

# STATE OF NEW YORK

2500

2019-2020 Regular Sessions

## IN ASSEMBLY

January 23, 2019

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BARRETT, BARRON, BENEDETTO, BICHOTTE, BLAKE, BRONSON, CAHILL, CARROLL, COOK, CRESPO, CUSICK, DAVILA, DE LA ROSA, DICKENS, DILAN, D'URSO, ENGLEBRIGHT, FAHY, GALEF, GLICK, GOTTFRIED, HEVESI, HUNTER, HYNDMAN, JAFFEE, JEAN-PIERRE, JOYNER, KIM, LAVINE, LENTOL, LIFTON, LUPARDO, MOSLEY, ORTIZ, OTIS, PEOPLES-STOKES, PERRY, PICHARDO, PRETLOW, QUART, RAMOS, RICHARDSON, RIVERA, RODRIGUEZ, L. ROSENTHAL, ROZIC, SEAWRIGHT, SIMON, SIMOTAS, SOLAGES, STECK, STIRPE, THIELE, TITUS, VANEL, WALKER, WEPRIN, WRIGHT -- 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:

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

3 23. "Segregated confinement" means the [~~disciplinary~~] confinement of  
4 an inmate in [~~a special housing unit or in a separate keeplock housing~~  
5 ~~unit. Special housing units and separate keeplock units are housing~~  
6 ~~units that consist of cells grouped so as to provide separation from the~~  
7 ~~general population, and may be used to house inmates confined pursuant~~  
8 ~~to the disciplinary procedures described in regulations]~~ any form of  
9 cell confinement for more than seventeen hours a day other than in a  
10 facility-wide emergency or for the purpose of providing medical or  
11 mental health treatment. Cell confinement that is implemented due to  
12 medical or mental health treatment shall be within a clinical area in  
13 the correctional facility or in as close proximity to a medical or  
14 mental health unit as possible.

15 § 2. Section 2 of the correction law is amended by adding two new  
16 subdivisions 32 and 33 to read as follows:

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

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1 32. "Special populations" means any person: (a) twenty-one years of  
2 age or younger; (b) fifty-five years of age or older; (c) with a disa-  
3 bility as defined in paragraph (a) of subdivision twenty-one of section  
4 two hundred ninety-two of the executive law; or (d) who is pregnant, in  
5 the first eight weeks of the post-partum recovery period after giving  
6 birth, or caring for a child in a correctional institution pursuant to  
7 subdivisions two or three of section six hundred eleven of this chapter.

8 33. "Residential rehabilitation unit" means a separate housing unit  
9 used for therapy, treatment, and rehabilitative programming of incarcer-  
10 ated people who have been determined to require more than fifteen days  
11 of segregated confinement pursuant to department proceedings. Such units  
12 shall be therapeutic and trauma-informed, and aim to address individual  
13 treatment and rehabilitation needs and underlying causes of problematic  
14 behaviors.

15 § 3. Paragraph (a) of subdivision 6 of section 137 of the correction  
16 law, as amended by chapter 490 of the laws of 1974, is amended to read  
17 as follows:

18 (a) The inmate shall be supplied with a sufficient quantity of whole-  
19 some and nutritious food~~[, provided, however, that such food need not be~~  
20 ~~the same as the food supplied to inmates who are participating in~~  
21 ~~programs of the facility];~~

22 § 4. Paragraph (d) of subdivision 6 of section 137 of the correction  
23 law, as added by chapter 1 of the laws of 2008, is amended to read as  
24 follows:

25 (d) (i) Except as set forth in clause (E) of subparagraph (ii) of this  
26 paragraph, the department, in consultation with mental health clini-  
27 cians, shall divert or remove inmates with serious mental illness, as  
28 defined in paragraph (e) of this subdivision, from segregated confine-  
29 ment or confinement in a residential rehabilitation unit, where such  
30 confinement could potentially be for a period in excess of thirty days,  
31 to a residential mental health treatment unit. Nothing in this para-  
32 graph shall be deemed to prevent the disciplinary process from proceed-  
33 ing in accordance with department rules and regulations for disciplinary  
34 hearings.

35 (ii) (A) Upon placement of an inmate into segregated confinement or a  
36 residential rehabilitation unit at a level one or level two facility, a  
37 suicide prevention screening instrument shall be administered by staff  
38 from the department or the office of mental health who has been trained  
39 for that purpose. If such a screening instrument reveals that the inmate  
40 is at risk of suicide, a mental health clinician shall be consulted and  
41 appropriate safety precautions shall be taken. Additionally, within one  
42 business day of the placement of such an inmate into segregated confine-  
43 ment at a level one or level two facility, the inmate shall be assessed  
44 by a mental health clinician.

45 (B) Upon placement of an inmate into segregated confinement or a resi-  
46 dential rehabilitation unit at a level three or level four facility, a  
47 suicide prevention screening instrument shall be administered by staff  
48 from the department or the office of mental health who has been trained  
49 for that purpose. If such a screening instrument reveals that the inmate  
50 is at risk of suicide, a mental health clinician shall be consulted and  
51 appropriate safety precautions shall be taken. All inmates placed in  
52 segregated confinement or a residential rehabilitation unit at a level  
53 three or level four facility shall be assessed by a mental health clini-  
54 cian, within [~~fourteen~~] seven days of such placement into segregated  
55 confinement.

1 (C) At the initial assessment, if the mental health clinician finds  
2 that an inmate suffers from a serious mental illness, that person shall  
3 be diverted or removed from segregated confinement or a residential  
4 rehabilitation unit and a recommendation shall be made whether excep-  
5 tional circumstances, as described in clause (E) of this subparagraph,  
6 exist. In a facility with a joint case management committee, such recom-  
7 mendation shall be made by such committee. In a facility without a joint  
8 case management committee, the recommendation shall be made jointly by a  
9 committee consisting of the facility's highest ranking mental health  
10 clinician, the deputy superintendent for security, and the deputy super-  
11 intendent for program services, or their equivalents. Any such recommen-  
12 dation shall be reviewed by the joint central office review committee.  
13 The administrative process described in this clause shall be completed  
14 within [~~fourteen~~] seven days of the initial assessment, and if the  
15 result of such process is that the inmate should be removed from segre-  
16 gated confinement or a residential rehabilitation unit, such removal  
17 shall occur as soon as practicable, but in no event more than seventy-  
18 two hours from the completion of the administrative process. Pursuant to  
19 paragraph (g) of this subdivision, nothing in this section shall permit  
20 the placement of an incarcerated person with serious mental illness into  
21 segregated confinement at any time, even for the purposes of assessment.

22 (D) If an inmate with a serious mental illness is not diverted or  
23 removed to a residential mental health treatment unit, such inmate shall  
24 be diverted to a residential rehabilitation unit and reassessed by a  
25 mental health clinician within fourteen days of the initial assessment  
26 and at least once every fourteen days thereafter. After each such addi-  
27 tional assessment, a recommendation as to whether such inmate should be  
28 removed from [~~segregated confinement~~] a residential rehabilitation unit  
29 shall be made and reviewed according to the process set forth in clause  
30 (C) of this subparagraph.

31 (E) A recommendation or determination whether to remove an inmate from  
32 segregated confinement or a residential rehabilitation unit shall take  
33 into account the assessing mental health clinicians' opinions as to the  
34 inmate's mental condition and treatment needs, and shall also take into  
35 account any safety and security concerns that would be posed by the  
36 inmate's removal, even if additional restrictions were placed on the  
37 inmate's access to treatment, property, services or privileges in a  
38 residential mental health treatment unit. A recommendation or determi-  
39 nation shall direct the inmate's removal from segregated confinement or  
40 a residential rehabilitation unit except in the following exceptional  
41 circumstances: (1) when the reviewer finds that removal would pose a  
42 substantial risk to the safety of the inmate or other persons, or a  
43 substantial threat to the security of the facility, even if additional  
44 restrictions were placed on the inmate's access to treatment, property,  
45 services or privileges in a residential mental health treatment unit; or  
46 (2) when the assessing mental health clinician determines that such  
47 placement is in the inmate's best interests based on his or her mental  
48 condition and that removing such inmate to a residential mental health  
49 treatment unit would be detrimental to his or her mental condition. Any  
50 determination not to remove an inmate with serious mental illness from  
51 segregated confinement or a residential rehabilitation unit shall be  
52 documented in writing and include the reasons for the determination.

53 (iii) Inmates with serious mental illness who are not diverted or  
54 removed from [~~segregated confinement~~] a residential rehabilitation unit  
55 shall be offered a heightened level of mental health care, involving a  
56 minimum of [~~two~~] three hours [~~each day, five days a week,~~] daily of

1 out-of-cell therapeutic treatment and programming. This heightened level  
2 of care shall not be offered only in the following circumstances:

3 (A) The heightened level of care shall not apply when an inmate with  
4 serious mental illness does not, in the reasonable judgment of a mental  
5 health clinician, require the heightened level of care. Such determi-  
6 nation shall be documented with a written statement of the basis of such  
7 determination and shall be reviewed by the Central New York Psychiatric  
8 Center clinical director or his or her designee. Such a determination is  
9 subject to change should the inmate's clinical status change. Such  
10 determination shall be reviewed and documented by a mental health clini-  
11 cian every thirty days, and in consultation with the Central New York  
12 Psychiatric Center clinical director or his or her designee not less  
13 than every ninety days.

14 (B) The heightened level of care shall not apply in exceptional  
15 circumstances when providing such care would create an unacceptable risk  
16 to the safety and security of inmates or staff. Such determination shall  
17 be documented by security personnel together with the basis of such  
18 determination and shall be reviewed by the facility superintendent, in  
19 consultation with a mental health clinician, not less than every seven  
20 days for as long as the inmate remains in [~~segregated confinement~~] a  
21 residential rehabilitation unit. The facility shall attempt to resolve  
22 such exceptional circumstances so that the heightened level of care may  
23 be provided. If such exceptional circumstances remain unresolved for  
24 thirty days, the matter shall be referred to the joint central office  
25 review committee for review.

26 (iv) [~~Inmates with serious mental illness who are not diverted or~~  
27 ~~removed from segregated confinement shall not be placed on a restricted~~  
28 ~~diet, unless there has been a written determination that the restricted~~  
29 ~~diet is necessary for reasons of safety and security. If a restricted~~  
30 ~~diet is imposed, it shall be limited to seven days, except in the excep-~~  
31 ~~tional circumstances where the joint case management committee deter-~~  
32 ~~mines that limiting the restricted diet to seven days would pose an~~  
33 ~~unacceptable risk to the safety and security of inmates or staff. In~~  
34 ~~such case, the need for a restricted diet shall be reassessed by the~~  
35 ~~joint case management committee every seven days.~~

36 (v) All inmates in segregated confinement in a level one or level two  
37 facility who are not assessed with a serious mental illness at the  
38 initial assessment shall be offered at least one interview with a mental  
39 health clinician within [~~fourteen~~] seven days of their initial mental  
40 health assessment, [~~and additional interviews at least every thirty days~~  
41 ~~thereafter,~~] unless the mental health clinician at the most recent  
42 interview recommends an earlier interview or assessment. All inmates in  
43 [~~segregated confinement~~] a residential rehabilitation unit in a level  
44 three or level four facility who are not assessed with a serious mental  
45 illness at the initial assessment shall be offered at least one inter-  
46 view with a mental health clinician within thirty days of their initial  
47 mental health assessment, and additional interviews at least every nine-  
48 ty days thereafter, unless the mental health clinician at the most  
49 recent interview recommends an earlier interview or assessment.

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

53 (g) Persons in a special population as defined in subdivision thirty-  
54 two of section two of this chapter shall not be placed in segregated  
55 confinement for any length of time, except in keeplock for a period  
56 prior to a disciplinary hearing pursuant to paragraph (k) of this subdi-

1 vision. Individuals in a special population who are in keeplock prior  
2 to a disciplinary hearing shall be given seven hours a day out-of-cell  
3 time or shall be transferred to a residential rehabilitation unit or  
4 residential mental health treatment unit as expeditiously as possible,  
5 but in no case longer than forty-eight hours from the time an individual  
6 is admitted to keeplock.

7 (h) No person may be placed in segregated confinement for longer than  
8 necessary and no more than fifteen consecutive days or twenty total days  
9 within any sixty day period. At these limits, he or she must be  
10 released from segregated confinement or diverted to a separate residen-  
11 tial rehabilitation unit. If placement of such person in segregated  
12 confinement would exceed the twenty-day limit and the department estab-  
13 lishes that the person committed an act defined in subparagraph (ii) of  
14 paragraph (j) of this subdivision, the department may place the person  
15 in segregated confinement until admission to a residential rehabili-  
16 tation unit can be effectuated. Such admission to a residential rehabil-  
17 itation unit shall occur as expeditiously as possible and in no case  
18 take longer than forty-eight hours from the time such person is placed  
19 in segregated confinement.

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

23 (ii) Persons in segregated confinement shall be offered out-of-cell  
24 programming at least four hours per day, including at least one hour for  
25 recreation. Persons admitted to residential rehabilitation units shall  
26 be offered at least six hours of daily out-of-cell congregate program-  
27 ming, services, treatment, and/or meals, with an additional minimum of  
28 one hour for recreation. Recreation in all residential rehabilitation  
29 units shall take place in a congregate setting, unless exceptional  
30 circumstances mean doing so would create a significant and unreasonable  
31 risk to the safety and security of other incarcerated persons, staff, or  
32 the facility.

33 (iii) No limitation on services, treatment, or basic needs such as  
34 clothing, food and bedding shall be imposed as a form of punishment. If  
35 provision of any such services, treatment or basic needs to an individ-  
36 ual would create a significant and unreasonable risk to the safety and  
37 security of incarcerated persons, staff, or the facility, such services,  
38 treatment or basic needs may be withheld until it reasonably appears  
39 that the risk has ended. The department shall not impose restricted  
40 diets or any other change in diet as a form of punishment. Persons in a  
41 residential rehabilitation unit shall have access to all of their  
42 personal property unless an individual determination is made that having  
43 a specific item would pose a significant and unreasonable risk to the  
44 safety of incarcerated persons or staff or the security of the unit.

45 (iv) Upon admission to a residential rehabilitation unit, program and  
46 mental health staff shall administer assessments and develop an individ-  
47 ual rehabilitation plan in consultation with the resident, based upon  
48 his or her medical, mental health, and programming needs. Such plan  
49 shall identify specific goals and programs, treatment, and services to  
50 be offered, with projected time frames for completion and discharge from  
51 the residential rehabilitation unit.

52 (v) An incarcerated person in a residential rehabilitation unit shall  
53 have access to programs and work assignments comparable to core programs  
54 and work assignments in general population. Such incarcerated persons  
55 shall also have access to additional out-of-cell, trauma-informed thera-  
56 peutic programming aimed at promoting personal development, addressing

1 underlying causes of problematic behavior resulting in placement in a  
2 residential rehabilitation unit, and helping prepare for discharge from  
3 the unit and to the community.

4 (vi) If the department establishes that a person committed an act  
5 defined in subparagraph (ii) of paragraph (j) of this subdivision while  
6 in segregated confinement or a residential rehabilitation unit and poses  
7 a significant and unreasonable risk to the safety and security of other  
8 incarcerated persons or staff, the department may restrict such person's  
9 participation in programming and out-of-cell activities as necessary for  
10 the safety of other incarcerated persons and staff. If such restrictions  
11 are imposed, the department must provide at least four hours out-of-cell  
12 time daily, including at least two hours of therapeutic programming and  
13 two hours of recreation, and must make reasonable efforts to reinstate  
14 access to programming as soon as possible. In no case may such  
15 restrictions extend beyond fifteen days unless the person commits a new  
16 act defined herein justifying restrictions on program access, or if the  
17 commissioner and, when appropriate, the commissioner of mental health  
18 personally reasonably determine that the person poses an extraordinary  
19 and unacceptable risk of imminent harm to the safety or security of  
20 incarcerated persons or staff. Any extension of program restrictions  
21 beyond fifteen days must be meaningfully reviewed and approved at least  
22 every fifteen days by the commissioner and, when appropriate, by the  
23 commissioner of mental health. Each review must consider the impact of  
24 therapeutic programming provided during the fifteen-day period on the  
25 person's risk of imminent harm and the commissioner must articulate in  
26 writing, with a copy provided to the incarcerated person, the specific  
27 reason why the person currently poses an extraordinary and unacceptable  
28 risk of imminent harm to the safety or security of incarcerated persons  
29 or staff. In no case may restrictions imposed by the commissioner extend  
30 beyond ninety days unless the person commits a new act defined herein  
31 justifying restrictions on program access.

32 (vii) Restraints shall not be used when incarcerated persons are  
33 participating in out-of-cell activities within a residential rehabili-  
34 tation unit unless an individual assessment is made that restraints are  
35 required because of a significant and unreasonable risk to the safety  
36 and security of other incarcerated persons or staff.

37 (j) (i) The department may place a person in segregated confinement  
38 for up to three consecutive days and no longer than six days in any  
39 thirty day period if, pursuant to an evidentiary hearing, it determines  
40 that the person violated department rules which permit a penalty of  
41 segregated confinement. The department may not place a person in segre-  
42 gated confinement for longer than three consecutive days or six days  
43 total in a thirty day period unless the provisions of subparagraph (ii)  
44 of this paragraph are met.

45 (ii) The department may place a person in segregated confinement  
46 beyond the limits of subparagraph (i) of this paragraph or in a residen-  
47 tial rehabilitation unit only if, pursuant to an evidentiary hearing, it  
48 determines by written decision that the person committed one of the  
49 following acts and if the commissioner or his or her designee determines  
50 in writing based on specific objective criteria the acts were so heinous  
51 or destructive that placement of the individual in general population  
52 housing creates a significant risk of imminent serious physical injury  
53 to staff or other incarcerated persons, and creates an unreasonable risk  
54 to the security of the facility:

55 (A) causing or attempting to cause serious physical injury or death to  
56 another person or making an imminent threat of such serious physical

1 injury or death if the person has a history of causing such physical  
2 injury or death and the commissioner and, when appropriate, the commis-  
3 sioner of mental health or their designees reasonably determine that  
4 there is a strong likelihood that the person will carry out such threat.  
5 The commissioner of mental health or his or her designee shall be  
6 involved in such determination if the person is or has been on the  
7 mental health caseload or appears to require psychiatric attention. The  
8 department and the office of mental health shall promulgate rules and  
9 regulations pertaining to this clause;

10 (B) compelling or attempting to compel another person, by force or  
11 threat of force, to engage in a sexual act;

12 (C) extorting another, by force or threat of force, for property or  
13 money;

14 (D) coercing another, by force or threat of force, to violate any  
15 rule;

16 (E) leading, organizing, inciting, or attempting to cause a riot,  
17 insurrection, or other similarly serious disturbance that results in the  
18 taking of a hostage, major property damage, or physical harm to another  
19 person;

20 (F) procuring deadly weapons or other dangerous contraband that poses  
21 a serious threat to the security of the institution; or

22 (G) escaping, attempting to escape or facilitating an escape from a  
23 facility or escaping or attempting to escape while under supervision  
24 outside such facility.

25 For purposes of this section, attempting to cause a serious disturb-  
26 ance or to escape shall only be determined to have occurred if there is  
27 a clear finding that the inmate had the intent to cause a serious  
28 disturbance or the intent to escape and had completed significant acts  
29 in the advancement of the attempt to create a serious disturbance or  
30 escape. Evidence of withdrawal or abandonment of a plan to cause a seri-  
31 ous disturbance or to escape shall negate a finding of intent.

32 (iii) No person may be placed in segregated confinement or a residen-  
33 tial rehabilitation unit based on the same act or incident that was  
34 previously used as the basis for such placement.

35 (iv) No person may be held in segregated confinement for protective  
36 custody. Any unit used for protective custody must, at a minimum,  
37 conform to requirements governing residential rehabilitation units.

38 (k) All hearings to determine if a person may be placed in segregated  
39 confinement shall occur prior to placement in segregated confinement  
40 unless a security supervisor, with written approval of a facility super-  
41 intendent or designee, reasonably believes the person fits the specified  
42 criteria for segregated confinement in subparagraph (ii) of paragraph  
43 (j) of this subdivision. If a hearing does not take place prior to  
44 placement, it shall occur as soon as reasonably practicable and at most  
45 within five days of such placement unless the charged person seeks a  
46 postponement of the hearing. Persons at such hearings shall be permitted  
47 to be represented by any attorney or law student, or by any paralegal or  
48 incarcerated person unless the department reasonably disapproves of such  
49 paralegal or incarcerated person based upon objective written criteria  
50 developed by the department.

51 (l) (i) Any sanction imposed on an incarcerated person requiring  
52 segregated confinement shall run while the person is in a residential  
53 rehabilitation unit and the person shall be discharged from the unit  
54 before or at the time such sanction expires. If a person successfully  
55 completes his or her rehabilitation plan before the sanction expires,

1 the person shall have a right to be discharged from the unit upon such  
2 completion.

3 (ii) If an incarcerated person has not been discharged from a residen-  
4 tial rehabilitation unit within one year of initial admission to such a  
5 unit or is within sixty days of a fixed or tentatively approved date for  
6 release from a correctional facility, he or she shall have a right to be  
7 discharged from the unit unless he or she committed an act listed in  
8 subparagraph (ii) of paragraph (j) of this subdivision within the prior  
9 one hundred eighty days and he or she poses a significant and unreason-  
10 able risk to the safety or security of incarcerated persons or staff. In  
11 any such case the decision not to discharge such person shall be imme-  
12 diately and automatically subjected to an independent review by the  
13 commissioner and the commissioner of mental health or their designees. A  
14 person may remain in a residential rehabilitation unit beyond the time  
15 limits provided in this section if both commissioners or both of their  
16 designees approve this decision. In extraordinary circumstances, a  
17 person who has not committed an act listed in subparagraph (ii) of para-  
18 graph (j) of this subdivision within the prior one hundred eighty days,  
19 may remain in a residential rehabilitation unit beyond the time limits  
20 provided in this section if both the commissioner and the commissioner  
21 of mental health personally determine that such individual poses an  
22 extraordinary and unacceptable risk of imminent harm to the safety or  
23 security of incarcerated persons or staff.

24 (iii) There shall be a meaningful periodic review of the status of  
25 each incarcerated person in a residential rehabilitation unit at least  
26 every sixty days to assess the person's progress and determine if the  
27 person should be discharged from the unit. Following such periodic  
28 review, if the person is not discharged from the unit, program and  
29 mental health staff shall specify in writing the reasons for the deter-  
30 mination and the program, treatment, service, and/or corrective action  
31 required before discharge. The incarcerated person shall be given access  
32 to the programs, treatment and services specified, and shall have a  
33 right to be discharged from the residential rehabilitation unit upon the  
34 successful fulfillment of such requirements.

35 (iv) When an incarcerated person is discharged from a residential  
36 rehabilitation unit, any remaining time to serve on any underlying  
37 disciplinary sanction shall be dismissed. If an incarcerated person  
38 substantially completes his or her rehabilitation plan, he or she shall  
39 have any associated loss of good time restored upon discharge from the  
40 unit.

41 (m) All special housing unit, keeplock unit and residential rehabili-  
42 tation unit staff and their supervisors shall undergo a minimum of thir-  
43 ty-seven hours and thirty minutes of training prior to assignment to  
44 such unit, and twenty-one hours of additional training annually there-  
45 after, on substantive content developed in consultation with relevant  
46 experts, on topics including, but not limited to, the purpose and goals  
47 of the non-punitive therapeutic environment, trauma-informed care,  
48 restorative justice, and dispute resolution methods. Prior to presiding  
49 over any hearings, all hearing officers shall undergo a minimum of thir-  
50 ty-seven hours and thirty minutes of training, with one additional day  
51 of training annually thereafter, on relevant topics, including but not  
52 limited to, the physical and psychological effects of segregated  
53 confinement, procedural and due process rights of the accused, and  
54 restorative justice remedies.

55 (n) The department shall publish monthly reports on its website, with  
56 semi-annual and annual cumulative reports, of the total number of people

1 who are in segregated confinement and the total number of people who are  
2 in residential rehabilitation units on the first day of each month. The  
3 reports shall provide a breakdown of the number of people in segregated  
4 confinement and in residential rehabilitation units by: (i) age; (ii)  
5 race; (iii) gender; (iv) mental health treatment level; (v) special  
6 health accommodations or needs; (vi) need for and participation in  
7 substance abuse programs; (vii) pregnancy status; (viii) continuous  
8 length of stay in residential treatment units as well as length of stay  
9 in the past sixty days; (ix) number of days in segregated confinement;  
10 (x) a list of all incidents resulting in sanctions of segregated  
11 confinement by facility and date of occurrence; (xi) the number of  
12 incarcerated persons in segregated confinement by facility; and (xii)  
13 the number of incarcerated persons in residential rehabilitation units  
14 by facility.

15 § 6. Section 138 of the correction law is amended by adding a new  
16 subdivision 7 to read as follows:

17 7. De-escalation, intervention, informational reports, and the with-  
18 drawal of incentives shall be the preferred methods of responding to  
19 misbehavior unless the department determines that non-disciplinary  
20 interventions have failed, or that non-disciplinary interventions would  
21 not succeed and the misbehavior involved an act listed in subparagraph  
22 (ii) of paragraph (j) of subdivision six of section one hundred thirty-  
23 seven of this article, in which case, as a last resort, the department  
24 shall have the authority to issue misbehavior reports, pursue discipli-  
25 nary charges, or impose new or additional segregated confinement sanc-  
26 tions.

27 § 7. Subdivision 1 of section 401 of the correction law, as amended by  
28 chapter 1 of the laws of 2008, is amended to read as follows:

29 1. The commissioner, in cooperation with the commissioner of mental  
30 health, shall establish programs, including but not limited to residen-  
31 tial mental health treatment units, in such correctional facilities as  
32 he or she may deem appropriate for the treatment of mentally ill inmates  
33 confined in state correctional facilities who are in need of psychiatric  
34 services but who do not require hospitalization for the treatment of  
35 mental illness. Inmates with serious mental illness shall receive thera-  
36 py and programming in settings that are appropriate to their clinical  
37 needs while maintaining the safety and security of the facility.

38 The conditions and services provided in the residential mental health  
39 treatment units shall be at least comparable to those in all residential  
40 rehabilitation units, and all residential mental health treatment units  
41 shall be in compliance with all provisions of paragraphs (h), (i), (j),  
42 and (k) of subdivision six of section one hundred thirty-seven of this  
43 chapter. Residential mental health treatment units that are either resi-  
44 dential mental health unit models or behavioral health unit models shall  
45 also be in compliance with all provisions of paragraph (l) of subdivi-  
46 sion six of section one hundred thirty-seven of this chapter.

47 The residential mental health treatment units shall also provide the  
48 additional mental health treatment, services, and programming delineated  
49 in this section. The administration and operation of programs estab-  
50 lished pursuant to this section shall be the joint responsibility of the  
51 commissioner of mental health and the commissioner. The professional  
52 mental health care personnel, and their administrative and support  
53 staff, for such programs shall be employees of the office of mental  
54 health. All other personnel shall be employees of the department.

1 § 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section 401  
2 of the correction law, as added by chapter 1 of the laws of 2008, is  
3 amended to read as follows:

4 (i) In exceptional circumstances, a mental health clinician, or the  
5 highest ranking facility security supervisor in consultation with a  
6 mental health clinician who has interviewed the inmate, may determine  
7 that an inmate's access to out-of-cell therapeutic programming and/or  
8 mental health treatment in a residential mental health treatment unit  
9 presents an unacceptable risk to the safety of inmates or staff. Such  
10 determination shall be documented in writing and such inmate shall be  
11 removed to a residential rehabilitation unit that is not a residential  
12 mental health treatment unit where alternative mental health treatment  
13 and/or other therapeutic programming, as determined by a mental health  
14 clinician, shall be provided.

15 § 9. Subdivision 5 of section 401 of the correction law, as added by  
16 chapter 1 of the laws of 2008, is amended to read as follows:

17 5. (a) An inmate in a residential mental health treatment unit shall  
18 not be sanctioned with segregated confinement for misconduct on the  
19 unit, or removed from the unit and placed in segregated confinement or a  
20 residential rehabilitation unit, except in exceptional circumstances  
21 where such inmate's conduct poses a significant and unreasonable risk to  
22 the safety of inmates or staff, or to the security of the facility and  
23 he or she has been found to have committed an act or acts defined in  
24 subparagraph (ii) of paragraph (j) of subdivision six of section one  
25 hundred thirty-seven of this chapter. Further, in the event that such a  
26 sanction is imposed, an inmate shall not be required to begin serving  
27 such sanction until the reviews required by paragraph (b) of this subdivi-  
28 sion have been completed; provided, however that in extraordinary  
29 circumstances where an inmate's conduct poses an immediate unacceptable  
30 threat to the safety of inmates or staff, or to the security of the  
31 facility an inmate may be immediately moved to [~~segregated confinement~~]  
32 a residential rehabilitation unit. The determination that an immediate  
33 transfer to [~~segregated confinement~~] a residential rehabilitation unit  
34 is necessary shall be made by the highest ranking facility security  
35 supervisor in consultation with a mental health clinician.

36 (b) The joint case management committee shall review any disciplinary  
37 disposition imposing a sanction of segregated confinement at its next  
38 scheduled meeting. Such review shall take into account the inmate's  
39 mental condition and safety and security concerns. The joint case  
40 management committee may only thereafter recommend the removal of the  
41 inmate in exceptional circumstances where the inmate commits an act or  
42 acts defined in subparagraph (ii) of paragraph (j) of subdivision six of  
43 section one hundred thirty-seven of this chapter and poses a significant  
44 and unreasonable risk to the safety of inmates or staff or to the secu-  
45 rity of the facility. In the event that the inmate was immediately moved  
46 to segregated confinement, the joint case management committee may  
47 recommend that the inmate continue to serve such sanction only in excep-  
48 tional circumstances where the inmate commits an act or acts defined in  
49 subparagraph (ii) of paragraph (j) of subdivision six of section one  
50 hundred thirty-seven of this chapter and poses a significant and unrea-  
51 sonable risk to the safety of inmates or staff or to the security of the  
52 facility. If a determination is made that the inmate shall not be  
53 required to serve all or any part of the segregated confinement sanc-  
54 tion, the joint case management committee may instead recommend that a  
55 less restrictive sanction should be imposed. The recommendations made by  
56 the joint case management committee under this paragraph shall be docu-

1 mented in writing and referred to the superintendent for review and if  
2 the superintendent disagrees, the matter shall be referred to the joint  
3 central office review committee for a final determination. The adminis-  
4 trative process described in this paragraph shall be completed within  
5 fourteen days. If the result of such process is that an inmate who was  
6 immediately transferred to [~~segregated confinement~~] a residential reha-  
7 bilitation unit should be removed from [~~segregated confinement~~] such  
8 unit, such removal shall occur as soon as practicable, and in no event  
9 longer than seventy-two hours from the completion of the administrative  
10 process.

11 § 10. Subdivision 6 of section 401 of the correction law, as amended  
12 by chapter 20 of the laws of 2016, is amended to read as follows:

13 6. The department shall ensure that the curriculum for new correction  
14 officers, and other new department staff who will regularly work in  
15 programs providing mental health treatment for inmates, shall include at  
16 least eight hours of training about the types and symptoms of mental  
17 illnesses, the goals of mental health treatment, the prevention of  
18 suicide and training in how to effectively and safely manage inmates  
19 with mental illness. Such training may be provided by the office of  
20 mental health or the justice center for the protection of people with  
21 special needs. All department staff who are transferring into a residen-  
22 tial mental health treatment unit shall receive a minimum of eight addi-  
23 tional hours of such training, and eight hours of annual training as  
24 long as they work in such a unit. All security, program services, mental  
25 health and medical staff with direct inmate contact shall receive train-  
26 ing each year regarding identification of, and care for, inmates with  
27 mental illnesses. The department shall provide additional training on  
28 these topics on an ongoing basis as it deems appropriate. All staff  
29 working in a residential mental health treatment unit shall also receive  
30 all training mandated in paragraph (m) of subdivision six of section one  
31 hundred thirty-seven of this chapter.

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

34 4. The justice center shall assess the department's compliance with  
35 the provisions of sections two, one hundred thirty-seven, and one  
36 hundred thirty-eight of this chapter relating to segregated confinement  
37 and residential rehabilitation units and shall issue a public report, no  
38 less than annually, with recommendations to the department and legisla-  
39 ture, regarding all aspects of segregated confinement and residential  
40 rehabilitation units in state correctional facilities including but not  
41 limited to policies and practices concerning: (a) placement of persons  
42 in segregated confinement and residential rehabilitation units; (b)  
43 special populations; (c) length of time spent in such units; (d) hear-  
44 ings and procedures; (e) programs, treatment and conditions of confine-  
45 ment in such units; and (f) assessments and rehabilitation plans, proce-  
46 dures and discharge determinations.

47 § 12. Section 45 of the correction law is amended by adding a new  
48 subdivision 18 to read as follows:

49 18. Assess compliance of local correctional facilities with the terms  
50 of paragraphs (g), (h), (i), (j), (k), (l), (m) and (n) of subdivision  
51 six of section one hundred thirty-seven of this chapter. The commission  
52 shall issue a public report regarding all aspects of segregated confine-  
53 ment and residential rehabilitation units at least annually with recom-  
54 mendations to local correctional facilities, the governor, the legisla-  
55 ture, including but not limited to policies and practices regarding: (a)  
56 placement of persons; (b) special populations; (c) length of time spent

1 in segregated confinement and residential treatment units; (d) hearings  
2 and procedures; (e) conditions, programs, services, care, and treatment;  
3 and (f) assessments, rehabilitation plans, and discharge procedures.

4 § 13. Section 500-k of the correction law, as amended by chapter 2 of  
5 the laws of 2008, is amended to read as follows:

6 § 500-k. Treatment of inmates. 1. Subdivisions five and six of section  
7 one hundred thirty-seven of this chapter, except paragraphs (d) and (e)  
8 of subdivision six of such section, relating to the treatment of inmates  
9 in state correctional facilities are applicable to inmates confined in  
10 county jails; except that the report required by paragraph (f) of subdivi-  
11 sion six of such section shall be made to a person designated to  
12 receive such report in the rules and regulations of the state commission  
13 of correction, or in any county or city where there is a department of  
14 correction, to the head of such department.

15 2. Notwithstanding any other section of law to the contrary, subdivi-  
16 sion thirty-three of section two of this chapter, and subparagraphs (i),  
17 (iv) and (v) of paragraph (i) and subparagraph (ii) of paragraph (1) of  
18 subdivision six of section one hundred thirty-seven of this chapter  
19 shall not apply to local correctional facilities with a total combined  
20 capacity of five hundred inmates or fewer.

21 § 14. This act shall take effect one year after it shall have become a  
22 law.