

Testimony of
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As part of the
Joint Legislative Public Hearings
on the
2018-19 Executive Budget Proposal: Public Protection

January 30, 2018
9:30AM
Hearing Room B
Legislative Office Building
Albany, NY

Good afternoon Assemblymember Weinstein, Senator Young, Senator Gallivan and Assemblymember Weprin (if they're attending) and esteemed members of the Fiscal Committees.

Thank you for allowing me to speak today on behalf of the over 21,000 dedicated members of the New York State Correctional Officers & Police Benevolent Association, Inc. (NYSCOPBA).

My name is Michael Powers, and as President of NYSCOPBA, I have the privilege of representing the interests of our membership, including the brave and hard-working correctional officers and sergeants who are charged with maintaining the care, custody and control of our State's prison population.

With me today are the three union officials elected statewide: recently re-elected Executive Vice President Tammy Sawchuk, recently elected Recording Secretary Chris Summers and recently elected Treasurer Toby Hogan. Also present are several other members of the NYSCOPBA Executive Board.

In my testimony today, I want to make three points about the Governor's budget proposal and the State's correctional system:

- First, New York State's correctional system is more dangerous than ever.
- Second, the Governor's Special Housing Unit (SHU) initiative will increase, not reduce the risk of violence to both inmates and staff.
- Third, despite a reduction in the inmate population and New York's low rate of incarceration, there are compelling reasons why further consolidation should not take place in New York's correctional system.

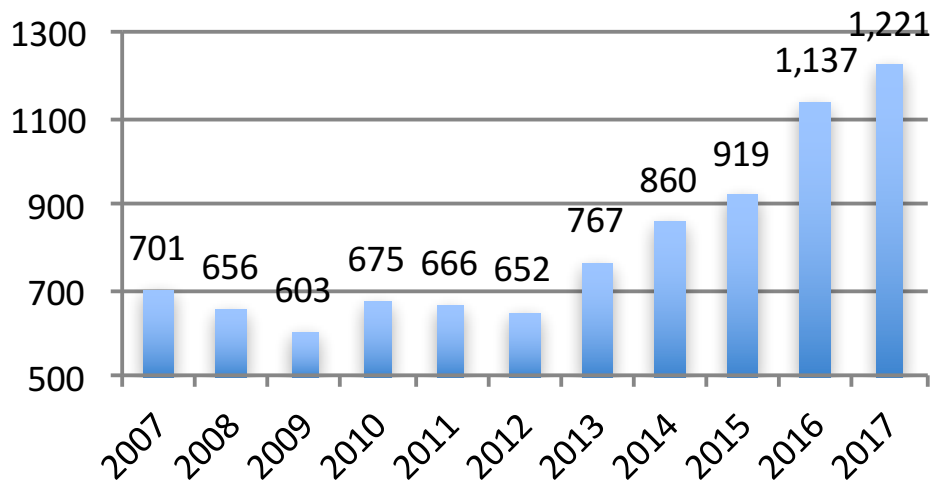
New York State's correctional system is more dangerous than ever

Those of you who have sat through (some might say *endured*) these hearings in the past know NYSCOPBA has clearly and consistently rang the alarm about the escalating levels of violence in New York's correctional system.

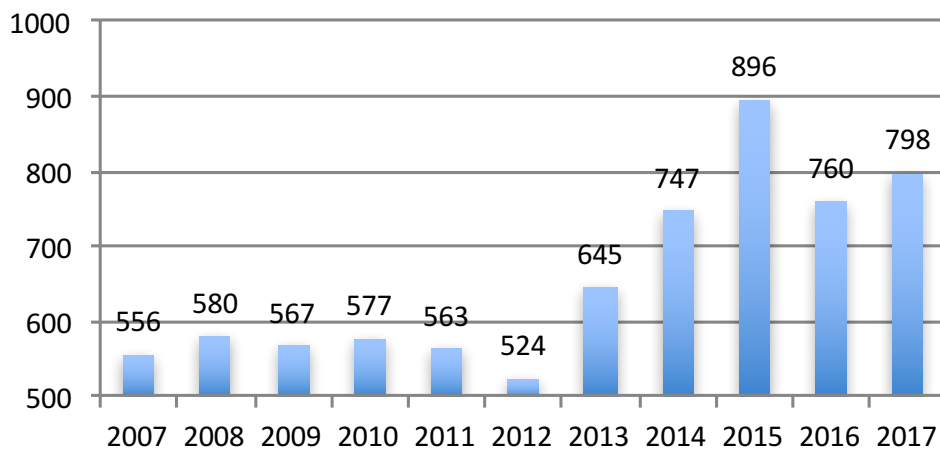
Regrettably, I must ring the alarm again this year.

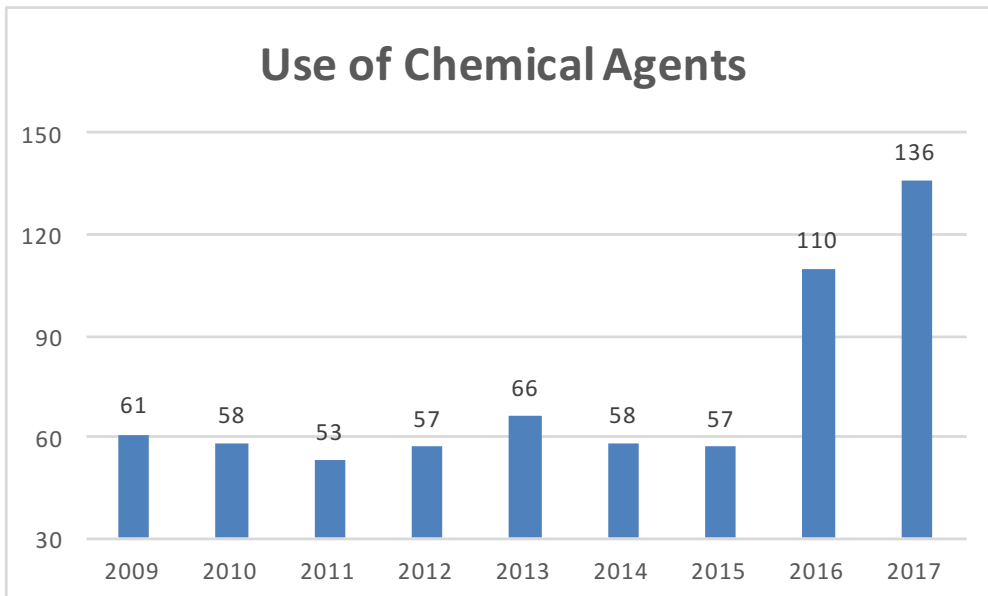
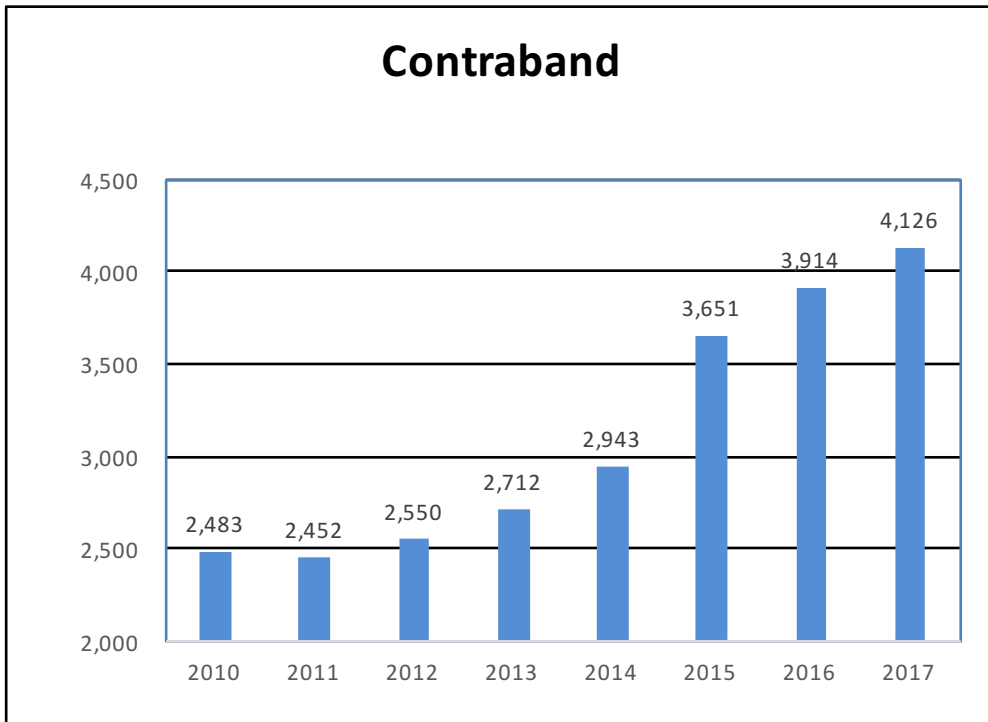
As the following graphs illustrate, inmate violence against other inmates, against staff, the incidence of contraband being confiscated and use of chemical agents by staff to quell uprisings all rose in 2017 over 2016 levels.

Inmate-On-Inmate Assaults



Inmate-On-Staff Assaults





For many years, NYSCOPBA has made suggestions on how to better supervise inmates. While we have worked with DOCCS to bring necessary changes to the correctional system with respect to the inmate dress code, K-9 units, altered food packages, package room procedures and other areas, it is obvious to us that we must do more, and better, to stem this violence.

As many of you may recall, NYSCOPBA entered into a Memorandum of Understanding with the Department in 2014 to thoroughly review the staffing needs of all 54 of the correctional facilities. The Union and the leaders of each facility agreed on the need for Security Staff increases. Regrettably, only two years' worth of staffing increases have materialized. Had the roughly 200 additional corrections officers, properly trained and equipped, been hired and deployed, we believe the violence illustrated in those charts would not have occurred.

Achieving a better staffing ratio would be more attainable if we had the incentive to retain some of NYSCOPBA's most seasoned, retirement-eligible officers. I would like to take this opportunity to thank the Senate and Assembly for passing "death gamble" legislation for corrections officers. Unfortunately, the Governor vetoed the bill and chose not to address this disincentive to remaining on the job in his budget. Had he chosen to protect the financial well-being of the beneficiaries of our uniformed personnel by ensuring that they receive the pension that their fallen loved ones had rightfully earned, the attrition rates of experienced corrections officers would not be so high. NYSCOPBA respectfully asks the Legislature to once again put officers' bereaved families first and include death gamble legislation in this year's budget.

The well-being of our members is also in jeopardy in Washington. I am certain all of you have been informed about the possible devastating effect an adverse decision in the *Janus* case by the US Supreme Court could have on our brothers and sisters in the labor community. Please keep the possible ramifications in mind as you deliberate the budget and legislation this year. The 21,000 members of NYSCOPBA stand in unity with you and we are prepared to go to the limits of our organization's ability to thwart the potentially destabilizing impact of a negative decision in this case.

Governor Cuomo's Special Housing Unit initiative will increase, not reduce, the risk of violence to both inmates and staff

Doing more, and better, to stem violence in New York's correctional facilities will not happen without consequences for bad behavior. Much ink has been used to tell the stories of bad behavior by corrections officers. I can assure you that NYSCOPBA does not condone such behavior. I can also assure you that the tiny fraction of individuals does not reflect the actions of the many professionals in our ranks.

In the eyes of my members, DOCCS is very quick to discipline corrections officers, sometimes well before the due process that all Americans are entitled, has been followed. At the same time, we often see what appears to be extreme leniency in the treatment of inmates who commit infractions of the rules in the State's correctional facilities.

Regrettably, inside the walls of New York's prisons, there are inmates who refuse to follow the rules, present themselves as a danger to staff and other inmates alike, and must be separated from inmates in general population in order to maintain a safe and secure environment. Secure housing units operate for this very purpose. These units

allow for much-needed segregation, while also presenting opportunities for rehabilitation so that the inmate can return to general population in a safe and productive manner.

Unfortunately, recent court settlements and changes to the Department's policies regarding SHU have resulted in an inability of the men and women working inside our prison system to utilize SHU in an effective manner. As a result, a critical tool to ensure safety for officers and inmates alike is no longer readily available to the men and women of NYSCOPBA.

Before we rush to condemn or dismiss SHU, let me be clear about what a secure housing unit is. It is not what is often portrayed in films like "Shawshank Redemption." It is irresponsible, nonfactual and disingenuous for those that portray this image to continue to do so, since nothing could be further from the truth.

In New York State, inmates that are housed in secure housing units have more access to, and more one-on-one contact with, mental health providers, counselors, and physicians than inmates in general population. In addition, the Department has instituted a pilot program in three facilities that will soon be system-wide that allows all inmates in secure housing units to maintain electronic computer tablets. The lighting inside these units and their dimensions must meet the accreditation of the American Correctional Association (ACA). In fact, the size of a secure housing unit cell is essentially no different than the size of a cell for general confinement. In some instances, the cells are actually bigger. Inmates in secure housing units are given the opportunity to participate in the Progressive Inmate Movement System (PIMS) program that allows inmates who display proper behavior to gain privileges while inside secure housing units.

NYSCOPBA believes the time has come for the rhetoric to cease and for the discussion surrounding segregated housing to be limited to facts. As such, we are respectfully requesting every member of this panel and every member of the Legislature to tour a correctional facility in or near your respective districts and ask to tour a secure housing unit so that you can see for yourself what a secure housing unit is; and more importantly, what a secure housing unit is not.

There are compelling reasons why further consolidation should not take place in New York's correctional system

I mentioned earlier that violence in the corrections system was rising even though the inmate population was declining. I want to raise an issue that relates to that declining population and the misconception that there are thousands of empty beds in the system.

For many years, members of the Executive Board of NYSCOPBA have articulated our stance on the existence of double bunks within the prison system. The concentration

of inmates, particularly within the medium security dorm setting (illustrated below) that has resulted from double bunking, has created a serious safety concern for members of our organization as well as for the inmate population.



Current regulations utilized by the Department allow for up to 60 inmates to be housed in a medium security dorm setting (illustrated below). The Department will likely take the position that it is complying with existing law by housing 60 inmates in a dorm setting. However, it is crucial to understand how these current regulations came into being in order to assess whether the current “60 inmate” threshold is sound public policy. From our perspective, it is not.

When the prison population began exploding in the late 80s and early 90s, regulations were promulgated to allow for up to 60 inmates in a dorm setting, as opposed to the 50 that were authorized prior to the rise in prison population. Overcrowding necessitated drastic action and the State took that action by issuing revised regulations authorizing a 20% increase in the number of inmates housed in the medium dorm setting. Although the promulgated regulations increased the maximum allowable number to 60 inmates, through the Commission’s variances, up to 90 inmates were allowed in a dorm setting provided an additional officer was present.

During this double bunking time horizon, further regulations were promulgated to allow what is commonly referred to as “double celling.” These regulations, which still exist today, allow for two inmates to be placed in a cell together – that cell having been originally built and designated for only one inmate. This double celling began at a time of extreme overcrowding (68,534 inmates and a capacity of 67,039 as of July 13, 1995). Interestingly, when double celling was proposed, initially as an emergency regulation, the Commission of Corrections specifically noted that not only was the existing double bunking (in medium dorms) insufficient to handle the overcrowding, but that the double bunking was more dangerous than this proposed new process of

double celling. In fact, in the reasoning for the double celling regulations in 1995, the Commission wrote:

In addition, the practice of double bunking poses a number of security risks not necessarily associated with the practice of double celling. By design, medium security correctional facilities allow for much greater mobility of the inmate population than maximum security correctional facilities. An inmate disturbance in a medium security correctional facility, where there is a concentration of a large number of inmates, thus could be more difficult to contain than at a maximum security facility. Since maximum security correctional facilities are specifically designed to provide for the isolation of various areas within the prison, an inmate disturbance would be easier to bring under control. *NYS Register, September 27, 1995, p. 2.*

Since the Rockefeller Drug Law reforms, most of the system's low level offenders have been released. As such, while the current capacity level may mirror the capacity numbers prior to the prison population explosion, which supports a return to the "50 inmate maximum" in our medium dorms, we are dealing with a much larger concentration of violent offenders remaining in the system in comparison to the pre-explosion, making it even more vital to right size our medium dorms immediately.

Rather than continuing to close beds as the Department has recently done with respect to its secure housing unit bed reduction initiative, the Department should immediately take steps to address the overcrowding that is manifest in all medium dorms by limiting the number of inmates in those dorms to 50.

To illustrate the rationale for limiting the number of inmates in a medium dorm, one needs only to look at a midnight officer's challenge. During midnight shifts, medium dorms are staffed by a single correctional officer who is locked inside the unit with 60 inmates. Maintaining security in a setting with one officer and 50 inmates is difficult; maintaining such security with one officer and 60 inmates is borderline impossible. Especially when you consider that, on average, 33 of those 60 inmates has been convicted of a violent felony offense.

Over 6,800 top beds exist in the system. Dealing with this dangerous situation by eliminating them would virtually eliminate what the Department refers to as more than 8,000 'empty beds'. This figure is misleading because it counts as permanent more than 7,000 'temporary beds' in places like infirmaries and Special Housing Units. When inmates return from the infirmary or Special Housing Units, they need a permanent bed to return to.

In many ways, the New York State prison system is a microcosm of society. Outside the walls of our prison system, when people commit violent acts and break our laws, we incarcerate them in an effort to segregate them from the law-abiding citizens who

oftentimes would not be safe without such separation. A goal of incarceration is certainly to rehabilitate those convicted of crimes so that, someday, they may be able to reenter society in a safe and productive manner. However, we must never lose sight of the need to ensure the safety of our citizens.

NYSCOPBA has articulated its stance on these critical issues frequently and consistently at hearings like this and through official channels like Labor-Management meetings at both the State and facility levels. And we will continue to make our voices heard on these and any other issues that affect the safety and security of our members, inmates and the prisons they collectively work and reside in.

The men and women of NYSCOPBA, each of whom walks the toughest beat in law enforcement, remain committed to such reform. We look forward to working with all of you as partners in that effort.

Thank you again for the opportunity to share our views. We will do our best to answer any questions you have.