

STATE OF NEW YORK

3080

2017-2018 Regular Sessions

IN ASSEMBLY

January 26, 2017

Introduced by M. of A. AUBRY, PERRY, ARROYO, BARRETT, STECK, RIVERA, GOTTFRIED, COOK, JAFFEE, DAVILA, LUPARDO, SEPULVEDA, MOSLEY, ORTIZ, PEOPLES-STOKES, SKARTADOS, QUART, WEPRIN, ROSENTHAL, LIFTON, ABINANTI, PRETLOW, BICHOTTE, BARRON, WALKER, BLAKE, RODRIGUEZ, FAHY, TITONE, McDONALD, CAHILL, HARRIS, JOYNER, JENNE, BENEDETTO, SOLAGES, RICHARDSON, PICHARDO, HYNDMAN, STIRPE, KAVANAGH, TITUS, KIM, SIMOTAS, OTIS, MAYER -- Multi-Sponsored by -- M. of A. CUSICK, ENGLEBRIGHT, FARRELL, GLICK, HEVESI, LAVINE, LENTOL, MAGEE, SEAWRIGHT, SIMON, THIELE -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 137 of the correction law is amended by adding a new subdivision 5-a to read as follows:

5-a. The use of segregated confinement, exclusion of certain special populations, and length of time any person can spend in segregated confinement shall be restricted in accordance with paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of subdivision six of this section or any other applicable law.

§ 2. Subdivision 23 of section 2 of the correction law, as added by chapter 1 of the laws of 2008, is amended to read as follows:

23. "Segregated confinement" means the [~~disciplinary~~] confinement, other than for emergency confinement as defined in subdivision thirty-three of this section, or for documented medical reasons or mental health emergencies, of an inmate in a special housing unit or in a separate keeplock housing unit or any form of keeplock, or cell confinement for more than seventeen hours a day other than in a facility-wide lockdown. Special housing units and separate keeplock units are housing units that consist of cells grouped so as to provide separation from the

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

LBD08286-01-7

1 general population, and may be used to house inmates confined pursuant
2 to the disciplinary procedures described in regulations.

3 § 3. Section 2 of the correction law is amended by adding five new
4 subdivisions 32, 33, 34, 35, and 36 to read as follows:

5 32. "Special populations" means any person: (a) twenty-one years of
6 age or younger; (b) fifty-five years of age or older; (c) with a disa-
7 bility as defined in subdivision twenty-one of section two hundred nine-
8 ty-two of the executive law, including but not limited to, for purposes
9 of mental impairment, persons with a serious mental illness as defined
10 in paragraph (e) of subdivision six of section one hundred thirty-seven
11 of this chapter; (d) who is pregnant, is in the first eight weeks of the
12 post-partum recovery period after giving birth, or is caring for a child
13 in a correctional institution pursuant to subdivisions two or three of
14 section six hundred eleven of this chapter; or (e) who is or is
15 perceived to be lesbian, gay, bisexual, transgender, or intersex.

16 33. "Emergency confinement" means confinement in any cell for no more
17 than twenty-four consecutive hours and no more than forty-eight total
18 hours in any fifteen day period, with at least one hour of out-of-cell
19 recreation for every twenty-four hours.

20 34. "Short-term segregated confinement" means segregated confinement
21 of no more than three consecutive days and six days total within any
22 thirty day period.

23 35. "Extended segregated confinement" means segregated confinement of
24 no more than fifteen consecutive days and twenty days total within any
25 sixty day period.

26 36. "Residential rehabilitation unit" means secure and separate units
27 used for therapy, treatment, and rehabilitative programming of people
28 who would be placed in segregated confinement for more than fifteen
29 days. Such units are therapeutic and trauma-informed, and aim to address
30 individual treatment and rehabilitation needs and underlying causes of
31 problematic behaviors.

32 § 4. Subdivision 6 of section 137 of the correction law is amended by
33 adding eight new paragraphs (g), (h), (i), (j), (k), (l), (m), and (n)
34 to read as follows:

35 (g) Persons in a special population as defined in subdivision thirty-
36 two of section two of this chapter shall not be placed in segregated
37 confinement for any length of time. Any such persons the department
38 would otherwise place in segregated confinement shall remain in general
39 population or be diverted to a residential rehabilitation unit. If a
40 person in a special population is placed in emergency confinement for
41 more than sixteen hours, he or she shall be allowed out-of-cell at least
42 four hours.

43 (h) No person may be in segregated confinement for longer than neces-
44 sary and never more than fifteen consecutive days nor twenty total days
45 within any sixty day period. At these limits, persons must be released
46 from segregated confinement or diverted to a separate secure residential
47 rehabilitation unit.

48 (i) (i) All segregated confinement and residential rehabilitation
49 units shall create the least restrictive environment necessary for the
50 safety of residents, staff, and the security of the facility.

51 (ii) Persons in segregated confinement shall be allowed out-of-cell at
52 least four hours per day, including at least one hour for recreation.
53 Persons in residential rehabilitation units shall be allowed at least
54 six hours per day out-of-cell for programming, services, treatment,
55 and/or meals, and an additional minimum of one hour for recreation.
56 Recreation in all units shall take place in a congregate setting, unless

1 exceptional circumstances mean doing so would create a significant and
2 unreasonable risk to the safety and security of other incarcerated
3 persons, staff, or the facility.

4 (iii) Persons in segregated confinement and residential rehabilitation
5 units shall: (A) receive at least comparable medical and mental health
6 care to general population, including obstetrical and gynecological
7 services, in a setting ensuring privacy and confidentiality; (B) have
8 their basic needs met in a manner comparable to general population, and
9 never have restricted diets nor any order restricting any basic need
10 imposed as a form of punishment; (C) if in a residential rehabilitation
11 unit be able to retain all their property with them; (D) have comparable
12 access to all services and materials as in general population; and (E)
13 be able to retain program materials, complete program assignments, and
14 continue upon return all uncompleted programs they were in prior to
15 placement in segregated confinement or a residential rehabilitation
16 unit.

17 (iv) Within ten days of admission to a residential rehabilitation
18 unit, an assessment committee comprised of program, rehabilitation,
19 mental health, and security staff shall administer an assessment and
20 develop in collaboration with the resident an individual rehabilitation
21 plan, based upon the person's medical, mental health, and programming
22 needs, that identifies specific goals and programs, treatment, and
23 services to be offered, with projected time frames for completion and
24 release from the residential rehabilitation unit.

25 (v) Residents in residential rehabilitation units shall have access to
26 programs and jobs comparable to all core out-of-cell programs in general
27 population. Such residents shall also have access to additional out-of-
28 cell, trauma-informed therapeutic programming aimed at promoting
29 personal development, addressing underlying causes of problematic behav-
30 ior resulting in placement in a residential rehabilitation unit, and
31 helping prepare for discharge from the unit and to the community.

32 (vi) If the department establishes that a person committed an act
33 defined in subparagraph (iii) of paragraph (j) of this subdivision while
34 in segregated confinement or a residential rehabilitation unit and poses
35 a significant and unreasonable risk to the safety and security of other
36 residents or staff, the department may restrict that person's partic-
37 ipation in programming and out-of-cell time as necessary for the safety
38 of other residents and staff. If restrictions are imposed in segregated
39 confinement, the department must still provide at least two hours out-
40 of-cell time. If restrictions are imposed in a residential rehabili-
41 tation unit, the department shall develop a new rehabilitation plan,
42 provide at least three hours out-of-cell time, and on each day program-
43 ming restrictions are imposed provide at least two hours of out-of-cell
44 one-on-one therapy with the resident and one hour of out-of-cell recre-
45 ation. The department shall remove all restrictions within fifteen days,
46 and may not impose new restrictions unless the person commits a new act
47 defined in subparagraph (iii) of paragraph (j) of this subdivision.

48 (vii) Restraints shall not be used when residents leave a cell or
49 housing area for on-unit operations, unless a resident was found at a
50 hearing to have committed an act of violence on the residential rehabil-
51 itation unit within the previous seven days or is currently acting in an
52 unacceptably violent manner, and not using restraints would create a
53 significant and unreasonable risk to the safety and security of other
54 residents or staff.

55 (viii) There shall be a presumption against the imposition of misbe-
56 havior reports, pursuit of disciplinary charges, or imposition of addi-

1 tional time in segregated confinement for individuals in segregated
2 confinement or residential rehabilitation units. The department shall
3 use other non-disciplinary interventions to address any problematic
4 behavior. No resident shall receive segregated confinement time while in
5 segregated confinement or a residential rehabilitation unit except where
6 it is determined pursuant to a disciplinary hearing that he or she
7 committed one or more act listed in subparagraph (iii) of paragraph (j)
8 of this subdivision while on the unit, and that he or she poses a
9 significant and unreasonable risk to the safety of residents or staff,
10 or the security of the facility.

11 (j) (i) The department may place a person in emergency confinement
12 without a hearing if necessary for immediately defusing a substantial
13 and imminent threat to safety or security of incarcerated persons or
14 staff.

15 (ii) The department is encouraged to use responses other than segre-
16 gated confinement in response to department rule violations. The depart-
17 ment may place a person in short term segregated confinement if it
18 determines, pursuant to an evidentiary hearing, that the person commit-
19 ted a department rule violation warranting such confinement and the
20 length of segregated confinement imposed is proportionate to the
21 violation.

22 (iii) The department may place a person in extended segregated
23 confinement or a residential rehabilitation unit only if, pursuant to an
24 evidentiary hearing, it determines the person committed, while under
25 department custody, or prior to custody if the commissioner or his or
26 her designee determines in writing based on specific objective criteria
27 the acts were so heinous or destructive that general population housing
28 creates a significant risk of imminent serious physical injury to staff
29 or other incarcerated persons, one of the following acts: (A) causing or
30 attempting to cause serious physical injury or death to another person;
31 (B) compelling or attempting to compel another person, by force or
32 threat of force, to engage in a sexual act; (C) extorting another, by
33 force or threat of force, for property or money; (D) coercing another,
34 by force or threat of force, to violate any rule; (E) leading, organiz-
35 ing, or inciting a serious disturbance that results in the taking of a
36 hostage, major property damage, or physical harm to another person; (F)
37 procuring deadly weapons or other dangerous contraband that poses a
38 serious threat to the security of the institution; or (G) escaping,
39 attempting to escape or facilitating an escape from a facility, or while
40 under supervision outside of such a facility, resulting in physical harm
41 or threatened physical harm to others, or in major destruction to the
42 physical plant.

43 (iv) No person may be held in segregated confinement for protective
44 custody. Any unit used for protective custody must, at a minimum,
45 conform to requirements governing residential rehabilitation units under
46 paragraphs (i), (l), (m), and (n) of this subdivision. When applied to a
47 person in protective custody, the criteria in subparagraph (ii) and
48 clause (A) of subparagraph (iii) of paragraph (l) of this subdivision
49 shall be that "the person still is in need of protective custody"; and
50 the criteria in subparagraph (iv) of paragraph (l) of this subdivision
51 shall be that "the person is in voluntary protective custody."

52 (k) (i) All hearings to determine if a person may be placed in short
53 term or extended segregated confinement shall occur prior to placement
54 in segregated confinement unless a security supervisor, with written
55 approval of a facility superintendent or designee, reasonably believes
56 the person fits the criteria for extended segregated confinement. If a

1 hearing does not take place prior to placement, it shall occur as soon
2 as reasonably practicable and at most within five days of transfer
3 unless the charged person seeks more time. All hearings shall at a mini-
4 mum comply with the standards of all department rules for disciplinary
5 hearings as of January first, two thousand eighteen. Persons at all
6 hearings shall be permitted to be represented by any pro bono or
7 retained attorney, or law student; or any paralegal or incarcerated
8 person unless the department reasonably disapproves of such paralegal or
9 incarcerated person based upon objective written criteria developed by
10 the department concerning qualifications to be an assistant at a hear-
11 ing.

12 (ii) On notification a person is to be placed in segregated confine-
13 ment and prior to such placement, he or she shall be assessed by rele-
14 vant licensed medical, social, and/or mental health professionals to
15 determine whether he or she belongs to any special population as defined
16 in subdivision thirty-two of section two of this chapter. If a person
17 disputes a determination that he or she is not in a special population,
18 he or she shall be provided a hearing within seventy-two hours of place-
19 ment in segregated confinement to challenge such determination.

20 (1) (i) Any sanction imposed on an incarcerated person requiring
21 segregated confinement shall run while the person is in a residential
22 rehabilitation unit and the person shall be discharged from the unit
23 before or at the time that sanction expires.

24 (ii) Within thirty days of admission to a residential rehabilitation
25 unit and every sixty days thereafter, the assessment committee shall
26 review each resident's progress and discharge a resident unless it
27 determines in writing through credible and reliable evidence that there
28 is currently a substantial likelihood that the resident will commit an
29 act listed in subparagraph (iii) of paragraph (j) of this subdivision.

30 (iii) Within one hundred days after admission to a residential reha-
31 bilitation unit and every one hundred twenty days thereafter, a rehabil-
32 itation review committee, comprised of correctional facility executive
33 level program, rehabilitation, and security staff shall discharge a
34 resident from a residential rehabilitation unit unless it determines in
35 writing, after considering the resident's oral statement and any written
36 submissions by the resident or others, that: (A) there is currently a
37 substantial likelihood that the resident will commit an act listed in
38 subparagraph (iii) of paragraph (j) of this subdivision, significant
39 therapeutic reasons exist for keeping the resident in the unit to
40 complete specific program or treatment goals, and remaining in the unit
41 is in the best interest of the resident; or (B) the resident has commit-
42 ted an act listed in subparagraph (iii) of paragraph (j) of this subdivi-
43 vision during the one hundred twenty days prior to the review.

44 (iv) If a resident has spent one year in a residential rehabilitation
45 unit or is within sixty days of a fixed or tentatively approved date for
46 release from a correctional facility, he shall be discharged from the
47 unit unless he or she committed an act listed in subparagraph (iii) of
48 paragraph (j) of this subdivision within the prior one hundred eighty
49 days or he or she caused the death of another person while under depart-
50 ment custody or escaped or attempted to escape from department or other
51 police custody and the rehabilitation review committee determines he or
52 she poses a significant and unreasonable risk to the safety or security
53 of incarcerated persons or staff, but in any such case the decision not
54 to discharge such person shall be immediately and automatically
55 subjected to an independent review by the justice center entity with
56 oversight responsibilities under section four hundred one-a of this

chapter, with timely notice given to the incarcerated person of the submission of the case to the justice center and of the decision of the justice center. If the justice center disagrees with the decision to not discharge, the resident will be immediately released from the residential rehabilitation unit. If the justice center agrees with the decision to not discharge, the discharge procedures set forth in this paragraph shall apply including annual reviews by the justice center of a decision by the rehabilitation review committee to refuse to release a resident, however, under no circumstances shall any such person be held in the residential rehabilitation unit for more than three years unless the rehabilitation review committee determines he or she committed an act listed in subparagraph (iii) of paragraph (j) of this subdivision within one hundred eighty days prior to the expiration of the three year period and poses a significant and unreasonable risk to the safety or security of incarcerated persons or staff.

(v) After each assessment committee and rehabilitation review committee decision, if a resident is not discharged from the residential rehabilitation unit, the respective committee shall specify in writing (A) the reasons for the determination and (B) the program, treatment, service, and/or corrective action requirements for discharge. The resident shall be given access to the programs, treatment and services specified, and shall be discharged from the residential rehabilitation unit upon completion unless the resident has committed an act listed in subparagraph (iii) of paragraph (j) of this subdivision during the previous one hundred twenty days.

(vi) When a resident is discharged from a residential rehabilitation unit, any remaining sentence to segregated confinement time will be dismissed. If a resident substantially completes his rehabilitation plan, he or she will have all good time restored upon discharge from the unit.

(m) All staff, including supervisory staff, working in a segregated confinement or residential rehabilitation unit shall undergo a minimum of forty hours of training prior to working on the unit and twenty-four hours annually thereafter, on substantive content developed in consultation with relevant experts, including trauma, psychiatric and restorative justice experts, on topics including, but not limited to, the purpose and goals of the non-punitive therapeutic environment and dispute resolution methods. Prior to presiding over any hearings, all hearing officers shall undergo a minimum of forty hours of training, and eight hours annually thereafter, on relevant topics, including but not limited to, the physical and psychological effects of segregated confinement, procedural and due process rights of the accused, and restorative justice remedies.

(n) The department shall make publicly available monthly reports of the number of people as of the first day of each month, and semi-annual and annual cumulative reports of the total number of people, who are (i) in segregated confinement; and (ii) in residential rehabilitation units; along with a breakdown of the number of people (iii) in segregated confinement and (iv) in residential rehabilitation units by (A) age; (B) race; (C) gender; (D) mental health level; (E) health status; (F) drug addiction status; (G) pregnancy status; (H) lesbian, gay, bisexual, transgender, or intersex status; and (I) total continuous length of stay, and total length of stay in the past sixty days, in segregated confinement or a residential rehabilitation unit.

§ 5. Section 401-a of the correction law is amended by adding a new subdivision 4 to read as follows:

1 4. The justice center shall assess compliance with the terms of, and
2 at least annually report on and make recommendations to the department,
3 legislature, and public in writing, regarding all aspects of segregated
4 confinement and residential rehabilitation units in state correctional
5 facilities pursuant to section one hundred thirty-seven of this chapter,
6 including but not limited to policies and practices regarding: (a)
7 placement of persons; (b) special populations; (c) length of time spent;
8 (d) hearings and procedures; (e) conditions, programs, services, care,
9 and treatment; and (f) assessments and rehabilitation plans, and proce-
10 dures and determinations made as to whether persons should remain in
11 residential rehabilitation units.

12 § 6. Subdivision 4 of section 45 of the correction law, as amended by
13 section 15 of subpart A of part C of chapter 62 of the laws of 2011, is
14 amended to read as follows:

15 4. (a) Establish procedures to assure effective investigation of
16 grievances of, and conditions affecting, inmates of local correctional
17 facilities. Such procedures shall include but not be limited to receipt
18 of written complaints, interviews of persons, and on-site monitoring of
19 conditions. In addition, the commission shall establish procedures for
20 the speedy and impartial review of grievances referred to it by the
21 commissioner of the department of corrections and community supervision.

22 (b) The commission shall also assess compliance with the terms of, and
23 at least annually report on and make recommendations to the department,
24 legislature, and public, regarding all aspects of segregated confinement
25 and residential rehabilitation units in facilities governed by section
26 five hundred-k of this chapter, including but not limited to policies
27 and practices for both regarding: (i) placement of persons; (ii) special
28 populations; (iii) length of time spent; (iv) hearings and procedures;
29 (v) conditions, programs, services, care, and treatment; and (vi)
30 assessments and rehabilitation plans, and procedures and determinations
31 made as to whether persons should remain in residential rehabilitation
32 units.

33 § 7. This act shall take effect immediately.