STATE OF NEW YORK

8364

2023-2024 Regular Sessions

IN ASSEMBLY

December 13, 2023

Introduced by M. of A. FORREST, BURDICK, GALLAGHER, MAMDANI, SHRESTHA -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to the rights of people in prisons, jails, and forensic facilities

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

Section 1. Short title. This act shall be known and may be cited as the "rights behind bars; protecting the rights of people in prisons, jails, and forensic facilities, and their loved ones, in New York state act".

§ 2. Legislative findings and intent. The legislature hereby finds and declares:

A. Incarcerated individuals, their families, and loved ones have human rights. The legislature finds that New York's prisons and jails systematically fail to recognize and protect the human rights of incarcerated individuals, their families, and their loved ones. While some of these rights are protected by the law and constitution of New York State, and the law and constitution of the United States, it is well-documented that the rights protected under existing law are often not recognized in practice and that there are gaps in existing law. The intent of this act is to: (i) make clear some of the rights that already exist under New York law but are not being consistently followed, (ii) close some of the gaps in existing law, and (iii) enshrine into New York State law some of the well-established principles and obligations under international human rights law.

B. Numerous recent studies, reports, and court decisions have documented systemic, widespread, and persistent human rights violations in New York's correctional facilities. These include: NYS Inspector General Lucy Lang, **Racial Disparities in the Administration of Discipline in New York State Prisons**, November 2022; Neff, Santo, and Meagher, **How A 'Blue Wall' Inside New York State Prisons Protects Abusive Guards**, The Mars-

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

LBD13213-04-3

hall Project in partnership with the New York Times, May 2023; Neff, Santo, and Meagher, **In New York Prisons Guards Who Brutalize Prisoners Rarely Get Fired**, The Marshall Project in partnership with the New York Times, May 2023; Law, V., **The Worst Prison in New York State**, Prison Legal News, March 2022; Gelardi and Brown, **State Prisons Are Routinely Violating New York's Landmark Solitary Confinement Law**, New York Focus, September 2022; Bryant, **19 People Have Died From NYC Jails in 2022**, The Vera Project, December 2022; Weill-Greenberg, **Disabled and Abandoned in New York State Prisons**, The Nation, October 2021; Marcius, **Hundreds of Women Set to Sue New York Over Allegations of Prison Sex Abuse**, New York Times, November 2022; Monitor's Reports in **Nunez, et al. v. NYC Department of Correction, et al.**, 11-cv-05845 (LTS) (SDNY) (multiple reports issued by Court-appointed Monitor as part of the settlement of a class action lawsuit relating to conditions in NYC jails on Rikers Island, starting in 2016 and continuing to the present); and Post-Visit Briefing Reports issued periodically by the Correctional Association of New York ("CANY") pursuant to their statutory authority to conduct monitoring visits in NYS prisons (Nine Post-Visit Briefings were issued by CANY from June 2021 through December 2022. Among the findings during this period were that 45% of incarcerated individuals interviewed reported witnessing or experiencing verbal, physical, or sexual abuse by prison staff, and 36% reported witnessing or experiencing racialized abuse by prison staff.).

C. Some of the human rights of incarcerated individuals in New York State are protected by provisions in the New York State Constitution, including, Article I, sections 5 (prohibiting cruel and unusual punishment), 6 (right to due process), 8 (right to speak freely), 11 (guaranteeing equal protection of the laws), and 12 (prohibiting unreasonable searches and seizures); the United States Constitution, including the 1st Amendment (free speech), 4th Amendment (prohibition of unreasonable searches and seizures), 8th Amendment (prohibition of cruel and unusual punishments), and 14th Amendment (guaranteeing equal protection of the law and due process of law). However, these provisions and laws do not go far enough to protect the rights of people incarcerated in New York. The intent of this act, in part, is to incorporate into New York law additional human rights protections for incarcerated people as enshrined in key documents included in the body of international human rights law, including, the United Nations Declaration of Human Rights, recognizing basic human rights applicable to all people, including, in Article 5, the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment; the International Covenant of Civil and Political Rights, including Article 7 (No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment), and Article 10 (All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person); the Basic Principles for the Treatment of Prisoners (General Assembly Resolution 45/111); the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); and other applicable and binding principles of international human rights law.

D. The fundamental approach of international human rights law to the treatment of people in prison is expressed in Rule 3 of the Mandela Rules, which recognizes that "imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determina-

tion by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation." In turn, Rule 4 requires that incarceration must be used to "ensure the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life" and Rule 5 thus requires prisons and jails to "minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the {incarcerated people} or the respect due to their dignity as human beings."

To effectuate these rights, the Mandela Rules require, among other protections, that incarcerated people be allowed regular communication with their family and friends, including through visits and through writing, telecommunication, electronic means, and digital means (Rule 58.1), that people in prison have a right to "food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served", and that any use of force against an incarcerated individual be "no more than is strictly necessary" (Rule 82). They also establish basic rights related to access to programming and treatment, connections to community entities, and restrictions on the use of restraints.

E. In keeping with these legislative findings, this act aims to clearly recognize and establish the broad human rights framework that protects all incarcerated individuals in New York State. This act specifically addresses certain issues that have arisen in New York prisons and jails in recent years. That has included: violations of the HALT Solitary Confinement Law; restrictions on packages, visits, and mail; staff abuse and brutality; and denials of other basic rights.

In regard to some of these issues, the law is already clear, but New York's prisons and jails are not consistently following it. For example, despite clarity concerning who qualifies as disabled under the HALT Solitary Confinement Law, and who, therefore, cannot be placed in segregated confinement, the NYS Department of Corrections and Community Supervision has consistently placed people with disabilities in segregated confinement. The intent of the amendments to paragraph (c) of subdivision 33 of section 2 of the correction law made by section five of this act is not to define disability, which is already in the law, but rather to make clear via examples what is already required. Similarly, while the correction law is already clear that people facing possible placement in segregated confinement or facing Tier III tickets must have access to meaningful representation, including by any lawyer or law student; that hearing officers must conduct individualized assessments of the fact to determine if the allegations meet the threshold requirements for placement in segregated confinement or alternatives; and that people in alternative disciplinary units must have access to out-of-cell time in group settings, access to core programs available in the general population; and a presumption against the use of restraints unless an individualized determination is made finding a significant and unreasonable risk, prisons and jails are not complying with these provisions and so this act reiterates and clarifies these requirements.

This act is not intended as an all-inclusive compendium of the human rights protections afforded to people in jail or prison under international law, as the intent is to correct and clarify certain specific rights within the overall human rights framework. Among other protections, this act aims to ensure that people have a right to visit with their loved ones, to have regular communication with their loved

ones, to receive care packages from their loved ones, to have access to healthy and nutritious food, to be free from staff brutality and retaliation, to be free from the torture of prolonged solitary confinement, and to have access to real and meaningful out-of-cell group programming and engagement. Recognition of these basic human rights will alleviate suffering of incarcerated individuals, strengthen ties with families and communities, better prepare people for release, increase safety in prisons and jails and in outside communities, and unequivocally establish as the policy of the State of New York that brutality, racism, sexual abuse, harassment, and denials of access to family and loved ones have no place in New York's jails and prisons and will not be tolerated.

§ 3. Section 2 of the correction law is amended by adding eleven new subdivisions 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 to read as follows:

35. "Contact visit" means a visit between an incarcerated individual and one or more visitors in a visiting room or equivalent space in which the incarcerated individual and their visitor are in the same unobstructed space as each other without physical barriers between the incarcerated individual and their visitor or visitors, that is conducive to meaningful social interaction and activity, and with the ability to interact freely with their visitor, including but not limited to the ability to communicate freely, hold hands, hug, kiss, have other appropriate physical contact, purchase and share food and drinks from the vending machine, and take photographs together.

36. "Visitor" means any individual who comes to visit a person incarcerated in a correctional facility or secure facility, including, but not limited to, a family member, friend, advocate, or loved one.

37. "Cell" means any room, area or space that is used or is intended to be used by an incarcerated individual for sleep, or that is not a shared space conducive to meaningful congregate social interaction among many people in a group setting where an individual is held for any purpose.

38. "Cell confinement" means being in a cell.

39. "Out-of-cell" means being in a space outside of, and in an area away from, a cell, in a group setting with other people all in the same shared space without physical barriers between people that is conducive to meaningful and congregate social interaction and activity.

40. "Congregate recreation" means out-of-cell recreation in a group setting with other people all in the same shared space that takes place outside, weather permitting, in an open yard without being caged or covered, and when weather does not permit or when an incarcerated individual so chooses, in a non-caged gymnasium or equivalent.

41. "Core programs" means any and all programs that can be assigned by a department program committee, any and all required department programs, and any and all programs that are considered for purposes of good time, merit time, other time allowance, parole release, or other release mechanisms. Core programs shall include, but not be limited to, academic classes, vocational programs, transitional services, alcohol and substance abuse treatment, aggression replacement training, sex offense counseling and treatment, and any other assigned or required programs.

42. "Represented" means an incarcerated individual having an attorney (licensed in any jurisdiction of the United States), law student with supervision by any attorney regardless of whether the attorney is affiliated with a law school, paralegal, or other incarcerated individual provide representation at any and all stages of a hearing and appeal,

including but not limited to opening and closing statements, presentation of evidence, calling and questioning witnesses, cross-examining witnesses, reading of the disposition, sentencing, and appeal, with the choice by the incarcerated individual and their representative of either having the representative physically present at any and all stages of the hearing in the same room and/or participating through videoconference.

43. "Personal property" means any and all property that has been lawfully in the possession of an incarcerated individual, including but not limited to, for the purposes of state correctional facilities all items listed in department directive forty-nine hundred thirteen as of June fourteenth, two thousand twenty-two and for purposes of local correctional facilities and secure facilities all items permitted under applicable rules and regulations to each facility as of October twentieth, two thousand twenty-three. If a person has a static tablet, personal property includes a static tablet and the person shall be able to use that tablet, in addition to any other tablet, for purposes of making phone calls, emails, and other uses. If a person is at a facility that allows televisions, personal property includes televisions. Personal property shall also include typewriters, assistive devices, approved electronic devices, books-on-tape players, and any other property that an incarcerated individual has lawfully had in their possession.

44. "Secure facility" means (a) all forensic mental health facilities, including those that hold people pursuant to section 330.20 or 730.50 of the criminal procedure law or 14 NYCRR Part 57, and including but not limited to the Mid-Hudson Forensic Psychiatric Center, Kirby Forensic Psychiatric Center, Rochester Regional Forensic Unit, and Northeast Regional Forensic Unit; (b) all secure treatment facilities, as defined in subdivision (o) of section 10.03 of the mental hygiene law, including but not limited to the Central New York Psychiatric Center and St. Lawrence Psychiatric Center; and (c) all secure mental health facilities holding people pursuant to section four hundred two or five hundred eight of this chapter.

45. "Incarcerated individual" means any person confined in a state or local correctional facility or secure facility.

§ 4. Subdivision 23 of section 2 of the correction law is amended by adding three new paragraphs (a), (b) and (c) to read as follows:

(a) A person may only be placed in cell confinement beyond seventeen hours a day for purposes of medical or mental health treatment if a licensed medical professional determines that the cell confinement itself is medically necessary to carry out the medical or mental health treatment, such as for purposes of suicide watch, medical isolation, or medical quarantine. Such determination shall be documented in writing and shall be reviewed and reauthorized by a licensed medical professional at least once every forty-eight hours.

(b) A person may only be held in such confinement pursuant to paragraph (a) of this subdivision for as limited a time as medically necessary, as exclusively determined by medical or mental health staff, and in the least restrictive environment that is medically appropriate, as determined exclusively by medical or mental health staff.

(c) Cell confinement pursuant to paragraph (a) of this subdivision shall be in an appropriate space conducive to medical or mental health treatment. While in such confinement a person shall at least have access to: (i) a tablet pursuant to paragraph (t) of subdivision six of section one hundred thirty-seven of this chapter unless a licensed medical

professional determines that access to a tablet would be harmful to the person based on medical or mental health-related reasons; (ii) his or her full complement of property unless a licensed medical professional determines that access to a particular item is inappropriate for medical or mental health-related reasons; and (iii) core programs and other programming and engagement available to people incarcerated in the general population but done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff.

§ 5. Subdivision 33 of section 2 of the correction law, as added by chapter 93 of the laws of 2021, is amended to read as follows:

33. "Special populations" means any person: (a) twenty-one years of age or younger; (b) fifty-five years of age or older; (c) with a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the executive law, including but not limited to: (i) all people with any mental health diagnosis; (ii) all people on the office of mental health caseload currently; (iii) all people with any intellectual, developmental, or cognitive diagnosis; (iv) all people with any physical disability diagnosis or mobility impairment; (v) all people with any sensorial disability diagnosis; and (vi) all people with traumatic brain injury or organic brain syndrome; (d) who had been on the office of mental health caseload, or had any mental health diagnosis, within the previous year; (e) who had a diagnosis of intellectual, developmental, cognitive, physical, or sensorial disability within the previous year; or [~~(d)~~] (f) who is pregnant, in the first [~~eight~~] twelve weeks of the post-partum recovery period after giving birth, experiencing a miscarriage, or terminating a pregnancy, or longer if medically necessary, or caring for a child in a correctional institution pursuant to [~~subdivisions~~] subdivision two or three of section six hundred eleven of this chapter.

§ 6. Subdivision 3 of section 137 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

3. Each incarcerated individual shall be entitled to clothing suited to the season and weather conditions, including but not limited to appropriate winter weather clothing, multiple layers of clothing, and the ability to wear personal clothing under state issued clothing when going to programs, recreation, visits, facility medical, or medical trips when the temperature is forty-five degrees or below, and to a sufficient quantity of quality, wholesome and nutritious food, including a full range and variety of fresh fruits and vegetables, consistent with nutritional guideline requirements developed by the department of health. Medically necessary diets, including but not limited to diabetic and heart health diets, and religious diets, shall be provided and be of comparable quality and variety as general population meals.

(a) Each incarcerated individual shall be afforded sufficient time to eat their meals, including that all people shall be provided at least twenty minutes after receiving their food to eat during meal times and that any person who requires additional time due to age or disability shall be provided sufficient additional time. Each incarcerated individual shall be allowed to bring leftover food out of the mess hall in a small bowl. To the extent practicable, the clothing and bedding of incarcerated individuals shall be manufactured and laundered in institutions in the department.

(b) Each incarcerated individual who uses a wheelchair shall be provided an assistant to help push the wheelchair if the person who uses the wheelchair chooses to have such an assistant.

§ 7. Subdivision 5 of section 137 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

5. No incarcerated individual in the care or custody of the department shall be subjected to degrading treatment[~~, and no~~]. No officer [~~or~~], other employee of the department, or other government employee shall [~~inflict any blows whatever~~] use force upon any incarcerated individual, [~~unless in self defense, or to suppress a revolt or insurrection. When any incarcerated individual, or group of incarcerated individuals, shall offer violence to any person, or do or attempt to do any injury to property, or attempt to escape, or resist or disobey any lawful direction, the officers and employees shall use all suitable means to defend themselves, to maintain order, to enforce observation of discipline, to secure the persons of the offenders and to prevent any such attempt or escape~~] except as a last resort after exhausting de-escalation techniques and where there are no practical alternatives available to prevent: (i) imminent physical harm to other incarcerated individuals, staff, visitors, or other persons; (ii) major property damage that raises an imminent safety and security risk; or (iii) escape. When the use of force is authorized, officers and employees shall always use the minimum amount necessary to defend themselves, to secure the persons of incarcerated individuals, to prevent imminent physical harm, to prevent major property damage that raises an imminent safety and security risk, and to prevent an escape. Any force used shall be proportional to the threat encountered. Contractors and volunteers are prohibited from ever using force.

(a) All officers, department employees, and government employees working or operating in a correctional facility shall be prohibited from using excessive and unnecessary force, force after control of an incarcerated individual has been established, and all high impact force, including but not limited to (i) strikes or blows to the head, face, groin, neck, kidneys, and spinal column, (ii) kicks, and (iii) choke holds, carotid restraint holds, and other neck restraints except where a person is in imminent danger of death or equivalent level of serious bodily injury and where lesser means are impractical or ineffective.

(b) No officer, other employee of the department, or other government employee working or operating in a correctional facility shall carry or use a steel baton. Any use of other batons, chemical spray, or any other weapons shall comply with all provisions of this subdivision.

(c) No officer, other employee of the department or the office of mental health, or other government employee working or operating in a correctional facility or secure facility shall carry out, nor cause others to carry out, any form of retaliation against any person incarcerated in a correctional facility or confined in a secure facility for reporting misconduct, reporting an incident, raising a complaint, filing a grievance, filing a lawsuit, taking other legal action, communicating with the media, lawmakers, the Correctional Association of New York, an attorney, an advocate, any investigative body or any other person or entity, otherwise exercising or asserting the rights of incarcerated or confined individuals or asserting responsibilities of staff or the department, taking any other similar action, or supporting another incarcerated or confined individual in taking any of the actions in this paragraph.

(d) No officer, other employee of the department or the department of mental health, or other government employee working or operating in a correctional facility or secure facility shall provide any false information on a misbehavior report, unusual incident report, use of force

report, or any other document, and all officers, employees, and government employees working or operating in a correctional facility or secure facility shall have a duty to report, and provide all relevant information regarding, any and all observed misconduct by another officer, employee, or person working or operating in a correctional facility or secure facility.

§ 8. Subdivision 6 of section 137 of the correction law is amended by adding seven new paragraphs (p), (q), (r), (s), (t), (u) and (v) to read as follows:

(p) (i) All persons incarcerated in a correctional facility or secure facility shall have the right to in-person contact visits with up to four visitors at a time, every day of the week for many hours per day. Visitation shall be allowed at all correctional facilities and secure facilities, seven days a week, every day of the year. The number, length, and frequency of visits by each visitor may be limited only as necessary to accommodate all visitors who arrive during scheduled visiting times, and any such limitations shall never infringe upon the minimum visit requirements in this paragraph. Multiple sets of visitors shall be allowed to visit an incarcerated individual at different times on the same day, and a visitor shall be allowed to visit multiple incarcerated individuals at different times on the same day. If a visitor leaves the correctional facility, they shall have the ability to return to the facility that day to participate in a visit, including either with the same incarcerated individual originally visited or a different incarcerated individual.

(ii) Neither the department nor the office of mental health may restrict an incarcerated individual's visits as a disciplinary measure or for any other reason, nor may either agency deny or restrict a visitor's ability to visit so long as the person visited agrees to the visit.

(iii) Each correctional facility and secure facility shall process visitors and bring down people in such facilities to a visit as expeditiously as possible, including ensuring that the visited person and their visitor are able to be together starting within one hour of the visitor arriving at the facility, unless the visited person voluntarily chooses to take more time to come for the visit. All visitors waiting for a visit shall have basic needs met while waiting, including but not limited to being able to wait inside, being able to comfortably sit, and having access to drinking water and bathroom facilities.

(iv) No drug detecting dogs may be used inside of any visiting rooms or other areas where a visited person is meeting with their visitor.

(v) Videoconferencing may supplement, but shall not take the place of, in-person visits.

(vi) Each incarcerated individual shall be provided the opportunity to take a shower before any visit.

(q) All persons in a correctional facility or a secure facility shall have the right to receive packages from any person through direct mail, during a visit to a correctional facility or secure facility, or by mail from commercial sources. The department shall not require that packages be purchased from or delivered by a vendor, shall not require that packages that are purchased or delivered from a vendor come from a particular vendor or vendors, and shall not restrict the ability of a person to directly send items to an incarcerated individual through the facility package room or directly deliver items to an incarcerated individual through the visiting process. The department shall provide for prompt delivery to incarcerated individuals of all packages, including prompt

delivery of perishable food items to avoid expiration or spoilage. All packages shall be delivered to incarcerated individuals within forty-eight hours from the time the package arrives at the facility, except that all packages that are brought on a visit shall be delivered to the incarcerated individual on the same day as the visit. If any item in a package is disallowed, the incarcerated individual shall have the option to, within fourteen days of receiving written notice that the item is disallowed, donate the item to the charitable organization of their choosing, return the item via the visiting room, or return the item via mail at their own expense. Items that may be part of packages shall include, but not be limited to the following items, and any restrictions on the particular packaging of any such items must be reasonably and directly related to a significant safety or security concern:

(i) food utensils and food items, without any limit on the number of pounds or items, including but not limited to fresh fruits and vegetables, coffee and beverages, dried coffee cream, bread, pouched food, canned food, candy, cheese, condiments, meats, nuts, oatmeal and cereal, pastries, raisins and dried fruit, cooked or cured or smoked seafood, and snacks;

(ii) personal cosmetics and personal hygiene products, including but not limited to soap, shampoo, deodorant, and feminine hygiene items;

(iii) seasonally appropriate indoor and outdoor clothing and footwear;

(iv) legal, writing, and art supplies, including but not limited to stationery, writing and drawing implements, and typewriters;

(v) educational supplies, including but not limited to notebooks, rulers, and calculators appropriate for primary, secondary and post-secondary education;

(vi) new and used books, magazines and other publications;

(vii) items for use in recreation and physical exercise;

(viii) accessories for tablet computers and other electronic devices permitted in facilities;

(ix) religious articles, including but not limited to prayer rugs and books, religious headgear, and pendants; and

(x) tobacco products.

(r) All persons incarcerated in a correctional facility or secure facility, other than those in segregated confinement, shall have access to at least fourteen hours of out-of-cell time per day, including access to at least seven hours of daily out-of-cell congregate programming and activities and access to at least two hours of congregate recreation.

(s) All persons incarcerated in a correctional facility or secure facility shall have the right to receive correspondence in its original, and not photocopied, form, including but not limited to letters, cards, photographs, postcards, legal mail, and other correspondence.

(t) All persons incarcerated in a correctional facility or secure facility shall have access to an internet-connected or similarly equipped tablet or other device that allows for free personal phone calls and free emails, as well as access to law library resources, programming, music, games, videos, movies, and other applications. Incarcerated individuals shall have access to free personal phone calls and free emails at least four hours per day. Beyond the four-hour minimum, a facility may provide additional access to the tablet and additional access to personal phone calls and emails, and all personal phone calls and emails shall be free for the person initiating and the person receiving the communication.

(u) All correctional facilities and secure facilities shall operate a commissary or canteen. The prices of items sold at each commissary or

canteen shall take into account the minimum wages people incarcerated are earning and shall be at least sixty percent below the current market rate for such items, as based upon the cost of similar items for sale in the same region as the correctional facility. Each commissary and canteen shall be fully stocked and shall include quality wholesome and nutritious food, including a full range and variety of fresh fruits and vegetables.

(v) Any person incarcerated in a correctional facility or secure facility shall have a right to bring in state court an action based on any violation of this section or the regulations prescribed under these sections to: (i) enjoin such violation; (ii) obtain a declaratory judgment; (iii) recover for money damages; and (iv) any other appropriate relief determined by the court.

§ 9. Subparagraph (ii) of paragraph (j) of subdivision 6 of section 137 of the correction law is amended by adding two new clauses (A) and (B) to read as follows:

(A) Time spent in any of the following locations shall not constitute out-of-cell time: (1) on a tier or walkway outside of a cell or groups of cells; (2) in a recreation area contiguous to a cell; (3) in a recreation area without a group of many people afforded simultaneous access to the same shared space without physical barriers and conducive to a meaningful congregate social interaction; or (4) any space without a group of many people afforded simultaneous access to the same shared space without physical barriers and conducive to meaningful congregate social interaction.

(B) If an incarcerated individual voluntarily chooses not to participate in congregate out-of-cell time, congregate recreation, or congregate programming, they shall be offered access to comparable individual programming, individual recreation, and individual time away from their cell where they sleep. Voluntarily declining to participate in congregate out-of-cell time, congregate recreation, or congregate programming shall be done in writing or by videotape.

§ 10. Subparagraph (v) of paragraph (j) of subdivision 6 of section 137 of the correction law, as amended by section 4 of part NNN of chapter 59 of the laws of 2021, is amended to read as follows:

(v) An incarcerated [~~person~~] individual in a residential rehabilitation unit shall have access to core programs and work assignments [~~comparable to core programs and types of work assignments in general population~~] available in general population, and shall receive the same credit for participation in such programs as they would in general population for purposes of their program requirements and for purposes of good time, merit time, other time allowance, parole release, or consideration for other release mechanisms. Such incarcerated [~~persons~~] individuals shall also have access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in a residential rehabilitation unit, and helping prepare for discharge from the unit and to the community.

§ 11. Subparagraph (vii) of paragraph (j) of subdivision 6 of section 137 of the correction law, as added by chapter 93 of the laws of 2021, is amended to read as follows:

(vii) Restraints shall not be used when incarcerated [~~persons~~] individuals are participating in out-of-cell activities within a residential rehabilitation unit, residential mental health treatment unit, step-down unit, correctional alternative rehabilitation unit, protective custody, and any other similar unit, unless an [~~individual~~] individualized

assessment is made **at the time of, or immediately following, an incident involving the person in question** that restraints are required **for that specific person in question** because of a significant and unreasonable risk [~~**to the safety and security**~~] of **imminent serious physical injury to self,** other incarcerated [~~**persons**~~] **individuals** or staff **based on concrete evidence of such risk by that person. Such individualized assessments shall be memorialized in writing, with a written explanation as to why, including providing concrete evidence relied on to determine that, restraints were required for the specific person in question to prevent a significant and unreasonable risk of imminent serious physical injury**.

(A) Where restraints are imposed, the least restrictive form of restraints shall be used, for no longer than necessary to abate such imminent harm.

(B) Restraints shall not continue to be used beyond the day they were applied unless a determination is made at a subsequent due process hearing, with all of the protections of subdivision one of this section, that restraints remain necessary to abate a significant and unreasonable risk of imminent serious physical injury to self, other incarcerated individuals, or staff, based on concrete evidence of such risk.

(C) Any continuing use of restraints shall be reviewed daily, in writing, and discontinued once there is no longer a risk of imminent injury. Continued use of restraints may only be authorized for at most a seven-day period.

§ 12. Paragraph (k) of subdivision 6 of section 137 of the correction law is amended by adding three new subparagraphs (v), (vi) and (vii) to read as follows:

(v) No incarcerated individual shall receive a sanction of more than fifteen days of segregated confinement time nor more than sixty days of time in a residential rehabilitation unit, residential mental health treatment unit, or any other disciplinary confinement unit for any incident, regardless of how many charges are associated with that incident.

(vi) To impose a disciplinary sanction, a hearing officer must find an incarcerated individual guilty of the charged act or acts by clear and convincing evidence.

(vii) All hearing officers shall engage in a meaningful fact finding process. If a hearing officer imposes a sanction of segregated confinement beyond three days or any time in a residential rehabilitation unit, the hearing officer shall detail in writing in their decision the specific ways in which the act or acts the incarcerated individual was found guilty of met all of the requirements of subparagraph (ii) of this paragraph. The disposition or determination shall include a statement of evidence, which includes the testimony of each witness and a statement of reasons why the incarcerated individual's evidence or defense was credited or rejected.

§ 13. Paragraph (l) of subdivision 6 of section 137 of the correction law is amended by adding five new subparagraphs (i), (ii), (iii), (iv) and (v) to read as follows:

(i) Each person facing the possibility of placement in segregated confinement or a residential rehabilitation unit shall be informed in writing and verbally, including before they appear for a disciplinary hearing and then again on the hearing record, that they are permitted to be represented at their disciplinary hearing, shall be provided the opportunity to seek representation, and may bring their chosen representative into the hearing at any time prior to the disposition of their hearing.

(ii) For all disciplinary hearings, incarcerated individuals and, where applicable, their representatives shall be provided, as soon as possible and no later than forty-eight hours prior to the start of a hearing, all evidence relevant to their disciplinary charge and/or hearing, including but not limited to the misbehavior report, any and all exculpatory evidence, any use of force or unusual incident reports concerning the incident, any to-from memoranda concerning the incident, any staff reports or accounts, any witness statements, any information relied upon from a confidential source subject to security redactions, any medical records related to the incident, any related contraband receipts, any other written materials concerning the incident, any related photographs, and audio and video recordings of or related to the incident.

(iii) For all disciplinary hearings, incarcerated individuals and, where applicable, their representatives shall have the right during a hearing to provide opening and closing statements, request and receive evidence, conduct a meaningful investigation, call and question witnesses, cross-examine witnesses, and present evidence.

(iv) All disciplinary hearings shall be recorded and such recordings shall be provided to the incarcerated individual and his or her representative, if applicable.

(v) If a person is held in segregated confinement or a residential rehabilitation unit prior to a hearing, any time spent in segregated confinement or a residential rehabilitation unit prior to the hearing shall: (A) if the person is found guilty of an eligible charge under subparagraph (ii) of paragraph (k) of this subdivision, be credited toward any sanction to segregated confinement or residential rehabilitation unit imposed; and (B) if the person is not found guilty of an eligible charge under subparagraph (ii) of paragraph (k) of this subdivision, be credited as additional good time behavior allowance time under section eight hundred three of this chapter.

§ 14. Paragraph (o) of subdivision 6 of section 137 of the correction law, as amended by section 6 of part NNN of chapter 59 of the laws of 2021, is amended to read as follows:

(o) The department shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of beds at each facility, including the number of beds held vacant for use as quarantine, and the total number of people who are in, separately listed: general population; segregated confinement [~~and the total number of people who are in~~]; residential rehabilitation units; step-down programs; residential mental health treatment units, including but not limited to behavioral health units, residential mental health units, therapeutic behavior units, intermediate care programs, and transitional intermediate care programs; protective custody; administrative segregation; reception, shock incarceration; I-ASAT; close supervision units; special needs units; assessment and program preparation units; residential crisis treatment units; intensive intermediate care programs, correctional alternative rehabilitation units, units for the cognitively impaired, and any and all other designated units within the prison system where out-of-cell time is restricted in any way, on the first day of each month and the total number of placements in each location during the preceding month. The reports shall provide a breakdown of the number of people and placements, separately listed, in [~~segregated confinement and in residential rehabilitation~~] each of the aforementioned units, separately listed, by: (i) age; (ii) race; (iii) gender; (iv) mental health treatment level; (v) special health accommodations or

needs; (vi) need for and participation in substance use disorder, academic, vocational, transitional services, aggression replacement training, sex offense counseling and treatment, and all other mandatory programs, separately listed; (vii) pregnancy status; (viii) continuous length of stay in [~~residential treatment units~~] each type of unit, as well as length of stay in the past sixty days; (ix) number of days [~~in segregated confinement~~] and hours per day, of participation in out-of-cell group programming; (x) a list of all incidents resulting in sanctions of segregated confinement, including all substantiated charges related to each incident, by facility, unit, amount of segregated confinement and residential rehabilitation unit time imposed for the sanction, and date of occurrence; (xi) [~~the number of incarcerated persons in segregated confinement by~~] facility; [~~and~~] (xii) the number of [~~incarcerated persons in residential rehabilitation units by facility~~] incidents of self-harm, suicide attempts, and suicide by facility, unit, and date of occurrence; (xiii) the number of deaths by facility and unit, cause of death, and date of occurrence; (xiv) the number of sanctions taking away a person's privileges or services, separately listed and including but not limited to, visitation, packages, correspondence, phone calls, tablets, cell shield, programs, recreation, commissary, out-of-cell time, food, restitution, forfeiture of funds, loss of good time, family reunion program, and imposed work task; and (xv) staff uses of force, by facility, unit, date of occurrence, level of injury to incarcerated individuals and staff, and outcome of any disciplinary or other action taken.

§ 15. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 16. This act shall take effect on the thirtieth day after it shall have become a law.