STATE OF NEW YORK

3706

2019-2020 Regular Sessions

IN SENATE

February 13, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to creating the office of the correctional ombudsman; to amend the county law, in relation to reports by coroners; to amend the criminal procedure law, in relation to designating investigators of the office of the correctional ombudsman as peace officers; to amend the education law, in relation to the certification of inmate populations; to amend the executive law, in relation to authorizing the attorney general to investigate the alleged commission of any criminal offense committed by an employee of the department of corrections and community supervision in connection with his or her official duties; to amend the executive law, in relation to the division of criminal justice services; to amend the mental hygiene law, in relation to clinical records; to amend the public health law, in relation to the confidentiality of certain records; to amend the public officers law, in relation to including the office of the correctional ombudsman records within the definition of public safety agency records; and to amend the social services law, in relation to inspection and supervision

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

Section 1. The correction law is amended by adding a new article 3-A to read as follows:

ARTICLE 3-A

OFFICE OF THE CORRECTIONAL OMBUDSMAN

Section 50. Definitions.
51. Office of the correctional ombudsman; organization.
52. Correctional oversight board.
53. Powers of the ombudsman.

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

LBD02936-01-9

54. Additional functions, powers and duties of the office of the ombudsman.
55. Additional duties of the department.
56. Obstructing an investigation by the correctional ombudsman.

§ 50. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Office" refers to the office of the correctional ombudsman.

2. "Ombudsman" refers to the commissioner of the office of the correctional ombudsman.

§ 51. Office of the correctional ombudsman; organization. 1. In order to achieve transparency, fairness, impartiality and accountability in our state correctional facilities, there shall be an independent office of the correctional ombudsman within the executive department. The ombudsman shall report to the correctional oversight board established pursuant to section fifty-two of this article, provided, however, that administrative matters of general application within the executive department shall be also applicable to the office.

(a) Following the initial appointment of the members of the correctional oversight board established pursuant to section fifty-two of this article, such board shall promptly nominate a full-time ombudsman and notify the governor of such nomination. Nothing in this paragraph shall prohibit the board from appointing an interim ombudsman if there is a vacancy.

(b) The governor, within thirty days after receiving written notice of any nomination of an ombudsman made pursuant to paragraph (a) of this subdivision, may approve or disapprove such nomination. If the governor approves such nomination, or fails to act on such nomination within such thirty day period, the nominee shall thereupon commence his or her term as ombudsman. If, within such thirty day period, the governor serves upon the chair of such board a written notice disapproving such nomination, the nominee shall not be authorized to serve as ombudsman provided, however, that such board may authorize an interim ombudsman appointed pursuant to paragraph (a) of this subdivision to serve or continue to serve as interim ombudsman until such time as an ombudsman is approved, or not timely disapproved, by the governor. Following any disapproval, the board shall have sixty days to submit another nominee, although such period may be extended, upon request of the board, by the governor. A person appointed as interim ombudsman may exercise all of the powers available to the ombudsman.

(c) The ombudsman may not have worked for the department within the last ten years and may not hold any public office or other employment. The ombudsman shall serve a six-year term and may only be removed for good cause shown, after notice and an opportunity to be heard, by a vote of two-thirds or more of the twelve members of the board.

§ 52. Correctional oversight board. 1. There is hereby created the correctional oversight board hereinafter referred to in this section as the "board". The purpose of such board shall be to monitor, study and make efforts to improve the transparency, fairness, impartiality and accountability in state correctional facilities and to appoint the ombudsman. No current employee of the department shall be appointed to or serve on such board. The board shall consist of twelve members who shall be appointed as follows:

(a) one shall be the state inspector general;

(b) two shall be appointed by the governor on the recommendation of the senate;

(c) two shall be appointed by the governor on the recommendation of the assembly;

(d) two shall be appointed by the governor from a list of at least six nominees submitted by non-profit agencies working in the fields of re-entry or prisoner advocacy;

(e) one shall be appointed by the governor and shall be a former state inmate;

(f) one shall be appointed by the governor and shall be a former employee of the department who is no longer in state service;

(g) one shall be an attorney appointed by the governor from a list of at least four nominees submitted by the state bar association;

(h) one shall be a medical professional appointed by the governor; and

(i) one shall be a mental health professional who works with the Justice Center for the Protection of People with Special Needs appointed by the governor.

2. All members of the board shall be appointed for terms of three years with such terms to commence on August first, and expire July thirty-first, provided, however, that the inspector general shall serve ex officio. Initial appointments must be made within sixty days of the effective date of this subdivision. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Vacancies caused by expiration of a term or otherwise shall be filled promptly and in the same manner as original appointments. Any member may be reappointed for additional terms. A member of the board shall continue in such position upon the expiration of his or her term until such time as he or she is reappointed or his or her successor is appointed, as the case may be.

3. Membership on the board shall not constitute the holding of an office, and members of the board shall not be required to take and file oaths of office before serving on the board. The board shall not have the right to exercise any portion of the sovereign power of the state.

4. The board shall meet at least two times in each year. The first meeting of the board shall be held within thirty days of the appointment of the full board or within sixty days after the effective date of this subdivision, whichever occurs earlier. Special meetings may be called by the chair and shall be called by the chair upon the request of at least five members of the board. The board may establish its own procedures with respect to the conduct of its meetings and other affairs; provided, however, that the quorum and majority provisions of section forty-one of the general construction law shall govern all actions taken by the board.

5. The members of the board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

6. No member of the board shall be disqualified from holding any public office or employment outside of the department, nor shall he or she forfeit any such office or employment, by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any other general, special or local law, ordinance or city charter.

7. The board shall make recommendations to the ombudsman for the improvement of the department's policies and consult with and advise the office of the correctional ombudsman in carrying out the duties and responsibilities of such office. The ombudsman shall report to the board fully on the activities of the office and shall seek board approval on all major decisions or policy changes, including any stand-

ards or protocols adopted by the ombudsman for the inspection and monitoring of correctional facilities or the resolution of complaints received by the office.

8. Each member of the board shall tour a correctional facility with the ombudsman at least annually.

§ 53. Powers of the ombudsman. 1. The ombudsman shall have the authority to hire and retain counsel to provide confidential advice or to represent the ombudsman if the attorney general has a conflict in representing the ombudsman in any litigation.

2. The office of the ombudsman shall not be located in the same building or buildings as the department but shall be wholly independent of the department except that the department shall provide it with office space, equipment and furnishings within any department facility as needed to carry out its functions and duties.

3. The ombudsman may appoint such assistants, officers, investigators, monitors, employees and consultants as he or she shall determine necessary, prescribe their duties and powers, provide them with appropriate training, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor except that the ombudsman shall not hire any person known to be directly or indirectly involved in an open internal affairs investigation conducted by any federal, state or local agency or who is a named defendant in a pending federal or state lawsuit or criminal proceeding relating to his or her prior work for a state, local or federal correctional or law enforcement agency. The ombudsman may appoint a representative to carry out any of his or her duties under this article except that the ombudsman must attend meetings with the correctional oversight board.

4. The ombudsman may create, abolish, transfer and consolidate bureaus and other units within the office as he or she may determine necessary for the efficient operation of the office, subject to the approval of the director of the budget.

5. The ombudsman may request and shall receive from any department, division, bureau, commission or any other agency of the state or political subdivision thereof or any public authority such assistance, information and data as will enable the office to carry out its functions, powers and duties.

6. The ombudsman shall be responsible for the contemporaneous public oversight of internal affairs and the disciplinary process of the department of corrections and community supervision. The ombudsman shall have discretion to provide oversight of any department investigation relating to the well-being, treatment, discipline, safety or any other matter concerning inmates or persons under community supervision as needed, including personnel investigations.

7. The ombudsman may review specific policies, practices, programs and procedures of the department that raise a significant correctional issue relevant to the well-being, treatment, discipline, safety, rehabilitation or any other matter concerning inmates or persons under community supervision. The ombudsman is authorized to inspect, investigate or examine all aspects of the department's operations and conditions, including, but not limited to, staff recruitment, training, supervision, discipline, inmate deaths, medical and mental health care, use of force, inmate violence, conditions of confinement, inmate disciplinary process, inmate grievance process, substance-abuse treatment, educational, vocational and other programming and re-entry planning. During the course of a review the ombudsman shall identify areas of full and partial compliance or noncompliance with departmental policies and procedures, specify

deficiencies in the completion and documentation of processes and recommend corrective actions, including, but not limited to, additional training, additional policies or changes in policies, as well as any other findings or recommendations he or she deems appropriate.

8. The ombudsman may place such members of his or her staff as he or she deems appropriate as monitors in any correctional facility which, in the judgment of the ombudsman, presents an imminent danger to the health safety or security of inmates or employees of such correctional facility or the public.

9. The ombudsman shall accept, with the approval of the governor, as agent of the state any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the ombudsman to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

10. The ombudsman may enter into contracts with any person, firm, corporation, municipality, or governmental agency.

11. The ombudsman shall adopt, amend or rescind such rules and regulations, in accordance with applicable state law, as may be necessary or convenient to the performance of the functions, powers and duties of the office.

12. The ombudsman shall do all other things necessary or convenient to carry out its functions, powers and duties expressly set forth in this article.

13. When exigent circumstances of unsafe or life threatening situations arise involving inmates, staff, people on community supervision or other individuals, the ombudsman shall notify the governor, temporary president of the senate and speaker of the assembly and commence an immediate review of such circumstances. Upon completion of a review, the ombudsman shall prepare a complete written report which shall be disclosed with the underlying materials that the ombudsman deems appropriate to the commissioner, the requesting entity and any appropriate law enforcement agency.

14. (a) The ombudsman shall interview and review all candidates for appointment to serve as the superintendent of any state correctional facility. The commissioner shall submit the names of such candidates to the ombudsman who shall review such candidates' qualifications and employ confidential procedures to evaluate the qualifications of each candidate with regard to his or her ability to discharge the duties of the office to which he or she is being appointed. Within ninety days of the submission of a candidate's name, the ombudsman shall confidentially advise the commissioner as to whether such candidate is well-qualified, qualified or not qualified and the reasons therefore and may report, in confidence, any other information that the ombudsman deems pertinent to the qualification of the candidate. The ombudsman shall establish and adopt rules and procedures regarding the review of candidates for the position of superintendent and for maintaining the confidentiality of any interviews, documents or other information relied upon in his or her review. All such information shall be privileged and not subject to disclosure.

(b) If the commissioner appoints a superintendent who the ombudsman found was not qualified, the ombudsman shall make public that finding after due notice to the appointee. Any candidate found to be not qualified by the ombudsman shall have the right to withdraw from consideration before the ombudsman makes such public finding and in that case

the finding shall not be published. Such notice and public finding shall not constitute a waiver of privilege or breach of confidentiality concerning the ombudsman's review of the appointee's qualifications pursuant to this section.

15. Notwithstanding any law to the contrary, the ombudsman shall periodically, but not less than every three years, conduct inspections of each correctional facility and shall periodically review delivery of medical and mental health care at each correctional facility. The ombudsman shall issue a public report on each correctional facility at least every three years. The ombudsman need not notify the department before commencing such inspection or review.

16. All records, correspondence, videotapes, audiotapes, photographs, notes, electronic communications, books, memoranda, papers or other documents or objects used as evidence to support a completed review or investigation must be retained for three years after a report is issued unless handed over to a law enforcement agency for criminal investigation. No such documents or evidence shall be destroyed pending the completion of an investigation or review. Such documents or evidence shall be publicly available unless confidential and not subject to disclosure under the freedom of information law or by court order.

17. Notwithstanding any other provision of the law the ombudsman shall have complete access and authority to examine and reproduce any and all past and current books, accounts, reports, medical and mental health records, vouchers, correspondence files, computer files, computer data bases, documents, video and audio tape recordings, statistics and performance based outcome measures and any and all other past and current records and to examine the bank accounts, money or property of the department. Any state office or agency of a political subdivision of the state or other public entity or employee or officer thereof possessing such records or property shall permit access to, and examination and reproduction thereof, consistent with the provisions of this article, upon the request the ombudsman or his or her designee. Access, examination and reproduction consistent with the provision of this section shall not result in the waiver of any confidentiality or privilege regarding any records or property.

18. The ombudsman may require any state employee to be interviewed on a confidential basis. Such employee must comply with the request to be interviewed and must be given time off from his or her employment for the purposes of attending such an interview and may be accompanied by counsel acting on his or her behalf. The ombudsman may also conduct a confidential interview of any inmate or other person upon consent.

19. The ombudsman may enter anywhere on the grounds of any department facility or office for the purposes of observation, inspection and investigation and shall have unfettered access to all areas of the department and any facility at any time.

20. The ombudsman may cause the body of a deceased inmate to undergo such examinations, including an autopsy, as he or she deems necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have been previously performed.

21. (a) In the exercise of its functions, powers and duties, the ombudsman and any attorney employed by the office is authorized to issue and enforce a subpoena and a subpoena duces tecum, administer oaths and examine persons under oath, in accordance with and pursuant to civil practice law and rules. A person examined under oath pursuant to this subdivision shall have the right to be accompanied by counsel who shall advise the person of his or her rights subject to reasonable limitations

to prevent obstruction of, or interference with, the orderly conduct of the examination. Notwithstanding any other provision of law, a subpoena may be issued and enforced pursuant to this subdivision for the medical records of an inmate of a correctional facility, regardless of whether such medical records were made during the course of the inmate's incarceration.

(b) In any case where a person in charge or control of a correctional facility or an officer or employee thereof shall fail to comply with the provisions of paragraph (a) of this subdivision, or in any case where a coroner, coroner's physician or medical examiner shall fail to comply with the provisions of subdivision six of section six hundred seventy-seven of the county law, the ombudsman may apply to the supreme court for an order directed to such person requiring compliance therewith. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

22. The ombudsman shall not be compelled to testify or release records without a court order that are otherwise exempt from public disclosure, including documents pertaining to any investigation that has not been completed or any identifying information, personal papers or correspondence with any person who has requested assistance from the office unless that person consents in writing to the release of such information, papers or correspondence.

23. The ombudsman may hold public hearings.

§ 54. Additional functions, powers and duties of the office of the ombudsman. 1. The office may receive communications from any individual who believes he or she may have information that may describe improper governmental activities or wrongdoing within the department. Inmate mail to and from the ombudsman shall be treated in the same manner as legal mail and may not be restricted by the department, the office of mental health or any other entity.

(a) The ombudsman shall establish a toll-free telephone number for the purpose of identifying any alleged wrongdoing by an employee of the department. This telephone number shall be posted by the department in clear view of employees, inmates and the public, and inmates shall be permitted to call such number during normal hours for telephone usage or within twenty-four hours of admission to a special housing unit or other unit with restricted telephone access. Telephone calls made to such toll-free number from a correctional facility shall not be recorded by the department and are protected confidential communications. The ombudsman shall also maintain a website with a complaint form that may be filled out online and shall also accept complaints by mail or other means alleging wrongdoing by an employee of the department. When requested, the ombudsman shall initiate a review of any such alleged wrongdoing which may result in an investigation of the alleged wrongdoing at the ombudsman's discretion.

(b) At the conclusion of an investigation of a complaint, the ombudsman shall report his or her findings to the complainant and any person designated to receive such findings by the complainant. If the ombudsman does not investigate a complaint, he or she shall notify the complainant and such other person of the decision not to investigate and the reasons for the decision. If the complainant is deceased at the time of the completion of an investigation, the ombudsman shall report his or her findings to the complainant's next of kin when such person is known to the ombudsman or to the department.

(c) The ombudsman may act informally to resolve a complaint including providing referrals or information to complainants, expediting individual matters, mediating or providing other assistance.

(d) All identifying information and any personal records or correspondence from any person who initiated the review of such alleged wrongdoing shall be confidential unless the person consents to disclosure in writing.

(e) Where the ombudsman believes that an allegation of criminal misconduct has been made by a complainant, he or she shall report such allegation to the appropriate law enforcement agency.

2. Upon receiving a complaint of retaliation for complaining to or cooperating with the ombudsman, the ombudsman shall commence an inquiry into the complaint and conduct a formal investigation. Should the ombudsman find that a complaint of retaliation is founded as a result of an investigation, he or she shall so notify the department and make recommendations for corrective action to be taken by the department. The ombudsman shall make the results and supporting evidence of its formal investigation available to the division of human rights should an employee file a retaliation complaint with such agency and consent to such disclosure in writing.

3. To facilitate oversight, the office shall be immediately notified by the department of all unusual and significant incidences including, but not limited to, riots or fights involving multiple combatants, use of force, inmate deaths, serious physical assaults on employees or inmates, work stoppages and escapes and shall be given monthly aggregated reports of unusual incidents and inmate grievances by the department. Employees of the office shall be permitted to be present in any department internal investigation or inquiry. The office shall be responsible for reporting such unusual and significant incidents and the outcome of its investigations into such incidents to the public no less than quarterly.

4. (a) The ombudsman shall annually prepare a public report and summary of all investigations and reviews, including a list of significant problems discovered by the office, whether or not the recommendations made by the office have been implemented, and a list of the office's high priorities for the following year. The ombudsman shall submit such report to the governor, the temporary president of the senate, and speaker of the assembly by December thirty-first of each year. Such report shall be posted in electronic form on the office's public website. The ombudsman shall be authorized to redact portions of such report in a manner consistent with article six of the public officers law or where disclosure is otherwise prohibited by law.

(b) Upon review of the cause of death and circumstances surrounding the death of any inmate in a correctional facility, the ombudsman shall submit its report thereon to the governor, the speaker of the assembly, the temporary president of the senate, the chairperson of the assembly correction committee, the chairperson of the senate crime and correction committee, and the commissioner, and, where appropriate, make recommendations to prevent the recurrence of such deaths. Such reports shall be published on the office's website and shall otherwise be made available to the public.

(c) The ombudsman shall make an annual report to the governor, the speaker of the assembly, the temporary president of the senate, the chairperson of the assembly correction committee and the chairperson of the senate crime and correction committee on the condition of systems for the delivery of medical care to inmates of correctional facilities

and, where appropriate, recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care. Such report shall be published on the office's website and shall otherwise be made available to the public.

(d) All public reports by the ombudsman shall not disclose information where prohibited by law.

§ 55. Additional duties of the department. 1. State employees operating within a correctional facility must cooperate fully and promptly with the ombudsman.

2. The department shall respond in writing to any recommendations made by the ombudsman or his or her designee within forty-five days and shall state with specificity its reasons for failing to act on any such recommendation. Such writings shall be made public by the ombudsman except that information which would reveal confidential material that may not be released pursuant to federal or state law shall be reacted by the ombudsman from any such report or recommendation.

3. The commissioner shall immediately report to the ombudsman the death of an inmate of any such facility in such manner and form as the ombudsman shall prescribe and shall provide him or her with an autopsy report when available.

§ 56. Obstructing an investigation by the correctional ombudsman. A person is guilty of obstructing an investigation by the correctional ombudsman when, with intent to obstruct or impede an inquiry or investigation by the correctional ombudsman appointed pursuant to sections fifty-three or fifty-four of this article, he or she knowingly destroys or knowingly fails to permit access to, examination of, or reproduction by the office of such correctional ombudsman, of any book, account, bank account information, report, voucher, correspondence or correspondence file, computer file, computer data base, document, video or audio recording, statistic or performance based outcome measure, money, property or any other record of the department of corrections and community supervision lawfully requested by such correctional ombudsman. Obstructing an investigation by the correctional ombudsman is a class A misdemeanor.

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

32. "Office" means the office of the correctional ombudsman.

33. "Ombudsman" means the commissioner of the office of the correctional ombudsman.

§ 3. Subdivision 3 of section 40 of the correction law, as amended by section 13 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

3. "Correctional facility" means [~~any institution operated by the state department of corrections and community supervision,~~] any local correctional facility, or any place, other than a state correctional facility operated by the department, used, pursuant to a contract with the state or a municipality, for the detention of persons charged with or convicted of a crime, or, for the purpose of this article only, a secure facility operated by the office of children and family services.

§ 4. Paragraph 1 of subdivision (c) of section 42 of the correction law, as added by chapter 865 of the laws of 1975, is amended to read as follows:

1. Advise and assist the commission in developing policies, plans and programs for improving the commission's performance of its duties and for coordinating the efforts of the commission and of correctional officials to improve conditions of care, treatment, safety, supervision,

rehabilitation, recreation, training and education in **local** correctional facilities;

§ 5. Subdivisions 1, 2, 3, 4, 6, 8, and 10 of section 45 of the correction law, subdivisions 1 and 2 as added by chapter 865 of the laws of 1975, subdivision 3 as amended by section 1, subdivisions 6 and 10 as amended by section 7 of part Q of chapter 56 of the laws of 2009, subdivision 4 as amended by section 15 of subpart A of part C of chapter 62 of the laws of 2011, subdivision 8 as amended by section 2 of part D of chapter 63 of the laws of 2005, paragraph (b) of subdivision 8 as amended by section 4 of part H of chapter 56 of the laws of 2009, are amended to read as follows:

1. Advise and assist the governor in developing policies, plans and programs for improving the administration of **local** correctional facilities and the delivery of services therein.

2. Make recommendations to administrators of **local** correctional facilities for improving the administration of such correctional facilities and the delivery of services therein.

3. Except in circumstances involving health, safety or alleged violations of established standards of the commission, visit, and inspect **local** correctional facilities consistent with a schedule determined by the chairman of the commission, taking into consideration available resources, workload and staffing, and appraise the management of such correctional facilities with specific attention to matters such as safety, security, health of inmates, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness, and adherence to laws and regulations governing the rights of inmates.

4. 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.**~~]

6. Promulgate rules and regulations establishing minimum standards for the review of the construction or improvement of **local** correctional facilities and the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in **such** correctional facilities. Such rules and regulations shall be forwarded to the governor, the temporary president of the senate and the speaker of the assembly no later than January first, nineteen hundred seventy-six and annually thereafter.

8. [~~**(a)**~~] Close any **local** correctional facility which is unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners required by law or which has not adhered to or complied with the rules or regulations promulgated with respect to any such facility by the commission pursuant to the provisions of subdivision six of this section; provided, however, that before such facility may be closed due to conditions which are unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners, the commission shall cause a citation to be mailed to the appropriate municipal or other official at least ten days before the return day thereof directing the responsible authorities designated to appear before such commission at the time and place set forth in the citation, and show cause why such correctional facility should not be closed. After a hearing thereon or upon the failure to appear, such commission is empowered to order such

facility designated in the citation closed within twenty days, during which time the respondent authority may review such order in the manner provided in article seventy-eight of the civil practice law and rules, in the supreme court. Fifteen days after the order to close has been served by a registered letter upon the appropriate official if no court review has been taken, and fifteen days after the order of such commission has been confirmed by the court, in case of court review, such facility designated in the order shall be closed, and it shall be unlawful to confine or detain any person therein and any officer confining or detaining any person therein shall be guilty of a class A misdemeanor.

[~~(b) Before a correctional facility as defined in subdivision four of section two of this chapter, may be closed for a reason other than those set forth in paragraph (a) of this subdivision, the provisions of section seventy-nine-a of this chapter shall be adhered to.~~]

10. Approve or reject plans and specifications for the construction or improvement of **local** correctional facilities that directly affect the health of inmates and staff, safety, or security.

§ 6. Section 46 of the correction law, as added by chapter 865 of the laws of 1975, subdivisions 1 and 2 as amended by chapter 232 of the laws of 2012, and subdivision 3 as amended by chapter 490 of the laws of 2015, is amended to read as follows:

§ 46. Additional functions, powers and duties of the commission. 1. The commission, any member or any employee designated by the commission must be granted access at any and all times to any **local** correctional facility or part thereof and to all books, records, inmate medical records and data pertaining to any correctional facility deemed necessary for carrying out the commission's functions, powers and duties. The commission, any member or any employee designated by the chairman may require from the officers or employees of [~~a~~] **such** correctional facility any information deemed necessary for the purpose of carrying out the commission's functions, powers and duties.

2. In the exercise of its functions, powers and duties, the commission, any member, and any attorney employed by the commission is authorized to issue and enforce a subpoena and a subpoena duces tecum, administer oaths and examine persons under oath, in accordance with and pursuant to civil practice law and rules. A person examined under oath pursuant to this subdivision shall have the right to be accompanied by counsel who shall advise the person of their rights subject to reasonable limitations to prevent obstruction of, or interference with, the orderly conduct of the examination. Notwithstanding any other provision of law, a subpoena may be issued and enforced pursuant to this subdivision for the medical records of an inmate of a correctional facility, regardless of whether such medical records were made during the course of the inmate's incarceration.

3. In any case where a person in charge or control of a **local** correctional facility or an officer or employee thereof shall fail to comply with the provisions of subdivision one, or in any case where a coroner, coroner's physician or medical examiner shall fail to comply with the provisions of subdivision six of section six hundred seventy-seven of the county law, the commission may apply to the supreme court for an order directed to such person requiring compliance therewith. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

4. In any case where any rule or regulation promulgated by the commission pursuant to subdivision six of section forty-five **of this article**

or the laws relating to the construction, management and affairs of [~~any~~] **a local** correctional facility or the care, treatment and discipline of its inmates, are being or are about to be violated, the commission shall notify the person in charge or control of the facility of such violation, recommend remedial action, and direct such person to comply with the rule, regulation or law, as the case may be. Upon the failure of such person to comply with the rule, regulation or law the commission may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

§ 7. Section 47 of the correction law, as added by chapter 865 of the laws of 1975, paragraph (e) of subdivision 1 as amended by chapter 447 of the laws of 2016, subdivision 2 as amended by chapter 491 of the laws of 1987, is amended to read as follows:

§ 47. Functions, powers and duties of the board. 1. The board shall have the following functions, powers and duties:

(a) Investigate and review the cause and circumstances surrounding the death of any inmate of a **local** correctional facility.

(b) Visit and inspect any **local** correctional facility wherein an inmate has died.

(c) Cause the body of the deceased to undergo such examinations, including an autopsy, as in the opinion of the board, are necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have previously been performed.

(d) Upon review of the cause of death and circumstances surrounding the death of any inmate **in a local correctional facility**, the board shall submit its report thereon to the commission**, the governor, the speaker of the assembly and temporary president of the senate, the chairperson of the assembly correction committee and the chairperson of the senate crime and correction committee,** and, where appropriate, make recommendations to prevent the recurrence of such deaths to the commission and the administrator of the appropriate correctional facility.

(e) (i) Investigate and report to the commission on the condition of systems for the delivery of medical care to inmates of **local** correctional facilities and where appropriate recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care.

(ii) The board shall be responsive to inquiries from the next of kin and other person designated as a representative of any inmate whose death takes place during custody in a state correctional facility regarding the circumstances surrounding the death of such inmate. Contact information for the next of kin and designated representative shall be provided by the department to the board from the emergency contact information previously provided by the inmate to the department.

2. Every administrator of a **local** correctional facility shall immediately report to the board the death of an inmate of any such facility in such manner and form as the board shall prescribe, together with an autopsy report.

§ 8. Section 89-a of the correction law, as amended by chapter 409 of the laws of 1991, is amended to read as follows:

§ 89-a. [~~1.~~] Management of alternate correctional facilities. **1.** Superintendence, management and control of alternate correctional facilities and the eligible inmates housed therein shall be as directed by the commissioner consistent with the following: an alternate correction-

al facility shall be operated pursuant to rules and regulations promulgated for such facilities by the commissioner in consultation with the [~~state commission of correction~~] **office of the correctional ombudsman** and the provisions of the operation agreement. The commissioner shall operate such facility insofar as practicable in the same manner as a general confinement facility which houses medium security state inmates. Nothing herein, however, shall preclude the commissioner from enhancing staffing or programming to accommodate the particular needs of eligible inmates pursuant to the operation agreement. No inmate shall be housed in any alternate correctional facility until such facility has been established in accordance with the provisions of section eighty-nine of this article. The population in an alternate correctional facility shall not exceed its design capacity of approximately seven hundred eligible inmates except pursuant to variances permitted by law, rule or regulation or court order.

2. Notwithstanding any other provisions of law, no variance authorizing an alternate correctional facility to exceed its design capacity shall be granted after March fifteenth, nineteen hundred ninety-two unless the mayor of the city of New York submits, together with the variance request, a certificate of emergency demonstrating the need for such variance and that reasonable alternatives to the granting of the variance do not exist, and containing a detailed summary of measures that will be taken to restore compliance with such design capacity. The [~~chairman of the state commission of correction~~] **commissioner of the office of the correctional ombudsman** shall transmit, in a timely manner, notice of such request to the chairmen of the senate crime and correction committee and the assembly correction committee.

§ 9. Subdivision 1 of section 89-e of the correction law, as amended by section 47 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

1. The alternate correctional facility review panel is hereby established and shall consist of the commissioner, [~~the chairman of the state commission of correction~~] **the commissioner of the office of the correctional ombudsman**, the chairman of the board of parole, the director of the office of probation and correctional alternatives, the commissioner of correction of the city of New York, the president of the New York State Sheriffs' Association Institute, Inc., and the president of the Correctional Association of New York or their designees. The governor shall appoint a chairman and vice-chairman from among the members.

§ 10. Section 89-f of the correction law, as added by chapter 549 of the laws of 1987, is amended to read as follows:

§ 89-f. Oversight. The [~~state commission of correction~~] **office of the correctional ombudsman** shall exercise the same powers and duties concerning each alternate correctional facility as the [~~commission~~] **office** is required to exercise concerning a New York state correctional facility. The [~~commission~~] **office** shall prepare an annual report on each alternate correctional facility which shall evaluate and assess the department's compliance with all rules and regulations applicable to that facility and the operation agreement and which shall include an analysis of the frequency and severity of all unusual incidents and assaults occurring in that facility. The annual reports shall be filed with the governor, the mayor of the city of New York, the chairman of the senate crime and correction committee, and the chairman of the assembly committee on correction no later than the first day of June of each year.

§ 11. Subdivision 1 of section 112 of the correction law, as amended by section 19 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

1. The commissioner of corrections and community supervision shall have the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. He or she shall have the power and it shall be his or her duty to inquire into all matters connected with said correctional facilities **and to report any allegations of corruption, fraud, criminal activity, conflicts of interest or abuse to the office of the correctional ombudsman for investigation, as well as report to such office on other correctional issues, including, but not limited to, staff recruitment, training, supervision, discipline, inmate deaths, medical and mental health care, use of force, inmate violence, conditions of confinement, inmate disciplinary process, inmate grievance process, substance-abuse treatment, educational, vocational and other programming and re-entry planning**. He or she shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility, as he or she may deem proper, and shall cause such rules and regulations to be recorded by the superintendent of the facility, and a copy thereof to be furnished to each employee assigned to the facility. He or she shall also prescribe a system of accounts and records to be kept at each correctional facility, which system shall be uniform at all of said facilities, and he or she shall also make rules and regulations for a record of photographs and other means of identifying each inmate received into said facilities. He or she shall appoint and remove, subject to the civil service law and rules, subordinate officers and other employees of the department who are assigned to correctional facilities.

§ 12. Subdivision 1 of section 146 of the correction law, as amended by chapter 234 of the laws of 2013, is amended to read as follows:

1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction**, any employee of, or person under contract to, the office of the correctional ombudsman, members of the correctional oversight board,** members of the legislature and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe. The provisions of this section shall not apply to such portion of a correctional facility in which inmates under sentence of death are confined.

§ 13. Section 853 of the correction law, as amended by chapter 757 of the laws of 1981, is amended to read as follows:

§ 853. Reporting and information. To ensure the accurate maintenance and availability of statistics and records with respect to participation in temporary release programs, the department shall maintain the following information relative to the operation of temporary release programs:

(a) number of inmate participants in each temporary release program;

(b) number of inmates participating in temporary release for whom written approval of the commissioner was required pursuant to subdivision two of section eight hundred fifty-one of this chapter;

(c) number and type of individual programs approved for each participant;

(d) approved participating employers and educational institutions;

(e) number of inmates arrested;

(f) inmates involuntarily returned for violations by institution;

(g) absconders still at large;

(h) number of disciplinary proceedings initiated and the results thereof;

(i) number of temporary release committee decisions appealed and the results thereof by institution;

(j) reports or information made available to the department with respect to the participation of individuals in such programs, including any incidents of absconding or re-arrest.

The department shall also forward to the [~~state commission of correction~~] office of the correctional ombudsman quarterly reports including, but not limited to, the information identified in subdivisions (a), (b), (d), (e), (f) and (g) of this section and such other information requested by the [~~commission~~] office or available to the department with respect to such programs.

§ 14. Section 854 of the correction law, as added by chapter 691 of the laws of 1977, is amended to read as follows:

§ 854. Evaluation and recommendation. In recognition of the need for an independent evaluation of, and recommendations with respect to, temporary release, the [~~commission of correction~~] office of the correctional ombudsman shall evaluate and assess the administration and operation of all temporary release programs conducted pursuant to this article and shall submit to the governor and the legislature by March first, [~~nineteen hundred seventy-eight~~] two thousand twenty-two, its findings together with any recommendations with respect to the proper operation or the improvement of such temporary release programs.

§ 15. Section 857 of the correction law, as added by chapter 691 of the laws of 1977, is amended to read as follows:

§ 857. Complaint and abuse review. Any person may submit to the [~~commission of correction~~] office of the correctional ombudsman any complaint he or she may have concerning programmatic abuses. The [~~commission of correction~~] office shall evaluate such complaints and, where indicated, conduct any needed investigation. If the [~~commission~~] office concludes that a complaint is valid, the [~~commission~~] ombudsman shall make recommendations to the department for corrective action. Where the [~~commission~~] office believes sufficient evidence exists to support a criminal charge, the [~~commission~~] office shall report such evidence to the appropriate law enforcement agencies.

§ 16. Subdivision 6 of section 677 of the county law, as amended by chapter 490 of the laws of 2015, is amended to read as follows:

6. Notwithstanding section six hundred seventy of this article or any other provision of law, the coroner, coroner's physician or medical

examiner shall promptly provide the chairman of the correction medical review board **or the commissioner of the office of the correctional ombudsman** and the commissioner of corrections and community supervision**, as appropriate,** with copies of any autopsy report, toxicological report or any report of any examination or inquiry prepared with respect to any death occurring to an inmate of a correctional facility as defined by subdivision three of section forty of the correction law within his **or her** county; and shall promptly provide the executive director of the justice center for the protection of people with special needs with copies of any autopsy report, toxicology report or any report of any examination or inquiry prepared with respect to the death of any service recipient occurring while he or she was a resident in any facility operated, licensed or certified by any agency within the department of mental hygiene, the office of children and family services, the department of health or the state education department. If the toxicological report is prepared pursuant to any agreement or contract with any person, partnership, corporation or governmental agency with the coroner or medical examiner, such report shall be promptly provided to the chairman of the correction medical review board, **the commissioner of the office of the correctional ombudsman,** the commissioner of corrections and community supervision or the executive director of the justice center for people with special needs, as appropriate, by such person, partnership, corporation or governmental agency.

§ 17. Section 2.10 of the criminal procedure law is amended by adding a new subdivision 85 to read as follows:

85. Investigators of the office of the correctional ombudsman.

§ 18. Subdivision 2 of section 285 of the education law, as added by section 6 of part O of chapter 57 of the laws of 2005, is amended to read as follows:

2. The commissioner is authorized to expend up to one hundred seventy-five thousand dollars annually to provide grants to public library systems operating under an approved plan of service for provision of services to county jail facilities. Such formula grants shall assist the library system in making available to the inmate population of such facility or facilities the library resources of such system. Such grants shall be available to each public library system in such manner as to insure that the ratio of the amount each system is eligible to receive equals the ratio of the number of inmates served by the county jail facility to the total number of inmates served by county jail facilities in the state as of July first of the year preceding the calendar year in which the state aid to public library systems is to be paid. Inmate populations shall be certified by the [~~New York state commission of correction~~] **office of the correctional ombudsman**. The commissioner shall adopt any regulations necessary to carry out the purposes and provisions of this subdivision.

§ 19. Section 63 of the executive law is amended by adding a new subdivision 17 to read as follows:

17. Investigate the alleged commission of any criminal offense or offenses committed by an employee of the department of corrections and community supervision in connection with the performance of his or her official duties, and prosecute any such person or persons believed to have committed such criminal offense or offenses in connection with the performance of his or her official duties. The attorney general may only exercise the jurisdiction provided by this subdivision upon a written finding that such jurisdiction is necessary because: (a) of a lack of alternative prosecutorial resources to adequately investigate and prose-

cute such criminal offense or offenses or, (b) the exercise of such jurisdiction is necessary to ensure the confidence of the public in the judicial system. In all such proceedings, the attorney general may appear in person or by his or her deputy or assistant before any court or grand jury and exercise all of the powers and perform all of the duties with respect to such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform.

§ 20. Paragraph (a) of subdivision 1 of section 169 of the executive law, as amended by section 9 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

(a) commissioner of corrections and community supervision, commissioner of the office of the correctional ombudsman, commissioner of education, commissioner of health, commissioner of mental health, commissioner of developmental disabilities, commissioner of children and family services, commissioner of temporary and disability assistance, chancellor of the state university of New York, commissioner of transportation, commissioner of environmental conservation, superintendent of state police, commissioner of general services, commissioner of the division of homeland security and emergency services and the executive director of the state gaming commission;

§ 21. Subdivision 9 of section 837-a of the executive law, as added by section 4 of part Q of chapter 56 of the laws of 2009, is amended to read as follows:

9. In consultation with the state commission of correction, the office of the correctional ombudsman and the municipal police training council, establish and maintain basic and other correctional training programs for such personnel employed by correctional facilities as the commissioner shall deem necessary. Such basic correctional training program shall be satisfactorily completed by such personnel prior to their undertaking their duties or within one year following the date of their appointment or at such times as the commissioner may prescribe. Provided, however, the commissioner may, after consultation with the state commission of correction or the office of the correctional ombudsman, exempt from such requirement personnel employed by any correctional facility which, in the opinion of the commissioner, maintains a basic correctional training program of a standard equal to or higher than that established and maintained by the division; or revoke in whole or in part such exemption, if in his or her opinion the standards of the basic correctional training program maintained by such facility are lower than those established pursuant to this article.

§ 22. Subdivision (c) of section 33.13 of the mental hygiene law is amended by adding a new paragraph 18 to read as follows:

18. to the office of the correctional ombudsman.

§ 23. Subdivision 1 of section 2782 of the public health law is amended by adding a new paragraph (s) to read as follows:

(s) an employee or agent of the office of the correctional ombudsman in order to carry out the office's functions, powers and duties with respect to the protected individual, pursuant to article three-A of the correction law.

§ 24. Paragraph (a) of subdivision 2 of section 2786 of the public health law, as added by chapter 584 of the laws of 1988, is amended to read as follows:

(a) Each state agency authorized pursuant to this article to obtain confidential HIV related information shall, in consultation with the department of health, promulgate regulations: (1) to provide [~~safe-~~

~~quards~~] **safeguards** to prevent discrimination, abuse or other adverse actions directed toward protected individuals; (2) to prohibit the disclosure of such information except in accordance with this article; (3) to seek to protect individuals in contact with the protected individual when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids[~~,~~]**;** and (4) to establish criteria for determining when it is reasonably necessary for a provider of a health or social service or the state agency or a local government agency to have or to use confidential HIV related information for supervision, monitoring, investigation, or administration and for determining which employees and agents may, in the ordinary course of business of the agency or provider, be authorized to access confidential HIV related information pursuant to the provisions of paragraphs (l) and (m) of subdivision one and subdivision six of section twenty-seven hundred eighty-two of this article; and provided further that such regulations shall be promulgated by the chairperson of the commission of correction **or the office of the correctional ombudsman** where disclosure is made pursuant to paragraphs (n) [~~and~~]**,** (o)**, or (r)** of subdivision one of section twenty-seven hundred eighty-two of this article.

§ 25. Subdivision 8 of section 92 of the public officers law, as amended by section 135 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(8) Public safety agency record. The term "public safety agency record" means a record of the state commission of correction, **the office of the correctional ombudsman,** the temporary state commission of investigation, the department of corrections and community supervision, the office of children and family services, the office of victim services, the office of probation and correctional alternatives or the division of state police or of any agency or component thereof whose primary function is the enforcement of civil or criminal statutes if such record pertains to investigation, law enforcement, confinement of persons in correctional facilities or supervision of persons pursuant to criminal conviction or court order, and any records maintained by the division of criminal justice services pursuant to sections eight hundred thirty-seven, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thirty-nine, and eight hundred forty-five of the executive law and by the department of state pursuant to section ninety-nine of the executive law.

§ 26. Subdivision 1 of section 460-c of the social services law, as amended by chapter 838 of the laws of 1987, is amended to read as follows:

1. Excepting state institutions for the education and support of the blind, the deaf and the dumb, facilities subject to the approval, visitation and inspection of the state department of mental hygiene**, the office of the correctional ombudsman** or the state commission of correction, facilities operated by or under the supervision of the division for youth and facilities subject to the supervision of the department of health pursuant to article twenty-eight of the public health law, the department shall inspect and maintain supervision over all public and private facilities or agencies whether state, county, municipal, incorporated or not incorporated which are in receipt of public funds, which are of a charitable, eleemosynary, correctional or reformatory character, including facilities or agencies exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent chil-

dren, agencies engaged in the placing-out or boarding-out of children as defined in section three hundred seventy-one of this chapter, homes or shelters for unmarried mothers, residential programs for victims of domestic violence as defined in subdivision [~~five~~] four of section four hundred fifty-nine-a of this chapter and adult care facilities.

§ 27. This act shall take effect one year after it shall have become a law.