STATE OF NEW YORK

3035

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sens. STEC, BORRELLO, GALLIVAN, HELMING, MATTERA, OBERACKER, O'MARA, ORTT, PALUMBO, TEDISCO, WEIK -- 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, in relation to confinement; and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 23 of section 2 of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, is amended to read as follows:

23. "Segregated confinement" means the **disciplinary** confinement of an incarcerated individual in [~~any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible~~] **a special housing unit or in a separate keeplock housing unit. Special housing units and separate keeplock units are housing units that consist of cells grouped so as to provide separation from the general population, and may be used to house incarcerated individuals confined pursuant to the disciplinary procedures described in regulations**.

§ 2. Subdivisions 33 and 34 of section 2 of the correction law are REPEALED.

§ 3. Paragraph (a) of subdivision 6 of section 137 of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, is amended to read as follows:

(a) The incarcerated individual shall be supplied with a sufficient quantity of wholesome and nutritious food**, provided, however, that such**

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

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food need not be the same as the food supplied to incarcerated individuals who are participating in programs of the facility;

§ 4. Paragraph (d) of subdivision 6 of section 137 of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, clauses (A) and (E) of subparagraph (ii) as separately amended by section 1 and subparagraph (iv) as separately amended by section 2 of part NNN of chapter 59 of the laws of 2021, is amended to read as follows:

(d) (i) Except as set forth in clause (E) of subparagraph (ii) of this paragraph, the department, in consultation with mental health clinicians, shall divert or remove incarcerated individuals with serious mental illness, as defined in paragraph (e) of this subdivision, from segregated confinement [~~or confinement in a residential rehabilitation unit~~], where such confinement could potentially be for a period in excess of thirty days, to a residential mental health treatment unit. Nothing in this paragraph shall be deemed to prevent the disciplinary process from proceeding in accordance with department rules and regulations for disciplinary hearings.

(ii) (A) Upon placement of an incarcerated individual into segregated confinement [~~or a residential rehabilitation unit~~] at a level one or level two facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. Additionally, within one business day of the placement of such an incarcerated individual into segregated confinement at a level one or level two facility [~~or a residential rehabilitation unit~~], the incarcerated individual shall be assessed by a mental health clinician.

(B) Upon placement of an incarcerated individual into segregated confinement [~~or a residential rehabilitation unit~~] at a level three or level four facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. All incarcerated individuals placed in segregated confinement [~~or a residential rehabilitation unit~~] at a level three or level four facility shall be assessed by a mental health clinician, within [~~seven~~] **fourteen** days of such placement into segregated confinement.

(C) At the initial assessment, if the mental health clinician finds that an incarcerated individual suffers from a serious mental illness, [~~that person shall be diverted or removed from segregated confinement or a residential rehabilitation unit and~~] a recommendation shall be made whether exceptional circumstances, as described in clause (E) of this subparagraph, exist. In a facility with a joint case management committee, such recommendation shall be made by such committee. In a facility without a joint case management committee, the recommendation shall be made jointly by a committee consisting of the facility's highest ranking mental health clinician, the deputy superintendent for security, and the deputy superintendent for program services, or their equivalents. Any such recommendation shall be reviewed by the joint central office review committee. The administrative process described in this clause shall be completed within [~~seven~~] **fourteen** days of the initial assessment, and if

the result of such process is that the incarcerated individual should be removed from segregated confinement [~~or a residential rehabilitation unit~~], such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process. [~~Pursuant to paragraph (h) of this subdivision, nothing in this section shall permit the placement of an incarcerated person with serious mental illness into segregated confinement at any time, even for the purposes of assessment.~~]

(D) If an incarcerated individual with a serious mental illness is not diverted or removed to a residential mental health treatment unit, such incarcerated individual shall be [~~diverted to a residential rehabilitation unit and~~] reassessed by a mental health clinician within fourteen days of the initial assessment and at least once every fourteen days thereafter. After each such additional assessment, a recommendation as to whether such incarcerated individual should be removed from [~~a residential rehabilitation unit~~] **segregated confinement** shall be made and reviewed according to the process set forth in clause (C) of this subparagraph.

(E) A recommendation or determination whether to remove an incarcerated individual from segregated confinement [~~or a residential rehabilitation unit~~] shall take into account the assessing mental health clinicians' opinions as to the incarcerated individual's mental condition and treatment needs, and shall also take into account any safety and security concerns that would be posed by the incarcerated individual's removal, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit. A recommendation or determination shall direct the incarcerated individual's removal from segregated confinement [~~or a residential rehabilitation unit~~] except in the following exceptional circumstances: (1) when the reviewer finds that removal would pose a substantial risk to the safety of the incarcerated individual or other persons, or a substantial threat to the security of the facility, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit; or (2) when the assessing mental health clinician determines that such placement is in the incarcerated individual's best interests based on his or her mental condition and that removing such incarcerated individual to a residential mental health treatment unit would be detrimental to his or her mental condition. Any determination not to remove an incarcerated individual with serious mental illness from [~~a residential rehabilitation unit~~] **segregated confinement** shall be documented in writing and include the reasons for the determination.

(iii) Incarcerated individuals with serious mental illness who are not diverted or removed from [~~a residential rehabilitation unit~~] **segregated confinement** shall be offered a heightened level of [~~mental health~~] care, involving a minimum of [~~three~~] **two** hours [~~daily~~] **each day, five days a week,** of out-of-cell therapeutic treatment and programming. This heightened level of care shall not be offered only in the following circumstances:

(A) The heightened level of care shall not apply when an incarcerated individual with serious mental illness does not, in the reasonable judgment of a mental health clinician, require the heightened level of care. Such determination shall be documented with a written statement of the basis of such determination and shall be reviewed by the Central New York Psychiatric Center clinical director or his or her designee. Such a

determination is subject to change should the incarcerated individual's clinical status change. Such determination shall be reviewed and documented by a mental health clinician every thirty days, and in consultation with the Central New York Psychiatric Center clinical director or his or her designee not less than every ninety days.

(B) The heightened level of care shall not apply in exceptional circumstances when providing such care would create an unacceptable risk to the safety and security of incarcerated individuals or staff. Such determination shall be documented by security personnel together with the basis of such determination and shall be reviewed by the facility superintendent, in consultation with a mental health clinician, not less than every seven days for as long as the incarcerated individual remains in [~~a residential rehabilitation unit~~] **segregated confinement**. The facility shall attempt to resolve such exceptional circumstances so that the heightened level of care may be provided. If such exceptional circumstances remain unresolved for thirty days, the matter shall be referred to the joint central office review committee for review.

(iv) **Incarcerated individuals with serious mental illness who are not diverted or removed from segregated confinement shall not be placed on a restricted diet, unless there has been a written determination that the restricted diet is necessary for reasons of safety and security. If a restricted diet is imposed, it shall be limited to seven days, except in the exceptional circumstances where the joint case management committee determines that limiting the restricted diet to seven days would pose an unacceptable risk to the safety and security of incarcerated individuals or staff. In such case, the need for a restricted diet shall be reassessed by the joint case management committee every seven days.**

(v) All incarcerated individuals in segregated confinement in a level one or level two facility [~~or a residential rehabilitation unit~~] who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within [~~seven~~] **fourteen** days of their initial mental health assessment, **and additional interviews at least every thirty days thereafter,** unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All incarcerated individuals in [~~a residential rehabilitation unit~~] **segregated confinement** in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within thirty days of their initial mental health assessment, and additional interviews at least every ninety days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

§ 5. Paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) of subdivision 6 of section 137 of the correction law are REPEALED.

§ 6. Subdivision 7 of section 138 of the correction law is REPEALED.

§ 7. Subdivision 1 of section 401 of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, is amended to read as follows:

1. The commissioner, in cooperation with the commissioner of mental health, shall establish programs, including but not limited to residential mental health treatment units, in such correctional facilities as he or she may deem appropriate for the treatment of mentally ill incarcerated individuals confined in state correctional facilities who are in need of psychiatric services but who do not require hospitalization for the treatment of mental illness. Incarcerated individuals with serious mental illness shall receive therapy and programming in settings that

are appropriate to their clinical needs while maintaining the safety and security of the facility.

[~~The conditions and services provided in the residential mental health treatment units shall be at least comparable to those in all residential rehabilitation units, and all residential mental health treatment units shall be in compliance with all provisions of paragraphs (i), (j), (k), and (l) of subdivision six of section one hundred thirty-seven of this chapter. Residential mental health treatment units that are either residential mental health unit models or behavioral health unit models shall also be in compliance with all provisions of paragraph (m) of subdivision six of section one hundred thirty-seven of this chapter.~~

~~The residential mental health treatment units shall also provide the additional mental health treatment, services, and programming delineated in this section.~~] The administration and operation of programs established pursuant to this section shall be the joint responsibility of the commissioner of mental health and the commissioner. The professional mental health care personnel, and their administrative and support staff, for such programs shall be employees of the office of mental health. All other personnel shall be employees of the department.

§ 8. Subparagraph (i) of paragraph (a) of subdivision 2 of section 401 of the correction law, as amended by chapter 486 of the laws of 2022, is amended to read as follows:

(i) In exceptional circumstances, a mental health clinician, or the highest ranking facility security supervisor in consultation with a mental health clinician who has interviewed the incarcerated individual, may determine that an incarcerated individual's access to out-of-cell therapeutic programming and/or mental health treatment in a residential mental health treatment unit presents an unacceptable risk to the safety of incarcerated individuals or staff. Such determination shall be documented in writing and [~~such incarcerated individual may be removed to a residential rehabilitation unit that is not a residential mental health treatment unit~~] where alternative mental health treatment and/or other therapeutic programming, as determined by a mental health clinician, shall be provided.

§ 9. Subdivision 5 of section 401 of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021, is amended to read as follows:

5. (a) An incarcerated individual in a residential mental health treatment unit shall not be sanctioned with segregated confinement for misconduct on the unit, or removed from the unit and placed in segregated confinement [~~or a residential rehabilitation unit~~], except in exceptional circumstances where such incarcerated individual's conduct poses a significant and unreasonable risk to the safety of incarcerated individuals or staff, or to the security of the facility [~~and he or she has been found to have committed an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter~~]. Further, in the event that such a sanction is imposed, an incarcerated individual shall not be required to begin serving such sanction until the reviews required by paragraph (b) of this subdivision have been completed; provided, however that in extraordinary circumstances where an incarcerated individual's conduct poses an immediate unacceptable threat to the safety of incarcerated individuals or staff, or to the security of the facility an incarcerated individual may be immediately moved to [~~a residential rehabilitation unit~~] **segregated confinement**. The determination that an immediate transfer to [~~a residential rehabilitation unit~~] **segregated confinement** is necessary shall

be made by the highest ranking facility security supervisor in consultation with a mental health clinician.

(b) The joint case management committee shall review any disciplinary disposition imposing a sanction of segregated confinement at its next scheduled meeting. Such review shall take into account the incarcerated individual's mental condition and safety and security concerns. The joint case management committee may only thereafter recommend the removal of the incarcerated individual in exceptional circumstances where the incarcerated individual [~~commits an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter and~~] poses a significant and unreasonable risk to the safety of incarcerated individuals or staff or to the security of the facility. In the event that the incarcerated individual was immediately moved to segregated confinement, the joint case management committee may recommend that the incarcerated individual continue to serve such sanction only in exceptional circumstances where the incarcerated individual [~~commits an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter and~~] poses a significant and unreasonable risk to the safety of incarcerated individuals or staff or to the security of the facility. If a determination is made that the incarcerated individual shall not be required to serve all or any part of the segregated confinement sanction, the joint case management committee may instead recommend that a less restrictive sanction should be imposed. The recommendations made by the joint case management committee under this paragraph shall be documented in writing and referred to the superintendent for review and if the superintendent disagrees, the matter shall be referred to the joint central office review committee for a final determination. The administrative process described in this paragraph shall be completed within fourteen days. If the result of such process is that an incarcerated individual who was immediately transferred to [~~a residential rehabilitation unit~~] **segregated confinement** should be removed from [~~such unit~~], **segregated confinement** such removal shall occur as soon as practicable, and in no event longer than seventy-two hours from the completion of the administrative process.

§ 10. Subdivision 6 of section 401 of the correction law, as separately amended by section 9 of part NNN of chapter 59 and chapter 322 of the laws of 2021, is amended to read as follows:

6. The department shall ensure that the curriculum for new correction officers, and other new department staff who will regularly work in programs providing mental health treatment for incarcerated individuals, shall include at least eight hours of training about the types and symptoms of mental illnesses, the goals of mental health treatment, the prevention of suicide and training in how to effectively and safely manage incarcerated individuals with mental illness. Such training may be provided by the office of mental health or the justice center for the protection of people with special needs. All department staff who are transferring into a residential mental health treatment unit shall receive a minimum of eight additional hours of such training, and eight hours of annual training as long as they work in such a unit. All security, program services, mental health and medical staff with direct incarcerated individual contact shall receive training each year regarding identification of, and care for, incarcerated individuals with mental illnesses. The department shall provide additional training on these topics on an ongoing basis as it deems appropriate. [~~All staff working in a residential mental health treatment unit shall also receive~~

~~the training mandated in paragraph (n) of subdivision six of section one hundred thirty-seven of this chapter.~~]

§ 11. Subdivision 4 of section 401-a of the correction law is REPEALED.

§ 12. Subdivision 18 of section 45 of the correction law is REPEALED.

§ 13. Section 500-k of the correction law, as separately amended by chapters 93 and 322 of the laws of 2021 and subdivision 2 as amended by chapter 486 of the laws of 2022, is amended to read as follows:

§ 500-k. Treatment of incarcerated individuals. [~~1.~~] Subdivisions five and six of section one hundred thirty-seven of this chapter, except paragraphs (d) and (e) of subdivision six of such section, relating to the treatment of incarcerated individuals in state correctional facilities are applicable to incarcerated individuals confined in county jails; except that the report required by paragraph (f) of subdivision six of such section shall be made to a person designated to receive such report in the rules and regulations of the state commission of correction, or in any county or city where there is a department of correction, to the head of such department.

[~~2. Notwithstanding any other section of law to the contrary, subdivision thirty-four of section two of this chapter, and subparagraphs (i), (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of subdivision six of section one hundred thirty-seven of this chapter shall not apply to local correctional facilities with a total combined capacity of five hundred incarcerated individuals or fewer.~~]

§ 14. This act shall take effect immediately.