

STATE OF NEW YORK

905--A

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. O'DONNELL, WEPRIN, BENEDETTO, ROZIC, LAVINE, CAHILL, ABINANTI, WALKER, REYES, EPSTEIN, GONZALEZ-ROJAS -- Multi-Sponsored by -- M. of A. GLICK, NOLAN, SIMON -- 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 creating the office of the correctional ombudsman; to amend the county law, in relation to reports by coroners; to amend the criminal procedure law, in relation to designating investigators of the office of the correctional ombudsman as peace officers; to amend the education law, in relation to the certification of incarcerated individual populations; to amend the executive law, in relation to authorizing the attorney general to investigate the alleged commission of any criminal offense committed by an employee of the department of corrections and community supervision in connection with his or her official duties; to amend the executive law, in relation to the division of criminal justice services; to amend the mental hygiene law, in relation to clinical records; to amend the public health law, in relation to the confidentiality of certain records; to amend the public officers law, in relation to including the office of the correctional ombudsman records within the definition of public safety agency records; and to amend the social services law, in relation to inspection and supervision

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

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

3 ARTICLE 3-A
4 OFFICE OF THE CORRECTIONAL OMBUDSMAN

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

LBD04476-02-2

1 Section 50. Definitions.

2 51. Office of the correctional ombudsman; organization.

3 52. Correctional oversight board.

4 53. Powers of the ombudsman.

5 54. Additional functions, powers and duties of the office of the
6 ombudsman.

7 55. Additional duties of the department and local correctional
8 facilities.

9 56. Obstructing an investigation by the correctional ombudsman.

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

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

13 2. "Ombudsman" refers to the commissioner of the office of the correc-
14 tional ombudsman.

15 § 51. Office of the correctional ombudsman; organization. In order to
16 achieve transparency, fairness, impartiality and accountability in our
17 state and local correctional facilities, there shall be an independent
18 office of the correctional ombudsman within the executive department.
19 The ombudsman shall report to the correctional oversight board estab-
20 lished pursuant to section fifty-two of this article, provided, however,
21 that administrative matters of general application within the executive
22 department shall be also applicable to the office.

23 1. Following the initial appointment of the members of the correction-
24 al oversight board established pursuant to section fifty-two of this
25 article, such board shall promptly nominate a full-time ombudsman and
26 notify the governor of such nomination. Nothing in this subdivision
27 shall prohibit the board from appointing an interim ombudsman if there
28 is a vacancy.

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

45 3. The ombudsman may not have worked for the department or for any
46 local correctional facility within the last ten years and may not hold
47 any public office or other employment. The ombudsman shall serve a six-
48 year term and may only be removed for good cause shown, after notice and
49 an opportunity to be heard, by a vote of two-thirds or more of the
50 twelve members of the board.

51 § 52. Correctional oversight board. 1. There is hereby created the
52 correctional oversight board hereinafter referred to in this section as
53 the "board". The purpose of such board shall be to monitor, study and
54 make efforts to improve the transparency, fairness, impartiality and
55 accountability in state and local correctional facilities and to appoint
56 the ombudsman. No current employee of the department or an employee of

1 any local correctional facility shall be appointed to or serve on such
2 board. The board shall consist of twelve members who shall be appointed
3 as follows:

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

5 (b) two shall be appointed by the governor on the recommendation of
6 the senate;

7 (c) two shall be appointed by the governor on the recommendation of
8 the assembly;

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

12 (e) one shall be appointed by the governor and shall be a former state
13 incarcerated individual;

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

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

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

19 (i) one shall be a mental health professional who works with the
20 justice center for the protection of people with special needs appointed
21 by the governor.

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

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

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

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

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

7. The board shall make recommendations to the ombudsman for the improvement of the department's policies and consult with and advise the office of the correctional ombudsman in carrying out the duties and responsibilities of such office. The ombudsman shall report to the board fully on the activities of the office and shall seek board approval on all major decisions or policy changes, including any standards or protocols adopted by the ombudsman for the inspection and monitoring of correctional facilities or the resolution of complaints received by the office.

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

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

2. The office of the ombudsman shall not be located in the same building or buildings as the department but shall be wholly independent of the department except that the department shall provide it with office space, equipment and furnishings within any department facility as needed to carry out its functions and duties.

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

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

5. The ombudsman may request and shall receive from any department, division, bureau, commission or any other agency of the state or any municipality or political subdivision thereof or any public authority such assistance, information and data as will enable the office to carry out its functions, powers and duties.

6. The ombudsman shall be responsible for the contemporaneous public oversight of internal affairs and the disciplinary process of the department of corrections and community supervision. The ombudsman shall have discretion to provide oversight of any department investigation relating to the well-being, treatment, discipline, safety or any other matter concerning incarcerated individuals or persons under community supervision as needed, including personnel investigations.

7. The ombudsman may review specific policies, practices, programs and procedures of the department and of all local correctional facilities that raise a significant correctional issue relevant to the well-being, treatment, discipline, safety, rehabilitation or any other matter concerning incarcerated individuals or persons under community supervision. The ombudsman is authorized to inspect, investigate or examine all aspects of the department's operations and conditions, and of such

1 operations and conditions of any local correctional facility, including,
2 but not limited to, staff recruitment, training, supervision, disci-
3 pline, incarcerated individuals deaths, medical and mental health care,
4 use of force, incarcerated individual violence, conditions of confine-
5 ment, incarcerated individuals disciplinary process, incarcerated indi-
6 viduals grievance process, substance-abuse treatment, educational, voca-
7 tional and other programming and re-entry planning. During the course of
8 a review the ombudsman shall identify areas of full and partial compli-
9 ance or noncompliance with departmental or local correctional facility
10 policies and procedures, specify deficiencies in the completion and
11 documentation of processes and recommend corrective actions, including,
12 but not limited to, additional training, additional policies or changes
13 in policies, as well as any other findings or recommendations he or she
14 deems appropriate.

15 8. The ombudsman may place such members of his or her staff as he or
16 she deems appropriate as monitors in any correctional facility which, in
17 the judgment of the ombudsman, presents an imminent danger to the
18 health, safety or security of incarcerated individuals or employees of
19 such correctional facility or the public.

20 9. The ombudsman shall accept, with the approval of the governor, as
21 agent of the state any grant, including federal grants, or any gift for
22 any of the purposes of this article. Any moneys so received may be
23 expended by the ombudsman to effectuate any purpose of this article,
24 subject to the same limitations as to approval of expenditures and audit
25 as are prescribed for state moneys appropriated for the purposes of this
26 article.

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

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

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

36 13. When exigent circumstances of unsafe or life threatening situ-
37 ations arise involving incarcerated individuals, staff, people on commu-
38 nity supervision or other individuals, the ombudsman shall notify the
39 governor, the temporary president of the senate and the speaker of the
40 assembly and commence an immediate review of such circumstances. Upon
41 completion of a review, the ombudsman shall prepare a complete written
42 report which shall be disclosed with the underlying materials that the
43 ombudsman deems appropriate to the commissioner, the requesting entity
44 and any appropriate law enforcement agency.

45 14. (a) The ombudsman shall interview and review all candidates for
46 appointment to serve as the superintendent of any state correctional
47 facility. The commissioner shall submit the names of such candidates to
48 the ombudsman who shall review such candidates' qualifications and
49 employ confidential procedures to evaluate the qualifications of each
50 candidate with regard to his or her ability to discharge the duties of
51 the office to which he or she is being appointed. Within ninety days of
52 the submission of a candidate's name, the ombudsman shall confidentially
53 advise the commissioner as to whether such candidate is well-qualified,
54 qualified or not qualified and the reasons therefor and may report, in
55 confidence, any other information that the ombudsman deems pertinent to
56 the qualification of the candidate. The ombudsman shall establish and

1 adopt rules and procedures regarding the review of candidates for the
2 position of superintendent and for maintaining the confidentiality of
3 any interviews, documents or other information relied upon in his or her
4 review. All such information shall be privileged and not subject to
5 disclosure.

6 (b) If the commissioner appoints a superintendent who the ombudsman
7 found was not qualified, the ombudsman shall make public that finding
8 after due notice to the appointee. Any candidate found to be not quali-
9 fied by the ombudsman shall have the right to withdraw from consider-
10 ation before the ombudsman makes such public finding and in that case
11 the finding shall not be published. Such notice and public finding
12 shall not constitute a waiver of privilege or breach of confidentiality
13 concerning the ombudsman's review of the appointee's qualifications
14 pursuant to this section.

15 15. Notwithstanding any law to the contrary, the ombudsman shall
16 periodically, but not less than every three years, conduct inspections
17 of each state and local correctional facility and shall periodically
18 review delivery of medical and mental health care at each correctional
19 facility. The ombudsman shall issue a public report on each correction-
20 al facility at least every three years. The ombudsman need not notify
21 the department or any local correctional facility before commencing such
22 inspection or review.

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

32 17. Notwithstanding any other provision of the law the ombudsman shall
33 have complete access and authority to examine and reproduce any and all
34 past and current books, accounts, reports, medical and mental health
35 records, vouchers, correspondence files, computer files, computer data
36 bases, documents, video and audio tape recordings, statistics and
37 performance based outcome measures and any and all other past and
38 current records and to examine the bank accounts, money or property of
39 the department and of any local correctional facility. Any state office
40 or agency of a political subdivision of the state or other public entity
41 or employee or officer thereof possessing such records or property shall
42 permit access to, and examination and reproduction thereof, consistent
43 with the provisions of this article, upon the request of the ombudsman
44 or his or her designee. Access, examination and reproduction consistent
45 with the provision of this section shall not result in the waiver of any
46 confidentiality or privilege regarding any records or property.

47 18. The ombudsman may require any state, county or municipal employee
48 to be interviewed on a confidential basis. Such employee must comply
49 with the request to be interviewed and must be given time off from his
50 or her employment for the purposes of attending such an interview and
51 may be accompanied by counsel acting on his or her behalf. The ombudsman
52 may also conduct a confidential interview of any incarcerated individual
53 or other person upon consent.

54 19. The ombudsman may enter anywhere on the grounds of any department
55 facility or office or local correctional facility for the purposes of

1 observation, inspection and investigation and shall have unfettered
2 access to all areas of the department and any facility at any time.

3 20. The ombudsman may cause the body of a deceased incarcerated indi-
4 vidual to undergo such examinations, including an autopsy, as he or she
5 deems necessary to determine the cause of death, irrespective of whether
6 any such examination or autopsy shall have been previously performed.

7 21. (a) In the exercise of its functions, powers and duties, the
8 ombudsman and any attorney employed by the office is authorized to issue
9 and enforce a subpoena and a subpoena duces tecum, administer oaths and
10 examine persons under oath, in accordance with and pursuant to the civil
11 practice law and rules. A person examined under oath pursuant to this
12 subdivision shall have the right to be accompanied by counsel who shall
13 advise the person of his or her rights subject to reasonable limitations
14 to prevent obstruction of, or interference with, the orderly conduct of
15 the examination. Notwithstanding any other provision of law, a subpoena
16 may be issued and enforced pursuant to this subdivision for the medical
17 records of an incarcerated individual of a correctional facility,
18 regardless of whether such medical records were made during the course
19 of the incarcerated individual's incarceration.

20 (b) In any case where a person in charge or control of a correctional
21 facility or an officer or employee thereof shall fail to comply with the
22 provisions of paragraph (a) of this subdivision, or in any case where a
23 coroner, coroner's physician or medical examiner shall fail to comply
24 with the provisions of subdivision six of section six hundred seventy-
25 seven of the county law, the ombudsman may apply to the supreme court
26 for an order directed to such person requiring compliance therewith.
27 Upon such application the court may issue such order as may be just and
28 a failure to comply with the order of the court shall be a contempt of
29 court and punishable as such.

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

37 23. The ombudsman may hold public hearings.

38 § 54. Additional functions, powers and duties of the office of the
39 ombudsman. 1. The office may receive communications from any individual
40 who believes he or she may have information that may describe improper
41 governmental activities or wrongdoing within the department or any state
42 or local correctional facility. Incarcerated individual mail to and from
43 the ombudsman shall be treated in the same manner as legal mail and may
44 not be restricted by the department, the office of mental health or any
45 other entity.

46 (a) The ombudsman shall establish a toll-free telephone number for the
47 purpose of identifying any alleged wrongdoing by an employee of the
48 department or of any local correctional facility. This telephone number
49 shall be posted by the department and by local correctional facilities
50 in clear view of employees, incarcerated individuals and the public, and
51 incarcerated individuals shall be permitted to call such number during
52 normal hours for telephone usage or within twenty-four hours of admis-
53 sion to a special housing unit or other unit with restricted telephone
54 access. Telephone calls made to such toll-free number from a correction-
55 al facility shall not be recorded by the department or by the local
56 correctional facility and are protected confidential communications. The

1 ombudsman shall also maintain a website with a complaint form that may
2 be filled out online and shall also accept complaints by mail or other
3 means alleging wrongdoing by an employee of the department. When
4 requested, the ombudsman shall initiate a review of any such alleged
5 wrongdoing which may result in an investigation of the alleged wrongdo-
6 ing at the ombudsman's discretion.

7 (b) At the conclusion of an investigation of a complaint, the ombuds-
8 man shall report his or her findings to the complainant and any person
9 designated to receive such findings by the complainant. If the ombudsman
10 does not investigate a complaint, he or she shall notify the complainant
11 and such other person of the decision not to investigate and the reasons
12 for the decision. If the complainant is deceased at the time of the
13 completion of an investigation, the ombudsman shall report his or her
14 findings to the complainant's next of kin when such person is known to
15 the ombudsman or to the department or local correctional facility.

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

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

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

26 2. Upon receiving a complaint of retaliation for complaining to or
27 cooperating with the ombudsman, the ombudsman shall commence an inquiry
28 into the complaint and conduct a formal investigation. Should the
29 ombudsman find that a complaint of retaliation is founded as a result of
30 an investigation, he or she shall so notify the department or local
31 correctional facility and make recommendations for corrective action to
32 be taken by the department or local correctional facility. The ombudsman
33 shall make the results and supporting evidence of its formal investi-
34 gation available to the division of human rights should an employee file
35 a retaliation complaint with such agency and consent to such disclosure
36 in writing.

37 3. To facilitate oversight, the office shall be immediately notified
38 by the department or local correctional facility of all unusual and
39 significant incidences including, but not limited to, riots or fights
40 involving multiple combatants, use of force, incarcerated individuals
41 deaths, serious physical assaults on employees or incarcerated individ-
42 uals, work stoppages and escapes and shall be given monthly aggregated
43 reports of unusual incidents and incarcerated individuals grievances by
44 the department and each local correctional facility. Employees of the
45 office shall be permitted to be present in any department internal
46 investigation or inquiry in any correctional facility. The office shall
47 be responsible for reporting such unusual and significant incidents and
48 the outcome of its investigations into such incidents to the public no
49 less than quarterly.

50 4. (a) The ombudsman shall annually prepare a public report and summa-
51 ry of all investigations and reviews, including a list of significant
52 problems discovered by the office, whether or not the recommendations
53 made by the office have been implemented, and a list of the office's
54 high priorities for the following year. The ombudsman shall submit such
55 report to the governor, the temporary president of the senate, and the
56 speaker of the assembly by December thirty-first of each year. Such

1 report shall be posted in electronic form on the office's public
2 website. The ombudsman shall be authorized to redact portions of such
3 report in a manner consistent with article six of the public officers
4 law or where disclosure is otherwise prohibited by law.

5 (b) Upon review of the cause of death and circumstances surrounding
6 the death of any incarcerated individual in a correctional facility, the
7 ombudsman shall submit its report thereon to the governor, the speaker
8 of the assembly, the temporary president of the senate, the chairperson
9 of the assembly correction committee, the chairperson of the senate
10 crime and correction committee, and the commissioner, and, where appro-
11 priate, make recommendations to prevent the recurrence of such deaths.
12 Such reports shall be published on the office's website and shall other-
13 wise be made available to the public.

14 (c) The ombudsman shall make an annual report to the governor, the
15 speaker of the assembly, the temporary president of the senate, the
16 chairperson of the assembly correction committee and the chairperson of
17 the senate crime and correction committee on the condition of systems
18 for the delivery of medical care to incarcerated individuals of correc-
19 tional facilities and, where appropriate, recommend such changes as it
20 shall deem necessary and proper to improve the quality and availability
21 of such medical care. Such report shall be published on the office's
22 website and shall otherwise be made available to the public.

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

25 § 55. Additional duties of the department and local correctional
26 facilities. 1. State, county, or municipal employees operating within a
27 correctional facility must cooperate fully and promptly with the ombuds-
28 man.

29 2. The department or local correctional facility shall respond in
30 writing to any recommendations made by the ombudsman or his or her
31 designee within forty-five days and shall state with specificity its
32 reasons for failing to act on any such recommendation. Such writings
33 shall be made public by the ombudsman except that information which
34 would reveal confidential material that may not be released pursuant to
35 federal or state law shall be reacted by the ombudsman from any such
36 report or recommendation.

37 3. The commissioner or any sheriff shall immediately report to the
38 ombudsman the death of an incarcerated individual of any such facility
39 in such manner and form as the ombudsman shall prescribe and shall
40 provide him or her with an autopsy report when available.

41 § 56. Obstructing an investigation by the correctional ombudsman. A
42 person is guilty of obstructing an investigation by the correctional
43 ombudsman when, with intent to obstruct or impede an inquiry or investi-
44 gation by the correctional ombudsman appointed pursuant to section
45 fifty-three or fifty-four of this article, he or she knowingly destroys
46 or knowingly fails to permit access to, examination of, or reproduction
47 by the office of such correctional ombudsman, of any book, account, bank
48 account information, report, voucher, correspondence or correspondence
49 file, computer file, computer data base, document, video or audio
50 recording, statistic or performance based outcome measure, money, prop-
51 erty or any other record of the department of corrections and community
52 supervision or of any local correctional facility lawfully requested by
53 such correctional ombudsman. Obstructing an investigation by the
54 correctional ombudsman is a class A misdemeanor.

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

1 35. "Office" means the office of the correctional ombudsman.

2 36. "Ombudsman" means the commissioner of the office of the correc-
3 tional ombudsman.

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

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

8 (a) Investigate and review the cause and circumstances surrounding the
9 death of any incarcerated individual of a local correctional facility.

10 (b) Visit and inspect any local correctional facility wherein an
11 incarcerated individual has died.

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

16 (d) Upon review of the cause of death and circumstances surrounding
17 the death of any incarcerated individual in a local correction facility,
18 the board shall submit its report thereon to the commission [~~and to~~],
19 the governor, the [chairman] speaker of the assembly and the temporary
20 president of the senate, the chairperson of the assembly committee on
21 correction and the [~~chairman~~] chairperson of the senate committee on
22 crime victims, crime and correction and, where appropriate, make recom-
23 mendations to prevent the recurrence of such deaths to the commission
24 and the administrator of the appropriate correctional facility. The
25 report provided to the governor, the [~~chairman~~] speaker of the assembly
26 and the temporary president of the senate, the chairperson of the assem-
27 bly committee on correction and the [~~chairman~~] chairperson of the senate
28 committee on crime victims, crime and correction shall not be redacted
29 except as otherwise required to protect confidential medical records and
30 behavioral health records in accordance with state and federal laws,
31 rules, and regulations.

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

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

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

49 § 4. Section 89-a of the correction law, as amended by chapter 409 of
50 the laws of 1991, subdivision 1 as amended by chapter 322 of the laws of
51 2021, is amended to read as follows:

52 § 89-a. [~~1.~~] Management of alternate correctional facilities. 1.
53 Superintendence, management and control of alternate correctional facil-
54 ities and the eligible incarcerated individuals housed therein shall be
55 as directed by the commissioner consistent with the following: an
56 alternate correctional facility shall be operated pursuant to rules and

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

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

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

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

40 § 6 Section 89-f of the correction law, as added by chapter 549 of the
41 laws of 1987, is amended to read as follows:

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

§ 7. Subdivision 1 of section 112 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

1. The commissioner of corrections and community supervision shall have the superintendence, management and control of the correctional facilities in the department and of the incarcerated individuals confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. He or she shall have the power and it shall be his or her duty to inquire into all matters connected with said correctional facilities and to report any allegations of corruption, fraud, criminal activity, conflicts of interest or abuse to the office of the correctional ombudsman for investigation, as well as report to such office on other correctional issues, including, but not limited to, staff recruitment, training, supervision, discipline, incarcerated individual deaths, medical and mental health care, use of force, incarcerated individual violence, conditions of confinement, incarcerated individual disciplinary process, incarcerated individual grievance process, substance-abuse treatment, educational, vocational and other programming and re-entry planning. He or she shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility, as he or she may deem proper, and shall cause such rules and regulations to be recorded by the superintendent of the facility, and a copy thereof to be furnished to each employee assigned to the facility. He or she shall also prescribe a system of accounts and records to be kept at each correctional facility, which system shall be uniform at all of said facilities, and he or she shall also make rules and regulations for a record of photographs and other means of identifying each incarcerated individual received into said facilities. He or she shall appoint and remove, subject to the civil service law, subordinate officers and other employees of the department who are assigned to correctional facilities.

§ 8. Subdivision 1 of section 146 of the correction law, as amended by chapter 274 of the laws of 2019, is amended to read as follows:

1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, any employee of, or person under contract to, the office of the correctional ombudsman, members of the correctional oversight board, members of the legislature and their accompanying staff and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe.

§ 9. The closing paragraph of section 853 of the correction law, as added by chapter 757 of the laws of 1981, is amended to read as follows:

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

7 § 10. Section 854 of the correction law, as added by chapter 691 of
8 the laws of 1977, is amended to read as follows:

9 § 854. Evaluation and recommendation. In recognition of the need for
10 an independent evaluation of, and recommendations with respect to,
11 temporary release, the [~~commission of correction~~] office of the correc-
12 tional ombudsman shall evaluate and assess the administration and opera-
13 tion of all temporary release programs conducted pursuant to this arti-
14 cle and shall submit to the governor and the legislature by March first,
15 [~~nineteen hundred seventy-eight~~] two thousand twenty-four, its findings
16 together with any recommendations with respect to the proper operation
17 or the improvement of such temporary release programs.

18 § 11. Section 857 of the correction law, as added by chapter 691 of
19 the laws of 1977, is amended to read as follows:

20 § 857. Complaint and abuse review. Any person may submit to the
21 [~~commission of correction~~] office of the correctional ombudsman any
22 complaint he or she may have concerning programmatic abuses. The
23 [~~commission of correction~~] office shall evaluate such complaints and,
24 where indicated, conduct any needed investigation. If the [~~commission~~]
25 office concludes that a complaint is valid, the [~~commission~~] ombudsman
26 shall make recommendations to the department for corrective action.
27 Where the [~~commission~~] office believes sufficient evidence exists to
28 support a criminal charge, the [~~commission~~] office shall report such
29 evidence to the appropriate law enforcement agencies.

30 § 12. Subdivision 6 of section 677 of the county law, as amended by
31 chapter 322 of the laws of 2021, is amended to read as follows:

32 6. Notwithstanding section six hundred seventy of this article or any
33 other provision of law, the coroner, coroner's physician or medical
34 examiner shall promptly provide the chairman of the correction medical
35 review board or the commissioner of the office of the correctional
36 ombudsman and the commissioner of corrections and community supervision,
37 as appropriate, with copies of any autopsy report, toxicological report
38 or any report of any examination or inquiry prepared with respect to any
39 death occurring to an incarcerated individual of a correctional facility
40 as defined by subdivision three of section forty of the correction law
41 within his or her county; and shall promptly provide the executive
42 director of the justice center for the protection of people with special
43 needs with copies of any autopsy report, toxicology report or any report
44 of any examination or inquiry prepared with respect to the death of any
45 service recipient occurring while he or she was a resident in any facil-
46 ity operated, licensed or certified by any agency within the department
47 of mental hygiene, the office of children and family services, the
48 department of health or the state education department. If the toxico-
49 logical report is prepared pursuant to any agreement or contract with
50 any person, partnership, corporation or governmental agency with the
51 coroner or medical examiner, such report shall be promptly provided to
52 the chairman of the correction medical review board, the commissioner of
53 the office of the correctional ombudsman, the commissioner of
54 corrections and community supervision or the executive director of the
55 justice center for people with special needs, as appropriate, by such
56 person, partnership, corporation or governmental agency.

1 § 13. Section 2.10 of the criminal procedure law is amended by adding
2 a new subdivision 86 to read as follows:

3 86. Investigators of the office of the correctional ombudsman.

4 § 14. Subdivision 2 of section 285 of the education law, as amended by
5 chapter 322 of the laws of 2021, is amended to read as follows:

6 2. The commissioner is authorized to expend up to one hundred seven-
7 ty-five thousand dollars annually to provide grants to public library
8 systems operating under an approved plan of service for provision of
9 services to county jail facilities. Such formula grants shall assist the
10 library system in making available to the incarcerated individual popu-
11 lation of such facility or facilities the library resources of such
12 system. Such grants shall be available to each public library system in
13 such manner as to insure that the ratio of the amount each system is
14 eligible to receive equals the ratio of the number of incarcerated indi-
15 viduals served by the county jail facility to the total number of incar-
16 cerated individuals served by county jail facilities in the state as of
17 July first of the year preceding the calendar year in which the state
18 aid to public library systems is to be paid. Incarcerated individual
19 populations shall be certified by the [~~New York state commission of~~
20 ~~correction~~] office of the correctional ombudsman. The commissioner shall
21 adopt any regulations necessary to carry out the purposes and provisions
22 of this subdivision.

23 § 15. Section 63 of the executive law is amended by adding a new
24 subdivision 18 to read as follows:

25 18. Investigate the alleged commission of any criminal offense or
26 offenses committed by an employee of the department of corrections and
27 community supervision or of any local correctional facility in
28 connection with the performance of his or her official duties, and pros-
29 ecute any such person or persons believed to have committed such crimi-
30 nal offense or offenses in connection with the performance of his or her
31 official duties. The attorney general may only exercise the jurisdiction
32 provided by this subdivision upon a written finding that such jurisdic-
33 tion is necessary because: (a) of a lack of alternative prosecutorial
34 resources to adequately investigate and prosecute such criminal offense
35 or offenses, or (b) the exercise of such jurisdiction is necessary to
36 ensure the confidence of the public in the judicial system. In all such
37 proceedings, the attorney general may appear in person or by his or her
38 deputy or assistant before any court or grand jury and exercise all of
39 the powers and perform all of the duties with respect to such actions or
40 proceedings which the district attorney would otherwise be authorized or
41 required to exercise or perform.

42 § 16. Paragraph (a) of subdivision 1 of section 169 of the executive
43 law, as amended by section 9 of part A of chapter 60 of the laws of
44 2012, is amended to read as follows:

45 (a) commissioner of corrections and community supervision, commission-
46 er of the office of the correctional ombudsman, commissioner of educa-
47 tion, commissioner of health, commissioner of mental health, commission-
48 er of developmental disabilities, commissioner of children and family
49 services, commissioner of temporary and disability assistance, chancel-
50 lor of the state university of New York, commissioner of transportation,
51 commissioner of environmental conservation, superintendent of state
52 police, commissioner of general services, commissioner of the division
53 of homeland security and emergency services and the executive director
54 of the state gaming commission;

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

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

§ 18. Subdivision (c) of section 33.13 of the mental hygiene law is amended by adding a new paragraph 19 to read as follows:

19. to the office of the correctional ombudsman.

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

(t) an employee or agent of the office of the correctional ombudsman in order to carry out the office's functions, powers and duties with respect to the protected individual, pursuant to article three-A of the correction law.

§ 20. Paragraph (a) of subdivision 2 of section 2786 of the public health law, as amended by chapter 312 of the laws of 2020, is amended to read as follows:

(a) Each state agency authorized pursuant to this article to obtain confidential HIV related information and the board of correction of the city of New York shall, in consultation with the department of health, promulgate regulations: (1) to provide [~~safeguards~~] safeguards to prevent discrimination, abuse or other adverse actions directed toward protected individuals; (2) to prohibit the disclosure of such information except in accordance with this article; (3) to seek to protect individuals in contact with the protected individual when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids[~~r~~]; and (4) to establish criteria for determining when it is reasonably necessary for a provider of a health or social service or the state agency or a local government agency to have or to use confidential HIV related information for supervision, monitoring, investigation, or administration and for determining which employees and agents may, in the ordinary course of business of the agency or provider, be authorized to access confidential HIV related information pursuant to the provisions of paragraphs (l) and (m) of subdivision one and subdivision six of section twenty-seven hundred eighty-two of this article; and provided further that such regulations shall be promulgated by the chairperson of the commission of correction or the office of the correctional ombudsman where disclosure is made pursuant to paragraphs (n) [~~and~~], (o), or (t) of subdivision one of section twenty-seven hundred eighty-two of this article.

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

4 (8) Public safety agency record. The term "public safety agency
5 record" means a record of the state commission of correction, the office
6 of the correctional ombudsman, the temporary state commission of inves-
7 tigation, the department of corrections and community supervision, the
8 office of children and family services, the office of victim services,
9 the office of probation and correctional alternatives or the division of
10 state police or of any agency or component thereof whose primary func-
11 tion is the enforcement of civil or criminal statutes if such record
12 pertains to investigation, law enforcement, confinement of persons in
13 correctional facilities or supervision of persons pursuant to criminal
14 conviction or court order, and any records maintained by the division of
15 criminal justice services pursuant to sections eight hundred thirty-sev-
16 en, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight
17 hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thir-
18 ty-nine, and eight hundred forty-five of the executive law and by the
19 department of state pursuant to section ninety-nine of the executive
20 law.

21 § 22. Subdivision 1 of section 460-c of the social services law, as
22 amended by chapter 838 of the laws of 1987, is amended to read as
23 follows:

24 1. Excepting state institutions for the education and support of the
25 blind, the deaf and the dumb, facilities subject to the approval, visi-
26 tation and inspection of the state department of mental hygiene, the
27 office of the correctional ombudsman or the state commission of
28 correction, facilities operated by or under the supervision of the divi-
29 sion for youth and facilities subject to the supervision of the depart-
30 ment of health pursuant to article twenty-eight of the public health
31 law, the department shall inspect and maintain supervision over all
32 public and private facilities or agencies whether state, county, municip-
33 al, incorporated or not incorporated which are in receipt of public
34 funds, which are of a charitable, eleemosynary, correctional or reforma-
35 tory character, including facilities or agencies exercising custody of
36 dependent, neglected, abused, maltreated, abandoned or delinquent chil-
37 dren, agencies engaged in the placing-out or boarding-out of children as
38 defined in section three hundred seventy-one of this chapter, homes or
39 shelters for unmarried mothers, residential programs for victims of
40 domestic violence as defined in subdivision [~~five~~ four] of section four
41 hundred fifty-nine-a of this chapter and adult care facilities.

42 § 23. This act shall take effect one year after it shall have become a
43 law.