

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

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2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. SALAND, GALLIVAN, LARKIN, LITTLE, MAZIARZ, RANZEN-HOFER -- 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

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

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

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1 require the immediate transfer of an inmate to a different facility not
2 within the county or adjacent county, then the department shall, as soon
3 thereafter as practicable, arrange for such inmate to be returned to the
4 jurisdiction of the county from which he or she was committed.

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

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

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

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

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

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

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

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

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

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

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

50 5. (A) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (H) OF SUBDIVISION
51 THREE OF THIS SECTION, THE COMMISSIONER SHALL ENTER INTO AN AGREEMENT
52 WITH A COUNTY OR THE CITY OF NEW YORK PURSUANT TO THE PROVISIONS OF THIS
53 SECTION WHEN IT IS DETERMINED BY THE STATE COMMISSION ON CORRECTIONS TO
54 BE NECESSARY TO ALLEVIATE OVERCROWDING AT THE LOCAL CORRECTIONAL FACILI-
55 TY OR FACILITIES. UPON SUCH DETERMINATION, A COUNTY OR THE CITY OF NEW

1 YORK SHALL NOT BE REQUIRED BY THE STATE COMMISSION ON CORRECTIONS TO
2 CONSTRUCT NEW CORRECTIONAL FACILITIES.

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

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

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

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

18 S 2. Section 91 of the correction law, as amended by section 10 of
19 subpart B of part C of chapter 62 of the laws of 2011, is amended to
20 read as follows:

21 S 91. Agreements for custody of definite sentence inmates. 1. The
22 [state] commissioner of corrections and community supervision may,
23 SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION enter into
24 an agreement with any county or with the city of New York to provide for
25 custody by the [state] department [of corrections and community super-
26 vision] of persons who receive definite sentences of imprisonment with
27 terms in excess of ninety days who otherwise would serve such sentences
28 in the jail, workhouse, penitentiary or other local correctional [insti-
29 tution] FACILITY maintained by such locality.

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

38 3. An agreement made under this section [shall not require the locali-
39 ty to pay the cost of treatment, maintenance and custody furnished by
40 the state department of corrections and community supervision and] shall
41 contain at least the following provisions:

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

44 (B) A provision specifying the minimum length of the term of imprison-
45 ment of persons who may be received by the [state] department [of
46 corrections and community supervision] under the agreement, which may be
47 any term in excess of ninety days agreed to by the parties and which
48 need not be the same in each agreement;

49 [(b)] (C) A provision that no charge will be made to the state or to
50 the [state] department [of corrections and community supervision] or to
51 any of its institutions during the pendency of such agreement for deliv-
52 ery of inmates to the [state] department [of corrections and community
53 supervision] by officers of the locality, and that the provisions of
54 section six hundred two of this chapter or of any similar law shall not
55 apply for delivery of inmates during such time;

1 [(c)] (D) A provision that no charge shall be made to or shall be
2 payable by the state during the pendency of such agreement for the
3 expense of maintaining parole violators pursuant to section two hundred
4 [sixteen] FIFTY-NINE-I of [this chapter] THE EXECUTIVE LAW, for the
5 expense of maintaining coram nobis prisoners pursuant to section six
6 hundred one-b of this chapter, OR for the expense of maintaining felony
7 prisoners pursuant to section six hundred one-c of this chapter[, or for
8 the expense of maintaining alternative local reformatory inmates pursu-
9 ant to section eight hundred thirty-five in institutions maintained by
10 the locality];

11 [(d)] (E) A provision, approved by the state comptroller, for
12 reimbursement of the [state] department [of corrections and community
13 supervision] by the locality for expenses incurred under subdivision two
14 or three of section one hundred twenty-five of this chapter relating to
15 clothing, money and transportation furnished upon release or discharge
16 of inmates delivered to the [state] department [of corrections and
17 community supervision] pursuant to the agreement;

18 (F) A PROVISION FOR REIMBURSEMENT BY THE LOCALITY TO THE DEPARTMENT TO
19 PAY THE COST OF TREATMENT, MAINTENANCE AND CUSTODY OF AN INMATE
20 FURNISHED BY SUCH LOCALITY PURSUANT TO SUBDIVISION FOUR OF SECTION NINE-
21 TY-FIVE OF THIS ARTICLE;

22 [(e)] (G) Designation of the correctional facility or facilities to
23 which persons under sentences covered by the agreement are to be deliv-
24 ered;

25 [(f)] (H) Any other provision the [state] commissioner [of corrections
26 and community supervision] may deem necessary or appropriate; and

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

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

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

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

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

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

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

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

10 S 4. Subdivision 4 of section 92 of the correction law, as amended by
11 section 11 of subpart B of part C of chapter 62 of the laws of 2011, is
12 amended to read as follows:

13 4. In the event any such agreement is cancelled, inmates delivered to
14 the [state] department [of corrections and community supervision] prior
15 to the date of cancellation shall continue to serve their sentences in
16 the custody of [such] THE department and the provisions of such agree-
17 ment shall continue to apply with respect to such inmates. A copy of the
18 notice of cancellation shall be filed with the secretary of state and
19 with the clerks of courts in the manner provided in subdivision [four]
20 FIVE of section ninety-one of this article, and no inmates shall be
21 delivered to the custody of the [state] department [of corrections and
22 community supervision] under such agreement after the date on which such
23 cancellation becomes effective.

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