

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:

1 Section 1. Section 91 of the correction law, as amended by section 5
2 of part H of chapter 56 of the laws of 2009, is amended to read as
3 follows:
4 S 91. Agreements for custody of definite sentence inmates. 1. The
5 commissioner may, SUBJECT TO THE PROVISIONS OF SUBDIVISION FIVE OF THIS
6 SECTION, enter into an agreement with any county or with the city of New
7 York to provide for custody by the department of persons who receive
8 definite sentences of imprisonment with terms in excess of ninety days
9 who otherwise would serve such sentences in the jail, workhouse, peni-
10 tentiary or other local correctional [institution] FACILITY maintained
11 by such locality; provided, however, that a person committed to the
12 custody of the department pursuant to an agreement established by this
13 section, except a person committed pursuant to an agreement with the
14 city of New York, shall be delivered to a reception center designated by
15 the commissioner for an initial processing period which shall be no
16 longer than seven days, and thereafter, shall be transferred to a gener-
17 al confinement correctional facility located in the same county or in a
18 county adjacent to the county where such person would otherwise be
19 committed to a local correctional facility. In the event, however, that
20 exigent circumstances related to health, safety or security arise which
21 require the immediate transfer of an inmate to a different facility not
22 within the county or adjacent county, then the department shall, as soon
23 thereafter as practicable, arrange for such inmate to be returned to the
24 jurisdiction of the county from which he or she was committed.
25 2. Any such agreement, except one that is made with the city of New
26 York, may be made with the sheriff, warden, superintendent, local
27 commissioner of correction or other person in charge of such [county
28 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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1 approval of the chief executive officer of the county. An agreement made
2 with the city of New York may be made with the commissioner of
3 correction of that city and shall be subject to the approval of the
4 mayor.

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

12 (a) A PROVISION THAT REQUIRES THE LOCALITY TO PAY THE COST OF TREAT-
13 MENT, MAINTENANCE, AND CUSTODY OF AN INMATE FURNISHED BY THE DEPARTMENT;

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

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

24 [(c)] (D) A PROVISION FOR REIMBURSEMENT BY THE LOCALITY TO THE DEPART-
25 MENT TO PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE
26 FURNISHED BY SUCH LOCALITY PURSUANT TO SUBDIVISION FOUR OF SECTION NINE-
27 TY-FIVE OF THIS ARTICLE;

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

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

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

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

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

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

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

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

EXISTING AGREEMENT BETWEEN THE COUNTIES FOR THE ALLEVIATION OF OVER-CROWDING 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

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

3 [(e)] (F) A PROVISION FOR REIMBURSEMENT BY THE LOCALITY TO THE DEPART-
4 MENT TO PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE
5 FURNISHED BY SUCH LOCALITY PURSUANT TO SUBDIVISION FOUR OF SECTION NINE-
6 TY-FIVE OF THIS ARTICLE;

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

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

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

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

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

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

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

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

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

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

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

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

1 the manner provided in subdivision [four] FIVE of section ninety-one of
2 this article, and no inmates shall be delivered to the custody of the
3 [state] department [of correction] under such agreement after the date
4 on which such cancellation becomes effective.
5 S 5. This act shall take effect on the thirtieth day after it shall
6 have become a law, and shall apply to agreements entered into on or
7 before such effective date; provided that the amendments to sections 91
8 and 92 of the correction law made by sections one and three of this act
9 shall be subject to the expiration and reversion of such sections pursu-
10 ant to section 8 of part H of chapter 56 of the laws of 2009, as
11 amended, when upon such date sections two and four of this act shall
12 take effect.