

STATE OF NEW YORK

4379

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

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

AN ACT to amend the correction law, in relation to creating the office of the correctional ombudsman; to amend the county law, in relation to reports by coroners; to amend the criminal procedure law, in relation to designating investigators of the office of the correctional ombudsman as peace officers; to amend the education law, in relation to the certification of incarcerated individual populations; to amend the executive law, in relation to authorizing the attorney general to investigate the alleged commission of any criminal offense committed by an employee of the department of corrections and community supervision in connection with his or her official duties; to amend the executive law, in relation to the division of criminal justice services; to amend the mental hygiene law, in relation to clinical records; to amend the public health law, in relation to the confidentiality of certain records; to amend the public officers law, in relation to including the office of the correctional ombudsman records within the definition of public safety agency records; and to amend the social services law, in relation to inspection and supervision

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 article 3-A
2 to read as follows:

ARTICLE 3-A

OFFICE OF THE CORRECTIONAL OMBUDSMAN

Section 50. Definitions.

6 51. Office of the correctional ombudsman; organization.

7 52. Correctional oversight board.

8 53. Powers of the ombudsman.

9 54. Additional functions, powers and duties of the office of the
10 ombudsman.

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

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55. Additional duties of the department and local correctional facilities.

56. Obstructing an investigation by the correctional ombudsman.

§ 50. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Office" refers to the office of the correctional ombudsman.

2. "Ombudsman" refers to the commissioner of the office of the correctional ombudsman.

§ 51. Office of the correctional ombudsman; organization. In order to achieve transparency, fairness, impartiality and accountability in our state and local correctional facilities, there shall be an independent office of the correctional ombudsman within the executive department. The ombudsman shall report to the correctional oversight board established pursuant to section fifty-two of this article, provided, however, that administrative matters of general application within the executive department shall be also applicable to the office.

1. Following the initial appointment of the members of the correctional oversight board established pursuant to section fifty-two of this article, such board shall promptly nominate a full-time ombudsman and notify the governor of such nomination. Nothing in this subdivision shall prohibit the board from appointing an interim ombudsman if there is a vacancy.

2. The governor, within thirty days after receiving written notice of any nomination of an ombudsman made pursuant to subdivision one of this section, may approve or disapprove such nomination. If the governor approves such nomination, or fails to act on such nomination within such thirty day period, the nominee shall thereupon commence his or her term as ombudsman. If, within such thirty day period, the governor serves upon the chair of such board a written notice disapproving such nomination, the nominee shall not be authorized to serve as ombudsman provided, however, that such board may authorize an interim ombudsman appointed pursuant to subdivision one of this section to serve or continue to serve as interim ombudsman until such time as an ombudsman is approved, or not timely disapproved, by the governor. Following any disapproval, the board shall have sixty days to submit another nominee, although such period may be extended, upon request of the board, by the governor. A person appointed as interim ombudsman may exercise all of the powers available to the ombudsman.

3. The ombudsman may not have worked for the department or for any local correctional facility within the last ten years and may not hold any public office or other employment. The ombudsman shall serve a six-year term and may only be removed for good cause shown, after notice and an opportunity to be heard, by a vote of two-thirds or more of the twelve members of the board.

§ 52. Correctional oversight board. 1. There is hereby created the correctional oversight board hereinafter referred to in this section as the "board". The purpose of such board shall be to monitor, study and make efforts to improve the transparency, fairness, impartiality and accountability in state and local correctional facilities and to appoint the ombudsman. No current employee of the department or an employee of any local correctional facility shall be appointed to or serve on such board. The board shall consist of twelve members who shall be appointed as follows:

(a) one shall be the state inspector general;

(b) two shall be appointed by the governor on the recommendation of the senate;

1 (c) two shall be appointed by the governor on the recommendation of
2 the assembly;

3 (d) two shall be appointed by the governor from a list of at least six
4 nominees submitted by non-profit agencies working in the fields of
5 re-entry or prisoner advocacy;

6 (e) one shall be appointed by the governor and shall be a former state
7 incarcerated individual;

8 (f) one shall be appointed by the governor and shall be a former
9 employee of the department who is no longer in state service;

10 (g) one shall be an attorney appointed by the governor from a list of
11 at least four nominees submitted by the state bar association;

12 (h) one shall be a medical professional appointed by the governor; and

13 (i) one shall be a mental health professional who works with the
14 justice center for the protection of people with special needs appointed
15 by the governor.

16 2. All members of the board shall be appointed for terms of three
17 years with such terms to commence on August first, and expire July thir-
18 ty-first, provided, however, that the inspector general shall serve ex
19 officio. Initial appointments must be made within sixty days of the
20 effective date of this subdivision. Any member chosen to fill a vacancy
21 created otherwise than by expiration of term shall be appointed for the
22 unexpired term of the member whom he or she is to succeed. Vacancies
23 caused by expiration of a term or otherwise shall be filled promptly and
24 in the same manner as original appointments. Any member may be reap-
25 pointed for additional terms. A member of the board shall continue in
26 such position upon the expiration of his or her term until such time as
27 he or she is reappointed or his or her successor is appointed, as the
28 case may be.

29 3. Membership on the board shall not constitute the holding of an
30 office, and members of the board shall not be required to take and file
31 oaths of office before serving on the board. The board shall not have
32 the right to exercise any portion of the sovereign power of the state.

33 4. The board shall meet at least two times in each year. The first
34 meeting of the board shall be held within thirty days of the appointment
35 of the full board or within sixty days after the effective date of this
36 subdivision, whichever occurs earlier. Special meetings may be called by
37 the chair and shall be called by the chair upon the request of at least
38 five members of the board. The board may establish its own procedures
39 with respect to the conduct of its meetings and other affairs; provided,
40 however, that the quorum and majority provisions of section forty-one of
41 the general construction law shall govern all actions taken by the
42 board.

43 5. The members of the board shall receive no compensation for their
44 services but shall be allowed their actual and necessary expenses
45 incurred in the performance of their functions hereunder.

46 6. No member of the board shall be disqualified from holding any
47 public office or employment outside of the department, nor shall he or
48 she forfeit any such office or employment, by reason of his or her
49 appointment pursuant to this section, notwithstanding the provisions of
50 any other general, special or local law, ordinance or city charter.

51 7. The board shall make recommendations to the ombudsman for the
52 improvement of the department's policies and consult with and advise the
53 office of the correctional ombudsman in carrying out the duties and
54 responsibilities of such office. The ombudsman shall report to the
55 board fully on the activities of the office and shall seek board
56 approval on all major decisions or policy changes, including any stand-

ards or protocols adopted by the ombudsman for the inspection and monitoring of correctional facilities or the resolution of complaints received by the office.

8. Each member of the board shall tour a state correctional facility with the ombudsman at least annually.

§ 53. Powers of the ombudsman. 1. The ombudsman shall have the authority to hire and retain counsel to provide confidential advice or to represent the ombudsman if the attorney general has a conflict in representing the ombudsman in any litigation.

2. The office of the ombudsman shall not be located in the same building or buildings as the department but shall be wholly independent of the department except that the department shall provide it with office space, equipment and furnishings within any department facility as needed to carry out its functions and duties.

3. The ombudsman may appoint such assistants, officers, investigators, monitors, employees and consultants as he or she shall determine necessary, prescribe their duties and powers, provide them with appropriate training, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor except that the ombudsman shall not hire any person known to be directly or indirectly involved in an open internal affairs investigation conducted by any federal, state or local agency or who is a named defendant in a pending federal or state lawsuit or criminal proceeding relating to his or her prior work for a state, local or federal correctional or law enforcement agency. The ombudsman may appoint a representative to carry out any of his or her duties under this article except that the ombudsman must attend meetings with the correctional oversight board.

4. The ombudsman may create, abolish, transfer and consolidate bureaus and other units within the office as he or she may determine necessary for the efficient operation of the office, subject to the approval of the director of the budget.

5. The ombudsman may request and shall receive from any department, division, bureau, commission or any other agency of the state or any municipality or political subdivision thereof or any public authority such assistance, information and data as will enable the office to carry out its functions, powers and duties.

6. The ombudsman shall be responsible for the contemporaneous public oversight of internal affairs and the disciplinary process of the department of corrections and community supervision. The ombudsman shall have discretion to provide oversight of any department investigation relating to the well-being, treatment, discipline, safety or any other matter concerning incarcerated individuals or persons under community supervision as needed, including personnel investigations.

7. The ombudsman may review specific policies, practices, programs and procedures of the department and of all local correctional facilities that raise a significant correctional issue relevant to the well-being, treatment, discipline, safety, rehabilitation or any other matter concerning incarcerated individuals or persons under community supervision. The ombudsman is authorized to inspect, investigate or examine all aspects of the department's operations and conditions, and of such operations and conditions of any local correctional facility, including, but not limited to, staff recruitment, training, supervision, discipline, incarcerated individuals deaths, medical and mental health care, use of force, incarcerated individual violence, conditions of confinement, incarcerated individuals disciplinary process, incarcerated individuals grievance process, substance-abuse treatment, educational, voca-

1 tional and other programming and re-entry planning. During the course of
2 a review the ombudsman shall identify areas of full and partial compli-
3 ance or noncompliance with departmental or local correctional facility
4 policies and procedures, specify deficiencies in the completion and
5 documentation of processes and recommend corrective actions, including,
6 but not limited to, additional training, additional policies or changes
7 in policies, as well as any other findings or recommendations he or she
8 deems appropriate.

9 8. The ombudsman may place such members of his or her staff as he or
10 she deems appropriate as monitors in any correctional facility which, in
11 the judgment of the ombudsman, presents an imminent danger to the
12 health, safety or security of incarcerated individuals or employees of
13 such correctional facility or the public.

14 9. The ombudsman shall accept, with the approval of the governor, as
15 agent of the state any grant, including federal grants, or any gift for
16 any of the purposes of this article. Any moneys so received may be
17 expended by the ombudsman to effectuate any purpose of this article,
18 subject to the same limitations as to approval of expenditures and audit
19 as are prescribed for state moneys appropriated for the purposes of this
20 article.

21 10. The ombudsman may enter into contracts with any person, firm,
22 corporation, municipality, or governmental agency.

23 11. The ombudsman shall adopt, amend or rescind such rules and regu-
24 lations, in accordance with applicable state law, as may be necessary or
25 convenient to the performance of the functions, powers and duties of the
26 office.

27 12. The ombudsman shall do all other things necessary or convenient to
28 carry out its functions, powers and duties expressly set forth in this
29 article.

30 13. When exigent circumstances of unsafe or life threatening situ-
31 ations arise involving incarcerated individuals, staff, people on commu-
32 nity supervision or other individuals, the ombudsman shall notify the
33 governor, the temporary president of the senate and the speaker of the
34 assembly and commence an immediate review of such circumstances. Upon
35 completion of a review, the ombudsman shall prepare a complete written
36 report which shall be disclosed with the underlying materials that the
37 ombudsman deems appropriate to the commissioner, the requesting entity
38 and any appropriate law enforcement agency.

39 14. (a) The ombudsman shall interview and review all candidates for
40 appointment to serve as the superintendent of any state correctional
41 facility. The commissioner shall submit the names of such candidates to
42 the ombudsman who shall review such candidates' qualifications and
43 employ confidential procedures to evaluate the qualifications of each
44 candidate with regard to his or her ability to discharge the duties of
45 the office to which he or she is being appointed. Within ninety days of
46 the submission of a candidate's name, the ombudsman shall confidentially
47 advise the commissioner as to whether such candidate is well-qualified,
48 qualified or not qualified and the reasons therefor and may report, in
49 confidence, any other information that the ombudsman deems pertinent to
50 the qualification of the candidate. The ombudsman shall establish and
51 adopt rules and procedures regarding the review of candidates for the
52 position of superintendent and for maintaining the confidentiality of
53 any interviews, documents or other information relied upon in his or her
54 review. All such information shall be privileged and not subject to
55 disclosure.

(b) If the commissioner appoints a superintendent who the ombudsman found was not qualified, the ombudsman shall make public that finding after due notice to the appointee. Any candidate found to be not qualified by the ombudsman shall have the right to withdraw from consideration before the ombudsman makes such public finding and in that case the finding shall not be published. Such notice and public finding shall not constitute a waiver of privilege or breach of confidentiality concerning the ombudsman's review of the appointee's qualifications pursuant to this section.

15. Notwithstanding any law to the contrary, the ombudsman shall periodically, but not less than every three years, conduct inspections of each state and local correctional facility and shall periodically review delivery of medical and mental health care at each correctional facility. The ombudsman shall issue a public report on each correctional facility at least every three years. The ombudsman need not notify the department or any local correctional facility before commencing such inspection or review.

16. All records, correspondence, videotapes, audiotapes, photographs, notes, electronic communications, books, memoranda, papers or other documents or objects used as evidence to support a completed review or investigation must be retained for three years after a report is issued unless handed over to a law enforcement agency for criminal investigation. No such documents or evidence shall be destroyed pending the completion of an investigation or review. Such documents or evidence shall be publicly available unless confidential and not subject to disclosure under the freedom of information law or by court order.

17. Notwithstanding any other provision of the law the ombudsman shall have complete access and authority to examine and reproduce any and all past and current books, accounts, reports, medical and mental health records, vouchers, correspondence files, computer files, computer data bases, documents, video and audio tape recordings, statistics and performance based outcome measures and any and all other past and current records and to examine the bank accounts, money or property of the department and of any local correctional facility. Any state office or agency of a political subdivision of the state or other public entity or employee or officer thereof possessing such records or property shall permit access to, and examination and reproduction thereof, consistent with the provisions of this article, upon the request of the ombudsman or his or her designee. Access, examination and reproduction consistent with the provision of this section shall not result in the waiver of any confidentiality or privilege regarding any records or property.

18. The ombudsman may require any state, county or municipal employee to be interviewed on a confidential basis. Such employee must comply with the request to be interviewed and must be given time off from his or her employment for the purposes of attending such an interview and may be accompanied by counsel acting on his or her behalf. The ombudsman may also conduct a confidential interview of any incarcerated individual or other person upon consent.

19. The ombudsman may enter anywhere on the grounds of any department facility or office or local correctional facility for the purposes of observation, inspection and investigation and shall have unfettered access to all areas of the department and any facility at any time.

20. The ombudsman may cause the body of a deceased incarcerated individual to undergo such examinations, including an autopsy, as he or she deems necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have been previously performed.

21. (a) In the exercise of its functions, powers and duties, the ombudsman and any attorney employed by the office is authorized to issue and enforce a subpoena and a subpoena duces tecum, administer oaths and examine persons under oath, in accordance with and pursuant to the civil practice law and rules. A person examined under oath pursuant to this subdivision shall have the right to be accompanied by counsel who shall advise the person of his or her rights subject to reasonable limitations to prevent obstruction of, or interference with, the orderly conduct of the examination. Notwithstanding any other provision of law, a subpoena may be issued and enforced pursuant to this subdivision for the medical records of an incarcerated individual of a correctional facility, regardless of whether such medical records were made during the course of the incarcerated individual's incarceration.

(b) In any case where a person in charge or control of a correctional facility or an officer or employee thereof shall fail to comply with the provisions of paragraph (a) of this subdivision, or in any case where a coroner, coroner's physician or medical examiner shall fail to comply with the provisions of subdivision six of section six hundred seventy-seven of the county law, the ombudsman may apply to the supreme court for an order directed to such person requiring compliance therewith. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

22. The ombudsman shall not be compelled to testify or release records without a court order that are otherwise exempt from public disclosure, including documents pertaining to any investigation that has not been completed or any identifying information, personal papers or correspondence with any person who has requested assistance from the office unless that person consents in writing to the release of such information, papers or correspondence.

23. The ombudsman may hold public hearings.

§ 54. Additional functions, powers and duties of the office of the ombudsman. 1. The office may receive communications from any individual who believes he or she may have information that may describe improper governmental activities or wrongdoing within the department or any state or local correctional facility. Incarcerated individual mail to and from the ombudsman shall be treated in the same manner as legal mail and may not be restricted by the department, the office of mental health or any other entity.

(a) The ombudsman shall establish a toll-free telephone number for the purpose of identifying any alleged wrongdoing by an employee of the department or of any local correctional facility. This telephone number shall be posted by the department and by local correctional facilities in clear view of employees, incarcerated individuals and the public, and incarcerated individuals shall be permitted to call such number during normal hours for telephone usage or within twenty-four hours of admission to a special housing unit or other unit with restricted telephone access. Telephone calls made to such toll-free number from a correctional facility shall not be recorded by the department or by the local correctional facility and are protected confidential communications. The ombudsman shall also maintain a website with a complaint form that may be filled out online and shall also accept complaints by mail or other means alleging wrongdoing by an employee of the department. When requested, the ombudsman shall initiate a review of any such alleged wrongdoing which may result in an investigation of the alleged wrongdoing at the ombudsman's discretion.

1 (b) At the conclusion of an investigation of a complaint, the ombuds-
2 man shall report his or her findings to the complainant and any person
3 designated to receive such findings by the complainant. If the ombudsman
4 does not investigate a complaint, he or she shall notify the complainant
5 and such other person of the decision not to investigate and the reasons
6 for the decision. If the complainant is deceased at the time of the
7 completion of an investigation, the ombudsman shall report his or her
8 findings to the complainant's next of kin when such person is known to
9 the ombudsman or to the department or local correctional facility.

10 (c) The ombudsman may act informally to resolve a complaint including
11 providing referrals or information to complainants, expediting individ-
12 ual matters, mediating or providing other assistance.

13 (d) All identifying information and any personal records or corre-
14 spondence from any person who initiated the review of such alleged
15 wrongdoing shall be confidential unless the person consents to disclo-
16 sure in writing.

17 (e) Where the ombudsman believes that an allegation of criminal
18 misconduct has been made by a complainant, he or she shall report such
19 allegation to the appropriate law enforcement agency.

20 2. Upon receiving a complaint of retaliation for complaining to or
21 cooperating with the ombudsman, the ombudsman shall commence an inquiry
22 into the complaint and conduct a formal investigation. Should the
23 ombudsman find that a complaint of retaliation is founded as a result of
24 an investigation, he or she shall so notify the department or local
25 correctional facility and make recommendations for corrective action to
26 be taken by the department or local correctional facility. The ombudsman
27 shall make the results and supporting evidence of its formal investi-
28 gation available to the division of human rights should an employee file
29 a retaliation complaint with such agency and consent to such disclosure
30 in writing.

31 3. To facilitate oversight, the office shall be immediately notified
32 by the department or local correctional facility of all unusual and
33 significant incidences including, but not limited to, riots or fights
34 involving multiple combatants, use of force, incarcerated individuals
35 deaths, serious physical assaults on employees or incarcerated individ-
36 uals, work stoppages and escapes and shall be given monthly aggregated
37 reports of unusual incidents and incarcerated individuals grievances by
38 the department and each local correctional facility. Employees of the
39 office shall be permitted to be present in any department internal
40 investigation or inquiry in any correctional facility. The office shall
41 be responsible for reporting such unusual and significant incidents and
42 the outcome of its investigations into such incidents to the public no
43 less than quarterly.

44 4. (a) The ombudsman shall annually prepare a public report and summa-
45 ry of all investigations and reviews, including a list of significant
46 problems discovered by the office, whether or not the recommendations
47 made by the office have been implemented, and a list of the office's
48 high priorities for the following year. The ombudsman shall submit such
49 report to the governor, the temporary president of the senate, and the
50 speaker of the assembly by December thirty-first of each year. Such
51 report shall be posted in electronic form on the office's public
52 website. The ombudsman shall be authorized to redact portions of such
53 report in a manner consistent with article six of the public officers
54 law or where disclosure is otherwise prohibited by law.

55 (b) Upon review of the cause of death and circumstances surrounding
56 the death of any incarcerated individual in a correctional facility, the

1 ombudsman shall submit its report thereon to the governor, the speaker
2 of the assembly, the temporary president of the senate, the chairperson
3 of the assembly correction committee, the chairperson of the senate
4 crime and correction committee, and the commissioner, and, where appro-
5 priate, make recommendations to prevent the recurrence of such deaths.
6 Such reports shall be published on the office's website and shall other-
7 wise be made available to the public.

8 (c) The ombudsman shall make an annual report to the governor, the
9 speaker of the assembly, the temporary president of the senate, the
10 chairperson of the assembly correction committee and the chairperson of
11 the senate crime and correction committee on the condition of systems
12 for the delivery of medical care to incarcerated individuals of correc-
13 tional facilities and, where appropriate, recommend such changes as it
14 shall deem necessary and proper to improve the quality and availability
15 of such medical care. Such report shall be published on the office's
16 website and shall otherwise be made available to the public.

17 (d) All public reports by the ombudsman shall not disclose information
18 where prohibited by law.

19 § 55. Additional duties of the department and local correctional
20 facilities. 1. State, county, or municipal employees operating within a
21 correctional facility must cooperate fully and promptly with the ombuds-
22 man.

23 2. The department or local correctional facility shall respond in
24 writing to any recommendations made by the ombudsman or his or her
25 designee within forty-five days and shall state with specificity its
26 reasons for failing to act on any such recommendation. Such writings
27 shall be made public by the ombudsman except that information which
28 would reveal confidential material that may not be released pursuant to
29 federal or state law shall be reacted by the ombudsman from any such
30 report or recommendation.

31 3. The commissioner or any sheriff shall immediately report to the
32 ombudsman the death of an incarcerated individual of any such facility
33 in such manner and form as the ombudsman shall prescribe and shall
34 provide him or her with an autopsy report when available.

35 § 56. Obstructing an investigation by the correctional ombudsman. A
36 person is guilty of obstructing an investigation by the correctional
37 ombudsman when, with intent to obstruct or impede an inquiry or investi-
38 gation by the correctional ombudsman appointed pursuant to section
39 fifty-three or fifty-four of this article, he or she knowingly destroys
40 or knowingly fails to permit access to, examination of, or reproduction
41 by the office of such correctional ombudsman, of any book, account, bank
42 account information, report, voucher, correspondence or correspondence
43 file, computer file, computer data base, document, video or audio
44 recording, statistic or performance based outcome measure, money, prop-
45 erty or any other record of the department of corrections and community
46 supervision or of any local correctional facility lawfully requested by
47 such correctional ombudsman. Obstructing an investigation by the
48 correctional ombudsman is a class A misdemeanor.

49 § 2. Section 2 of the correction law is amended by adding two new
50 subdivisions 35 and 36 to read as follows:

51 35. "Office" means the office of the correctional ombudsman.

52 36. "Ombudsman" means the commissioner of the office of the correc-
53 tional ombudsman.

54 § 3. Section 47 of the correction law, as amended by chapter 322 of
55 the laws of 2021, is amended to read as follows:

§ 47. Functions, powers and duties of the board. 1. The board shall have the following functions, powers and duties:

(a) Investigate and review the cause and circumstances surrounding the death of any incarcerated individual of a local correctional facility.

(b) Visit and inspect any local correctional facility wherein an incarcerated individual has died.

(c) Cause the body of the deceased to undergo such examinations, including an autopsy, as in the opinion of the board, are necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have previously been performed.

(d) Upon review of the cause of death and circumstances surrounding the death of any incarcerated individual in a local correction facility, the board shall submit its report thereon to the commission ~~[and to]~~, the governor, the [chairman] speaker of the assembly and the temporary president of the senate, the chairperson of the assembly committee on correction and the ~~[chairman]~~ chairperson of the senate committee on crime victims, crime and correction and, where appropriate, make recommendations to prevent the recurrence of such deaths to the commission and the administrator of the appropriate correctional facility. The report provided to the governor, the ~~[chairman]~~ speaker of the assembly and the temporary president of the senate, the chairperson of the assembly committee on correction and the ~~[chairman]~~ chairperson of the senate committee on crime victims, crime and correction shall not be redacted except as otherwise required to protect confidential medical records and behavioral health records in accordance with state and federal laws, rules, and regulations.

(e) (i) Investigate and report to the commission on the condition of systems for the delivery of medical care to incarcerated individuals of local correctional facilities and where appropriate recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care.

(ii) The board shall be responsive to inquiries from the next of kin and other person designated as a representative of any incarcerated individual whose death takes place during custody in a state correctional facility regarding the circumstances surrounding the death of such incarcerated individual. Contact information for the next of kin and designated representative shall be provided by the department to the board from the emergency contact information previously provided by the incarcerated individual to the department.

2. Every administrator of a local correctional facility shall immediately report to the board the death of an incarcerated individual of any such facility in such manner and form as the board shall prescribe, together with an autopsy report.

§ 4. Section 89-a of the correction law, as amended by chapter 409 of the laws of 1991, subdivision 1 as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 89-a. ~~[1-]~~ Management of alternate correctional facilities. 1. Superintendence, management and control of alternate correctional facilities and the eligible incarcerated individuals housed therein shall be as directed by the commissioner consistent with the following: an alternate correctional facility shall be operated pursuant to rules and regulations promulgated for such facilities by the commissioner in consultation with the ~~[state commission of correction]~~ office of the correctional ombudsman and the provisions of the operation agreement. The commissioner shall operate such facility insofar as practicable in the same manner as a general confinement facility which houses medium

1 security state incarcerated individuals. Nothing herein, however, shall
2 preclude the commissioner from enhancing staffing or programming to
3 accommodate the particular needs of eligible incarcerated individuals
4 pursuant to the operation agreement. No incarcerated individual shall be
5 housed in any alternate correctional facility until such facility has
6 been established in accordance with the provisions of section eighty-
7 nine of this article. The population in an alternate correctional facil-
8 ity shall not exceed its design capacity of approximately seven hundred
9 eligible incarcerated individuals except pursuant to variances permitted
10 by law, rule or regulation or court order.

11 2. Notwithstanding any other provisions of law, no variance authoriz-
12 ing an alternate correctional facility to exceed its design capacity
13 shall be granted after March fifteenth, nineteen hundred ninety-two
14 unless the mayor of the city of New York submits, together with the
15 variance request, a certificate of emergency demonstrating the need for
16 such variance and that reasonable alternatives to the granting of the
17 variance do not exist, and containing a detailed summary of measures
18 that will be taken to restore compliance with such design capacity. The
19 ~~[chairman of the state commission of correction]~~ commissioner of the
20 office of the correctional ombudsman shall transmit, in a timely manner,
21 notice of such request to the chairmen of the senate crime and
22 correction committee and the assembly correction committee.

23 § 5. Subdivision 1 of section 89-e of the correction law, as amended
24 by section 47 of part A of chapter 56 of the laws of 2010, is amended to
25 read as follows:

26 1. The alternate correctional facility review panel is hereby estab-
27 lished and shall consist of the commissioner, ~~[the chairman of the state~~
28 ~~commission of correction]~~ the commissioner of the office of the correc-
29 tional ombudsman, the chairman of the board of parole, the director of
30 the office of probation and correctional alternatives, the commissioner
31 of correction of the city of New York, the president of the New York
32 State Sheriffs' Association Institute, Inc., and the president of the
33 Correctional Association of New York or their designees. The governor
34 shall appoint a chairman and vice-chairman from among the members.

35 § 6 Section 89-f of the correction law, as added by chapter 549 of the
36 laws of 1987, is amended to read as follows:

37 § 89-f. Oversight. The ~~[state commission of correction]~~ office of the
38 correctional ombudsman shall exercise the same powers and duties
39 concerning each alternate correctional facility as the ~~[commission]~~
40 office is required to exercise concerning a New York state correctional
41 facility. The ~~[commission]~~ office shall prepare an annual report on each
42 alternate correctional facility which shall evaluate and assess the
43 department's compliance with all rules and regulations applicable to
44 that facility and the operation agreement and which shall include an
45 analysis of the frequency and severity of all unusual incidents and
46 assaults occurring in that facility. The annual reports shall be filed
47 with the governor, the mayor of the city of New York, the chairman of
48 the senate crime and correction committee, and the chairman of the
49 assembly committee on correction no later than the first day of June of
50 each year.

51 § 7. Subdivision 1 of section 112 of the correction law, as amended by
52 chapter 322 of the laws of 2021, is amended to read as follows:

53 1. The commissioner of corrections and community supervision shall
54 have the superintendence, management and control of the correctional
55 facilities in the department and of the incarcerated individuals
56 confined therein, and of all matters relating to the government, disci-

pline, policing, contracts and fiscal concerns thereof. He or she shall have the power and it shall be his or her duty to inquire into all matters connected with said correctional facilities and to report any allegations of corruption, fraud, criminal activity, conflicts of interest or abuse to the office of the correctional ombudsman for investigation, as well as report to such office on other correctional issues, including, but not limited to, staff recruitment, training, supervision, discipline, incarcerated individual deaths, medical and mental health care, use of force, incarcerated individual violence, conditions of confinement, incarcerated individual disciplinary process, incarcerated individual grievance process, substance-abuse treatment, educational, vocational and other programming and re-entry planning. He or she shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility, as he or she may deem proper, and shall cause such rules and regulations to be recorded by the superintendent of the facility, and a copy thereof to be furnished to each employee assigned to the facility. He or she shall also prescribe a system of accounts and records to be kept at each correctional facility, which system shall be uniform at all of said facilities, and he or she shall also make rules and regulations for a record of photographs and other means of identifying each incarcerated individual received into said facilities. He or she shall appoint and remove, subject to the civil service law, subordinate officers and other employees of the department who are assigned to correctional facilities.

§ 8. Subdivision 1 of section 146 of the correction law, as amended by chapter 274 of the laws of 2019, is amended to read as follows:

1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, any employee of, or person under contract to, the office of the correctional ombudsman, members of the correctional oversight board, members of the legislature and their accompanying staff and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe.

§ 9. The closing paragraph of section 853 of the correction law, as added by chapter 757 of the laws of 1981, is amended to read as follows:

The department shall also forward to the ~~[state commission of correction]~~ office of the correctional ombudsman quarterly reports including, but not limited to, the information identified in subdivisions (a), (b), (d), (e), (f) and (g) of this section and such other information requested by the ~~[commission]~~ office or available to the department with respect to such programs.

1 § 10. Section 854 of the correction law, as added by chapter 691 of
2 the laws of 1977, is amended to read as follows:

3 § 854. Evaluation and recommendation. In recognition of the need for
4 an independent evaluation of, and recommendations with respect to,
5 temporary release, the ~~[commission of correction]~~ office of the correc-
6 tional ombudsman shall evaluate and assess the administration and opera-
7 tion of all temporary release programs conducted pursuant to this arti-
8 cle and shall submit to the governor and the legislature by March first,
9 ~~[nineteen hundred seventy-eight]~~ two thousand twenty-six, its findings
10 together with any recommendations with respect to the proper operation
11 or the improvement of such temporary release programs.

12 § 11. Section 857 of the correction law, as added by chapter 691 of
13 the laws of 1977, is amended to read as follows:

14 § 857. Complaint and abuse review. Any person may submit to the
15 ~~[commission of correction]~~ office of the correctional ombudsman any
16 complaint he or she may have concerning programmatic abuses. The
17 ~~[commission of correction]~~ office shall evaluate such complaints and,
18 where indicated, conduct any needed investigation. If the ~~[commission]~~
19 office concludes that a complaint is valid, the ~~[commission]~~ ombudsman
20 shall make recommendations to the department for corrective action.
21 Where the ~~[commission]~~ office believes sufficient evidence exists to
22 support a criminal charge, the ~~[commission]~~ office shall report such
23 evidence to the appropriate law enforcement agencies.

24 § 12. Subdivision 6 of section 677 of the county law, as amended by
25 chapter 322 of the laws of 2021, is amended to read as follows:

26 6. Notwithstanding section six hundred seventy of this article or any
27 other provision of law, the coroner, coroner's physician or medical
28 examiner shall promptly provide the chairman of the correction medical
29 review board or the commissioner of the office of the correctional
30 ombudsman and the commissioner of corrections and community supervision,
31 as appropriate, with copies of any autopsy report, toxicological report
32 or any report of any examination or inquiry prepared with respect to any
33 death occurring to an incarcerated individual of a correctional facility
34 as defined by subdivision three of section forty of the correction law
35 within his or her county; and shall promptly provide the executive
36 director of the justice center for the protection of people with special
37 needs with copies of any autopsy report, toxicology report or any report
38 of any examination or inquiry prepared with respect to the death of any
39 service recipient occurring while he or she was a resident in any facil-
40 ity operated, licensed or certified by any agency within the department
41 of mental hygiene, the office of children and family services, the
42 department of health or the state education department. If the toxico-
43 logical report is prepared pursuant to any agreement or contract with
44 any person, partnership, corporation or governmental agency with the
45 coroner or medical examiner, such report shall be promptly provided to
46 the chairman of the correction medical review board, the commissioner of
47 the office of the correctional ombudsman, the commissioner of
48 corrections and community supervision or the executive director of the
49 justice center for people with special needs, as appropriate, by such
50 person, partnership, corporation or governmental agency.

51 § 13. Section 2.10 of the criminal procedure law is amended by adding
52 a new subdivision 86 to read as follows:

53 86. Investigators of the office of the correctional ombudsman.

54 § 14. Subdivision 2 of section 285 of the education law, as amended by
55 chapter 322 of the laws of 2021, is amended to read as follows:

2. The commissioner is authorized to expend up to one hundred seventy-five thousand dollars annually to provide grants to public library systems operating under an approved plan of service for provision of services to county jail facilities. Such formula grants shall assist the library system in making available to the incarcerated individual population of such facility or facilities the library resources of such system. Such grants shall be available to each public library system in such manner as to insure that the ratio of the amount each system is eligible to receive equals the ratio of the number of incarcerated individuals served by the county jail facility to the total number of incarcerated individuals served by county jail facilities in the state as of July first of the year preceding the calendar year in which the state aid to public library systems is to be paid. Incarcerated individual populations shall be certified by the ~~[New York state commission of correction]~~ office of the correctional ombudsman. The commissioner shall adopt any regulations necessary to carry out the purposes and provisions of this subdivision.

§ 15. Section 63 of the executive law is amended by adding a new subdivision 17 to read as follows:

17. Investigate the alleged commission of any criminal offense or offenses committed by an employee of the department of corrections and community supervision or of any local correctional facility in connection with the performance of his or her official duties, and prosecute any such person or persons believed to have committed such criminal offense or offenses in connection with the performance of his or her official duties. The attorney general may only exercise the jurisdiction provided by this subdivision upon a written finding that such jurisdiction is necessary because: (a) of a lack of alternative prosecutorial resources to adequately investigate and prosecute such criminal offense or offenses, or (b) the exercise of such jurisdiction is necessary to ensure the confidence of the public in the judicial system. In all such proceedings, the attorney general may appear in person or by his or her deputy or assistant before any court or grand jury and exercise all of the powers and perform all of the duties with respect to such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

§ 16. Paragraph (a) of subdivision 1 of section 169 of the executive law, as amended by section 9 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

(a) commissioner of corrections and community supervision, commissioner of the office of the correctional ombudsman, commissioner of education, commissioner of health, commissioner of mental health, commissioner of developmental disabilities, commissioner of children and family services, commissioner of temporary and disability assistance, chancellor of the state university of New York, commissioner of transportation, commissioner of environmental conservation, superintendent of state police, commissioner of general services, commissioner of the division of homeland security and emergency services and the executive director of the state gaming commission;

§ 17. Subdivision 9 of section 837-a of the executive law, as added by section 4 of part Q of chapter 56 of the laws of 2009, is amended to read as follows:

9. In consultation with the state commission of correction, the office of the correctional ombudsman and the municipal police training council, establish and maintain basic and other correctional training programs for such personnel employed by correctional facilities as the commis-

1 sioner shall deem necessary. Such basic correctional training program
2 shall be satisfactorily completed by such personnel prior to their
3 undertaking their duties or within one year following the date of their
4 appointment or at such times as the commissioner may prescribe.
5 Provided, however, the commissioner may, after consultation with the
6 state commission of correction or the office of the correctional ombuds-
7 man, exempt from such requirement personnel employed by any correctional
8 facility which, in the opinion of the commissioner, maintains a basic
9 correctional training program of a standard equal to or higher than that
10 established and maintained by the division; or revoke in whole or in
11 part such exemption, if in his or her opinion the standards of the basic
12 correctional training program maintained by such facility are lower than
13 those established pursuant to this article.

14 § 18. Subdivision (c) of section 33.13 of the mental hygiene law is
15 amended by adding a new paragraph 19 to read as follows:

16 19. to the office of the correctional ombudsman.

17 § 19. Subdivision 1 of section 2782 of the public health law is
18 amended by adding a new paragraph (t) to read as follows:

19 (t) an employee or agent of the office of the correctional ombudsman
20 in order to carry out the office's functions, powers and duties with
21 respect to the protected individual, pursuant to article three-A of the
22 correction law.

23 § 20. Paragraph (a) of subdivision 2 of section 2786 of the public
24 health law, as amended by chapter 312 of the laws of 2020, is amended to
25 read as follows:

26 (a) Each state agency authorized pursuant to this article to obtain
27 confidential HIV related information and the board of correction of the
28 city of New York shall, in consultation with the department of health,
29 promulgate regulations: (1) to provide [~~safeguards~~] safeguards to
30 prevent discrimination, abuse or other adverse actions directed toward
31 protected individuals; (2) to prohibit the disclosure of such informa-
32 tion except in accordance with this article; (3) to seek to protect
33 individuals in contact with the protected individual when such contact
34 creates a significant risk of contracting or transmitting HIV infection
35 through the exchange of body fluids[~~7~~]; and (4) to establish criteria
36 for determining when it is reasonably necessary for a provider of a
37 health or social service or the state agency or a local government agen-
38 cy to have or to use confidential HIV related information for super-
39 vision, monitoring, investigation, or administration and for determining
40 which employees and agents may, in the ordinary course of business of
41 the agency or provider, be authorized to access confidential HIV related
42 information pursuant to the provisions of paragraphs (l) and (m) of
43 subdivision one and subdivision six of section twenty-seven hundred
44 eighty-two of this article; and provided further that such regulations
45 shall be promulgated by the chairperson of the commission of correction
46 or the office of the correctional ombudsman where disclosure is made
47 pursuant to paragraphs (n) [~~and~~], (o), or (t) of subdivision one of
48 section twenty-seven hundred eighty-two of this article.

49 § 21. Subdivision 8 of section 92 of the public officers law, as
50 amended by section 135 of subpart B of part C of chapter 62 of the laws
51 of 2011, is amended to read as follows:

52 (8) Public safety agency record. The term "public safety agency
53 record" means a record of the state commission of correction, the office
54 of the correctional ombudsman, the temporary state commission of inves-
55 tigation, the department of corrections and community supervision, the
56 office of children and family services, the office of victim services,

1 the office of probation and correctional alternatives or the division of
2 state police or of any agency or component thereof whose primary func-
3 tion is the enforcement of civil or criminal statutes if such record
4 pertains to investigation, law enforcement, confinement of persons in
5 correctional facilities or supervision of persons pursuant to criminal
6 conviction or court order, and any records maintained by the division of
7 criminal justice services pursuant to sections eight hundred thirty-sev-
8 en, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight
9 hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thir-
10 ty-nine, and eight hundred forty-five of the executive law and by the
11 department of state pursuant to section ninety-nine of the executive
12 law.

13 § 22. Subdivision 1 of section 460-c of the social services law, as
14 amended by chapter 838 of the laws of 1987, is amended to read as
15 follows:

16 1. Excepting state institutions for the education and support of the
17 blind, the deaf and the dumb, facilities subject to the approval, visi-
18 tation and inspection of the state department of mental hygiene, the
19 office of the correctional ombudsman or the state commission of
20 correction, facilities operated by or under the supervision of the divi-
21 sion for youth and facilities subject to the supervision of the depart-
22 ment of health pursuant to article twenty-eight of the public health
23 law, the department shall inspect and maintain supervision over all
24 public and private facilities or agencies whether state, county, municip-
25 al, incorporated or not incorporated which are in receipt of public
26 funds, which are of a charitable, eleemosynary, correctional or reforma-
27 tory character, including facilities or agencies exercising custody of
28 dependent, neglected, abused, maltreated, abandoned or delinquent chil-
29 dren, agencies engaged in the placing-out or boarding-out of children as
30 defined in section three hundred seventy-one of this chapter, homes or
31 shelters for unmarried mothers, residential programs for victims of
32 domestic violence as defined in subdivision [~~five~~] four of section four
33 hundred fifty-nine-a of this chapter and adult care facilities.

34 § 23. This act shall take effect one year after it shall have become a
35 law.