

# 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:

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

3 § 135. State disaster emergency management release plans in correc-  
4 tional facilities. 1. There shall be established within the department  
5 an advisory board to provide recommendations to the department regarding  
6 the development of emergency management release plans within the facili-  
7 ties operated by the department for use in the event of a state disaster  
8 emergency declared pursuant to executive order.

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

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

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

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

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

18 (e) three members appointed by the governor including:

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

21 (ii) an individual with a demonstrated background in emergency plan-  
22 ning who has created an emergency management accreditation program for  
23 accreditation purposes in the past;

24 (iii) an individual with a background in correctional health, capable  
25 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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1 infections, or any other public health risks that could face the incar-  
2 cerated population; and

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

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

7 4. The members of the advisory board shall elect a chair of the board  
8 from among their number. A majority of the members of the advisory board  
9 shall constitute a quorum for the purposes of the business of the advi-  
10 sory board.

11 5. The advisory board shall:

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

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

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

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

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

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

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

35 6. Each state agency and department shall provide assistance to the  
36 advisory board as requested for the purpose of fulfilling the obli-  
37 gations of the advisory board under this section. The advisory board  
38 shall have access to all the relevant data necessary to make recommenda-  
39 tions as provided in subdivision five of this section, including, but  
40 not limited to, for each facility operated by the department in the  
41 state:

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

43 (b) information as to the vulnerability and resiliency of each facili-  
44 ty;

45 (c) the staff to incarcerated individual ratio;

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

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

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

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

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

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

17 (b) Emergency plans developed pursuant to paragraph (a) of this subdivi-  
18 sion shall include, but not be limited to, provisions describing the  
19 procedures that will be implemented to facilitate the recommendations  
20 made by the advisory board as described in paragraph (b) of subdivision  
21 five of this section, including a list of incarcerated individuals to be  
22 considered for emergency release based on the criteria established in  
23 subdivision eleven of this section for determining eligibility for emer-  
24 gency release. After such list of incarcerated individuals to be consid-  
25 ered for emergency release is compiled for each facility operated by the  
26 department, individualized decisions shall be made by the department as  
27 to the eligibility for release of each incarcerated individual, with  
28 clearly stated reasons in case of denial.

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

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

37 11. The following criteria shall be considered to determine eligibil-  
38 ity for emergency release of an incarcerated individual pursuant to this  
39 section; provided, however, that such criteria represent a non-exhaus-  
40 tive list of factors to be considered in determining such eligibility.  
41 Such criteria shall include consideration of any incarcerated individual  
42 who:

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

45 (b) is medically vulnerable;

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

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

51 (e) is over fifty-five years old;

52 (f) is a primary caregiver;

53 (g) is pregnant;

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

1 (i) will complete their sentence within eighteen months of the effec-  
2 tive date of this section.

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

6 13. Within forty-eight hours of a state disaster emergency declared  
7 pursuant to executive order, the department shall provide to the gover-  
8 nor, the advisory board and the state legislature the emergency manage-  
9 ment plan for release in each facility operated by the department. The  
10 department shall provide the governor, the advisory board and the state  
11 legislature:

12 (a) a certification that each facility has released the persons deter-  
13 mined eligible for emergency release pursuant to this section;

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

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

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

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

26 (i) diagnosed with a chronic lung disease;

27 (ii) diagnosed with moderate or severe asthma;

28 (iii) diagnosed with a serious heart condition;

29 (iv) diagnosed with diabetes;

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

31 (vi) diagnosed with liver disease;

32 (vii) diagnosed with cancer;

33 (viii) diagnosed with obesity; or

34 (ix) immunocompromised.

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

42 § 2. This act shall take effect on the one hundred eightieth day after  
43 it shall have become a law. Effective immediately, the addition, amend-  
44 ment and/or repeal of any rule or regulation necessary for the implemen-  
45 tation of this act on its effective date are authorized to be made and  
46 completed on or before such date.