

STATE OF NEW YORK

312--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. SALAZAR, BRISPORT, CLEARE, KRUEGER, RIVERA, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- 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 citizens of the state and deputized by the state to provide independent
2 monitoring and oversight of the state's prisons in 1846, the Correctional Association of New York is one of the first organizations in the
3 country created to administer civilian oversight of prisons to ensure
4 greater transparency of correctional institutions in the state. The
5 Correctional Association of New York's on-site access to the state's
6 prisons and to information on state prisons is critical for the organization to provide insight into the policies and procedures of the
7 state's prisons through its monitoring and reporting on prison conditions, policies, and procedures for the executive, legislature, and
8 public, playing an important role in informing debates on correctional
9 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~~

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

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

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

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

52 d. (i) The correctional association may request and receive from the
53 department or other agency with records relevant to correctional facili-
54 ties such assistance, information and data as will enable the correc-
55 tional 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

1 description of each charge; the date of the hearing; and the outcome and
2 penalty associated with each charge;

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

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

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

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

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

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

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

1 defined as privileged correspondence, and any and all processing
2 controls, allowances for limited free postage, and advances of incarcer-
3 ated individual funds for postage shall apply to privileged correspond-
4 ence received and sent to the correctional association. For the purposes
5 of this section, identical incoming blank surveys and questionnaires
6 shall not be defined as privileged correspondence.

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

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

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

30 § 3. This act shall take effect immediately.