

Testimony of
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Assemblymember Weinstein, Senator Krueger, and esteemed members of the Fiscal Committees. Thank you for allowing me to submit this testimony today on behalf of more than 21,000 dedicated members of the New York State Correctional Officers & Police Benevolent Association, (NYSCOPBA).

My name is Michael Powers, and as President of NYSCOPBA, I have the privilege of representing the interests of our membership, including the brave and hard-working correctional officers and sergeants who are charged with maintaining the care, custody and control of our state's prison population. We also represent the dedicated Security Hospital Treatment Assistants and the Safety and Security Officers who work with some of our most vulnerable populations in OMH and OPWDD state facilities. NYSCOPBA even has the privilege of representing the fine men and women operating as Security Screening Technicians here at the LOB and State Capitol in Albany. They are working hard to ensure that these halls are safe for the public and our elected officials and staff to gather peacefully and conduct the people's business. We should thank them all for their service to the state of New York.

Suffice it to say our interests are broad and there are many issues that could be addressed within the context of this submitted testimony, the data contained within the graph set forth as an appendix to this document is paramount to all other issues. As such, the submitted testimony on behalf of my membership relates primarily to this graph as we seek much needed assistance from this body in helping to understand why violence within the prison system is not only increasing, but is spiking at an alarming and unacceptable rate. It should be noted that the data used to create this graph comes directly from the Department.

Recent Changes within New York's Prison System

In 2016, the State of New York implemented an historic settlement with respect to litigation that originated as a class action lawsuit brought by the New York Civil Liberties Union ("NYCLU") that greatly impacted the manner in which special housing units ("SHU") are utilized within the prison system. (This settlement was preceded by a preliminary settlement that went into effect in early 2014.) Prior to discussing the specific changes to New York's SHU policy, I feel it is necessary to first provide some context with respect to the term "solitary confinement" that is all too often utilized by the media and by certain advocacy groups who present a disingenuous picture of the SHU setting in New York's prisons.

Many members of the media and various advocacy groups improperly synonymize "solitary confinement" with New York's SHUs. The term "solitary confinement" connotes total isolation and separation of incarcerated individuals with limited to no human contact, coupled with limited sustenance (the perceived "bread and water" diet). For many years, inmate advocate groups have been utilizing this phrase – "solitary confinement" – to describe the process of inmates being placed in special housing units, completely mischaracterizing the factual realities of SHUs in New York. NYSCOPBA has continually and consistently sought to correct the mischaracterization of special housing as "solitary confinement." However, despite our best efforts, many continue to believe that solitary confinement as portrayed in Hollywood and in the media actually exists in New York.

In New York's SHUs, inmates still receive property, services and amenities similar to inmates in general population. They receive up to two (2) hours of outdoor recreation per day; two (2) personal visits per week; unlimited legal visits; headphones and personal radios; commissary privileges; the exact same meals as inmates in general population; literature, playing cards, books, and photographs; writing materials; religious materials; frequent mental health assessments; packages, mail, and legal mail access and privileges; access to daily medical sick call and emergency sick call; access to the general library services and law library services; weekly laundry; weekly access to notary public services; weekly religious counseling services; access to the inmate grievance program; access to cell study educational services; daily visits from the Offender Rehabilitation Coordinator for additional counseling services; and potential diversion to residential mental health units. In short, significant attention and acute individualized care is provided to inmates in SHU.

With respect to SHU determinations, incarcerated individuals are provided essential due process rights and are entitled to an evidentiary hearing before an impartial hearing officer to determine whether separation from general population is an appropriate penalty. Any inmate with limited English proficiency or sensorial disability is entitled to access to a facility staff member who shall assist the inmate in pursuit of his or her defense for any level of misbehavior. Inmates also possess the right and opportunity to present their own witnesses and cross-examine any witnesses who present testimony. Hearing officers are required to take into account the inmate's mental state and intellectual capacity during a hearing. Inmates found guilty of any misbehavior charge have the right to appeal this finding to the Commissioner of the Department of Corrections and Community Supervision ("DOCCS"), or his or her designee. Facility Superintendents also retain the discretion to reduce any penalty imposed by a hearing officer. And despite the false assertions from those who want to create a perception of total isolation in a torturous setting, inmates who are confined to SHU following such a hearing receive significant services (as stated above) and more one-on-one individual care than inmates in general population. Prison staff interact with inmates confined to SHU at least every 30 minutes, 24 hours per day, and 7 days per week.

As stated above, the NYCLU settlement drastically changed the operational aspects of New York's special housing units. Nearly 50 percent of the rules violations that would have resulted in an inmate being placed in SHU – including drug use and drug possession – are now no longer punishable for first-time violations. Petty rules violations, which comprise more than 25 percent of all violations, are no longer eligible for special housing at all.

Moreover, as a result of the NYCLU settlement, there is now a maximum sentence of SHU confinement of three months for all but a handful of first-time violations, such as assault and escape; and there is a maximum sentence of 30 days for almost all first-time non-violent violations. In addition, the settlement **mandates** early release from SHU for good behavior and participation in rehabilitative programming. In essence, all SHU confinements receive automatic time cuts (even those that relate to assaults on staff or assaults on other inmates).

Current Data

It is unequivocal that as a direct result of the NYCLU settlement inmates are serving far shorter disciplinary sentences than they were prior to the settlement. However, it is equally clear upon

examining the attached graph that since the NYCLU agreement's full implementation, violence inside the State's prison system has been escalating. Although any trend in increasing assaults would be troubling, the trend in New York is even more disturbing as defensive tools for law enforcement have been deployed by the Department in recent years throughout the system in an effort to curb violence. For example, DOCCS has trained NYSCOPBA members in the use of pepper spray and deployed this safety tool for officers at facilities throughout the State. A significant amount of security cameras have been installed in many facilities since the NYCLU settlement and many individual officers are now wearing body cameras during their respective work days. Moreover, the State has implemented de-escalation training for all officers in an effort to ensure that NYSCOPBA's members are better equipped to thwart potential violent interactions with inmates. Additional technology initiatives, such as "cell sense," have been implemented as well. Notwithstanding this plethora of safety tools, violence levels are not diminishing.

NYSCOPBA's Request

It is absolutely paramount that steps be taken immediately to ascertain the reasons for the increasing levels of violence within New York's prison system before the State rushes to implement further changes with respect to its SHU policies that could further exacerbate the current crisis of prison violence. On behalf of all the members of NYSCOPBA, I am respectfully requesting that funding be provided to perform a thorough, unbiased analysis of the current violence epidemic that is plaguing not only the men and women of NYSCOPBA who walk the toughest beat in law enforcement, but also the incarcerated population that is equally impacted by this disturbing trend. I would certainly be on solid footing to request funding for additional initiatives, including funding for better equipment, increased training, and additional staff since each of these areas warrant additional investment. However, the safety and security of my members and the system as a whole is paramount and must take precedence. Therefore, any funding available through the budget process needs to be first utilized to gain a thorough understanding of the current violence crisis plaguing New York's correctional system so that appropriate avenues of redress can be pursued.

We welcome the opportunity to work with each and every one of you to develop a common sense approach to violence reduction within New York's correctional facilities that recognizes the need to first ascertain why the prison system is becoming ever increasingly more dangerous before we rush to implement further changes that will likely only make matters worse.

Thank you again for the opportunity to share our views.

