programs, therapy, and support to address underlying needs and causes of behavior, with at least seven hours out-of-cell time per day consisting of 6 hours of out-of-cell congregate programming and 1 hour of out-of-cell recreation. HALT would also restrict the criteria for placement in solitary or alternative units, ban the use of solitary for people particularly vulnerable to its damaging effects or additional abuse in solitary, such as young people and people with mental illness, and expand staff training, procedural protections, transparency, and oversight.

The use of solitary confinement traumatizes the individual being isolated and the corrections staff assigned to monitor them. It negatively impacts the prison and community safety and has led our state into an urgent human rights crisis. The Governor and legislature must HALT solitary confinement in New York State and end this torture.

Raise the Age and Youth Justice

It is positive that Governor Cuomo has proposed a substantial allocation of resources for successful implementation of Raise the Age. However, other aspects of the proposed budget raise concerns about effective implementation in all counties of the state. The CA is particularly concerned about the defunding of the “Close to Home” initiative. While there have been some challenges with Close to Home, the solutions to those challenges involve providing adequate funding and effective implementation, rather than defunding the program. Overall the program has already provided, and would do so to an even greater degree following Raise the Age implementation, opportunities for young people to stay connected with their families and communities. Such connections are critical to young people’s success.

The Correctional Association has for many years advocated for keeping children in custody closer to their homes and communities. As the CA testified to at the time Close to Home was being proposed and implemented, we have also long advocated for ensuring that all youth justice programs and facilities, regardless of who operates them, promote positive outcomes while

¹⁴ Bedford Hills and Albion are the only two women’s facilities with a SHU – Bedford’s unit has 24 cells and Albion’s has 48 – and all facilities have a Keeplock area.

¹⁵ See *Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons*, A Report of the Women in Prison Project of the Correctional Association of NY, p. 145-158, Feb. 11, 2015, available at: <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf>.

keeping youth and communities safe. New York State should continue to fund Close to Home, and should greatly enhance the experiences of children in the youth justice system, including by ending abuse and mistreatment, expanding outside oversight mechanisms, enhancing family and community engagement, and implementing youth-centered, trauma-informed, strength-based approaches to working with children and young people.¹⁶

Elder Release and Other Parole Release

It is positive that Governor Cuomo is focusing on the crisis of elderly people in prison, and that his proposed budget initiatives seeks to expand geriatric parole; however there are substantial flaws in the geriatric release proposal that need to be revised and at the same time much more is needed to address the ongoing and worsening crisis of people aging in prison and repeated and inappropriate parole denials regardless of age. The CA fully supports the analysis and recommendations of the Release Aging People in Prison (RAPP) campaign, and some aspects of the below is drawn from their expertise.

With regard to the specific geriatric parole initiative proposed, it is positive that the proposal attempts to expand release of people who are aged 55 or older in prison who have a debilitating medical condition. New York's medical parole release has for years and decades been extremely under-utilized, with hardly anyone being released and people languishing or dying in prison because of the failure to release people with serious medical conditions. As an example, only 13 people in 2016 and eight people in 2017 were released on medical parole (after changes had previously been made to the law to expand release), despite there being hundreds of elderly patients recognized by DOCCS to have such serious medical needs as to require placement in one of the state's Regional Medical Units.

At the same time, the proposal should be revised and expanded. First, although the eligibility criteria for medical parole is expanded from the current law, it still is very restrictive and should be expanded further. The proposal would allow for "geriatric parole" if a person has a "chronic or serious condition . . . exacerbated by age, that has rendered the person so physically or cognitively debilitated or incapacitated that the ability to provide self-care within prison is substantially diminished." We question why the phrase "exacerbated by age" is included since (1) it might be difficult to assess whether a condition that substantially diminishes an elderly patient's self-care status has been exacerbated by age, and (2) the degree of diminution in self-care is the relevant factor in deciding eligibility. We strongly support the narrowing of DOCCS review to the medical status of the patient and leaving any assessment of risk of recidivism to the parole authorities. We would also suggest that the language contained in section 2(a) requiring the medical provider to evaluate whether the patient is "severely restricted in his or her ability to self-ambulate" should not be included since the ambulation limitation has been used in the past under medical parole and has resulted in very few patients being qualified for release. Ambulation is only one of many factors to be considered in a patient's ability to maintain self-care and should not be elevated to some higher priority.

¹⁶ See, e.g., Correctional Association Testimony for State Budget Hearing for Human Services, 2012-2013, available at: <https://www.correctionalassociation.org/wp-content/uploads/2012/05/Feb-2012-CA-Human-Services-Testimony.pdf>.

In addition, it is deeply problematic that the law excludes people based exclusively on their crime of conviction. Evidence demonstrates that people convicted of murder and the most serious crimes are the least likely to commit a crime upon release. Moreover, any person – regardless of their crime of conviction – who is suffering such a debilitating condition or who is dying in prison, should have the opportunity for release. The proposal should eliminate the exclusion and all people should be eligible for consideration on a case-by-case basis. Similarly, the proposal should be revised to remove the following language that has been abused by the Parole Board in other contexts to repeatedly and inappropriately deny people release: “release is not incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law.”

Furthermore, the proposal should be revised to speed up the process by which medical parole release decisions are made rather than slow them down. The proposal provides for a 30-day comment period – for the sentencing court, district attorney, defense attorney, and crime victim – before a geriatric parole can be granted. This expansion of time on the existing 15-day comment period for medical parole is problematic and should be reversed, particularly given the often time-sensitive nature of these procedures given applicants’ serious and potentially life threatening conditions. For example, DOCCS’ most recently available data indicates that between 1992 and 2014, 108 of the 525 certified medical parole applicants died prior to receiving medical parole. We would urge including time limitations on each of the several steps in the review process, including deadlines on the initial medical review, the review and decision-making process in determining medical eligibility by the Commissioner or his/her designee, and the parole board processes in rendering a final parole decision.

In addition to these changes, we strongly support the recommendations contained in the testimony from the Release Aging People in Prison (RAPP) campaign concerning the need for enhanced transparency and accountability in this review process. The public needs much more information about who is being granted or denied release, the basis for these determinations, and whether the review process is fair and effective in getting elderly persons with significant health problems released from prison.

Finally, the Governor and the legislature must take bolder and more expansive steps to address the inhumane, abusive, and costly parole system as a whole – to release more elderly people (regardless of whether they have a debilitating medical condition) and to release more parole-ready people in general regardless of age.¹⁷ Thousands of people each year are denied parole in New York State.¹⁸ Worse still, thousands of people are repeatedly denied parole, sometimes as many as ten or more times, thereby remaining in prison for decades longer than they should. Indeed, roughly only one out of every five people who appears before the Parole Board for a general assessment of eligibility for parole is released, whether appearing for the first time or as someone previously denied parole.¹⁹ All of those individuals who have been denied have already

¹⁷ For more information regarding the failures of the Parole Board and the need for fundamental reform, *see* Correctional Association Testimony before the NYS Assembly Corrections Committee re Board of Parole, Dec. 4, 2013, *available at*: <http://www.correctionalassociation.org/wp-content/uploads/2013/12/CA-Parole-Testimony-12-4-13-Hearing-FINAL.pdf>.

¹⁸ CA analysis of data provided by the Board of Parole for 2011, 2012, and 2013.

¹⁹ *Ibid.*

served at least the minimum sentence deemed appropriate by the judiciary and the legislature for their crimes of conviction and past criminal history.

Yet, the Board repeatedly denies parole based on the nature of applicants' crimes of conviction or past criminal history, in the process failing to adequately consider or give sufficient weight to what people have accomplished while incarcerated, their current readiness for reentry, or their risk to the community as measured in an objective manner. Although a risk assessment is now conducted for people appearing before the Parole Board and the Board by its own regulations is now required to place emphasis in its decisions along with a case plan intended to measure rehabilitation progress, the Board often ignores the assessment and case plan and frequently denies people determined to be at very low risk of committing an offense upon release.

Although there has been some recent progress made with the adoption of new regulations and appointment of new commissioners in 2017, more needs to be done to increase releases and ensure that release decisions are based on individuals' growth, current risk, and readiness for release. The repeated denials of parole, particularly when coupled with DOCCS programming that is lacking and insufficiently supported, is an inhumane form of persistent punishment. In particular, people serving long sentences who are denied parole even when they have completed required prison programming and demonstrated rehabilitation are left to languish with little positive opportunities and little hope. In addition to this human cost, this system of parole denials also is a tremendous drain on taxpayer funds, with potential savings of hundreds of millions of dollars per year if appropriate parole decisions were made. Moreover, when the state fails to abide by the rule of law, the resulting demoralization from repeated parole denials can lead some people to become less willing to engage in beneficial activities, to instead carry out problematic or disruptive behavior, or to lose respect for the rule of law or society as a whole.

Perhaps most importantly, repeated parole denials deprive families and communities of valuable and contributing members. Many people who are denied parole are parents, children, or grandparents; have transformed their lives or self-actualized; have attained GEDs or college degrees; and are genuinely cognizant of the harms they have caused others and deeply committed to doing something positive in the community to help repair the harms caused. For them and our communities, we need to let them return home to be contributing members of our society.

There are a number of policy changes the Governor and legislature should make to ensure the parole board releases people who have demonstrated their accomplishments or transformation while in prison, current low risk of harm to others, and/or readiness for reentry. Two current priorities for this budget and legislative session are: presumptive release and "second look" parole consideration. For presumptive release, proposed bill A.7546, requires the board to focus on a person's current public safety risk at all appearances and creates a presumption of release at parole reappearances (following an initial denial), unless there is a evidence that a person poses a current serious public safety risk. For "second look" parole consideration, New York should provide all older people (aged 50 or 55 and older) – regardless of their sentence – the opportunity to appear before the parole board for release consideration after they have spent 15 years in prison. Given the extreme sentence lengths in New York State, the ability of people to grow and change over this period of time, and the extremely low risk to public safety posed by older people and people convicted of the most serious crimes, allowing people who meet these criteria

to at least appear before the Board is a much more humane and cost-effective policy. Beyond these two priority policy changes, the SAFE Parole Act, A.4353/S.3095A, provides a comprehensive change to existing parole law to ensure appropriate parole release decisions.

Temporary Release Programs

While it is positive that the Governor has proposed some initiatives related to temporary release – a pilot college education and a pilot work release program, the size of the programs are grossly inadequate and restrictions on program participation are problematic.

With respect to the size of the proposed programs: temporary release programs, which can serve as an important and meaningful transition period for people who will return home from prison, has been almost eliminated in New York over the past decade and a half. While nearly 28,000 people participated in temporary release in 1994,²⁰ and still nearly 6,800 people participated in some form of temporary release in New York in 2000, under 800 people participated in the program in 2013 – the latest year of available data.²¹ It is long past due for New York to revive the temporary release program and provide people with an enhanced opportunity to prepare for their release to the community. Governor Cuomo’s initiative is a step in the right direction but needs to be hugely expanded to provide for substantial meaningful opportunities. Given the drop in the program from tens of thousands of participants per year to only mere hundreds, proposing two 50-person pilot programs is grossly inadequate. New York should re-implement a substantial number of temporary release programs – particularly given their effectiveness at helping to prepare people to be successful upon release and the cost-savings they can produce.

In addition to the limited size of the proposed temporary release initiative, the proposal has concerning restrictions on participation based on people’s crime of conviction or past disciplinary history. All people should be eligible for the program regardless of their crime of conviction and participation in the program should be based on individual determinations made on a case-by-case basis. As discussed above, people convicted of the most serious crimes are the least likely to commit a new crime, and also possibly stand the most to gain from temporary release, given the length of time people would have spent in prison before being eligible for the program. Also, the proposal does not place any timeframe for the denial of participation based on a disciplinary infraction. Given the CA’s experience in other contexts, DOCCS will use disciplinary infractions from years or decades prior to deny people participation, regardless of a person’s current risk of engaging in problematic conduct.

Moreover, particularly if the Governor and legislature are serious about expanding opportunities for higher education for people who are incarcerated, New York should restore Tuition Assistance Program (TAP) eligibility for people who are incarcerated (A. 3995), so that incarcerated people are able to access college education. Educational opportunities have the

²⁰ Patricia Warth and Alan Rosenthal, *How New York Could Save Millions: The Potential Cost Savings and Public Safety Benefits of the Temporary Release Program*, Justice Strategies, available at: <http://www.communityalternatives.org/pdf/TemporaryReleasePolicyPaper.pdf>.

²¹ Temporary Release Programs, Annual Report 2013, DOCCS, available at: <http://www.doccs.ny.gov/Research/Reports/2014/TempReleaseProgram2013.pdf>.

power to transform lives and increase safety in prisons and in outside communities.²² As demonstrated by the example of so many currently and formerly incarcerated persons, these programs can help participants grow and develop, increase opportunities for employment and success upon release, and empower incarcerated persons to become peer leaders, teachers, and role models for others inside prisons and in our communities. Despite this enormous potential, the number and quality of DOCCS programs fail to match the need and opportunity. Specifically for college programs, while it is well known that college education is one of the most effective means of helping people transform their lives and decrease the likelihood of returning to prison, there are very limited college opportunities since the state ended Tuition Assistance Program (TAP) eligibility for incarcerated persons, and the U.S. ended Pell grants, in the mid-1990s.

Overall, New York needs to revitalize its temporary release program – at least to the levels of the early 2000s and ultimately to the levels of the early 1990s; needs to expand college access for people inside; and all people in prison should be eligible for consideration for any and all programs, without blanket prohibitions and instead determinations made on a case-by-case basis.

Merit Time and Limited Credit Time Allowance

Similar to the temporary release programs, it is positive that the Governor has proposed expanding merit time and limited credit time allowance eligibility, and at the same time the much greater expansion is needed – both in terms of eligibility and the amount of time that a sentence can be reduced. Specifically, the Governor’s proposal would allow for more people to be eligible for merit time if they successfully complete two consecutive semesters of college, and for more people to be eligible for a limited credit time allowance if they complete two years of certain vocational programs with specialist certifications obtained, 18 months of carrying out barbering or cosmetology after completing a training program and obtaining a license, or thinking for a change plus 18 months of subsequent work release.

It is positive that the programs and certifications that make a person eligible for merit time and limited credit time allowance would be expanded under this proposal. However, the availability of such specific and extensive programs is very limited across the prison system. Regarding merit time, college programs are very limited across NY prisons. Regarding the limited credit time allowance, most of the prisons the CA has visited during the past five years do not even have the specific vocational programs needed to qualify, and when such programs are at a facility, participants are generally not permitted to remain in the program for the length of time needed to qualify. As an example, when the CA visited Elmira C.F. in 2016, the prison did not have these newly listed vocational programs in the proposal and only one person over several years had completed a vocational certification program that required an extended period of time in a vocational program. Thus, only a relatively small number of people will benefit from this amended policy. The Governor and the legislature should greatly expand what programs make a person eligible, such as obtaining a High School Equivalency degree, successfully participating in some years of academic programming (regardless of whether a degree is obtained),

²² For more information about the need for expanded education opportunities, including college education inside New York prisons, *see* Correctional Association Testimony before the Hearing of NYS Assembly Corrections Committee re Educational and Vocational Programs in NY Prisons, Nov. 29, 2012, *available at*: <http://www.correctionalassociation.org/wp-content/uploads/2013/02/testimonu-prison-ed-voc-progs-nov-2012.pdf>.

completing a alcohol and substance abuse treatment program, completing an Aggression Replacement Training or Thinking for a Change program, completing a vocational program, serving as a program assistance or other peer-leader position, a certain period of time without any disciplinary infractions, and so forth.

Moreover, the Governor and legislature should greatly expand the amount of time that a person can have their sentence reduced if they earn merit time or limited credit time allowance. For example, proposals have included people earning one third off of their current determine or minimum sentence, and the Governor and legislature should adopt this and greater sentence reduction lengths for merit time and limited credit time allowance. In addition, New York should eliminate the categorical denial of these and other benefits to people convicted of certain crimes, and (like with many other policies discussed throughout this testimony) allow all people to be eligible if they meet the other criteria.

Arrest-to-Trial Initiatives (Bail, Speedy Trial, Discovery)

It is positive the Governor has recognized the tremendous need for reform of various arrest-to-trial court-phase practices, allocated funding for indigent defense across NY, and put forward some initiatives related to bail, speedy trial, and discovery. At the same time the proposals also include aspects that may undermine the positive attributes and the Governor's proposal fails to include an important court-phase initiative that will be discussed in the next section.

There is a great need for bail, speedy, trial, and discovery reform, as well as expanded funding for effective defense representation for accused people across NY. However there are serious concerns with the details of the proposals. The CA supports the analysis and recommendations of many of its partners and allies that are more deeply involved in these pre-trial issues, such as the Legal Aid Society and other defense organizations, the Katal Center, Just Leadership USA, and others, and the following analysis is drawn in large part from their analysis.

Regarding bail, it is positive that the proposal would limit when monetary bail can be used, require judges to select the least restrictive conditions of release (including release or release with non-monetary conditions), require judges that do impose bail to include three forms of bail (including unsecured bonds), and create some additional procedural protections for people facing pretrial detention. However, it is deeply problematic, for example, that the proposal: creates a dichotomy between people charged with so-called "violent" and "non-violent" crimes; greatly expands who can be subject to indefinite, preventative detention, allowing district attorneys to seek pre-trial detention in a wide variety of cases that often can involve minor conduct (such as turnstile jumping while another case is pending or a family dispute that has dissipated); creates some more restrictive release conditions in certain circumstances; and expands the potential use of GPS monitoring. Bail reform should eliminate monetary bail in all cases, apply the same policies to people charged with "violent" or "non-violent crimes; avoid pretrial detention based on "dangerousness" rather than flight risk and probable cause a person committed the alleged crime; include a presumption of release and a burden on the prosecution for why conditions should be imposed; and avoid the use of GPS/other monitoring to avoid community surveillance.

Regarding speedy trial, it is positive again that there is an attempt to enhance speedy trial protections and that the proposal allows for judges to examine prosecutors' claims of readiness for trial and find those claims to be invalid. However, the proposal makes harmful changes to current speedy trial provisions, including by allowing defendants (rather than their attorneys) waive speedy trial. Also, the proposal does not address one of the biggest ways in which speedy trial in practice is denied: namely it does not include in speedy trial time calculations court delays due to congestion and backlogs. The proposal must go further to cover the actual time that a person is awaiting trial and thus truly protect people's constitutional right to a speedy trial.

Regarding discovery, it is positive the proposal aims to ease the ability of accused persons to obtain certain information in a timely fashion. However, the proposal again has serious flaws. For example, it is problematic the proposal does not include access to pieces of vital evidence and information, including names and contact information of witnesses and information that could support suppression of evidence; does not require discovery prior to a guilty plea; and provides prosecutors with greater authority to redact information. New York should adopt open-file discovery, giving access to all information held by prosecutors and law enforcement, that is automatically turned over, and is given as early as possible and before a guilty plea.

Domestic Violence Survivors Justice Act

One court processes initiative not included in the Governor's proposals that should be adopted by the Governor and the legislature through the budget or otherwise is the protection of people who have survived domestic violence and face prosecution for acts related to the abuse they endured.

Domestic violence affects women in prison in staggering numbers: an estimated 75% of women in NY's prisons suffered serious physical violence by an intimate partner during adulthood, 8 in 10 were severely physically or sexually abused as children and 9 in 10 experienced physical or sexual abuse in their lifetimes. All too often, the justice system's response to domestic violence survivors who act to protect themselves from an abuser's violence is to incarcerate them – often for many years. This represents a shameful miscarriage of justice. Instead of giving survivors who have suffered life-shattering abuse compassion and assistance, we give them harsh punishment and prison. Instead of providing protection, the justice system becomes one more entity in the continuum of violence in survivors' lives. Our state's mandatory sentencing statutes are responsible for much of the problem. These statutes require judges to dispense long prison sentences to survivors even when they determine that diversion to an Alternative to Incarceration (ATI) program is more appropriate. Because judges lack discretion, ATI programs are possible only if a prosecutor agrees to reduce the charge to a lower-level offense – a rare occurrence.

The Domestic Violence Survivors Justice Act (DVSJA), A. 3110 / S. 5116, would take steps to address this problem.²³ The Act would: (1) allow judges to send certain survivors convicted of

²³The DV Survivors Justice Act is supported by a broad coalition of over 125 domestic violence, social service, victims' rights, criminal justice and women's organizations, and by thousands of individuals across the state. Supporters include: the New York State Coalition Against DV, Downstate Coalition for Crime Victims, Erie County Coalition Against Family Violence, Rochester/Monroe County Coalition Against DV, Nassau County Coalition Against DV, Suffolk County Coalition Against DV, Sanctuary for Families, Lawyers Committee Against DV, Men Can Stop Rape, Rockland Family Shelter, Safe Homes of Orange County, Equinox Domestic Violence Services, Family Counseling Service of the Finger Lakes, STEPS to End Family Violence, My Sisters' Place, NYC Bar

crimes directly related to abuse to either shorter prison terms or to ATI programs; and (2) allow certain survivors currently serving long prison terms to petition the courts for resentencing and earlier release. To be eligible for an alternative sentence or for resentencing under the bill, a judge must find that a survivor meets three specific criteria: (1) that she was, at the time of her offense, a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a spouse, intimate partner or relative (either by blood or marriage); (2) that the abuse was a “significant contributing factor” to the crime; and, (3) that a sentence under the law’s general sentencing provisions would be “unduly harsh.” Individuals convicted of Murder in the First Degree, Aggravated Murder, Sex Offenses and Terrorism Offenses are excluded from eligibility under the bill. It is important to note that the Act’s “significant contributing factor” standard has already been recognized by the legislature as a proper standard in assessing mitigating circumstances in sentencing. For example, the recent Rockefeller Drug Law reforms permit diversion if substance abuse is a “contributing factor” to the crime.

The DVSJA poses absolutely no risk to public safety. The vast majority of survivors convicted of crimes directly related to abuse have no prior felony convictions, no history of violent behavior, and extremely low recidivism rates. For example, 85% of women sent to NYS prisons for a violent felony in 2011 had never before been convicted of a felony. Of the 38 women convicted of murder and released between 1985-2003, not a single one returned to prison for a new crime within three years of release – a 0% recidivism rate. By increasing use of ATIs and shortening the amount of time mothers are away from their children, the DV Survivors Justice Act will save the state funds without compromising public safety, and will take critical steps toward treating survivors who act to protect themselves with the compassion and dignity they deserve.

Oversight and Accountability for Abuse in Jails and Prisons

Although the Governor’s State of the State book discussed the need for action to address abuse of incarcerated people, neither his proposed budget nor proposed Article VII bills specifically addressed the issue and the Governor’s budget proposal did not provide any additional resources to the SCOC compared to last year, despite his call for the SCOC to take further action in this regard. The Governor and the legislature should take measures in the budget and otherwise to stop the widespread and rampant brutality, racism, and abuse that plagues New York’s prisons and jails. As the Governor wrote in his state of the state book:

[P]eople are held in facilities and under conditions that we would condemn as human rights violations if they were occurring in another country. Our tolerance for the ongoing injustice is repugnant to our position as the progressive capital of the nation. Some jails in our state have long records of violations that continue for years. We must act with a new urgency to safeguard the rights of all New Yorkers—too long neglected. It is a state-wide problem. I am directing the State Corrections Commission to develop corrective action plans or closure orders on jails that are out of compliance.

Association’s Domestic Violence and Criminal Operations Committees, and the YWCA of Northeastern New York. In addition, in a PBS poll conducted in 2012, 92% of respondents said they supported reduced sentences for DV survivors convicted of crimes directly related to their abuse.

While the Governor was specifically referencing jails across New York State – which he rightfully pointed out are ripe with abuse – the same statement could be made regarding prisons throughout the state. New York State prisons, like many of the jails, are plagued by a pervasive and entrenched culture of staff brutality, violence, abuse, racism, dehumanization, and intimidation. As CA reports on Southport, Clinton, Attica, Greene, Fishkill Correctional Facilities and other prisons have long documented,²⁴ and as exposed by the brutal beating of George Williams at Attica, systematic beatings at Clinton in the wake of the June 2015 escape from that facility, and the killings of Samuel Harrell at Fishkill²⁵ and Karl Taylor at Sullivan (for which there has still been no official public report from DOCCS or the state, let alone corrective action), these abuses and their cover-ups are regular and typical practices. An underlying culture and environment of abuse – not a few individual bad actors – drive the dehumanization and brutalization taking place. This culture is undergirded and fueled by racism, staff impunity, a lack of meaningful programs, a history of violent repression (especially at Attica and Clinton), and a reliance on force, punishment, and disempowerment.

This staff violence is intrinsically linked with the systemic racial disparities in the targeting of Black and Latino people in the New York State prison system. Nearly 75% of the people incarcerated in New York prisons are Black (49%) and Latino (24%), vastly disproportionate to the percentage of Black (13%) and Latino (17%) people in New York State as a whole. Yet, the vast majority of Correction Officers (COs) are white, and at some prisons, there are no or almost no Black COs. At Clinton for example, DOCCS has reported at times that there was not one Black CO at the prison. Moreover, disproportionately, staff harassment, brutality, and abuse are often most directed at Black and Latino people.

The CA has long documented elsewhere extensive brutality taking place at Southport, Clinton, Attica, Great Meadow, Greene, Wyoming, and Fishkill.²⁶ Although some of these prisons stand out with respect to the severe levels of violence, brutality, racism, and other staff misconduct; staff abuse is not limited to these facilities but is system-wide. The CA constantly receives information regarding brutal staff assaults on people in prisons across the DOCCS system – in both medium and maximum security facilities. The pervasive racism-fueled staff brutality permeates the entire prison system. New York State must close Attica and Clinton, along with Rikers Island and other county jails, in order to stop the ongoing abuses at those prisons and jails that have been happening for decades, and to send a ripple effect throughout the prison and jail

²⁴ See <https://www.correctionalassociation.org/resource/solitary-at-southport-a-2017-report-based-upon-the-correctional-associations-visits-data-analysis-first-hand-accounts-of-the-torture-of-solitary-confinement-from-one-of-new-yorks-supermax-priso>; <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Clinton-Correctional-Facility-Final-Draft-2.pdf>; <http://www.correctionalassociation.org/wp-content/uploads/2015/02/Attica-2014-CA-Updated-Report-Final.pdf>; <http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-C.F.-Report-Final.pdf>; <http://www.correctionalassociation.org/wp-content/uploads/2013/12/Fishkill-C.F.-Final-Report.pdf>.

²⁵ See <http://www.nytimes.com/2015/03/01/nyregion/attica-prison-infamous-for-bloodshed-faces-a-reckoning-as-guards-go-on-trial.html>; <http://www.nytimes.com/2015/08/12/nyregion/after-2-killers-fled-new-york-prisoners-say-beatings-were-next.html>; http://www.nytimes.com/2015/08/19/nyregion/fishkill-prison-inmate-died-after-fight-with-officers-records-show.html?ref=nyregion&_r=0.

²⁶ See, e.g., <http://www.correctionalassociation.org/wp-content/uploads/2015/12/CA-Testimony-re-Oversight-of-DOCCS-Dec-2-2015-with-Appendix.pdf>; <https://www.correctionalassociation.org/resource/solitary-at-southport-a-2017-report-based-upon-the-correctional-associations-visits-data-analysis-first-hand-accounts-of-the-torture-of-solitary-confinement-from-one-of-new-yorks-supermax-priso>.

system that abuse will not be tolerated. At the same time, New York must end brutality within all New York prisons and jails. So long as the state confines people in prisons, it must be compelled to create mechanisms to reduce violence and abuse in our prisons, including through greater transparency, oversight, and accountability; and a fundamental transformation of the culture from punishment, brutality, and abuse to communication, de-escalation, and empowerment.

Regarding oversight, accountability, and closure, as the Governor referenced, the SCOC has the authority to promulgate rules and regulations establishing minimum standards for the “care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities.”²⁷ Further, the SCOC has the authority and indeed the mandate to close any correctional facility which is “unsafe, unsanitary or inadequate to provide for the separation and classification of [incarcerated persons] required by law or which has not adhered to or complied with the rules or regulations promulgated with respect to any such facility by the commission.”²⁸ Epicenters of racism, brutality, and torture like Attica and Clinton – as well as jails like Rikers Island and many county jails across the state – are long overdue for closure because of their “unsafe, unsanitary, and inadequate” conditions, and the SCOC should be taking action to shut these institutions down.

As noted above, the Governor did not provide any additional resources to the SCOC in this current budget proposal to carry out efforts related to addressing abuses (let alone the new solitary confinement regulations the SCOC has proposed). Also while the SCOC has significant powers, it has a long history of failing to implement its duties effectively and has done very little to monitor conditions in the state prisons or to evaluate the treatment of the incarcerated population. The Office of the New York State Comptroller, Division of State Government Accountability, performed an evaluation of the SCOC in 2006 and concluded: “SCOC relies on inspections to determine whether correctional facilities are complying with the regulations governing their operations. However, SCOC stopped inspecting DOCS correctional facilities when its staffing levels were reduced during the 1990s.”²⁹ The Comptroller’s office again just recently released a new evaluation of the SCOC in 2018, and again found the SCOC seriously lacking, particularly with respect to addressing complaints of abuse by incarcerated people.³⁰ While the SCOC should utilize its powers, carry out its duties, and close abusive prisons and jails, the Governor and legislature should also be looking to other mechanisms for carrying out this urgent and imperative task, including by creating a correctional Ombudsman, A. 1904.

²⁷ *N.Y. Correction Law*, §§ 45(2), (3) and (6).

²⁸ *N.Y. Correction Law*, § 45(8).

²⁹ NYS Comptroller, NYS Commission of Correction: Oversight of Correctional Facilities and Handling of Grievances and Complaints Report 2006-S-93, at 4 (2008) available at <https://osc.state.ny.us/audits/allaudits/093008/06s93.pdf>.

³⁰ New York State Office of the State Comptroller Thomas P. DiNapoli, *Facility Oversight and timeliness of Response to Complaints and [Incarcerated Person] Grievances: State Commission of Correction*, Report 2017-S-2, Jan. 2018, available at: <https://www.osc.state.ny.us/audits/allaudits/093018/sga-2018-17s2.pdf>; See also DiNapoli: *State Correction Commission Falling Short in Tracking Problems or Inspecting Prisons*, Jan. 19, 2018, available at: <https://www.osc.state.ny.us/press/releases/jan18/011918.htm>; Glenn Blain, *State Commission of Correction Fails N.Y. Prisons Inspections*, New York Daily News, Jan. 19, 2018, available at: <http://www.nydailynews.com/new-york/state-commission-correction-fails-n-y-prisons-inspections-article-1.3766968>.

Specifically related to culture, the culture and environment of brutality, violence, excessive punishment, dehumanization, intimidation, fear, and abuse must end. It must be replaced by a culture that prioritizes mutual respect and communication between staff and incarcerated persons; conflict resolution, transformation, and de-escalation; and individual autonomy, support, programs, empowerment, and personal growth for incarcerated persons. Examples from around the world – such as systems in Germany, the Netherlands, Norway, and Sweden,³¹ from around the country – such as the Resolve to Stop Violence Project in San Francisco jails;³² and from within New York State – such as the now closed Merle Cooper program;³³ demonstrate that an alternative culture focused on growth, transformation, and preparation for return to the community can have much more successful outcomes, including decreased violence within prisons, better job satisfaction for staff and experiences for incarcerated people; and lower recidivism rates and greater success for people returning home.

Reentry

It is positive the Governor has proposed replacing categorical bars for criminal convictions with individual determinations for various different types of licenses, including stockbrokers, bingo, community school board, bingo operators, notaries, conducting games of chance, authorized commercial lessors, and real estate brokers and sales. It is also positive that the proposal would eliminate the unnecessary and unfair monthly parole supervision fee. These two steps are important measures that will help people who return to the outside community from prison and jail. We urge that the Governor and legislature build off of these initiatives and expand them much further to eliminate all licensing bans based on convictions, the removal of all barriers to re-entry for returning community members (including reversing the scourge of re-incarceration of people on technical parole violations), and the expansion of housing, employment, education, healthcare, emotional, and other support for people released from prisons and jails.

Conclusion

From the billions of dollars spent on incarceration to the epidemic of brutality plaguing prisons and jails across the state and the torture of solitary confinement. From the over-incarceration and

³¹ See Dashka Slater, *North Dakota's Norway Experiment*; See Erwin James, *The Norwegian prison where [incarcerated people] are treated like people*, The Guardian, Feb. 25, 2013, available at: <http://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-like-people> (documenting conditions at Bastoy prison); Jessica Benko, *The Radical Humaneness of Norway's Halden Prison*, New York Times Magazine, March 26, 2015, available at: http://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html?_r=0; Ram Subramanian and Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, p. 13, Oct. 2013, available at: <http://www.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v3.pdf>.

³² Bandy Lee and James Gilligan, *The Resolve to Stop the Violence Project: Transforming an in-house culture of violence through a jail-based programme*, Journal of Public Health, Vol. 27, No. 2, p. 149-155, at 152; James Gilligan and Bandy Lee, *The Resolve to Stop the Violence Project: Reducing Violence in the Community Through a Jail-Based Initiative*, Journal of Public Health, Vol. 27, No. 2, p. 143-148, at 145 (2005); James Gilligan and Bandy Lee, *Beyond the Prison Paradigm: From Provoking Violence to Preventing It by Creating "Anti-Prisons" (Residential Colleges and Therapeutic Communities)*, Ann. N.Y. Acad. Sci. 1036: 300-324, 307 (2004). See also Dashka Slater, *North Dakota's Norway Experiment*, Mother Jones, July/August 2017 Issue, available at: <http://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.

³³ See *Clinton Correctional Facility*, Correctional Association of New York, 2012-2014.

mistreatment of young people and people with mental health needs and all people, to the high incarceration rate and extreme sentence lengths for all people and the denial of parole release to elderly people and others who pose little risk and have demonstrated their release readiness. From the failure to protect domestic violence survivors from abusive prosecution and sentencing, to the many barriers to successful reentry for returning community members, to the racism that drives the entire system. New York must make fundamental changes to its policing, courts, and incarceration systems in this year's budget and otherwise.

Overall, New York policy-makers must demonstrate their seriousness in addressing all of those challenges; shift away from a punishment paradigm rooted in racism toward a model premised on rehabilitation, treatment, growth, empowerment, and community; and reduce the number of people incarcerated to allow for greater ability to implement a more empowering culture with a smaller number of people inside and provide greater resources in outside communities.

Ultimately, as priorities for this year's budget and legislative session, the legislature and the Governor must take bold action on a slate of urgent and necessary policy changes, including:

- the HALT Solitary Confinement;
- Domestic Violence Survivors Justice Act;
- dramatic increases in parole release rates and parole policy changes;
- implementation and expansion of Raise the Age and Close to Home;
- closure of Attica, Clinton, Rikers, and other prisons and jails;
- restoration of Tuition Assistance Program (TAP) eligibility for people incarcerated to attend college;
- meaningful and progressive bail, speedy trial, and discovery reform;
- dramatic reductions in prison sentence lengths (including through expansion on the back-end of merit) and increased diversion opportunities for young people, people with mental health needs, and all people;
- restoration and expansion of visit and package opportunities, and the reinstatement of the free bus visiting program;
- restoration of voting rights for people incarcerated and people on parole supervision;
- reduction of other barriers, and additional supports for, people returning to the outside community;
- racial impact statements for any future legislation; and
- implementation of a truth, justice and reconciliation commission along with reparations for the past and ongoing racial oppression in New York from slavery to segregation to incarceration.³⁴

Now is a moment for bold progressive leadership. Governor Cuomo and NY legislators must adopt these changes in the 2018-2019 budget or otherwise during this 2018 legislative session.

³⁴ See, e.g., Prioritized Platform of Challenging Incarceration: A Movement for Community Empowerment, Racial Justice, and an End to Mass Incarceration and State Violence, *available at*: <https://nationinside.org/campaign/challenging-incarceration/facts/>.