

**Testimony to the Joint Public Hearing of the
Senate Corrections and Health Committees
to Discuss the Impact of COVID-19 on Prisons and Jails**

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September 22, 2020



Transforming Lives, Communities,
and the Criminal Justice System

Thank you for the opportunity to speak with you today. I am the President of the Osborne Association, a New York nonprofit founded 90 years ago by Thomas Mott Osborne, an Auburn mayor and businessman from a family of abolitionists and suffragettes who served as warden of Sing Sing in 1914 and became known as the “pioneer and prophet of prison reform.” I am sure he would be both saddened and proud of how the organization he founded has grown. Sad because of how mass incarceration has swelled the prison system, and proud of the programs and services we have designed and implemented to bring the population down and provide opportunities for those on both sides of the walls.

Today, the Osborne Association has community sites in the Bronx, Brooklyn, Harlem, Newburgh, and Buffalo. We operate programs at 30 DOCCS facilities, including (when we reopen in the next couple of weeks) 16 Visitor Hospitality Centers welcoming 80,000 visitors a year, 5 Family Centers in prison visiting rooms (to be opened at an undetermined date), and Supportive Video Visiting (currently operating) that can connect children and families to loved ones in 10 facilities, including all three women’s prisons, from any of our sites. Our programs operate in all 9 DOCCS hubs, and in 19 upstate counties. It is likely clear from that recitation that Osborne is unique among major criminal justice nonprofit organizations in that we center the children and families of incarcerated men and women in our programs and advocacy, while having the largest presence in NY prisons. We added offices in Erie and Orange counties because the majority of people in NYS prisons are no longer from NYC. Pre-Covid, we also had services in 7 NYC Jails, many of which are being offered by substitute methods, including a Reentry Hotline available to all those incarcerated in NYC jails.

The response of prisons and jails in the face of Covid-19 is certainly worth your attention. You will be hearing from many leaders in City and State corrections as well as my colleagues from the community of service providers and advocates, which will include testimony from many well informed people about the conditions inside our state prisons and jails, and the challenges of handling the pandemic, and I am confident they will cover the situation well. I also believe that you have the right to visit facilities at your discretion and can observe conditions for yourself. I have been working in NY prisons since 1972, and first visited Rikers Island in 1978. I have seen responses to TB and HIV in both settings as well as COVID, and under the best of circumstances, an airborne virus in a tightly packed setting of people with a lot of health vulnerabilities is a crisis waiting to happen. In this pandemic, we have had concerns about the lack of PPE, the fact that masks are still not universally used inside facilities, social distancing is impossible, testing is limited, our staff are certainly concerned about going back inside, and the families in our programs are both deeply concerned about their loved ones.

DOCCS has resumed visiting and we have heard both positive experiences and concerns in response to a survey that we have created and distributed. The concerns expressed in the survey include there not being food in the vending machines, long waits, lack of hand sanitizer, porters

cleaning visit areas with the same towel, and the short time to visit (2 hours) compared to the travel time. We ask you to distribute this survey to your constituents in your newsletters, so that we can better understand the challenges people have or the reasons they are choosing not to visit. At the same time, we have been able to continue providing services with a number of “hacks” – phone calls with our clerks, creating “correspondence courses,” holding WebEx classes in some places, and watching in amazement as DOCCS has accepted the use of technology that would have been out of question just a few months ago. We had hoped to load some of our curricula onto tablets, but unfortunately J-Pay owns the platform and is driven by profit so it does not seem workable.

It is important to remember, when you are seeking information about how the system is working in the face of COVID-19, the old saying “If you’ve seen one jail...you’ve seen one jail.” Despite valiant efforts by a central administration to make policies and rules, every prison still operates to some degree as a fiefdom and what we can do in one prison may not work the same in another. That’s not always a bad thing but a good reminder that some challenges – from staff wearing masks to access to testing – may vary.

One effort by Central Office that has worked well in this time has been identifying people who could be released 90 days early. For a time we received regular lists of hundreds of such individuals and worked with other service providers, the Mayor’s office, and DOCCS to maximize reentry options especially for those without a residence to which to return. We have provided smart phones and reentry kits, and in some cases a Reentry Stimulus through a program created by the Center for Employment Opportunities. We arranged Uber pickups at bus or train stations for some people being released early from upstate and worked with the City and DOCCS to arrange housing in hotels leased by the NYC Department of Emergency Management leased. (At the same time, it has been very disappointing that the State’s emergency managers didn’t rent rooms to enable safe releases in the dozens of struggling motels all along the Thruway.)

One area where DOCCS should have done more was parole violations. Given the circumstances, more people could have been released if there were no pending criminal charges or the pending charges were otherwise bail eligible. At the same time, this would have been made significantly easier if the Legislature had passed, and the Governor had signed, the “Less is More” legislation.

Overall, given that the most critical response to an airborne pandemic is reducing the population, to the degree that releases were within DOCCS power, they made efforts. I want to tell you one story. I got a call at home late one evening from the Executive Deputy Commissioner. He said he had spent much of the day trying to arrange for the release of a pregnant woman from Bedford, but she had a warrant from a county in the Capitol region from a prior case and if DOCCS released her, she could end up in the county jail, which would be worse. The only way to get the warrant lifted is if she paid the restitution and fines and fees that she owed, which was only a

couple of hundred dollars but DOCCS couldn't pay it – and so: did Osborne have any way to do this so she could be released. (The next day I called the county with my credit card and was told I needed to bring a check! Well, that wasn't going to happen, so I called the head of probation for the county, who remembered me from years ago when she worked for DCJS, and she said, “I know you're good for it, I'm lifting the warrant.”) I am assuming this young woman has now had her baby. But I tell you this story because I want you to know that many people in government, including DOCCS and your own staff, have worked overtime to try to release everyone they thought could be released within the limitations of the law and the Governor's direction.

Of course DOCCS, and all of us, could have done better, which I will discuss, but let's be clear: the most significant beneficial action that can be taken to protect incarcerated men and women is to RELEASE as many people as possible. Prisons are inherently high risk environments for elevated risk of infection because they are high density, offer no opportunity for social distancing, and provide little access among the population to risk reduction supplies or actions. While they did what they could, Corrections has very little control over release. The dials and levers best able to respond to a crisis like this were in the hands of the Executive and the Legislature. Eligibility for parole or early release, work release or other temporary release are controlled by legislation and regulation that DOCCS does not control. YOU DO. You and the Governor.

Granting parole is not controlled by DOCCS, that would be the Board of Parole made up of people nominated by the Governor and confirmed by the Senate. Reducing sentences for parole violators returned to prison? Board of Parole. Reducing time between a parole grant and release? Board of Parole. Outright clemency and sentence reductions to facilitate more release? The Governor. There are so many executive orders that would have been possible to speed the release of people, so many opportunities to release people who have been incarcerated for a long time and pose no danger to public safety despite a prior conviction for a violent crime. So many older adults who are vulnerable and might have been eligible for parole consideration if the Elder Parole bill had been passed and signed, or people who would've been released if the Fair & Timely Parole bill had been passed and signed.

And there are more things that could be done, right now. We could reopen the closed Lincoln Correctional Facility to house people released from prison without a safe place to go. You could delay any prison closures to allow for the least crowding.

While prison closures are evidence of decarceration, and New York has seen considerable success in reducing the prison population through sensible diversion, the percentage of people in state prison serving life and virtual life sentences is among the highest in the country, and leads us to a crisis of aging in prison – an unforced error given that older adults serving long sentences

are the most expensive to incarcerate, pose the lowest risk to public safety, and have done the most to grapple with the consequences of the harm they caused.

Passing the Elder Parole bill would enable aging boomers – many of whom were children when they committed the crime for which they are incarcerated – to be considered for discretionary release ahead of their regular parole date or at all, for those who are not otherwise parole eligible.

And while we acknowledge the work DOCCS has done within some challenging constraints, we are deeply concerned about the decision to move so many older adults to Adirondack, a facility that has held an adolescent population with a staff that has no experience in aging. Moving a highly vulnerable population to a remote facility that is not designed to best suit their needs and is very far from population centers causes social isolation. And removing these elders from other prisons has meant eliminating their steadying role in general population in other facilities. Some of the men had been part of our Elder Reentry program at Fishkill, and we are hoping to maintain our connection to them via video if a connection can be made, but overall we do not think segregating older men in a remote location is a well-designed plan. A better plan, if these men are vulnerable to COVID, is to release them. We have also pushed for legislation that centers the importance of visiting and we are so grateful that the legislature has passed the Proximity bill. We hope the Governor will soon sign this into law.

While DOCCS has brought back regular visiting, we do have some concerns that the Family Reunion Program (FRP) is slower to return, and more so because proposed new regulations for FRP are alarming: the proposed rules would make people with serious infractions PERMANENTLY ineligible. Given the number of people who get into trouble when they are young and first entering prison and who turn their lives around, and the subjective or questionable nature of some of what is deemed “trouble,” it seems like the worst possible approach. Eliminating the word “recent” seems self-defeating by denying these important family-building opportunities to so many people who have not had any problems in a very long time.

We also hope you will act on the bill that would mandate in-person visiting in New York State jails and prisons. While DOCCS has resumed in-person visiting, NYC DOC has not, and we see little evidence that they are planning it. We once again call on the Assembly and Senate to pass the Codification of Visits Bill S2698/A2483 which would enshrine into state law the right to in-person visits at state prisons and local jails, ensuring that video conferencing never replaces in-person visits as is happening in jails across the country.

We know you support this measure. We have it on record: At our pre-pandemic press conference, Senator Sepulveda said, “The challenges of incarceration affect entire families. I’m proud to stand here today with colleagues, activists, children of incarcerated parents, and families

to support the right to in person visiting, the family visiting bus program, and close to home bills. These recognize the unique and essential role that stronger family and community ties have in supporting both successful rehabilitation and re-entry. It is vital we pass these bills to achieve truer justice, progress, and healing across our state”

Assemblywoman Carmen De La Rosa said, “I am proud to stand here today, on the steps of Brooklyn Borough Hall, with advocates and family members to make sure the voices of children and families are being heard, especially during this holiday season when family is the most important and the absence of our loved ones who are incarcerated is immensely felt. We must recognize the trauma, sadness and despair that the children with incarcerated parents face every single day. Family visits are necessary in order for families to remain connected and to give these children a bit of hope as they deal with the incarceration of a parent. We know that visits promote an easier reentry process for those incarcerated, helping to maintain a source of support they can rely on as they reintegrate into the communities they have left behind. Visits also provide incarcerated individuals with emotional support, access to their loved ones, and relief from isolation”

It is important to consider jails as well as prisons. I do not know if the NYS Commission on Corrections that oversees jails within the state includes New York City facilities, but they have been known to do so and should now. While it’s fantastic that the NYC Department of Correction increased televisiting capacity (and no small feat to get expanded capacity up and running so quickly), this cannot be the sole visiting option long term. The decision to place the televisiting kiosks inside the actual visiting room also raises alarm in terms of the long-term plan for continuing televisiting once visiting resumes.

It has now been 6 months without visiting in NYC jails and perhaps other jails across the state. While suspending all visiting was necessary during the height of COVID-19 and NYC’s DOC and Correctional Health Services rightly focused on preventing transmission and caring for those infected, NYC now has a lower than 1% infection rate and a 0% active case rate (as per CHS testimony shared at the City Council hearing 9/21/2020). DOCCS resumed in-person visiting in early August. While recognizing that State prisons and City jails are different, there are lessons to be learned from the visiting plan DOCCS has implemented. DOC has approximately 8,000 uniformed staff, with thousands of uniformed and other staff going in and out every day. We have received reports from various sources that Corrections Officers are not all wearing masks consistently and that while masks are available, wearing them is often treated as a choice rather than a mandate. We have received reports - and this was confirmed by a BOC Commissioner at last week’s BOC meeting that this is what he witnessed- that this has become more lax over the past months since the infection rate in NYC has decreased. I bring this up to illustrate that there are current risks which could be minimized. Continuing to suspend all visits because visitors would introduce possible risk and disease is a valid and important concern which must be

managed, not avoided. However, visitors do not pose any higher risk than corrections staff who come and go every day and who are not universally using the recommended PPE. Yes, there are very vulnerable people in custody with underlying health conditions but we also have to weigh the largely invisible-to-the-public toll of having no visiting for 6 months and absolutely no plan to reinstate. Visiting must come back.

Osborne joins our colleagues who are concerned about a potential "second wave." We all see the results across the country of what can happen when states do not keep safety protocols in place. At minimum, we urge New York to implement an absolute mandate for corrections staff across local and state facilities to wear masks. And we urge YOU to pass the bills I mentioned today, continue to press the Governor to issue clemencies, and require DOCCS and others to rethink any punitive changes to visiting and FRPs.

Thank you for your time.