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:

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

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

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

§ 41. State commission of correction; organization. 1. **(a)** There shall be within the executive department a state commission of correction. It shall consist of [~~three~~] **nine** persons [~~to be~]**, two of whom shall be appointed by the governor[~~, by and with the advice and consent of the senate~~]**, two of whom shall be appointed by a majority vote of the membership of the assembly, two of whom shall be appointed by a majority vote of the membership of the senate, two of whom shall be appointed by the attorney general, and one of whom shall be appointed by the correctional association. All appointments shall be by and with the advice and consent of the senate to ensure the requirements of this subdivision are met.**

(b) At least one member of the commission shall be a formerly incarcerated person, and a preference in appointment shall be granted to nominees who have been personally affected by contact with the criminal 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

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

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

(b) Upon a recommendation made by the governor or the attorney general, or upon a resolution passed in the assembly or senate, or upon the request of a considerable number of people incarcerated in any correctional facility or particular wing, annex, or housing unit thereof, asking the commission to inspect any correctional facility and recommend remedial actions or close a correctional facility pursuant to powers granted in section forty-five of this article, the commission shall discuss such matter at the next stated meeting to occur after ten business days, provided that such meeting occurs within forty-five days of such request. The commission shall inspect the correctional facility or facilities in question, collect any relevant documents, and conduct any interviews of incarcerated people, staff, medical providers, and supervisors at such correctional facility prior to such meeting and make the result of its inspection and analysis public online before its next stated meeting. Such analysis shall, at a minimum, include a description of the factors contained in subdivision three of section forty-five of this article. At such meeting, the commission shall determine whether, based on its inspection and analysis, the correctional facility lacks compliance with any law or regulation promulgated by the commission, and whether such non-compliance poses an imminent harm to any incarcerated person in the custody of that correctional facility. At such stated

meeting the commission shall state on the record the reasoning underlying its determination to take no action, recommend remedial action, apply to the supreme court for an order, or order the closure of a facility.

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

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

(c) The commission may publish information contained in its reports, data on deaths or serious injuries of incarcerated people at correctional facilities, and information on uncured violations of laws and regulations at any correctional facility in a searchable database format on its website if the commission determines that such a format will facilitate greater public access to such information.

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

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

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

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

2. The six appointed members of the board shall hold office for five years; provided that of the two members first appointed, after December thirty-first, nineteen hundred eighty-seven who are not appointed to succeed any other member of the board, one shall be appointed for a term of four years and one shall be appointed for a term of five years from January first next succeeding their appointment. Any appointed member of the board 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 board remains vacant for any period longer than one hundred eighty days, the members of the board may appoint an individual to fill such vacancy whose appointment satisfies the requirements of subdivision one of this section**.

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

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

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

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

(b) Visit and inspect any correctional facility wherein an incarcerated individual has died **or suffered a serious injury**.

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

(d) Upon review of the cause of death **or serious injury** and circumstances surrounding the death **or serious injury** of any incarcerated individual, the board shall submit its report thereon to the commission and to the governor, the chairman of the assembly committee on correction and the chairman of the senate committee on crime victims, crime and correction and, where appropriate, make recommendations to prevent the recurrence of such deaths **or serious injuries** to the commission and the administrator of the appropriate correctional facility. The report provided to the governor, the chairman of the assembly committee on correction and the chairman of the senate committee on crime victims, crime and correction shall not be redacted except as otherwise required

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

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

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

2. Every administrator of a correctional facility shall immediately report to the board the death **or serious injury** of an incarcerated individual of any such facility in such manner and form as the board shall prescribe, together with an autopsy report**, or in cases of serious injury a physician's report**.

§ 7. This act shall take effect immediately.