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:

Section 1. Legislative findings. Founded in 1844 by concerned citizens of the state and deputized by the state to provide independent monitoring and oversight of the state's prisons in 1846, the Correctional Association of New York is one of the first organizations in the country created to administer civilian oversight of prisons to ensure greater transparency of correctional institutions in the state. The Correctional Association of New York's on-site access to the state's prisons and to information on state prisons is critical for the organization to provide insight into the policies and procedures of the state's prisons through its monitoring and reporting on prison conditions, policies, and procedures for the executive, legislature, and public, playing an important role in informing debates on correctional reform and incarcerated individuals' rights.

§ 2. 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 to access, visit, inspect, and examine all state correctional facilities [~~with seventy-two hours advance notice to the department~~]. 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~~]. Prior 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.

LBD00661-07-4

tional 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 a facility is locked down or experiencing a facility wide emergency. [~~**In addition**~~] **However**, 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**~~] **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, confidential 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. **(i) The correctional association may request and receive from the department or other agency with records relevant to correctional facilities such assistance, information and data as will enable the correctional association to carry out its functions, powers and duties.**

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

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

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

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

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

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

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

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

(8) unusual incidents, which shall contain, at minimum, report-level information for all unusual incidents, as defined by the department at the current time, including the incident code, the name and code of the facility where the incident took place, the date and time of the incident, the location within the facility, the name and code of the categories and subcategories indicated in the report, the roles of all individuals involved in the report (including incarcerated and nonincarcerated individuals), the weapons used by each individual, the type of force applied by department staff on each individual, if applicable, and the degree of injury to staff and incarcerated individuals;

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

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

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

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

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

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

e. The correctional association shall periodically[~~, but not less than every five years,~~] conduct inspections of each state correctional facility, 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.

[~~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. Physical mail received and sent to the correctional association is defined as privileged correspondence, and any and all processing controls, allowances for limited free postage, and advances of incarcer-

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

[~~f.~~] g. 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.

h. 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.

i. 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.

§ 3. This act shall take effect immediately.