

2023 Policy Agenda – Existing Legislation

The Correctional Association of New York (CANY), under §146, of New York’s Correction Law, is charged with visiting and examining the state’s correctional facilities to identify and report on prison conditions, the treatment of incarcerated individuals, and the administration of policy promulgated by the executive and legislature.

In 2022, CANY’s seventy-two designees conducted in person monitoring of eleven state correctional facilities, completing over 700 structured interviews with incarcerated individuals, and meeting with hundreds of correctional employees on site. CANY’s in person monitoring of the state’s prisons is bolstered by administrative data released by the department and obtained through the Freedom of Information Law (FOIL) as well as significant contact with incarcerated individuals, family members and friends of incarcerated people, and advocate groups.

As a result of observations made through CANY oversight and findings released from reporting, CANY recommends the advancement of the below listed pending legislation as well as for the introduction of new legislation in 2023.

Oversight and Transparency

A 6489 (Weprin) / S 312 (Salazar)—Relates to correctional facility visits by the correctional association; authorizes the correctional association to visit correctional facilities at any time and without advance notice; requires reports to be published on the department of corrections and community supervision websites

In 2021, CANY’s existing ability to monitor state prisons was consolidated into state law with the passage of legislation codifying CANY’s authority to visit, access, inspect and report on the state’s prisons. Under this law, CANY is permitted to visit any state prison with 72 hours’ notice to the Department of Corrections and Community Supervision (DOCCS), communicate confidentially with incarcerated individuals and department staff, operate a phone hotline for the reporting of prison conditions by incarcerated individuals, distribute surveys to incarcerated people, and disseminate reports and recommendations to the state’s executive, legislature, DOCCS, and the public at large.

The goal of this legislation is to enhance and expand the ability of CANY to monitor state prisons, and entities providing services to incarcerated individuals in state prisons, and report to the public, the legislature, and the Governor by removing limitations issued by the department on CANY’s access to the state’s prisons and information related to the administration of state correctional facilities.

A7261 (Aubry) / S 600 (Salazar) - Authorizes the correctional association to inspect residential juvenile detention facilities

Juvenile residential facilities administered by the Office of Children and Family Services' currently do not have any independent oversight of the facilities, leaving policymakers with limited information and data on the policies and practices in these facilities. Additionally, while incarcerated individuals in state prisons are able to contact Prisoners Legal Services in order to request legal assistance, this is currently not available for juveniles in residential juvenile detention facilities.

This legislation will allow the Correctional Association of New York access to residential juvenile detention facilities to conduct independent monitoring and oversight of the OCFS operated facilities, while providing for juveniles in detention facilities access to legal representation by Prisoners Legal Services.

A 4379 (O'Donnell) - Creates the office of the correctional ombudsman to achieve transparency, fairness, impartiality and accountability in New York state correctional facilities; relates to reports by coroners; designates investigators of the office of the correctional ombudsman as peace officers; authorizes the attorney general to investigate the alleged commission of any criminal offense committed by an employee of the department of corrections and community supervision in connection with his or her official duties; relates to the confidentiality of certain records; includes the office of the correctional ombudsman records within the definition of public safety agency records; makes related provisions

Currently, DOCCS maintains its own investigative body, the Office of Special Investigations (OSI), to investigate grievances and unusual incidents, among other issues raised by incarcerated individuals. Additionally, the State Inspector General and the Justice Center for the Protection of People with Special Needs have limited jurisdiction over the prison system. This legislation would create an independent public oversight agency, the office of the correctional ombudsman, to monitor the prisons, investigate complaints and report to the governor, the legislature, DOCCS and the public. Additionally, DOCCS' current system of investigating violations of policies and procedures, the grievance process, often leaves grievances unaddressed, unresolved or unanswered. For example, at Elmira CF, only 33.3% of respondents to a CANY interview who filed a grievance reported that their grievance had been resolved (n=15). At Albion CF, of people who reported filing a grievance, only 34.3% reported that their grievance had been resolved (n=35). And of those who did receive a response to their grievance, 40% reported waiting longer than one month (n=25). Another example, from data from a system-wide survey on the grievance process conducted by CANY in January 2023, noted that 65% of people (n=303) said there were issues for which they would like to file a grievance but were unable to do so, 81% of people said they had decided not to file a grievance despite having a reason to do so (n=395), 63% of respondents said they had experienced relaxation after finding a grievance (n=306), 23% of the people said their most recent grievance was heard or resolved informally within 16 calendar days of filing (n=90), only 22% of most recent submissions to the Central Office Review Committee (CORC) were reviewed within 30 days per directive 4040 (n=44) 66% of respondents said that the process makes relationships between incarcerated people and staff worse (n=295)

With the envisioned role, the Office of the Correctional Ombudsman would allow an impartial entity to investigate and adjudicate complaints and concerns from incarcerated individuals, while providing transparency and accountability.

A 5709 (Gallagher) / S 5877 (Salazar) - Increases the number of members on the state commission of correction and provides for the manner of confirmation of such members

As the state appointed oversight entity of local jails in New York and all deaths in correctional facilities, the State Commission on Correction (SCOC) is currently authorized to investigate and recommend changes in practice to local correctional facilities and state agencies. This bill would further strengthen the SCOC by implementing reforms to empower and restore the Commission; by allowing members of the State Commission on Correction to be appointed by the Assembly & Senate, and Correctional Association of New York, in addition to the Executive.

By allowing multiple entities to appoint members to the SCOC and by diversifying the membership of the SCOC, this legislation will allow for the commission to offer different perspectives on jail and prison conditions, while maintaining a level of independence from the executive.

S 5238 (Sepulveda) - Requires certain departmental security staff who interact with the incarcerated population to wear a body camera

CANY monitoring in 2022 uncovered very limited use of body worn cameras by staff in correctional facilities, with reporting noting a lack of wide use at Sing Sing, Albion and Bedford Hills, all of which are part of the department's pilot program for the use of body cameras. Staff at the facilities note that previously issued body cameras at each prison in need of repair or replacement, leaving a handful of working cameras available for use during each shift.

This legislation would mandate that the department provide body cameras to all security staff below the rank of captain to be worn in performance of their duties, expanding the existing DOCCS pilot program that introduced body cameras in prisons. CANY supports this legislation and would further support adding language to ensure that body camera footage is indexed and stored for preservation for accessible and expedient access.

Medical and Mental Health Care

S 505 (Rivera) - Expands the health department's review of correctional health services by including a biennial study of health care staffing at facilities operated by the department of corrections and community supervision

In 2009, NYS authorized the State Department of Health to review policies and practices related to HIV/AIDS and Hepatitis C. In 2021, the 2009 law was expanded to add COVID-19 to DOH's authority. After implementation of the 2009 law, New

York noted success in improving the HIV/AIDS viral suppression and a significant expansion of Hepatitis C treatment. Despite these advances, incarcerated individuals still report significant problems with the adequacy of medical, dental, and mental health care as well as mistrust of medical staff in a correctional setting. At Elmira CF, incarcerated individuals interviewed by CANY spoke of long waits for treatments for hip replacements, MRI scans, eye care, rashes, dental cleanings and surgery, asthma, chronic pain, and other issues. Overall, in its monitoring visits to eight New York prisons between 2020 and 2021, CANY found that four out of ten incarcerated people reported being unable to access medical care. Nine out of ten incarcerated people said they didn't trust prison medical staff to make decisions in their best interest or to make medically correct judgments.

This bill builds on the successes of addressing HIV/AIDS and Hepatitis C by expanding DOH's role in correctional care to additional categories of incarcerated individuals as well as reviews of health care staffing.

A 227 (Rosenthal L) / S 4264 (Webb) - Relates to women's health in correctional facilities; establishes a women's health education program; requires HIV and STD testing to be offered to incarcerated individuals; provides pregnant incarcerated individuals with access to prenatal vitamins as well as a specialized diet tailored to pregnancy needs; requires a study and report on women's health in prison

CANY monitoring at Albion Correctional Facility, a medium security women's prison in 2022, noted that of those who have received medical care, only 19.7% noted the care as adequate. At Bedford Hills, a maximum security women's prison visited by CANY in 2021, 62% of incarcerated individuals interviewed had not received an adequate response for a request for medical care at the time of the visit, raising concerns about the access to medical care for women incarcerated at the prison. Historical reporting from CANY's Women in Prison Project of formerly incarcerated found that many respondents classified healthcare experiences in prison as traumatic or uncomfortable, especially if the respondents were victims of past sexual or domestic violence. CANY supports this legislation and would further support adding language to require DOCCS evaluate policies and practices to include gender responsive strategies and approaches to healthcare.

This bill would require the DOCCS Commissioner to partner with the DOH commissioner to establish a Women's Health Education Program to provide gender responsive care and provide a study and report on the implementation of the law to the legislature.

A 6058 (Solanges) / S 3103A (Brisport) - Requires mental health services for incarcerated individuals with mental health issues related to the trauma of incarceration upon reentry and reintegration into society upon release.

Access to mental health care in prisons can have a significant effect in improving outcomes for incarcerated people in prison and upon release. Currently, most state prisons do not offer significant mental health treatment for all incarcerated individuals, with either part-time or no mental health staff available on site, leaving most people in

prison without regular access to mental health practitioners. For example, at Bare Hill, a medium security men's prison visited by CANY in 2022, both staff and incarcerated individuals spoke to the lack of a mental healthcare presence on site increasing strain on staff and stress among incarcerated individuals.

This legislation recognizes that incarceration can create mental health trauma, can serve as an obstacle to successful re-entry and rehabilitation, and several effect an individual's well-being and as a result, requires DOCCS and OMH to provide mental health screening and therapy to all incarcerated individuals in DOCCS' custody.

Access to Food, Water, and Basic Goods

A 6720 (Solanges) / S 4364 (Fernandez) - Directs the department of health to develop state food guidelines for foods purchased, served, and sold by state agencies, programs, and institutions and on state property

Access to healthy, fresh, and nutritional food is among the most widespread areas of concern for people incarcerated in New York's prisons with food in the mess hall either being not enough in quantity or lacking in nutritional content and food ordered by mail or in the commissary as unaffordable, especially considering prison wages can be as low as 16 cents per hour. At Albion, visited by CANY in 2022, Incarcerated people spoke about inadequate stocking of staple food items such as fruit and vegetables, hence being limited to unhealthy items. "They added fruits and vegetables, but the day after the order, they are out of stock," said one person.

This legislation will require the Department of Health in consultation with the Office of General Services to develop State Food Standards designed to promote healthy eating and sustainably and locally grown products, and to reflect the allergens, preferences, and health needs of the specific populations the state agencies serve, including the State Department of Corrections and Community Supervision.

Prison Work and Wages

S 2345 (Myrie) - Enacts "the prison minimum wage act" relating to payment for labor performed by incarcerated individuals

The Department of Correction and Community Supervision, is able to discipline incarcerated individuals for refusing a program assignment, including work assignments, which in practice results in incarcerated people losing privileges for communication, property, and out of cell time for refusing to work for a wage that on average is less than a dollar a day. In recent years, the prospect of inflation has also affected incarcerated people who regularly supplement provided food and hygiene products with additional purchases from the commissary and through third party vendors costing more than ever before.

This legislation would increase prison wages to three dollars per hour and prohibit non-volunteer work in state prisons by incarcerated individuals.

Access to Communication and Visiting

A 2164 (Epstein) / S 1942 (Bailey) - Relates to providing voice communication services to incarcerated individuals in state correctional facilities at no cost; requires agencies charged with the operation and management of state and local correctional facilities and juvenile detention facilities to provide persons in their custody with voice communication service at a minimum of 90 minutes per day

DOCCS currently partners with a company, Securus, that charges incarcerated individuals 4.3 cents per minute for a phone call. Access to phones and the duration of calls is also limited across the prison system, and incarcerated individuals at Elmira, Downstate, Clinton Bedford Hills, Sing Sing, and Albion Correctional Facilities noted long wait times to make a phone call, limited time to make a call, and altercations between incarcerated individuals as a result of limited call time and limited access to phones. At Albion, Multiple respondents noted that their dormitory of 40 to 50 incarcerated people relied on as few as three phones. At Sing Sing, Incarcerated individuals reported that there are nine phones per block for the main cellblocks leaving approximately 66 incarcerated people per phone.

This legislation requires DOCCS to provide voice communication at no cost while also requiring the department to provide at least 90 minutes of phone call time for each incarcerated individual.

A 6488 (Weprin) / S 3318 (Sepulveda) - Establishes a visiting program for incarcerated people, which gives incarcerated people opportunities for personal contact with relatives, friends, clergy, volunteers and other persons to promote better institutional adjustment and better community adjustment upon release

During CANY's visit to Sing Sing in 2021, monitors found that proximity to family is of clear value to incarcerated people. Interviewees and members of the Incarcerated Individual Liaison Committee (ILC) whom CANY spoke with during the prison monitoring visit both spoke passionately about the emotional significance of family visits and contact with the outside and linked the frequency and quality of family visits to increased morale among incarcerated individuals in the prison. It is crucial that this beneficial practice is codified into state law with the introduction of video visiting policies supplanting in person visiting in other states and jurisdictions.

This legislation codifies in person visiting into state law, while setting standards for a visiting program.

Gender Identity

A 709A (Rozic) / S 2860 (Salazar) - The “gender identity respect, dignity and safety act” - To allow for the appropriate placement and treatment of transgender, gender nonconforming, nonbinary, and intersex individuals in state and local correctional facilities in a manner aligned with their gender identities

Protections for gender identity for incarcerated individuals, while currently afforded by departmental policy to some degree, is not protected under state law, a concern as Transgender, gender nonconforming, nonbinary, and intersex people are routinely subjected to discriminatory and harmful placement decisions and other treatment while in custody. For example, at Albion, incarcerated people highlighted to CANY monitors their experiences with gender-based harassment and abuse by correctional staff, namely towards nonbinary and transgender people. Incarcerated individuals, in addition to members of the ILC and IGRC, noted a lack of access to clothing to match gender identity, which contributed to the broader perception of discrimination against transgender people.

This legislation would require that transgender, gender nonconforming, nonbinary, and intersex individuals are incarcerated in state and local correctional facilities in a manner aligned with their gender identities; and subsequently have access to the services and goods to match gender identity under state law.

Safety in Prisons

Existing Legislation

A 6486 (Weprin) / S 1923 (Sepulveda) - Establishes a temporary state commission to study and make recommendations on violence in state correctional facilities including the causes and consequences of such violence with a particular emphasis on changes in levels of violence and the causes of those changes

Over the past decade, administrative data provided by DOCCS shows an increase in violence in prisons, affecting quality of life for both staff and incarcerated people. CANY’s in person monitoring of prisons also shows violence as a significant problem affecting people in prison, with individuals at Bare Hill, Sing Sing, Albion and Elmira reported having seen or been personally subject to verbal, physical, or sexual abuse by staff. For example, in 2022, following a monitoring visit to Bare Hill CF, a medium security prison in Malone, NY, CANY monitors heard a large amount of allegations of physical assault and abuse, leading the organization to call for an investigation by the Inspector General.

This legislation would create a temporary state commission with representation of the unions, DOCCS and OMH, prisoner advocacy groups, the John Jay College of Criminal Justice and Correctional Association of New York to conduct a two-year study on the

causes of violence, and any increase in violence, in our state prison system and to make recommendations to the governor and the legislature for changes in practice and policy to address such violence.

A 260 (Weprin) / S 3269 (Sanders) - Establishes the New York state commission to end mass incarceration and to prevent violence; provides such commission shall investigate, evaluate and make recommendations concerning how to reduce the New York prison population, incidences of violent crime in New York state, and other various topics related to the criminal justice system

The New York State Department of Correction and Community Supervision, one of the largest agencies in the State, is slated to expend \$3.19 billion in FY2023 and \$3.16 billion FY2024. These funds continue to represent a significant investment in the agency and provide a wealth of resources for the department to fulfill its mission, objectives, and requirements under the law. From FY2015 to FY2023, DOCCS received an 8.5% increase in funding, reflecting a change from \$2.94 billion in FY2015 to \$3.19 billion in FY2023. In the same period, the department has seen a 40.1% decline in the population of incarcerated individuals: DOCCS held 31,088 incarcerated individuals as of January 1, 2023 compared to 51,890 incarcerated individuals as of January 1, 2015.

While the amount of people incarcerated in New York has fallen, the state still incarcerates a significant amount of people, without providing additional services despite a stable budget. This bill would establish a commission to study end mass incarceration and to prevent violence.

S6975 (Salazar) - Authorizes the state inspector general to receive and investigate complaints of sexual assault in correctional facilities and other places operated by the department of corrections and community supervision for the confinement of persons; requires the state inspector general to establish protocol and procedures for such reports and investigations.

As part of its monitoring of Albion correctional facility in 2022, CANY found reports indicating an abusive environment at the prison with 25.8% of individuals interviewed reported having seen or been personally subjected to sexual abuse or sexual harassment by staff, 43.3% reported having seen or experienced racialized abuse by staff at Albion, and 30 individuals reported having been targeted for harassment, verbally abused, or physically assaulted by staff. Additionally, CANY found that women and transgender and gender non-conforming individuals incarcerated at the prison lived in an environment characterized by a fear of sexual harassment or assault, racialized abuse, and/or other verbal or physical abuse. These findings were in the context of the prison receiving a passing grade in a 2020 PREA audit, indicating that, despite having intend measures in place to deter sexual assault and abuse in prisons, that sexual violence continues to occur in DOCCS facilities at an alarming rate.

As evidence of this, in 2022, several law firms filed suits under the Adult Survivors Act against DOCCS on the behalf of hundreds of incarcerated individuals alleging sexual

abuse while incarcerated in New York State prisons; citing CANY's Albion 2022 report as well as the organization's 1985 report, *Neglected Population: Women Prisoners at Bayview*, as part of the justification for litigation.

This legislation will seek to add empower the State Office of the Inspector General to receive and investigate complaints related to sexual assault in state correctional facilities, and other places under DOCCS jurisdiction, while requiring the office to add protocols for these reports and investigations to it's already existing mandate to investigate criminal and other wrongdoing in state agencies, including DOCCS.

Earned Time and Work Release

A 1128 (Kelles) / S 774 (Cooney) - Establishes the “earned time act”

Currently, earned, credit, or merit time, which is time removed from a prison sentence for the successful completion of programs while incarcerated, is only afforded to a portion of incarcerated individuals and is often limited to individuals eligible for an earned time credit based on the crime of conviction. This in practice results in a significant amount of incarcerated individuals being ineligible for an incentive for good behavior and works to create a barrier to rehabilitative programs that can benefit incarcerated individuals in state prisons. Through monitoring in 2022, CANY monitors noted limited eligibility for earned time among incarcerated individuals as a result of the law as well as a complex process by which time credits are granted by the department.

This legislation would provide for time allowances against the term or maximum term of sentences imposed by the court to be credited on an annual pro rata basis.

A 6481 (Weprin) / S 4916 (Sepulveda) - Relates to expanding prison work release program eligibility and participation

Participation in work release and education release programs are currently limited to a certain number of incarcerated individuals based on the crime of conviction and other factors, leaving a significant amount of incarcerated individuals without access to work and education programs that can be beneficial to enroll in prior to release. CANY monitoring in 2022 showed limited participation in work release programs systemwide, and specifically at women's prisons, with only two women enrolled in work release programs at Albion correctional facility as of a CANY visit in June 2022 and less than 10 individuals enrolled in work release programs at Edgecombe CF in December 2022.

This legislation will expand work release participation by expanding eligibility to the program.

Parole and Sentencing

A 2035 (Davila) / S 2423 (Hoylman-Sigal) - Relates to parole eligibility for certain incarcerated persons age fifty-five

Elderly and aging incarcerated population currently makes up 30% of the New York state prison population. Longer periods spent in prison have produced a more significant aging prison population. While the overall number of people incarcerated in New York's prisons dropped nearly 20% over the last decade, the percentage of incarcerated people aged 50 or older tripled— from 11% of the population in 2007 to 30% 2021. In the Fall and Winter of 2019-2020, CANY distributed surveys about the parole process to 1,994 incarcerated people across 49 New York State prisons. All 1,994 incarcerated people who received a survey were selected for this survey because they had gone before a parole board and been denied parole at least one time previously, according to data received from DOCCS. CANY received a 15% response rate (n=313) with findings in four major areas: Pre-Parole Board Experience and Preparation; Parole Process and Experience with the Parole Board; Parole Board Denial and Impact; and Potential Changes to the Parole Process. The first area of findings revealed that the majority of survey respondents were 45 and older, with a large percentage of those 55 and older. Many of them were first incarcerated as young as 25; on average, this meant individuals had spent more than 20 years in prison and were still not released on parole. Individuals significantly focused on activities that would bolster their parole applications, with most respondents reporting completion of all of their required programs, as well as participation in vocational, academic, and voluntary programs. More than half the respondents held leadership positions in peer-led programs.

This legislation would expand access to parole for individuals above the age of 55 who have been incarcerated for over 15 years.

A 162 (Weprin) / S 307 (Salazar) – Provides for findings of the state board of parole necessary for discretionary release of incarcerated individuals on parole

In the Fall and Winter of 2019-2020, CANY distributed surveys about the parole process to 1,994 incarcerated people across 49 New York State prisons. All 1,994 incarcerated people who received a survey were selected for this survey because they had gone before a parole board and been denied parole at least one time previously, according to data received from DOCCS. CANY received a 15% response rate (n=313) with findings in four major areas: Pre-Parole Board Experience and Preparation; Parole Process and Experience with the Parole Board; Parole Board Denial and Impact; and Potential Changes to the Parole Process. In these areas, the overwhelming majority of respondents believe that the process can be improved by allowing legal representation for parole candidates and allowing for the submission of additional materials that demonstrate personal growth. Additionally, respondents suggested changes in the composition of the board to reflect the communities that individuals were coming from.

This legislation, Fair and Timely Parole, provides for incarcerated individuals to secure release on parole unless there is an articulated risk to public safety, while allowing incarcerated people to provide evidence of personal achievements and growth during the parole process.

A 2878 (Aubry) / S 215 (Myrie) Challenging Wrongful Convictions Act - Relates to motions to vacate judgment; authorizes filing motions to vacate judgment due to a change in law; authorizes motions to vacate judgment to be filed at any time after entry of a judgment obtained at trial or by plea; relates to the requirements of discovery.

Currently, New York provides limited mechanisms for post-conviction relief and while the state has made progress in recent years with the enactment of the Domestic Violence Survivors Justice Act, to provide for post-conviction relief for individuals who suffered sexual, psychological or physical abuse that contributed to a conviction, the statute does not address the specter of wrongful convictions, which can result from people pleading guilty as a result of a plea bargain in an exchange for leniency. For example, in April of 2022, as part of CANY's monitoring of the reception process at Elmira Correctional Facility, CANY found that of respondents sentenced in new cases, only 8.3% (n=3) of respondents stated they had a full trial, with 91.7% (n=33) of respondents accepting a plea bargain.

This legislation would allow for the restoration of inequitable access to adequate legal resources and mechanisms.