

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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.

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

LBD02188-01-1

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

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

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

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

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

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

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

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

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

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

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

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

54 (B) NOTHING IN THIS SECTION SHALL PRECLUDE THE STATE COMMISSION ON
55 CORRECTIONS FROM ISSUING WAIVERS PURSUANT TO THIS ARTICLE, IF IN THE
56 DISCRETION OF THE STATE COMMISSION ON CORRECTIONS THE ISSUANCE OF THE

1 WAIVER IS MORE APPROPRIATE THAN THE AGREEMENT PROVIDED FOR IN THIS
2 SECTION.

3 (C) NOTHING IN THIS SECTION SHALL PRECLUDE A COUNTY FROM ENTERING AN
4 AGREEMENT WITH A CONTIGUOUS COUNTY OR PROHIBIT THE CONTINUATION OF ANY
5 EXISTING AGREEMENT BETWEEN THE COUNTIES FOR THE ALLEVIATION OF OVER-
6 CROWDING AT A LOCAL CORRECTIONAL FACILITY.

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

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

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

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

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

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

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

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

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

48 [(c)] (D) A provision that no charge shall be made to or shall be
49 payable by the state during the pendency of such agreement for the
50 expense of maintaining parole violators pursuant to section two hundred
51 [sixteen] FIFTY-NINE-I of [this chapter] THE EXECUTIVE LAW, for the
52 expense of maintaining coram nobis prisoners pursuant to section six
53 hundred one-b of this chapter, OR for the expense of maintaining felony
54 prisoners pursuant to section six hundred one-c of this chapter[, or for
55 the expense of maintaining alternative local reformatory inmates pursu-

ant 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 NINE-TY-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:

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

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