

STATE OF NEW YORK

8461--A

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. GALLAGHER -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to the membership of the state commission of correction and to inspection and procedures applicable to unsafe or unsanitary correctional facilities

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

1 Section 1. Section 40 of the correction law is amended by adding a new
2 subdivision 7 to read as follows:

3 7. "Serious injury" means the same as such term is defined in section
4 fifty-one hundred two of the insurance law.

5 § 2. Section 41 of the correction law, as added by chapter 865 of the
6 laws of 1975, is amended to read as follows:

7 § 41. State commission of correction; organization. 1. (a) There shall
8 be within the executive department a state commission of correction. It
9 shall consist of [~~three~~] nine persons [~~to be~~], two of whom shall be
10 appointed by the governor, ~~by and with the advice and consent of the~~
11 ~~senate~~, two of whom shall be appointed by a majority vote of the
12 membership of the assembly, two of whom shall be appointed by a majority
13 vote of the membership of the senate, two of whom shall be appointed by
14 the attorney general, and one of whom shall be appointed by the correc-
15 tional association. All appointments shall be by and with the advice and
16 consent of the senate to ensure the requirements of this subdivision are
17 met.

18 (b) At least one member of the commission shall be a formerly incar-
19 cerated person, and a preference in appointment shall be granted to
20 nominees who have been personally affected by contact with the criminal
21 legal system. At least one member of the commission shall have a profes-

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

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sional background in public health. No more than three members of the commission shall have a background in law enforcement, criminal prosecution, or employment within a corrections agency, and the members of the commission with such backgrounds shall never be greater than the number of members of the commission with backgrounds in indigent criminal defense services, prisoner's rights litigation, or public legal services. The remaining members of the commission shall have expertise in any other field deemed useful for the promotion of an efficient, humane, and lawful correctional system. The ~~[governor]~~ members of the commission shall designate one of the appointed members as chairman to serve ~~[as such]~~ at ~~[the]~~ their pleasure ~~[of the governor]~~. The members shall devote full time to their duties and shall hold no other salaried public position.

2. The members shall hold office for terms of five years; provided that of the three members first appointed, one shall serve for a term of two years, one shall serve for a term of three years and one shall serve for a term of five years from January first next succeeding their appointment. No member shall serve for more than ten years. Any member of the commission may be removed by the governor for cause after an opportunity to be heard in his or her defense.

3. Any member chosen to fill a vacancy created other 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 term or otherwise shall be filled in the same manner as original appointments; provided, however, that if a position on the commission remains vacant for any period longer than one hundred eighty days, the members of the commission may appoint an individual to fill such vacancy whose appointment satisfies the requirements of paragraph (b) of subdivision one of this section.

4. The appropriations available to pay for the expenses of the commission during each fiscal year shall not be less than two percentum of the appropriations available to pay for the expenses of the department during such fiscal year.

§ 3. Subdivision 3 of section 45 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

3. Except in circumstances involving health, safety or alleged violations of established standards of the commission, visit, and inspect every correctional ~~[facilities]~~ facility in the state on an annual basis 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 incarcerated individuals, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness, and adherence to laws and regulations governing the rights of incarcerated individuals. The commission shall not disclose its schedule for inspections or provide advance notice to any correctional facility of a planned inspection unless such notice is required to carry out the duties of the commission.

§ 4. Subdivision 4 of section 46 of the correction law, as amended by chapter 322 of the laws of 2021, is amended and two new subdivisions 5 and 6 are added to read as follows:

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 correctional facility or the care, treatment and discipline of its

1 incarcerated individuals, are being or are about to be violated, the
2 commission shall immediately notify the person in charge or control of
3 the facility of such violation, recommend remedial action, and direct
4 such person to comply with the rule, regulation or law, as the case may
5 be. The commission shall also immediately notify the governor, the
6 chair and members of the assembly standing committee on correction, and
7 the chair and members of the senate standing committee on crime victims,
8 crime, and correction, of the alleged or documented violation and the
9 remedial action that the commission recommends. Upon the failure of such
10 person to comply with the rule, regulation or law the commission [~~may~~]
11 shall promptly apply to the supreme court for an order directed to such
12 person requiring compliance with such rule, regulation or law; provided,
13 however, that if the commission decides to close a facility pursuant to
14 section forty-five of this article, the commission shall not be required
15 to apply for an order. Upon such application the court [~~may~~] shall issue
16 such order as may be just and a failure to comply with the order of the
17 court shall be a contempt of court and punishable as such.

18 5. (a) In any case where there is a reasonably foreseeable risk that
19 conditions at a correctional facility might violate the constitutional
20 rights of people incarcerated there, cause imminent harm to any incar-
21 cerated person, or cause the imminent death of any incarcerated person,
22 the commission shall be required to order the closure of such correc-
23 tional facility pursuant to subdivision eight of section forty-five of
24 this article. Such correctional facility shall remain closed permanently
25 or until the commission has determined that such correctional facility
26 can resume operations in compliance with all regulations promulgated by
27 the commission and without posing any reasonably foreseeable harm to any
28 person incarcerated there. The commission shall not need to apply for a
29 court order pursuant to subdivision four of this section before deciding
30 to close a correctional facility. Failure to take action pursuant to
31 this subdivision or subdivision four of this section shall constitute
32 neglect of a ministerial matter. For the purposes of this subdivision,
33 "ministerial matter" shall have the same meaning as such term is defined
34 in paragraph (d) of subdivision one of section seventy-three of the
35 public officers law.

36 (b) Upon a recommendation made by the governor or the attorney gener-
37 al, or upon a resolution passed in the assembly or senate, or upon the
38 request of a considerable number of people incarcerated in any correc-
39 tional facility or particular wing, annex, or housing unit thereof,
40 asking the commission to inspect any correctional facility and recommend
41 remedial actions or close a correctional facility pursuant to powers
42 granted in section forty-five of this article, the commission shall
43 discuss such matter at the next stated meeting to occur after ten busi-
44 ness days, provided that such meeting occurs within forty-five days of
45 such request. The commission shall inspect the correctional facility or
46 facilities in question, collect any relevant documents, and conduct any
47 interviews of incarcerated people, staff, medical providers, and super-
48 visors at such correctional facility prior to such meeting and make the
49 result of its inspection and analysis public online before its next
50 stated meeting. Such analysis shall, at a minimum, include a description
51 of the factors contained in subdivision three of section forty-five of
52 this article. At such meeting, the commission shall determine whether,
53 based on its inspection and analysis, the correctional facility lacks
54 compliance with any law or regulation promulgated by the commission, and
55 whether such non-compliance poses an imminent harm to any incarcerated
56 person in the custody of that correctional facility. At such stated

1 meeting the commission shall state on the record the reasoning underly-
2 ing its determination to take no action, recommend remedial action,
3 apply to the supreme court for an order, or order the closure of a
4 facility.

5 6. (a) Twice per year, at intervals separated by approximately six
6 months, the commission shall publish a report containing the results of
7 its annual inspections of correctional facilities in a prominent place
8 on its website, and shall deliver a copy of such report to the governor,
9 the temporary president of the senate, the speaker of the assembly, and
10 the attorney general. Such reports shall contain, without limitation,
11 detailed information about any violations of regulations or applicable
12 laws at each correctional facility inspected, notable excerpts from
13 interviews with incarcerated people, staff, medical providers, and
14 supervisors at each facility, descriptions of deaths or serious injuries
15 that have occurred at any correctional facility that was inspected,
16 copies of recommendations or directives that have been issued by the
17 commission to any correctional facility during the period of time
18 covered by the report, and copies of any correctional facility's
19 response to such recommendations or directives.

20 (b) As soon as the commission completes an investigation of a death or
21 serious injury suffered by an incarcerated person in the custody of a
22 correctional facility, the commission shall publish on its website a
23 report containing the result of such investigation, including without
24 limitation the complete result of the commission's investigation of such
25 incident, true and correct copies of records that the commission has
26 received from such facility in connection with its investigation of such
27 incident, a determination as to whether conditions in the correctional
28 facility or the quality of medical care or supervision that the incar-
29 cerated person received were contributing factors or related to the
30 cause of death, and a list of regulations or applicable laws that may
31 have been violated in proximate relation to such incident. The commis-
32 sion shall also cause such report to be delivered to the next-of-kin or
33 authorized legal representative of such incarcerated person. Such
34 reports shall not be redacted except as otherwise required to protect
35 confidential medical records and behavioral health records in accord-
36 ance with state and federal laws, rules, and regulations.

37 (c) The commission may publish information contained in its reports,
38 data on deaths or serious injuries of incarcerated people at correction-
39 al facilities, and information on uncured violations of laws and regu-
40 lations at any correctional facility in a searchable database format on
41 its website if the commission determines that such a format will facili-
42 tate greater public access to such information.

43 (d) If, in the course of the commission's investigations or
44 inspections, the commission finds evidence of a pattern of malfeasance,
45 nonfeasance, abuse, or negligence on the part of staff or management at
46 any correctional facility, the commission shall immediately report such
47 evidence to the attorney general and the district attorney for the coun-
48 ty in which such correctional facility is located, and such evidence
49 shall be published within the reports issued by the commission pursuant
50 to paragraph (a) of this subdivision.

51 § 5. Section 43 of the correction law, as added by chapter 865 of the
52 laws of 1975, subdivisions 1 and 2 as amended by chapter 379 of the laws
53 of 1988, is amended to read as follows:

54 § 43. Correction medical review board; organization. 1. There shall be
55 within the commission a correction medical review board. It shall
56 consist of six persons to be appointed by the [governor] commissioner of

1 the department of health by and with the advice and consent of the
2 senate. In addition, the governor shall designate one of the full-time
3 members other than the chairman of the commission and the chairman of
4 the council as chairman of the board to serve as such at the pleasure of
5 the governor. Of the appointed members of the board one shall be a
6 physician duly licensed to practice in this state; one shall be a physi-
7 cian duly licensed to practice in this state and a board certified
8 forensic pathologist; one shall be a physician duly licensed to practice
9 in this state and shall be a board certified forensic psychiatrist; one
10 shall be an attorney admitted to practice in this state; two shall be
11 members appointed at large.

12 2. The six appointed members of the board shall hold office for five
13 years; provided that of the two members first appointed, after December
14 thirty-first, nineteen hundred eighty-seven who are not appointed to
15 succeed any other member of the board, one shall be appointed for a term
16 of four years and one shall be appointed for a term of five years from
17 January first next succeeding their appointment. Any appointed member
18 of the board may be removed by the governor for cause after an opportu-
19 nity to be heard in his or her defense.

20 3. Any member chosen to fill a vacancy created other than by expira-
21 tion of term shall be appointed for the unexpired term of the member
22 whom he or she is to succeed. Vacancies caused by expiration of term or
23 otherwise shall be filled in the same manner as original appointments;
24 provided, however, that if a position on the board remains vacant for
25 any period longer than one hundred eighty days, the members of the board
26 may appoint an individual to fill such vacancy whose appointment satis-
27 fies the requirements of subdivision one of this section.

28 4. The members of the board shall [~~receive no compensation for their~~
29 ~~services but each member shall be entitled to receive his actual and~~
30 ~~necessary expenses incurred in the performance of his duties~~] devote
31 full-time to their duties and shall hold no other salaried public posi-
32 tion.

33 § 6. Section 47 of the correction law, as amended by chapter 322 of
34 the laws of 2021, is amended to read as follows:

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

37 (a) Investigate and review the cause and circumstances surrounding the
38 death or serious injury of any incarcerated individual of a correctional
39 facility.

40 (b) Visit and inspect any correctional facility wherein an incarcerat-
41 ed individual has died or suffered a serious injury.

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

46 (d) Upon review of the cause of death or serious injury and circum-
47 stances surrounding the death or serious injury of any incarcerated
48 individual, the board shall submit its report thereon to the commission
49 and to the governor, the chairman of the assembly committee on
50 correction and the chairman of the senate committee on crime victims,
51 crime and correction and, where appropriate, make recommendations to
52 prevent the recurrence of such deaths or serious injuries to the commis-
53 sion and the administrator of the appropriate correctional facility. The
54 report provided to the governor, the chairman of the assembly committee
55 on correction and the chairman of the senate committee on crime victims,
56 crime and correction shall not be redacted except as otherwise required

1 to protect confidential medical records and behavioral health records in
2 accordance with state and federal laws, rules, and regulations.

3 (e) (i) Investigate and report to the commission on the condition of
4 systems for the delivery of medical care to incarcerated individuals of
5 correctional facilities and where appropriate recommend such changes as
6 it shall deem necessary and proper to improve the quality and availabil-
7 ity of such medical care.

8 (ii) The board shall be responsive to inquiries from the next of kin
9 and other person designated as a representative of any incarcerated
10 individual whose death or serious injury takes place during custody in a
11 state correctional facility regarding the circumstances surrounding the
12 death or serious injury of such incarcerated individual. Contact infor-
13 mation for the next of kin and designated representative shall be
14 provided by the department to the board from the emergency contact
15 information previously provided by the incarcerated individual to the
16 department.

17 2. Every administrator of a correctional facility shall immediately
18 report to the board the death or serious injury of an incarcerated indi-
19 vidual of any such facility in such manner and form as the board shall
20 prescribe, together with an autopsy report, or in cases of serious inju-
21 ry a physician's report.

22 § 7. This act shall take effect immediately.