



Public Protection Joint Legislative Budget Hearing
2023-2024 Executive Budget Proposal
February 7, 2023
Testimony by Wayne Spence

Good afternoon Chairs Krueger, Weinstein, Salazar, Dilan and other committee members. My name is Wayne Spence and I am the President of the Public Employees Federation (PEF). I want to thank you for the opportunity to speak to you on behalf of our 50,000 members about the potential impact of the Executive Budget if adopted without modification.

Our union is made up of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Our members care for the elderly, the sick and the infirm; they work to ensure the state's roads and bridges are safe and secure; they help to rehabilitate those who have violated the law and to counsel and provide safety net services for at-risk youth. Our members take a great deal of pride in their work because they are professionals and they care.

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS)

The NYS Public Employees Federation represents nearly 4,500 DOCCS members, including those who work in the Division of Community Supervision. It also includes those who work within the prison health system, rehabilitative services, education, vocational training, drug treatment and many other titles that provide programs and services to incarcerated individuals. These are all areas critical to help DOCCS fulfill its mission.

We want to thank Governor Hochul for advancing a budget that puts New Yorkers first. While we have concerns about several different proposals, the Governor has advanced a plan that makes significant investments in state services and the depleted state workforce. This budget represents a clear and distinct departure from the previous Governor's Executive Budget proposals which over the course of the past decade sought to arbitrarily limit the ability of state agencies to deliver needed services to at-risk New Yorkers. We look forward to discussing the following items and other issues with you over the next several weeks so we can develop a final state budget that meets the needs of all New Yorkers.

FUND OUR FUTURE

PEF fully supports the effort to reduce the state's incarcerated population. However, we believe that the state must also do much more to meet its obligation to provide accessible state-operated supports and services for both the incarcerated and formerly incarcerated population, as well as every other New Yorker who needs safety net services. We are pleased that the Governor has advanced

additional resources for re-entry and other services to facilitate the re-integration of formerly incarcerated individuals back into their communities. However, the current over-reliance on private providers neither adequately addresses the continuum of care for this population nor the need to integrate services for those that have multiple needs – i.e., mental health, health and wellness, job training, housing, etc.

This year’s budget surplus, combined with the savings achieved from right-sizing the state’s correctional system, provides the state a unique opportunity to address public safety concerns around mental health, addiction and the continued effort to reduce the state’ incarcerated population. PEF has initiated a campaign with its national affiliates, other unions and other community groups to encourage you, our legislators, to make needed investments in state-operated services so that we can provide quality, accessible services to all New Yorkers regardless of income, insurance, immigration status, or other factors that serve to limit the availability of services from the private provider network.

We thank Governor Hochul for focusing in on the importance of state services for New York’s most at-risk residents and the need to develop a coordinated effort to provide re-entry services to the formerly incarcerated so they can successfully re-integrate back into their communities.

I. DOCCS Staffing:

A. Staffing Reductions:

According to the “New York State Agency: Use of Overtime and State Workforce Trends, 2012-2021 Report by the Office of the New York State Comptroller, DOCCS continues to see a decrease in staffing. In 2021, DOCCS had 26,845 staff – this is 1,844 fewer staff than 2020. PEF members at DOCCS provide direct health, wellness, education and other services to the incarcerated population – These titles include nurses, rehabilitation specialists, mental health and addiction specialists and parole officers. Given our mutual goal of reducing the incarcerated population, we believe the state has a responsibility to expand the number and types of support staff that render mental health, wellness, education, training and addiction services so that taxpayers can be comfortable knowing that the rehabilitation of incarcerated individuals is already happening in advance of what we all hope will be a successful release.

Budget Request: Reinvest savings into institutionally based, state-operated programs to address the mental health, wellness, education, and job training needed for the currently incarcerated population to maximize the opportunities for success upon release.

- B. **Hazard Pay for DOCCS Staff:** We applaud and thank you for enacting the Health Care Workforce Bonus program in last year's budget. This critically important program as served to retain direct care staff in our health care workforce. However, it is equally important to remember all of the staff at DOCCS who worked to protect the health and safety of the incarcerated and parolee population despite non-existent or inadequate personal protective equipment, inaccurate guidance from the former administration and the inability to maintain appropriate safety protocols within the state's corrections system (i.e., masking of incarcerated individuals, appropriate social distancing). These staff continued to meet their obligations despite the challenges and health risks. The majority of these officers contracted COVID and many transmitted the disease to their families. Now is the time to recognize the service of these and the other dedicated professionals in state service who were designated as 'essential employees' and tasked with putting themselves in harms way to serve the state and protect and treat the public.

Budget Request: Establish a meaningful hazard pay benefit for all state employees designated as "essential" employees and who risked their lives and the lives of their families in meeting the needs of the state as ordered by the Governor.

- C. **Safety of Staff and Incarcerated Individuals:** Safety of both incarcerated individuals and staff is paramount for DOCCS to be successful. Too often, safety is compromised by the introduction of contraband into correctional facilities. DOCCS is always looking for ways to limit contraband making its way to inmates and should be supported in these efforts, especially if it can be done in a less intrusive way.

Budget Request: Accept A.3005/S.4005 Part C to allow the use of body scanners at DOCCS and OCFS facilities to screen those who are detained or committed, as well as visitors under certain circumstances.

II. Community Supervision:

PEF supports providing additional training to parole officers so that they can assist formerly incarcerated individuals locate employment, access mental health and addiction services, housing, etc. PEF fully supports the Governor's \$36.4 million commitment to the "Gun Involved Violence Elimination" (GIVE) program and the \$7.4 million the Governor requested to support the "Supervisors Against Violent Engagement" (SAVE) initiative.

One area where we need to do a better job is re-entry services for formerly incarcerated individuals. PEF engaged the Governor to seek an increase in funding for state-operated "re-entry services" and we are pleased that she has asked for \$11.5 million to support those programs. One concern we have with this proposal is that it may be limited to not-for-profit service providers. First, we believe it is critically important that these limited resources be dedicated to build a network of integrated government operated services and supports through the NYS Department of Corrections and Community Supervision, the NYS Office of Mental Health, the NYS Office of Addiction Services and Supports and other state social service agencies. The development of such a network would provide parole officers and others with a menu of statewide government-operated programs and services readily available for formerly incarcerated individuals so they can access the free services and support they need to be successful. This would allow for a broader array of specialized service delivery and allow for the collection and calibration of data to inform rehabilitation practices and gauge the success of such programs.

Budget Requests:

- (1) Pass the "Gun Involved Violence Elimination" (GIVE) program with funding of \$36.4 million; and
- (2) Pass the "Supervisors Against Violent Engagement" (SAVE) with funding of \$7.4 million; and
- (3) Enact legislation requiring the state to develop a real system of integrated state-operated wellness, mental health, addiction, job placement and other programs and services to help the formerly incarcerated access needed services to maximize opportunities for success.

III. Amend "Less is More" Law and Provide Needed Resources:

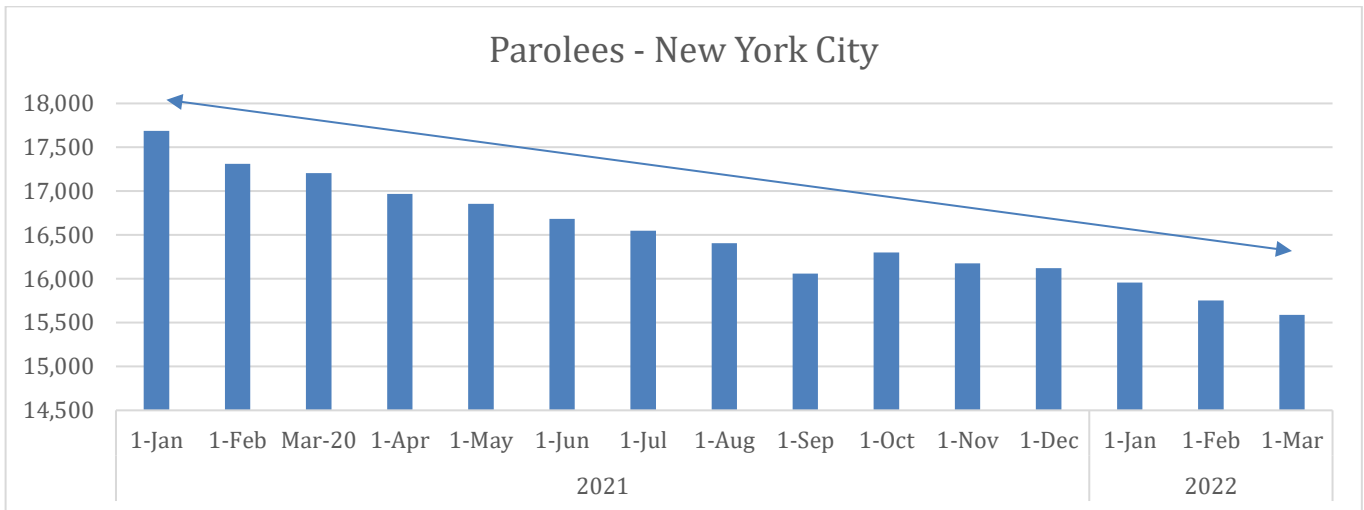
PEF supports the continued effort to de-institutionalize the criminal justice system where appropriate. PEF opposed the "Less is More" law (Chapter 427 of 2021), but PEF supports the

intent of this law and many of its components like providing earned time credits for adhering to the parole plan and ensuring parolees have expedited proceedings.

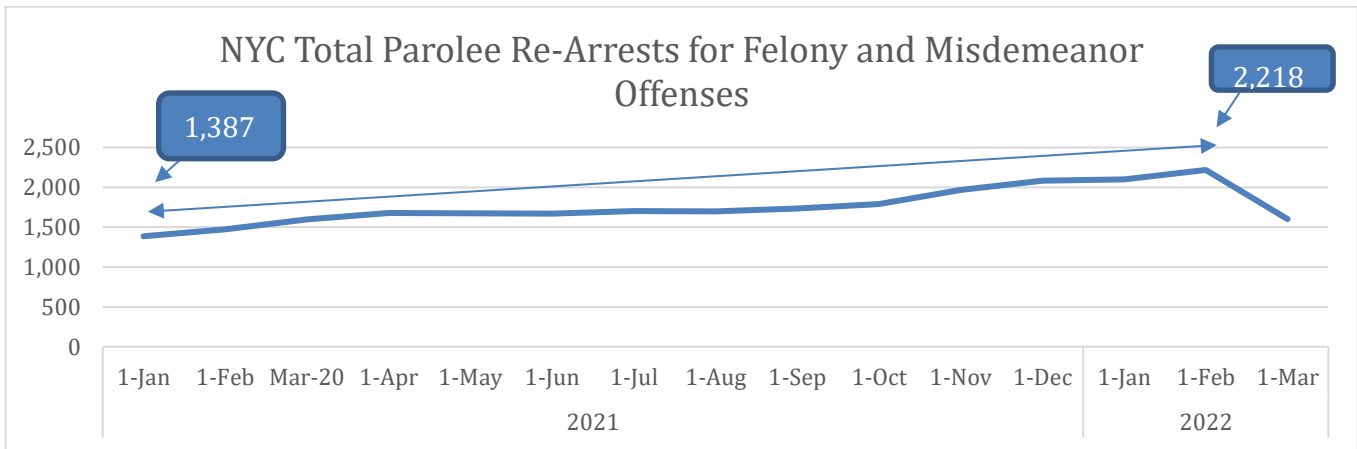
It is important to remember that individuals on parole have not completed their court ordered sentence for the crime(s) for which they were convicted. Parole is a tool to reward for positive behavior and an opportunity for individuals to build upon their successes by serving out the remainder of their sentence back in the community.

PEF supports providing incarcerated individuals and parolees with opportunities for success and rewarding individuals for their efforts to become productive citizens. However, reforms are needed to ensure that parolees serving sentences for violent felony offenses are held accountable for their failure to adhere to their agreed upon parole release plan. This is necessary to shape and reinforce appropriate behaviors for long-term success and to protect the general public.

According to data that PEF received as part of a Freedom of Information Request from DOCCS, the number of parolees in New York City has continued to decrease since 2021 (Source: FOIL Request Log No. DOCCS-22-04-195, August 2022).



However, over this same period, the number of parolees rearrested for a misdemeanor or felony offenses in New York City has increased.



PEF believes that this increase is due, in part, to certain parolees no longer feeling compelled to adhere to their court ordered addiction treatment plan, mental health plan or other parole plans. Under the current law, parolees may not be reincarcerated for failure to adhere to their drug treatment plans, mental health treatments or other offenses like consuming alcohol, violating curfew, failing to report to their officer or bureau, etc. This lack of accountability leads to the compounding of behaviors that are inconsistent with success. These individuals re-offend because they lack the tools and effective oversight to maintain their level of success back in the community.

Budget Requests:

- (1) **Set a Higher Standard of Conduct for Parolees with Violent Felony Offenses:** The original law did not differentiate between parolees with non-violent felony convictions or violent felony convictions. As such, violent felony offenders on parole cannot be re-incarcerated for violating their parole plans, including skipping court-ordered addiction treatment, mental health treatment, missing curfew or failing to report to their parole officer. Individuals convicted of possession or use of a firearm or dangerous weapon, criminal contempt, kidnapping, and failure to register as a sex offender should maintain a higher standard of conduct while on parole to ensure they are meeting their rehabilitative goals and to protect the public from the potential for re-offenses while they are serving their sentences.
- (2) **Real Sanctions for Parolees Convicted of Violent Felony Offenses:** We believe this law should provide for the potential for immediate reincarceration of any parolee who fails to register on the sex offender registry, skips court order mental health or drug treatment, threatens or engages in domestic abuse and/or purposefully absconds from custody. In order to protect due process and individual rights, the ultimate decision on re-incarceration should be

subject to immediate judicial review and determination. We believe these immediate sanctions should be authorized for these violations as they constitute a significant departure from the conduct needed for successful re-integration and an identifiable, immediate and unnecessary danger to the public.

- (3) **Correct Shortcomings of Earned Time Credits (“30 for 30”)**: PEF fully supports awarding earned time credits for parolees adhering to their agreed upon parole plan. These individuals should be lauded for their efforts and awarded reduced time commensurate with their success on parole. However, parolees who have not been adhering to their parole plan have also been receiving earned time credits. This is unfair to those who are working towards success, provide negative reinforcement to parolees violating their parole plans and ultimately, dangerous for the public. The state should not award earned time credits if the individual is violating their parole plan.
- (4) **Institute a “Red Flag” Provision for At-Risk Parolees**: While we understand the intention of limiting re-incarceration, we should establish a “red flag” law that allows the state’s trained, experienced parole officers to seek an immediate judicial review and determination to reinstitute limited reincarceration for those parolees who commit a violation or violations that officers believe represent an immediate and dangerous threat to themselves or others (i.e., overdose, untreated addictions, gang activity, etc.). The fact of the matter is that parole officers interact with parolees regularly and they understand when the behaviors of parolees not only violate the terms of their parole, but also constitute a significant departure from that individual parolee’s path to long-term success and a potential threat to the parolee and/or the general public.

It is important to note that PEF does not support parolees being re-incarcerated unfairly or for indeterminate sentences; PEF supports the role of the judiciary and believes judges should render any and all determinations on re-incarceration for offenders; PEF believes public safety should have equal weight with regard to violent felony offenders who violate their parole agreements; and PEF believes immediate support and resources should be provided to parolees who fail to meet their parole plan objectives. The reforms we are seeking are designed to affirm the courts ordered parole plan, to increase opportunities for success by adhering to such plan and protecting the public from individuals who are still serving the sentence for their original conviction.

IV. Support Changes to the “Humane Alternatives to Long-Term Solitary Confinement Act” (HALT)

All New Yorkers support the humane treatment of all people in this state. The HALT law ignores the need to provide humane treatment to all staff and all incarcerated individuals who face the on-going threat of assault by other incarcerated individuals;

This imbalance in approach has led to an increase in assaults against staff and against other incarcerated individuals. The staff need tools to:

- (1) keep people safe so they can effectively address those few incarcerated individuals who have no respect or boundaries when it comes to the safety of their fellow incarcerated individuals and staff;
- (2) safely and effectively deliver needed services and support to foster a rehabilitative environment for the entire incarcerated population; and
- (3) to provide secure, protective custody to incarcerated individuals who have been targeted.

Data released by the Department of Corrections and Community Supervision indicates that assaults and injuries against incarcerated individuals and staff are up significantly since this law was enacted in 2021 as assaults against incarcerated individuals are up 11% and assaults against staff are up 29% from 2020 to 2022, despite the incarcerated population shrinking by more than 20% during that time.

Increase in Assaults in NY Correctional Facilities 2020-2022

	2018	2019	2020	2021	2022	% Change
Incarcerated Population	47,459	44,334	34,446	30,746	28,480	-20.95%
Assaults on Staff	972	1,033	1,047	1,177	1,351	29.04%
Assaults on Incarcerated Individuals	1,165	1,265	1,205	1,108	1,340	11.20%

(Source: https://doccs.ny.gov/system/files/documents/2022/12/doccs-fact-sheet-december-2022_0.pdf)

Policy Solutions:

- Utilize the state’s excess correctional facility space capacity to establish separate, segregated facilities for all incarcerated individuals and to provide protective custody options for those incarcerated individuals who have been targeted. This, in turn, will reduce the risks associated with overcrowding in some facilities and in facilities with high populations of violent felony offenders; and
- Re-establish the use of the “step down” program in both Residential Mental Health Unit (RMHU) programs and for those individuals remanded to Segregated Housing Units (SHU). The “step down” program, which was in operation just before the enactment of the HALT Act, allows incarcerated individuals to earn privileges and the use of fewer restraints based on exhibiting positive behaviors and for continued participation in and adherence to the program; and
- Expand professional treatment staff to address mental, behavioral and other issues within the population; and
- Establish merit time eligibility for violent felony offenders so they can work towards early release. This type of merit system fosters understanding and helps shape positive behaviors; and
- Expand re-entry services by establishing programming for incarcerated individuals and parolees around mental health services, job training services, housing, etc.

Thank you again for the opportunity to present the views of PEF as they relate to the Public Protection portion of the 2023-24 Executive Budget.

Appendix I
Re-Arrest Rates for Parolees in New York City
January 2021 – March 2022

Number of Parolees*	2021												2022		
	1-Jan	1-Feb	Mar-20	1-Apr	1-May	1-Jun	1-Jul	1-Aug	1-Sep	1-Oct	1-Nov	1-Dec	1-Jan	1-Feb	1-Mar
Bronx	4,273	4,198	4,145	4,036	3,962	3,891	3,889	3,860	3,829	3,858	3,813	3,755	3,693	3,619	3,566
Brooklyn	4,040	3,968	3,939	3,836	3,794	3,775	3,758	3,742	3,695	3,731	3,728	3,718	3,708	3,632	3,594
Manhattan/SI	4,098	4,017	4,069	4,056	4,095	4,054	4,026	3,940	3,853	3,872	3,849	3,843	3,799	3,757	3,722
Queens/LI	5,275	5,127	5,051	5,041	5,005	4,962	4,874	4,864	4,682	4,840	4,786	4,805	4,758	4,744	4,705
Parolees NYC	17,686	17,310	17,204	16,969	16,856	16,682	16,547	16,406	16,059	16,301	16,176	16,121	15,958	15,752	15,587
Total Re-Arrests	1,387	1,475	1,598	1,679	1,675	1,671	1,702	1,700	1,736	1,789	1,968	2,082	2,100	2,218	1,604
Percent Re-arrested	8.0%	8.5%	9.3%	9.9%	9.9%	10.0%	10.3%	10.4%	10.8%	11.0%	11.9%	12.9%	13.2%	14.1%	10.3%

Misdemeanor Re-Arrests**	2021												2022			
	1-Jan	1-Feb	Mar-20	1-Apr	1-May	1-Jun	1-Jul	1-Aug	1-Sep	1-Oct	1-Nov	1-Dec	1-Jan	1-Feb	1-Mar	Totals
Bronx	135	168	176	179	181	164	165	175	172	185	191	210	217	231	147	2,696
Brooklyn	86	91	104	125	128	123	130	146	146	158	164	176	180	182	133	2,072
Manhattan/SI	188	182	198	208	218	232	218	224	230	234	252	272	263	278	214	3,411
Queens/LI	216	229	265	270	266	270	269	264	273	279	279	290	295	312	212	3,989
Misdemeanor Re-Arrests	625	670	743	782	793	789	782	809	821	856	886	948	955	1003	706	12,168

Felony Re-Arrests**	2021												2022			
	1-Jan	1-Feb	Mar-20	1-Apr	1-May	1-Jun	1-Jul	1-Aug	1-Sep	1-Oct	1-Nov	1-Dec	1-Jan	1-Feb	1-Mar	Total
Bronx	199	203	214	226	215	224	229	216	222	224	297	280	268	297	197	3,511
Brooklyn	129	135	147	159	168	166	177	176	178	178	198	227	232	234	191	2,695
Manhattan/SI	220	234	246	254	251	255	246	241	246	253	281	301	301	304	239	3,872
Queens/LI	214	233	248	258	248	237	268	258	269	278	306	326	344	380	271	4,138
Felony Re-Arrests	762	805	855	897	882	882	920	891	915	933	1082	1134	1145	1215	898	14,216

Parolees NYC	2021												2022		
	1-Jan	1-Feb	Mar-20	1-Apr	1-May	1-Jun	1-Jul	1-Aug	1-Sep	1-Oct	1-Nov	1-Dec	1-Jan	1-Feb	1-Mar
Parolees NYC	17,686	17,310	17,204	16,969	16,856	16,682	16,547	16,406	16,059	16,301	16,176	16,121	15,958	15,752	15,587

* Data gathered from DOCCS Monthly Report at <https://doccs.ny.gov/>

** Data gathered from DOCCS FOIL Request