

STATE OF NEW YORK

8461

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. GALLAGHER -- read once and referred to the
Committee on Correction

AN ACT to amend the correction law, in relation to the membership of the
state commission of correction and to inspection and procedures appli-
cable to unsafe or unsanitary correctional facilities

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 1 of section 41 of the correction law, as added
2 by chapter 865 of the laws of 1975, is amended to read as follows:

3 1. There shall be within the executive department a state commission
4 of correction. It shall consist of [~~three~~ nine] persons [~~to be~~], three
5 of whom shall be appointed by the governor upon names submitted by the
6 judges of the court of appeals, by and with the advice and consent of
7 the senate, three of whom shall be appointed by a majority vote of the
8 membership of the assembly upon names submitted by the speaker of the
9 assembly, and three of whom shall be appointed by a majority vote of the
10 membership of the senate upon names submitted by the temporary president
11 of the senate. At least one member of the commission shall be a formerly
12 incarcerated person, and a preference in appointment shall be granted to
13 nominees who have been personally affected by contact with the criminal
14 legal system. At least one member of the commission shall have a profes-
15 sional background in public health. No more than three members of the
16 commission shall have a background in law enforcement, criminal prose-
17 cution, or employment within a corrections agency, and the members of
18 the commission with such backgrounds shall never be greater than the
19 number of members of the commission with backgrounds in indigent crimi-
20 nal defense services, prisoner's rights litigation, or public legal
21 services. The remaining members of the commission shall have expertise
22 in any other field deemed useful for the promotion of an efficient,
23 humane, and lawful correctional system. The governor shall designate one
24 of the appointed members as chairman to serve as such at the pleasure of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

LBD13287-07-1

1 the governor. The members shall devote full time to their duties and
2 shall hold no other salaried public position.

3 § 2. Subdivision 3 of section 45 of the correction law, as amended by
4 chapter 322 of the laws of 2021, is amended to read as follows:

5 3. Except in circumstances involving health, safety or alleged
6 violations of established standards of the commission, visit, and
7 inspect every correctional ~~[facilities]~~ facility in the state on a regu-
8 lar basis consistent with a schedule determined by the chairman of the
9 commission~~[, taking into consideration available resources, workload and~~
10 ~~staffing]~~, and appraise the management of such correctional facilities
11 with specific attention to matters such as safety, security, health of
12 incarcerated individuals, sanitary conditions, rehabilitative programs,
13 disturbance and fire prevention and control preparedness, and adherence
14 to laws and regulations governing the rights of incarcerated individ-
15 uals. The commission shall not disclose its schedule for inspections or
16 provide advance notice to any correctional facility of a planned
17 inspection.

18 § 3. Paragraph (a) of subdivision 8 of section 45 of the correction
19 law, as amended by section 2 of part D of chapter 63 of the laws of
20 2005, is amended to read as follows:

21 (a) Close any correctional facility which is unsafe, unsanitary or
22 inadequate to provide for the separation and classification of prisoners
23 required by law or which has not adhered to or complied with the rules
24 or regulations promulgated with respect to any such facility by the
25 commission pursuant to the provisions of subdivision six of this
26 section; provided, however, that the closure of any local correctional
27 facility pursuant to this section shall not be cause for the transfer of
28 any incarcerated person to a correctional facility operated by the
29 department, and that before such facility may be closed due to condi-
30 tions which are unsafe, unsanitary or inadequate to provide for the
31 separation and classification of prisoners, the commission shall cause a
32 citation to be mailed to the appropriate municipal or other official at
33 least ten days before the return day thereof directing the responsible
34 authorities designated to appear before such commission at the time and
35 place set forth in the citation, and show cause why such correctional
36 facility should not be closed. After a hearing thereon or upon the fail-
37 ure to appear, such commission is empowered to order such facility
38 designated in the citation closed within twenty days, during which time
39 the respondent authority may review such order in the manner provided in
40 article seventy-eight of the civil practice law and rules, in the
41 supreme court. Fifteen days after the order to close has been served by
42 a registered letter upon the appropriate official if no court review has
43 been taken, and fifteen days after the order of such commission has been
44 confirmed by the court, in case of court review, such facility desig-
45 nated in the order shall be closed, and it shall be unlawful to confine
46 or detain any person therein and any officer confining or detaining any
47 person therein shall be guilty of a class A misdemeanor.

48 § 4. Subdivision 4 of section 46 of the correction law, as amended by
49 chapter 322 of the laws of 2021, is amended and two new subdivisions 5
50 and 6 are added to read as follows:

51 4. In any case where any rule or regulation promulgated by the commis-
52 sion pursuant to subdivision six of section forty-five of this article
53 or the laws relating to the construction, management and affairs of any
54 correctional facility or the care, treatment and discipline of its
55 incarcerated individuals, are being or are about to be violated, the
56 commission shall immediately notify the person in charge or control of

1 the facility of such violation, recommend remedial action, and direct
2 such person to comply with the rule, regulation or law, as the case may
3 be. The commission shall also immediately notify the governor, the
4 chair and members of the assembly standing committee on correction, and
5 the chair and members of the senate standing committee on crime victims,
6 crime, and correction, of the alleged or documented violation and the
7 remedial action that the commission recommends. Upon the failure of such
8 person to comply with the rule, regulation or law the commission [~~may~~]
9 shall apply to the supreme court for an emergency order directed to such
10 person requiring compliance with such rule, regulation or law; provided,
11 however, that if the commission decides to close a facility pursuant to
12 section forty-five of this article, the commission shall not be required
13 to apply for an emergency order. Upon such application the court [~~may~~]
14 shall issue such order as may be just and a failure to comply with the
15 order of the court shall be a contempt of court and punishable as such.

16 5. (a) In any case where there is a reasonably foreseeable risk that
17 conditions at a correctional facility might violate the constitutional
18 rights of people incarcerated there, cause imminent harm to any incar-
19 cerated person, or cause the imminent death of any incarcerated person,
20 the commission shall be required to order the closure of such correc-
21 tional facility pursuant to subdivision eight of section forty-five of
22 this article. Such correctional facility shall remain closed permanently
23 or until the commission has determined that such correctional facility
24 can resume operations in compliance with all regulations promulgated by
25 the commission and without posing any reasonably foreseeable harm to any
26 person incarcerated there. The commission shall not need to apply for a
27 court order pursuant to subdivision four of this section before deciding
28 to close a correctional facility. Failure to take action pursuant to
29 this subdivision or subdivision four of this section shall constitute
30 neglect of a ministerial matter. For the purposes of this subdivision,
31 "ministerial matter" shall have the same meaning as such term is defined
32 in paragraph (d) of subdivision one of section seventy-three of the
33 public officers law.

34 (b) Upon a recommendation made by the governor or the attorney gener-
35 al, or upon a resolution passed in the assembly or senate, or upon the
36 request of a considerable number of people incarcerated in any correc-
37 tional facility or particular wing, annex, or housing unit thereof,
38 asking the commission to inspect any correctional facility and recommend
39 remedial actions or close a correctional facility pursuant to powers
40 granted in section forty-five of this article, the commission shall
41 discuss such matter at the next stated meeting to occur after ten busi-
42 ness days, provided that such meeting occurs within forty-five days of
43 such request. The commission shall inspect the correctional facility or
44 facilities in question, collect any relevant documents, and conduct any
45 interviews of incarcerated people, staff, medical providers, and super-
46 visors at such correctional facility prior to such meeting and make the
47 result of its inspection and analysis public online before its next
48 stated meeting. Such analysis shall, at a minimum, include a description
49 of the factors contained in subdivision three of section forty-five of
50 this article. At such meeting, the commission shall determine whether,
51 based on its inspection and analysis, the correctional facility lacks
52 compliance with any law or regulation promulgated by the commission, and
53 whether such non-compliance poses an imminent harm to any incarcerated
54 person in the custody of that correctional facility. At such stated
55 meeting the commission shall state on the record the reasoning underly-
56 ing its determination to take no action, recommend remedial action,

1 apply to the supreme court for an emergency order, or order the closure
2 of a facility.

3 6. (a) Twice per year, at intervals separated by approximately six
4 months, the commission shall publish a report containing the results of
5 its annual inspections of correctional facilities in a prominent place
6 on its website. Such reports shall contain, without limitation, detailed
7 information about any violations of regulations or applicable laws at
8 each correctional facility inspected, notable excerpts from interviews
9 with incarcerated people, staff, medical providers, and supervisors at
10 each facility, descriptions of reportable incidents that have occurred
11 at any correctional facility that was inspected, and copies of recommen-
12 dations or directives that have been issued to any correctional facility
13 during the period of time covered by the report. The report shall
14 contain a summary or copy of any correctional facility's response to
15 recommendations or directives issued by the commission in relation to an
16 inspection that occurred during that year.

17 (b) Within twenty days of a request, and only provided that such
18 disclosure is authorized by laws and regulations governing access to
19 individually-identifying health information, the commission shall
20 disclose to the next-of-kin or authorized legal representative of any
21 person who has died or suffered a serious injury at a correctional
22 facility the details and circumstances of such incident, including with-
23 out limitation the complete result of the commission's investigation of
24 such incident, true and correct copies of records that the commission
25 has received from such facility in connection with its investigation of
26 such incident, and a list of regulations or applicable laws that may
27 have been violated in proximate relation to such incident, without cost
28 to the requestor.

29 (c) Within thirty days of any death of an incarcerated person in the
30 custody of a correctional facility and following the commission's inves-
31 tigation of the circumstances of such death, the commission shall
32 publish on its website a general summary of its investigation, and a
33 determination as to whether the incarcerated individual received
34 adequate medical care while in custody and whether conditions in the
35 correctional facility or the quality of medical care or supervision that
36 the incarcerated person received were contributing factors or related to
37 the cause of death. Such results shall be redacted or written to prevent
38 the disclosure of potentially sensitive personal medical information
39 belonging to the deceased incarcerated person.

40 (d) Any person who willfully obstructs the efforts of the commission
41 to inspect a correctional facility, including without limitation, by
42 obstructing the efforts of an employee or member of the commission to
43 copy or review records reasonably related to the commission's duties or
44 falsifying or destroying records in the possession of a correctional
45 facility that the commission may seek to copy or review, shall be guilty
46 of obstructing governmental administration in the second degree. For the
47 purposes of this section, the term "obstructing governmental adminis-
48 tration in the second degree" shall have the same meaning as such term
49 does in section 195.05 of the penal law. In any proceeding brought
50 against an individual for obstructing the efforts of the commission to
51 inspect a correctional facility, there shall be a presumption of the
52 willfulness of such obstruction, rebuttable upon a preponderance of
53 evidence to the contrary.

54 (e) If, in the course of the commission's investigations or
55 inspections, the commission finds evidence of a pattern of malfeasance,
56 nonfeasance, abuse, or negligence on the part of staff or management at

1 any correctional facility, the commission shall immediately report such
2 evidence to the attorney general and the district attorney for the coun-
3 ty in which such correctional facility is located, and such evidence
4 shall be published within the reports issued by the commission pursuant
5 to paragraph (a) of this subdivision.

6 § 5. This act shall take effect immediately.