

No. 22-10

October 11-12, 2022

Monitoring Visit to Marcy Correctional Facility

**Correctional Association
of New York**

Post-Visit Briefing and
Recommendations

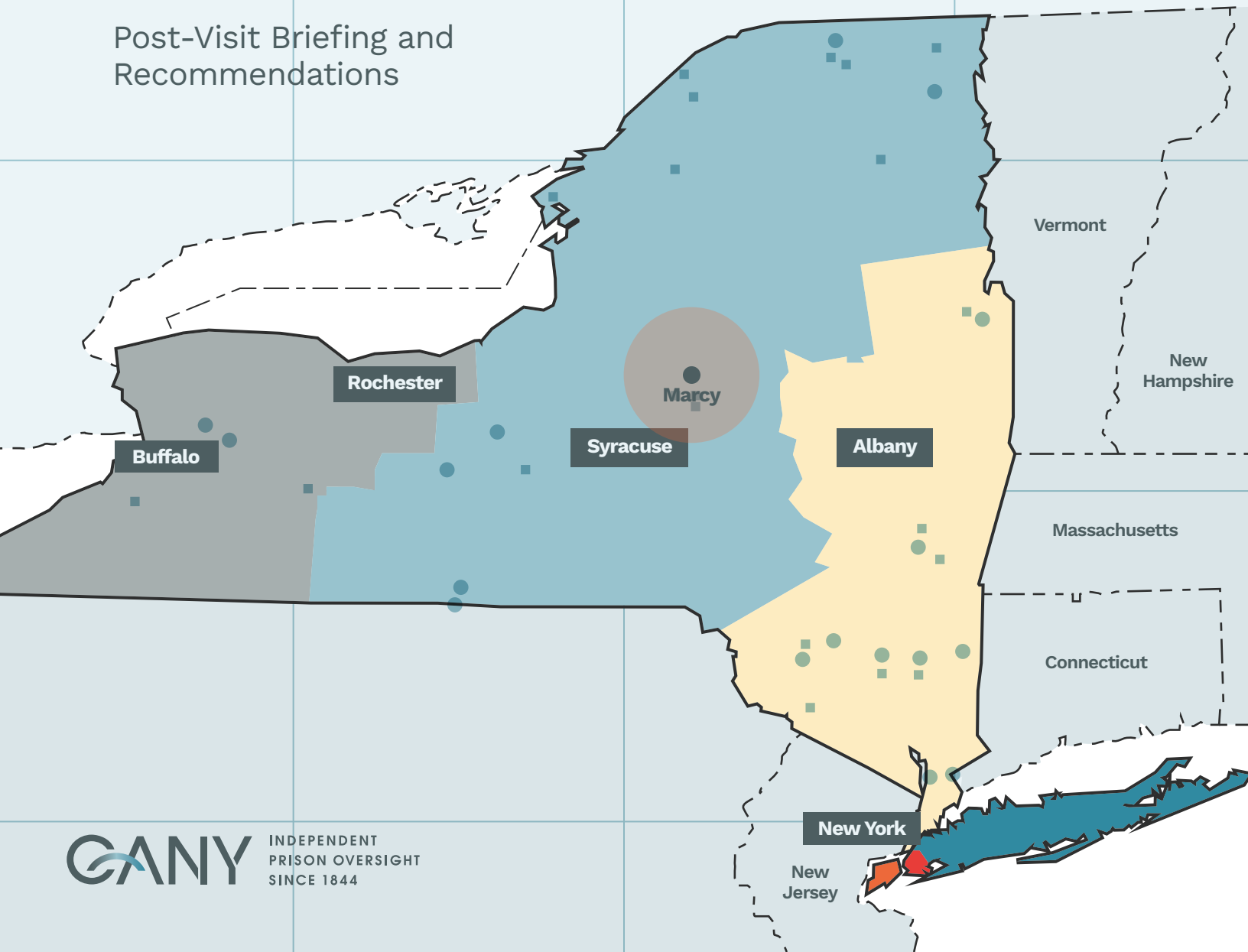


Table of Contents

Executive Summary	2
A. Background	2
B. Findings	2
C. Recommendations	5
Post-Visit Briefing	7
A. Background	7
B. Methodology	8
C. Acknowledgements	9
D. Basic Provision of Services	9
1. Commissary	9
2. Packages	10
3. Food	10
4. Phone Calls and Tablets	11
5. Visits	13
E. Medical and Dental Healthcare	13
1. COVID-19	15
F. Mental Health	16
G. Programs and Recreation	18
H. Staff Behavior	22
I. Grievances	25
J. Discipline	26
1. Arrival in the SHU	27
2. HALT Implementation	28
K. Material Conditions and Environmental Issues	29
Appendix A: Additional SHU Tables	54
Appendix B: Snapshot of Demographic Data	55

Executive Summary

On October 11 and 12, 2022, the Correctional Association of New York (CANY) conducted a monitoring visit to the Marcy Correctional Facility, a medium-security men's prison in Marcy, NY. CANY's monitoring visit to Marcy was conducted as part of its oversight mandate pursuant to Correctional Law §146(3). CANY representatives conducted meetings with prison staff as well as interviews with incarcerated people. The CANY visiting party carried out 117 interviews with incarcerated individuals in general population housing areas, the Special Housing Unit (SHU), the Residential Mental Health Unit (RMHU) and Residential Crisis Treatment Program (RCTP). CANY developed findings and recommendations from its analysis of data collected, observations and conversations with both incarcerated individuals and staff during its monitoring at Marcy. A detailed account of each of the findings can be found in the full report below.

Background

On October 11 and 12, 2022, the Correctional Association of New York (CANY) conducted a monitoring visit to Marcy Correctional Facility, a medium-security men's prison in Marcy, NY. CANY's monitoring visit to Marcy was conducted as part of its oversight mandate pursuant to Correctional Law §146(3). CANY chose to visit Marcy after receiving an unusually large volume of correspondence, more than 25 letters, from individuals incarcerated at Marcy between the months of February and September. CANY also sought to monitor the implementation of the HALT law in mental health units such as the RMHU. The CANY visiting party included eight representatives who carried out a total of 117 interviews with incarcerated individuals: 75 individuals incarcerated in general population housing areas, 29 individuals incarcerated in the Residential Mental Health Unit (RMHU), 11 individuals incarcerated in the Special Housing Unit (SHU), and 2 individuals incarcerated in the Residential Crisis Treatment Program (RCTP). As of October 11, Marcy housed 909 incarcerated people. See Appendix B, Snapshot of Marcy, for additional information about the characteristics of incarcerated individuals at Marcy.

Findings

Basic Provision of Services

- Incarcerated people reported that items in the commissary were inconsistently available and sometimes unaffordable; there was a lack of fresh fruit and vegetables.

- Incarcerated people reported that due to changes to NYS Department of Corrections and Community Supervision's (DOCCS) Directive 4911A¹ they have experienced delays, missing items, and denials of packages. Many people described the package room as a source of contention and harassment.
- People expressed dissatisfaction with the food quality and an inability to meet their dietary needs at Marcy. People alleged frequently having been denied access to the mess hall for failure to meet grooming standards that had a disparate effect on Black people. Some people alleged that short time limits to eat were sometimes imposed through threats and the use of force.
- People incarcerated in general population units at Marcy reported good access to phones and visits, however, people in the RMHU complained of a recent rule allegedly restricting tablet access to evenings only.
- Some people in the RMHU reported allegedly not having access to hygienic materials and personal property.

Medical and Dental Healthcare

- Incarcerated people reported being unsatisfied with the quality and accessibility of healthcare services at Marcy. Staffing vacancies in medical, nursing and dental departments negatively impacted access to care and contributed to long wait times.

Mental Health

- People in the RMHU and the SHU reported mixed experiences with mental healthcare, while people in general population units reported OMH being inaccessible and a lack of programs.

Programs and Recreation

- The variety of current vocational program and industry offerings for those in the general population units showed promise and the Department's commitment to rehabilitative programs. Highlights included popular programs in electrical, building maintenance, custodial maintenance, and an auto garage that repairs DOCCS vehicles for Marcy and Mid-State correctional facilities. People incarcerated at Marcy may also attend college courses through Mohawk Valley Community College.
- The success of the programs was limited by long waitlists for enrollment and staffing vacancies.

¹ NYS Directive #4911 Packages and Articles Sent or Brought to Facilities: effective June 28, 2019. <https://doccs.ny.gov/system/files/documents/2020/11/4911.pdf>

- People in the SHU reported not having access to the required minimum four hours of out of cell programming and recreation opportunities.
- People incarcerated in the RMHU reported receiving limited helpful programming. Congregate recreation seemed to be available to a very small number of people, and restraints were used for most people during programs in the RMHU.

Staff Behavior

- Incarcerated people reported rampant abuse by staff, including physical assaults and observations of a retaliatory environment across the general population units, the SHU, and the RMHU.
- Incarcerated people alleged a significant number of instances of racialized abuse and discrimination including derogatory language and unequal treatment.

Grievances

- Incarcerated people at Marcy expressed a lack of confidence in the grievance process. Incarcerated people also reported delays and inattentiveness to grievances and fear of retaliation.
- People in the RMHU reported not receiving responses to grievances.

Discipline

- Incarcerated people in the general population units and the RMHU expressed little confidence in the fairness of the disciplinary process at Marcy.
- Incarcerated people reported being regularly held for more than 15 days in the Marcy SHU.
- The Marcy RMHU seemed to be operating outside of HALT guidelines. Concerns included a lack of congregate recreation, insufficient out of cell time, insufficient group programming and activities, and the shackling of incarcerated individuals during programs.
- Incarcerated people were being held in the SHU well past the 15-day limit imposed by HALT and reported a lack of access to out of cell programming in the SHU. During that excess time, they allegedly were deprived of basic privileges, such as property, out-of-cell time, programming, and commissary access, that would be available to them in an RRU.
- Nine of the 16 people in the SHU at the time of CANY's visit were on the Office of Mental Health caseload despite being in a special population category that is prohibited from placement in the SHU.

Material Conditions and Environmental Issues

- Incarcerated people in the general population units described inadequate temperature controls in housing units causing problems in both winter and summer weather.
- Some incarcerated people in the general population units reported outstanding maintenance needs.

Recommendations

Based on these findings, CANY makes the following recommendations.

Basic Provisions of Services

- DOCCS should assess commissary availability to identify items out of stock, the range of listed items available, and the effects of inflation on the pricing of items at the commissary.

Medical and Dental Healthcare

- The Legislature should pass a bill designating the New York State Department of Health as the oversight entity for all healthcare provided in DOCCS facilities.

Mental Health

- DOCCS and OMH should provide people in the RMHU access to at least seven hours of group out-of-cell programming and activities, seven days a week as required under the HALT law.
- DOCCS should remove people who are on the OMH caseload from the SHU as required under the HALT law and must ensure people who have spent 15 days in the SHU are removed as required by HALT law.

Programs and Recreation

- OMH should partner with DOCCS to ensure all people in the RMHU have access to at least 7 hours of daily out of cell programming and activities, enhancing the quality of mental health programming and individual treatment.
- DOCCS should continue to develop meaningful program opportunities for people in the SHU and the RMHU that inspire robust participation.
- DOCCS should make every effort to provide congregate recreation in the RMHU as required under the HALT law.

Staff Behavior

- The Office of Special Investigations (OSI) and Inspector General should investigate the widespread claims of abuse at Marcy, and make the findings and measures taken to address them reported to the public upon completion.²
- DOCCS should implement the recommendations made by the New York State Inspector General in the November 2022 report entitled “Racial Disparities in the Administration of Discipline in New York State Prisons.”³
- DOCCS should ensure that facility superintendents and other facility leaders review Correction Law § 146 (3)⁴ which grants CANY the authority to interview any incarcerated individual without fear of retaliation or adverse action against them for participating in the interviews.

Grievances

- DOCCS should assess what is causing reported delays in grievance responses and investigate claims of retaliation at Marcy. Retaliation for use of the grievance system is prohibited under DOCCS Directive 4040.⁵

Discipline

- DOCCS should ensure that no one is sent to the SHU or the RMHU for conduct that does not meet the sanction criteria under the law.
- DOCCS should incorporate procedural justice principles into all aspects of the due process for the SHU & the RMHU. Research has shown that individuals are more likely to cooperate with law enforcement when processes are fair, and they perceive they have been treated fairly.⁶
- DOCCS should ensure individuals understand the process and how decisions are made. The HALT law provides for the participation of incarcerated individuals in disciplinary hearings and access to legal representation.

2 Particularly relevant to the allegations of racially discriminatory treatment at Marcy are the findings in the Inspector General's recent report, “Racial Disparities in the Administration of Discipline in New York State Prisons,” November 2022, demonstrating Black incarcerated individuals were 22% more likely to receive a Misbehavior Report than their White counterparts during the years 2015-2020.

3 Lucy Lang, “Racial Disparities in the Administration of Discipline New York Prisons,” State of New York Offices of the Inspector General, November 2022. <https://ig.ny.gov/system/files/documents/2022/12/oig-doccs-racial-disparities-report-12.1.22.pdf>.

4 Correction Law § 146 (3), “The Correctional Association shall have the power to interview and converse publicly or confidentially with...any incarcerated individual...such interviews shall not be restricted by the Department or attended by anyone on behalf of the Department, nor shall there be any retaliation or adverse action taken by the Department or other state agency against anyone who agrees to speak with the Correctional Association.”

5 DOCCS Directive 4040 Section 701.6 Procedural Safeguards (b) “Reprisals prohibited. No reprisals of any kind shall be taken against an incarcerated or employee of good faith utilization of this grievance procedure.”

6 See TOM. R. TYLER, WHY PEOPLE OBEY THE LAW (2006) and Lorraine Mazerolle et al, Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queenstand Community Engagement Trial (QCET), 8J. Experimental Criminology 343 (2012).

- DOCCS should provide ongoing training and guidance for staff and incarcerated individuals as the implementation of the HALT law progresses.
- Both DOCCS and the Office of Mental Health should publish and adopt regulations in line with the requirements of HALT.

Material Conditions and Environmental Issues

- The Department should create an annual heat mitigation plan to ensure incarcerated individuals and staff have options available to stay cool, hydrated, and safe during high heat temperatures. The plan should include access to industrial fans, water, ice and additional access to cool showers. Commissaries should be fully stocked with personal fans prior to the beginning of summer. Additional measures should be taken such as monitoring temperatures in housing, program and industry areas; maintaining a list of incarcerated people and staff with medical conditions that make them more susceptible to heat and monitoring their well-being; increasing rounds and wellness checks; and providing shade on the exercise grounds.

Post-Visit Briefing

Background

On October 11 and 12, 2022, the Correctional Association of New York (CANY) conducted a monitoring visit to Marcy Correctional Facility, a medium-security men's prison in Marcy, NY. CANY's monitoring visit to Marcy was conducted as part of its oversight mandate pursuant to Correctional Law §146(3). CANY chose to visit Marcy after receiving an unusually large volume of correspondence, more than 25 letters, from individuals incarcerated at Marcy between the months of February and September. CANY also sought to monitor the implementation of the HALT law in mental health units such as the RMHU. The CANY visiting party included eight representatives who carried out a total of 117 interviews with incarcerated individuals: 75 individuals incarcerated in general population housing areas, 29 individuals incarcerated in the Residential Mental Health Unit (RMHU), 11 individuals incarcerated in the Special Housing Unit (SHU), and 2 individuals incarcerated in the Residential Crisis Treatment Program (RCTP). As of October 11, Marcy housed 909 incarcerated people. See Appendix B, Snapshot of Marcy, for additional information about the characteristics of incarcerated individuals at Marcy.

Methodology

CANY representatives held meetings with the Department of Corrections and Community Supervision (DOCCS) Executive Team, the Nurse Administrator and other medical staff, and staff from the State Office of Mental Health (OMH). CANY also held meetings with the Incarcerated Liaison Committee (ILC) and the Incarcerated Grievance Resolution Committee (IGRC), as well as representatives from employee unions New York State Law Enforcement Officers Union (Council 82), the New York State Public Employees Federation (PEF), and the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA). CANY conducted visual observations of housing units, the CSAT/ASAT/MAT programs, recreation areas, and academic and vocational programs.

CANY representatives deployed a variety of data collection methods. Individual respondents housed in the general population were interviewed using a 60-question general protocol. Individuals housed in the RMHU and RCTP were interviewed using a 14-question unit-specific protocol. Individuals housed in the SHU were interviewed using a 67-question unit-specific protocol. Meetings with staff and incarcerated groups followed a semi-structured interview guide and visual observations were documented using various note-taking methods.

Discussions of monitoring visit open-ended data often include numerical counts in parentheses that refer to the number of responses (instances) in the open-ended data that referred to the issue in question.⁷ These counts of instances are different from the sample sizes from individual questions presented in the monitoring visit closed-ended dataset.⁸

7 Each monitoring visit protocols form yields open-ended responses. This data comes from open-ended questions employed as part of the General protocols form, the Special Housing Unit (SHU) protocols form, and the Residential Rehabilitation Unit (RRU) protocols form. This data is either directly quoted or paraphrased in the third person from oral responses. Open-ended questions on the protocol forms help gauge incarcerated people's views and experiences on various aspects of imprisonment, in both general and specific terms. Moreover, open-ended questions provide incarcerated respondents the ability to describe the nuances of their experiences in ways valuable to data collection and analysis. Upon reception of this data, open-ended responses are tabulated by question, protocols form, and facility (in succeeding order of organization). Responses are then coded using emergent inductive and open coding approaches: a list of themes are developed based on the responses to questions asked of all interviewees, and not based on any individual interviewee's responses. Thus, the open-ended responses are inherently aggregated. All this data is coded by hand. The data from each question has been coded into an overarching list of themes and then into subthemes. Within this document, the numbers next to each theme and subtheme refer to the number of responses (instances) coded within them. These numbers should not be construed as observations from unique incarcerated people; rather they are a tally of each time an incarcerated person spoke to that theme during their interview.

8 Each monitoring visit protocols form yields closed-ended responses. This data comes from closed-ended questions employed as part of the General protocols form, the Special Housing Unit (SHU) protocols form, and the Residential Rehabilitation Unit (RRU) protocols form. Closed-ended questions on the protocols forms help gauge incarcerated people's views and experiences on various aspects of imprisonment, in both general and specific terms. Moreover, closed-ended questions provide the basis for quantitative, generalizable findings about experiences of incarceration across a prison, as well as across the DOCCS facilities. Upon reception of this data, closed-ended responses are tabulated by question, question type, form, and facility (in succeeding order of organization). Closed-ended responses are aggregated, and thus not based on any individual interviewee's responses. Closed-ended questions are usually expressed in the form of "Yes/No" binaries, sometimes with a "Not applicable" option. Other types of closed-ended questions are tabulated by categorical counts and numeric measurements of time or of instances.

Acknowledgements

We thank the leadership and staff of the NYS Department of Corrections and Community Supervision, NYS Office of Mental Health, and incarcerated individuals for their knowledge and assistance in supporting our visit.

We also acknowledge and thank CANY staff, Board members, and designees who devoted many hours to this report and monitoring visit.

Basic Provision of Services

Commissary

Incarcerated people reported that items in commissary were inconsistently available and sometimes unaffordable; they reported a lack of fresh fruit and vegetables.

General Population Units	Yes	No	Total
Is the commissary adequately stocked with items on a regular basis?	0 0%	62 100%	62 100%

Qualitative responses to open-ended questions provide further detail.

- Incarcerated people in general population units overwhelmingly reported problems with the commissary (68 instances), primarily citing items frequently out of stock and on backorder and increasing prices.⁹ Some individuals also indicated a lack of fresh and healthy food options, noting that fruits and vegetables had recently been added yet the changes were not sufficient.
- Open-ended data from RMHU revealed concerns about commissary (7 instances) including items being reportedly out of stock and restricted access due to loss of privileges.

Recommendation

- DOCCS should assess commissary availability to identify items out of stock, the range of listed items available, and the effects of inflation on the pricing of items at the commissary.

⁹ While CANY has uncovered problems with the accessibility of goods from the commissary across several prisons, Marcy's responses were starkly more negative: (0%, n=62) reported that the commissary was adequately stocked with items on a regular basis as compared to 28% (n=82) at Bare Hill in March 2022; 52% (n=44) at Elmira in April 2022; and 21% (n=63) at Albion in June 2022.

Packages

Incarcerated people reported experiencing delays, missing items, and denials of packages. People described the package room as a source of contention and harassment.

- Open-ended data from general population units revealed that incarcerated people reported frequent problems with packages (16 instances), often citing recent changes enacted per Directive 4911A, the new package policy.¹⁰ Reported problems included delays leading to perishables expiring and other issues, items having gone missing, and full denials of packages rather than having separated out approved and non-approved items.
- Several individuals in general population units reported that after raising package issues with staff they suffered retaliation, experiencing verbal and physical harassment and threats. One individual described package room staff’s behavior by saying, “They take out personal issues on someone by taking their food and bragging about it to their face.” Another described being forcefully dismissed at the package room: “When I ask about items missing [I’m] told I need to ‘get out or else [I’m] going to get sprayed””
- Open-ended data revealed reported problems with packages in the RMHU (4 instances) including delays and outright denials. One individual shared his frustration, “You know what it does to a mentally ill person to not get your package or be given [your] package for a long period after it was delivered? It makes people stressed out. It makes people act out.”

Food

People expressed dissatisfaction with the food quality and an inability to meet their dietary needs at Marcy. There were allegations of denied access to the mess hall for failure to meet grooming standards, adversely impacting Black incarcerated individuals. People reported that short time limits to eat were sometimes imposed through threats and use of force.

General Population Units	Yes	No	Total
Are you receiving three meals per day in adequate portions?	40 65%	22 35%	62 100%

Qualitative responses to open-ended questions provide further detail:

- Many individuals in general population units reported low quality food in the mess hall (19 instances) and a smaller group cited issues accessing food consistent with

¹⁰ See DOCCS Directive 4911A at <https://doccs.ny.gov/system/files/documents/2022/04/4911a-draft-version.pdf>. DOCCS Directive #4911: “Packages and Articles Sent to Facilities.” <https://doccs.ny.gov/system/files/documents/2022/04/4911a-draftversion.pdf>.

their dietary restrictions (4 instances) including high fiber, soft foods, and plant-based diets. Respondents frequently cited a lack of meat and an overuse of soy products as well as being served food that was bland and often cold. Some individuals mentioned supplanting meals with food from the commissary, while others relied on the mess hall, despite its issues, because they did not have money for commissary.

- Respondents in general population units frequently cited issues accessing the mess hall (13 instances). Individuals described officers turning them away from the mess hall line seemingly at random, often citing minor grooming or clothing-related reasons such as untied shoes, untucked shirts, or hair that was too long. By the time they could rectify the issue, if possible, they were out of time and were effectively denied the opportunity to eat.
- Several Black individuals described a racially discriminatory practice by which they were repeatedly turned away from the mess hall for wearing their hair in cornrows or braids.
- When CANY monitors raised the issue of mess hall access to executive leadership, the Superintendent acknowledged having heard about it from the ILC. In response, he had instructed the captain in charge of the mess hall line to allow individuals to eat first then rectify any appearance-related issues afterward. The Superintendent and executive team showed a willingness to revisit the issue considering the monitors' findings that problems persisted.
- Incarcerated people also reported being rushed and not having enough time to eat (14 instances). Respondents estimated the time they had to eat as anywhere from 2 to 10 minutes, many citing 3-5 minutes only. One individual described the problems that occur as a result of rushing, "people are choking and have stomach issues." Another explained that he has advanced gum disease which makes it harder to eat quickly. He described that the officers "put hands on you if you don't get up quickly enough in the mess hall."
- Several incarcerated individuals expressed not wanting to go to the mess hall for fear of physical abuse and discipline based on what they had previously experienced and witnessed.

Phone Calls and Tablets

People reported good access to phones and tablets in general population units at Marcy, however, people in the RMHU complained of a recent reported rule restricting tablet access to evenings only.

General Population Units	Yes	No	Total
Do you have access to phone calls, either by using the phones or through a tablet?	51 96%	2 4%	53 100%

General Population Units	4-7 Times	More Than 7 Times	Total
How many times per week are you able to access the phones?	3 6%	45 94%	48 100%

- Overwhelmingly, incarcerated people in general population units confirmed access to phone calls (96%, n=53) more than 7 times per week (94%, n=48) and in-person visits (96%, n=47).¹¹

Special Housing Unit	Yes	No	Total
Are you able to access phone calls, either through the tablet or other means while in the SHU?	9 100%	0 0%	9 100%

Qualitative responses to open-ended questions provide further detail:

- While the majority of respondents in the SHU confirmed access to phone calls, either through the tablet or other means, there was some reported dissatisfaction with the tablets (4 instances); individuals cited that they frequently broke and the content was limited.
- People incarcerated in the RMHU expressed frustrations with phone and tablet access (12 instances). Tablets were reportedly frequently broken. They reported that recently morning access to tablets was eliminated and they were being distributed during the evenings only.
- Some incarcerated people raised concern that the change in access times prevented them from calling their attorneys and other service providers during business hours.

¹¹ Respondents at Marcy reported access to phone calls and in-person visits at a higher rate than at prisons recently visited by CANY. At Marcy, 96% of respondents (n=53) reported access to phone calls compared to 89% (n=47) at Elmira in April 2022 and 92% (n=59) at Albion in June 2022. At Marcy, 96% (n=47) of respondents reported access to in-person visits compared to 89% (n=37) at Elmira in April 2022 and 79% (n=57) at Albion in June 2022.

Visits

Incarcerated people reported good access to visits in general population units at Marcy.

General Population Units	Yes	No	Total
Do you have access to in-person visits?	45 96%	2 4%	47 100%

- Overwhelmingly, incarcerated people in general population units confirmed access to in-person visits (96%, n=47).¹²

Medical and Dental Healthcare

Incarcerated people reported being unsatisfied with the quality and accessibility of healthcare services at Marcy. Staffing vacancies in medical, nursing, and dental departments negatively impacted access to care and contributed to long wait times for incarcerated individuals at Marcy. People in general population units shared concerns with timely responses to emergencies and long waits for treatment.

General Population Units	Yes	No	Total
(Medical) If you have requested medical or dental care have you received a response?	42 71%	17 29%	59 100%
(Dental) If you have requested medical or dental care have you received a response?	22 49%	23 51%	45 100%
Do you have unaddressed medical or dental needs?	41 87%	6 13%	47 100%

General Population Units	Yes	No	N/A	Total
If you have received medical care, was the level of care adequate?	11 29%	24 63%	3 8%	38 100%
If you have received dental care, was the level of care adequate?	3 19%	9 56%	4 25%	16 100%
Are you receiving medication as prescribed, including schedule and dosage?	25 50%	11 22%	14 28%	50 100%

¹² Respondents at Marcy reported access to phone calls and in-person visits at a higher rate than at prisons recently visited by CANY. At Marcy, 96% of respondents (n=53) reported access to phone calls compared to 89% (n=47) at Elmira in April 2022 and 92% (n=59) at Albion in June 2022. At Marcy, 96% (n=47) of respondents reported access to in-person visits compared to 89% (n=37) at Elmira in April 2022 and 79% (n=57) at Albion in June 2022.

General Population Units	2 Days	1 Week	2 Weeks	1 Month	Longer Than 1 Month	Total
(MEDICAL) If no, how long has your request been outstanding?	2 20%	0 0%	0 0%	2 20%	6 60%	10 100%
(DENTAL) If no, how long as your request been outstanding?	0 0%	0 0%	0 0%	1 7%	14 93%	15 100%
(MEDICAL) If yes, how long did it take to get care?	4 18%	2 9%	2 9%	1 5%	13 59%	22 100%
(DENTAL) If yes, how long did it take to get care?	0 0%	0 0%	0 0%	1 11%	8 89%	9 100%

- Marcy provides on-site healthcare services for patients including a Medication Assisted Treatment (MAT) program. Marcy was the first MAT pilot program in the state, serving 50 patients, half of whom were receiving buprenorphine and the other half methadone. At the time of CANY’s visit, they were preparing for an expansion to 200 total patients.
- At the time of the visit, Marcy’s medical and dental divisions were experiencing significant staff vacancies. The executive team told CANY monitors that medical staffing consisted of a nurse administrator, 2 nurse practitioners, and 12 nurses. Seven nurse positions were vacant, 5 of which were being filled by agency nurses. The nursing administrator identified a need for more nursing staff particularly considering the planned expansion of MAT. One doctor had resigned in September and the other retired in June, leaving no doctor at the facility. Dentist and hygienist positions were also vacant. Prison administrators explained that staff vacancies were leading to longer wait times for procedures.

Qualitative responses to open-ended questions provide further detail:

- Incarcerated people in general population units reported experiencing poor-quality healthcare and difficulty accessing care at Marcy. In open-ended data, incarcerated people widely reported long waits for treatment (26 instances), substandard quality of care (41 instances), and unaddressed medical or dental needs (41 instances).¹³ In some cases, incarcerated people reported having stopped submitting sick call slips altogether fearing intimidation by security officers. They reported feeling that inadequate care was not worth the effort or risk.
- In open-ended data, incarcerated people in general population units also reported problems with emergency healthcare response (14 instances), citing a lack of adequate response to serious incidents such as seizures, stroke, and mental health crises.

¹³ A lesser share of Marcy respondents, 49% (n=45), cited they have received responses to their dental requests as compared to recent visits to comparable facilities 58% (n=24) at Elmira in April 2022 and 73% (n=51) at Albion in June 2022. A greater share of Marcy respondents, 87% (n=47) have unaddressed medical or dental needs as compared to 50% (n=86) at Bate Hill in March 2022, 50% at Elmira (n=38) in April 2022, and 61% (n=56) at Albion in June 2022.

- People incarcerated in the SHU reported receiving a response when requesting medical care, but no response when requesting dental care.
- People incarcerated in the RMHU reported long waits for medical and dental treatment (7 instances), citing sick calls going unanswered and an overall lack of communication from medical.
- A smaller subset of responses from the RMHU cited a lack of dental care (5 instances), with one individual describing having placed requests for a filling and cleaning in the last 6 months to no avail.

Special Housing Units	Yes	No	Total
If you have requested medical care, have you received a response?	6 75%	2 25%	8 100%
If you have requested dental care, have you received a response?	0 0%	5 100%	5 100%
If you received medical care, was the level of care adequate?	2 50%	2 50%	4 100%
Do you have unaddressed medical or dental needs?	4 50%	4 50%	8 100%

Recommendation

- The Legislature should pass a bill designating the New York State Department of Health as the oversight entity for all healthcare provided in DOCCS facilities.

COVID-19

Incarcerated individuals reported access to COVID vaccine and boosters at Marcy.

General Population Units	Yes	No	Total
Have you been fully vaccinated for COVID-19, meaning either two doses of the Pfizer/ Moderna vaccine or one dose of the Johnson & Johnson vaccine?	37 64%	21 36%	58 100%
If you are eligible for a booster shot, have you taken it?	23 50%	23 50%	46 100%

- Medical staff indicated that there were no active cases of COVID-19 as of October 11, 2022. The executive team reported that the incarcerated population at Marcy has been vaccinated at a slightly lower rate, 49%, than the overall DOCCS population, 53%. Marcy was offering second booster shots to all interested individuals. The most recent vaccine clinic had occurred in August 2022.

Mental Health

Reported experiences of mental health treatment in the RMHU and the SHU were mixed. People in general population units reported OMH being inaccessible and a lack of programs.

General Population Units	Yes	No	Total	
Are you on the OMH caseload?	20 37%	34 63%	54 100%	
Have you attempted to hurt yourself in this prison?	3 7%	39 93%	42 100%	
Have you experienced or witnessed an emergency medical or mental health situation in this prison?	24 55%	20 45%	44 100%	
General Population Units	Yes	No	N/A	Total
Are you getting the mental health programs you need?	13 32%	21 51%	7 17%	41 100%

- Marcy operates a 100-bed maximum security Residential Mental Health Unit¹⁴ (RMHU) that includes a Residential Crisis Treatment Program¹⁵ (RCTP), a four-cell observation unit for individuals experiencing mental health crisis. As of October 11, 2022, 75 people were housed in the RMHU and 4 people were housed in the RCTP.
- Marcy is a Level II OMH facility containing RMHU and RCTP housing units designated Level I. OMH leadership described to CANY that they had 44 employees currently assigned to Marcy. There were 3-unit chiefs total, one each for the RMHU, SOTP, and general population. There were 3 psychiatrists seeing patients via video

¹⁴ According to 7 CRR-NY 320.2, the RMHU “is a program that includes a separate housing location within a correctional facility designed to address the corrections-based therapeutic treatment of [incarcerated individuals] currently diagnosed with a serious mental illness who, due to their behavior, would otherwise be serving a confinement sanction in a special housing unit (SHU) or separate keeplock housing unit. These [incarcerated individuals] often present with a complex interplay of antisocial behaviors and psychological factors. The unit is designed to meet the therapeutic needs of the [incarcerated individuals] while maintaining appropriate safety and security on the unit. Although an RMHU is not operated as a disciplinary housing unit, in light of the security concerns associated with the behaviors that resulted in their confinement and other sanctions, [incarcerated individuals] on the unit are subject to limitations on the quantity and type of property they are permitted to have in their cells and are afforded access to programs that are more restrictive than those afforded general population [incarcerated individuals], in order to maintain security and order on the unit. After a brief orientation period and absent exceptional circumstances, in addition to exercise, [incarcerated individuals] are offered four hours of structured out-of-cell therapeutic programming and/or mental health treatment on a daily basis, except on weekends and holidays.” According to Subdivision 1 of Section 401 of the correction law, people in the RMHU must receive all of the protections of Residential Rehabilitation Units (RRUs), including access to at least seven hours of daily out-of-cell group programming and activities.

¹⁵ According to the Memorandum of Understanding between DOCCS and OMH, “a Residential Crisis Treatment Program (RCTP) consists of mental observation cells and a dorm area where [incarcerated people] can be admitted, observed and treated 24 hours a day. These [incarcerated people] receive services from psychiatrists, non-medical clinical staff, psychiatric nurses, and recreation staff. Security is provided by DOCS correction officers. These [incarcerated people] are either returned to their respective prison milieu or committed to the inpatient unit of CNYPC, depending on each [incarcerated person’s] mental health needs.” “The RCTP consists of dormitory beds and observation rooms, separate from the general population, which provide a secure, structured environment for patients who are a danger to self or others due to mental disorder. Services of this program include screening and assessment, crisis intervention, medication evaluation, medication stabilization, individual psychotherapy, and the completion of examinations for commitment proceedings under CL Section 402.”

teleconference with one additional psychiatrist slated to start in November. In general population units, there were 3 social workers, one social work vacancy, one pre-release coordinator, and an administrative assistant. A psychiatric nurse practitioner was shared between general population units and the SHU. The RMHU had 12 clinicians including an on-site contracted psychiatrist, a social work supervisor, several social workers, and mental health nurses. There were also 3 clinical vacancies in the RMHU.

- According to OMH staffing data CANY received on February 3, 2023, OMH at Marcy was fully staffed except for one clinician vacancy in Marcy Main and one clinician vacancy in the RMHU.
- On October 11, OMH staff assigned to Marcy reported a caseload of between 250-290 individuals. The executive team provided data indicating as of October 11, there had been six incidents of self-sustained injuries and six suicide attempts in 2022.
- During meetings with the OMH unit chief and forensic unit chief, CANY learned that OMH staffing in the RMHU has increased since the HALT law was enacted. OMH leadership described staffing levels as adequate; however, they mentioned needing more staff on site to prescribe medication. They elaborated that they were richly staffed and had manageable caseload sizes, while noting that the need for their staffing levels was not due to having a high volume of patients but about the intensity of people's mental health needs in the RMHU.

Qualitative responses to open-ended questions provide further detail:

- Open-ended data revealed perceptions that mental healthcare reportedly lacks quality (13 instances) as well as some reported problems with the accessibility of mental healthcare (7 instances) and medication (5 instances).
- Incarcerated people's concerns about deficiencies in care included infrequent therapy sessions and minimal programming.
- Individuals in general population units described difficulties accessing care ranging from general unresponsiveness to the perception that you must "say that you're going to kill yourself" to be able to speak to a counselor.
- Some individuals in general population units expressed frustration that they were reportedly taken off essential psychiatric medication or not receiving medication for some aspect of their diagnosis.
- Open-ended data from the RMHU and RCTP revealed an even split between responses citing adequate mental healthcare (11 instances) and those describing inadequate mental healthcare (11 instances).
- Incarcerated people in the RMHU shared positive statements such as "the staff are trying to help," "the therapist comes once a month and the psychiatrist comes to the cell once a month," and "the mental health programs are good."

- Individuals in RHMU also described a range of reported problems including confidentiality having been broken between OMH and security staff, lacking access to OMH staff, lacking access to call the crisis line, and delays and deficiencies in OMH’s response to incidents of self-harm and suicide.

Special Housing Units	Yes	No	Total
Are you on the OMH caseload?	5 45%	6 55%	11 100%
Are you getting the mental health programs you need?	3 38%	5 63%	8 100%
Do you have any unaddressed mental health needs?	4 50%	4 50%	8 100%
Have you attempted to hurt yourself in this prison?	0 0%	8 100%	8 100%

Qualitative responses to open-ended questions provide further detail:

- While incarcerated people in the SHU confirmed receiving the mental health programs they need, there were several reports of inadequate quality of care (7 instances), particularly emphasizing that OMH staff were inaccessible.
- Marcy Executive Team representatives reported that 9 out of 16 people in the SHU (or 56%) were on the Office of Mental Health caseload.

Recommendation

- DOCCS and OMH should provide people in the RMHU access to at least seven hours of group out-of-cell programming and activities, seven days a week as required under the HALT law.
- DOCCS should remove people who are on the OMH caseload from the SHU as required under the HALT law and must ensure people who have spent 15 days in the SHU are removed as required by the HALT law.

Programs and Recreation

Marcy Correctional Facility offers a wide variety of programs which demonstrate DOCCS’ commitment to providing high quality rehabilitative offerings. Staffing shortages and long waitlists for enrollment complicated the success of programming. Incarcerated people reported that the RMHU did not offer sufficient or engaging programs and other services. Incarcerated people reported that the SHU was not offering adequate access to out-of-cell time and programs or stimulating recreational activities.

General Population Units	Yes	No	Total
Do you have access to the academic and vocational programs you need?	31 57%	23 43%	54 100%

- At the time of the visit, Marcy offered vocational training in Building Maintenance, Custodial Maintenance, Electrical Trades, Horticulture, Masonry, Painting, and Small Engine Repair. The General Business program was on hold because of an instructor vacancy. Marcy operates morning and afternoon vocational sessions with a maximum of 12 participants enrolled in each session. Marcy program leadership reported that the average time spent in a vocational program is approximately six months and that participants are prioritized by release date, allowing for individuals closest to their release date to enroll in a program. The Electrical Trades program carried the longest waitlist consisting of 56 prospective students. The next longest waitlist was 43 students waiting for Building Maintenance followed by 24 waiting for Custodial Maintenance, 21 for Horticulture, 16 for Painting, and 9 for Masonry. Waitlist figures were not provided for Small Engine Repair or General Business.
- Marcy offered industry programs in automotive maintenance repairing DOCCS vehicles at Marcy and Mid-State facilities, composting, food production, landscaping, and recycling.
- Marcy offered academic training through the High School Equivalency (HSE), in-person grantfunded college classes through a partnership with Mohawk Valley Community College enrolling 20 students, and correspondence classes with colleges in other locations.¹⁶ Programs staff shared that there were substantial waiting lists for academic programs including 68 individuals waiting for ABE 1, 45 for ABE 2, 88 for Pre-HSE, and 18 for HSE.
- Representatives from the ILC and IGRC expressed concerns about a reported lack of opportunities to be meaningfully engaged, especially for the younger population, and low work wages.¹⁷ They emphasized that there were no programs led by community organizations or opportunities for peer leadership.
- A staff member lamented the outdated nature of vocational and transitional services at Marcy and across DOCCS. She recounted sharing with the Superintendent her ideas for modernizing programming, such as offering in-demand certifications like the commercial driver's license.¹⁸ She reported that the Superintendent had relayed her recommendations to Central Office but that no changes had been made.
- DOCCS data from a February 27, 2022, Freedom of Information Law (FOIL) request showed that the program service staffing level was 76% filled with 47.6 out of a recommended 62.7 staff positions filled. There were five vacancies in guidance

¹⁶ As of February 2022, 15 out of 78 program staff positions at Marcy were unfilled, with the highest number of vacancies in Academic & General Education including 4 teacher vacancies. (cite DOCCS staffing foil?)

¹⁷ A smaller share of respondents at Marcy (57%, n=54) reported having access to the academic and vocational programs they needed as compared to recent data collected from Bare Hill in March 2022 (81%, n=69), Elmira in April 2022 (69%, n=48), and Albion in June 2022 (70%, n=63).

¹⁸ Governor Hochul included in the 2022 State of the State Book a plan to launch a new vocational program for commercial driver's license training in DOCCS facilities. Details of the scale and scope of the initiative have yet to be released.

services including one ORC and four administrative staff positions. Marcy had 4.4 vacancies in academic and general education and one vacancy in vocational education, all of which were teaching positions.

- Marcy Executive Team members reported that there had not been any changes in RMHU programming since the implementation of the HALT Solitary Confinement Law. DOCCS and OMH administrators reported that people in the RMHU have access to four hours of out-of-cell programming per day, five days a week and no out-of-cell time on weekends. Specifically, Monday through Friday people are offered two hours of out-of-cell programming in the morning and two hours of out-of-cell programming in the afternoon, and on Saturdays and Sundays there is no out-of-cell programming. Recreation takes place in a pen behind each individual's cell.
- The Executive Team indicated that the recreation pens in the back of the cell were being left open for longer than they were before HALT, including three hours during weekdays and seven hours on the weekends. The executive team indicated that individuals that have achieved Level III progress are afforded congregate recreation. At the time of the visit, only three people were designated as Level III.
- The executive team indicated that the following programs are offered in the RMHU: ABE and pre-HSE, ASAT, IDDT, ART, and SOP. There are no vocational or work programs in the RMHU. The OMH Unit Chief mentioned that RMHUs at other facilities allow for incarcerated people to engage in more expanded program offerings and opportunities for congregate activities such as work assignments, congregate meals, and movies in the evenings.
- OMH representatives described that people incarcerated in the RMHU are always escorted when moving throughout the facility; people in levels I and II are in leg restraints during programs, with some individuals placed in therapeutic cubicles in response to behavioral incidents in the classroom.

Qualitative responses to open-ended questions provide further detail:

- Incarcerated people in general population units cited several reasons for dissatisfaction with programs including ineligibility (7 instances) and wait lists.
- While some incarcerated people in RHMU reported adequate experiences with programs (2 instances), there were also reports of dissatisfaction with programs (4 instances), not being offered or being denied programs (4 instances), and individuals refusing to go to programs (9 instances). Respondents shared that rather than completing valuable therapeutic programming, they were doing puzzles and discussing news articles.

Special Housing Units	Yes	No	Total	
Do you have at least three hours of out of cell programming per day? (Can include individual or group programming)	2 20%	8 80%	10 100%	
Do you have least one hour of out of cell congregational recreation per day (i.e., with other incarcerated people)	2 20%	8 80%	10 100%	
Special Housing Units	No restraints during programs	Shacked for Showers	Shacked for Showers	Total
During programs, are any of these restraints used:	1 33%	1 33%	1 33%	3 100%

- Recreation in the SHU is offered alone in single recreation pens at the end of the SHU gallery.
- The executive team reported that people incarcerated in the SHU are offered Advanced Aggression/Cognitive Behavioral Therapy (CBT) and cell study if they are enrolled in academic programs. Programming is offered in single-file restart chairs on a SHU tier.
- At the time of CANY’s visit, staff reported that no one in the SHU came out of their cell for programming or recreation.

Qualitative responses to open-ended questions provide further detail:

- Incarcerated people in the SHU cited several reasons for not going to recreation (9 instances) including not wanting to be alone in a “cage,” fear of staff abuse, cold temperatures, and having to choose between using the tablet and going to recreation.

Recommendation

- OMH should partner with DOCCS to ensure all people in the RMHU have access to at least 7 hours of daily out of cell programming and activities, enhancing the quality of mental health programming and individual treatment.
- DOCCS should continue to develop meaningful program opportunities for people in the SHU and the RMHU that inspire robust participation.
- DOCCS should make every effort to provide congregate recreation in the RMHU as required under the HALT law.

Staff Behavior

Incarcerated people reported allegations of staff abuse including physical assaults and observations of a retaliatory environment across the general population units, the SHU, and the RMHU. There were a high number of reports of racialized abuse and discrimination including derogatory language and unequal treatment.

General Population Units	Yes	No	Total
Have you seen or been personally subject to verbal, physical, or sexual abuse by staff at this prison?	51 80%	13 20%	64 100%
Have you seen or experienced racialized abuse by staff (slurs, stereotyping, discrimination, etc.) at this prison?	37 67%	18 33%	55 100%

Qualitative responses to open-ended questions provide further detail:

- Open-ended data indicated a higher instance of staff abuse (111 instances) at Marcy as compared to other facilities CANY has visited recently.¹⁹ Respondents in general population units detailed experiencing or witnessing a range of abusive behaviors by staff, such as physical assaults in locations where cameras are absent including between the gates, in vans, and in showers. They also described staff engaging in verbal harassment and using pepper spray. One individual described, “Physical abuse is rampant; the CO told me when I got here this is a ‘hands-on facility,’ we’re going to put hands on you if we don’t like what you’re doing.” Another stated, “Vibes in this jail with staff are off - they brag and intimidate us about the number of people they’ve beat or sprayed.”
- ILC representatives cited a pattern of staff regularly engaging in physical abuse targeting incarcerated young adults.
- CANY monitors observed a pervasive culture of fear and retaliation at Marcy. On the second day of CANY’s visit, several incarcerated individuals confided in CANY monitors that staff had walked through the housing units the night prior announcing threats of physical harm in retaliation for speaking with CANY.
- Interview data also indicated a higher instance of alleged race-based abuse and discriminatory treatment than on recent CANY visits (44 instances).²⁰ Incarcerated people cited the frequent use of racial slurs, unequal treatment of Blacks and Hispanics, and threatening comments about people of different races spending time together. While most of the verbal abuse reported was directed at Black people, incarcerated individuals also reported slurs and derogatory comments made toward Jewish and Asian people.

¹⁹ 80% of respondents at Marcy (n=64) cited having seen or been personally subject to verbal, physical, or sexual abuse by staff compared to 58% (n=104) at Bare Hill in March 2022 and 23% (n=48) at Elmira in April 2022.

²⁰ 67% of respondents at Marcy (n=55) cited having seen or experienced racialized violence by staff compared to 55% (n=98) at Bare Hill in March 2022, 20% (n=46) at Elmira in April 2022, and 43% (n=60) at Albion in June 2022.

- Relatedly, there were 11 instances of incarcerated people in general population units reporting having experienced abuse and discrimination based on their appearance, most frequently being turned away in the mess hall line for having cornrows or braids.
- Incarcerated people also reported poor treatment by security staff (50 instances), citing a culture of degradation and collective punishment. Open-ended responses highlighted alleged instances of bullying, using dehumanizing language, and removing communal items for long periods of time such as a stove, microwave, and hot water heater.
- Some respondents described having mixed experiences with staff (12 instances). One individual stated, “Some CO’s are cool and others go out of their way to do us harm.” Others described the importance of staying out of trouble in a tense environment (10 instances).
- A smaller group of respondents cited adequate experiences with staff (8 instances), such as one individual who stated, “They don’t bother me, I’m 68 and quiet,” and another who expressed, “I’ve been treated okay.”
- Incarcerated people described staff inadequately responding to emergencies or mental health situations (17 instances). One individual stated, “They respond quickly to a fight but not to anything else; they will let you bleed or seize out.” Others cited staff assaulting incarcerated people and not offering them medical treatment including the opportunity to go to an outside hospital. Incarcerated people also reported staff refusing wheelchair access and diminishing a mental health crisis as someone on drugs rather than in need of mental healthcare.
- Executive team members reported that the RMHU is the only housing unit at Marcy currently equipped with stationary cameras. They believe they are “next in line” for additional stationary cameras for the remaining housing units due to the number of unusual incidents recently reported at the facility. They cited using body cameras on a very limited basis a few years ago as a pilot program in the RMHU. These cameras have not been used since and a reason was not provided.
- Open-ended data revealed a range of perceptions of staff among individuals incarcerated in the RMHU including three instances of mixed experiences, nine instances of adequate experiences, and nine instances of poor treatment by staff. Allegations of poor treatment included staff tampering with property and food, false disciplinary tickets, staff assaults and use of pepper spray on incarcerated people. One individual described staff treatment as “super bad - they have no regard for OMH patients...they lead people to bug out.”
- Several respondents in the RHMU cited violence and abuse by prison staff (13 instances). Respondents recounted incidents including staff engaging in random assaults, spraying mace, and verbal putdowns.

- Executive team members reported employing a total of 370 security staff and cited a security staff shortage saying they needed approximately 12 to 15 more officers. The executive team provided data identifying 19 security staff vacancies. DOCCS FOIL data from February 27, 2022 showed that Marcy lacked one lieutenant and 21.5 correctional officers with a total of 350.5 filled positions out of a recommended 373. This represents a 94% fill rate, in contrast to the 76% fill rate among program staff.

Special Housing Units	Yes	No	Total
Have you seen or been personally subject to verbal, physical or sexual abuse by staff in the SHU?	5 56%	4 44%	9 100%
Have you seen or experienced racialized abuse by staff (slurs, stereotyping, discrimination, etc.) in the SHU?	6 60%	4 40%	10 100%

Qualitative responses to open-ended questions provide further detail:

- Respondents’ experiences with staff in the SHU ranged from adequate (5 instances) to negative (6 instances). While one individual stated, staff are “respectful if [you] respect them,” others described being treated “like the scum of the earth” and “like we are animals if we respond or react.” Some individuals described allegedly experiencing assault by staff and being denied food and clothing while in the SHU.

Recommendation

- The Office of Special Investigations (OSI) and Inspector General should investigate the widespread claims of abuse at Marcy, with the findings and measures taken to address them reported to the public upon completion.²¹
- DOCCS should implement the recommendations made by the New York State Inspector General in the November 2022 report entitled “Racial Disparities in the Administration of Discipline in New York State Prisons.”²²
- DOCCS should ensure that facility superintendents and other facility leaders review Correction Law § 146 (3)²³ which grants CANY the authority to interview any incarcerated individual without fear of retaliation or adverse action against them for participating in the interviews.

21 Particularly relevant to the allegations of racially discriminatory treatment at Marcy are the findings in the Inspector General’s recent report, “Racial Disparities in the Administration of Discipline in New York State Prisons,” November 2022, demonstrating Black incarcerated individuals were 22% more likely to receive a Misbehavior Report than their White counterparts during the years 2015-2020.

22 Lucy Lang, “Racial Disparities in the Administration of Discipline New York Prisons,” State of New York Offices of the Inspector General, November 2022. <https://ig.ny.gov/system/files/documents/2022/12/oig-doccs-racial-disparities-report-12.122.pdf>.

23 Correction Law § 146 (3), “The Correctional Association shall have the power to interview and converse publicly or confidentially with ... any incarcerated individual ... such interviews shall not be restricted by the Department or attended by anyone on behalf of the Department, nor shall there be any retaliation or adverse action taken by the Department or other state agency against anyone who agrees to speak with the Correctional Association.”

Grievances

Incarcerated people at Marcy expressed a lack of confidence in the grievance process.

General Population Units		Yes	No	Total				
Have you filled a grievance at this prison?		26 39%	40 61%	66 100%				
If yes, has your grievance been resolved?		6 26%	17 74%	23 100%				
Is the grievance process fair?		2 6%	33 94%	35 100%				
General Population Units		Within 2 Days	Within 1 Week	Within 2 Weeks	Within 1 Month	Longer than 1 Month	I have not received a response	Total
If you filed a grievance at this prison, how long did it take to get a response?		2 9%	2 9%	3 14%	3 14%	5 23%	7 32%	22 100%

Qualitative responses to open-ended questions provide further detail:

- Open-ended data revealed several reasons incarcerated people reported having filed grievances including inadequate access to medical care and racial discrimination by staff.²⁴
- Incarcerated people expressed a lack of confidence in the grievance process, portraying it as biased or dysfunctional (18 instances) and lacking value (9 instances).²⁵ Individuals reported a history of grievances going unprocessed either by staff not circulating grievance forms or allegedly tampering with them upon receipt. One individual reported having filed seven grievances and not having received word that the Committee had received them. Another individual summarized the process this way: “the grievance system is a dead end here.”
- IGRC representatives reported that grievances only seem to go as far as the Superintendent level, as they very rarely receive responses from the Central Office Review Committee.
- Incarcerated people conveyed experiencing a high degree of alleged retaliation or fear of retaliation for filing grievances (25 instances). Alleged retaliatory actions included destruction of property, verbal harassment, and threats of physical abuse.

²⁴ ILC and IGRC representatives identified assaults by staff, package issues, and lack of adequate medical care as some of the most common reasons for grievances.

²⁵ A smaller proportion of respondents at Marcy conveyed confidence in the grievance process (6%, n=35) than at similar facilities CANY visited recently: 15% (n=48) at Bare Hill in March 2022, 24% (n=17) at Elmira in April 2022, and 25% (n=40) at Albion in June 2022.

- Respondents in RHMU expressed a few reasons for reportedly having filed grievances, including missing property and physical abuse by staff.
- A substantial number of individuals in RHMU expressed frustration over reportedly having not received responses to grievances (9 instances).

Recommendation

- DOCCS should assess what is causing delays in grievance responses and investigate claims of retaliation at Marcy. Retaliation for the use of the grievance system is prohibited under DOCCS Directive 4040.²⁶

Discipline

Incarcerated people in general population units and the RMHU reported viewing the disciplinary system as overused and unfair. Some respondents in the SHU reported problems with false claims of weapon possession and assaults on staff.

General Population Units	Yes	No	Total
Have you been subject to discipline at this prison?	18 39%	28 61%	46 100%
Is the disciplinary system fair?	2 6%	31 94%	33 100%

- The executive team indicated that the average stay for individuals in the RMHU was 9.7 months and asserted that the length of stay has decreased since the HALT law was implemented.

Qualitative responses to open-ended questions provide further detail:

- Respondents in general population units described a variety of disciplinary measures reportedly used at Marcy, including cube confinement, loss of basic services and privileges, loss of programs, and SHU sanctions.
- Incarcerated people in general population units described instances of alleged collective punishment for an individual’s actions. In one of the housing units, CANY monitors observed a communal stove from which the burners had been removed; they were informed by officers that the stove was a privilege and it had been revoked after some individuals were found smoking in the bathrooms.
- Several individuals in general population units cited a pattern of officers “setting them up” for discipline (10 instances) including staff allegedly physically assaulting incarcerated individuals as punishment then writing them a ticket for “assault on staff” and placing weapons in cubes.

²⁶ DOCCS Directive 4040 Section 701.6 Procedural Safeguards (b) “Reprisals prohibited. No reprisals of any kind shall be taken against an incarcerated or employee of good faith utilization of this grievance procedure.”

- Incarcerated people in general population units reported a lack of confidence in the disciplinary system, citing an unfair and biased process (12 instances) and arbitrary and unfair disciplinary measures (8 instances).²⁷ A smaller number (4 instances) described an adequate experience with the disciplinary system.
- Individuals incarcerated in the RMHU described experiencing a variety of disciplinary measures: restriction of property, packages, commissary, and access to educational programs as well as time in the SHU. One individual also described receiving “negatives” causing them to have to restart a particular program.
- While the data from the RMHU revealed some adequate experiences with discipline (2 instances), more respondents cited an unfair and biased disciplinary process (7 instances) with multiple individuals alleging falsified tickets. One individual recounted their experience of receiving multiple disciplinary tickets while actively in crisis and on suicide observation.
- Respondents shared reasons for being placed in the RMHU ranging from minor incidents such as “talking when not supposed to” to fighting. One individual expressed not knowing the reason he was there. In two instances, respondents reportedly felt they were being disciplined under a false pretense, by having weapons planted as retaliation.

Arrival in the SHU

Special Housing Units	Yes	No	Total
Since March 31 of this year, have you been in a SHU or other form of segregated confinement for longer than 15 consecutive days?	9 90%	1 10%	10 100%
Have you been in a SHU or other form of segregated confinement for a total of more than 20 days in the last 60 days?	4 57%	3 43%	7 100%
Did you have a hearing where you were sentenced to this current bid in the SHU?	9 90%	1 10%	10 100%
Were you told that you could have representation at your hearing by an attorney, paralegal, law student, or fellow incarcerated person?	10 91%	1 9%	11 100%
Were you provided an opportunity to make a phone call to your family or an attorney, or to speak to a fellow incarcerated person, to request such representation?	6 67%	3 33%	9 100%
Special Housing Units	Before	After	Total
If you did have a hearing where you were sentenced to this current bid in the SHU, did that hearing happen before or after you were placed in the SHU?	0 0%	9 100%	9 100%

²⁷ A smaller proportion of respondents at Marcy felt the disciplinary process is fair 6% (n=33) as compared to facilities CANY has visited recently: 11% (n=66) at Bare Hill in March 2022, 30% (n=20) at Elmira in April 2022, and 19% (n=37) at Albion in June 2022.

Special Housing Units	With a Mental Health Need	With a Mental Health Need, With a Disability	Total
How long were you in the SHU or segregated confinement before transfer to the RRU?	4 80%	1 20%	5 100%

Qualitative responses to open-ended questions provide further detail:

- Respondents disclosed a range of reasons for being placed in the SHU, the most common being weapons. In several cases, individuals reported being “set up” for discipline (8 instances) including what they characterized as false claims of weapon possession and assault on staff.

Recommendation

- DOCCS should incorporate procedural justice principles into all aspects of the due process for the SHU and the RMHU. Research has shown that individuals are more likely to cooperate with law enforcement when processes are fair, and they perceive they have been treated fairly.²⁸
- DOCCS should ensure individuals understand the process and how decisions are made. The HALT law provides for the participation of incarcerated individuals in disciplinary hearings and access to legal representation.
- DOCCS should ensure that no one is sent to the SHU or the RMHU for conduct that does not meet the sanction criteria under the law.

HALT Implementation

Special Housing Units	Yes	No	Total
Have you heard about the HALT Solitary Confinement Act?	7 78%	2 22%	9 100%

- As of October 11, the Marcy executive team representatives reported being out of compliance with the 15-day maximum stay in the SHU, offering that 14 out of 16 individuals in the SHU had been there longer than the statutory limit.

Recommendation

- DOCCS should provide training and guidance for staff and incarcerated individuals as the implementation of the HALT law progresses.

²⁸ See TOM.R. TYLER, WHY PEOPLE OBEY THE LAW (2006) and Lorraine Mazerolle et al, Procedural Justice, Routine Encounters and Citizen Perceptions of Police: Main Findings from the Queenstand Community Engagement Trial (QCET), 8J. Experimental Criminology 343 (2012).

- Both DOCCS and the Office of Mental Health should publish and adopt regulations in line with the requirements of HALT.

Material Conditions and Environmental Issues

High summer temperatures reportedly posed serious challenges to the health and comfort of incarcerated individuals at Marcy. Incarcerated people also reported a lack of working radiators and non-working showers.

General Population Units	Yes	No	Total
Are the equipment and fixtures in your cell or living area working properly? (toilet, lights, bed, etc.)	36 69%	16 31%	52 100%
Do you have access to clean drinking water outside of the commissary?	43 84%	8 16%	51 100%
Do you have access to clean drinking water?	23 42%	32 58%	55 100%

Qualitative responses to open-ended questions provide further detail:

- Open-ended data revealed a significant amount of reported temperature issues (30 instances) in general population units, describing summer indoor temperatures as “brutally hot” and “dangerous,” and noting a lack of working radiators to keep housing units warm in the winter.
- Incarcerated people also highlighted broken fixtures and appliances (16 instances), most often showers.

Recommendation

- The Department should create an annual heat mitigation plan to ensure incarcerated individuals and staff have options available to stay cool, hydrated, and safe during high heat temperatures. The plan should include access to industrial fans, water, ice and additional access to cool showers. Commissaries should be fully stocked with personal fans prior to the beginning of summer. Additional measures such as monitoring temperatures in housing, program and industry areas; maintaining a list of incarcerated people and staff with medical conditions that make them more susceptible to heat and monitoring their well-being; increasing rounds and wellness checks; and providing shade on the exercise grounds.



Corrections and Community Supervision

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

This responds to the Correctional Association of New York's (CANY) report on their visit to Marcy Correctional Facility on October 11th and 12th of 2022. The Department discusses below the programmatic and operational functions raised in their post visit report.

Programing

Marcy Correctional Facility is a Medium-Security General Confinement facility, which provides a wide range of programs to further the Department's mission of preparing individuals for release to be successful when they return to their communities. Marcy is yet another example of the efforts being taken state-wide to provide the population life-changing academic, vocational, and rehabilitative programs, highlighting opportunities that are not often seen behind prison walls. This approach has made the Department a national leader in corrections.

All facilities are continuously examined for programming opportunities in order to maximize the rehabilitative programs throughout the State based on demand and available resources. Incarcerated individuals are assigned Offender Rehabilitation Coordinators (ORC) who meet with them frequently to address a wide variety of needs and to ensure that they are appropriately prioritized to take programs that meet their established goals. All work and program assignments are made without regard to an incarcerated individual's age, race, religion, national origin, sex, sexual orientation, or non-violent political views. The Program Chair ensures that work assignments reflect, to the extent possible, the demographic composition of the facility's incarcerated individual population. The Program Committee places an incarcerated individual in an assignment deemed most appropriate for the individual and the facility.

Placement in therapeutic, vocational, and academic programs are made based on the incarcerated individual's earliest release date. When a program is at capacity, incarcerated individuals are given a choice of other vocational programs and are added to the program list for their chosen vocational program. Classes for these programs are filled based on an equitable evaluation of the individual's position on the required program list. Incarcerated individuals that are required to take certain programming are prioritized when such programming may have an impact on their liberty interests. Below is an overview of the rehabilitative programs currently available to individuals at Marcy Correctional Facility:

- Counseling - The Department's philosophy embodies a commitment to the development of the whole person. Comprehensive programming is made available to the incarcerated individuals so they may become aware of alternatives and choose to take charge of and assume responsibility for their own lives.
 - Aggression Replacement Training (ART) is a cognitive behavioral intervention program designed to assist individuals in improving social skills, moral reasoning, and coping with and reducing aggressive behavior by utilizing self-regulating exercises and mindfulness. Participants learn to understand what causes them to feel angry and act aggressively, as well as techniques to reduce anger/aggressive behavior, to self-regulate for ending "automatic" aggression, and to build skills that help make better choices.
 - Substance abuse treatment is provided in a number of modalities, including the Comprehensive Alcohol and Substance Abuse Treatment (CASAT) program. A Residential Substance Abuse Treatment (RSAT) program provides intensive, structured residential treatment for a minimum of six months, employing the therapeutic community model. Participants progress through the early stages of recovery with the potential for continued treatment upon release. Additionally, a Medication for Addiction Treatment (MAT) program allows eligible individuals to voluntarily complement their substance abuse treatment and commitment to recovery. MAT falls under the purview of Health Services.
 - Sex Offender Counseling and Treatment Program (SOCTP) is a comprehensive program of counseling and treatment for convicted sex offenders and other incarcerated individuals the Department identifies as likely to benefit from sex offender counseling and treatment based upon a study of their background. The SOCTP is offered to those who have been identified as low, moderate/high, and high risk to reoffend. Individuals are assigned a risk level for treatment using a comprehensive process that utilizes both actuarial tools and clinical assessment. Utilizing established best practice standards, an individualized treatment plan is created based upon static and dynamic risk factors that guide the individual's treatment.
 - Veterans Program – this program is designed to help incarcerated veterans become aware of their entitlements, benefits and community resources, and provide counseling to address service-related problems. Programs ensure that veterans obtain a copy of their DD214 Military Discharge papers and that appropriate referrals are made through the Veterans Administration (VA) for ongoing treatment, vocational training, education, housing, and employment when the veteran is released from incarceration. Therapeutic programs are provided to address readjustment issues with a focus on continuing substance abuse recovery, anger and aggression management, PTSD, and personal enhancement. Veterans are provided with community and VA referrals and contacts for re-entry planning. Veterans meet on a regular basis providing education, camaraderie and support to each other.

- Education – The Adult Basic Education Program is offered to provide individualized instruction. The goal of this program is to provide individuals with skills or competencies necessary to function successfully in contemporary society and to enable the participant to at least function at the sixth grade reading and mathematics level, while the PHSE and GED allow incarcerated individuals to work towards obtaining their Diploma. An Education Counselor is assigned to incarcerated individuals under the age of 21 that have been identified to receive special education and related services. Incarcerated Individuals under the age of 21 are provided an individual assessment of their academic needs and if warranted, the development of an Individualized Education Program (IEP). If they possess an IEP, their individual goals are met with appropriate individualized instruction.
 - Marcy Correctional Facility offers college level credited courses provided by Mohawk Community College. Qualified incarcerated individuals may obtain an Associate Degree. This program has been a positive attribute towards enhancing the student experience and supporting academic growth.
- Industry – Marcy Correctional Facility operates a regional recycling center that provides industrial training and marketable experience to incarcerated individuals. The training promotes the Department's overall mission to prepare incarcerated individuals for release through skill development, work ethic, respect, and responsibility. Incarcerated individuals are provided with an orientation where they are given direction and training regarding their activities and surroundings. The program operates a comprehensive recycling center that handles, processes, and markets recyclable materials received from other facilities as well as other agencies and municipalities within the region.
- Library – The General Library Program offers library services and programs in a manner similar to those offered by public libraries in the community. Materials are selected based on a systematic selection process designed to determine and meet library service standards and educational, informational, vocational, recreational, and re-entry needs of the Marcy Correctional Facility incarcerated population. General library services are available to all incarcerated individuals.
 - Law Library Program – Provides resources for legal research and preparation of legal papers. Legal assistance services are available to incarcerated individuals who are unable to do their own legal work. Incarcerated individuals who are law clerks and have been certified through a Department-sponsored legal research course, provide these legal assistance services or refer individuals to free legal service organizations in the community. Other services usually available through the Law Library Program include notary services, photocopying legal materials for a fee, typing services, and the provision of legal writing supplies.

- Recreation – At Marcy Correctional Facility there is a trend towards providing more individualized health and fitness for the incarcerated population. Incarcerated individuals may engage in organized sports games and weightlifting.
- Religious Services – Marcy Correctional Facility provides incarcerated individuals with the resources to practice any of the 54 religions currently authorized by the state in the interest of helping them spiritually and to apply religious principles in their daily lives. The Facility provides several religious services: access to chaplains, spiritual counseling, education, congregate worship, study of scripture, and Holy Day celebrations.
- Transitional Services
 - Phase One – An introductory phase provided to all entering the state correctional system. The goal is to assist incarcerated individuals with transitioning to incarceration and to begin preparing them for successful reentry to the community as law-abiding and productive citizens. This phase consists of the following courses: Relating to the correctional situation; Maintaining significant relationships and positive community ties; Developing work ethics; Decision making; Goal setting and time management, and socialization skills.
 - Phase Two – Thinking for a Change (T4C) Program -- is an integrated, cognitive behavioral change program designed for incarcerated individuals and delivered by trained staff in small group (12-15 participants) settings. The program is closed-ended and intended for the general population. It includes cognitive restructuring and developing social and problem-solving skills. Participants learn how to take change of their lives by taking control of their thoughts and feelings. T4C is a close-ended program consisting of three major components:
 - Cognitive Self Change – Participants learn that by paying attention to their thoughts and feelings, they can discover which ways of thinking and feeling cause trouble for them and others. In addition, they learn that their core beliefs and attitudes impact how they think and feel.
 - Social Skills – Participants learn skills that are used in situations involving interaction with other people. Good social skills get people what they want, as well as maximize positive responses and/or minimize negative responses from other people. Through role play, participants practice social skills and new ways of thinking that can steer them away from trouble.
 - Three Steps of Problem Solving:
 - Stop and Think – Keeping control of situations by thinking rather than by acting on emotions. Participants learn to identify thoughts, emotions and physical reactions that tell them they are in a problem situation (warning signs) and it is time to be quiet, calm down and get some space to stop and think.

- **Problem Description** – Participants learn to describe problems in objective terms and identify their risk reaction to those situations. They identify how their thoughts, feelings and physical sensations pose a risk of reacting in a way that makes the problem worse.
 - **Getting Information** – Setting goals, participants practice gathering information about a situation by considering the objective facts, others' thoughts and feelings, and their own beliefs and opinions. They use the information to state goals and to determine the preferred outcome of those situations.
- **Phase Three** – This phase is designed to assist in planning for reentry into society as crime free, productive citizens. Participants receive a "portfolio" to assist in organizing documents, such as birth certificates, social security cards, and resumes. They keep vocation and education certificates in one place, locating reentry strategies and plans, and preserving service referral information and employment related materials. The curriculum calls for them to prepare for Department staff to evaluate the following:
 - A release portfolio that will include vital documents, education and vocational training history, and a functional resume.
 - An examination of barriers to family relationships and a written plan that addresses issues likely to arise when returning to their family environment.
 - A "mock job interview" exercise to practice interviewing skills that also involve responding to difficult questions. In addition, they will learn how to dress for success and tailor their resume by matching skill sets acquired to meet the job description, etc.
 - A realistic six-month "job search plan" using their Education Achievement and Employability Profile Report as a tool/resource in preparing functional resumes and responding to an employer's job application.
 - A "recreation plan" to address personal wellness issues and family reintegration concerns.
 - Opioid Overdose prevention and rescue training is provided to all participants, and they are offered rescue naloxone kits to take home upon release.
- **Vocational Programs** – There are multiple vocational opportunities at Marcy Correctional Facility that provide marketable skills. The vocational programs offer a variety of disciplines for participants to obtain occupational titles in a trade that may bring value to themselves, their families, and to their returning communities. The following programs which are offered at Marcy Correctional Facility include painting, auto garage, small engine repair, building maintenance, custodial maintenance, electrical, masonry, and horticulture.
 - **Volunteer Programs** – Volunteers provide several programming opportunities at Marcy Correctional Facility for health, religious practice, higher education, substance abuse, life skills, re-entry, and visitor services. The volunteers that work with Marcy Correctional Facility are helpful in furthering the Department's mission.

Nutrition

The Department utilizes a standard statewide menu to provide incarcerated individuals with meals that meet their dietary needs, are nutritionally balanced, and provide adequate portions. A cycle menu has been developed with categories of menus accompanied by a standard portion list. Adherence to the standard, statewide menu and portion list assures nutritional adequacy. Menus are designed so that at least three meals (including two hot meals) are provided at regular mealtimes during each 24-hour period, with no more than 14 hours between the evening meal and breakfast meal. The food that is served at Marcy follows a statewide 8-week cycle menu. This menu is created within the Nutritional Service office and approved by a registered dietician. Food is randomly sampled monthly at the Office of Nutritional Services to ensure quality and consistency. Produce is delivered fresh two days a week and inspected to ensure quality. The menus are reviewed and approved by a registered dietician.

Alternative diets are available for incarcerated individuals for religious accommodations as well as those who have been identified to have a therapeutic need.

- Kosher Diet – A Kosher menu is available to incarcerated individuals who request kosher dietary consideration. This meal is provided after validation and verification of religious need by the Director of Ministerial Services.
- Therapeutic – Modified menus are designed to address therapeutic diet needs aimed at improving health outcomes. The modified menu is based on the general statewide menu utilizing as many of the same food items as possible. Food items are changed when necessary for therapeutic or production purposes. The modified menu is offered to incarcerated individuals.

The General Confinement Menu, when served according to the Department's approved standard portion chart, meet and/or exceed the Recommended Dietary Allowances and are nutritionally adequate for healthy adults. Sodium levels are closely monitored and must adhere to established product specifications before being purchased and placed on menus.

The Department strives to provide a variety of foods on all available menus, in relation to visual appeal, nutritional requirements, preference, and religious concerns. In most cases, when a meat entrée item is served, a non-meat alternative is also offered. Due to supply chain issues in the food industry, there have been occurrences where unavailable products have been temporarily substituted with available products. These isolated instances can have limited impact of variety for the duration of the product shortage.

To ensure that incarcerated individuals' concerns are heard, the Office of Nutritional Services conducts monthly QI meetings. As a result of these meetings, such changes as adjusting recipes based on feedback, removing unpopular items, and adding requested items have been made. In making these decisions, the broader impact of nutritional and religious considerations is taken into account for the macro facility population.

Incarcerated individuals at Marcy Correctional Facility receive up to 20 minutes to eat their food. Only when the incarcerated individuals at a table are finished eating, are they advised to exit the mess hall so another group may sit down to eat. Incarcerated individuals are expected to follow objective grooming and dress code standards. If an incarcerated individual is not in compliance, they are given a warning and allowed to enter the mess hall and participate in the meal. If they are found to be in violation again, they are sent back to their housing unit to correct the infractions and then allowed to return to the mess hall and participate in the meal. They are never denied the opportunity to receive a meal. Furthermore, the grooming standards are enforced on all incarcerated individuals irrespective and without regard to an incarcerated individual's race, religion, or national origin. No threats and or Uses of Force are made towards incarcerated individuals for wanting the allotted time in the mess hall. All Uses of Force are fully documented incidents that are reviewed by members of the Executive Team and the Superintendent.

Commissary

The commissary store is a privilege that provides incarcerated individuals the means to supplement the meals and personal items provided by the Department. Commissary vendors are selected via a competitive bid process. Marcy Correctional Facility makes every effort to ensure the entire population is able to purchase all items sold in the commissary. Stock levels are monitored daily. Marcy Correctional Facility maintains an adequate inventory of hygiene products that are supplied to the housing units. In addition to essential provisions provided upon intake, the facility provides personal hygiene items, such as toothpaste, toothbrush, and soap if the incarcerated individual is in need and makes a request. The commissary store may carry a wider variety of additional items depending on availability.

Unfortunately, commissary vendors and the Department have experienced the effects of ongoing national and local economic trends, inflationary forces, and supply chain pressures, that have impacted the economy as a whole. These obstacles have impacted the availability of goods as well as their costs. Marcy Correctional Facility staff take active measures to identify items from alternate vendors, when certain items may remain "out-of-stock" for an extended period of time. In order to mitigate these issues, and in compliance with New York State Finance Law, staff continuously work with vendors to ensure timely delivery of products, while always seeking new opportunities for goods through contracts negotiated with various vendors Statewide. In addition, the Department has increased the buy limits for incarcerated individuals from \$75 to \$90.

There has been a change in supplier and a new contract signed. As of the past few months, supplies have greatly increased and out of stock items are at minimum. Fresh fruits and vegetables supplies are readily available. The Marcy Correctional Facility Executive Team and the Incarcerated Individual Liaison Committee (IILC) representatives periodically discuss produce items by evaluating what is being purchased and make changes based on the wants and needs of the incarcerated population.

Packages

The goals of the Department's Vendor Package program are to maximize the availability of food and articles for incarcerated individuals from vendors that offer a variety of items at competitive pricing, while maintaining security and safety in the facility. In response to the uptick in violent conduct in DOCCS facilities and assaults on staff, a Prison Violence Task Force (PVTF) was created in December 2021, with the mission to evaluate and develop recommendations to enhance safety and security in the prisons. The PVTF includes representatives from correctional facilities and each of the unions representing the Department staff, members from Central Office and, at times, advocates.

As a part of this continuous battle to prevent contraband from getting into DOCCS' correctional facilities and maintaining security and safety for both staff and the incarcerated population, the Department revised its policy concerning packages and articles received through facility package rooms. The recommendation for this initiative was a direct result of the work of the PVTF. Input was also solicited from several Incarcerated Individual Liaison Committees, while several advocacy organizations were also consulted on the initiative.

In addition to the increase in violence, the Vendor Package Program idea was driven by the increasing number of packages found to contain contraband. In 2019, 290 packages were found to contain contraband during examination in package rooms. In 2020, that number jumped to 924 packages, and 710 packages were found to be concealing contraband in 2021. Since the implementation of the Vendor Package Program, 30+ packages were found to have contained contraband. In addition, overdose deaths have dropped from fourteen (14) in 2021 to eight (8) in 2022 with the implementation of the Vendor Package Program. Incarcerated individuals who are not serving a Loss of Packages sanction continue to order packages and articles utilizing disbursement forms and ordering from vendor catalogs.

The Vendor Package program has made the system safer and aided in reducing drug overdoses and violence. Family and/or friends are permitted to send two (2) non-food packages from home per year by mail. The number of food packages allowed increased from two (2) to three (3) per month and the total weight increased from 35 to 40 lbs. There are no limits on non-food packages received from vendors, whether ordered by the incarcerated individual or family/friends. The "Receipt Value Record" increased from \$20 to \$30. The maximum value of an allowable item of clothing increased from \$80 to \$90, the mini-calculator max value increased from \$30 to \$50, and the typewriter max value increased from \$350 to \$370.

Since the inception of the Vendor Package program, there have been no delays, missing items, or denials of packages directly related to the policy at Marcy Correctional Facility. It is important to note, with the implementation of the Vendor Package program, contraband coming through the package room is almost nonexistent, which in turn makes for a safer and more secure environment.

All incarcerated individuals are advised of the package process and their ability to inquire at their orientation. Directive #4911, "Packages & Articles Sent to Facilities," outlines the procedures for processing, issuing, and returning packages, as well as a listing of allowable items that can be received through the package room. Directive #4911 is available for incarcerated individuals through the law library. The Department has a well-established process to file claims for any item(s) declared missing. Claims are then investigated thoroughly, and the incarcerated individual is notified of the determination in writing. Additionally, executive staff discuss with the IILC at their scheduled meetings all package room complaints. All complaints are thoroughly investigated, and findings are supported with documentation.

Visits

The Department encourages visits by family and friends, which can be a positive influence during the time a person spends in prison and after their release. Appropriate participation in the visitor program provides incarcerated individuals an opportunity to maintain relationships with friends and relatives and to promote better community adjustment upon release. Contact with persons from the outside provides all offenders emotional support in adjusting to the prison environment. Research shows that incarcerated individuals who receive regular visits adjust much better once they are released from prison. Visitation enhances positive relationships during incarceration.

The Department's policies support the visiting experience to be family friendly and positive. The Department has Visitor Hospitality Centers that provide shelter and respite for visiting families and friends prior to entering the facility. Restrooms, a baby changing station, lockers for storing personal belongings, and information concerning rules and regulations pertaining to visitation are available.

Marcy provides access for family and friends to visit weekends and Holidays between the hours of 8:30 A.M. to 3:00 P.M., including incarcerated individuals housed in segregated confinement.

In addition to in-person visitation, Marcy Correctional Facility provides opportunities for incarcerated individuals to communicate with their families and communities by telephone. Marcy has a telephone system with over 95 physical phones that allow daily calls. The Department also provides incarcerated individuals with electronic tablets with access to a suite of communication, education, and entertainment applications. These applications help incarcerated users remain connected to their friends and family, as well as provide opportunities to learn skills that will help them succeed after their release. Each device is equipped with the Secure Messaging Program that allows for communication between incarcerated individuals and their families and friends by receiving messages, e-cards, photos, and VideoGrams. Similar to the free calls provided through the phone system the Department has also negotiated with the tablet vendor to provide four free messages (or stamps) each month to all incarcerated individuals. In addition to these opportunities, Marcy Correctional Facility offers the following additional methods for communication: standard postage stamps and access to authorized legal representatives through privileged correspondence, legal calls, and confidential legal visits.

Facility Infrastructure

Marcy Correctional Facility utilizes all its infrastructure in the most efficient manner possible to provide adequate living temperatures year-round. Facility temperature and ventilation are within American Correctional Association accreditation standards, which Marcy Correctional Facility consistently meets. Specifically, circulation is to be at least 10-cubic feet of fresh or recirculated filtered air per minute per occupant for incarcerated individual rooms/cells, officer stations, and dining areas. Temperatures experienced at Marcy Correctional Facility indoor living and work areas are appropriate to the summer and winter comfort zones. As equipment ages, it is replaced as issues arise. Work orders are submitted and completed to fix any physical issues that may arise preventing the proper heating or cooling of an area.

The Department uses the Integrated Health Alerting and Notification System (IHANS) to notify superintendents when Excessive Heat Warnings or Heat Advisories are issued. These notifications include a summary of the event, results of an increased risk of heat stress and heat-related illness, a list of people more susceptible to heat related illnesses, notification for staff and incarcerated individuals to remain hydrated, signs and symptoms of heat-related illnesses, and evaluating the necessity for outside assignments. In addition, watch commanders at each facility monitor for the most up-to-the-moment information and the information is reiterated at all line-ups for 72 hours following issuance. The Department continues to actively participate and engage in the Extreme Heat Action Plan Work Group. The Work Group is comprised of more than 70 NYS agency and authority staff serving a wide range of populations.

Incarcerated individuals have access unlimited water and are given ice on their housing units twice a day. They are also afforded the opportunity to purchase personal fans in the commissary. Fans are readily available and in stock in the commissary. Staff make frequent daily rounds throughout the facility including wellness checks.

Mental Health

Marcy Correctional Facility is classified as a Mental Health Level 2 facility, as defined in Correction Law § 2(28). Marcy Correctional Facility also contains a separate Residential Mental Health Unit (RMHU), which is classified as maximum security and Mental Health Service Level 1, as defined in Correction Law § 2(27). The Department partners with the New York State Office of Mental Health (OMH) in providing special programs along a continuum of care for incarcerated individuals with a mental illness. OMH has the statutory responsibility for providing mental health services to incarcerated individuals in our custody pursuant to Correction Law § 401. All mental health services in correctional facilities are provided through the Central New York Psychiatric Center (CNYPC), which is fully accredited by an independent organization, The Joint Commission (TJC). Mental Health Specialized Units are therapeutic in nature and are not operated as disciplinary housing units. The environments are designed to create a balanced approach to the care and treatment of incarcerated patients and the ability to ensure the safety and security for all individuals in the setting. All Department staff assigned to Mental Health Specialized Units are required to attend mandatory annual training that addresses suicide prevention, mental health signs/symptoms, how to work with individuals with serious mental

illness, effective treatment modalities, dispute resolution techniques, Trauma Informed Care, and Restorative Justice for these populations.

Incarcerated individuals diagnosed with a mental illness have access to mental health services and for those with serious mental illness, they may have access to the heightened level of care in the RMHU. The Marcy Correctional Facility RMHU is a 100-bed unit, providing services to incarcerated individuals who are designated Seriously Mentally Ill (SMI). The RMHU is a corrections-based therapeutic treatment for individuals diagnosed with a SMI who, due to their behavior, would otherwise be serving a confinement sanction in a Special Housing Unit (SHU). After a brief orientation period, and absent exceptional circumstances, in addition to exercise, incarcerated individuals are offered structured out-of-cell therapeutic programming and/or mental health treatment seven (7) days a week. Staff work diligently to provide therapeutic and interesting programming to RMHU participants. The participants can choose groups of interest to them, and staff work to inspire participation by utilizing positive incentive programs. Incentive programs include rewarding participants that complete specific objectives by issuing benefits to entice their group participation and engagement in the programming.

The Department staff and OMH conduct daily rounds to address any issues. All incarcerated individuals admitted to RMHU are assessed upon arrival with continued assessments throughout their placement in RMHU by DOCCS and OMH. Additionally, OMH staff see all incarcerated individuals in RRU and SHU settings within 24-hours of their admission; the seventh day post admission, and then every 30 days thereafter. Rounds are made on these units several times a week by OMH supervisors.

There is a well-established OMH grievance process that allows their incarcerated patients to write OMH staff, or their Risk Management Office, with any complaints regarding their treatment. Any complaints/grievances regarding OMH that are received by the Department from the incarcerated population are expeditiously forwarded to OMH to handle accordingly. An individual's placement within the RMHU does not impact their access to the grievance process.

In addition to mental health treatment access, suicide prevention efforts are vigorously undertaken by the Department to mitigate risk factors in all facilities. In 2015, the Department contracted with a national prevention expert to enhance suicide prevention efforts. From their recommendations, the Department implemented several noteworthy changes including:

- The revision of suicide prevention screening and mental health referral forms.
- Requiring correction officer recruits to be presented with 20 hours of mental health training. The course curriculum includes guidance on identifying the signs and symptoms of incarcerated individuals experiencing mental health distress and who may be at risk of suicide.
- The Department developed a mandatory annual two-hour suicide prevention refresher course for all staff.

- Video and pamphlets were created for incarcerated individuals to receive information during their orientation at Reception as well as transfers between facilities.
 - Suicide videos feature messages from incarcerated individuals, that the population is able to access from their general population tablets. To encourage individuals to download the video, a stamp is provided at no charge to those who do.
 - The Department regularly sends out messages through the tablets regarding suicide prevention and provides information as to how an incarcerated individual may seek assistance.
 - The Department works with outside vendors who monitor an incarcerated individual's messages to notify DOCCS officials when trigger words are used, which may be an indication of a potential suicide risk. This allows the Department to take appropriate responsive measures.
 - All incarcerated individuals receive pamphlets and educational material every time they are transferred to another facility.
 - All incarcerated individuals are seen by medical professionals and a suicide prevention screening is completed on all transfers.
- All staff in OMH Level 1 & 2 facilities, assigned to SHU and RCTP, receive four (4) hours of annual training in recognizing the signs and symptoms of mental illness and suicide prevention.
- Staff assigned in Residential Mental Health Treatment Units receive eight (8) hours of suicide prevention training annually.
- Staff assigned in Residential Regional Units receive suicide prevention training prior to assignment and annually.
- OMH is notified of every incarcerated individual that will be reviewed by the Parole Board as well as the results of their review.
- Handbook for Family/Friends is available on the Department's website. This provides information for visitors and members of the community, who are in contact with the incarcerated population, to identify signs of suicide risk, and whom to contact if warning signs are noticed.
- Suicide Prevention messages are sent out monthly to all family/friends registered with the secure messaging program (JPAY.) Information includes:
 - Signs of suicide risk
 - Examples of concerning statements individuals might make
 - Information on who to contact with any concerns

- A pre-recorded message is played to recipients accepting calls from an incarcerated individual that states “Preventing suicide is important; if you have concerns during this call, please contact the individual’s facility to report them”
- Security has increased the frequency of rounds in ICP and RRU.

In 2018, the Department established an RCTP Directive to create statewide policy for treatment and programming specifically for patients housed within this setting. RCTP dormitories have been approved for use as a step-down unit for ongoing monitoring and treatment of patients in a less restrictive environment. The Department revised forms utilized by nursing staff when an incarcerated individual is transferred to a new facility, admitted to SHU, or received at a Reception Center, to assist staff in further identifying and documenting concerns. Also, it is our understanding that OMH will follow-up with any incarcerated individual within seven-days of being discharged from an RCTP.

Suicide Prevention Steering Committee, comprised of both DOCCS and OMH administration, meets to establish trends and to make recommendations to improve suicide prevention efforts statewide. The recommendations have included sending joint audit teams to a specific facility to look at any contributing factors to suicide risks and how to mitigate them. A Suicide Prevention Workgroup was refocused to identify trends for recent suicides.

In 2020, the Department developed a Peer Supporter Program, which provides support for individuals recently discharged from the RCTP and returning to the general population. In 2023, this program is forecast for expansion. Also, the Department updated Suicide Prevention posters and placed them throughout the facilities. Suicide Prevention videos are now available on an incarcerated individual’s tablet that provides information and guidance of how to seek help. A suicide prevention hotline for incarcerated individuals (988) is available with a description of services offered made available to all facilities.

In 2020, a stronger focus was placed on staff wellness in the interest of improving morale and performance, which is projected to also benefit the incarcerated and supervised populations as well. The Department contracted with a vendor to train master trainers for Corrections Fatigue, Correction Wellness and Trauma. The Department now has 156 master trainers hosting trainings throughout the Department.

A Suicide Prevention Steering Committee was organized comprised of both DOCCS and OMH administration staff. This committee meets to recognize trends and to make recommendations that would improve suicide prevention efforts. Subgroups of the committees review all suicides and suicide attempts and create suicide prevention messages during the holidays. Additionally, subgroups of the committees review fear as a precipitating factor for suicide and how to address concerns. A suicide prevention work group, consisting of DOCCS and OMH staff, review all suicides and suicide attempts incidents, looking for trends, patterns and signs of potential suicide for high-risk incarcerated individuals. This committee makes recommendations to a Central Office Committee of high-ranking DOCCS and OMH staff that reviews proposed policy changes, determines what changes to make, and then implements the policy changes statewide. A mortality review of all suicides is conducted to ensure

all procedures and practices were adhered to and make recommendations to Central Office to improve suicide prevention efforts. Central Office also conducts administrative reviews of all suicide and self-harm statewide. Following each incarcerated individual suicide, the Department conducts a Mortality Review meeting to review the facts and circumstances surrounding the incident and to identify possible improvements to policies and procedures.

Health Care

The Department is committed to providing quality and timely health care that serves the needs of incarcerated individuals. Marcy Correctional Facility medical and dental staff provide compassion and respect for the dignity of every incarcerated individual they provide treatment to. At the time of the CANY visit, Marcy Correctional Facility medical and dental resources included one (1) Medical Doctor; one (1) Nurse Practitioner; one (1) Nurse Administrator; fifteen (15) Nurses; one (1) Dental Assistant, and visiting Dentists. Marcy Correctional Facility provides compassionate medical and dental care to all individuals in the Department's custody following community standards of treatment and services.

The healthcare and security staff in all of the Department's facilities receive initial and on-going training to respond to healthcare emergencies. Staff are trained on a variety of elements including, but not limited to, the recognition of signs and symptoms and knowledge of actions required in potential emergencies; administration of first aid, CPR and AED; and administration of Narcan to unresponsive persons. Additionally, to ensure staff can respond to a healthcare emergency anywhere in a facility within three minutes of being notified, each facility is required to conduct an annual emergency response drill on each shift. Response time to health care emergencies is a key component of operational readiness. Accordingly, security and health care staff are trained to respond immediately upon encountering a health care emergency, and all local procedures and resources shall be designated to ensure that an emergency response can be achieved anywhere in a facility within three minutes.

Every incarcerated individual has access to emergency sick call twenty-four hours a day. For non-emergent care, incarcerated individuals are able to access medical staff through the sick call process. Sick calls are triaged, and the individual is seen based on their medical needs. Marcy Correctional Facility received approximately 4,800 sick call and 2,200 emergency sick call encounters in 2022. Since the time of this site visit by CANY, the number of MAT program participants has increased to 150. Marcy is a medical service level 1 facility, with 24-hour nursing coverage. Despite medical provider vacancies for a period of time, routine medical care is taking place regularly. No medical call outs are affected by staffing levels as the Department utilizes agency nurses and overtime scheduling to ensure all areas are staffed as required. With regards to survey questions related to medical and dental call out times for the general population, it should be noted that the sample sizes were extremely small in comparison with the population size (~7%).

Marcy Correctional Facility receives pharmaceuticals from the Mohawk Hub Pharmacy. Controlled substances are sourced through vendors. The timeframe requirements for submitting refill requests to the pharmacy are reviewed at facility orientation with each incarcerated individual. The expectation is

that individuals will submit their refill requests within the specified timeframe to ensure refills are completed in a timely manner.

Precautionary measures are taken by the Department to protect the life and safety of all incarcerated individuals and staff in response to the COVID-19 pandemic. Every facet of the State's response to the COVID-19 outbreak has been guided by facts, scientific data, and guidance of public health experts at the Department of Health (DOH) and the Center for Disease Control (CDC). Each action taken in response to the spread of COVID-19 is done in the best interests of those who work within, or are incarcerated in our facilities, including Marcy Correctional Facility. With each confirmed case, the Department works to identify any potentially exposed individuals to provide notifications and to stop the spread of the COVID-19 virus. The testing process is currently the same for those in prison as it is for those in the community. The Department will continue to evaluate all options as this situation unfolds. A multitude of measures have been taken to ensure the safety and well-being of staff and incarcerated individuals include mandating all staff, incarcerated individuals, visitors and contractors to wear face masks while in the facility, which is no longer the case based on DOH guidance, supplying all incarcerated individuals with masks and supplying incarcerated individuals subject to isolation and quarantine with surgical-type masks. Additionally, all visitors are supplied a COVID test that must produce a negative result prior to allowing the visit.

Our physicians, nurse practitioners and physician assistants, working with our nurses, are following the guidance of DOH so that incarcerated individuals are tested when exhibiting symptoms and after a medical evaluation is conducted. Our process identifies those patients who are ill, requiring special monitoring and care, and isolates those who exhibit any symptoms or have a positive test. Additionally, anyone exposed to a patient who has a positive test is placed into quarantine and is subsequently administered a COVID test. A nurse will swab the individual and that swab is then sent to an authorized lab. If an individual's test result is positive, that person is placed in isolation for a minimum of ten (10) days. For those in quarantine who receive a negative test, they remain in quarantine for the ten (10) day period. For individuals who need enhanced levels of care, we access our network of outside hospitals to ensure the population receives the necessary treatment and services. Asymptomatic patients who wear a mask and follow social distancing and hand hygiene guidelines have minimal risk to others. However, to be proactive, the Department, in consultation with DOH, developed a statewide asymptomatic surveillance program to randomly test the population in every facility on a daily basis. This program began in December 2020 and continues today.

In consultation with DOH, the Department has been vaccinating those staff and incarcerated individuals who wish to be vaccinated, since February 5, 2021. All incarcerated individuals coming into Marcy Correctional Facility are screened and evaluated for COVID symptoms and vaccination history. Marcy is able to continue a COVID vaccine series if the incarcerated individual has started in the community or at another facility. As vaccination efforts continue, the Department is also focused on ensuring staff thwart the spread of COVID-19 by enforcing the most efficient and mitigating efforts available at the time. The Department provides vaccines when they are available and has made strong efforts to educate the population on the importance of booster shots. To date, Marcy has held vaccination clinics where 39 COVID-19 vaccinations were administered to the incarcerated population this year. Prior to each clinic, medical staff conducts face-to-face education, asks every incarcerated individual if they

wish to be vaccinated and provides edification. In addition to these efforts, at every encounter with the incarcerated population in the medical unit, incarcerated individuals were, and continue to be, educated, and encouraged to receive the COVID-19 vaccination, including boosters. The Department offered incentives to encourage interest in the vaccine in the form of a special Christmas meal, a meal purchase from a local vendor, and a commissary care package not to exceed \$75. Staff actively continues to poll the incarcerated population to see who is interested in either the vaccine or the booster shot. When vaccine supplies are received, vaccines are sent out immediately.

The Department, like many institutions, has faced significant staffing challenges when recruiting certain titles. Notwithstanding, the Department has expanded its recruitment efforts by utilizing employment websites such as Indeed.com, Targeted Digital Marketing campaigns and attendance at college job fairs. The Department has established a position that is fully dedicated to recruiting qualified medical and dental staff. In addition, facility administrators utilized the resources available to them and creatively filled in cracks as needed. An example of which is utilizing agency nurses to staff the need for medical personnel safely and adequately, when required. Regarding non-medical staffing, the Department is also experiencing the effects of the ongoing national and local economic trends impacting all labor markets. Marcy Correctional Facility continues to canvass and recruit a full time Dentist. In the meantime, area Dentists assist with emergent dental procedures.

In addition to aggressive recruitment efforts, the Department, by consulting with DOH as well as Albany Medical Center, took similar measures as community hospitals during the pandemic; namely, a priority was accorded to the most critical services. For example, all sick calls are reviewed and triaged from the more serious to the less serious, which, as one might expect, has caused longer delays in addressing the less serious complaints. Our protocols for addressing staff shortages are in compliance with CDC COVID-19 guidelines.

The Department takes the continued spread of this global health emergency seriously and shares the same concerns as staff, incarcerated individuals, and their loved ones. Our focus is ensuring that the hardworking men and women of this Department, as well as our incarcerated and formerly incarcerated populations, are healthy and safe. Just as we have successfully managed infectious outbreaks in the past, we have emergency protocols in place and have proactively made adjustments in our facilities and Community Supervision offices in an attempt to limit any outbreaks. The Department made robust efforts to educate the incarcerated population on the COVID-19 virus and the importance of vaccination through educational material, videos, medical staff speaking one-on-one to the population, and facility Executive Team members talking to incarcerated individuals on rounds and educating the ILC. Several times the Department medical staff went around to every housing unit and provided educational material and answered any questions cell by cell.

One of many risk-reduction measures taken by the facility to thwart the spread of COVID-19 included physical social distancing plans to protect the incarcerated population and staff from the spread of COVID-19. Due to the facility layout and infrastructure limitations, programming and movement were modified for the safety of all. As a result, policy was crafted to provide access to all incarcerated individuals in an equitable manner. For example, to provide incarcerated individuals that are housed in different settings with the same recreation access, a rotating schedule for access was determined to

be the most equitable option. A rotation for the incarcerated individuals to come out of their cells to use amenities for up to five hours a day, in addition to utilizing the yard, was the narrowly tailored solution available. With correctional security and staffing interest evaluated, a modification of those hours to allow earlier access to amenities such as phones would create a disproportional administrative and security burden. As previously noted, the Department provides incarcerated individuals with electronic tablets free of charge, which include a suite of communication, educational, and entertainment applications, that help incarcerated users remain connected to their communities and learn skills that will help them succeed after their release.

Staff

The Department is committed to holding staff to the highest standards of public service. The Department takes pride in the degree of fairness, professionalism, integrity, and transparency expected of our staff in providing excellent service. As such, all allegations of an employee not meeting those standards are investigated thoroughly and are taken very seriously. The Department has several safeguards in place to prevent and report misconduct. The incarcerated population has been educated on the many avenues to report allegations of misconduct and incidents of abusive behavior directly to facility staff and the Office of Special Investigations (OSI), as well as outside agencies. The Marcy Correctional Facility Executive Team conducts daily rounds to observe facility operations and speak with staff and the incarcerated population by engaging with them directly. This is to ensure the Department's policies are administered in a fair, equitable and consistent manner, with compliance and quality, and to spot issues.

OSI serves as the Department's investigative body. The primary mission of OSI is to advance the mission and statutory mandates of the Department; vigorously pursue justice through fair, thorough, and impartial investigations; and foster accountability, integrity, and safety within the Department. The incarcerated population may write to any facility supervisory staff to report complaints. All complaints that are received by the facility are documented and investigated. This includes staff communications with incarcerated individuals. The incarcerated population have unrestricted access to OSI via the hotline and can report all alleged abuse. The Department has zero tolerance for violence within our facilities and anyone engaged in misconduct is disciplined, and if warranted, incidents will be referred for outside prosecution. When facts establish that staff have acted unprofessionally, cases are forwarded to the Department's Office of Labor Relations for appropriate disciplinary measures.

Allegations made regarding discrimination or racialized abuse are delegated to the Office of Diversity and Inclusion for review. It is the policy of the Department to eliminate, mitigate, and respond to allegations of racial disparities. A fair and equitable distribution of benefits and burdens in the placement of incarcerated individuals in housing unit assignments, institutional work assignments, and programs is safeguarded. Moreover, any administrative processes associated with incarcerated individual who may be subject to discipline and grievances are conducted fairly, to ensure that decisions are not influenced by stereotypes or bias based on age, race, religion, national origin, sex, sexual orientation, disability, marital status, veteran's status, or non-violent political views.

Additionally, the Department has invested millions of dollars to implement a pilot program to improve safety within its facilities that includes deployment of body-worn cameras and accompanying policies for their use. The Department is currently working to upgrade our existing body-worn cameras and significantly expand the deployment of these devices. These systems bolster the efforts of investigators through objective and evidence-based examinations. Any substantiated case of misconduct by an employee is referred to the Department's Bureau of Labor Relations for consideration of disciplinary action, which may include termination of the employee. In addition, any misconduct, where there is evidence of criminality, will be referred to outside law enforcement authorities for potential criminal charges. The Department maintains a zero-tolerance policy regarding verbal or physical abuse. Furthermore, allegations made regarding discrimination or racialized abuse are delegated to the Office of Diversity and Inclusion for review.

All Unusual Incidents and Uses of Force are wholly documented incidents, which are thoroughly reviewed by executive staff. Any cause for concern that an application of force is inconsistent with Department policy is expeditiously referred to OSI for examination. Further, all staff involved in an incident are required to provide written documentation of their involvement in the incident and supervisors are also required to provide written documentation of their independent investigation of the incident. All video footage that is available is made part of the record along with photographs of the incident to include incarcerated individuals and staff. Since the inception of Humane Alternatives to Long Term (HALT) Solitary Confinement Law, assaults on staff by incarcerated individuals have dramatically increased. Moreover, assaultive behavior amongst the incarcerated population has also increased. This behavior is directly related to gang activity, owed debts, and may be used as a tool by the incarcerated population to be transferred to another facility.

Regarding security staffing levels, the Budget Fill Level (BFL) for the Supervision of Incarcerated Individuals as of October 2022, called for three-hundred-thirty-two (332) Correction Officers; twenty-three (23) Sergeants; eleven (11) Lieutenants, and three (3) Captains for a total of three-hundred-sixty-nine (369). At that time, Marcy Correctional Facility was actually staffed with three-hundred-thirteen (313) Correction Officers; twenty-four (24) Sergeants, eleven (11) Lieutenants, and three (3) Captains for a total of three-hundred-fifty-one (351). The facility Executive Team is credited with reporting that they had three-hundred-seventy (370) security staff positions.¹ The Deputy Superintendent for Security, was inadvertently included. The Department has been actively recruiting to fill vacancies within security and civilian items throughout the agency, with the Albany Training Academy continuing to run and prepare security staff to enter its workforce.

Incarcerated Discipline

Incarcerated individuals in correctional settings are expected to abide by published rules of conduct, which are established to protect all individuals from potential harm, either as a result of injury to their person, or loss or damage of their property. Rules of conduct also serve to establish standards for behavior, which are both reasonable and consistent. When discipline is applied reasonably and with fairness, it not only assists in protection of the health, safety, and security of all persons within a

¹ The referenced February 2022 plot plan called for the same staffing levels.

correctional facility, but also is a positive factor in rehabilitation of incarcerated individuals and the morale of the facility.

Persons vested with responsibility for disciplinary measures in facilities of the Department are expected to consider each situation individually. The Department believes that disciplinary action must be administered in a fair, impersonal, impartial manner, and must be as consistent as possible. Disciplinary measures should not be overly severe and must never be arbitrary or capricious, or administered for the purpose of retaliation or revenge. Staff is trained on how to use focused observations to assess situations; exhibit a command presence, establish rapport with incarcerated individuals, and manage conversations, which allows them to impact the incarcerated individual's behavior. Additionally, all staff assigned to a Special Housing Unit, Residential Rehabilitation Unit, Step-Down Program, Residential Mental Health Unit, Therapeutic Behavioral Unit, Behavioral Health Unit, Correctional Alternative Rehabilitation, or Diversion Unit and their supervisors, received training prior to working those units - and annual training thereafter to include the following topics: The Non-Punitive Therapeutic Environment, Trauma-Informed Care, Restorative Justice, and Dispute Resolution.

Disciplinary action is one of many essential elements in correctional treatment and is a necessary part of correctional security, which should not be construed as harassment or other malfeasance by staff. To that end, Departmental employees are trained that disciplinary action shall be taken only in such measures and degree as is necessary to regulate an incarcerated individual's behavior within acceptable limits, assist in achieving acceptable standards of behavior for the entire incarcerated population, and preserve the confidence of all concerned in the administration's commitment to maintaining those standards.

All incarcerated individuals alleged to have violated the standards of behavior for the incarcerated population, are provided with significant due process protections, which include meaningful opportunities to challenge the allegations. The disciplinary system is rooted in fair practices and procedures, that require lawfully obtained and credible evidence. The disciplinary system assists in protection of the health, safety, and security of all persons within a correctional facility, and serves an important role in the rehabilitation of incarcerated individuals, while maintaining the morale of the facility's workforce.

The Department's disciplinary system has several built-in safeguards to ensure due process. Moreover, it is the Department's policy that the disciplinary procedures are conducted in a fair and equitable manner to ensure that decisions are not influenced by stereotypes or biases. Misbehavior reports set forth three (3) tiers of offenses, and the standards for behavior are provided to all incarcerated individuals. In certain cases where an incarcerated individual is charged with serious misconduct, the individual may seek employee assistance to gather additional evidence, and be represented by an attorney, law student, paralegal, or other incarcerated individual at the hearing. The Department's standards of behavior violations are classified based on the severity of the offense and the potential sanctions. The misbehavior reports are tiered as follows:

- Violation Hearing – Tier 1 misbehavior reports are reviewed by a violation officer, who holds the rank of Sergeant or above. An individual may challenge the findings by appealing directly to the Superintendent.
- Disciplinary Hearing – Tier 2 misbehavior reports are reviewed by Hearing Officers who hold the rank of Lieutenant or above. An individual may challenge the findings by appealing directly to the Superintendent.
- Superintendent's Hearing – Tier 3 misbehavior reports are reviewed by the Superintendent, Deputy Superintendent, Captain, Commissioner's Hearing Officer, or a Superintendent's designee. If an incarcerated individual is found guilty of a Tier 3 misbehavior report, the individual may challenge the finding by appealing to the Commissioner, which is thoroughly reviewed by the Commissioner's designee in the Office of Special Housing.

Review officers are expected to utilize the lowest appropriate tier level designation. Additionally, hearing officers must ensure they are progressive with the imposition of sanctions, dependent on articulable facts for the specific incident and circumstances at issue. The disciplinary program at Marcy Correctional Facility is in compliance with HALT and Department Directive #4932. The Hearing Officers have received 37.5 hours of training prior to conducting hearings to ensure fairness and consistency. All Superintendent and Disciplinary Hearings are digitally recorded to create a permanent record that can be utilized by the Department to ensure that hearings are conducted in a fair and consistent manner. All completed hearing packets are reviewed by executive staff to ensure due process was followed and dispositions are appropriate. The Department provides further administrative due process through an appeal mechanism for an unbiased review by a member of the office of Special Housing and Incarcerated Individual Disciplinary Program. If found guilty, the incarcerated individual is advised of the appellate process before the conclusion of their disciplinary proceeding. Upon appeal, Tier 2 Disciplinary hearings and Tier 3 Superintendent's hearings are subject to an unbiased and thorough review by the Superintendent or by a member of the Office of Special Housing and Incarcerated Individual Disciplinary Program, respectively.

SHU confinement guidelines were modified to be in compliance with HALT. Those changes reflected the elimination of "Keeplock," the elimination of prehearing confinement and confinement sanctions for Tier II incidents, and reduced confinement penalties for certain Tier III proceedings. Where an incarcerated individual is subject to a Superintendent's Hearing, they are permitted to be represented by an attorney or law student, or by a paralegal or incarcerated individual, contingent upon the representative satisfying the requirements established by the Department's objective criteria. To ensure incarcerated individuals have the ability to contact their representative, directions have been issued to all facilities to accomplish this in an efficient and timely manner.

If an incarcerated individual is found guilty after a hearing of an eligible offense, the service of potential confinement sanctions limits the amount of time in segregated confinement to fifteen (15) days. All incarcerated individuals that have received a disciplinary sanction of SHU receive privileges such as property, commissary, and static tablets. They may elect to stay in their cells and decline all out of cell

time, in part, to utilize the static tablets. This is documented daily. After the fifteenth (15) day, the person is transferred to a residential rehabilitative unit (RRU), at which time an individualized rehabilitation plan is implemented, and the individual's confinement sanction runs concurrently, while assigned to the RRU. Individuals serving confinement sanctions are offered seven hours out-of-cell, which includes rehabilitative programming in a group setting. They also have full access to mental health and medical treatment, food, clothing, water, and recreation. An incarcerated individual in an RRU setting receives meaningful periodic reviews conducted every sixty (60) days. If upon completion of this review the incarcerated individual is not discharged, program and mental health staff shall specify the reason for such determination and the corrective action required to attain a future discharge.

Incarcerated individuals serving a loss of privileges sanction are entitled to the minimum provisions for health and morale, which permits showers at least three times a week, and exercise outside of their cell for at least one hour daily, except if a new arrival is waiting to be interviewed by a supervisor within 17 hours, or they received a loss of recreation status and have a program assignment.

Dorm kitchen equipment is considered a privilege at the facility and may be removed from an incarcerated individual for the following reasons: general disruptive behavior on the dorm; or poor housekeeping practices; or misuse of equipment, or at the direction of the Deputy Superintendent for Security. Upon removal, the dorm is then monitored for improved behavior and privileges are restored.

Grievance

The Incarcerated Grievance Program (IGP) is designed to provide each incarcerated individual with an orderly, fair, simple, and expeditious method for resolving their concerns. While incarcerated individuals are still expected to resolve problems on their own, through informal communication with staff, the IGP provides a formal structure to help incarcerated individuals peacefully address issues. This process also allows the Department the opportunity to correct problems internally, identify issues in need of administrative attention, and clarify policies and procedures. The IGP is a non-adversarial process designed to allow staff and incarcerated individuals the opportunity to mediate resolutions to problems in the facility. In addition to addressing formal grievances, IGP staff also interact with incarcerated individuals through non-calendared contacts, which assists them in resolving problems without a formal grievance being filed.

The grievance procedure is initiated by the incarcerated individual. If an incarcerated individual is unable to resolve the problem through informal channels, the individual may file a written grievance within twenty-one (21) calendar days of the incident in question (exceptions may be granted up to 45 days). The IGRC has sixteen (16) calendar days in which to attempt to informally resolve the complaint or hold a hearing. The IGRC is comprised of two voting incarcerated individuals, two voting staff members, and a non-voting chairperson, that can either be an incarcerated individual, staff member, or outside volunteer associated with the facility's program. The incarcerated individual has seven (7) calendar days from the receipt of the IGRC's written response to appeal to the facility Superintendent. The Superintendent has up to twenty (20) calendar days (25 calendar days for staff conduct complaints) to render a decision. If the incarcerated individual wishes to appeal further, the individual has seven (7) calendar days from the receipt of the Superintendent's decision to appeal to the Central Office Review

Committee (CORC). CORC is comprised of Central Office staff who review grievance appeals on behalf of the Commissioner. CORC is the final level of administrative review for grievances filed through the IGP mechanism.

The incarcerated individual grievance program at Marcy is in compliance with the aforementioned policies. Marcy staff encourage the incarcerated individuals to resolve their complaints through other existing channels, prior to submitting a grievance. For example, the incarcerated individual can contact security staff, counselors, Executive Team members or a program unit directly affected. Mailboxes are spread throughout the facility where the incarcerated population may submit a grievance complaint. These mailboxes are emptied by the IGP Supervisor. Complaints of misconduct are thoroughly investigated and reviewed by both the Deputy Superintendent of Security and the Superintendent. All other complaints received are properly investigated and appropriate action taken.

Conclusion

Marcy Correctional Facility is an example of why New York is a leader in the corrections field. The Department is proud of the wide-ranging programs and services provided at Marcy Correctional Facility, as well as their dedication to fulfilling the Department's mission.

It should also be noted that in March of 2022, Marcy Correctional Facility received accreditation from the American Correctional Association, signifying compliance with fundamental correctional practices pertaining to all aspects of day-to-day prison operations. The facility was also examined in May of 2022 by an independent auditor and determined to be in compliance with the Federal Prison Rape Elimination Act standards.



KATHY HOCHUL
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MOIRA TASHJIAN, MPA
Executive Deputy Commissioner

June 23, 2023

Jennifer Scaife
Executive Director
Correctional Association of New York
Post Office Box 793
Brooklyn, New York 11207

RE: No. 22-10: Monitoring Visit to Marcy Correctional Facility – October 11-12, 2022

Dear Executive Director Scaife:

We received your post-visit briefing and recommendations regarding CANY's October 11-12, 2022 visit to Marcy Correctional Facility. We recognize that the bulk of your report and findings are directed towards the Department of Corrections and Community Supervision (DOCCS); however, we would like to respond to the matters pertaining to the Office of Mental Health (OMH).

CANY's recommendations involving OMH were as follows:

- “DOCCS and OMH should provide people in the RMHU access to at least seven hours of group out-of-cell programming and activities, seven days a week as required under the HALT law... OMH should partner with DOCCS to ensure all people in the RMHU have access to at least 7 hours of daily out of cell programming and activities, enhancing the quality of mental health programming and individual treatment.”

OMH Response: OMH defers to DOCCS as they are responsible for allocating the additional recreational and congregate programming space to allow for up to seven hours of out-of-cell programming, seven days a week.

However, OMH would like to comment on part of the findings associated with these recommendations¹, specifically: “Individuals in RMHU also described a range of reported problems including confidentiality having been broken between OMH and security staff, lacking access to OMH staff, lacking access to call the crisis line, and delays and deficiencies in OMH's response to incidents of self-harm and suicide.”

Regarding confidentiality, as DOCCS staff are responsible for the safety and security of the facility, officers may be posted outside of a callout room so that they can respond quickly if needed. Officers are not present in the room during private mental health callouts. As noted in a previous response, if incarcerated individuals refuse to attend private callouts or choose to speak to mental health staff during rounds, confidentiality

¹ Page 18 of CANY's report.

cannot be guaranteed as these are cellside contacts where officers and peers may be present. Incarcerated individuals are consistently encouraged to attend their private callouts and reminded of the ways in which they can contact mental health staff if they want to be seen privately.

It is unclear what “crisis line” CANY is referring to. An incarcerated individual’s ability to connect with any hotlines or 988 through the tablets or phone is managed by DOCCS, not OMH.

Finally, it is unclear what was meant by “response to incidents of self-harm and suicide.” Immediate responses to incidents of self-directed violence are necessarily focused on the individual’s safety, medical stability, and any necessary life saving measures. These interventions must be provided by DOCCS security and medical staff before mental health staff can further assess the individual(s). In the case of suicides, OMH staff may not learn of the incident until days later, or they may not be allowed to immediately be able to go onto the unit. OMH staff take all incidents of self-injurious behavior seriously and respond to them as timely as possible.

- “DOCCS should remove people who are on the OMH caseload from the SHU as required under the HALT law...”

OMH Response: As noted in a previous response, per section 292(21) of Executive Law, a “disability,” which would require someone to be considered part of the “special population,” is defined as “a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques...” Not all mental health diagnoses are synonymous with an individual experiencing substantial functional disability (Mental Hygiene Law 1.03). This is not only true in the correctional environment, but applies across mental health settings, including the community. In cases where an individual at a correctional facility is experiencing substantial functional disability due to their mental health, they are assigned an S-designation and thus appropriately considered part of the “special population” and diverted from SHU.

OMH will continue to monitor the services provided to individuals in need of mental health services and make changes as indicated and as achievable. Collaboration with DOCCS will continue as many of these processes rely on input from both agencies.

Sincerely,



Li-Wen Lee, M.D.
Associate Commissioner
Division of Forensic Services

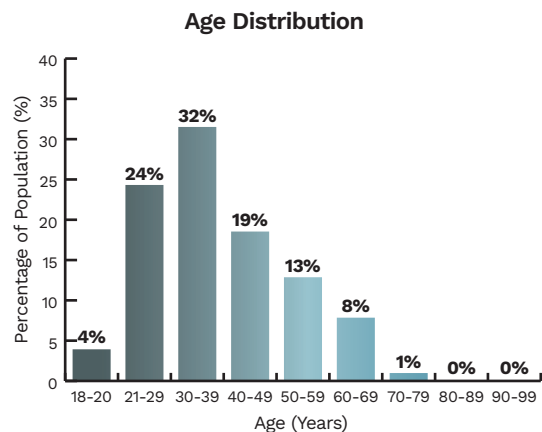
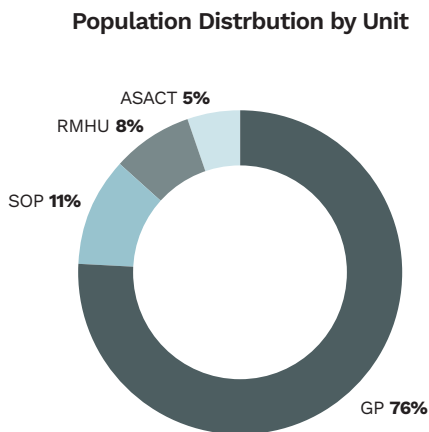
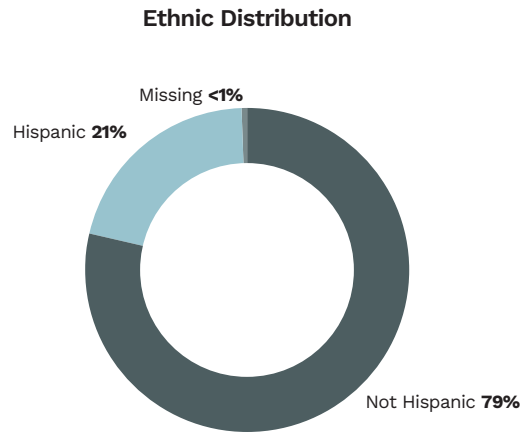
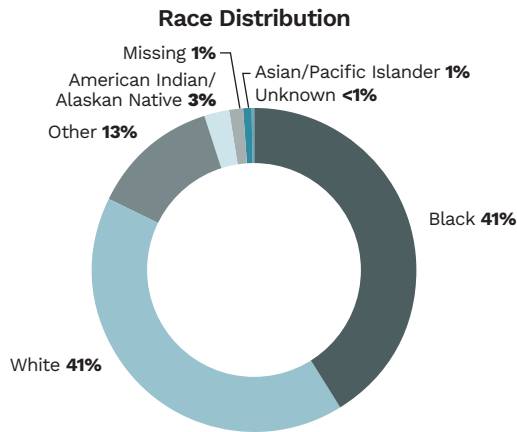
cc: Danielle Dill, Psy.D., Executive Director, CNYPC
William Vertoske, Deputy Director, Corrections Based Operations, CNYPC
File

Appendix A: Additional SHU Tables

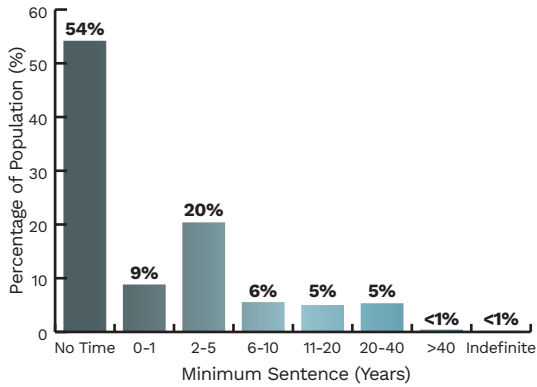
Special Housing Units	Yes	No	Total
Are you in this unit because of a disciplinary sentence?	11 100%	0 0%	11 100%
Besides the SHU unit at Marcy, have you been in any other disciplinary units here or at other prisons? (If yes, choose all that apply from the following):	4 44%	5 56%	9 100%
Residential Rehabilitation Units (RRUs)	2 22%		
Protective custody	1 11%		
Administrative segregation	0 0%		
Keeplock	3 33%		
Longterm Keeplock	2 22%		
Step-down program	0 0%		
Mental health or other alternative to solitary	0 0%		
Were you medically evaluated on arrival?	7 78%	2 22%	9 100%
Did you receive a suicide prevention screening on arrival?	7 78%	2 22%	9 100%
Did you receive clean clothing on arrival?	5 56%	4 44%	9 100%
Did you undergo a mental health assessment within one day of your arrival?	6 60%	4 40%	10 100%

Appendix B: Snapshot of Demographic Data

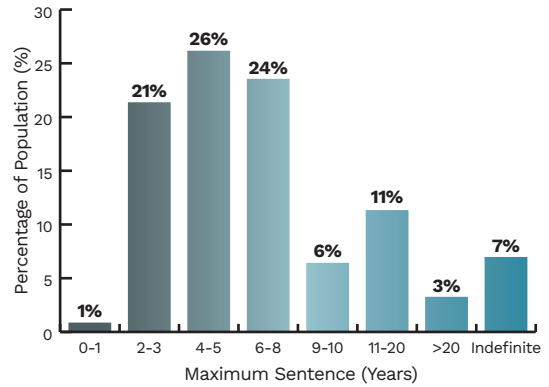
Population Demographics as of October 1, 2022 Marcy Correctional Facility



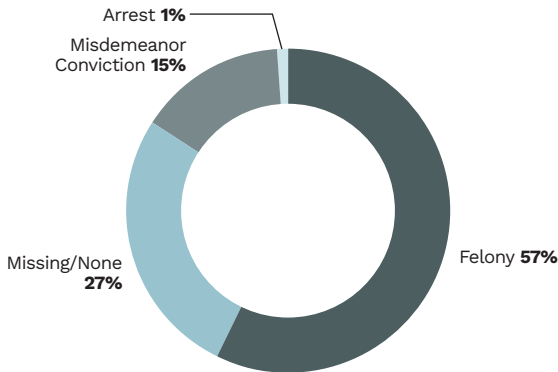
Population Distribution by Minimum Sentence



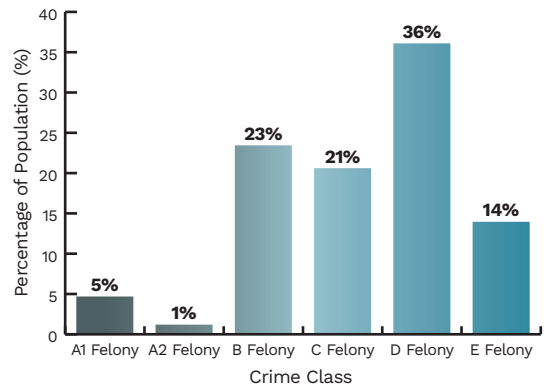
Population Distribution by Maximum Sentence



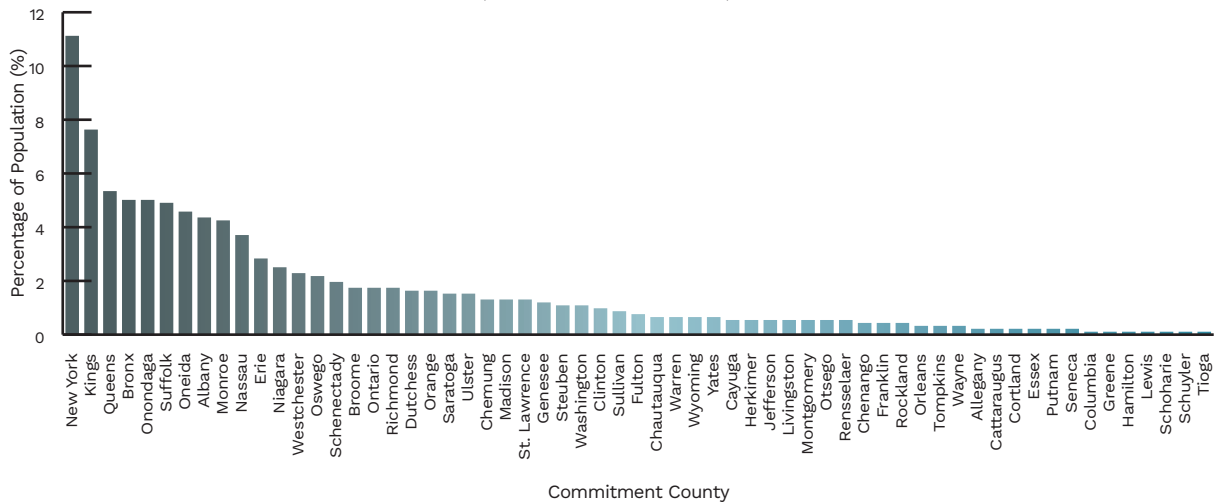
Population Distribution by Most Serious Prior Offense



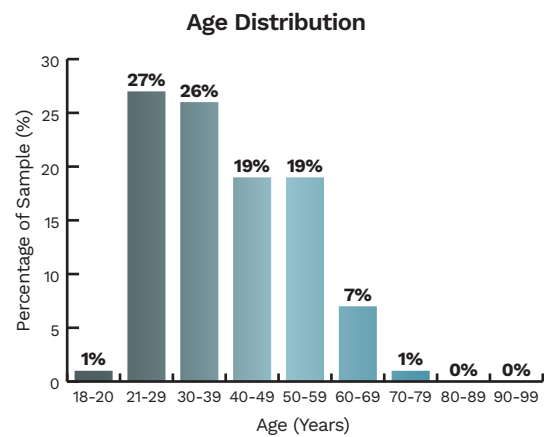
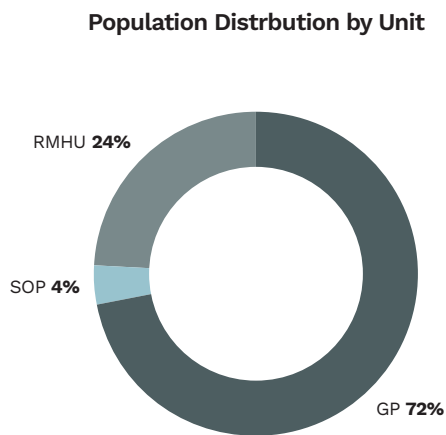
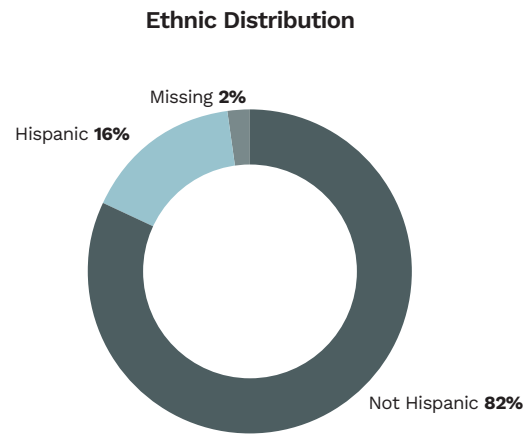
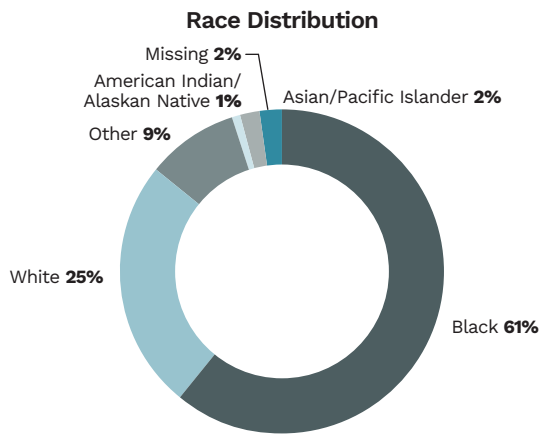
Population Distribution by Crime Class (Most Serious Offense)



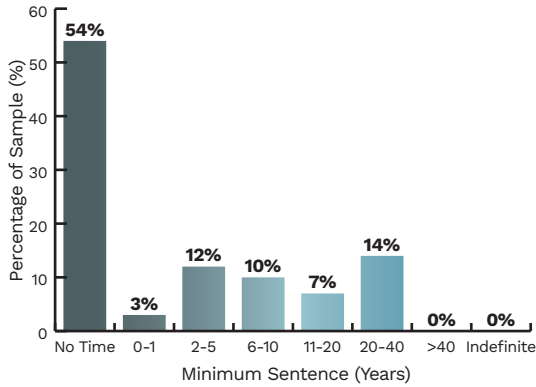
Population Distribution by Commitment County (Most Serious Offense)



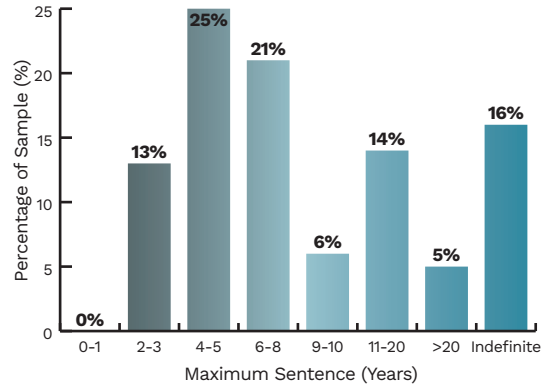
Demographics of Incarcerated Individuals Interviewed by CANY in October, 2022 Marcy Correctional Facility



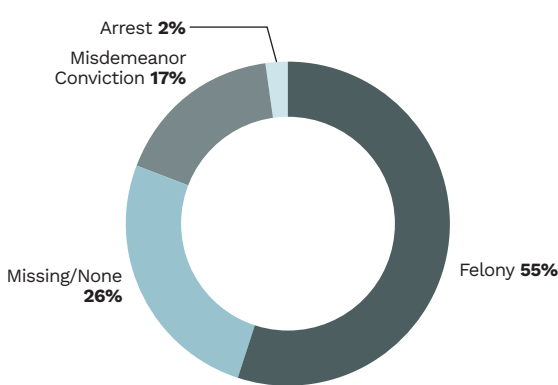
Population Distribution by Minimum Sentence



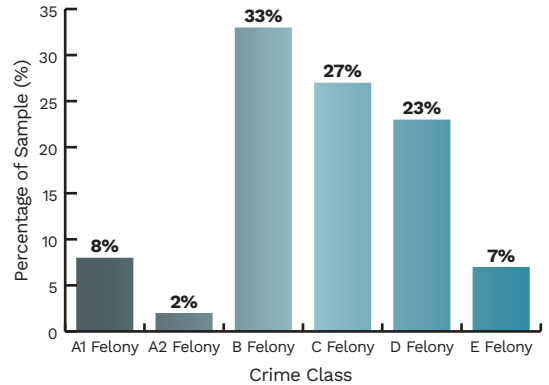
Population Distribution by Maximum Sentence



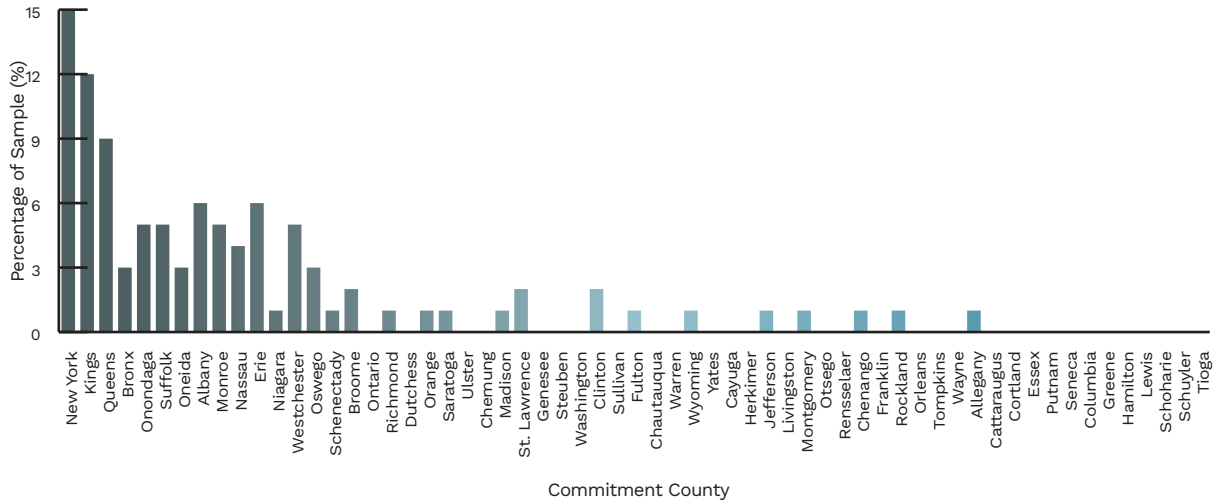
Population Distribution by Most Serious Prior Offense



Population Distribution by Crime Class (Most Serious Offense)

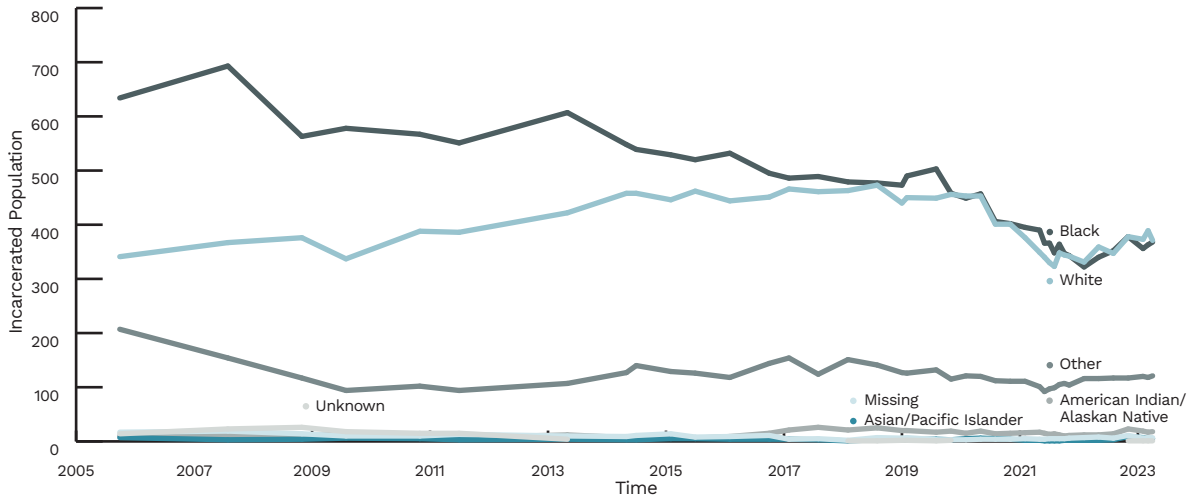


Population Distribution by Commitment County (Most Serious Offense)

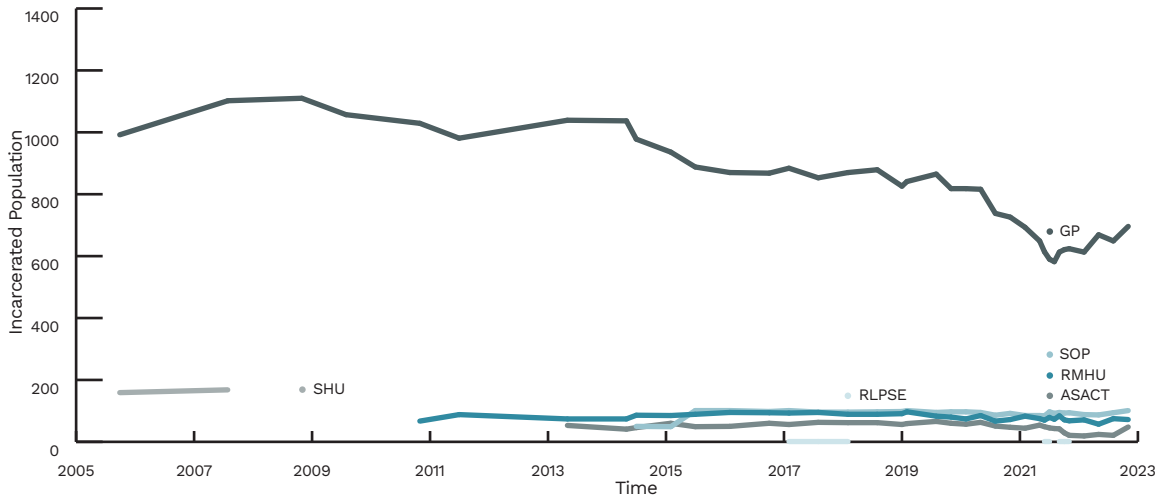


Population Demographics as of October 1, 2022 Marcy Correctional Facility

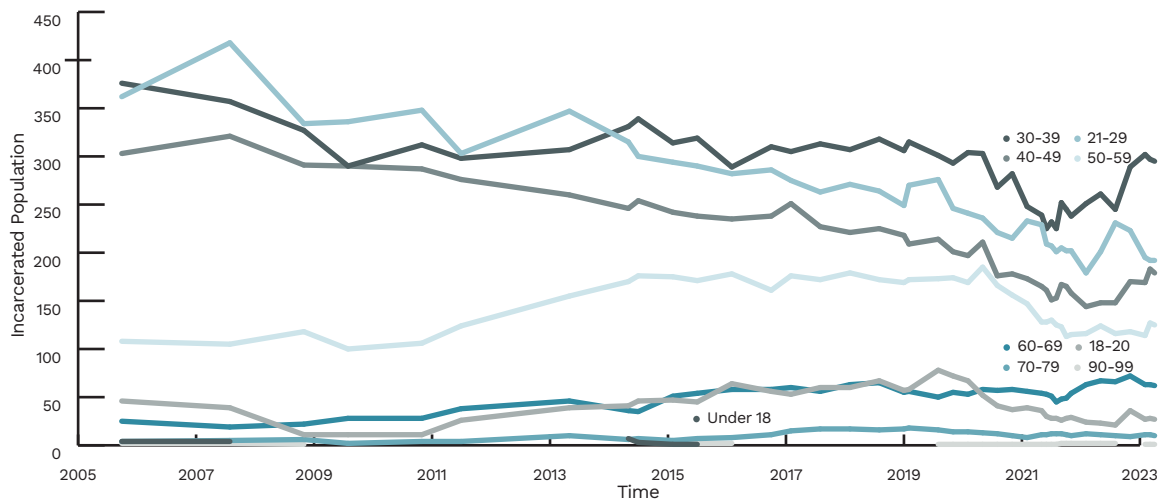
Incarcerated Population Over Time by Race



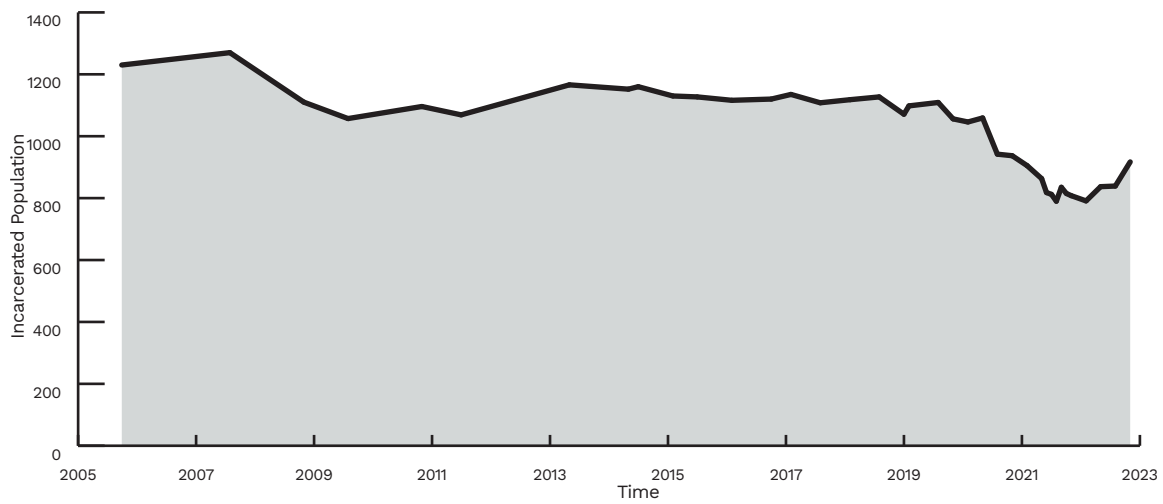
Incarcerated Population Over Time by Unit



Incarcerated Population Over Time by Age Range



Incarcerated Population Over Time



CANY Post-Visit Briefing and Recommendations

Monitoring Visit to Marcy Correctional Facility

No. 22-10 October 11-12, 2022

Correctional Association of New York

Post Office Box 793

Brooklyn, NY 11207

212-254-5700 (We accept collect calls)

info@correctionalassociation.org

www.correctionalassociation.org

