

STATE OF NEW YORK

2277--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. AUBRY, STIRPE, EPSTEIN, REYES, ZEBROWSKI, FERNANDEZ, SAYEGH, TAYLOR, QUART, D. ROSENTHAL, FALL, EICHENSTEIN, CRUZ, DARLING, NIOU, FRONTUS, HEVESI, DE LA ROSA, WEPRIN, JACOBSON, DICKENS, BURGOS, ANDERSON, KELLES, GONZALEZ-ROJAS, GALLAGHER, BURDICK, MITAYNES, MEEKS, JACKSON, FORREST, MAMDANI -- Multi-Sponsored by -- M. of A. ABINANTI, BARRETT, BARRON, BENEDETTO, BICHOTTE HERMELYN, BRONSON, CAHILL, CARROLL, COLTON, COOK, CUSICK, DAVILA, DILAN, DINOWITZ, ENGLEBRIGHT, FAHY, GALEF, GLICK, GOTTFRIED, HUNTER, HYNDMAN, JEAN-PIERRE, JOYNER, KIM, LAVINE, LUPARDO, OTIS, PEOPLES-STOKES, PERRY, PICHARDO, PRETLOW, RAMOS, RICHARDSON, J. RIVERA, RODRIGUEZ, L. ROSENTHAL, ROZIC, SEAWRIGHT, SIMON, SOLAGES, STECK, THIELE, VANEL, WALKER, ZINERMAN -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 the correctional facility or in as close proximity to a medical or
2 mental health unit as possible.

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

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

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

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

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

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

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

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

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

1 three or level four facility shall be assessed by a mental health clinician, within [~~fourteen~~ seven] days of such placement into segregated confinement.

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

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

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

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

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

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

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

~~(v)~~ All inmates in segregated confinement in a level one or level two facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within ~~[fourteen]~~ seven days of their initial mental health assessment, ~~[and additional interviews at least every thirty days thereafter,]~~ unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All inmates in ~~[segregated confinement]~~ a residential rehabilitation unit in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within thirty days of their initial mental health assessment, and additional interviews at least every ninety days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

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

1 (h) Persons in a special population as defined in subdivision thirty-
2 three of section two of this chapter shall not be placed in segregated
3 confinement for any length of time, except in keeplock for a period
4 prior to a disciplinary hearing pursuant to paragraph (l) of this subdi-
5 vision. Individuals in a special population who are in keeplock prior
6 to a disciplinary hearing shall be given seven hours a day out-of-cell
7 time or shall be transferred to a residential rehabilitation unit or
8 residential mental health treatment unit as expeditiously as possible,
9 but in no case longer than forty-eight hours from the time an individual
10 is admitted to keeplock.

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

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

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

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

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

1 (v) An incarcerated person in a residential rehabilitation unit shall
2 have access to programs and work assignments comparable to core programs
3 and work assignments in general population. Such incarcerated persons
4 shall also have access to additional out-of-cell, trauma-informed thera-
5 peutic programming aimed at promoting personal development, addressing
6 underlying causes of problematic behavior resulting in placement in a
7 residential rehabilitation unit, and helping prepare for discharge from
8 the unit and to the community.

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

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

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

50 (ii) The department may place a person in segregated confinement
51 beyond the limits of subparagraph (i) of this paragraph or in a residen-
52 tial rehabilitation unit only if, pursuant to an evidentiary hearing, it
53 determines by written decision that the person committed one of the
54 following acts and if the commissioner or his or her designee determines
55 in writing based on specific objective criteria the acts were so heinous
56 or destructive that placement of the individual in general population

1 housing creates a significant risk of imminent serious physical injury
2 to staff or other incarcerated persons, and creates an unreasonable risk
3 to the security of the facility:

4 (A) causing or attempting to cause serious physical injury or death to
5 another person or making an imminent threat of such serious physical
6 injury or death if the person has a history of causing such physical
7 injury or death and the commissioner and, when appropriate, the commis-
8 sioner of mental health or their designees reasonably determine that
9 there is a strong likelihood that the person will carry out such threat.
10 The commissioner of mental health or his or her designee shall be
11 involved in such determination if the person is or has been on the
12 mental health caseload or appears to require psychiatric attention. The
13 department and the office of mental health shall promulgate rules and
14 regulations pertaining to this clause;

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

17 (C) extorting another, by force or threat of force, for property or
18 money;

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

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

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

27 (G) escaping, attempting to escape or facilitating an escape from a
28 facility or escaping or attempting to escape while under supervision
29 outside such facility.

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

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

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

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

1 (m) (i) Any sanction imposed on an incarcerated person requiring
2 segregated confinement shall run while the person is in a residential
3 rehabilitation unit and the person shall be discharged from the unit
4 before or at the time such sanction expires. If a person successfully
5 completes his or her rehabilitation plan before the sanction expires,
6 the person shall have a right to be discharged from the unit upon such
7 completion.

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

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

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

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

1 limited to, the physical and psychological effects of segregated
2 confinement, procedural and due process rights of the accused, and
3 restorative justice remedies.

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

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

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

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

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

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

52 The residential mental health treatment units shall also provide the
53 additional mental health treatment, services, and programming delineated
54 in this section. The administration and operation of programs estab-
55 lished pursuant to this section shall be the joint responsibility of the
56 commissioner of mental health and the commissioner. The professional

1 mental health care personnel, and their administrative and support
2 staff, for such programs shall be employees of the office of mental
3 health. All other personnel shall be employees of the department.

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

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

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

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

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

tion, the joint case management committee may instead recommend that a less restrictive sanction should be imposed. The recommendations made by the joint case management committee under this paragraph shall be documented in writing and referred to the superintendent for review and if the superintendent disagrees, the matter shall be referred to the joint central office review committee for a final determination. The administrative process described in this paragraph shall be completed within fourteen days. If the result of such process is that an inmate who was immediately transferred to [~~segregated confinement~~] a residential rehabilitation unit should be removed from [~~segregated confinement~~] such unit, such removal shall occur as soon as practicable, and in no event longer than seventy-two hours from the completion of the administrative process.

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

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

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

4. The justice center shall assess the department's compliance with the provisions of sections two, one hundred thirty-seven, and one hundred thirty-eight of this chapter relating to segregated confinement and residential rehabilitation units and shall issue a public report, no less than annually, with recommendations to the department and legislature, regarding all aspects of segregated confinement and residential rehabilitation units in state correctional facilities including but not limited to policies and practices concerning: (a) placement of persons in segregated confinement and residential rehabilitation units; (b) special populations; (c) length of time spent in such units; (d) hearings and procedures; (e) programs, treatment and conditions of confinement in such units; and (f) assessments and rehabilitation plans, procedures and discharge determinations.

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

18. Assess compliance of local correctional facilities with the terms of paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) of subdivision six of section one hundred thirty-seven of this chapter. The commission shall issue a public report regarding all aspects of segregated confinement and residential rehabilitation units at least annually with recom-

1 mendations to local correctional facilities, the governor, the legisla-
2 ture, including but not limited to policies and practices regarding: (a)
3 placement of persons; (b) special populations; (c) length of time spent
4 in segregated confinement and residential treatment units; (d) hearings
5 and procedures; (e) conditions, programs, services, care, and treatment;
6 and (f) assessments, rehabilitation plans, and discharge procedures.

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

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

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

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