STATE OF NEW YORK

9449

IN ASSEMBLY

March 14, 2024

Introduced by M. of A. GIBBS -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to the establishment of emergency management release plans to be developed for use in correctional facilities in the event of a state disaster emergency declared pursuant to executive order

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

Section 1. The correction law is amended by adding a new section 135 to read as follows:

§ 135. State disaster emergency management release plans in correctional facilities. 1. There shall be established within the department an advisory board to provide recommendations to the department regarding the development of emergency management release plans within the facilities operated by the department for use in the event of a state disaster emergency declared pursuant to executive order.

2. The advisory board shall consist of nine members including:

(a) the commissioner of the department, or their designee;

(b) the commissioner of the department of health, or their designee;

(c) the director of homeland security and emergency services;

(d) two individuals who were formerly incarcerated in facilities operated by the department, one each appointed by the temporary president of the senate and the speaker of the assembly, based on consultations with advocacy organizations working directly with communities impacted by the criminal justice system;

(e) three members appointed by the governor including:

(i) a member of the New York state correctional officers' benevolent association;

(ii) an individual with a demonstrated background in emergency planning who has created an emergency management accreditation program for accreditation purposes in the past;

(iii) an individual with a background in correctional health, capable of ascertaining particular vulnerabilities to any emerging diseases or

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

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infections, or any other public health risks that could face the incarcerated population; and

(f) an attorney with experience defending the constitutional rights of incarcerated individuals, appointed by the attorney general.

3. Vacancies on the advisory board shall be filled in the same manner as the original appointment.

4. The members of the advisory board shall elect a chair of the board from among their number. A majority of the members of the advisory board shall constitute a quorum for the purposes of the business of the advisory board.

5. The advisory board shall:

(a) visit each facility operated by the department at least one time every three years;

(b) evaluate and make general recommendations for the correctional facility system and facility-specific recommendations for each facility operated by the department as to:

(i) a selection process for incarcerated individuals eligible for emergency release during a state disaster emergency declared pursuant to executive order. Such selection process shall include, but not be limited to, consideration of incarcerated individuals who meet the criteria included under subdivision eleven of this section;

(ii) a process for evacuation of incarcerated individuals who do not qualify for emergency release during a state disaster emergency declared pursuant to executive order if such need arises;

(iii) changes to facility operations to ensure the safety and well-being of incarcerated individuals who remain incarcerated during a state disaster emergency declared pursuant to executive order; and

(iv) alternative methods that can be deployed in order to meet the needs of incarcerated individuals who remain incarcerated during the state disaster emergency, including alternatives to help facilitate visits by counsel and family visitation; and

(c) have authority based on a declared emergency to evaluate reports and draft counter reports with alternative recommended courses of action.

6. Each state agency and department shall provide assistance to the advisory board as requested for the purpose of fulfilling the obligations of the advisory board under this section. The advisory board shall have access to all the relevant data necessary to make recommendations as provided in subdivision five of this section, including, but not limited to, for each facility operated by the department in the state:

(a) the number of incarcerated individuals in the facility;

(b) information as to the vulnerability and resiliency of each facility;

(c) the staff to incarcerated individual ratio;

(d) the number of vacant spots at the facility; and

(e) the number and identity of incarcerated individuals released pursuant to this plan and the factors utilized to determine such release pursuant to subdivision eleven of this section and a detailed report on incarcerated individuals that fit into a category but were determined ineligible for release pursuant to this section and the factors utilized for such determination.

7. The members of the advisory board shall serve without compensation but shall be reimbursed for their necessary and actual expenses in the performance of their duties under this section.

8. Meetings of the advisory board shall be called by the chairperson of the advisory board.

9. The advisory board shall issue its first general recommendations to the department within six months of the effective date of this section and shall issue recommendations for each facility operated by the department no later than six months after the advisory board conducts a visit to such facility and shall update its general recommendations and facility specific recommendations on at least an annual basis.

10. (a) Within one year of receipt of the recommendations of the advisory board, the department shall develop and implement sustainable facility-based emergency management plans for the release of incarcerated individuals for use in the event of a state disaster emergency declared pursuant to executive order based upon the advisory board's recommendations. The department shall review and update each such plan on at least an annual basis. Updates to the plans shall include measures taken based upon updated recommendations by the advisory board.

(b) Emergency plans developed pursuant to paragraph (a) of this subdivision shall include, but not be limited to, provisions describing the procedures that will be implemented to facilitate the recommendations made by the advisory board as described in paragraph (b) of subdivision five of this section, including a list of incarcerated individuals to be considered for emergency release based on the criteria established in subdivision eleven of this section for determining eligibility for emergency release. After such list of incarcerated individuals to be considered for emergency release is compiled for each facility operated by the department, individualized decisions shall be made by the department as to the eligibility for release of each incarcerated individual, with clearly stated reasons in case of denial.

(i) An incarcerated individual may be deemed ineligible for consideration for emergency release if they have been found guilty by the department of a violent institutional infraction within the one hundred eighty days prior to release consideration.

(ii) The termination of the state disaster emergency declared pursuant to executive order shall not be a basis for an incarcerated individual released pursuant to the provisions of this section to be remanded back into custody.

11. The following criteria shall be considered to determine eligibility for emergency release of an incarcerated individual pursuant to this section; provided, however, that such criteria represent a non-exhaustive list of factors to be considered in determining such eligibility. Such criteria shall include consideration of any incarcerated individual who:

(a) is terminally ill, mentally ill, or disabled, as determined by a medical professional;

(b) is medically vulnerable;

(c) has an additional documented illness or illnesses determined by an independent health practitioner not affiliated with the facility who determines that such illness or illnesses place the individual at risk;

(d) is unlikely to pose a substantial risk of causing bodily injury or using violent force against another individual;

(e) is over fifty-five years old;

(f) is a primary caregiver;

(g) is pregnant;

(h) has completed more than fifty percent of their minimum sentence if serving an indeterminate sentence or fifty percent of their sentence if serving a determinate sentence; or

(i) will complete their sentence within eighteen months of the effective date of this section.

12. The department shall have the authority to implement facility-based emergency management release plans upon the occurrence of a state disaster emergency pursuant to executive order.

13. Within forty-eight hours of a state disaster emergency declared pursuant to executive order, the department shall provide to the governor, the advisory board and the state legislature the emergency management plan for release in each facility operated by the department. The department shall provide the governor, the advisory board and the state legislature:

(a) a certification that each facility has released the persons determined eligible for emergency release pursuant to this section;

(b) the identity of each incarcerated individual released pursuant to the emergency management release plan for each facility operated by the department and the factors utilized for such eligibility determinations, without disclosing any information that would constitute an invasion of the privacy of any individual or which would disclose protected health information; and

(c) an estimate of the fiscal savings to the state due to the release of incarcerated individuals pursuant to this section.

14. Definitions. As used in this section, the following terms shall have the following meaning:

(a) The term "medically vulnerable" includes, but is not limited to, an individual who is:

(i) diagnosed with a chronic lung disease;

(ii) diagnosed with moderate or severe asthma;

(iii) diagnosed with a serious heart condition;

(iv) diagnosed with diabetes;

(v) diagnosed with a chronic kidney disease and undergoing dialysis;

(vi) diagnosed with liver disease;

(vii) diagnosed with cancer;

(viii) diagnosed with obesity; or

(ix) immunocompromised.

(b) The term "primary caregiver" means an individual who has the responsibility for the care of another individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and includes a family member or other individual who provides compensated or uncompensated care to another individual, on behalf of such individual or on behalf of a public or private agency, organization, or institution.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.