

STATE OF NEW YORK

309--B

Cal. No. 581

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

AN ACT to amend the correction law, in relation to the establishment of emergency management release plans to be developed for use in correctional facilities 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 135
2 to read as follows:

3 § 135. State disaster emergency management release plans in correc-
4 tional facilities. 1. There shall be established within the department
5 an advisory board to provide recommendations to the department regarding
6 the development of emergency management release plans within the facili-
7 ties operated by the department for use in the event of a state disaster
8 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 their designee;

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

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

13 (d) two individuals who were formerly incarcerated in facilities oper-
14 ated by the department, one each appointed by the temporary president of
15 the senate and the speaker of the assembly, based on consultations with
16 advocacy organizations working directly with communities impacted by the
17 criminal justice system;

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

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

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

3 (ii) an individual with a demonstrated background in emergency plan-
4 ning who has created an emergency management accreditation program for
5 accreditation purposes in the past;

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

10 (f) an attorney with experience defending the constitutional rights of
11 incarcerated individuals, appointed by the attorney general.

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

14 4. The members of the advisory board shall elect a chair of the board
15 from among their number. A majority of the members of the advisory board
16 shall constitute a quorum for the purposes of the business of the advi-
17 sory board.

18 5. The advisory board shall:

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

21 (b) evaluate and make general recommendations for the correctional
22 facility system and facility-specific recommendations for each facility
23 operated by the department as to:

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

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

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

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

39 (c) have authority based on a declared emergency to evaluate reports
40 and draft counter reports with alternative recommended courses of
41 action.

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

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

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

52 (c) the staff to incarcerated individual ratio;

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

54 (e) the number and identity of incarcerated individuals released
55 pursuant to this plan and the factors utilized to determine such release
56 pursuant to subdivision eleven of this section and a detailed report on

incarcerated individuals that fit into a category but were determined ineligible for release pursuant to this section and the factors utilized for such determination.

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

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

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

10. (a) Within one year of receipt of the recommendations of the advisory board, the department shall develop and implement sustainable facility-based emergency management plans for the release of incarcerated individuals for use in the event of a state disaster emergency declared pursuant to executive order based upon the advisory board's recommendations. The department shall review and update each such plan on at least an annual basis. Updates to the plans shall include measures taken based upon updated recommendations by the advisory board.

(b) Emergency plans developed pursuant to paragraph (a) of this subdivision shall include, but not be limited to, provisions describing the procedures that will be implemented to facilitate the recommendations made by the advisory board as described in paragraph (b) of subdivision five of this section, including a list of incarcerated individuals to be considered for emergency release based on the criteria established in subdivision eleven of this section for determining eligibility for emergency release. After such list of incarcerated individuals to be considered for emergency release is compiled for each facility operated by the department, individualized decisions shall be made by the department as to the eligibility for release of each incarcerated individual, with clearly stated reasons in case of denial.

(i) An incarcerated individual may be deemed ineligible for consideration for emergency release if they have been found guilty by the department of a violent institutional infraction within the one hundred eighty days prior to release consideration.

(ii) The termination of the state disaster emergency declared pursuant to executive order shall not be a basis for an incarcerated individual released pursuant to the provisions of this section to be remanded back into custody.

11. The following criteria shall be considered to determine eligibility for emergency release of an incarcerated individual pursuant to this section; provided, however, that such criteria represent a non-exhaustive list of factors to be considered in determining such eligibility. Such criteria shall include consideration of any incarcerated individual who:

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

(b) is medically vulnerable;

(c) has an additional documented illness or illnesses determined by an independent health practitioner not affiliated with the facility who 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;

1 (e) is over fifty-five years old;
2 (f) is a primary caregiver;
3 (g) is pregnant;
4 (h) has completed more than fifty percent of their minimum sentence if
5 serving an indeterminate sentence or fifty percent of their sentence if
6 serving a determinate sentence; or
7 (i) will complete their sentence within eighteen months of the effec-
8 tive date of this section.

9 12. The department shall have the authority to implement facility-
10 based emergency management release plans upon the occurrence of a state
11 disaster emergency pursuant to executive order.

12 13. Within forty-eight hours of a state disaster emergency declared
13 pursuant to executive order, the department shall provide to the gover-
14 nor, the advisory board and the state legislature the emergency manage-
15 ment plan for release in each facility operated by the department. The
16 department shall provide the governor, the advisory board and the state
17 legislature:

18 (a) a certification that each facility has released the persons deter-
19 mined eligible for emergency release pursuant to this section;

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

26 (c) an estimate of the fiscal savings to the state due to the release
27 of incarcerated individuals pursuant to this section.

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

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

32 (i) diagnosed with a chronic lung disease;

33 (ii) diagnosed with moderate or severe asthma;

34 (iii) diagnosed with a serious heart condition;

35 (iv) diagnosed with diabetes;

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

37 (vi) diagnosed with liver disease;

38 (vii) diagnosed with cancer;

39 (viii) diagnosed with obesity; or

40 (ix) immunocompromised.

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

48 § 2. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law. Effective immediately, the addition, amend-
50 ment and/or repeal of any rule or regulation necessary for the implemen-
51 tation of this act on its effective date are authorized to be made and
52 completed on or before such date.