

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

398--A

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 -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- 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
21 require the immediate transfer of an inmate to a different facility not

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

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1 within the county or adjacent county, then the department shall, as soon
2 thereafter as practicable, arrange for such inmate to be returned to the
3 jurisdiction of the county from which he or she was committed.
4 2. Any such agreement, except one that is made with the city of New
5 York, may be made with the sheriff, warden, superintendent, local
6 commissioner of correction or other person in charge of such [county
7 institution] LOCAL CORRECTIONAL FACILITY and shall be subject to the
8 approval of the chief executive officer of the county. An agreement made
9 with the city of New York may be made with the commissioner of
10 correction of that city and shall be subject to the approval of the
11 mayor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 [(c)] (D) A provision that no charge shall be made to or shall be
55 payable by the state during the pendency of such agreement for the
56 expense of maintaining parole violators pursuant to section two hundred

1 [sixteen] FIFTY-NINE-I of [this chapter] THE EXECUTIVE LAW, for the
2 expense of maintaining coram nobis prisoners pursuant to section six
3 hundred one-b of this chapter, OR for the expense of maintaining felony
4 prisoners pursuant to section six hundred one-c of this chapter[, or for
5 the expense of maintaining alternative local reformatory inmates pursu-
6 ant to section eight hundred thirty-five in institutions maintained by
7 the locality];

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

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

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

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

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

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

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

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

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

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

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

53 4. In the event any such agreement is cancelled, inmates delivered to
54 the department prior to the date of cancellation shall continue to serve
55 their sentences in the custody of such department and the provisions of
56 such agreement shall continue to apply with respect to such inmates. A

1 copy of the notice of cancellation shall be filed with the secretary of
2 state and with the clerks of courts in the manner provided in subdivi-
3 sion [four] SIX of section ninety-one of this article, and no inmates
4 shall be delivered to the custody of the department under such agreement
5 after the date on which such cancellation becomes effective.

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

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

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