

# STATE OF NEW YORK

777

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. MONTGOMERY -- 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:

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

3 ARTICLE 3-A

4 OFFICE OF THE CORRECTIONAL OMBUDSMAN

5 Section 50. Definitions.

6 51. Office of the correctional ombudsman; organization.

7 52. Correctional oversight board.

8 53. Powers of the ombudsman.

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

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1           54. Additional functions, powers and duties of the office of the  
2           ombudsman.

3           55. Additional duties of the department.

4           56. Obstructing an investigation by the correctional ombudsman.

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

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

8           2. "Ombudsman" refers to the commissioner of the office of the correc-  
9 tional ombudsman.

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

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

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

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

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

53          (a) one shall be the state inspector general;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ards or protocols adopted by the ombudsman for the inspection and moni-  
2 toring of correctional facilities or the resolution of complaints  
3 received by the office.

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

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

10 2. The office of the ombudsman shall not be located in the same build-  
11 ing or buildings as the department but shall be wholly independent of  
12 the department except that the department shall provide it with office  
13 space, equipment and furnishings within any department facility as need-  
14 ed to carry out its functions and duties.

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

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

32 5. The ombudsman may request and shall receive from any department,  
33 division, bureau, commission or any other agency of the state or poli-  
34 tical subdivision thereof or any public authority such assistance,  
35 information and data as will enable the office to carry out its func-  
36 tions, powers and duties.

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

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

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

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

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

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

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

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

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

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

52 (b) If the commissioner appoints a superintendent who the ombudsman  
53 found was not qualified, the ombudsman shall make public that finding  
54 after due notice to the appointee. Any candidate found to be not quali-  
55 fied by the ombudsman shall have the right to withdraw from consider-  
56 ation before the ombudsman makes such public finding and in that case

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

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

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

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

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

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

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

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

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

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

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

24 23. The ombudsman may hold public hearings.

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

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

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

1 (c) The ombudsman may act informally to resolve a complaint including  
2 providing referrals or information to complainants, expediting individ-  
3 ual matters, mediating or providing other assistance.

4 (d) All identifying information and any personal records or corre-  
5 spondence from any person who initiated the review of such alleged  
6 wrongdoing shall be confidential unless the person consents to disclo-  
7 sure in writing.

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

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

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

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

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

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



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

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

7 § 55. Additional duties of the department. 1. State employees operat-  
8 ing within a correctional facility must cooperate fully and promptly  
9 with the ombudsman.

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

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

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

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

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

38 33. "Ombudsman" means the commissioner of the office of the correc-  
39 tional ombudsman.

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

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

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

53 1. Advise and assist the commission in developing policies, plans and  
54 programs for improving the commission's performance of its duties and  
55 for coordinating the efforts of the commission and of correctional offi-  
56 cials to improve conditions of care, treatment, safety, supervision,

1 rehabilitation, recreation, training and education in local correctional  
2 facilities;

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

12 1. Advise and assist the governor in developing policies, plans and  
13 programs for improving the administration of local correctional facili-  
14 ties and the delivery of services therein.

15 2. Make recommendations to administrators of local correctional facil-  
16 ities for improving the administration of such correctional facilities  
17 and the delivery of services therein.

18 3. Except in circumstances involving health, safety or alleged  
19 violations of established standards of the commission, visit, and  
20 inspect local correctional facilities consistent with a schedule deter-  
21 mined by the chairman of the commission, taking into consideration  
22 available resources, workload and staffing, and appraise the management  
23 of such correctional facilities with specific attention to matters such  
24 as safety, security, health of inmates, sanitary conditions, rehabilita-  
25 tive programs, disturbance and fire prevention and control preparedness,  
26 and adherence to laws and regulations governing the rights of inmates.

27 4. Establish procedures to assure effective investigation of grievenc-  
28 es of, and conditions affecting, inmates of local correctional facili-  
29 ties. Such procedures shall include but not be limited to receipt of  
30 written complaints, interviews of persons, and on-site monitoring of  
31 conditions. [~~In addition, the commission shall establish procedures for  
32 the speedy and impartial review of grievances referred to it by the  
33 commissioner of the department of corrections and community super-  
34 vision.~~]

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

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

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

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

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

18 § 6. Section 46 of the correction law, as added by chapter 865 of the  
19 laws of 1975, subdivisions 1 and 2 as amended by chapter 232 of the laws  
20 of 2012, and subdivision 3 as amended by chapter 490 of the laws of  
21 2015, is amended to read as follows:

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

32 2. In the exercise of its functions, powers and duties, the commis-  
33 sion, any member, and any attorney employed by the commission is author-  
34 ized to issue and enforce a subpoena and a subpoena duces tecum, admin-  
35 ister oaths and examine persons under oath, in accordance with and  
36 pursuant to civil practice law and rules. A person examined under oath  
37 pursuant to this subdivision shall have the right to be accompanied by  
38 counsel who shall advise the person of their rights subject to reason-  
39 able limitations to prevent obstruction of, or interference with, the  
40 orderly conduct of the examination. Notwithstanding any other provision  
41 of law, a subpoena may be issued and enforced pursuant to this subdivi-  
42 sion for the medical records of an inmate of a correctional facility,  
43 regardless of whether such medical records were made during the course  
44 of the inmate's incarceration.

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

55 4. In any case where any rule or regulation promulgated by the commis-  
56 sion pursuant to subdivision six of section forty-five of this article

1 or the laws relating to the construction, management and affairs of  
2 [~~any~~] a local correctional facility or the care, treatment and disci-  
3 pline of its inmates, are being or are about to be violated, the commis-  
4 sion shall notify the person in charge or control of the facility of  
5 such violation, recommend remedial action, and direct such person to  
6 comply with the rule, regulation or law, as the case may be. Upon the  
7 failure of such person to comply with the rule, regulation or law the  
8 commission may apply to the supreme court for an order directed to such  
9 person requiring compliance with such rule, regulation or law. Upon such  
10 application the court may issue such order as may be just and a failure  
11 to comply with the order of the court shall be a contempt of court and  
12 punishable as such.

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

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

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

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

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

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

35 (e) (i) Investigate and report to the commission on the condition of  
36 systems for the delivery of medical care to inmates of local correction-  
37 al facilities and where appropriate recommend such changes as it shall  
38 deem necessary and proper to improve the quality and availability of  
39 such medical care.

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

47 2. Every administrator of a local correctional facility shall imme-  
48 diately report to the board the death of an inmate of any such facility  
49 in such manner and form as the board shall prescribe, together with an  
50 autopsy report.

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

53 § 89-a. [~~1.~~] Management of alternate correctional facilities. 1.  
54 Superintendence, management and control of alternate correctional facil-  
55 ities and the eligible inmates housed therein shall be as directed by  
56 the commissioner consistent with the following: an alternate correction-

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

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

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

31 1. The alternate correctional facility review panel is hereby estab-  
32 lished and shall consist of the commissioner, [~~the chairman of the state~~  
33 ~~commission of correction~~] the commissioner of the office of the correc-  
34 tional ombudsman, the chairman of the board of parole, the director of  
35 the office of probation and correctional alternatives, the commissioner  
36 of correction of the city of New York, the president of the New York  
37 State Sheriffs' Association Institute, Inc., and the president of the  
38 Correctional Association of New York or their designees. The governor  
39 shall appoint a chairman and vice-chairman from among the members.

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

42 § 89-f. Oversight. The [~~state commission of correction~~] office of the  
43 correctional ombudsman shall exercise the same powers and duties  
44 concerning each alternate correctional facility as the [~~commission~~]  
45 office is required to exercise concerning a New York state correctional  
46 facility. The [~~commission~~] office shall prepare an annual report on each  
47 alternate correctional facility which shall evaluate and assess the  
48 department's compliance with all rules and regulations applicable to  
49 that facility and the operation agreement and which shall include an  
50 analysis of the frequency and severity of all unusual incidents and  
51 assaults occurring in that facility. The annual reports shall be filed  
52 with the governor, the mayor of the city of New York, the chairman of  
53 the senate crime and correction committee, and the chairman of the  
54 assembly committee on correction no later than the first day of June of  
55 each year.

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

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

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

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

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

3 § 853. Reporting and information. To ensure the accurate maintenance  
4 and availability of statistics and records with respect to participation  
5 in temporary release programs, the department shall maintain the follow-  
6 ing information relative to the operation of temporary release programs:

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

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

11 (c) number and type of individual programs approved for each partic-  
12 ipant;

13 (d) approved participating employers and educational institutions;

14 (e) number of inmates arrested;

15 (f) inmates involuntarily returned for violations by institution;

16 (g) absconders still at large;

17 (h) number of disciplinary proceedings initiated and the results ther-  
18 eof;

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

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

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

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

32 § 854. Evaluation and recommendation. In recognition of the need for  
33 an independent evaluation of, and recommendations with respect to,  
34 temporary release, the [~~commission of correction~~] office of the correc-  
35 tional ombudsman shall evaluate and assess the administration and opera-  
36 tion of all temporary release programs conducted pursuant to this arti-  
37 cle and shall submit to the governor and the legislature by March first,  
38 [~~nineteen hundred seventy-eight~~] two thousand twenty-two, its findings  
39 together with any recommendations with respect to the proper operation  
40 or the improvement of such temporary release programs.

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

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

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

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

1 examiner shall promptly provide the chairman of the correction medical  
2 review board or the commissioner of the office of the correctional  
3 ombudsman and the commissioner of corrections and community supervision,  
4 as appropriate, with copies of any autopsy report, toxicological report  
5 or any report of any examination or inquiry prepared with respect to any  
6 death occurring to an inmate of a correctional facility as defined by  
7 subdivision three of section forty of the correction law within his or  
8 her county; and shall promptly provide the executive director of the  
9 justice center for the protection of people with special needs with  
10 copies of any autopsy report, toxicology report or any report of any  
11 examination or inquiry prepared with respect to the death of any service  
12 recipient occurring while he or she was a resident in any facility oper-  
13 ated, licensed or certified by any agency within the department of  
14 mental hygiene, the office of children and family services, the depart-  
15 ment of health or the state education department. If the toxicological  
16 report is prepared pursuant to any agreement or contract with any  
17 person, partnership, corporation or governmental agency with the coroner  
18 or medical examiner, such report shall be promptly provided to the  
19 chairman of the correction medical review board, the commissioner of the  
20 office of the correctional ombudsman, the commissioner of corrections  
21 and community supervision or the executive director of the justice  
22 center for people with special needs, as appropriate, by such person,  
23 partnership, corporation or governmental agency.

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

26 85. Investigators of the office of the correctional ombudsman.

27 § 18. Subdivision 2 of section 285 of the education law, as added by  
28 section 6 of part 0 of chapter 57 of the laws of 2005, is amended to  
29 read as follows:

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

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

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



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

9 § 20. Paragraph (a) of subdivision 1 of section 169 of the executive  
10 law, as amended by section 9 of part A of chapter 60 of the laws of  
11 2012, is amended to read as follows:

12 (a) commissioner of corrections and community supervision, commission-  
13 er of the office of the correctional ombudsman, commissioner of educa-  
14 tion, commissioner of health, commissioner of mental health, commis-  
15 sioner of developmental disabilities, commissioner of children and family  
16 services, commissioner of temporary and disability assistance, chancel-  
17 lor of the state university of New York, commissioner of transportation,  
18 commissioner of environmental conservation, superintendent of state  
19 police, commissioner of general services, commissioner of the division  
20 of homeland security and emergency services and the executive director  
21 of the state gaming commission;

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

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

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

44 18. to the office of the correctional ombudsman.

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

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

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

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

1 ~~guards~~] safeguards to prevent discrimination, abuse or other adverse  
2 actions directed toward protected individuals; (2) to prohibit the  
3 disclosure of such information except in accordance with this article;  
4 (3) to seek to protect individuals in contact with the protected indi-  
5 vidual when such contact creates a significant risk of contracting or  
6 transmitting HIV infection through the exchange of body fluids[~~r~~]; and  
7 (4) to establish criteria for determining when it is reasonably neces-  
8 sary for a provider of a health or social service or the state agency or  
9 a local government agency to have or to use confidential HIV related  
10 information for supervision, monitoring, investigation, or adminis-  
11 tration and for determining which employees and agents may, in the ordi-  
12 nary course of business of the agency or provider, be authorized to  
13 access confidential HIV related information pursuant to the provisions  
14 of paragraphs (l) and (m) of subdivision one and subdivision six of  
15 section twenty-seven hundred eighty-two of this article; and provided  
16 further that such regulations shall be promulgated by the chairperson of  
17 the commission of correction or the office of the correctional ombudsman  
18 where disclosure is made pursuant to paragraphs (n) [~~and~~], (o), or (r)  
19 of subdivision one of section twenty-seven hundred eighty-two of this  
20 article.

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

24 (8) Public safety agency record. The term "public safety agency  
25 record" means a record of the state commission of correction, the office  
26 of the correctional ombudsman, the temporary state commission of inves-  
27 tigation, the department of corrections and community supervision, the  
28 office of children and family services, the office of victim services,  
29 the office of probation and correctional alternatives or the division of  
30 state police or of any agency or component thereof whose primary func-  
31 tion is the enforcement of civil or criminal statutes if such record  
32 pertains to investigation, law enforcement, confinement of persons in  
33 correctional facilities or supervision of persons pursuant to criminal  
34 conviction or court order, and any records maintained by the division of  
35 criminal justice services pursuant to sections eight hundred thirty-sev-  
36 en, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight  
37 hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thir-  
38 ty-nine, and eight hundred forty-five of the executive law and by the  
39 department of state pursuant to section ninety-nine of the executive  
40 law.

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

44 1. Excepting state institutions for the education and support of the  
45 blind, the deaf and the dumb, facilities subject to the approval, visi-  
46 tation and inspection of the state department of mental hygiene, the  
47 office of the correctional ombudsman or the state commission of  
48 correction, facilities operated by or under the supervision of the divi-  
49 sion for youth and facilities subject to the supervision of the depart-  
50 ment of health pursuant to article twenty-eight of the public health  
51 law, the department shall inspect and maintain supervision over all  
52 public and private facilities or agencies whether state, county, munici-  
53 pal, incorporated or not incorporated which are in receipt of public  
54 funds, which are of a charitable, eleemosynary, correctional or reforma-  
55 tory character, including facilities or agencies exercising custody of  
56 dependent, neglected, abused, maltreated, abandoned or delinquent chil-

1 dren, agencies engaged in the placing-out or boarding-out of children as  
2 defined in section three hundred seventy-one of this chapter, homes or  
3 shelters for unmarried mothers, residential programs for victims of  
4 domestic violence as defined in subdivision [~~five~~ four] of section four  
5 hundred fifty-nine-a of this chapter and adult care facilities.  
6 § 27. This act shall take effect one year after it shall have become a  
7 law.