

STATE OF NEW YORK

8612

IN SENATE

March 22, 2022

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to the establishment of decarceration emergency management plans to be developed for use in the event of a state disaster emergency declared pursuant to executive order

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

1 Section 1. The correction law is amended by adding a new section 134
2 to read as follows:

3 § 134. State disaster decarceration emergency management plans. 1.
4 There shall be established within the department an advisory board to
5 provide recommendations to the department regarding the development by
6 the department of decarceration emergency management plans within the
7 facilities operated by the department for use in the event of a state
8 disaster emergency declared pursuant to executive order.

9 2. The advisory board shall consist of nine members including:

10 (a) the commissioner of the department, or his or her designee;

11 (b) the commissioner of the department of health, or his or her designee;

12 (c) the director of homeland security and emergency services;

13 (d) two individuals who were formerly incarcerated in facilities operated by the department, one each appointed by the senate committee on
14 crime victims, crime and correction and the assembly committee on
15 corrections, based on consultations with advocacy organizations working
16 directly with communities impacted by the criminal justice system;

17 (e) three members appointed by the governor including:

18 (i) a member of the New York state correctional officers' benevolent
19 association;

20 (ii) an individual with a demonstrated background in emergency planning who has created an emergency management accreditation program for
21 accreditation purposes in the past;
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (iii) an individual with a background in correctional health, capable
2 of ascertaining particular vulnerabilities to any emerging diseases or
3 infections, or any other public health risks that could face the incar-
4 cerated population; and

5 (f) an attorney with experience defending the constitutional rights of
6 incarcerated individuals.

7 3. Vacancies on the advisory board shall be filled in the same manner
8 as the original appointment.

9 4. The members of the advisory board shall elect a chair of the board
10 from among their number. A majority of the members of the advisory board
11 shall constitute a quorum for the purposes of the business of the advi-
12 sory board.

13 5. The advisory board shall:

14 (a) visit each facility operated by the department at least one time
15 every three years;

16 (b) evaluate and make general recommendations for the correctional
17 facility system and facility-specific recommendations for each facility
18 operated by the department as to:

19 (i) a selection process for incarcerated individuals eligible for
20 emergency release during a state disaster emergency declared pursuant to
21 executive order. Such selection process shall include, but not be limit-
22 ed to, consideration of incarcerated individuals who meet the criteria
23 included under subdivision eleven of this section;

24 (ii) a process for evacuation of incarcerated individuals who do not
25 qualify for emergency release during a state disaster emergency declared
26 pursuant to executive order if such need arises;

27 (iii) changes to facility operations to ensure the safety and well-be-
28 ing of incarcerated individuals who remain incarcerated during a state
29 disaster emergency declared pursuant to executive order; and

30 (iv) alternative methods that can be deployed in order to meet the
31 needs of incarcerated individuals who remain incarcerated during the
32 state disaster emergency, including alternatives to help facilitate
33 visits by counsel and family visitation; and

34 (c) have authority based on a declared emergency to evaluate reports
35 and draft counter reports with alternative recommended courses of
36 action.

37 6. Each state agency and department shall provide assistance to the
38 advisory board as requested for the purpose of fulfilling the obli-
39 gations of the advisory board under this section. The advisory board
40 shall have access to all the relevant data necessary to make recommenda-
41 tions as provided in subdivision five of this section, including, but
42 not limited to, for each facility operated by the department in the
43 state:

44 (a) the number of incarcerated individuals in the facility;

45 (b) information as to the vulnerability and resiliency of each facili-
46 ty;

47 (c) the staff to incarcerated individual ratio;

48 (d) the number of vacant spots at the facility; and

49 (e) the number and identity of incarcerated individuals released
50 pursuant to this plan and the factors utilized to determine such release
51 pursuant to subdivision eleven of this section and a detailed report on
52 incarcerated individuals that fit into a category but were determined
53 ineligible for release pursuant to this section and the factors utilized
54 for such determination.

1 7. The members of the advisory board shall serve without compensation
2 but shall be reimbursed for their necessary and actual expenses in the
3 performance of their duties under this section.

4 8. Meetings of the advisory board shall be called by the chairperson
5 of the advisory board.

6 9. The advisory board shall issue its first general recommendations to
7 the department within six months of the effective date of this section
8 and shall issue recommendations for each facility operated by the
9 department no later than six months after the advisory board conducts a
10 visit to such facility and shall update its general recommendations and
11 facility specific recommendations on at least an annual basis.

12 10. (a) Within one year of receipt of the recommendations of the advi-
13 sory board, the department shall develop and implement sustainable
14 facility-based decarceration emergency management plans for use in the
15 event of a state disaster emergency declared pursuant to executive order
16 based upon the advisory board's recommendations. The department shall
17 review and update each such plan on at least an annual basis. Updates to
18 the plans shall include measures taken based upon updated recommenda-
19 tions by the advisory board.

20 (b) Emergency plans developed pursuant to paragraph (a) of this subdivi-
21 sion shall include, but not be limited to, provisions describing the
22 procedures that will be implemented to facilitate the recommendations
23 made by the advisory board as described in paragraph (b) of subdivision
24 five of this section, including a list of incarcerated individuals to be
25 considered for emergency release based on the criteria established in
26 subdivision eleven of this section for determining eligibility for emer-
27 gency release. After such list of incarcerated individuals to be consid-
28 ered for emergency release is compiled for each facility operated by the
29 department, individualized decisions shall be made by the department as
30 to the eligibility for release of each incarcerated individual, with
31 clearly stated reasons in case of denial.

32 (i) When determining eligibility for emergency release, an incarcerat-
33 ed individual's underlying conviction or convictions for which they were
34 sentenced to incarceration shall not serve as a justification for exclu-
35 sion from consideration.

36 (ii) An incarcerated individual may be deemed ineligible for consider-
37 ation for emergency release if they have been found guilty by the
38 department of a violent institutional infraction within the one hundred
39 eighty days prior to release consideration.

40 (iii) The termination of the state disaster emergency declared pursu-
41 ant to executive order shall not be a basis for an incarcerated individ-
42 ual released pursuant to the provisions of this section to be remanded
43 back into custody.

44 11. The following criteria shall be considered to determine eligibil-
45 ity for emergency release of an incarcerated individual pursuant to this
46 section; provided, however, that such criteria represent a non-exhaus-
47 tive list of factors to be considered in determining such eligibility.
48 Such criteria shall include consideration of any incarcerated individual
49 who:

50 (a) is terminally ill, mentally ill, or disabled, as determined by a
51 medical professional;

52 (b) is medically vulnerable;

53 (c) has an additional documented illness or illnesses determined by an
54 independent health practitioner not affiliated with the facility who
55 determines that such illness or illnesses place the individual at risk;

(d) is unlikely to pose a substantial risk of causing bodily injury or using violent force against another individual;
(e) is over fifty-five years old;
(f) is a primary caregiver;
(g) is pregnant;
(h) has completed more than fifty percent of their minimum sentence if serving an indeterminate sentence or fifty percent of their sentence if serving a determinate sentence; or

(i) will complete their sentence within eighteen months of the effective date of this section.

12. The department shall have the authority to implement facility-based decarceration emergency management plans upon the occurrence of a state disaster emergency pursuant to executive order without legislative or judicial approval or further action by the governor.

13. Within forty-eight hours of a state disaster emergency declared pursuant to executive order, the department shall provide to the governor, the advisory board and the state legislature the decarceration emergency management plan for each facility operated by the department. The department shall provide the governor, the advisory board and the state legislature:

(a) a certification that each facility has released the persons determined eligible for emergency release pursuant to this section;

(b) the identity of each incarcerated individual released pursuant to the decarceration emergency management plan for each facility operated by the department and the factors utilized for such eligibility determinations, without disclosing any information that would constitute an invasion of the privacy of any individual or which would disclose protected health information; and

(c) an estimate of the fiscal savings to the state due to the decarceration implemented pursuant to this section.

14. Definitions. As used in this section, the following terms shall have the following meaning:

(a) The term "medically vulnerable" includes, but is not limited to, an individual who is:

(i) diagnosed with a chronic lung disease;

(ii) diagnosed with moderate or severe asthma;

(iii) diagnosed with a serious heart condition;

(iv) diagnosed with diabetes;

(v) diagnosed with a chronic kidney disease and undergoing dialysis;

(vi) diagnosed with liver disease;

(vii) diagnosed with cancer;

(viii) diagnosed with obesity; or

(ix) who is immunocompromised.

(b) The term "primary caregiver" means an individual who has the responsibility for the care of another individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and includes a family member or other individual who provides compensated or uncompensated care to another individual, on behalf of such individual or on behalf of a public or private agency, organization, or institution.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.