



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

*To NYS Senate Crime Victims,
Crime and Corrections and
Health Committees*

9/22/2020

The impact of COVID-19 on individuals and staff at the state's
prisons and jails

The New York State Public Employees Federation Testimony

Thank you, Chairpersons Sepulveda and Rivera and distinguished members of the Senate Crime Victims, Crime and Corrections and Health Committees. We appreciate you holding today's hearing and providing stakeholders the opportunity to address you on the impact of the COVID-19 pandemic on the individuals and staff at the state's prisons and jails and how we can work collectively to improve conditions for both staff and the individuals under their care.

My name is Steven Drake, I am a Vocational Supervisor at Mohawk Correctional Facility and have worked for the Department of Corrections and Community Supervision (DOCCS) for over 26 years. I am also a member of PEF's Executive Board.

The Public Employees Federation (PEF) represents over 52,000 state workers in the Professional, Scientific and Technical bargaining unit. Many of the frontline and essential members of the state workforce are PEF members like me.

More specifically, PEF represents almost 4,950 employees in the Department of Corrections and Community Supervision (DOCCS), as well as the staff at the Albany County Probation Department.¹ These members serve as parole officers, parole revocation specialists, nurses, social workers, dietitians, psychologists, psychiatrists, developmental specialists, teachers, offender rehabilitation aides and coordinators, translators and numerous other positions. PEF members have always been instrumental in providing health and rehabilitative services for the state's incarcerated population, as well as helping to provide reintegration services for individuals upon release.

The pandemic and the state's response has made clear that New Yorkers understand the importance of government services. Additionally, now more than ever, the general public has a better understand of how critical state employees are in meeting the needs of New Yorkers, especially during the emergency situations. At the DOCCS, despite the challenges posed by the nature of this highly communicable disease and the lack of clear and consistent guidance by agency management, PEF members have gone above and beyond to keep New Yorkers and the individuals under their care safe and secure.

Given this framework, I do want to highlight some serious issues that remain unresolved. In order to avoid worst case scenarios in these confined, close proximity facilities, these issues need to be addressed in anticipation of a resurgence of the virus, a second wave or even a new public health or other emergency.

CHRONIC AGENCY UNDERFUNDING AND WORKFORCE ISSUES:

One issue that we have continued to bring to your attention and which became apparent from the beginning of the pandemic is the state's response to this pandemic was hampered by the long-term, systemic reduction in the state workforce – a trend that has been ongoing for over a quarter of a century.

¹ Source: <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2019.pdf>

The flat budgets and hiring freezes precluded agencies from meeting their mandate and the onset of the pandemic transformed this long-standing issue into a crisis.

Prior to the pandemic, DOCCS employed approximately 30,000 staff. PEF represents 4,950 or 17% of these professionals.

Classification	Number	Percent
Protective Services	19,674	66.4%
Professionals	5,286	17.9%
Administrative Support	2,319	7.8%
Skilled Staff	1,268	4.3%
Paraprofessionals	453	1.5%
Technicians	219	0.7%
Administration	209	0.7%
Service	202	0.7%

Source: <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2019.pdf>

Despite ongoing efforts to reduce the overall numbers of incarcerated individuals and to provide for basic support services for at-risk individuals to integrate or re-integrate back into the community, the state continues to focus its hiring and workforce efforts on enforcement personnel. In fact, due to the steadily decreasing prison population, the State Legislature provided the Governor the power to expedite the closure of state prison facilities this year (Chapter 55 of the Laws of 2020).

If the state wants to be successful in its laudable efforts to reduce the number of incarcerated individuals; to provide social, psychological, nutrition and other resources and support for at-risk individuals to be successful in their communities; and to provide enhanced education and workforce training to them to provide on-going opportunities for success, then it needs to provide the resources and develop a workforce plan to achieve those goals. In 2018, New York state hired 1,680 new correction officers at DOCCS, while across all of the state agencies it only hired only 945 nursing titles, including licensed nurse practitioners (204); nurses (217); licensed master social workers (121); nurse 2 psychology (175); certified nurse assistant (105); and nurse assistants (81)². Not only does this pattern not address the need to transform the correction system, the pandemic showed the problems associated with the lack of focus on health and other services for the incarcerated population, as well as those on parole.

One example of this on-going problem occurred at the Elmira Correctional Facility just three days before the Department of Health's "Study of Nurse Caregiver Minimum Staffing Levels and Other Staffing

² Source: <https://www.cs.ny.gov/businesssuite/docs/workforceplans/2019.pdf>

Enhancement Strategies and Patient Quality Improvement Initiatives” was released in August. An inmate was stabbed in the neck and a single nurse was left to care for this fatally wounded individual.³

We know that many of the individuals who are incarcerated in this state suffer from mental illness and have other developmental disabilities. Yet the state has not dedicated the resources or staff to help deal with this reality and, in fact, has been cutting resources and staff at the very agencies that should be charged with meeting these needs – OMH and OPWDD. Instead, upon completion of their sentence, these individuals are returned to their communities and expected to adhere to the terms of their release. Because there are precious few services available to these individuals, their chances of long-term success are limited. This gap in the continuum of care creates significant and unnecessary burdens on parole and other law enforcement officers, as well as local courts and social service agencies.

It should also be noted that the shortage of nurses also remains a significant problem for the state and its agencies, including DOCCS. Despite the findings of the Department of Health’s “Study of Nurse Caregiver Minimum Staffing Levels and Other Staffing Enhancement Strategies and Patient Quality Improvement Initiatives,” we know from our experiences during this pandemic that the state needs to address the chronic shortage and maltreatment of nurses. Unfortunately, the profession of nursing has been mired in a cycle of dysfunction for over a decade and the effects of that dysfunction are readily apparent. While the state legislature rightfully enacted legislation to protect both clients and staff from the dangers stemming from management’s abuse of mandatory overtime, the imposition of hiring freezes, lower wages than their counterparts in private facilities, the nature of the patient populations and generally poor working conditions are all impeding the ability of the state to attract and retain nurses to render care to the state’s most at-risk residents. Moreover, the abject failure of policymakers to address these issues is undercutting the willingness of individuals from pursuing careers in nursing and further compounding short- and long-term staffing issues.

Our nurses continue to face unmanageable conditions in the midst of this pandemic. The typical tools of management to address chronic workforce shortages continue unabated, including the use of mandatory overtime, staff redeployments, lowering minimum staffing requirements, and last minute shift adjustments. These tools all increase stress on families and negatively impact morale and are a poor substitute for adequate staffing. As the nursing staff gets stretched further and further, state facilities face greater challenges in maintaining the quality and continuity of care and these issues may, in turn, may lead to staff referral to the Justice Center. Additionally, we know that the lack of adequate staff has resulted in an increase in assaults against nurses and other staff by clients at all of the state’s facilities, including DOCCS. One example of the destructiveness of this ongoing cycle is the recent decision by the Brooklyn Developmental Disability Services Office (DDSO) to cease operations because it cannot attract, retain and/or hire sufficient nursing staff to meet federal certification requirements. This will leave a tremendous service gap for the state’s clients in the borough of Brooklyn.

³ <https://www.timesunion.com/news/article/One-nurse-was-left-to-try-and-save-prison-inmate-15500056.php>

Despite repeated attempts by PEF to develop and advance strategies for management to address these issues, the state has taken no discernable action and the result of this in-action clearly limited the state's response.

Our nurses are responsible for the care they render even after working 16-18 hour shifts four days a week with inadequate supplies and no support. When will management be held responsible for the individuals under their care?

MANGEMENT AND OTHER WORKFORCE PLANNING ISSUES:

We want to commend the Governor and his team for their response to the crisis. This was a serious, unforeseen challenge that this state has been able to meet thanks to the Governor's leadership, the hard work of his team and the dedication of our members and the thousands of other state employees who kept the wheels of government moving.

It should be noted that the state's public employees willingly worked as directed to meet the needs of the state in its response to this pandemic. These issues, however, persist despite being brought to management on multiple occasions. It is also important to note, both the Senate and Assembly took action to require state agencies and other public employers to develop plans for future public health emergencies (S.8617-B/A10832). We thank Governor Cuomo, Senator Andrew Gounardes, Assemblymember Peter Abbate, the leaders of both houses and all of you for your work on this law and we hope it will serve as a baseline for us to work collectively with management to develop plans that will address the needs of the various agencies, the residents of the state and the state workforce.

However, it must be noted that the following issues remain problems that require action in the near term.

A. Designation of Essential vs. Non-Essential Employees and Access to Support:

It was also noticeable that the agencies varied greatly when dealing with the Governor's directives about the designation of essential vs. non-essential personnel. We understand the difficulty of addressing staffing needs when no blueprint of plan had been developed in advance. However, there was a clear lack of coordination between individual agency heads and the Governor's office.

The "essential" vs. "non-essential" designation, in some circumstances, was done in a haphazard fashion and designations were shifted periodically leaving some staff questioning what their designation was.

While it may seem trivial, this lack of clarity affected many staff negatively, especially with regarding to child care and access to services under the Family First Act and other benefits afforded under federal and state law. On several occasions, the union sought clarity on this designation for staff both verbally and in formal correspondence with the Office of Employee Relations, the Director of State Operations, Division of the Budget and the Executive. Despite repeated verbal and written requests for guidance or clarification, none was provided. This created an unnecessary hardship for many staff and unnecessarily put our members on the defensive as they were grappling to deal with the pandemic.

B. Work Locations/Telecommuting

1. **Common Work Areas and Residential Facilities:** The state owns and leases many office and residential buildings that require staff and/or clients to remain in close proximity. This is especially true at DOCCS. Many of these aging facilities are absolutely critical to maintaining services to the state's most at-risk residents and to house dangerous individuals.

To date, there has been a serious lack of consistent and clear guidance on protecting workers and clients at these facilities and the guidance that has been issued is usually agency-specific. For example, employees at various DOCCS facilities reported that they were precluded from wearing masks at their worksites during various stages of the surge. Additionally, it has been challenging to require many incarcerated individuals to wear their masks correctly and consistently.

One only need to look at the situation that unfolded at Rikers Island to understand what the worst case scenario could be if significant steps are not taken over the near term. More than 400 inmates and more than 1,000 staff were infected and many of these individuals eventually succumbed to the virus. The correctional facility environment is clearly the most challenging to you as policymakers due to the lack of social distancing and the limited ability to enforce masking requirements.

In order to address this situation, the state needs to develop a process which provides clear and consistent guidance for all of the staff in its employ and individuals under its care. This guidance should be comprehensive and consistent across agencies and should apply to staff and clients in both State-owned and privately leased worksites.

2. **Air Filtration Systems and Air Quality:** Air quality has been a persistent issue at various agencies, especially DOCCS. The pandemic has raised new concerns about the adequacy of existing systems in all agencies, especially those housed in older facilities. Most existing air conditioning and air filtration systems, common in most facilities, re-circulate the existing air and little consideration is given to flushing the air out. With an airborne virus such as COVID-19, this magnifies the exposure of the public, clients, parents and staff.

To address this, the Governor rightly placed important new requirements on enhanced air filtration systems for indoor malls and gyms prior to re-opening. He rightly said that using fresh air to dilute the virus and high efficiency filters to filter it out of the air would reduce the risk of exposure on enclosed spaces. But, no such requirements were made of state owned facilities or for offices leased by the state.

Unfortunately, there are no uniform or enforceable standards in place to protect clients or staff from bad air quality or inappropriate temperatures in correctional and other state-owned or operated facilities. Moving forward, we need to have older systems updated and all new facilities fitted with systems that control temperatures and flush existing air safely out of these facilities.

If allowed to persist and given the limits available for social distancing, the state's correctional facilities could become breeding grounds for the virus.

3. **Telecommuting:** One area where some productive work has occurred is in dealing with management on addressing the work locations of essential and non-essential staff and affording telecommuting options for staff. Several agencies, including the Office of the Attorney General Letitia James, moved quickly to develop plans to continue the work and protect staff by adopting telecommuting plans.

Research indicates that employers enjoy increased worker productivity, improved worker recruitment and retention, lower overhead costs and easing of traffic congestion when workers participate in telework programs. Additionally, members who have been authorized to telecommute report that it has been highly successful in increasing productivity, decreasing out of pocket costs (fuel, parking, etc.) and enhancing overall job satisfaction.

New York is ranked 37th nationally for the amount of teleworkers. Tennessee currently has 17% of its state workforce participating in some level of telework and that number could reach 70% in the coming years and will save the state millions of dollars by allowing it to decrease physical office space. While teleworking has been embraced by many private employers and some state agencies, others agencies have yet to realize the benefits of such a program until recently.

It is disheartening that despite the resounding success of the telecommuting program, the state is bringing all staff back to their office locations. We hope to extend and expand telecommuting opportunities for staff moving forward both through bargaining and through the development of agency-specific plans to address future public health emergencies.

At a time of staff shortages, the ability to telecommute can expand access to services for individuals transitioning back into the community.

C. Lack of Adequate and Appropriate Personal Protective Equipment and Staff Housing

We all know and understand the inability of the state to identify and acquire adequate and appropriate personal protective equipment (PPE) for staff. However, at the height of the pandemic, the staff at DOCCS and other agencies were placed in harm's way with inappropriate guidance on the use of existing PPE, directives precluding staff from bringing their own PPE and a lack of alternative housing for staff who were exposed to the virus. The state still does not have adequate PPE for staff today.

Given this situation, our union spent more than \$300,000 in union dues to acquire and distribute PPE to our members and to pay for hotel rooms for many members in high risk facilities. The failure of the state to acquire and make available separate housing is unexplainable.

These failures put staff at risk, put their families at risk and risked expanding the spread of the virus into the community. From the start, the lack of Personal Protective Equipment (PPE), the armor of the state workforce, was significantly below the minimum required in order to maintain

the health and safety standards established by the Centers for Disease Control and Prevention (CDC), Occupational Safety and Health Administration (OSHA), and the Office of Mental Health. It is clear that in order to ensure a sound process, there must be a more coordinated effort, with shared resources available to all facilities. A streamlined process must be developed. Some of this has begun, but it must be refined to become second nature and increasingly effective at the facility level. In addition, being FIT tested for N95 use and educated on PPE use prior to implementation is of utmost importance going forward.

During the course of the pandemic, many staff and clients were exposed to COVID-19. Tragically, many became extremely ill and there were a significant number who died. Often this exposure was the direct result of having insufficient PPE related to the exposure risks encountered due to supply and distribution issues. In addition, the lack of compliance with mask wearing among the incarcerated population was not adequately assessed and addressed to mitigate the high levels of exposure.

Receiving minute by minute reeducation and encouragement as well as a specialized compliance plan that includes a specified behavioral modification plan (incentives) to maintain the safety of self and others must be implemented under such conditions. In the absence of an effective plan of action to address mask and social distancing non-compliance, DOCCS must make use of cohort groupings that allow for impacted staff to wear PPE in keeping with the resulting exposure risks encountered. This is an imperative step to mitigate exposure risks to other patients as well as the employees who are charged with the care of potentially infected individuals.

D. Early Release of Low Level Offenders Due to COVID-19

PEF supported the release of low level offenders in the effort to control the spread of COVID-19 in correctional facilities and across the state. However, the release of these individuals has created strains on the ability to parole officers and other social service agencies to manage their greatly increased caseloads. Again, as previously noted, the only manner through which to effectively reduce the incarcerated population AND curtail recidivism is to provide the guidance and supports necessary for success as individuals re-integrate and re-acclimate themselves back in their communities. While our parole officers and social workers work tirelessly to identify and provide services to clients who need help, there is no uniform, single touch state or other programming available to support individuals in need of child care, job training services, housing, food security, etc.

Additionally, the state could further achieve its goals of securing long-term savings and reducing the incarcerated population by addressing the persistent service needs of those with mental illness or developmental disabilities. There are few, if any, resources and supports for individuals with mental illness or developmental disabilities who require continuing care after release. For example, since 2013, OPWDD has closed over 1,300 intensive treatment beds which are geared towards serving individuals with mental illness or developmental disabilities and who have experience forensic or psychiatric issues within criminal justice system. The state now maintains 150 beds total statewide -- one in Binghamton and one in Lake Placid -- to address this entire

population

The state's failure to provide these support services in a consistent and comprehensive fashion has and will continue to result in the inability of many individuals to be successful after their release. This, in turn, creates other challenges as resources are re-dedicated to assist individuals who have already been through the system. The state must invest the resources necessary to provide the oversight, mental health, health, child care, education, training and other services necessary for these individuals to succeed and thrive. Absent these investments, we are dooming this laudable and important rehabilitation effort to failure.

RECOMMENDATIONS FOR ACTION

Support Uniformed Officers and Help End to Discrimination and Institutional Racism:

New York could not have weathered this pandemic without the strong support of its public employees in the uniformed services. The 52,000 members of the NYS Public Employees Federation, including all of our members who serve as Peace Officers in the roles of Parole Officers, Parole Revocation Specialists, and County Probation Officers, Revenue Crime Specialists and Investigators stand in strong support of advancing the civil and human rights of all.

As unionists, we know that the use of broad generalizations about any group of people is inaccurate, unfair and unproductive. However, despite their selfless service to the state and their communities, these officers have been subjected to broad generalizations about their motivations and their character. The current approach of legislating the tools available to law enforcement officers does not address the real, rudimentary issues that can plague law enforcement agencies with regard to institutional bias and undermines the morale of the vast majority of law enforcement officers who take their oaths to "serve and protect" seriously. Additionally, in some instances, it may put them needlessly in harm's way.

This pandemic has exposed issues around already large caseloads and the diminishing resources available to our officers and civilians as they work on the front lines to help at-risk clients work to reintegrate themselves back as productive members of society. Our officers and other staff take pride in helping clients locate housing, child care, health care and job training services and supports, as well as providing regular wellness check-ins to help these clients stay on track to become productive members in their communities.

What has been lacking in the attempt to achieve tangible policing/law enforcement reform to date are the resources necessary for the success of our employees and our clients. The only manner through which to effectuate real systemic change and to attract and retain quality uniformed personnel is to ensure appropriate and deep screening before hiring, regular performance evaluations, on-going training and professional development opportunities, and holding the state accountable to effectively manage its workforce.

Additionally, every law enforcement officer understands and supports the systematic effort to transform troubled youth and other at-risk individuals who have intersected with the law enforcement community into productive members of our communities. However, we need resources and support to help our

clients make that transition especially at a time when the availability of jobs and other opportunities have been decimated by the pandemic. Additionally, the path to productivity and inclusion back into society requires that individuals demonstrate that they can adhere to the expectations placed on them by the judicial system, especially as they re-integrate through the parole system. This transition, which has been chronically underfunded and under-prioritized, is the key to successfully transforming the system.

If we want a criminal justice system that works for everyone, then we need the resources to make that happen. We encourage the members of the State Legislature to help our members, our state and its citizens to combat institutional racism and to protect the civil and human rights of all our citizens without vilifying those who protect and serve us all. This state cannot sustain itself through another wave of this pandemic or meet other future crises without our uniformed officers having the authority and confidence necessary to protect all our citizens.

Address State Budget Issues Fairly and Effectively:

We understand that the pandemic has decimated this year's state budget and will continue to challenge the availability of resources of the near term. However, the state must maintain the capabilities needed to continue to operate this state in a safe and sustainable manner.

To address this challenge, we have been working with you to secure the needed resources from the federal government to help our state meet its operational needs. That said, even given the dysfunction in the U.S. Senate, we cannot afford to cut agency budgets, eliminate programs and lay-off staff in the middle of a pandemic.

A. Raise State Revenues:

In times of crisis, our state has a long history of ensuring shared sacrifice to achieve outcomes that benefit all our residents. As previously detailed, our members have sacrificed their time, health and the health of their families to combat this scourge. It is time for those with substantial means to make some sacrifices to keep our state strong. We strongly encourage the Governor and the Legislature to implement a bolder, longer-term solution to re-envision and redevelop our state agencies.

To begin that process, we are asking our state legislators to increase taxes on the state's wealthiest individuals. More specifically, at a minimum, we are asking for the implementation of additional assessments on our wealthiest residents as follows:

- (1) **Billionaires Tax (S.8277 by Senator Ramos)** – Establishes a mark to market tax on unrealized capital gains on the 112 New Yorkers currently holding \$525 billion in assets
- (2) **Multi-millionaires Tax (S.8164 by Senator May/A.10364 by Asm. Simotas)** – Establishes increased tax rates on individuals based on income of \$5 million, \$10 million and \$100 million per year; and
- (3) **2nd and 3rd Vacation Homes (S.44 by Sen. Hoylman/A.4540 by Asm. Glick)** – Establishes a progressive assessment on non-primary residences worth over \$5 million.

In total, we expect these three proposals to generate between \$8-10 billion annually. This is not something new, similar actions were taken after the 9-11 terrorist attacks and during the “great recession” in 2009.

Address COVID-19 Policy Issues

The State Legislature has the ability to address many of the issues that arose during the pandemic. Many of these issues are about fairness. Several of these issues are absolutely critical to address before a resurgence of COVID-19 or the onset of another public health emergency, including:

A. **Pass Hazard Pay for Essential Employees (S.8839 by Sen. Gounardes):**

Essential staff, especially nurses and other health care professionals, served on the very front lines of the COVID-19 surge in New York. These staff worked incredibly long hours without sufficient or appropriate personal protective equipment often times isolated for weeks from their family and friends. Many of these staff fell ill with the virus and many did not survive. Their sacrifices should be recognized and rewarded.

In most private health care settings, as well as with many other private employers, the essential staff that served to continue operations in the midst of this crisis were provided financial and/or other fringe benefits. These actions were taken to recognize and reward their faithful service and to prepare them for what is yet to come. At Northwell Health, for example, nurses and other essential staff were awarded \$2,500 bonuses and an extra week of vacation to recognize their commitment, selflessness and isolation from their families. To date, the state of New York has not provided ANY additional remuneration, recognition, fringe or other benefit to those essential workers who led this state through the first wave of the pandemic.

B. **Authorize Telecommuting Where it Makes Sense (S.4647-B by Sen. Kaplan/A.7127-B by Asm. Rozie):**

The COVID-19 pandemic has demonstrated that many state workers can complete their jobs remotely while providing additional benefits to both the employee and employer. This is especially true for those who provide support services to the expanded numbers of individuals on parole.

We encourage the state to enact legislation encouraging the state to adopt this program for DOCCS and all state agencies.

C. **Pass Legislation to Limit and Oversee the Use of Outside Service Contracts S. 8940 by Sen. Breslin):**

As part of this year’s state budget agreement, legislators agreed on a process to remedy budget shortfalls or expenditure increases related to the COVID-19 pandemic and the continuing negative economic impact on New York State.

One area of state expenditures and potential future expense liability that was not addressed specifically in that agreement was the use of outside contract services for state functions. The state agencies and

the public employees that operate them have been at the forefront of the state's response to the COVID-19 pandemic. Have the state's outside service contract providers also been on the frontlines of the state's response to this crisis?

In the event of a mid-year cut to the state operations budget pursuant to the adopted state budget agreement then a corresponding reduction in the payments to vendors who render outside services to the state is only fair and appropriate. Additionally, we support the enactment of legislation that would preclude all state agencies from entering into new outside service contract agreements for the duration of the fiscal year. If there are agencies that believe they require such outside service providers, then those agencies should include such proposed outside service contracts as line item requests in the next ensuing Executive Budget so that thoughtful decisions can be made within the context of the entire state budget process.

D. Early Retirement Incentive:

There has been much discussion among PEF members about the possibility of an early retirement incentive (ERI). PEF only supports the utilization of an early retirement incentive if the federal government fails to meet its responsibilities to our state and if the state legislature, after enacting revenue enhancements, is unable to close the budget gap without impacting state operations. That said, an ERI should only be implemented if it is used with the overarching goal of retooling the state workforce and building capacity for the future.

As such, PEF only supports the imposition of an ERI if:

- (1) Any benefits afforded are available to all eligible employees; and
- (2) Provision is made to backfill all of the positions vacated by retirement thereunder.

In summary, we would like to remind all our legislators that we have worked our way through the initial wave of this pandemic only through the leadership of our Governor and his team, through the hard work and diligence of our state legislators and through the hard work and selfless service of the state's public servants. We will be facing additional challenges from this virus or other unforeseen emergencies in the future. This is our opportunity to learn from and address our mistakes and to make long-term plans that address the capacity needs of our state and its service agencies as we all work collectively to deliver quality services to our residents.

We thank you for your hard work and the opportunity to join you here today. Please feel free to contact Patrick Lyons, PEF's Legislative Director at plyons@pef.org or (518) 424-8473 if you have any questions or concerns regarding this testimony or any other issues.

Respectfully Submitted,

Steven Drake
PEF Executive Board