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Introduced by M. of A. FORREST, BURDICK, GALLAGHER, MAMDANI, SHRESTHA, MITAYNES, EPSTEIN, GONZALEZ-ROJAS, LEVENBERG, BICHOTTE HERMELYN, SIMON, DAVILA, TAPIA, CRUZ, KELLES -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to the rights of people in prisons, jails, and forensic facilities

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "rights behind bars; protecting the rights of people in prisons,
3 jails, and forensic facilities, and their loved ones, in New York state
4 act".

5 § 2. Legislative findings and intent. The legislature hereby finds and
6 declares:

7 A. Incarcerated individuals, their families, and loved ones have human
8 rights. The legislature finds that New York's prisons and jails system-
9 atically fail to recognize and protect the human rights of incarcerated
10 individuals, their families, and their loved ones. While some of these
11 rights are protected by the law and constitution of New York State, and
12 the law and constitution of the United States, it is well-documented
13 that the rights protected under existing law are often not recognized in
14 practice and that there are gaps in existing law. The intent of this
15 act is to: (i) make clear some of the rights that already exist under
16 New York law but are not being consistently followed, (ii) close some of
17 the gaps in existing law, and (iii) enshrine into New York State law
18 some of the well-established principles and obligations under interna-
19 tional human rights law.

20 B. Numerous recent studies, reports, and court decisions have docu-
21 mented systemic, widespread, and persistent human rights violations in
22 New York's correctional facilities. These include: NYS Inspector General
23 Lucy Lang, Racial Disparities in the Administration of Discipline in New

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

LBD02137-01-5

1 [York State Prisons](#), November 2022; Neff, Santo, and Meagher, [How A 'Blue](#)
2 [Wall' Inside New York State Prisons Protects Abusive Guards](#), The Mars-
3 hall Project in partnership with the New York Times, May 2023; Neff,
4 Santo, and Meagher, [In New York Prisons Guards Who Brutalize Prisoners](#)
5 [Rarely Get Fired](#), The Marshall Project in partnership with the New York
6 Times, May 2023; Law, V., [The Worst Prison in New York State](#), Prison
7 Legal News, March 2022; Gelardi and Brown, [State Prisons Are Routinely](#)
8 [Violating New York's Landmark Solitary Confinement Law](#), New York Focus,
9 September 2022; Bryant, [19 People Have Died From NYC Jails in 2022](#), The
10 Vera Project, December 2022; Weill-Greenberg, [Disabled and Abandoned in](#)
11 [New York State Prisons](#), The Nation, October 2021; Marcius, [Hundreds of](#)
12 [Women Set to Sue New York Over Allegations of Prison Sex Abuse](#), New York
13 Times, November 2022; Monitor's Reports in [Nunez, et al. v. NYC Depart-](#)
14 [ment of Correction, et al.](#), 11-cv-05845 (LTS) (SDNY) (multiple reports
15 issued by Court-appointed Monitor as part of the settlement of a class
16 action lawsuit relating to conditions in NYC jails on Rikers Island,
17 starting in 2016 and continuing to the present); and Post-Visit Briefing
18 Reports issued periodically by the Correctional Association of New York
19 ("CANY") pursuant to their statutory authority to conduct monitoring
20 visits in NYS prisons (Nine Post-Visit Briefings were issued by CANY
21 from June 2021 through December 2022. Among the findings during this
22 period were that 45% of incarcerated individuals interviewed reported
23 witnessing or experiencing verbal, physical, or sexual abuse by prison
24 staff, and 36% reported witnessing or experiencing racialized abuse by
25 prison staff.).

26 C. Some of the human rights of incarcerated individuals in New York
27 State are protected by provisions in the New York State Constitution,
28 including, Article I, sections 5 (prohibiting cruel and unusual punish-
29 ment), 6 (right to due process), 8 (right to speak freely), 11 (guaran-
30 teeing equal protection of the laws), and 12 (prohibiting unreasonable
31 searches and seizures); the United States Constitution, including the
32 1st Amendment (free speech), 4th Amendment (prohibition of unreasonable
33 searches and seizures), 8th Amendment (prohibition of cruel and unusual
34 punishments), and 14th Amendment (guaranteeing equal protection of the
35 law and due process of law). However, these provisions and laws do not
36 go far enough to protect the rights of people incarcerated in New York.
37 The intent of this act, in part, is to incorporate into New York law
38 additional human rights protections for incarcerated people as enshrined
39 in key documents included in the body of international human rights law,
40 including, the United Nations Declaration of Human Rights, recognizing
41 basic human rights applicable to all people, including, in Article 5,
42 the right not to be subjected to torture or to cruel, inhuman, or
43 degrading treatment or punishment; the International Covenant of Civil
44 and Political Rights, including Article 7 (No one shall be subjected to
45 torture or to cruel, inhuman or degrading treatment or punishment), and
46 Article 10 (All persons deprived of their liberty shall be treated with
47 humanity and with respect for the inherent dignity of the human person);
48 the Basic Principles for the Treatment of Prisoners (General Assembly
49 Resolution 45/111); the Convention Against Torture and Other Cruel,
50 Inhuman, or Degrading Treatment or Punishment; the United Nations Stand-
51 ard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela
52 Rules); and other applicable and binding principles of international
53 human rights law.

54 D. The fundamental approach of international human rights law to the
55 treatment of people in prison is expressed in Rule 3 of the Mandela
56 Rules, which recognizes that "imprisonment and other measures that

1 result in cutting off persons from the outside world are afflictive by
2 the very fact of taking from these persons the right of self-determina-
3 tion by depriving them of their liberty. Therefore the prison system
4 shall not, except as incidental to justifiable separation or the mainte-
5 nance of discipline, aggravate the suffering inherent in such a situ-
6 ation." In turn, Rule 4 requires that incarceration must be used to
7 "ensure the reintegration of such persons into society upon release so
8 that they can lead a law-abiding and self-supporting life" and Rule 5
9 thus requires prisons and jails to "minimize any differences between
10 prison life and life at liberty that tend to lessen the responsibility
11 of the {incarcerated people} or the respect due to their dignity as
12 human beings."

13 To effectuate these rights, the Mandela Rules require, among other
14 protections, that incarcerated people be allowed regular communication
15 with their family and friends, including through visits and through
16 writing, telecommunication, electronic means, and digital means (Rule
17 58.1), that people in prison have a right to "food of nutritional value
18 adequate for health and strength, of wholesome quality and well prepared
19 and served", and that any use of force against an incarcerated individ-
20 ual be "no more than is strictly necessary" (Rule 82). They also estab-
21 lish basic rights related to access to programming and treatment,
22 connections to community entities, and restrictions on the use of
23 restraints.

24 E. In keeping with these legislative findings, this act aims to clear-
25 ly recognize and establish the broad human rights framework that
26 protects all incarcerated individuals in New York State. This act
27 specifically addresses certain issues that have arisen in New York pris-
28 ons and jails in recent years. That has included: violations of the
29 HALT Solitary Confinement Law; restrictions on packages, visits, and
30 mail; staff abuse and brutality; and denials of other basic rights.

31 In regard to some of these issues, the law is already clear, but New
32 York's prisons and jails are not consistently following it. For example,
33 despite clarity concerning who qualifies as disabled under the HALT
34 Solitary Confinement Law, and who, therefore, cannot be placed in segre-
35 gated confinement, the NYS Department of Corrections and Community
36 Supervision has consistently placed people with disabilities in segre-
37 gated confinement. The intent of the amendments to paragraph (c) of
38 subdivision 33 of section 2 of the correction law made by section five
39 of this act is not to define disability, which is already in the law,
40 but rather to make clear via examples what is already required. Similar-
41 ly, while the correction law is already clear that people facing possi-
42 ble placement in segregated confinement or facing Tier III tickets must
43 have access to meaningful representation, including by any lawyer or law
44 student; that hearing officers must conduct individualized assessments
45 of the fact to determine if the allegations meet the threshold require-
46 ments for placement in segregated confinement or alternatives; and that
47 people in alternative disciplinary units must have access to out-of-cell
48 time in group settings, access to core programs available in the general
49 population; and a presumption against the use of restraints unless an
50 individualized determination is made finding a significant and unreason-
51 able risk, prisons and jails are not complying with these provisions and
52 so this act reiterates and clarifies these requirements.

53 This act is not intended as an all-inclusive compendium of the human
54 rights protections afforded to people in jail or prison under interna-
55 tional law, as the intent is to correct and clarify certain specific
56 rights within the overall human rights framework. Among other

1 protections, this act aims to ensure that people have a right to visit
2 with their loved ones, to have regular communication with their loved
3 ones, to receive care packages from their loved ones, to have access to
4 healthy and nutritious food, to be free from staff brutality and retali-
5 ation, to be free from the torture of prolonged solitary confinement,
6 and to have access to real and meaningful out-of-cell group programming
7 and engagement. Recognition of these basic human rights will alleviate
8 suffering of incarcerated individuals, strengthen ties with families and
9 communities, better prepare people for release, increase safety in pris-
10 ons and jails and in outside communities, and unequivocally establish as
11 the policy of the State of New York that brutality, racism, sexual
12 abuse, harassment, and denials of access to family and loved ones have
13 no place in New York's jails and prisons and will not be tolerated.

14 § 3. Section 2 of the correction law is amended by adding eleven new
15 subdivisions 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 to read as
16 follows:

17 35. "Contact visit" means a visit between an incarcerated individual
18 and one or more visitors in a visiting room or equivalent space in which
19 the incarcerated individual and their visitor are in the same unob-
20 structed space as each other without physical barriers between the
21 incarcerated individual and their visitor or visitors, that is conducive
22 to meaningful social interaction and activity, and with the ability to
23 interact freely with their visitor, including but not limited to the
24 ability to communicate freely, hold hands, hug, kiss, have other appro-
25 priate physical contact, purchase and share food and drinks from the
26 vending machine, and take photographs together.

27 36. "Visitor" means any individual who comes to visit a person incar-
28 cerated in a correctional facility or secure facility, including, but
29 not limited to, a family member, friend, advocate, or loved one.

30 37. "Cell" means any room, area or space that is used or is intended
31 to be used by an incarcerated individual for sleep, or that is not a
32 shared space conducive to meaningful congregate social interaction among
33 many people in a group setting where an individual is held for any
34 purpose.

35 38. "Cell confinement" means being in a cell.

36 39. "Out-of-cell" means being in a space outside of, and in an area
37 away from, a cell, in a group setting with other people all in the same
38 shared space without physical barriers between people that is conducive
39 to meaningful and congregate social interaction and activity.

40 40. "Congregate recreation" means out-of-cell recreation in a group
41 setting with other people all in the same shared space that takes place
42 outside, weather permitting, in an open yard without being caged or
43 covered, and when weather does not permit or when an incarcerated indi-
44 vidual so chooses, in a non-caged gymnasium or equivalent.

45 41. "Core programs" means any and all programs that can be assigned by
46 a department program committee, any and all required department
47 programs, and any and all programs that are considered for purposes of
48 good time, merit time, other time allowance, parole release, or other
49 release mechanisms. Core programs shall include, but not be limited to,
50 academic classes, vocational programs, transitional services, alcohol
51 and substance abuse treatment, aggression replacement training, sex
52 offense counseling and treatment, and any other assigned or required
53 programs.

54 42. "Represented" means an incarcerated individual having an attorney
55 (licensed in any jurisdiction of the United States), law student with
56 supervision by any attorney regardless of whether the attorney is affil-

1 iated with a law school, paralegal, or other incarcerated individual
2 provide representation at any and all stages of a hearing and appeal,
3 including but not limited to opening and closing statements, presenta-
4 tion of evidence, calling and questioning witnesses, cross-examining
5 witnesses, reading of the disposition, sentencing, and appeal, with the
6 choice by the incarcerated individual and their representative of either
7 having the representative physically present at any and all stages of
8 the hearing in the same room and/or participating through videoconfer-
9 ence.

10 43. "Personal property" means any and all property that has been
11 lawfully in the possession of an incarcerated individual, including but
12 not limited to, for the purposes of state correctional facilities all
13 items listed in department directive forty-nine hundred thirteen as of
14 June fourteenth, two thousand twenty-two and for purposes of local
15 correctional facilities and secure facilities all items permitted under
16 applicable rules and regulations to each facility as of October twenti-
17 eth, two thousand twenty-three. If a person has a static tablet,
18 personal property includes a static tablet and the person shall be able
19 to use that tablet, in addition to any other tablet, for purposes of
20 making phone calls, emails, and other uses. If a person is at a facility
21 that allows televisions, personal property includes televisions.
22 Personal property shall also include typewriters, assistive devices,
23 approved electronic devices, books-on-tape players, and any other prop-
24 erty that an incarcerated individual has lawfully had in their
25 possession.

26 44. "Secure facility" means (a) all forensic mental health facilities,
27 including those that hold people pursuant to section 330.20 or 730.50 of
28 the criminal procedure law or 14 NYCRR Part 57, and including but not
29 limited to the Mid-Hudson Forensic Psychiatric Center, Kirby Forensic
30 Psychiatric Center, Rochester Regional Forensic Unit, and Northeast
31 Regional Forensic Unit; (b) all secure treatment facilities, as defined
32 in subdivision (o) of section 10.03 of the mental hygiene law, including
33 but not limited to the Central New York Psychiatric Center and St.
34 Lawrence Psychiatric Center; and (c) all secure mental health facilities
35 holding people pursuant to section four hundred two or five hundred
36 eight of this chapter.

37 45. "Incarcerated individual" means any person confined in a state or
38 local correctional facility or secure facility.

39 § 4. Subdivision 23 of section 2 of the correction law is amended by
40 adding three new paragraphs (a), (b) and (c) to read as follows:

41 (a) A person may only be placed in cell confinement beyond seventeen
42 hours a day for purposes of medical or mental health treatment if a
43 licensed medical professional determines that the cell confinement
44 itself is medically necessary to carry out the medical or mental health
45 treatment, such as for purposes of suicide watch, medical isolation, or
46 medical quarantine. Such determination shall be documented in writing
47 and shall be reviewed and reauthorized by a licensed medical profes-
48 sional at least once every forty-eight hours.

49 (b) A person may only be held in such confinement pursuant to para-
50 graph (a) of this subdivision for as limited a time as medically neces-
51 sary, as exclusively determined by medical or mental health staff, and
52 in the least restrictive environment that is medically appropriate, as
53 determined exclusively by medical or mental health staff.

54 (c) Cell confinement pursuant to paragraph (a) of this subdivision
55 shall be in an appropriate space conducive to medical or mental health
56 treatment. While in such confinement a person shall at least have access

1 to: (i) a tablet pursuant to paragraph (t) of subdivision six of section
2 one hundred thirty-seven of this chapter unless a licensed medical
3 professional determines that access to a tablet would be harmful to the
4 person based on medical or mental health-related reasons; (ii) such
5 person's full complement of property unless a licensed medical profes-
6 sional determines that access to a particular item is inappropriate for
7 medical or mental health-related reasons; and (iii) core programs and
8 other programming and engagement available to people incarcerated in the
9 general population but done in a manner consistent with the medical and
10 mental health treatment being received, such as at a physical distance
11 determined appropriate by medical or mental health staff.

12 § 5. Subdivision 33 of section 2 of the correction law, as added by
13 chapter 93 of the laws of 2021, is amended to read as follows:

14 33. "Special populations" means any person: (a) twenty-one years of
15 age or younger; (b) fifty-five years of age or older; (c) with a disa-
16 bility as defined in paragraph (a) of subdivision twenty-one of section
17 two hundred ninety-two of the executive law, including but not limited
18 to: (i) all people with any mental health diagnosis; (ii) all people on
19 the office of mental health caseload currently; (iii) all people with
20 any intellectual, developmental, or cognitive diagnosis; (iv) all people
21 with any physical disability diagnosis or mobility impairment; (v) all
22 people with any sensorial disability diagnosis; and (vi) all people with
23 traumatic brain injury or organic brain syndrome; (d) who had been on
24 the office of mental health caseload, or had any mental health diagno-
25 sis, within the previous year; (e) who had a diagnosis of intellectual,
26 developmental, cognitive, physical, or sensorial disability within the
27 previous year; or [~~(d)~~] (f) who is pregnant, in the first [~~eight~~] twelve
28 weeks of the post-partum recovery period after giving birth, experienc-
29 ing a miscarriage, or terminating a pregnancy, or longer if medically
30 necessary, or caring for a child in a correctional institution pursuant
31 to [~~subdivisions~~] subdivision two or three of section six hundred eleven
32 of this chapter.

33 § 6. Subdivision 3 of section 137 of the correction law, as amended by
34 chapter 322 of the laws of 2021, is amended to read as follows:

35 3. Each incarcerated individual shall be entitled to clothing suited
36 to the season and weather conditions, including but not limited to
37 appropriate winter weather clothing, multiple layers of clothing, and
38 the ability to wear personal clothing under state issued clothing when
39 going to programs, recreation, visits, facility medical, or medical
40 trips when the temperature is forty-five degrees or below, and to a
41 sufficient quantity of quality, wholesome and nutritious food, including
42 a full range and variety of fresh fruits and vegetables, consistent with
43 nutritional guideline requirements developed by the department of
44 health. Medically necessary diets, including but not limited to diabetic
45 and heart health diets, and religious diets, shall be provided and be of
46 comparable quality and variety as general population meals.

47 (a) Each incarcerated individual shall be afforded sufficient time to
48 eat their meals, including that all people shall be provided at least
49 twenty minutes after receiving their food to eat during meal times and
50 that any person who requires additional time due to age or disability
51 shall be provided sufficient additional time. Each incarcerated individ-
52 ual shall be allowed to bring leftover food out of the mess hall in a
53 small bowl. To the extent practicable, the clothing and bedding of
54 incarcerated individuals shall be manufactured and laundered in insti-
55 tutions in the department.

1 (b) Each incarcerated individual who uses a wheelchair shall be
2 provided an assistant to help push the wheelchair if the person who uses
3 the wheelchair chooses to have such an assistant.

4 § 7. Subdivision 5 of section 137 of the correction law, as amended by
5 chapter 322 of the laws of 2021, is amended to read as follows:

6 5. No incarcerated individual in the care or custody of the department
7 shall be subjected to degrading treatment~~[, and no]~~. No officer ~~[or]~~,
8 other employee of the department, ~~or other government employee~~ shall
9 ~~[inflict any blows whatever]~~ use force upon any incarcerated individual,
10 ~~[unless in self defense, or to suppress a revolt or insurrection. When~~
11 ~~any incarcerated individual, or group of incarcerated individuals, shall~~
12 ~~offer violence to any person, or do or attempt to do any injury to prop-~~
13 ~~erty, or attempt to escape, or resist or disobey any lawful direction,~~
14 ~~the officers and employees shall use all suitable means to defend them-~~
15 ~~selves, to maintain order, to enforce observation of discipline, to~~
16 ~~secure the persons of the offenders and to prevent any such attempt or~~
17 ~~escape]~~ except as a last resort after exhausting de-escalation tech-
18 niques and where there are no practical alternatives available to
19 prevent: (i) imminent physical harm to other incarcerated individuals,
20 staff, visitors, or other persons; (ii) major property damage that rais-
21 es an imminent safety and security risk; or (iii) escape. When the use
22 of force is authorized, officers and employees shall always use the
23 minimum amount necessary to defend themselves, to secure the persons of
24 incarcerated individuals, to prevent imminent physical harm, to prevent
25 major property damage that raises an imminent safety and security risk,
26 and to prevent an escape. Any force used shall be proportional to the
27 threat encountered. Contractors and volunteers are prohibited from ever
28 using force.

29 (a) All officers, department employees, and government employees work-
30 ing or operating in a correctional facility shall be prohibited from
31 using excessive and unnecessary force, force after control of an incar-
32 cerated individual has been established, and all high impact force,
33 including but not limited to (i) strikes or blows to the head, face,
34 groin, neck, kidneys, and spinal column, (ii) kicks, and (iii) choke
35 holds, carotid restraint holds, and other neck restraints except where a
36 person is in imminent danger of death or equivalent level of serious
37 bodily injury and where lesser means are impractical or ineffective.

38 (b) No officer, other employee of the department, or other government
39 employee working or operating in a correctional facility shall carry or
40 use a steel baton. Any use of other batons, chemical spray, or any other
41 weapons shall comply with all provisions of this subdivision.

42 (c) No officer, other employee of the department or the office of
43 mental health, or other government employee working or operating in a
44 correctional facility or secure facility shall carry out, nor cause
45 others to carry out, any form of retaliation against any person incar-
46 cerated in a correctional facility or confined in a secure facility for
47 reporting misconduct, reporting an incident, raising a complaint, filing
48 a grievance, filing a lawsuit, taking other legal action, communicating
49 with the media, lawmakers, the Correctional Association of New York, an
50 attorney, an advocate, any investigative body or any other person or
51 entity, otherwise exercising or asserting the rights of incarcerated or
52 confined individuals or asserting responsibilities of staff or the
53 department, taking any other similar action, or supporting another
54 incarcerated or confined individual in taking any of the actions in this
55 paragraph.

1 (d) No officer, other employee of the department or the department of
2 mental health, or other government employee working or operating in a
3 correctional facility or secure facility shall provide any false infor-
4 mation on a misbehavior report, unusual incident report, use of force
5 report, or any other document, and all officers, employees, and govern-
6 ment employees working or operating in a correctional facility or secure
7 facility shall have a duty to report, and provide all relevant informa-
8 tion regarding, any and all observed misconduct by another officer,
9 employee, or person working or operating in a correctional facility or
10 secure facility.

11 § 8. Subdivision 6 of section 137 of the correction law is amended by
12 adding seven new paragraphs (p), (q), (r), (s), (t), (u) and (v) to read
13 as follows:

14 (p) (i) All persons incarcerated in a correctional facility or secure
15 facility shall have the right to in-person contact visits with up to
16 four visitors at a time, every day of the week for many hours per day.
17 Visitation shall be allowed at all correctional facilities and secure
18 facilities, seven days a week, every day of the year. The number,
19 length, and frequency of visits by each visitor may be limited only as
20 necessary to accommodate all visitors who arrive during scheduled visit-
21 ing times, and any such limitations shall never infringe upon the mini-
22 mum visit requirements in this paragraph. Multiple sets of visitors
23 shall be allowed to visit an incarcerated individual at different times
24 on the same day, and a visitor shall be allowed to visit multiple incar-
25 cerated individuals at different times on the same day. If a visitor
26 leaves the correctional facility, they shall have the ability to return
27 to the facility that day to participate in a visit, including either
28 with the same incarcerated individual originally visited or a different
29 incarcerated individual.

30 (ii) Neither the department nor the office of mental health may
31 restrict an incarcerated individual's visits as a disciplinary measure
32 or for any other reason, nor may either agency deny or restrict a visi-
33 tor's ability to visit so long as the person visited agrees to the
34 visit.

35 (iii) Each correctional facility and secure facility shall process
36 visitors and bring down people in such facilities to a visit as expe-
37 ditiously as possible, including ensuring that the visited person and
38 their visitor are able to be together starting within one hour of the
39 visitor arriving at the facility, unless the visited person voluntarily
40 chooses to take more time to come for the visit. All visitors waiting
41 for a visit shall have basic needs met while waiting, including but not
42 limited to being able to wait inside, being able to comfortably sit, and
43 having access to drinking water and bathroom facilities.

44 (iv) No drug detecting dogs may be used inside of any visiting rooms
45 or other areas where a visited person is meeting with their visitor.

46 (v) Videoconferencing may supplement, but shall not take the place of,
47 in-person visits.

48 (vi) Each incarcerated individual shall be provided the opportunity to
49 take a shower before any visit.

50 (q) All persons in a correctional facility or a secure facility shall
51 have the right to receive packages from any person through direct mail,
52 during a visit to a correctional facility or secure facility, or by mail
53 from commercial sources. The department shall not require that packages
54 be purchased from or delivered by a vendor, shall not require that pack-
55 ages that are purchased or delivered from a vendor come from a partic-
56 ular vendor or vendors, and shall not restrict the ability of a person

1 to directly send items to an incarcerated individual through the facili-
2 ty package room or directly deliver items to an incarcerated individual
3 through the visiting process. The department shall provide for prompt
4 delivery to incarcerated individuals of all packages, including prompt
5 delivery of perishable food items to avoid expiration or spoilage. All
6 packages shall be delivered to incarcerated individuals within forty-
7 eight hours from the time the package arrives at the facility, except
8 that all packages that are brought on a visit shall be delivered to the
9 incarcerated individual on the same day as the visit. If any item in a
10 package is disallowed, the incarcerated individual shall have the option
11 to, within fourteen days of receiving written notice that the item is
12 disallowed, donate the item to the charitable organization of their
13 choosing, return the item via the visiting room, or return the item via
14 mail at their own expense. Items that may be part of packages shall
15 include, but not be limited to the following items, and any restrictions
16 on the particular packaging of any such items must be reasonably and
17 directly related to a significant safety or security concern:

18 (i) food utensils and food items, without any limit on the number of
19 pounds or items, including but not limited to fresh fruits and vegeta-
20 bles, coffee and beverages, dried coffee cream, bread, pouched food,
21 canned food, candy, cheese, condiments, meats, nuts, oatmeal and cereal,
22 pastries, raisins and dried fruit, cooked or cured or smoked seafood,
23 and snacks;

24 (ii) personal cosmetics and personal hygiene products, including but
25 not limited to soap, shampoo, deodorant, and menstrual products;

26 (iii) seasonally appropriate indoor and outdoor clothing and footwear;

27 (iv) legal, writing, and art supplies, including but not limited to
28 stationery, writing and drawing implements, and typewriters;

29 (v) educational supplies, including but not limited to notebooks,
30 rulers, and calculators appropriate for primary, secondary and post-sec-
31 ondary education;

32 (vi) new and used books, magazines and other publications;

33 (vii) items for use in recreation and physical exercise;

34 (viii) accessories for tablet computers and other electronic devices
35 permitted in facilities;

36 (ix) religious articles, including but not limited to prayer rugs and
37 books, religious headgear, and pendants; and

38 (x) tobacco products.

39 (r) All persons incarcerated in a correctional facility or secure
40 facility, other than those in segregated confinement, shall have access
41 to at least fourteen hours of out-of-cell time per day, including access
42 to at least seven hours of daily out-of-cell congregate programming and
43 activities and access to at least two hours of congregate recreation.

44 (s) All persons incarcerated in a correctional facility or secure
45 facility shall have the right to receive correspondence in its original,
46 and not photocopied, form, including but not limited to letters, cards,
47 photographs, postcards, legal mail, and other correspondence.

48 (t) All persons incarcerated in a correctional facility or secure
49 facility shall have access to an internet-connected or similarly
50 equipped tablet or other device that allows for free personal phone
51 calls and free emails, as well as access to law library resources,
52 programming, music, games, videos, movies, and other applications.
53 Incarcerated individuals shall have access to free personal phone calls
54 and free emails at least four hours per day. Beyond the four-hour mini-
55 mum, a facility may provide additional access to the tablet and addi-
56 tional access to personal phone calls and emails, and all personal phone

1 calls and emails shall be free for the person initiating and the person
2 receiving the communication.

3 (u) All correctional facilities and secure facilities shall operate a
4 commissary or canteen. The prices of items sold at each commissary or
5 canteen shall take into account the minimum wages people incarcerated
6 are earning and shall be at least sixty percent below the current market
7 rate for such items, as based upon the cost of similar items for sale in
8 the same region as the correctional facility. Each commissary and
9 canteen shall be fully stocked and shall include quality wholesome and
10 nutritious food, including a full range and variety of fresh fruits and
11 vegetables.

12 (v) Any person incarcerated in a correctional facility or secure
13 facility shall have a right to bring in state court an action based on
14 any violation of this section or the regulations prescribed under these
15 sections to: (i) enjoin such violation; (ii) obtain a declaratory judg-
16 ment; (iii) recover for money damages; and (iv) any other appropriate
17 relief determined by the court.

18 § 9. Subparagraph (ii) of paragraph (j) of subdivision 6 of section
19 137 of the correction law is amended by adding two new clauses (A) and
20 (B) to read as follows:

21 (A) Time spent in any of the following locations shall not constitute
22 out-of-cell time: (1) on a tier or walkway outside of a cell or groups
23 of cells; (2) in a recreation area contiguous to a cell; (3) in a recre-
24 ation area without a group of many people afforded simultaneous access
25 to the same shared space without physical barriers and conducive to a
26 meaningful congregate social interaction; or (4) any space without a
27 group of many people afforded simultaneous access to the same shared
28 space without physical barriers and conducive to meaningful congregate
29 social interaction.

30 (B) If an incarcerated individual voluntarily chooses not to partic-
31 ipate in congregate out-of-cell time, congregate recreation, or congre-
32 gate programming, they shall be offered access to comparable individual
33 programming, individual recreation, and individual time away from their
34 cell where they sleep. Voluntarily declining to participate in congre-
35 gate out-of-cell time, congregate recreation, or congregate programming
36 shall be done in writing or by videotape.

37 § 10. Subparagraph (v) of paragraph (j) of subdivision 6 of section
38 137 of the correction law, as amended by section 4 of part NNN of chap-
39 ter 59 of the laws of 2021, is amended to read as follows:

40 (v) An incarcerated [~~person~~] individual in a residential rehabili-
41 tation unit shall have access to core programs and work assignments
42 [~~comparable to core programs and types of work assignments in general~~
43 ~~population~~] available in general population, and shall receive the same
44 credit for participation in such programs as they would in general popu-
45 lation for purposes of their program requirements and for purposes of
46 good time, merit time, other time allowance, parole release, or consid-
47 eration for other release mechanisms. Such incarcerated [~~persons~~] indi-
48 viduals shall also have access to additional out-of-cell, trauma-in-
49 formed therapeutic programming aimed at promoting personal development,
50 addressing underlying causes of problematic behavior resulting in place-
51 ment in a residential rehabilitation unit, and helping prepare for
52 discharge from the unit and to the community.

53 § 11. Subparagraph (vii) of paragraph (j) of subdivision 6 of section
54 137 of the correction law, as added by chapter 93 of the laws of 2021,
55 is amended to read as follows:

(vii) Restraints shall not be used when incarcerated [~~persons~~] individuals are participating in out-of-cell activities within a residential rehabilitation unit, residential mental health treatment unit, step-down unit, correctional alternative rehabilitation unit, protective custody, and any other similar unit, unless an [~~individual~~] individualized assessment is made at the time of, or immediately following, an incident involving the person in question that restraints are required for that specific person in question because of a significant and unreasonable risk [~~to the safety and security~~] of imminent serious physical injury to self, other incarcerated [~~persons~~] individuals or staff based on concrete evidence of such risk by that person. Such individualized assessments shall be memorialized in writing, with a written explanation as to why, including providing concrete evidence relied on to determine that, restraints were required for the specific person in question to prevent a significant and unreasonable risk of imminent serious physical injury.

(A) Where restraints are imposed, the least restrictive form of restraints shall be used, for no longer than necessary to abate such imminent harm.

(B) Restraints shall not continue to be used beyond the day they were applied unless a determination is made at a subsequent due process hearing, with all of the protections of subdivision one of this section, that restraints remain necessary to abate a significant and unreasonable risk of imminent serious physical injury to self, other incarcerated individuals, or staff, based on concrete evidence of such risk.

(C) Any continuing use of restraints shall be reviewed daily, in writing, and discontinued once there is no longer a risk of imminent injury. Continued use of restraints may only be authorized for at most a seven-day period.

§ 12. Paragraph (k) of subdivision 6 of section 137 of the correction law is amended by adding three new subparagraphs (v), (vi) and (vii) to read as follows:

(v) No incarcerated individual shall receive a sanction of more than fifteen days of segregated confinement time nor more than sixty days of time in a residential rehabilitation unit, residential mental health treatment unit, or any other disciplinary confinement unit for any incident, regardless of how many charges are associated with that incident.

(vi) To impose a disciplinary sanction, a hearing officer must find an incarcerated individual guilty of the charged act or acts by clear and convincing evidence.

(vii) All hearing officers shall engage in a meaningful fact finding process. If a hearing officer imposes a sanction of segregated confinement beyond three days or any time in a residential rehabilitation unit, the hearing officer shall detail in writing in their decision the specific ways in which the act or acts the incarcerated individual was found guilty of met all of the requirements of subparagraph (ii) of this paragraph. The disposition or determination shall include a statement of evidence, which includes the testimony of each witness and a statement of reasons why the incarcerated individual's evidence or defense was credited or rejected.

§ 13. Paragraph (l) of subdivision 6 of section 137 of the correction law is amended by adding five new subparagraphs (i), (ii), (iii), (iv) and (v) to read as follows:

(i) Each person facing the possibility of placement in segregated confinement or a residential rehabilitation unit shall be informed in writing and verbally, including before they appear for a disciplinary

1 hearing and then again on the hearing record, that they are permitted to
2 be represented at their disciplinary hearing, shall be provided the
3 opportunity to seek representation, and may bring their chosen represen-
4 tative into the hearing at any time prior to the disposition of their
5 hearing.

6 (ii) For all disciplinary hearings, incarcerated individuals and,
7 where applicable, their representatives shall be provided, as soon as
8 possible and no later than forty-eight hours prior to the start of a
9 hearing, all evidence relevant to their disciplinary charge and/or hear-
10 ing, including but not limited to the misbehavior report, any and all
11 exculpatory evidence, any use of force or unusual incident reports
12 concerning the incident, any to-from memoranda concerning the incident,
13 any staff reports or accounts, any witness statements, any information
14 relied upon from a confidential source subject to security redactions,
15 any medical records related to the incident, any related contraband
16 receipts, any other written materials concerning the incident, any
17 related photographs, and audio and video recordings of or related to the
18 incident.

19 (iii) For all disciplinary hearings, incarcerated individuals and,
20 where applicable, their representatives shall have the right during a
21 hearing to provide opening and closing statements, request and receive
22 evidence, conduct a meaningful investigation, call and question
23 witnesses, cross-examine witnesses, and present evidence.

24 (iv) All disciplinary hearings shall be recorded and such recordings
25 shall be provided to the incarcerated individual and such individual's
26 representative, if applicable.

27 (v) If a person is held in segregated confinement or a residential
28 rehabilitation unit prior to a hearing, any time spent in segregated
29 confinement or a residential rehabilitation unit prior to the hearing
30 shall: (A) if the person is found guilty of an eligible charge under
31 subparagraph (ii) of paragraph (k) of this subdivision, be credited
32 toward any sanction to segregated confinement or residential rehabili-
33 tation unit imposed; and (B) if the person is not found guilty of an
34 eligible charge under subparagraph (ii) of paragraph (k) of this subdivi-
35 vision, be credited as additional good time behavior allowance time
36 under section eight hundred three of this chapter.

37 § 14. Paragraph (o) of subdivision 6 of section 137 of the correction
38 law, as amended by section 6 of part NNN of chapter 59 of the laws of
39 2021, is amended to read as follows:

40 (o) The department shall publish monthly reports on its website, with
41 semi-annual and annual cumulative reports, of the total number of beds
42 at each facility, including the number of beds held vacant for use as
43 quarantine, and the total number of people who are in, separately list-
44 ed: general population; segregated confinement [~~and the total number of~~
45 people who are in]; residential rehabilitation units; step-down
46 programs; residential mental health treatment units, including but not
47 limited to behavioral health units, residential mental health units,
48 therapeutic behavior units, intermediate care programs, and transitional
49 intermediate care programs; protective custody; administrative segre-
50 gation; reception, shock incarceration; I-ASAT; close supervision units;
51 special needs units; assessment and program preparation units; residen-
52 tial crisis treatment units; intensive intermediate care programs,
53 correctional alternative rehabilitation units, units for the cognitively
54 impaired, and any and all other designated units within the prison
55 system where out-of-cell time is restricted in any way, on the first day
56 of each month and the total number of placements in each location during

1 the preceding month. The reports shall provide a breakdown of the
2 number of people and placements, separately listed, in [~~segregated~~
3 ~~confinement and in residential rehabilitation~~] each of the aforemen-
4 tioned units, separately listed, by: (i) age; (ii) race; (iii) gender;
5 (iv) mental health treatment level; (v) special health accommodations or
6 needs; (vi) need for and participation in substance use disorder,
7 academic, vocational, transitional services, aggression replacement
8 training, sex offense counseling and treatment, and all other mandatory
9 programs, separately listed; (vii) pregnancy status; (viii) continuous
10 length of stay in [~~residential treatment units~~] each type of unit, as
11 well as length of stay in the past sixty days; (ix) number of days [~~in~~
12 ~~segregated confinement~~] and hours per day, of participation in out-of-
13 cell group programming; (x) a list of all incidents resulting in sanc-
14 tions of segregated confinement, including all substantiated charges
15 related to each incident, by facility, unit, amount of segregated
16 confinement and residential rehabilitation unit time imposed for the
17 sanction, and date of occurrence; (xi) [~~the number of incarcerated~~
18 ~~persons in segregated confinement by~~] facility; [~~and~~] (xii) the number
19 of [~~incarcerated persons in residential rehabilitation units by facili-~~
20 ~~ty~~] incidents of self-harm, suicide attempts, and suicide by facility,
21 unit, and date of occurrence; (xiii) the number of deaths by facility
22 and unit, cause of death, and date of occurrence; (xiv) the number of
23 sanctions taking away a person's privileges or services, separately
24 listed and including but not limited to, visitation, packages, corre-
25 spondence, phone calls, tablets, cell shield, programs, recreation,
26 commissary, out-of-cell time, food, restitution, forfeiture of funds,
27 loss of good time, family reunion program, and imposed work task; and
28 (xv) staff uses of force, by facility, unit, date of occurrence, level
29 of injury to incarcerated individuals and staff, and outcome of any
30 disciplinary or other action taken.

31 § 15. Severability. If any provision of this act, or any application
32 of any provision of this act, is held to be invalid, that shall not
33 affect the validity or effectiveness of any other provision of this act,
34 or of any other application of any provision of this act, which can be
35 given effect without that provision or application; and to that end, the
36 provisions and applications of this act are severable.

37 § 16. This act shall take effect on the thirtieth day after it shall
38 have become a law.