

# STATE OF NEW YORK

6489--A

2023-2024 Regular Sessions

## IN ASSEMBLY

April 11, 2023

Introduced by M. of A. WEPRIN, BURGOS, AUBRY -- 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 correctional facility visits by the correctional association

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

1 Section 1. Legislative findings. Founded in 1844 by concerned citi-  
2 zens of the state and deputized by the state to provide independent  
3 monitoring and oversight of the state's prisons in 1846, the Correctional  
4 Association of New York is one of the first organizations in the  
5 country created to administer civilian oversight of prisons to ensure  
6 greater transparency of correctional institutions in the state. The  
7 Correctional Association of New York's on-site access to the state's  
8 prisons and to information on state prisons is critical for the organ-  
9 ization to provide insight into the policies and procedures of the  
10 state's prisons through its monitoring and reporting on prison condi-  
11 tions, policies, and procedures for the executive, legislature, and  
12 public, playing an important role in informing debates on correctional  
13 reform and incarcerated individuals' rights.

14 § 2. Subdivision 3 of section 146 of the correction law, as amended by  
15 chapter 32 of the laws of 2021, is amended to read as follows:

16 3. a. Notwithstanding any other provision of law to the contrary, the  
17 correctional association shall be permitted to access, visit, inspect,  
18 and examine all state correctional facilities [~~with seventy-two hours~~  
19 ~~advance notice to the department~~]. Up to twelve people may comprise the  
20 visiting party[, ~~provided, however, that only four people from the party~~  
21 ~~may enter a special housing facility or unit at the same time~~]. Prior  
22 to the visitation authorized pursuant to this subdivision, the correc-

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

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1 tional association shall provide to the department on, at least, an  
2 annual basis a list of people who will be visiting the facility or  
3 facilities, including names, dates of birth, driver's license numbers  
4 and their designation as an employee, board member, or designee in order  
5 for the department to perform prompt background checks. The department  
6 may not place restrictions on such visits and inspections, including  
7 during periods when a facility is locked down or experiencing a facility  
8 wide emergency. [~~In addition~~] However, the department may restrict  
9 access to a portion of a facility in an emergency situation for the  
10 duration of the emergency. For the purpose of this subdivision, an emer-  
11 gency shall be determined by the commissioner or his or her designee and  
12 defined as a significant risk to the safety or security of the facility,  
13 or the health, safety or security of staff or incarcerated individuals,  
14 or an event that significantly compromises the operations of the facili-  
15 ty.

16 b. [~~Upon twenty-four hours advance notice, at~~] At the commencement and  
17 conclusion of any visits to, or inspections and examinations of, state  
18 correctional facilities, the superintendent and executive team, [~~to the~~  
19 ~~extent practicable~~] upon request by the correctional association, shall  
20 meet with the correctional association[~~, Upon twenty-four hours advance~~  
21 ~~notice, the~~] privately without representatives of the central office  
22 present. Representatives of the office of mental health and any other  
23 entities or agencies providing services in a facility shall meet with  
24 the correctional association upon request. The correctional association  
25 may meet privately with the inmate liaison committee and representatives  
26 of the inmate grievance resolution committee or any other organization  
27 of incarcerated individuals recognized by the department.

28 c. [~~During the course of any such visit, inspection or examination,~~  
29 ~~upon consent of the person being interviewed, the~~] The correctional  
30 association shall have the power to interview and converse publicly or  
31 confidentially with any correctional employee or administrator, any  
32 incarcerated individual, and any other person providing, supervising, or  
33 monitoring services in a correctional facility, whether or not employed  
34 by such facility. Such interviews shall not be restricted by the depart-  
35 ment or the office of mental health any other agency or attended by  
36 anyone on behalf of the department or the office of mental health or any  
37 other agency, nor shall there be any retaliation or adverse action taken  
38 by the department or other state agency against [~~any incarcerated indi-~~  
39 ~~vidual~~] anyone who [~~agrees to speak~~] speaks with the correctional asso-  
40 ciation. The department may not limit the number of individuals the  
41 correctional association may interview or the duration of the inter-  
42 views[~~, in any manner unreasonable under the circumstances~~]. The  
43 correctional association shall have the power to conduct private, confi-  
44 dential meetings [~~reasonable in number under the circumstances~~] at their  
45 pleasure and without notice to the department with incarcerated people  
46 in housing units and in attorney visiting rooms or other rooms in the  
47 facility in which their conversations will remain confidential. No  
48 department employee may attend or listen to any such meeting without the  
49 consent of the correctional association.

50 d. (i) The correctional association may request and receive from the  
51 department or other agency with records relevant to correctional facili-  
52 ties such assistance, information and data as will enable the correc-  
53 tional association to carry out its functions, powers and duties.

54 (A) The correctional association shall have access to the following  
55 information and records on a quarterly basis:

1 (1) individuals admitted into custody, which shall contain, at mini-  
2 imum, individual-level records of all individuals admitted to custody,  
3 including the individual's departmental ID, demographic information,  
4 admission type, reception facility name and housing unit, reception  
5 date, sentencing, and crime information;

6 (2) individuals under custody, which shall contain, at minimum, indi-  
7 vidual-level records of all individuals presently under custody, includ-  
8 ing the individual's departmental ID, demographic information, current  
9 facility name and housing unit, date of original and latest reception at  
10 the facility, out counts, sentencing and crime information, and parole  
11 eligibility and relevant dates;

12 (3) individuals released from custody, which shall contain, at mini-  
13 imum, individual-level records of all individuals released from custody,  
14 including the individual's departmental ID, demographic information,  
15 releasing facility name and housing unit, release date, release county,  
16 sentencing and crime information, and parole eligibility and relevant  
17 dates;

18 (4) individuals on parole, which shall contain, at minimum, individu-  
19 al-level records of all individuals on parole, including the individ-  
20 ual's departmental ID, demographic information, discharging facility  
21 name and housing unit, start and release date, sentencing and crime  
22 information, custody status, and voting pardon status;

23 (5) programming, education, vocational, and work assignment require-  
24 ments, enrollment, and fulfillment, which shall contain, at minimum,  
25 individual-level records of all individuals under custody, including the  
26 individual's departmental ID, fields indicating the requirements of  
27 their sentence, and indicators of whether the individual is not  
28 enrolled, is on the waitlist, or has already completed any such require-  
29 ment;

30 (6) departmental staffing levels, which shall contain, at minimum,  
31 facility-level records of budgeted fill level, recommended staffing  
32 level, and actual filled items split by job category, including data on  
33 staff on long-term leave, workers compensation leave, and on the average  
34 of daily closed posts for each quarter;

35 (7) deaths, which shall contain, at minimum, individual-level records  
36 of all individuals who died while under custody, including the individ-  
37 ual's departmental ID, date and time of death, date of report, demo-  
38 graphic information, facility name and housing unit at time of death,  
39 location of terminal incident, reported immediate cause of death, and an  
40 indicator of whether an autopsy was performed;

41 (8) unusual incidents, which shall contain, at minimum, report-level  
42 information for all unusual incidents, as defined by the department at  
43 the current time, including the incident code, the name and code of the  
44 facility where the incident took place, the date and time of the inci-  
45 dent, the location within the facility, the name and code of the catego-  
46 ries and subcategories indicated in the report, the roles of all indi-  
47 viduals involved in the report (including incarcerated and  
48 nonincarcerated individuals), the weapons used by each individual, the  
49 type of force applied by department staff on each individual, if appli-  
50 cable, and the degree of injury to staff and incarcerated individuals;

51 (9) disciplinary charges and penalties, which shall contain, at mini-  
52 imum, charge-level information for all disciplinary incidents, including:  
53 the incarcerated individual's departmental ID and facility name; the  
54 location, date, and time of the incident; the tier, code, and  
55 description of each charge; the date of the hearing; and the outcome and  
56 penalty associated with each charge;

1 (10) grievances and appeals, which shall contain, at minimum, grievance-  
2 level information for all grievances filed with the department,  
3 including those resolved informally, including: the incarcerated indi-  
4 vidual's departmental ID; ID, date filed, category, type, and facility  
5 of the grievance; and the outcomes and outcome dates for all reviews,  
6 including those by the incarcerated grievance resolution committee,  
7 superintendent, and central office review committee;

8 (11) department employee disciplinary records, which shall contain, at  
9 minimum, incident-level information for all employee discipline issued  
10 by the department, including the incident facility, date, position of  
11 the relevant employee, a brief description of the incident, and the  
12 resulting penalty; and

13 (12) parole eligibility and hearing outcomes, which shall contain, at  
14 minimum, individual-level records for all incarcerated individuals  
15 currently under custody, including the incarcerated individual's depart-  
16 mental ID, parole eligibility date, type and date of interview, and date  
17 and outcome of interview.

18 (B) The correctional association shall have access to the annual budg-  
19 et of correctional facilities and records on a yearly basis. Such  
20 records shall contain facility and spending category-level information  
21 of the departmental budget for the year.

22 (ii) In order to facilitate the transfer of these records, the depart-  
23 ment shall, on an at least an annual basis, meet with the correctional  
24 association to determine the most feasible way of providing records and  
25 data that are easily searchable and electronically accessible.

26 e. The correctional association shall periodically~~[, but not less than~~  
27 ~~every five years,~~ conduct inspections of each state correctional facil-  
28 ity, prioritized based on the correctional association's assessment of  
29 systemic issues, and ~~[shall]~~ issue reports and recommendations to the  
30 governor, the legislature and the public about the conditions and issues  
31 at ~~[each such facility]~~ correctional facilities. When preparing such  
32 formal reports and recommendations, the correctional association shall  
33 submit a tentative copy of such report and recommendations to the  
34 commissioner~~[. The commissioner may],~~ and, if the correctional associ-  
35 ation so chooses, to the commissioner of mental health, commissioner of  
36 the parole board, commissioner of the department of health, and any  
37 other relevant commissioners or administrators. All commissioners  
38 receiving such report shall submit a written response to such tentative  
39 report within ~~[sixty]~~ thirty days of the receipt thereof, including a  
40 plan of action for addressing the findings and recommendations. When the  
41 correctional association thereafter submits its final report and recom-  
42 mendations, it shall contain a complete copy of the response, if any,  
43 submitted to the tentative report and recommendations.

44 ~~[e-]~~ f. The correctional association may send, and distribute during  
45 prison visits, confidential written and electronic surveys or question-  
46 naires to people in custody or employees concerning conditions of  
47 confinement, working conditions, or other subjects within the scope of  
48 their mission without prior approval of the department. People incar-  
49 cerated shall be permitted to confidentially complete and return to the  
50 correctional association such surveys either in written format or elec-  
51 tronically. The correctional association may also receive free confiden-  
52 tial phone calls and emails from incarcerated individuals and/or set up  
53 a confidential hotline for individuals to use if they choose to contact  
54 them. Physical mail received and sent to the correctional association is  
55 defined as privileged correspondence, and any and all processing  
56 controls, allowances for limited free postage, and advances of incarcer-

1 ated individual funds for postage shall apply to privileged correspond-  
2 ence received and sent to the correctional association. For the purposes  
3 of this section, identical incoming blank surveys and questionnaires  
4 shall not be defined as privileged correspondence.

5 [~~f.~~] g. The access, visits, and inspection of state correctional  
6 facilities by the correctional association pursuant to this subdivision  
7 shall be undertaken solely in furtherance of the correctional associ-  
8 ation's lawful powers, duties and obligations, and information obtained  
9 pursuant to these powers shall be used solely in furtherance of the  
10 correctional association's mission. Employees, board members and desig-  
11 nees shall be required to sign [~~a waiver~~] an acknowledgement of the  
12 foregoing as a condition of entry into a correctional facility pursuant  
13 to this subdivision.

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

18 i. In any case where the department or other agency operating in the  
19 prisons or an employee thereof shall fail to comply with the provisions  
20 of this subdivision, the correctional association may apply to the  
21 supreme court for an order directed to the department or such employee  
22 of the department requiring compliance therewith. Upon such application,  
23 the court may issue such order as may be just, and a failure to comply  
24 with the order of the court shall be a contempt of court and be punisha-  
25 ble as such; any action or proceeding commenced by the correctional  
26 association pursuant to this subdivision shall have expedited treatment  
27 by the court.

28 § 3. This act shall take effect immediately.