STATE OF NEW YORK

9273

IN ASSEMBLY

February 9, 2022

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the executive law, the local finance law, the mental hygiene law, the penal law, the public health law, the social services law and the administrative code of the city of New York, in relation to replacing instances of the words inmate or inmates with the words incarcerated individual or incarcerated individuals

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

Section 1. Subdivision 18 of section 45 of the correction law, as added by chapter 432 of the laws of 2021, is renumbered subdivision 19 and is amended to read as follows:

19. Establish standards and guidelines for a program of medication assisted treatment for [~~inmates~~] **incarcerated individuals** in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities pursuant to section six hundred twenty-six of this chapter and submit an annual report consistent with the requirements of subdivision three of such section.

§ 2. Section 49 of the correction law, as added by chapter 557 of the laws of 2021, is amended to read as follows:

§ 49. Commission on prison education. There is hereby established a commission on prison education comprised of nine members who shall study and develop a plan for improving education in the state prison system. The commission on prison education shall consider and investigate the following factors when determining education improvements: the impact on an [~~inmate's~~] **incarcerated individual's** employment opportunities upon release from prison, the impact on an [~~inmate's~~] **incarcerated individual's** reintegration into society and the effectiveness in reducing recidivism. Appointments to the task force shall be made as follows: three by the governor; two by the speaker of the assembly; one by the minority leader of the assembly; two by the temporary president of the senate and one by the minority leader of the senate. The commission on prison

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

LBD14403-01-2

education shall issue a report within ten months after the effective date of this section.

§ 3. Subdivision 1-b of section 71 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

1-b. The commissioner shall promulgate rules and regulations setting forth the procedures by which an incarcerated individual may apply to be considered for transfer to a foreign nation. The commissioner, or his designee, shall retain sole and absolute authority to approve or disapprove an incarcerated individual's application for transfer. Nothing herein shall be construed to confer upon an incarcerated individual a right to be [~~a~~] transferred to a foreign nation. Notwithstanding any other law, rule or regulation to the contrary, no [~~inmate~~] **incarcerated individual** application for transfer shall be processed unless the incarcerated individual has first indicated his willingness and desire in writing, on a form prescribed by the commissioner, to be considered for transfer to the foreign nation. Such form shall also contain a copy of the incarcerated individual's most recent legal date computation printout indicating the term or aggregate term of the sentence originally imposed and the release dates resulting therefrom. If a request for transfer is approved by the commissioner or his designee, facility staff shall assist in the preparation and submission of all materials and forms necessary to effectuate the person's request for transfer to the United States Department of Justice for purposes of finalization of the transfer process, including verification proceedings before a United States District Court Judge, United States magistrate or other appointed United States official to assure and document the incarcerated individual's voluntary request for transfer.

§ 4. Paragraph b of subdivision 3 of section 146 of the correction law, as amended by chapter 32 of the laws of 2021, is amended to read as follows:

b. Upon twenty-four hours advance notice, at the commencement of any visits to, or inspections and examinations of, state correctional facilities, the superintendent and executive team, to the extent practicable, shall meet with the correctional association. Upon twenty-four hours advance notice, the correctional association may meet privately with the [~~inmate~~] **incarcerated individual** liaison committee and representatives of the [~~inmate~~] **incarcerated individual** grievance resolution committee or any other organization of incarcerated individuals recognized by the department.

§ 5. Subparagraph (i) of paragraph (a) of subdivision 2 of section 401 of the correction law, as separately amended by section 8 of part NNN of chapter 59 and chapter 322 of the laws of 2021, is amended to read as follows:

(i) In exceptional circumstances, a mental health clinician, or the highest ranking facility security supervisor in consultation with a mental health clinician who has interviewed the incarcerated individual, may determine that an incarcerated individual's access to out-of-cell therapeutic programming and/or mental health treatment in a residential mental health treatment unit presents an unacceptable risk to the safety of incarcerated individuals or staff. Such determination shall be documented in writing and such [~~inmate~~] **incarcerated individual** may be removed to a residential rehabilitation unit that is not a residential mental health treatment unit where alternative mental health treatment and/or other therapeutic programming, as determined by a mental health clinician, shall be provided.

§ 6. Subdivision 2 of section 500-k of the correction law, as added by chapter 93 of the laws of 2021, is amended to read as follows:

2. Notwithstanding any other section of law to the contrary, subdivision thirty-four of section two of this chapter, and subparagraphs (i), (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of subdivision six of section one hundred thirty-seven of this chapter shall not apply to local correctional facilities with a total combined capacity of five hundred [~~inmates~~] **incarcerated individuals** or fewer.

§ 7. Section 601-a of the correction law, as amended by chapter 337 of the laws of 2009, is amended to read as follows:

§ 601-a. Return of persons erroneously sentenced for the purpose of resentence. Whenever it shall appear to the satisfaction of the department based on facts submitted on behalf of a person sentenced and confined in a state prison, that any such person has been erroneously sentenced, it shall be the duty of the department to communicate with the sentencing court, the [~~inmate's~~] **incarcerated individual's** defense attorney and the district attorney of the county in which such person was convicted. If upon investigation, the sentencing court, the defense attorney or the district attorney believes that the person has been so erroneously sentenced, the sentencing court, or the district attorney acting at the direction of the sentencing court, shall notify the department and arrange for the person to be heard and properly resentenced. The department thereupon shall comply with any court order to produce such person from such prison and cause him or her to be taken before the court in which he or she was sentenced for the purpose of resentence. The cost and expense of the return of such person necessarily incurred shall be a charge against the county from which he or she was committed.

§ 8. Section 607 of the correction law, as added by chapter 570 of the laws of 2021, is amended to read as follows:

§ 607. Prohibition of double-bunked housing. 1. For purposes of this section "double-bunked housing" shall mean the practice of [~~inmate~~] **incarcerated individual** housing where bunk beds are used in a dormitory setting, with [~~inmates~~] **incarcerated individuals** residing in an open space and sleeping on bunk beds.

2. Upon the effective date of this section, the department is prohibited from housing [~~inmates~~] **incarcerated individuals** using double-bunked housing practices in correctional facilities. Any [~~inmates~~] **incarcerated individuals** housed in such double-bunked housing on the effective date of this section shall be moved to other housing accommodations provided that such accommodations are not located in a more restrictive housing unit or correctional facility unless otherwise appropriate.

3. The department is authorized to promulgate or repeal any rules and regulations necessary to facilitate the implementation of this section.

§ 9. Subdivision 4 of section 611 of the correction law, as added by chapter 621 of the laws of 2021, is amended to read as follows:

4. Upon admitting a woman known to be pregnant, or upon learning of pregnancy status, the chief medical officer of each correctional facility housing female [~~inmates~~] **incarcerated individuals**, including the medical professional responsible for each local correctional facility housing female [~~inmates~~] **incarcerated individuals**, or such officer or professional's designee, shall immediately inform such woman of the option of participating in pregnancy counseling services and the right to abortion services.

§ 10. Section 625 of the correction law, as added by chapter 392 of the laws of 2018, is amended to read as follows:

§ 625. Feminine hygiene products. Feminine hygiene products, including, but not limited to, sanitary napkins, tampons and panty liners, shall be provided at no cost to individuals housed in state and local correctional facilities used for the general confinement of female [~~inmates~~] **incarcerated individuals** and in any other state or local facility where women are detained or confined by law enforcement agencies.

§ 11. Section 626 of the correction law, as added by chapter 432 of the laws of 2021, is amended to read as follows:

§ 626. Medication assisted treatment in correctional facilities. 1. For purposes of this section "medication assisted treatment" means treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.

2. (a) The commissioner, in conjunction with the office of [~~alcoholism and substance abuse~~] **addiction** services **and supports**, shall establish a program to be administered at correctional facilities within the department in the state, for the purpose of employing medication assisted treatment for [~~inmates~~] **incarcerated individuals** in such facilities who are undergoing treatment for a substance use disorder. Such program shall include all forms of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration for the duration of an [~~inmate's~~] **incarcerated individual's** incarceration and shall provide an individualized treatment plan for each participant. After a medical screening, [~~inmates~~] **incarcerated individuals** who are determined to suffer from a substance use disorder, for which FDA approved addiction medications exist shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory. Each participating [~~inmate~~] **incarcerated individual** shall work with an authorized specialist to determine an individualized treatment plan, including an appropriate level of counseling. Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under title eight of the education law who is authorized to administer such medication in conjunction with the [~~inmate~~] **incarcerated individual**.

(b) i. Such program shall also include conditions for a reentry strategy for [~~inmates~~] **incarcerated individuals** who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating [~~inmate~~] **incarcerated individual** with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the [~~inmate~~] **incarcerated individual** in continued recovery once released. Such program shall also assist the [~~inmate~~] **incarcerated individual** in Medicaid enrollment, prior to release.

ii. Such program shall provide participating [~~inmates~~] **incarcerated individual** preparing for release from prison with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

(c) Reentry planning and community supervision should include a collaborative relationship between clinical and parole staff including sharing of accurate information regarding the [~~inmate's~~] **incarcerated individual's** participation in medication assisted treatment to ensure that their medication is not deemed illicit or illegal. Additionally, proce-

dures shall be developed to assist any reentrant who communicates a relapse with their parole officer or who fails a drug test, to receive substance use disorder support in lieu of arrest and/or incarceration.

3. The commissioner shall submit within one year of the effective date of this section and annually thereafter, a report to the governor, the temporary president of the senate and the speaker of the assembly on the effectiveness of the program established pursuant to this section. Such reports shall include an analysis of the impact of such program on the participating [~~inmates~~] **incarcerated individuals**, including factors such as institutional adjustment, behavior infractions, reentry rates, HIV and hepatitis C treatment, and program participation, among related relevant factors. The reports shall also include the impact on institutional safety and performance and any recommendations for additional legislative enactments that may be needed or required to improve or enhance the program as determined to be appropriate by the commissioner.

4. Participation in the medication assisted treatment program shall not be withheld from a qualified [~~inmate~~] **incarcerated individual**. An [~~inmate~~] **incarcerated individual** may enter into such program at any time during his or her incarceration. An [~~inmate~~] **incarcerated individual** using medication assisted treatment prior to such [~~inmate's~~] **incarcerated individual's** incarceration shall be eligible to, upon request by such [~~inmate~~] **incarcerated individual**, continue such treatment in the medication assisted treatment program for any period of time during the duration of such [~~inmate's~~] **incarcerated individual's** incarceration. No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction: (a) before entry into the program; or (b) during participation in the program.

§ 12. The article heading of article 26-A of the correction law, as added by chapter 261 of the laws of 1987, is amended to read as follows:

SHOCK INCARCERATION PROGRAM
FOR STATE CORRECTIONAL [~~INMATES~~] **INCARCERATED INDIVIDUALS**

§ 13. Subdivision 3 of section 259-h of the executive law, as added by chapter 904 of the laws of 1977, is amended to read as follows:

3. The provisions of this subdivision shall apply in any case where a person is under a sentence imposed pursuant to the penal law in effect prior to September first, nineteen hundred sixty-seven, other than a sentence specified in subdivisions one and two of this section. Any person who is not otherwise or who will not sooner become eligible for release on parole shall be or become eligible for release on parole under such sentence after service of a minimum period of imprisonment of eight years and four months.

Notwithstanding the provisions of subdivisions one and two hereof, [~~inmates~~] **incarcerated individuals** convicted of murder, second degree, and sentenced pursuant to the provisions of the penal law in effect prior to September first, nineteen hundred sixty-seven, who are not otherwise or who will not sooner become eligible for release on parole, shall be eligible for release on parole under such sentence after service of a minimum period of imprisonment of eight years and four months.

§ 14. Subparagraph (i) of paragraph (a) of subdivision 2 of section 259-i of the executive law, as separately amended by section 6 of chap-

ter 103 and section 11 of chapter 322 of the laws of 2021, is amended to read as follows:

(i) Except as provided in subparagraph (ii) of this paragraph, at least one month prior to the date on which an incarcerated individual may be paroled pursuant to subdivision one of section 70.40 of the penal law, a member or members as determined by the rules of the board shall personally interview such incarcerated individual and determine whether he or she should be paroled in accordance with the guidelines adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. If parole is not granted upon such review, the incarcerated individual shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If the incarcerated individual is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order, mandatory surcharge, sex offender registration fee and DNA databank fee previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution, mandatory surcharge, sex offender registration fees and DNA databank fees as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the [~~inmate~~] **incarcerated individual** is released, he or she shall also be notified in writing that his or her voting rights will be restored upon release.

§ 15. Paragraph (a) of subdivision 2 of section 259-i of the executive law, as separately amended by section 7 of chapter 103 and section 11-a of chapter 322 of the laws of 2021, is amended to read as follows:

(a) At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the court or board, a member or members as determined by the rules of the board shall personally interview an incarcerated individual serving an indeterminate sentence and determine whether he or she should be paroled at the expiration of the minimum period or periods in accordance with the procedures adopted pursuant to subdivision four of section two hundred fifty-nine-c of this article. If parole is not granted upon such review, the incarcerated individual shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole. Such reasons shall be given in detail and not in conclusory terms. The board shall specify a date not more than twenty-four months from such determination for reconsideration, and the procedures to be followed upon reconsideration shall be the same. If the incarcerated individual is released, he or she shall be given a copy of the conditions of parole. Such conditions shall where appropriate, include a requirement that the parolee comply with any restitution order and mandatory surcharge previously imposed by a court of competent jurisdiction that applies to the parolee. The conditions shall indicate which restitution collection agency established under subdivision eight of section 420.10 of the criminal procedure law, shall be responsible for collection of restitution and mandatory surcharge as provided for in section 60.35 of the penal law and section eighteen hundred nine of the vehicle and traffic law. If the [~~inmate~~] **incarcerated individual** is released, he or she shall also be

notified in writing that his or her voting rights will be restored upon release.

§ 16. Subdivision 5 of paragraph b of section 101.00 of the local finance law, as amended by chapter 200 of the laws of 1960, is amended to read as follows:

5. A county, city or town from providing, pursuant to law, for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or **incarcerated individuals in** correctional institutions and of children placed in family homes by authorized agencies, whether under public or private control.

§ 17. Subdivision (l) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(l) "Related offenses" include any offenses that are prosecuted as part of the same criminal action or proceeding, or which are part of the same criminal transaction, or which are the bases of the orders of commitment received by the department of correctional services in connection with an [~~inmate's~~] **incarcerated individual's** current term of incarceration.

§ 18. Subdivision 8 of section 60.05 of the penal law, as added by section 1 of part KK of chapter 55 of the laws of 2019, is amended to read as follows:

8. Shock incarceration participation. (a) When the court imposes a determinate sentence of imprisonment pursuant to subdivision three of section 70.02 of this chapter or subdivision six of section 70.06 of this chapter upon a person who stands convicted either of burglary in the second degree as defined in subdivision two of section 140.25 of this chapter or robbery in the second degree as defined in subdivision one of section 160.10 of this chapter, or an attempt thereof, upon motion of the defendant, the court may issue an order directing that the department of corrections and community supervision enroll the defendant in the shock incarceration program as defined in article twenty-six-A of the correction law, provided that the defendant is an eligible [~~inmate~~] **incarcerated individual**, as described in subdivision one of section eight hundred sixty-five of the correction law. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and such rules and regulations governing discipline and removal from the program.

(b) Paragraph [~~(b)~~] **b** of subdivision seven of section 60.04 of this article shall apply in the event an [~~inmate~~] **incarcerated individual** designated by court order for enrollment in the shock incarceration program requires a degree of medical care or mental health care that cannot be provided at a shock incarceration facility.

§ 19. Subparagraph (i) of paragraph (a), subparagraph (ii) of paragraph (c) and subparagraphs (i) and (ii) of paragraph (f) of subdivision 6 of section 3502 of the public health law, as added by chapter 313 of the laws of 2018, are amended to read as follows:

(i) Notwithstanding the provisions of this section or any other provision of law, rule or regulation to the contrary, licensed practitioners, persons licensed under this article and unlicensed personnel employed at a local correctional facility may, in a manner permitted by the regulations promulgated pursuant to this subdivision, utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening [~~inmates~~] **incarcerated individuals** committed to

such facility, in connection with the implementation of such facility's security program.

(ii) Limitations on exposure which shall be no more than fifty percent of the annual exposure limits for non-radiation workers as specified by applicable regulations, except that [~~inmates~~] **incarcerated individuals** under the age of eighteen shall not be subject to more than five percent of such annual exposure limits, and pregnant women shall not be subject to such scanning at any time. Procedures for identifying pregnant women shall be set forth in the regulations;

(i) the number of times the equipment was used on [~~inmates~~] **incarcerated individuals** upon intake, after visits, and upon the suspicion of contraband, as well as any other event that triggers the use of such equipment;

(ii) the average, median, and highest number of times the equipment was used on any [~~inmate~~] **incarcerated individual**, with corresponding exposure levels;

§ 20. Subdivision 7 of section 194 of the social services law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

7. as far as practicable provide suitable employment for any incarcerated individual whom the attending physician pronounces able to work, assigning such [~~inmates~~] **incarcerated individuals** to such labor in connection with the farm and garden, or the care and upkeep of the buildings or other suitable tasks in the public home as they may be deemed capable of performing, and providing occupational and other diversions as may be for the best interests of the incarcerated individuals,

§ 21. Paragraph 1 of subdivision b of section 9-143 of the administrative code of the city of New York, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

1. The number of incarcerated individuals released by the department to the community during the reporting period, the number of eligible [~~inmates~~] **incarcerated individuals** released to the community by the department during the reporting period, and the percentage of incarcerated individuals released to the community by the department who were eligible during the reporting period, provided that such report shall count each individual released during the reporting period only once; and

§ 22. Subdivision a of section 9-149 of the administrative code of the city of New York, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

a. In order to facilitate the posting of bail, the department may delay the transportation of an incarcerated individual for admission to a housing facility for not less than four and not more than 12 hours following the [~~inmate's~~] **incarcerated individual's** arraignment in criminal court if requested by either the department or a not-for-profit corporation under contract with the city to provide pretrial and other criminal justice services, including interviewing adult defendants either before or after such persons are arraigned on criminal charges, has made direct contact with a person who reports that he or she will post bail for the incarcerated individual.

§ 23. The section heading of section 9-154 of the administrative code of the city of New York, as added by local law number 144 of the city of New York for the year 2018, is amended to read as follows:

Telephone services to [~~inmates~~] **incarcerated individuals**.

§ 24. The definition "correctional health authority" of subdivision a of section 9-156 of the administrative code of the city of New York, as added by local law number 21 of the city of New York for the year 2019, is amended to read as follows:

Correctional health authority. The term "correctional health authority" means the entity responsible for the delivery of health and mental health services to [~~inmates~~] **incarcerated individuals** in the custody of the department.

§ 25. The definition "cell" of section 408.1.1 of the building code of the administrative code of the city of New York, as added by section 5 of part C of local law number 126 of the city of New York for the year 2021, is amended to read as follows:

CELL. A room within a housing unit in a detention or correctional facility used to confine [~~inmates~~] **incarcerated individuals** or prisoners.

§ 26. Section E106.4.8 of appendix E of the building code of the administrative code of the city of New York, as amended by section 54 of part C of local law number 126 of the city of New York for the year 2021, is amended to read as follows:

E106.4.8 Detention and correctional facilities. In detention and correctional facilities, where a public pay telephone is provided in a secured area used only by detainees or [~~inmates~~] **incarcerated individuals** and security personnel, then at least one TTY shall be provided in at least one secured area.

§ 27. This act shall take effect immediately; provided, however:

a. that if chapter 432 of the laws of 2021 shall not have taken effect on or before such date then sections one and eleven of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2021 takes effect;

b. that if section 8 of part NNN of chapter 59 of the laws of 2021 shall not have taken effect on or before such date then section five of this act shall take effect on the same date and in the same manner as such section of such part of such chapter of the laws of 2021 takes effect;

c. that if chapter 93 of the laws of 2021 shall not have taken effect on or before such date then section six of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2021 takes effect;

d. that if chapter 570 of the laws of 2021 shall not have taken effect on or before such date then section eight of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2021 takes effect;

e. that if chapter 621 of the laws of 2021 shall not have taken effect on or before such date then section nine of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2021 takes effect;

f. that the amendments to subdivision 2 of section 259-i of the executive law made by section fourteen of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995 as amended, when upon such date the provisions of section fifteen of this act shall take effect;

g. that the amendments to subdivision 6 of section 3502 of the public health law made by section nineteen of this act shall not affect the expiration and repeal of such subdivision and shall be deemed to expire and repeal therewith;

h. that the amendments to section 9-149 of the administrative code of the city of New York made by section twenty-two of this act shall not affect the expiration and repeal of such section and shall be deemed to expire and repeal therewith;

i. that if section 5 of part C of local law number 126 of the city of New York for the year 2021 shall not have taken effect on or before such date then section twenty-five of this act shall take effect on the same date and in the same manner as such local law of the city of New York for the year 2021 takes effect; and

j. that if section 54 of part C of local law number 126 of the city of New York for the year 2021 shall not have taken effect on or before such date then section twenty-six of this act shall take effect on the same date and in the same manner as such local law of the city of New York for the year 2021 takes effect.