STATE OF NEW YORK

875

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the correction law, in relation to the correctional association's ability to access, visit, inspect, and examine all state correctional facilities; and to amend a chapter of the laws of 2020 amending the correction law relating to permitting the correctional association to access, visit, inspect, and examine all state correctional facilities, as proposed in legislative bills numbers S. 8046 and A. 10194, in relation to the effectiveness thereof

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

Section 1. Subdivision 3 of section 146 of the correction law, as added by a chapter of the laws of 2020 amending the correction law relating to permitting the correctional association to access, visit, inspect, and examine all state correctional facilities, as proposed in legislative bills numbers S. 8046 and A. 10194, is amended to read as follows:

3. a. Notwithstanding any other provision of law to the contrary, the correctional association shall be permitted[~~, at its pleasure,~~] to access, visit, inspect, and examine all state correctional facilities [~~without~~] with seventy-two hours advance notice to the department. Up to twelve people may comprise the [~~correctional association~~] visiting party [~~Except for documents or records created about employees of the department solely for supervisory or disciplinary purposes, the correctional association shall be given unfettered access to all paper, electronic, and digital records, including but not limited to documents, papers, logbooks, emails, books, data, video and audio recordings, policies, and procedures pertaining to the management, condition, issues or operation of any state correctional facility, including the individual records of incarcerated individuals that are not otherwise confidential under the~~

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

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~~mental hygiene law or federal law.~~]; provided, however, that only four people from the party may enter a special housing facility or unit at the same time. Prior to the visitation authorized pursuant to this subdivision, the correctional association shall provide to the department on, at least, an annual basis a list of people who will be visiting the facility or facilities, including names, dates of birth, driver's license numbers and their designation as an employee, board member, or designee in order for the department to perform prompt background checks. The department may [~~not~~] place restrictions on such visits and inspections[~~, including during periods~~] when [~~facilities are~~] a facility is locked down[~~, although they may restrict access to a portion of a facility in emergency situations for the duration of the emergency~~] or experiencing a facility wide emergency. In addition, the department may restrict access to a portion of a facility in an emergency situation for the duration of the emergency. For the purpose of this subdivision, an emergency shall be determined by the commissioner or his or her designee and defined as a significant risk to the safety or security of the facility, or the health, safety or security of staff or incarcerated individuals, or an event that significantly compromises the operations of the facility.

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 [~~possible~~] practicable, shall meet with the correctional association. Upon twenty-four hours advance notice, the correctional association may meet privately with the inmate liaison committee and representatives of the inmate grievance resolution committee or any other [~~inmate~~] organization of [~~its choosing~~] incarcerated individuals recognized by the department.

c. During the course of any such visit, inspection or examination, upon consent of the person being interviewed, the correctional association shall have the power to interview and converse publicly or confidentially with any correctional employee[~~,~~] or any incarcerated individual[~~, and any other person providing services in a state correctional facility, whether or not employed by such facility~~]. Such interviews shall not be restricted by the department or attended by anyone on behalf of the department nor shall there be any retaliation or adverse action taken by the department or other state agency against [~~anyone~~] any incarcerated individual who agrees to speak with the correctional association. The department may not limit the number of individuals the correctional association may interview or the duration of the interviews, in any manner unreasonable under the circumstances. The correctional association shall have the power to conduct private, confidential meetings [~~at their pleasure and without notice to the department~~] reasonable in number under the circumstances with incarcerated people in housing units and in attorney visiting rooms or other rooms in the facility in which their conversations will remain confidential. No department employee may attend or listen to any such meeting without the consent of the correctional association.

d. [~~The correctional association may at any time request and shall promptly receive from the department or any other agency of the state or public authority such paper, electronic, and digital records including but not limited to any and all documents, papers, logbooks, books, data, video, audio, policies, procedures, directives and emails related to the management, conditions of confinement and treatment of persons under custody, issues or operation of any state correctional facility, including policies, practices and procedures relating to staff training and~~

~~recruitment, so as to enable the correctional association to carry out its mission and duties, regardless of whether such requested paper, electronic, and digital records could have been withheld under article six of the public officers law. Any such paper, electronic, and digital records provided to the correctional association by the department does not constitute a waiver of any confidentiality or privilege regarding such records. The correctional association shall not be compelled to testify or release records that are otherwise exempt from public disclosure, including identifying information or correspondence with any person, without a court order unless that person consents in writing to the release of such information.~~

~~e. The correctional association shall periodically, but not less than every five years, conduct inspections of each state correctional facility and shall issue reports and recommendations to the governor, the legislature and the public about the conditions and issues at each such facility. The department shall issue a timely response to said reports and include explanations of any actions that have been or will be taken to address the issues raised therein.~~] The correctional association shall periodically, but not less than every five years, conduct inspections of each state correctional facility and shall issue reports and recommendations to the governor, the legislature and the public about the conditions and issues at each such facility. When preparing such formal reports and recommendations, the correctional association shall submit a tentative copy of such report and recommendations to the commissioner. The commissioner may submit a written response to such tentative report within sixty days of the receipt thereof. When the correctional association thereafter submits its final report and recommendations, it shall contain a complete copy of the response, if any, submitted to the tentative report and recommendations.

[~~f.~~] e. The correctional association may send surveys or questionnaires to people in custody concerning conditions of confinement or other subjects within the scope of their mission without prior approval of the department. [~~The department shall distribute such surveys when requested by the correctional association.~~] The correctional association may also receive phone calls from incarcerated individuals and/or set up a hotline for [~~such individuals to contact them~~] individuals to use if they choose to contact them.

[~~g. In any case where the department or an employee thereof shall fail to comply with the provisions of this subdivision, the correctional association may apply to the supreme court for an order directed to the department or such employee of the department requiring compliance therewith. Upon such application, the court may 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 be punishable as such; any action or proceeding commenced by the correctional association pursuant to this subdivision shall have a preference over all other cases, except habeas corpus proceedings, pending before the court.~~] f. The inspection of state correctional facilities by the correctional association pursuant to this subdivision shall be undertaken solely in furtherance of the correctional association's lawful powers, duties and obligations, and information obtained pursuant to these powers shall be used solely in furtherance of the correctional association's mission. Employees, board members and designees shall be required to sign a waiver as a condition of entry into a correctional facility pursuant to this subdivision.

§ 2. Section 3 of a chapter of the laws of 2020 amending the correction law relating to permitting the correctional association to

access, visit, inspect, and examine all state correctional facilities, as proposed in legislative bills numbers S. 8046 and A. 10194, is amended to read as follows:

§ 3. This act shall take effect on the [~~ninetieth~~] **one hundred eightieth** day after it shall have become a law.

§ 3. This act shall take effect immediately, provided, however, section one of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the correction law relating to permitting the correctional association to access, visit, inspect, and examine all state correctional facilities, as proposed in legislative bills numbers S. 8046 and A. 10194, takes effect.