STATE OF NEW YORK

6489

2023-2024 Regular Sessions

IN ASSEMBLY

April 11, 2023

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

AN ACT to amend the correction law, in relation to correctional facility visits by the correctional association

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 amended by chapter 32 of the laws of 2021, 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 on any day at any time of day and without advance notice,** to access, visit, inspect, and examine all state correctional facilities [~~with seventy-two hours advance notice to the department~~] **and all facilities in which people under the custody or supervision of the department are being held or used for operational purposes, including, but not limited to, the Central New York Psychiatric Center**. Up to twelve people may comprise the visiting party[~~; provided, however, that only four people from the party may enter a special housing facility or unit at the same time~~]. **The correctional association shall have unfettered access to every area of the facilities without department escort. The department shall provide escort whenever requested by the correctional association.** 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**, which shall not be unreasonably disapproved and any objections must be provided in a timely manner. The correctional association may from time to time supplement the list of visitors by providing the same information with**

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

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the same prompt background check and disapproval requirements. During all visits, 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 correctional facility, including records concerning incarcerated individuals, except for records that are protected from disclosure under state or federal law. At all times during all visits and inspections, the correctional association shall be permitted to use relevant electronic equipment, including but not limited to, audio and video recording devices, cameras, and computers and tablets for purposes of typing, recording, documentation, the administration of surveys, and other related purposes, as well as relevant instruments of measurement, including but not limited to those used for measuring distance, sound decibels, temperature, and air quality. The department may not place restrictions on such visits and inspections, including during periods when a facility is locked down 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~~] except in extraordinary circumstances in which there is explicit evidence that there is a specific, serious risk to the safety of the correctional association visiting team if they enter the facility even if security staff accompanies them during the visit.

b. [~~Upon twenty-four hours advance notice, at~~] At the commencement and conclusion of any visits to, or inspections and examinations of, state correctional facilities, the superintendent and executive team, [~~to the extent practicable~~] upon request by the correctional association, shall meet with the correctional association[~~. Upon twenty-four hours advance notice, the~~] privately without representatives of the central office present. Representatives of the office of mental health and any other entities or agencies providing services in a facility shall meet with the correctional association upon request. The correctional association may meet privately with the inmate liaison committee and representatives of the inmate grievance resolution committee or any other organization of 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~~] The correctional association shall have the power to interview and converse publicly or confidentially with any correctional employee or administrator, any incarcerated individual, and any other person providing, supervising, or monitoring services in a correctional facility, whether or not employed by such facility. Such interviews shall not be restricted by the department or the office of mental health any other agency or attended by anyone on behalf of the department or the office of mental health or any other agency, nor shall there be any retaliation or adverse action taken by the department or other state agency against [~~any incarcerated individual~~] anyone who [~~agrees to speak~~] speaks 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, confi-

dential meetings [~~reasonable in number under the circumstances~~] at their pleasure and without notice to the department 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 shall be provided within fourteen days of any request to the department or other agency with records relevant to correctional facilities, by mail and electronically in easily searchable and usable formats, such paper, electronic, and digital records that are not otherwise protected from disclosure by state or federal law 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.

e. The correctional association shall periodically[~~, but not less than every five years,~~] conduct inspections of [~~each state~~] correctional [~~facility~~] facilities, prioritized based on the correctional association's assessment of systemic issues, and [~~shall~~] issue reports and recommendations to the governor, the legislature and the public about the conditions and issues at [~~each such facility~~] correctional facilities. 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~~], and, if the correctional association so chooses, to the commissioner of mental health, commissioner of the parole board, commissioner of the department of health, and any other relevant commissioners or administrators. All commissioners receiving such report shall submit a written response to such tentative report within [~~sixty~~] thirty days of the receipt thereof, including a plan of action for addressing the findings and recommendations. 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. The department, the office of mental health, the parole board, the department of health and any other agency that received recommendations shall implement their plan of action and shall publicly report on the progress of such plan within sixty days of the correctional association's final report.

[~~e.~~] f. The correctional association may send, and distribute during prison visits, confidential written and electronic surveys or questionnaires to people in custody or employees concerning conditions of confinement, working conditions, or other subjects within the scope of their mission without prior approval of the department. People incarcerated shall be permitted to confidentially complete and return to the correctional association such surveys either in written format or electronically. The correctional association may also receive free confidential phone calls and emails from incarcerated individuals and/or set up a confidential hotline for individuals to use if they choose to contact them.

[~~f.~~] g. The department, in consultation with the office of mental health, the department of health, the parole board, the office of special investigations, and any other relevant agency, shall publicly report on its website on a monthly basis, and with semi-annual and annu-

al cumulative reports, with a word searchable database and cumulative subject matter index, data relevant to the conditions and experiences of people in correctional facilities, with any personal identifying information redacted, including but not limited to: all data on individuals under custody; department daily population data; all data on people under community supervision including but not limited to as related to sentence, aggregate time on parole, and location; all data on deaths, suicides and incidents of self-harm and attempted suicide; parole board hearings, release decisions, and appeals all disaggregated by basis for the revocation, outcome, and location; grievances aggregated by type and outcome; prison rape elimination act complaints disaggregated by type and outcome; disciplinary data disaggregated by type and outcome; unusual incidents disaggregated by type and outcome; staff uses of force disaggregated by level of injury to incarcerated individuals and staff and outcome of any disciplinary or other action taken; office of special investigations complaints received disaggregated by date received, date closed, and outcome; operational and capital expenditure disaggregated by facility; Corcraft and other industry revenue and expenditures; and wages paid to incarcerated individuals. All such data in this section shall be disaggregated by facility, location within a facility where relevant, and all relevant demographic categories, including but not limited to, race, ethnicity, age, gender, gender identity, mental health treatment level, medical conditions, pregnancy or postpartum status, and identification as lesbian, gay, bisexual, transgender, intersex, or gender non-conforming. The department shall also publicly report on its website in an easily accessible location, all policies, directives, and memorandums that are not privileged or confidential, all new and reissued directives, and all new memorandums issued to the incarcerated population or staff.

h. The access, visits, and 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~~] an acknowledgement of the foregoing as a condition of entry into a correctional facility pursuant to this subdivision.

i. In all circumstances in which the department has, or enters into, any memorandum of understanding or similar agreement with any other state or local agency, such agency shall also be subject to the provisions of this subdivision.

j. In any case where the department or other agency operating in the prisons 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 expedited treatment by the court.

§ 2. This act shall take effect immediately.