S T A T E O F N E W Y O R K

10191

I N A S S E M B L Y

March 10, 2010

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

AN ACT to amend the correction law, in relation to agreements for custody of definite sentence inmates

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 91 of the correction law, as amended by section 5 of part H of chapter 56 of the laws of 2009, is amended to read as follows:

S 91. Agreements for custody of definite sentence inmates. 1. The commissioner may, SUBJECT TO THE PROVISIONS OF SUBDIVISION FIVE OF THIS SECTION, enter into an agreement with any county or with the city of New York to provide for custody by the department of persons who receive definite sentences of imprisonment with terms in excess of ninety days who otherwise would serve such sentences in the jail, workhouse, penitentiary or other local correctional [institution] FACILITY maintained by such locality; provided, however, that a person committed to the custody of the department pursuant to an agreement established by this section, except a person committed pursuant to an agreement with the city of New York, shall be delivered to a reception center designated by the commissioner for an initial processing period which shall be no longer than seven days, and thereafter, shall be transferred to a general confinement correctional facility located in the same county or in a county adjacent to the county where such person would otherwise be committed to a local correctional facility. In the event, however, that exigent circumstances related to health, safety or security arise which require the immediate transfer of an inmate to a different facility not within the county or adjacent county, then the department shall, as soon thereafter as practicable, arrange for such inmate to be returned to the jurisdiction of the county from which he or she was committed.

2. Any such agreement, except one that is made with the city of New York, may be made with the sheriff, warden, superintendent, local commissioner of correction or other person in charge of such [county institution] LOCAL CORRECTIONAL FACILITY and shall be subject to the

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

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approval of the chief executive officer of the county. An agreement made with the city of New York may be made with the commissioner of correction of that city and shall be subject to the approval of the mayor.

3. An agreement made under this section [shall require the locality to pay the cost of treatment, maintenance and custody furnished by the department, and the costs incurred under subdivision two or three of section one hundred twenty-five of this chapter relating to the provision of clothing, money and transportation upon release or discharge of inmates delivered to the department pursuant to the agreement, and] shall contain at least the following provisions:

(a) A PROVISION THAT REQUIRES THE LOCALITY TO PAY THE COST OF TREATMENT, MAINTENANCE, AND CUSTODY OF AN INMATE FURNISHED BY THE DEPARTMENT;

(B) A provision specifying the minimum length of the term of imprisonment of persons who may be received by the department under the agreement, which may be any term in excess of ninety days agreed to by the parties and which need not be the same in each agreement;

[(b)] (C) A provision that no charge will be made to the state or to the department or to any of its institutions during the pendency of such agreement for delivery of inmates to the department by officers of the locality, and that the provisions of section six hundred two of this chapter or of any similar law shall not apply for delivery of inmates during such time;

[(c)] (D) A PROVISION FOR REIMBURSEMENT BY THE LOCALITY TO THE DEPARTMENT TO PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE FURNISHED BY SUCH LOCALITY PURSUANT TO SUBDIVISION FOUR OF SECTION NINETY-FIVE OF THIS ARTICLE;

(E) Designation of the correctional facility or facilities to which persons under sentences covered by the agreement are to be delivered;

[(d)] (F) A provision requiring the department to provide transitional services upon the release of persons committed to the custody of the department pursuant to an agreement established by this section;

[(e)] (G) Any other provision the commissioner may deem necessary or appropriate; and

[(f)] (H) A provision giving either party the right to cancel the agreement by giving the other party notice in writing, with cancellation to become effective on such date as may be specified in such notice.

4. Notwithstanding any other provision of law, the commissioner shall be authorized to grant, withhold, cause to be forfeited, or cancel time allowances as provided in and in compliance with section eight hundred four of this chapter.

5. (A) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (H) OF SUBDIVISION THREE OF THIS SECTION, THE COMMISSIONER SHALL ENTER INTO AN AGREEMENT WITH A COUNTY OR THE CITY OF NEW YORK PURSUANT TO THE PROVISIONS OF THIS SECTION WHEN IT IS DETERMINED BY THE STATE COMMISSION ON CORRECTIONS TO BE NECESSARY TO ALLEVIATE OVERCROWDING AT THE LOCAL CORRECTIONAL FACILITY OR FACILITIES. UPON SUCH DETERMINATION, A COUNTY OR THE CITY OF NEW YORK SHALL NOT BE REQUIRED BY THE STATE COMMISSION ON CORRECTIONS TO CONSTRUCT NEW CORRECTIONAL FACILITIES.

(B) NOTHING IN THIS SECTION SHALL PRECLUDE THE STATE COMMISSION ON CORRECTIONS FROM ISSUING WAIVERS PURSUANT TO THIS ARTICLE, IF IN THE DISCRETION OF THE STATE COMMISSION ON CORRECTIONS THE ISSUANCE OF THE WAIVER IS MORE APPROPRIATE THAN THE AGREEMENT PROVIDED FOR IN THIS SECTION.

(C) NOTHING IN THIS SECTION SHALL PRECLUDE A COUNTY FROM ENTERING AN AGREEMENT WITH A CONTIGUOUS COUNTY OR PROHIBIT THE CONTINUATION OF ANY

EXISTING AGREEMENT BETWEEN THE COUNTIES FOR THE ALLEVIATION OF OVERCROWDING AT A LOCAL CORRECTIONAL FACILITY.

(D) NOTHING IN THIS SECTION SHALL PRECLUDE THE CITY OF NEW YORK FROM ENTERING INTO AGREEMENTS WITH ANY COUNTY WITHIN THE STATE TO ALLEVIATE OVERCROWDING AT ITS LOCAL FACILITIES.

6. A copy of such agreement shall be filed with the secretary of state and with the clerk of each court having jurisdiction to impose sentences covered by the agreement in the county or city to which it applies.

S 2. Section 91 of the correction law, as added by chapter 478 of the laws of 1970, is amended to read as follows:

S 91. Agreements for custody of definite sentence inmates. 1. The [state] commissioner [of correction] may, SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, enter into an agreement with any county or with the city of New York to provide for custody by the [state] department [of correction] of persons who receive definite sentences of imprisonment with terms in excess of ninety days who otherwise would serve such sentences in the jail, workhouse, penitentiary or other local correctional [institution] FACILITY maintained by such locality.

2. Any such agreement, except one that is made with the city of New York, may be made with the sheriff, warden, superintendent, local commissioner of correction or other person in charge of such [county institution] LOCAL CORRECTIONAL FACILITY and shall be subject to the approval of the chief executive officer of the county. An agreement made with the city of New York may be made with the commissioner of correction of that city and shall be subject to the approval of the mayor.

3. An agreement made under this section [shall not require the locality to pay the cost of treatment, maintenance and custody furnished by the state department of correction and] shall contain at least the following provisions:

(a) A PROVISION THAT REQUIRES THE LOCALITY TO PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE FURNISHED BY THE DEPARTMENT;

(B) A provision specifying the minimum length of the term of imprisonment of persons who may be received by the [state] department [of correction] under the agreement, which may be any term in excess of ninety days agreed to by the parties and which need not be the same in each agreement;

[(b)] (C) A provision that no charge will be made to the state or to the [state] department [of correction] or to any of its institutions during the pendency of such agreement for delivery of inmates to the [state] department [of correction] by officers of the locality, and that the provisions of section six hundred two of this chapter or of any similar law shall not apply for delivery of inmates during such time;

[(c)] (D) A provision that no charge shall be made to or shall be payable by the state during the pendency of such agreement for the expense of maintaining parole violators pursuant to section two hundred sixteen of this chapter, for the expense of maintaining coram nobis prisoners pursuant to section six hundred one-b of this chapter, OR for the expense of maintaining felony prisoners pursuant to section six hundred one-c of this chapter[, or for the expense of maintaining alternative local reformatory inmates pursuant to section eight hundred thirty-five in institutions maintained by the locality];

[(d)] (E) A provision, approved by the state comptroller, for reimbursement of the [state] department [of correction] by the locality for expenses incurred under subdivision two or three of section one hundred twenty-five of this chapter relating to clothing, money and

transportation furnished upon release or discharge of inmates delivered to the [state] department [of correction] pursuant to the agreement;

[(e)] (F) A PROVISION FOR REIMBURSEMENT BY THE LOCALITY TO THE DEPARTMENT TO PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE FURNISHED BY SUCH LOCALITY PURSUANT TO SUBDIVISION FOUR OF SECTION NINETY-FIVE OF THIS ARTICLE;

(G) Designation of the correctional facility or facilities to which persons under sentences covered by the agreement are to be delivered;

[(f)] (H) Any other provision the [state] commissioner [of correction] may deem necessary or appropriate; and

[(g)] (I) A provision giving either party the right to cancel the agreement by giving the other party notice in writing, with cancellation to become effective on such date as may be specified in such notice.

4. (A) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (I) OF SUBDIVISION THREE OF THIS SECTION, THE COMMISSIONER SHALL ENTER INTO AN AGREEMENT WITH A COUNTY OR THE CITY OF NEW YORK PURSUANT TO THE PROVISIONS OF THIS SECTION WHEN IT IS DETERMINED BY THE STATE COMMISSION ON CORRECTIONS TO BE NECESSARY TO ALLEVIATE OVERCROWDING AT THE LOCAL CORRECTIONAL FACILITY OR FACILITIES. UPON SUCH DETERMINATION, A COUNTY OR THE CITY OF NEW YORK SHALL NOT BE REQUIRED BY THE STATE COMMISSION ON CORRECTIONS TO CONSTRUCT NEW CORRECTIONAL FACILITIES.

(B) NOTHING IN THIS SECTION SHALL PRECLUDE THE STATE COMMISSION ON CORRECTIONS FROM ISSUING WAIVERS PURSUANT TO THIS ARTICLE, IF IN THE DISCRETION OF THE STATE COMMISSION ON CORRECTIONS THE ISSUANCE OF THE WAIVER IS MORE APPROPRIATE THAN THE AGREEMENT PROVIDED FOR IN THIS SECTION.

(C) NOTHING IN THIS SECTION SHALL PRECLUDE A COUNTY FROM ENTERING AN AGREEMENT WITH A CONTIGUOUS COUNTY OR PROHIBIT THE CONTINUATION OF ANY EXISTING AGREEMENT BETWEEN COUNTIES FOR THE ALLEVIATION OF OVERCROWDING AT A LOCAL CORRECTIONAL FACILITY OR FACILITIES.

(D) NOTHING IN THIS SECTION SHALL PRECLUDE THE CITY OF NEW YORK FROM ENTERING INTO AGREEMENTS WITH ANY COUNTY WITHIN THE STATE TO ALLEVIATE OVERCROWDING AT ITS LOCAL FACILITIES.

5. A copy of such agreement shall be filed with the secretary of state and with the clerk of each court having jurisdiction to impose sentences covered by the agreement in the county or city to which it applies.

S 3. Subdivision 4 of section 92 of the correction law, as amended by section 6 of part H of chapter 56 of the laws of 2009, is amended to read as follows:

4. In the event any such agreement is cancelled, inmates delivered to the department prior to the date of cancellation shall continue to serve their sentences in the custody of such department and the provisions of such agreement shall continue to apply with respect to such inmates. A copy of the notice of cancellation shall be filed with the secretary of state and with the clerks of courts in the manner provided in subdivision [four] SIX of section ninety-one of this article, and no inmates shall be delivered to the custody of the department under such agreement after the date on which such cancellation becomes effective.

S 4. Subdivision 4 of section 92 of the correction law, as added by chapter 478 of the laws of 1970, is amended to read as follows:

4. In the event any such agreement is cancelled, inmates delivered to the [state] department [of correction] prior to the date of cancellation shall continue to serve their sentences in the custody of [such] THE department and the provisions of such agreement shall continue to apply with respect to such inmates. A copy of the notice of cancellation shall be filed with the secretary of state and with the clerks of courts in

the manner provided in subdivision [four] FIVE of section ninety-one of this article, and no inmates shall be delivered to the custody of the [state] department [of correction] under such agreement after the date on which such cancellation becomes effective.

S 5. This act shall take effect on the thirtieth day after it shall have become a law, and shall apply to agreements entered into on or before such effective date; provided that the amendments to sections 91 and 92 of the correction law made by sections one and three of this act shall be subject to the expiration and reversion of such sections pursuant to section 8 of part H of chapter 56 of the laws of 2009, as amended, when upon such date sections two and four of this act shall take effect.