

A photograph of a prison cell. The wall is a mottled, brownish-grey color. A window with horizontal bars is visible on the right side, casting a strong light and shadow across the wall. The floor is dark and tiled. The text is overlaid on the left side of the image.

CONNECTION WITH THE OUTSIDE WORLD: **PRISON MONITORING FINDINGS AND RECOMMENDATIONS**

SUMMARY

Report for the Quarter July-September 2019
Correctional Association of New York
175 Years of Independent Oversight

PREFACE

In early 2020, reports of more than a dozen deaths in Mississippi prisons and jails drew national attention to the consequences of over-incarceration and underinvestment in our prisons, as well as the danger of corrections systems that operate without oversight. If not for cellphone images of the squalor and overcrowding at Parchman, the crisis of prison conditions in Mississippi may have remained a local story.

The perilous living conditions and pervasive violence present in correctional facilities across the country would horrify most taxpayers. Correctional staff, incarcerated people, and their families know what happens inside our prisons, but because these facilities are closed systems, the broader public, including the media, is usually locked out – and in the dark.

New York differs from Mississippi and nearly every other state¹ because the Correctional Association of New York (CANY) provides independent, nongovernmental oversight of its prisons. Established in 1844, CANY is the only independent organization in New York authorized under state law to monitor prisons and report to the legislature and public. Since its inception, CANY has led community members on monitoring visits to prisons to shine a light on living conditions and advocate for more humane policies and practices. As a result of this crucially important access, CANY has been instrumental in shaping and securing nearly every major criminal justice reform in New York for close to two centuries.

New York's prisons differ from Mississippi's in other key ways. First, prisons in New York are not overcrowded; falling crime rates and evolving enforcement priorities

have led to historic drops in the New York state prison population, from 59,601 in June 2009 to 45,045 as of July 1, 2019². The declining population has given rise to 17 prison closures since 2011, and additional closures are slated for 2020, according to the Governor's proposed budget. Second, taxpayers in New York pay handsomely for the state's prison system. The proposed budget for the New York State Department of Corrections and Community Supervision (DOCCS) in FY 2021 is \$3.4 billion³, which includes capital improvement projects, healthcare, rehabilitative programs, and security personnel across the 52 facilities.

Incarceration at any scale - and its associated costs - warrant close scrutiny, especially as New York leads the nation on landmark decarceration strategies, such as limiting the use of cash bail and decommissioning the jails on Rikers Island in New York City. Independent oversight is as essential a function in times of opportunity as it is in times of crisis.

CANY's mission is to safeguard the human and civil rights of people in prison in New York; promote transparency and accountability in New York State prisons; produce evidence that portrays the unseen impact of incarceration; and support decarceration strategies. At CANY, we envision a future in which prisons hold far fewer people, for much less time, in transformed conditions that promote health, safety, and wellbeing for incarcerated individuals, communities, and society at large. In 2020 and future years, CANY will disseminate regular reports on its monitoring findings in further fulfillment of its mission. This and past reports can be found at www.correctionalassociation.org.

1 The John Howard Association (Illinois) and the Pennsylvania Prison Society perform independent, nongovernmental oversight processes in those states.

2 According to DOCCS "under custody" data. This report covers July 1-September 30, 2019.

3 By comparison, the FY20 budget for the entire state of Mississippi was just over \$6.3 billion. See <https://www.msolicy.org/state-budget-grows-by-al-most-4-percent/>

SUMMARY

HISTORY AND SCOPE OF CANY'S ACCESS

The organization known today as the Correctional Association of New York (CANY) was founded in 1844 by a group of 61 “concerned citizens.” They published a notice in local newspapers, calling on other New Yorkers to meet with them and discuss the employment needs of people leaving prisons and jails, as well as to address the “inhuman system of prison discipline.”⁴ On May 9, 1846, the Prison Association of New York (which changed its name to Correctional Association of New York in 1961) was incorporated by the New York State Legislature in an effort to provide independent oversight of jails and prisons, and keep the legislature informed of “their state and condition, and all such other things in regard to them as may enable the Legislature to perfect their government and discipline” (L.1846, Ch. 163, §6).

Today, CANY's authority remains protected by state law; however, the organization's access is defined by a set of protocols agreed upon in 2005, as an out-of-court settlement to a lawsuit brought against the New York Department of Correction and Community Supervision (DOCCS) by CANY. Among other provisions, the protocols stipulate that no more than 12 CANY representatives may visit a general confinement facility at one time; that no more than two CANY representatives may visit a Special Housing Unit (SHU) and no more than four may visit Southport or Upstate Correctional Facilities; that representatives of DOCCS' Counsel's Office observe conversations between CANY and representatives of the Inmate Liaison Committee, the Inmate Grievance Review Committee, and DOCCS' employee unions; that monitoring visits be arranged 30 days in advance; and that no information may be gathered for litigation purposes.

Although the protocols were created in part to add structure to the visiting process, they limit CANY's capacity to provide the legislature and public with a truly comprehensive and candid picture of prison conditions. In addition, the protocols impose upon CANY a set of limitations that are below the internationally recognized minimum standards for monitoring agencies, standards which stipulate the right of a monitoring body to “freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview,” and “to conduct private and fully confidential interviews with prisoners and prison staff.”⁵

With the aim of providing objective, independent oversight of 52 state prisons that incarcerate approximately 45,000 people, CANY is working with DOCCS and the legislature to improve the quality and scope of its access to both DOCCS facilities and information about them. Despite these limitations, CANY is committed to maintaining a constructive working relationship with DOCCS as well as ensuring the safety and wellbeing of everyone who enters prisons in New York State.

⁴ Ilan K. Reich, *A Citizen Crusade for Prison Reform: The History of the Correctional Association of New York* (New York: Correctional Association of New York, 1994).

⁵ UN General Assembly, “Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations” (Resolution A/RES/70/175, New York: United Nations, 1958), 25.

CANY uses a variety of methods to collect data and conduct oversight of New York State correctional facilities. During this reporting period, approaches included in-person monitoring of facilities, surveying incarcerated populations by mail, and analyzing data obtained from DOCCS through Freedom of Information Law (FOIL) requests. CANY requested that DOCCS provide a public written response to this report, but DOCCS declined.

POPULATION DEMOGRAPHICS

On July 1, 2019, 45,045 people were incarcerated in DOCCS facilities. The total for both men and women combined was as followed: Asian (272), Black (24,063), Native American (570), White (14,183), Other (5,671), and no race assigned (286).

The demographics of the people incarcerated in New York, similar to those of other states and nationally⁶, show stark racial disparities and an aging prison population. While Black New Yorkers account for just 15.7% of the state population,⁷ they are 53.4% of New York State's prison population. The racial disparity increases for young Black New Yorkers between the ages of 18 and 24, who comprise 61.0% of all people incarcerated in that age range. Latino New Yorkers are also overrepresented, comprising 19.2% of New York State's population but 22.8% of New York State's prison population.

Individuals in DOCCS custody ages 45 to 54 total 8,102 (17.9% of DOCCS population), while 5,645 people (12.5% of DOCCS population) are 55 years old or older. While the proportion of people in DOCCS custody older than 55 is smaller than the proportion of those 55 and older in New York State's overall population, this aging population is important to monitor due to the complex health and medical needs that increase and become more costly as people age.

KEY MONITORING FINDINGS

CANY conducted monitoring visits at four state prisons between July and September 2019: Auburn Correctional Facility, Five Points Correctional Facility, Southport Correctional Facility, and Elmira Correctional Facility. The purpose of CANY's monitoring visits is to gather information of sufficient quality and substantiation to provide DOCCS, the legislature, and the public with an understanding of how current conditions and treatment impact the lived experience of incarcerated people; further, CANY strives to provide an objective framework by grounding issues in relation to DOCCS directives and applicable national and international standards. This section provides an overview of the main issues raised by people incarcerated at the four facilities CANY visited during the quarter.

CANY has formulated recommendations for both DOCCS and the legislature in this report. Recommendations address key issues identified in each of the following categories: material conditions, healthcare, services, cell confinement and discipline, interpersonal relations, and the grievance process. These recommendations are intended to be realistic and

6 U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2017 (Washington, D.C., 2019).

7 U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates, Table DP05.

implementable, and ultimately generate tangible benefits for both incarcerated people and facility staff. CANY has prioritized issues on which sufficient information has been gathered to allow for specific actions to be proposed, and for which implementation would bring about the greatest improvements in quality of life. However, these are not the only areas which require actions, and solutions should be considered for all the issues presented here.

► MATERIAL CONDITIONS

This section includes a discussion on if the incarcerated people CANY surveyed and interviewed perceive their living environment as meeting basic criteria for habitability.

- 46.9% of respondents reported that their cells were not habitable per DOCCS Directive 4009, Minimum Provisions for Health and Morale.⁸
- A key finding at Auburn, observed by CANY in July 2019 and on its previous monitoring visit to the prison in May 2018, was that the windows in housing blocks C and D had not been replaced, leading to the presence of bird droppings year-round and extreme cold during the winter months.

Recommendations:

- CANY recommends that DOCCS develop criteria for the repair of key maintenance problems across DOCCS facilities, ensuring that improvements which would have a significant impact on the health and safety of incarcerated people and staff are prioritized. These criteria should be published, along with annual progress reports toward completing the planned improvements.
- CANY further recommends that the legislature review the planning process for capital improvements in DOCCS facilities.

► HEALTHCARE

CANY has long monitored the provision of healthcare in DOCCS facilities, noting both improvements made by DOCCS over time and the ongoing key areas of concern. Reports citing dissatisfaction with healthcare services are the most common types of reports received by CANY during in-person monitoring visits and correspondence by mail.

- 73.7% of respondents reported being unable to see a doctor or provider when needed in the year prior.
- 51.6% of respondents reported being unable to see a dentist when needed. Three of the four facilities CANY monitored during this period did not have full-time dentists on staff.
- 30.1% of respondents reported being unable to access mental health services when needed and 23.7% of respondents reported having had serious thoughts of or attempts at suicide.

Recommendations:

- According to DOCCS, the agency has made concerted efforts to overcome

challenges in the recruitment of medical staff across DOCCS facilities. The agency is also reportedly in the final stages of identifying a procurement process for the creation of an electronic medical record (EMR).⁹ These actions are essential to meeting the Health Services Policy Manual guidelines.¹⁰

- In addition to improving recruitment, CANY recommends that specific actions be taken by DOCCS to alleviate some of the resulting gaps in the quality of medical services by improving preventative care through routine screenings, education, and outreach.
- CANY further recommends DOCCS develop an electronic system for tracking requests for care and the response.
- CANY further recommends that the legislature pass a bill to establish technical oversight of healthcare services by the State Department of Health.¹¹

► SERVICES

In this section, “services” refers to phones, recreation, library, visiting, educational and vocational programs, and religious services. The purpose of this section is to provide a high level overview of the availability of these services and the level of satisfaction with them.

- Less than half (46%) of respondents reported being enrolled in a program that is required by DOCCS or that they would like to be in. Many incarcerated individuals expressed a strong desire to be in more programs or to have access to programs that confer skills for the modern workforce.
- Slightly more than half of respondents reported sufficient access to the library (including the law library) and phones (58.1% and 58.5%, respectively).
- 75% of respondents reported being able to receive visits, but stated that visitors face barriers, such as long delays at security and inhospitable visiting conditions.

Recommendations:

- CANY recommends that DOCCS engage an external evaluator to assess the quality, availability, enrollment, and efficacy of its rehabilitative and vocational programming. The report should engage incarcerated individuals during its development and should be released to the public.
- CANY further recommends that DOCCS increase the number of phones in housing blocks, gyms, and recreation yards to ensure that phones are “available to as many inmates as possible,” per Directive #4423.¹²
- CANY further recommends that the legislature authorize and fund the expansion of college programs in prisons throughout the state, with the goal of establishing a college program at every prison.

9 CANY, conference call with DOCCS, November 7, 2019.

10 NYSDOCCS Directive #4300, “Health Service Policy Manual”, New York Department of Corrections and Community Supervision, <https://doccs.ny.gov/system/files/documents/2019/08/4300%20Health%20Services%20Policy%20Manual.pdf/>.

11 Such a bill passed the legislature during the 2019 session but was vetoed by the Governor Andrew Cuomo, citing the Medicaid budget shortfall.

12 NYSDOCCS Directive #4423, “Inmate Telephone Calls,” New York State Department of Corrections and Community Supervision, <https://doccs.ny.gov/system/files/documents/2019/08/4423%20Inmate%20Telephone%20Calls.pdf>.

▶ CELL CONFINEMENT AND DISCIPLINE

In the context of anticipated reforms to the use of solitary confinement,¹³ this section begins to document the prevalence of in-cell isolation and punishment beyond the use of special housing units (SHU).

- 56.5% of respondents reported having remained in their cell or “self-isolated” at least once during the year prior, out of fear for safety or for mental health reasons.
- 56.8% reported having experienced keeplock, an official disciplinary sanction that confines incarcerated persons to their cells or to a designated housing area.
- 77.9% reported having been “burned,” an unofficial punitive sanction by which individuals are deprived of basic needs or privileges, including being confined to their cells, being prevented from going to recreation yard, and even from being able to eat a meal or take a shower.
 - Unofficial sanctions like “the burn” were more commonly reported than official sanctions through the disciplinary ticket process (57.6% reported having received a Tier II or Tier III ticket).

Recommendations:

- CANY recommends that DOCCS publish, as part of its monthly report, statistics on the number of individuals held in keeplock during the reporting period.
- CANY recommends that DOCCS conduct a study to understand the reason for and prevalence of “the burn,” which undermines the legitimacy of the formal disciplinary process and contributes to negativity for both incarcerated people and staff. While CANY will develop strategies to understand these issues further, the primary understanding into the extent and use of the practice should be developed by DOCCS through the use of the cameras and logs.
- CANY recommends that the legislature call a hearing to review the progress of the implementation of the SHU reforms agreed upon by the Governor, Senate Majority Leader, and Assembly Speaker during the 2019 legislative session. This hearing should also address any increases in other forms of disciplinary confinement, such as keeplock, in response to the SHU reforms.
- CANY further recommends that the legislature bring New York in line with international standards by passing long overdue reforms to solitary confinement, codifying dramatic reductions to its use, and fundamentally rethinking the purpose of solitary confinement in correctional facilities statewide.

13 “Statement from Governor Andrew M. Cuomo, Majority Leader Andrea Stewart-Cousins, and Speaker Carl Heastie on Joint Agreement to Overhaul Solitary Confinement Policies,” [governor.ny.gov](https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-majority-leader-andrea-stewart-cousins-and-speaker-carl/), June 21, 2019, <https://www.governor.ny.gov/news/statement-governor-andrew-m-cuomo-majority-leader-andrea-stewart-cousins-and-speaker-carl/>.

► INTERPERSONAL RELATIONS

CANY acknowledges the significant investment the state has made in the installation of security cameras throughout DOCCS facilities, and understands that this capital project is ongoing. In spite of this investment, serious concerns remain about safety and unchecked abuses of power.

- 69.7% of respondents reported having personally experienced abuse, including physical, sexual, and verbal, by DOCCS staff.
- 76% reported having witnessed racist behavior on the part of staff.
- 82.8% reported having witnessed abuse, including physical, sexual, and verbal, by DOCCS staff.

Recommendations:

- In addition to prioritizing the installation of security cameras in all prisons, CANY recommends that DOCCS identify and eliminate all “blind spots.”
- CANY further recommends that DOCCS conduct analysis of the extent to which the presence of cameras reduces unusual incidents and grievances related to staff misconduct.
- CANY recommends that the legislature reintroduce legislation that would establish a temporary multidisciplinary commission to study the cause of violence in prisons.

► ECONOMIC ISSUES

This section includes issues reported that relate to income and the ability to purchase or receive commodities.

- 71.4% of respondents reported problems receiving packages mailed to them by family members.
- 54.7% reported having a job assignment that required them to be out of their cell for more than one three-hour module per day.
- Only 9.4% reported that they earned enough money through their job assignment to purchase necessities through the commissary, pay surcharges, and pay restitution.

Recommendations:

- CANY recommends that DOCCS implement a public-facing electronic system that tracks when packages have arrived at the prison and have been received by the incarcerated individual. CANY further recommends that the legislature pass legislation that would substantially increase wages for incarcerated people.

► GRIEVANCE

This section outlines respondents' experiences with resolving issues through the grievance process, which, according to DOCCS Directive 4040, "provides each inmate an orderly, fair, simple, and expeditious method for resolving grievances, pursuant to Section 139 of the Correction Law, and allegations of discriminatory treatment, pursuant to Part 7695 of Title 9, NYCRR."

- 75.1% of respondents reported having filed a grievance in the prior year period, and only slightly more than half (51.8%) reported having received a response to their grievance.
- 67.1% reported that they had experienced retaliation for filing a grievance.
- Only 13.5% reported that their grievance had been resolved in their favor.

Recommendations:

- CANY recommends that, in an effort to increase the effectiveness and legitimacy of the grievance process, DOCCS expedite the planned¹⁴ implementation of an electronic grievance process using tablets.
- CANY recommends that, in addition to publishing information on a semi-annual basis about types of grievances filed, DOCCS publish information about the rates at which grievances are resolved in favor of the incarcerated individual.
- CANY recommends that the legislature further explore creating an independent correctional ombuds to investigate complaints related to incarcerated persons' health, safety, welfare, and rights.

MEDICAL SURVEY

CANY's survey on routine and preventative medical care was designed to gain a better understanding of the medical and healthcare experiences of incarcerated people, and primarily included questions on preventative health, routine screenings, and medical history. Specifically, the survey was restricted to people who had been incarcerated for more than five years and were 50 years of age or older. The medical survey was distributed to 3,017 people across New York's prisons and from this sample, 1,185 completed medical surveys were returned.

Of the 1,185 respondents who were over 50 and had been in DOCCS care for more than five years, only 11.4% (n=126) reported having been checked by a member of the medical staff for moles and growths. A smaller number of respondents, 16.9% (n=96), reported that they have had moles and growths removed. From the same population of respondents, only 57.5% (n=670) reported that they have had a colon cancer screening. Of the 98 women respondents who were over 50 and had been in DOCCS care for more than five years, only 24.5% (n=24) had received a women's health screening.

CONCLUDING THOUGHTS AND RECOMMENDATIONS

In this report, CANY presents numerous examples of alleged failures of the four prisons monitored to meet DOCCS directives, and as reported by a group of more than 1,000 individuals who responded to a survey about preventative medical care. This report will provide a baseline for measuring progress in subsequent monitoring work in 2020 and beyond.

CANY will continue to improve its oversight activities through requests for improved information sharing and communication with DOCCS. Specifically, the areas in which CANY seeks to gain agreement from DOCCS during the coming year in order to achieve greater transparency and accountability include:

- CANY has requested access to basic information from DOCCS about prisons to inform monitoring visits. Currently, CANY receives very limited information from DOCCS outside of the FOIL process.
- CANY has requested that DOCCS staff demonstrate transparency and cooperation by proactively sharing relevant information during monitoring visits. DOCCS staff often demonstrates reluctance to answer basic questions about their facilities and sometimes states they do not have information that common sense suggests they certainly have.
- CANY has requested opportunities to hold confidential conversations with incarcerated persons and staff. During monitoring visits, some incarcerated individuals indicate that they are hesitant to speak with CANY representatives for fear of retaliation by DOCCS staff.
- CANY has requested that DOCCS schedule quarterly meetings to discuss CANY's monitoring findings. CANY has had one follow-up conference call with DOCCS about its monitoring findings from this reporting period. This call did not include discussion of Elmira or Southport.
- CANY has requested that DOCCS respond in writing to CANY monitoring reports. Currently, DOCCS does not provide any written response to our findings. It is not known whether the findings have been considered or the recommendations implemented.

Through these and other oversight activities, CANY will continue to uphold its commitment to the legislature and the public to shine a light on prisons in New York. Criminal justice reform is a long process, and prisons may represent the last frontier for urgently needed reforms. CANY is as committed to these efforts today as its founders were in 1844.

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