

# STATE OF NEW YORK

1757

2021-2022 Regular Sessions

## IN SENATE

January 14, 2021

Introduced by Sens. SEPULVEDA, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, COMRIE, FELDER, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SERRANO, STAVISKY, THOMAS -- 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 restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

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

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

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

15 § 2. Section 2 of the correction law is amended by adding two new  
16 subdivisions 33 and 34 to read as follows:

17 33. "Special populations" means any person: (a) twenty-one years of  
18 age or younger; (b) fifty-five years of age or older; (c) with a disa-  
19 bility as defined in paragraph (a) of subdivision twenty-one of section

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

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1 two hundred ninety-two of the executive law; or (d) who is pregnant, in  
2 the first eight weeks of the post-partum recovery period after giving  
3 birth, or caring for a child in a correctional institution pursuant to  
4 subdivisions two or three of section six hundred eleven of this chapter.

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

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

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

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

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

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

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

53 (C) At the initial assessment, if the mental health clinician finds  
54 that an inmate suffers from a serious mental illness, that person shall  
55 be diverted or removed from segregated confinement or a residential  
56 rehabilitation unit and a recommendation shall be made whether excep-

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

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

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

49 (iii) Inmates with serious mental illness who are not diverted or  
50 removed from [~~segregated confinement~~] a residential rehabilitation unit  
51 shall be offered a heightened level of mental health care, involving a  
52 minimum of [~~two~~] three hours [~~each day, five days a week,~~] daily of  
53 out-of-cell therapeutic treatment and programming. This heightened level  
54 of care shall not be offered only in the following circumstances:

55 (A) The heightened level of care shall not apply when an inmate with  
56 serious mental illness does not, in the reasonable judgment of a mental

1 health clinician, require the heightened level of care. Such determi-  
2 nation shall be documented with a written statement of the basis of such  
3 determination and shall be reviewed by the Central New York Psychiatric  
4 Center clinical director or his or her designee. Such a determination is  
5 subject to change should the inmate's clinical status change. Such  
6 determination shall be reviewed and documented by a mental health clini-  
7 cian every thirty days, and in consultation with the Central New York  
8 Psychiatric Center clinical director or his or her designee not less  
9 than every ninety days.

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

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

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

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

49 (h) Persons in a special population as defined in subdivision thirty-  
50 three of section two of this chapter shall not be placed in segregated  
51 confinement for any length of time, except in keeplock for a period  
52 prior to a disciplinary hearing pursuant to paragraph (l) of this subdi-  
53 vision. Individuals in a special population who are in keeplock prior  
54 to a disciplinary hearing shall be given seven hours a day out-of-cell  
55 time or shall be transferred to a residential rehabilitation unit or  
56 residential mental health treatment unit as expeditiously as possible,

1 but in no case longer than forty-eight hours from the time an individual  
2 is admitted to keeplock.

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

16 (j) (i) All segregated confinement and residential rehabilitation  
17 units shall create the least restrictive environment necessary for the  
18 safety of incarcerated persons, staff, and the security of the facility.

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

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

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

48 (v) An incarcerated person in a residential rehabilitation unit shall  
49 have access to programs and work assignments comparable to core programs  
50 and work assignments in general population. Such incarcerated persons  
51 shall also have access to additional out-of-cell, trauma-informed thera-  
52 peutic programming aimed at promoting personal development, addressing  
53 underlying causes of problematic behavior resulting in placement in a  
54 residential rehabilitation unit, and helping prepare for discharge from  
55 the unit and to the community.

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

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

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

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

52 (A) causing or attempting to cause serious physical injury or death to  
53 another person or making an imminent threat of such serious physical  
54 injury or death if the person has a history of causing such physical  
55 injury or death and the commissioner and, when appropriate, the commis-  
56 sioner of mental health or their designees reasonably determine that

1 there is a strong likelihood that the person will carry out such threat.  
2 The commissioner of mental health or his or her designee shall be  
3 involved in such determination if the person is or has been on the  
4 mental health caseload or appears to require psychiatric attention. The  
5 department and the office of mental health shall promulgate rules and  
6 regulations pertaining to this clause;

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

9 (C) extorting another, by force or threat of force, for property or  
10 money;

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

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

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

19 (G) escaping, attempting to escape or facilitating an escape from a  
20 facility or escaping or attempting to escape while under supervision  
21 outside such facility.

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

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

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

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

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

55 (ii) If an incarcerated person has not been discharged from a residen-  
56 tial rehabilitation unit within one year of initial admission to such a

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

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

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

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

51 (o) The department shall publish monthly reports on its website, with  
52 semi-annual and annual cumulative reports, of the total number of people  
53 who are in segregated confinement and the total number of people who are  
54 in residential rehabilitation units on the first day of each month. The  
55 reports shall provide a breakdown of the number of people in segregated  
56 confinement and in residential rehabilitation units by: (i) age; (ii)



1 race; (iii) gender; (iv) mental health treatment level; (v) special  
2 health accommodations or needs; (vi) need for and participation in  
3 substance abuse programs; (vii) pregnancy status; (viii) continuous  
4 length of stay in residential treatment units as well as length of stay  
5 in the past sixty days; (ix) number of days in segregated confinement;  
6 (x) a list of all incidents resulting in sanctions of segregated  
7 confinement by facility and date of occurrence; (xi) the number of  
8 incarcerated persons in segregated confinement by facility; and (xii)  
9 the number of incarcerated persons in residential rehabilitation units  
10 by facility.

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

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

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

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

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

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

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

54 (i) In exceptional circumstances, a mental health clinician, or the  
55 highest ranking facility security supervisor in consultation with a  
56 mental health clinician who has interviewed the inmate, may determine

1 that an inmate's access to out-of-cell therapeutic programming and/or  
2 mental health treatment in a residential mental health treatment unit  
3 presents an unacceptable risk to the safety of inmates or staff. Such  
4 determination shall be documented in writing and such inmate shall be  
5 removed to a residential rehabilitation unit that is not a residential  
6 mental health treatment unit where alternative mental health treatment  
7 and/or other therapeutic programming, as determined by a mental health  
8 clinician, shall be provided.

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

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

30 (b) The joint case management committee shall review any disciplinary  
31 disposition imposing a sanction of segregated confinement at its next  
32 scheduled meeting. Such review shall take into account the inmate's  
33 mental condition and safety and security concerns. The joint case  
34 management committee may only thereafter recommend the removal of the  
35 inmate in exceptional circumstances where the inmate commits an act or  
36 acts defined in subparagraph (ii) of paragraph (k) of subdivision six of  
37 section one hundred thirty-seven of this chapter and poses a significant  
38 and unreasonable risk to the safety of inmates or staff or to the secu-  
39 rity of the facility. In the event that the inmate was immediately moved  
40 to segregated confinement, the joint case management committee may  
41 recommend that the inmate continue to serve such sanction only in excep-  
42 tional circumstances where the inmate commits an act or acts defined in  
43 subparagraph (ii) of paragraph (k) of subdivision six of section one  
44 hundred thirty-seven of this chapter and poses a significant and unrea-  
45 sonable risk to the safety of inmates or staff or to the security of the  
46 facility. If a determination is made that the inmate shall not be  
47 required to serve all or any part of the segregated confinement sanc-  
48 tion, the joint case management committee may instead recommend that a  
49 less restrictive sanction should be imposed. The recommendations made by  
50 the joint case management committee under this paragraph shall be docu-  
51 mented in writing and referred to the superintendent for review and if  
52 the superintendent disagrees, the matter shall be referred to the joint  
53 central office review committee for a final determination. The adminis-  
54 trative process described in this paragraph shall be completed within  
55 fourteen days. If the result of such process is that an inmate who was  
56 immediately transferred to [~~segregated confinement~~] a residential reha-

1 bilitation unit should be removed from [~~segregated confinement~~] such  
2 unit, such removal shall occur as soon as practicable, and in no event  
3 longer than seventy-two hours from the completion of the administrative  
4 process.

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

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

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

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

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

43 18. Assess compliance of local correctional facilities with the terms  
44 of paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) of subdivision  
45 six of section one hundred thirty-seven of this chapter. The commission  
46 shall issue a public report regarding all aspects of segregated confine-  
47 ment and residential rehabilitation units at least annually with recom-  
48 mendations to local correctional facilities, the governor, the legisla-  
49 ture, including but not limited to policies and practices regarding: (a)  
50 placement of persons; (b) special populations; (c) length of time spent  
51 in segregated confinement and residential treatment units; (d) hearings  
52 and procedures; (e) conditions, programs, services, care, and treatment;  
53 and (f) assessments, rehabilitation plans, and discharge procedures.

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

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

10 2. Notwithstanding any other section of law to the contrary, subdivi-  
11 sion thirty-four of section two of this chapter, and subparagraphs (i),  
12 (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of  
13 subdivision six of section one hundred thirty-seven of this chapter  
14 shall not apply to local correctional facilities with a total combined  
15 capacity of five hundred inmates or fewer.

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