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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) If the department establishes that a person committed an act defined in subparagraph (iii) of paragraph (j) of this subdivision while in segregated confinement or a residential rehabilitation unit and poses a significant and unreasonable risk to the safety and security of other residents or staff, the department may restrict that person's participation in programming and out-of-cell time as necessary for the safety of other residents and staff. If restrictions are imposed in segregated confinement, the department must still provide at least two hours out-of-cell time. If restrictions are imposed in a residential rehabilitation unit, the department shall develop a new rehabilitation plan, provide at least three hours out-of-cell time, and on each day programming restrictions are imposed provide at least two hours of out-of-cell one-on-one therapy with the resident and one hour of out-of-cell recreation. The department shall remove all restrictions within fifteen days, and may not impose new restrictions unless the person commits a new act defined in subparagraph (iii) of paragraph (j) of this subdivision.

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

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

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

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

(ii) The department is encouraged to use responses other than segregated confinement in response to department rule violations. The department may place a person in short term segregated confinement if it determines, pursuant to an evidentiary hearing, that the person committed a department rule violation warranting such confinement and the length of segregated confinement imposed is proportionate to the violation.

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

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

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

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

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

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

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

(iii) Within one hundred days after admission to a residential rehabilitation unit and every one hundred twenty days thereafter, a rehabilitation review committee, comprised of correctional facility executive level program, rehabilitation, and security staff shall discharge a resident from a residential rehabilitation unit unless it determines in writing, after considering the resident's oral statement and any written submissions by the resident or others, that: (A) there is currently a substantial likelihood that the resident will commit an act listed in subparagraph (iii) of paragraph (j) of this subdivision, significant therapeutic reasons exist for keeping the resident in the unit to complete specific program or treatment goals, and remaining in the unit is in the best interest of the resident; or (B) the resident has committed an act listed in subparagraph (iii) of paragraph (j) of this subdivision during the one hundred twenty days prior to the review.

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

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

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

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

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

§ 7. This act shall take effect immediately.