

STATE OF NEW YORK

8480

IN SENATE

February 5, 2024

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law and the civil service law, in relation to discipline of certain persons for serious misconduct

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

1 Section 1. The correction law is amended by adding a new section 12 to
2 read as follows:

3 § 12. Discipline of certain serious misconduct. 1. Definition. For the
4 purposes of this section, the term "serious misconduct" shall mean: an
5 act of excessive use of force; an act of false reporting regarding one
6 or more acts of excessive use of force; an intentional failure to report
7 an act of excessive use of force; the introduction of a cellular device,
8 controlled substance, marihuana or other significantly incapacitating
9 substance to an institution of the department; or an inappropriate sexual
10 relationship or contact with an incarcerated person or person under
11 community supervision.

12 2. Acts of misconduct. Notwithstanding any other provision of law,
13 when an employee is alleged to have committed an act of serious miscon-
14 duct then the disciplinary process that may be applied to such employee
15 shall not be governed by any collective bargaining agreement or by
16 section seventy-five of the civil service law but shall be governed by
17 the provisions of this section.

18 3. Disciplinary action. A person holding a position as described in
19 paragraph (a), (b) or (c) of this subdivision shall not be removed from
20 their position or otherwise subjected to any disciplinary penalty
21 authorized pursuant to this section; provided, however, that such person
22 may be removed or otherwise subjected to a disciplinary penalty author-
23 ized pursuant to this section for serious misconduct after a hearing
24 upon stated charges pursuant to this section. This subdivision shall
25 apply to:

26 (a) a person holding a position by permanent appointment in the
27 competitive class of the classified civil service; or

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

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(b) a person holding a position by permanent appointment or employment in the classified service of the state, who was honorably discharged or released under honorable circumstances from the armed forces of the United States, including (i) having a qualifying condition as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, or (ii) being a discharged LGBT veteran, as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, having served therein as such member in time of war as defined in section eighty-five of the civil service law, or who is an exempt volunteer firefighter as defined in the general municipal law, except when such person holds the position of private secretary, cashier or deputy of any official or department; or

(c) an employee holding a position in the non-competitive class other than a position designated in the rules of the state civil service commission as confidential or requiring the performance of functions influencing policy, who since his or her last entry into service has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy.

4. Procedure. An employee holding a position as described in paragraph (a), (b) or (c) of subdivision three of this section who at the time of questioning appears to be a potential subject of disciplinary action for an act or acts of serious misconduct shall have right to representation by his or her certified or recognized employee organization under article fourteen of the civil service law and shall be notified in advance, in writing, of such right. An employee holding a position as described in paragraph (a), (b) or (c) of subdivision three of this section who is designated managerial or confidential under article fourteen of the civil service law, shall have, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action for an act of serious misconduct, a right to representation and shall be notified in advance, in writing, of such right. If representation is requested, a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time, then the department may proceed with questioning the employee. A hearing officer appointed for the purposes of this section shall determine if a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from such questioning, as well as any evidence or information obtained as a result of such questioning shall be excluded. A person against whom removal or other disciplinary action is proposed shall be provided written notice and shall be furnished a copy of the charge or charges proffered against him or her and shall be allowed at least eight days for answering such charges in writing. The hearing upon such charges shall be held by a hearing officer, selected by the commissioner or his or her designee. The hearing officer shall be vested with all the powers of the commissioner and shall make a record of such hearing, which shall, along with his or her recommendation, be referred to the commissioner for review and final determination. The hearing officer shall, upon the request of the employee against whom charges are proffered, permit such employee to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him or her to summon witnesses on his or her behalf. The burden of

1 proving serious misconduct shall be upon the department. Compliance with
2 technical rules of evidence shall not be required.

3 5. Suspension pending determination of charges; penalties. (a) Pending
4 the hearing and determination of charges of serious misconduct, the
5 employee against whom such charges have been proffered may be suspended
6 without pay. If the employee is found guilty of a charge or charges of
7 serious misconduct, the recommended penalty or punishment may consist of
8 any combination of the following:

9 (i) a letter of reprimand;
10 (ii) removal from work location and transfer;
11 (iii) a fine to be deducted from the salary or wages of such employee;
12 (iv) probation for a specified period, provided any further violation
13 can lead to termination;
14 (v) suspension without pay;
15 (vi) demotion in grade and title; or
16 (vii) dismissal from the service and loss of accumulated leave cred-
17 its.

18 (b) Provided, however, that the time during the pendency of the hear-
19 ing, in which an employee is suspended without pay, may be considered as
20 part of the penalty. The final determination of the commissioner on the
21 recommendation from the hearing officer shall be made within ten busi-
22 ness days of receipt of such recommendation. If the employee is acquit-
23 ted of all charges, he or she shall be restored to his or her position
24 with full pay for the period of suspension less the amount of any unem-
25 ployment insurance benefits that may have been received. If such employ-
26 ee is found guilty of one or more of the charges, a copy of the charges,
27 his or her written answer, a transcript of the hearing, and the final
28 determination of the commissioner shall be filed in the bureau of labor
29 relations and the employee's personnel file. A copy of the transcript of
30 the hearing shall, upon request of the affected employee, be furnished
31 to him or her without charge.

32 6. Appeal. When an employee believes he or she is aggrieved by a
33 penalty of fine, probation, suspension, demotion or dismissal from
34 service imposed pursuant to this section, he or she may make an applica-
35 tion to the appropriate court in accordance with the provisions of arti-
36 cle seventy-eight of the civil practice law and rules.

37 7. Termination. Notwithstanding any other provision of law, the
38 commissioner, in his or her discretion, may terminate the employment of
39 any employee who is convicted of a crime whenever the commissioner
40 determines that the continued employment of such person would not be in
41 the best interest of the department. Notwithstanding the foregoing, no
42 employee shall be terminated pursuant to this section unless he or she
43 shall first have been furnished with a written statement of the reasons
44 for such determination and afforded an opportunity by the commissioner,
45 or his or her designee, to make an explanation and to submit facts in
46 opposition thereto.

47 § 2. Paragraph (h) of subdivision 4 of section 50 of the civil service
48 law, as added by chapter 790 of the laws of 1958, is amended and a new
49 paragraph (i) is added to read as follows:

50 (h) who has been dismissed from private employments because of habitu-
51 ally poor performance[~~+~~]; or

52 (i) who has been disciplined for an act of serious misconduct as set
53 forth in subdivision one of section twelve of the correction law.

54 § 3. Subdivision 1 of section 61 of the civil service law, as added by
55 chapter 790 of the laws of 1958, is amended to read as follows:

1 1. Appointment or promotion from eligible lists. Appointment or
2 promotion from an eligible list to a position in the competitive class
3 shall be made by the selection of one of the three persons certified by
4 the appropriate civil service commission as standing highest on such
5 eligible list who are willing to accept such appointment or promotion;
6 provided, however, that the state or a municipal commission may provide,
7 by rule, that where it is necessary to break ties among eligibles having
8 the same final examination ratings in order to determine their respec-
9 tive standings on the eligible list, appointment or promotion may be
10 made by the selection of any eligible whose final examination rating is
11 equal to or higher than the final examination rating of the third high-
12 est standing eligible willing to accept such appointment or promotion;
13 provided further, however, that an individual's name shall be suspended
14 from the eligible list pending the outcome of the review of the appli-
15 cant's qualifications pursuant to subdivision four of section fifty of
16 this article. Appointments and promotions shall be made from the eligi-
17 ble list most nearly appropriate for the position to be filled.

18 § 4. Subdivision 1 of section 112 of the correction law, as amended by
19 chapter 322 of the laws of 2021, is amended to read as follows:

20 1. The commissioner [~~of corrections and community supervision~~] shall
21 have the superintendence, management and control of the correctional
22 facilities in the department and of the incarcerated individuals
23 confined therein, and of all matters relating to the government, disci-
24 pline, policing, contracts and fiscal concerns thereof. He or she shall
25 have the power and it shall be his or her duty to inquire into all
26 matters connected with said correctional facilities. He or she shall
27 make such rules and regulations, not in conflict with the statutes of
28 this state, for the government of the officers and other employees of
29 the department assigned to said facilities, and in regard to the duties
30 to be performed by them, and for the government and discipline of each
31 correctional facility, as he or she may deem proper, and shall cause
32 such rules and regulations to be recorded by the superintendent of the
33 facility, and a copy thereof to be furnished to each employee assigned
34 to the facility. With due consideration for overall safety and securi-
35 ty, he or she shall also have the power to place reasonable limits or
36 restrictions on the items an employee may bring into a correctional
37 facility or community supervision office when reporting for duty, that
38 can pose a threat or be used as a weapon. He or she shall also prescribe
39 a system of accounts and records to be kept at each correctional facili-
40 ty, which system shall be uniform at all of said facilities, and he or
41 she shall also make rules and regulations for a record of photographs
42 and other means of identifying each incarcerated individual received
43 into said facilities. He or she shall appoint and remove, subject to the
44 civil service law, subordinate officers and other employees of the
45 department who are assigned to correctional facilities.

46 § 5. This act shall take effect on the thirtieth day after it shall
47 have become a law; provided, however, that section one of this act shall
48 take effect upon the expiration of the current collective bargaining
49 agreement that governs impacted employees of the department of
50 corrections and community supervision; provided further, however, that
51 the commissioner of corrections and community supervision shall notify
52 the legislative bill drafting commission upon the expiration of the
53 current collective bargaining agreement that governs impacted employees
54 of the department of corrections and community supervision in order that
55 the commission may maintain an accurate and timely effective data base
56 of the official text of the laws of the state of New York in furtherance

1 of effectuating the provisions of section 44 of the legislative law and
2 section 70-b of the public officers law; provided further, however, that
3 notwithstanding any other provision of law to the contrary, once these
4 provisions take effect they cannot be abrogated, amended, enhanced or
5 modified in any way by future collective bargaining.