



Safety of Persons in Custody, Transparency, and Accountability within State Correctional Facilities

SENATE STANDING COMMITTEE ON CRIME VICTIMS, CRIME & CORRECTION ASSEMBLY STANDING COMMITTEE ON CORRECTION

TESTIMONY OF DR. MEGAN FRENCH-MARCELIN, SENIOR DIRECTOR OF NEW YORK STATE POLICY AT LEGAL ACTION CENTER on behalf of the NYS ALTERNATIVES TO INCARCERATION AND REENTRY COALITION

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Thank you to Chairwoman Salazar and Chairman Dilan and members of the respective committees for this opportunity to testify. My name is Megan French-Marcelin. Today, I appear on behalf of the New York State Alternatives to Incarceration and Reentry Coalition. The coalition is a network of service organizations with decades of experience in providing holistic, community-based supports to justice-involved New Yorkers. Collectively, our programs serve more than 30,000 New York City residents each year. We also consistently advocate for the need to scale the model we have been able to create in New York City, where we work as an ecosystem to ensure access to holistic and appropriate treatment and services. I encourage you to read our comprehensive white paper, *Unlocking Potential: The Role of Community-Based Alternatives in Strengthening Public Safety in New York State*, which outlines the gaps in services and supports in upstate and Western New York.

Our services and our partnerships are essential now given the very clear challenges facing the Department of Corrections and Community Supervision (DOCCS); Our prisons are in crisis. In a span of just three months, corrections officers brutally murdered two men: 43 year-old Robert Brooks and Messiah Nantwi, who was only 22. One of the most shocking aspects of the interplay between their deaths is that Mr. Nantwi was killed just days after the public announcement of the indictment in Mr. Brooks' murder amid an unauthorized strike by corrections officers. Taken together, it is clear that these two unconscionable incidents are symptoms of a widespread and deeply entrenched culture of violence in which far too many correctional staff believed they could act with complete impunity. For years, the Correctional Association of New York has reported on a pattern of routine sexual and physical abuse as well as vitriolic bigotry.

In the face of continued suspension of programming, and sharply curtailed visiting, we are at a flashpoint where we must make decisions about how to establish dignity, humanity, and care in our prison system. It is exceptionally clear that amid this crisis, part of how we do that is a renewed and targeted effort to release people through all mechanisms at our disposal.

While we appreciate the Commissioner's attempt to reduce the population, utilizing Correction Law (CL) § 73 is not just ineffective, it is not even being deployed as outlined in law, thus creating gaps in access to resources for every person released. CL § 73 allows for the early release of individuals to a residential treatment facility when they are or soon will be eligible for community supervision and are less than a year out from completion of sentence. Because of this, all of the guidelines for release in the statute are tailored to individuals who will be residing in a residential treatment facility, not, as the statute is now being cited, to individuals who will be released to private residences. This effectively sets released individuals up to fail.

In reality, it is almost a misnomer to refer to these people as being "released." Rather, they are being classified as on the "outcount" for DOCCS, which means they are still technically in DOCCS custody and we understand that DOCCS has therefore determined that they cannot access essential community services including Medicaid or any other public benefits. They will also be issued a temporary DOCCS identification card, which will not provide the requisite points to assist them in obtaining a driver's license, or even a non-drivers state identification card. Without identification, they will be unable to obtain employment, and without Medicaid, they will be unable to access healthcare - including even prescription medication. To obtain prescriptions, or access routine healthcare, they will have to return to the prison from which they were released.

Sending people home from prison without access to Medicaid flies in the face of public health knowledge about reentry. People return to communities with exceptionally high rates of chronic health conditions that require immediate care, such as HIV and hepatitis, diabetes and hypertension, and serious mental illnesses (SMIs) and substance use disorders (SUDs).¹ When people are released without a continuity of healthcare, the resulting break in critical services can lead to rapid decompensation of their mental health, an overreliance on costly emergency services,

¹ Gore, A. & Amaning, A. (2024, October 29). Expanding access to basic reentry services will improve health, wellbeing, and public safety. Center for American Progress.

and ultimately, higher incidences of death—overdoses and otherwise. Even without a known chronic condition, no access to healthcare coverage can be dangerous. For example, a simple infection that could be treated by a primary care physician with simple antibiotics could instead lead to major complications or death without treatment. Resultantly, in the two weeks following release, individuals are thirteen times more likely to die than the general public, and more than 130 times more likely to die from fatal overdose.²

It is precisely as a result of these damning statistics that we have worked alongside Commissioner Martuscello to ensure that Medicaid is turned back on as people come home. In recent years, the number of people who are released with active Medicaid is over 90 percent. This policy has no doubt saved countless lives which is why it is so concerning that people will have no access to routine and emergency health care without returning to facility - it runs counter to the very policies DOCCS has set up to ensure the success of regular release.

And the deleterious impact of this exclusion is already clear: Just last week we received word from a man released through CL § 73 who, during his incarceration, benefitted from DOCCS' medication for addiction treatment program. Now, upon release, and without access to health insurance, the only way he can receive medication is to return to the facility to have medication administered there. This policy creates an undue burden on this person who is just reentering society, but also has the potential to jeopardize his recovery.

There is no basis in state or federal law to prevent people from accessing full Medicaid coverage while in "outcount" status. Federal law, regulations, and CMS guidance are clear that federal financial participation (FFP) is only excluded when individuals are "in custody and held involuntarily through operation of law enforcement authorities in a public institution."³ In fact, CMS guidance also provides that "individuals on parole, probation, or residing in "publicly operated corrections-related supervised community residential facilities" are eligible for Medicaid with federal financial participation (FFP). Preventing enrollment in full Medicaid and keeping people who have been released on an "inpatient only" status when individuals do not have access to health

² Kincaid, S.A. & Gardner, T. (2023, November 22). A new Medicaid program could dramatically improve healthcare for imprisoned People—If states use it. *The Appeal*.

³ CMS, SHO # 16-007 Re: To Facilitate Successful Re-entry for Individuals Transitioning from Incarceration to Their Communities, Q1 (April 28, 2016), <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/sho16007.pdf>

care provided by the correctional institution is not only inconsistent with state and federal law, but more importantly, wholly damaging to the wellbeing of persons coming home.

The “outcount” status has other implications as well that will clearly hinder successful reentry, including placing unnecessary burdens on families. Under DOCCS determination, individuals assigned this status will not be able access SNAP or public assistance while on “outcount,” denying them access to essential supports. Given that we anticipate the vast majority of people released under CL § 73 will be living with family, it is important to note that more than two-thirds of families with incarcerated loved ones struggle to meet their basic needs - this policy will only exacerbate that reality.⁴ Access to food has been considered so essential to reentry that under Commissioner Martuscello, DOCCS has piloted a program that enables SNAP to be activated at release thus assuring food resources to people returning home. Once again, the innovative policy fixes of DOCCS are unavailable to people returning under this mechanism.

The cumulative impact of these restrictions make reentry a disastrous prospect. It is unclear to us, as providers, how an individual is supposed to come home and be successful without access to programming, food, employment, or healthcare. CL § 73 represents a custodial approach disguised as reentry. This model restricts freedom, limits access to critical community supports, and increases the risk of technical violations and reincarceration thus setting people up to fail.

We believe that there are other mechanisms by which New York can and should pursue to decarcerate. The first of these options, and the most expansive, is executive clemency and commutations. Governor Hochul has yet to use her clemency powers amid this current crisis in DOCCS, however, it could be deployed to release people without restrictions and open the possibility of parole for the 36 percent of individuals with indeterminate sentences.

For years, our organizations have welcomed home, and even employed, people who have been granted clemency and go on to make tremendous contributions to their communities. While each and every one of them is exceptional, we know they are not the exceptions, and that there are far too many more men and women serving extremely lengthy sentences who have undergone deep

⁴ Joshua Williams, “How Incarceration Impacts the Basic Needs of Loved Ones & Families,” April 22, 2025: <https://www.diverseeducation.com/opinion/article/15743657/how-incarceration-impacts-the-basic-needs-of-loved-ones-families>

personal transformation and could, if given the chance, be assets to their communities if released. Research shows that people who have served long sentences for violent felony offenses, including homicide, are among the least likely to reoffend.⁵ We can safely release a significant number of people, many of whom were incarcerated when they were children, who have literally aged out of criminal behavior and who have sought out every opportunity to engage in programming, serve as role models to other incarcerated people, and who will pose no threat to public safety. We urge the legislature to call on the Governor to stop the unnecessary and counterproductive warehousing of people who have more than paid their debt to society and truly pose no risk to public safety.

By expanding these alternatives, DOCCS can both reduce prison populations responsibly and ensure that individuals reenter their communities with dignity, opportunity, and the tools they need to succeed. Other mechanisms could include the use of presumptive release under Correction Law § 806, the expansion and commitment to medical parole under Correction Law § 259-r. Additionally, the state Legislature should utilize the end of session to enact Fair and Timely Parole, Elder Parole, the Earned Time Act, and Second Look, thus providing pathways for all incarcerated individuals to return to community and live healthy, thriving lives. These are common sense reforms that will reduce the state's overreliance on mass incarceration.

Finally, we must express our tremendous concern about the provision in the FY26 approved budget that will allow DOCCS to hire people as young as 18 years old to serve as Corrections Officers. We understand that the staffing crisis is severe, and that it impacts the capacity of DOCCS to provide robust programming, creates challenges in ensuring access to medical care, and undermines morale. Yet, we know from the research on brain development that our frontal cortex is not fully developed until age 25; prior to that, in high-stress, dangerous situations, young people are more likely to react impulsively and influenced by others, *and* are less likely to exercise the kind of self-control and physical restraint that is absolutely crucial in this role. We believe that this change will lead to more violence and trauma in and across the facilities. We urge lawmakers instead to consider raising the maximum age at which people can be hired, which is currently 35.

Our network of reentry providers welcomes the opportunity to collaborate with the Governor, Commissioner Martuscello and the state Legislature to identify mechanisms for release and create

⁵ Ashley Nellis and Breanna Bishop, "A New Lease on Life," The Sentencing Project, <https://www.sentencingproject.org/reports/a-new-lease-on-life/>

robust, individualized discharge planning that can ensure that people are set up for success as they come home from our state facilities. To effectively do that, our organizations must be positioned to identify individuals ready for release, work with those individuals in facilities to plan for appropriate and coordinated services upon release for each and every person, and to ensure a collaborative approach to community reintegration that addresses the needs of returning individuals holistically. We believe such a collaboration is essential to investing in the systems of care that will reduce our prison population, while shoring up community well-being and safety across New York state.