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

1789--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. RIVERA, MONTGOMERY, HASSELL-THOMPSON, KRUEGER, PARKER, STAVISKY -- 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 establishing the pilot project for the placement of inmates close to home; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "pilot project for the placement of inmates close to home".

S 2. Legislative intent. The legislature hereby finds and declares that research shows inmates who maintain family ties during incarceration have lower rates of recidivism than inmates who do not. Further, most inmates are parents, and more than 80,000 children in the state of New York have a parent incarcerated in the state prison system.

The legislature further finds that the department of corrections and community supervision should consider proximity to minor children among the key criteria of security and health and program needs when determining prison assignments and transfers of parents, and should support increased access of children to their incarcerated parents through the use of technology and programs currently available within the department.

The legislature therefore declares that there is a need to develop classification criteria that would place inmates in proximity to their family members and home communities, and in particular for those inmates who are parents of minor children in the appropriate correctional facil-

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

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ity located closest to those children provided such placement is otherwise appropriate and suitable, and would facilitate increased contact between such inmate and his or her child or children.

S 3. The correction law is amended by adding a new section 72-c to read as follows:

S 72-C. PILOT PROJECT FOR THE PLACEMENT OF INMATES CLOSE TO HOME. 1. THE COMMISSIONER SHALL ESTABLISH A PILOT PROGRAM AT A DESIGNATED CORRECTIONAL FACILITY FOR THE PURPOSE OF HOUSING INMATES WHO ARE PARENTS OF MINOR CHILDREN IN THE CORRECTIONAL FACILITY WHICH IS LOCATED IN CLOSEST PROXIMITY TO THE PRIMARY PLACE OF RESIDENCE OF ANY SUCH INMATE'S MINOR CHILD OR CHILDREN UNDER EIGHTEEN YEARS OF AGE, PROVIDED THAT SUCH PLACEMENT IS OTHERWISE SUITABLE AND APPROPRIATE PURSUANT TO THE REGULATIONS OF THE DEPARTMENT AND WOULD FACILITATE INCREASED CONTACT BETWEEN SUCH INMATE AND HIS OR HER CHILD OR CHILDREN. FOR PURPOSES OF THIS PILOT PROGRAM, THERE SHALL BE A MAXIMUM OF ONE HUNDRED MALE AND FEMALE INMATES, WHO ON A VOLUNTARY BASIS REQUEST PLACEMENT IN THE PILOT PROGRAM AND WHO ARE PARENTS OF MINOR CHILDREN. IN SELECTING SUCH INMATES THE DEPARTMENT SHALL CONSULT WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE LOCAL DISTRICT OF SOCIAL SERVICES LOCATED IN THE COUNTY WHERE SUCH INMATE'S CHILD RESIDES TO DETERMINE IF ANY REASONS EXIST, SUCH AS NO VISITATION ORDER, THAT MAY PREVENT THE INMATE FROM PARTICIPATING IN THE PILOT PROGRAM. IF THE INMATE'S CHILD AND/OR FAMILY IS SUBJECT TO THE PREVIEW OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR A LOCAL SOCIAL SERVICES DISTRICT, THE DEPARTMENT SHALL CONSULT WITH THE ASSIGNED AGENCY TO DETERMINE WHETHER THE CHILD AND/OR FAMILY IS SUITABLE FOR PARTICIPATION IN THE PILOT PROGRAM, AND, IF SO, COLLABORATE WITH SUCH AGENCY TO OBTAIN INFORMATION RELATING TO SUCH CHILD AND/OR FAMILY AS SHALL BE NECESSARY TO DETERMINE THE EFFECTIVENESS OF THE PILOT PROGRAM.

2. THE COMMISSIONER, IN CONSULTATION WITH APPROPRIATE COMMUNITY ORGANIZATIONS, SHALL SUBMIT WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION AND ANNUALLY THEREAFTER A REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON THE EFFECTIVENESS OF THIS PILOT PROJECT. SUCH REPORTS SHALL INCLUDE AN ANALYSIS OF THE IMPACT ON THE INMATE, INCLUDING FACTORS SUCH AS INSTITUTIONAL ADJUSTMENT, BEHAVIOR INFRACTIONS, AND PROGRAM PARTICIPATION, AMONG RELATED RELEVANT FACTORS, AND ON HIS OR HER CHILDREN AND FAMILY PARTICIPANTS. THE REPORTS SHALL ALSO INCLUDE ANALYSIS OF FACTORS SUCH AS FREQUENCY OF VISITS, REPORTS FROM CAREGIVERS ABOUT CHILDREN'S CONNECTEDNESS TO THEIR INCARCERATED PARENTS, CHILDREN'S EMOTIONAL WELL-BEING AND BEHAVIOR IN THE HOME, AND OTHER RELEVANT FACTORS AS INCLUDED IN THE CAREGIVER'S REPORTS. FOR CHILD WELFARE CASES, IN ADDITION TO THE ABOVE FACTORS, PROGRESS TOWARD PERMANENCY GOALS, PARENT'S PARTICIPATION IN CASE PLANNING, AND OTHER RELEVANT FACTORS SHALL BE NOTED. IN CASES WHERE AN INMATE PARENT'S RELEASE IS IMMINENT, AS DETERMINED BY THE COMMISSIONER, THE REPORT SHALL EXAMINE THE LEVEL OF SUPPORT RECEIVED AND PROVIDED BY THE INMATE'S FAMILY THROUGH FAMILY INVOLVEMENT AND THE ATTACHMENT BETWEEN A RETURNING PARENT AND HIS OR HER CHILDREN UPON REUNIFICATION. THE REPORTS SHALL ALSO INCLUDE SUCH IMPACT ON INSTITUTIONAL SAFETY AND PERFORMANCE AND ANY RECOMMENDATIONS FOR ADDITIONAL LEGISLATIVE ENACTMENTS THAT MAY BE NEEDED OR REQUIRED, TO IMPROVE, ENHANCE AND SUBSEQUENTLY EXPAND THE PROGRAM TO OTHER CORRECTIONAL FACILITIES AS DETERMINED TO BE APPROPRIATE BY THE COMMISSIONER. IN COMPILING SUCH REPORTS, THE COMMISSIONER MAY ESTABLISH AND UTILIZE A CONTROL GROUP AND, IF HE OR SHE FAILS TO DO SO, THE COMMISSIONER SHALL INCLUDE AN EXPLANATION AS TO WHY A CONTROL GROUP WAS NOT USED.

3. NO PERSON SHALL HAVE THE RIGHT TO DEMAND OR REQUIRE PARTICIPATION IN THE PILOT PROJECT AUTHORIZED BY THIS SECTION. THE COMMISSIONER MAY REVOKE AT ANY TIME PARTICIPATION IN SUCH PROJECT FOR ANY SERIOUS DISCIPLINARY INFRACTION COMMITTED BY THE INMATE OR FOR ANY FAILURE TO CONTINUE TO PARTICIPATE SUCCESSFULLY IN ANY ASSIGNED WORK AND TREATMENT PROGRAM AFTER PLACEMENT IN SUCH PILOT PROGRAM.

4. AN ELIGIBILITY PREFERENCE SHALL BE GRANTED FOR CHILD WELFARE CASES. ADMISSION SHALL BE GRANTED ON A ROLLING BASIS AND PRIORITY SHALL BE GIVEN TO INMATES WHO WERE PRIMARY CAREGIVERS, ALTHOUGH ALL INMATE PARENTS SHALL BE CONSIDERED. THE FAMILIES OF INMATES SHALL SUBMIT DEMONSTRATED PROOF THAT THEY WILL VISIT THE INMATE IF THE PERSON LIVES CLOSER, AND THE INMATE SHALL REQUEST THAT SUCH FAMILY MEMBERS SUBMIT LETTERS. OTHER RELEVANT FACTORS SHALL BE TAKEN INTO CONSIDERATION, INCLUDING BUT NOT LIMITED TO, WHETHER AN INMATE'S FAMILY MEMBER HAS AN UNDUE HARDSHIP THAT WOULD AFFECT THE PERSON'S ABILITY TO VISIT THE INMATE. SUCH HARDSHIP SHALL INCLUDE, BUT NOT BE LIMITED TO, A PHYSICAL DISABILITY OR SERIOUS ILLNESS THAT INHIBITS TRAVEL, OR WHETHER THEY WOULD NOT BE ABLE TO REASONABLY VISIT THE INMATE BECAUSE THEY WOULD BE UNABLE TO VISIT BY PUBLIC TRANSPORTATION AND CANNOT AFFORD OR USE A MOTOR VEHICLE. ANY ACTION BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE DEEMED A JUDICIAL FUNCTION AND SHALL NOT BE REVIEWABLE IF DONE IN ACCORDANCE WITH LAW.

5. INMATES SHALL NOT BE ELIGIBLE FOR THIS PROGRAM FOR A VARIETY OF FACTORS, AS LISTED IN, BUT NOT LIMITED TO, THOSE ENUMERATED IN THIS SECTION. INMATES WHO ARE INCARCERATED FOR VIOLATING PAROLE OR CONDITIONAL RELEASE SHALL BE INELIGIBLE FOR THIS PROGRAM. INMATES WHO WERE CONVICTED OF A SEX OFFENSE SHALL BE INELIGIBLE FOR THIS PROGRAM. INMATES WHO HAVE COMMITTED A CRIME AGAINST A CHILD SHALL BE INELIGIBLE FOR THIS PROGRAM. INMATES FOR WHOM A CLOSER LOCATION WOULD NOT LEAD TO MORE VISITORS SHALL NOT BE ELIGIBLE FOR THIS PROGRAM. INMATES WHO HAVE NOT HAD CONTACT WITH THEIR CHILDREN IN OVER A YEAR OUT OF THEIR OWN VOLITION SHALL NOT BE ELIGIBLE FOR THIS PROGRAM, UNLESS THERE IS A COMPELLING REASON FOR NOT HAVING HAD CONTACT WITH THEIR CHILDREN. THE COMMISSIONER IS EMPOWERED TO GRANT PREFERENCE TO MORE INVOLVED INMATE PARENTS, AS DETERMINED BY THE AMOUNT OF CONTACT THAT THE CHILDREN HAVE WITH THEIR PARENTS, SHOULD THE COMMISSIONER DETERMINE TO DO SO. INMATES WHO WOULD ORDINARILY BE SENT TO A STRICTER SECURITY LEVEL PRISON SHALL NOT, UNLESS COMPELLING REASONS SHALL SUGGEST OTHERWISE, BE SENT TO A LIGHTER SECURITY PRISON BECAUSE OF PROXIMITY ON THE BASIS OF THIS PROGRAM. MENTAL HEALTH ISSUES SHALL NOT BE AN ISSUE OF INELIGIBILITY WITH REGARD TO THIS PROGRAM, UNLESS THERE IS A COMPELLING REASON TO DO SO.

S 4. This act shall take effect six months after it shall have become a law and shall expire 3 years after it shall take effect when upon such date the provisions of this act shall be deemed repealed. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.