

**Testimony on behalf of the members of the
New York State Correctional Officers & Police Benevolent Association, Inc.**

Submitted to:

**The New York State Senate
Civil Service and Pension Committee
Public Hearing on the Civil Service Workforce and Pension Fund
Wednesday, October 11th, 2023
Legislative Office Building
Albany, New York 12248**

Chairman Jackson, and other distinguished members of New York State Senate's Civil Service and Pension Committee, I am Michael Powers, President of the New York State Correctional Officers & Police Benevolent Association, Inc. On behalf of the more than 30,000 active and retired members of NYSCOPBA, thank you for the opportunity to testify before you today to discuss the challenges that our frontline state employees are facing everyday as a result of staffing shortages and the State's struggle to attract, recruit and retain those who are desperately needed to secure our most critical facilities.

NYSCOPBA represents security-based State employees in over 30 titles across some of New York's largest agencies including, but not limited to, DOCCS, OPWDD, OMH and SUNY. Although their job duties vary, there's one constant every member contends with each day – their respective agency's inability to recruit enough new employees, and retain experienced staff members to provide the necessary staffing levels needed for the safe and secure operation of our facilities.

Prior to discussing the current staffing pandemic in this written testimony, I think it is important that we first ask, "Why do people work in public service and what attracted them to do so?" The reasons undoubtedly vary among the hundreds of thousands of public employees in New York State. For me, when I completed the DOCCS training academy and reported to Sing Sing Correctional Facility in 1990, I knew I was signing up for a difficult job that was not going to make me rich. However, I knew my service to the State as a Corrections Officer, and later as a Sergeant, would afford me the opportunity to earn a decent wage, obtain a robust health and benefits package, paid time-off, and a defined-benefit pension to support my family in my retirement years. Unfortunately, in recent years we have seen a reduction in these benefits offered to public employees and, as a result, we are seeing fewer people answer the call to be a public servant and perform these essential duties.

Recruitment for NYSCOPBA Titles

In addition to the standard State civil service exam, job fairs, marketing campaigns or any other way that the State attempts to attract new employees, current employees are oftentimes the State's best recruiters. For years, working in corrections was a generational rite of passage. Sons and daughters would follow in their parents' and grandparents' footsteps in this career. Today, however, more and more of my members are dissuading their family members and friends from entering a career in corrections or law enforcement because the risk is no longer worth the reward. The same can be said for our brothers and sisters in OMH and OPWDD who are subjected to very similar working conditions and are less likely to encourage others to follow in their career path.

Why would someone want to enter into a dangerous career routinely subjected to violence, routinely mandated to work overtime on scheduled days-off (with Tier 6 overtime earnings capped towards their pension calculations), with continually diminished benefits and risk their health and safety on a daily basis? There are a wide variety of jobs in the private-sector that

offer comparable, if not better pay and benefits without the risk of being assaulted or having urine or feces thrown on you, or worse.

Prior to October 2019, the State offered competitive Civil Service exams for many of NYSCOPBA's State titles which generated long candidate lists. If you were not "reached" on the list of tens-of-thousands of candidates, you waited until the next exam and tried to achieve a better score hoping to be contacted by a State Agency. In recent years, the list of candidates has diminished with only a few thousand taking the Correction Officer Trainee exam, for example, the last time it was offered. The insufficient number of candidates taking these tests greatly stressed the operations of the agencies seeking to hire new employees.

Today, the competitive exams are a distant memory. NYSCOPBA member agencies now accept applications on a rolling basis by asking job seekers to fill out a *Training and Experience* questionnaire. This was done to widen the potential candidate pool, but unfortunately, the public seems less inclined to apply for these jobs, let alone qualify for them and remain employed in them. As a result, the current workforce is left to endure the workload at the expense of their health, safety and family life, with little to no relief in sight.

Coincidentally, also in October 2019, DOCCS announced a plan for a \$40 million renovation of the Albany Training Academy on New Scotland Road. It was a long overdue renovation and the facilities are state-of-the-art. The new housing dorms can now accommodate close to 400 people, up from 125. New classrooms were constructed, athletic fields were relocated and a new gymnasium was built to hold up to 350 people for graduation ceremonies and other events. Unfortunately these new facilities are being severely underutilized because there are just not enough qualified candidates to run more classes.

For many years prior to the new renovation, the Albany Training Academy was conducting multiple academy classes simultaneously that typically graduated 70-80 recruits in a class. By contrast, this past Friday, October 6th, DOCCS held a graduation ceremony for 30 recruits after they completed their 8-week training. Significantly, the class that began with just 44 candidates. I welcome this new class to our ranks as their services are greatly needed. I wish them luck in their careers and pray that they are able to return home safe after every shift, as I do for every one of my members. Unfortunately, 30 recruits graduating every 8 weeks is not going to fill the holes that we have. I would equate it to a Band-Aid on a bullet wound. The dwindling numbers in the academy classes do not give us much hope that enough help is on the way.

Fix Tier 6

The introduction of Tier 6 has resulted in serious, but rectifiable, recruitment and retention problems within the State's workforce, and particularly within the titles represented by NYSCOPBA. Today nearly 60% of NYSCOPBA's members are participating in the State's retirement system as Tier 6 members, a percentage that will only continue to grow.

Tier 6 requires all State employees hired after April 1st, 2012, to contribute 3%-6% of their income to the retirement system for their entire careers. This fluctuating rate is based on salary levels with an increasing contribution rate for higher earners. This is in stark contrast to every

other retirement tier which requires members to contribute 3% of their salary to the State's retirement plan only for their first 10 years of employment. Additionally, Tier 6 caps the annual amount of overtime from year-to-year that employees can apply to their final average salary for the purposes of calculating their pension benefits.

One possible remedy to attract new employees and to incentivize current employees would be to implement a fixed 3% employee contribution rate for all employees. If Tier 6 requires employees to contribute for the entirety of their careers, a fixed rate will help create a sense of financial predictability for individuals who are considering a career in public service. Another solution that will improve the issues surrounding recruitment and retention would be to remove the cap on the amount of year-to-year overtime that a Tier 6 employee can apply towards their final average salary.

Recruitment and retention issues associated with Tier 6 are exacerbated for NYSCOPBA members, especially when considering the unreasonable amount of mandatory overtime NYSCOPBA members are forced to endure. The staffing crisis throughout the state prison and mental health systems is well documented. If the record-breaking prison violence, deteriorating infrastructure and staff being ordered to work on their scheduled days off isn't enough to turn away prospective recruits, consider this: Tier 6 employees enduring these working conditions will be forced to contribute to the pension system at a higher rate than any other Tier, but won't be entitled to recoup additional overtime contributions when the time comes to collect their pensions. To remedy this, there should be a strict 3% cap on all employee pension contributions for all mandatory overtime earnings. The State shouldn't penalize dedicated employees who are forced to spend time away from their families by increasing their contribution rates.

Lastly, an increase in the pension benefit to beyond 50% FAS should be considered for staff that provide 30 years of State service. This would serve to incentivize veteran members of the workforce to continue working while they help train the next generation of staff coming into the system.

The current system is creating glaring differences and financial disparities amongst co-workers, as two employees that work identical hours and perform identical job duties will not only see differences in their bi-weekly net-income (due to higher contribution rates), but they will also be afforded vastly different pensions despite identical State service records. These disparities, unless addressed, will continue to have a negative impact on employee morale, and diminish the ability to attract new employees into State service.

Attrition and Retention of NYSCOPBA Titles

Recruiting new employees to State service has proven to be a difficult task. Lately though, retaining employees working in NYSCOPBA titles is proving to be equally difficult. Since January 1, 2023, our ranks in corrections have lost approximately 1000 Correction Officers. The loss of these positions can be attributed to retirements, resignations, terminations, and/or promotions and transfers. In the same time frame, the Training Academy has produced less than 500 new recruits to fill the void. In the context of the State Budget, DOCCS is currently 1,705 paid full time equivalent (FTE) items under our budgeted fill level. This level of staffing is not sustainable.

For many years, DOCCS has claimed the average monthly attrition rate average to be 80-100 Correction Officers leaving State service for one of the reasons stated above. NYSCOPBA contends that these numbers are higher. For instance, in 2022 the average monthly attrition rate for Correction Officers was 148 per month. From 2019 to present day, the 5-year monthly attrition rate average is 117 per month, or an average attrition of 1380 CO's annually. Again, these numbers do not add up and are only making a very dire situation worse.

So how do we retain our seasoned employees who are being overworked and burned out? NYSCOPBA has been sounding the alarm on this issue for many years. Unfortunately, our cries have been met with longer hours worked, prison closures, mandatory overtime and legislative losses that continue to wear down our already depleted ranks and drive morale even lower.

When New York State was embroiled in the COVID-19 pandemic, NYSCOPBA members answered the call. Sadly, my members were not afforded the same opportunities offered to other bargaining units and we are still fighting for our members to recoup the time that was taken from them. NYSCOPBA members reported to work every day during the pandemic not knowing if they would contract the deadly virus. Unfortunately, some of my members contracted the virus and died. Others are still suffering from the effects of the virus. So how did the State reward the members of NYSCOPBA? They gave them the opportunity to earn an increased overtime rate for an extremely short period of time (one month for Correction Officers and two months for some of NYSCOPBA's other titles), then took it away. Moreover, when health care workers across the State received a \$3000 COVID-19 bonus for their efforts, the members of NYSCOPBA received nothing. The lack of recognition and respect to the members of NYSCOPBA is appalling and needs to be addressed and rectified immediately.

Legislative Issues Impacting Morale

Long before COVID-19 was introduced into our lives, NYSCOPBA had submitted very modest proposals to the Legislature for its consideration that we believed we would make the jobs of NYSCOPBA titles more attractive. For example, legislative proposals that would increase the penalties for intentionally spitting saliva on a first responder or would establish the crime of forcible touching of a Correction Officer have been blocked by legislative leaders and stalled in committee. When common-sense proposals that will have an immediate impact in our facilities are met with resistance, it is no wonder that my members are frustrated. These members see our elected leaders ignore our pleas for help and, in turn, attack the brave men and women who work inside our prisons. Morale has plummeted to levels that I have never seen before.

Notwithstanding the above, and the impact the Legislature's actions have had on my members, things only became significantly worse with the ill-advised enactment of the HALT Act.

Since implementation of the HALT Act on April 1, 2022, violent assaults on staff have increased over 30%. Over that same timeframe, inmate-on-inmate violence is also up nearly 30%. Simply put, 2022 was the most violent year in our correctional facilities in New York State history. At the same time we have witnessed a steady decline in the number of incarcerated individuals in our

prisons and jails after being emptied out following sentencing guideline reforms, Rockefeller Drugs Law reforms, and the COVID-19 pandemic. Make no mistake, HALT is the main contributing factor for the significant rise in violence despite a shrinking incarcerated population.

Single year records in 2022 were established in both inmate-on-staff assaults and inmate-on-inmate assaults. This data which is generated by DOCCS is unequivocal and is available for our elected leaders to review. Changes to the law are desperately needed and the Legislature's failure to act will be just another slap in the face to the men and women employed at our facilities.

What is too often overlooked is how the HALT Act has impacted the majority of the incarcerated population who are simply trying to serve their sentences and return home following their release. The HALT law has incentivized bad behavior and misconduct to the detriment of everyone who works and lives in a facility. Our limited resources are now being redirected to a small percentage of bad-actors, where it seems that their only mission is to disrupt the normal operations of the facilities. The majority of the incarcerated are left to languish and go without their necessary programming and treatments because staff and resources are being redirected to the worst of the worst.

We do have one pending glimmer of legislative hope this year that could provide some relief to our ranks. S.5849 (Jackson), would provide NYSCOPBA members participating in the section 89 retirement plan with an enhanced benefit that would allow the beneficiaries of an employee who is retirement eligible, who continues working but dies prior to retirement, to receive the member's pension benefit. This bill has been vetoed twice in the last several years. However, we are grateful for the Legislature's support on the bill this year, as it passed both houses and is awaiting delivery to the Governor. We are hopeful that the Governor will sign this well-deserved bill into law. Sadly though, this is a benefit that our members will only receive upon their death. It is time that we start providing incentives for our members while they are still living.

On behalf of all NYSCOPBA members, I am imploring the Legislature and the Governor to take immediate remedial steps to address the critical recruitment and retention crisis plaguing the State's workforce. The primary function of any government is to promote and maintain the safety and security of its citizenry. Failing to address the critical need to maintain a robust workforce, particularly within the agencies that employ NYSCOPBA members, is nothing less than a dereliction of duty by the members of our State's government.

Thank you.