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:

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

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

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

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

(a) a person holding a position by permanent appointment in the 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

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

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

(i) a letter of reprimand;

(ii) removal from work location and transfer;

(iii) a fine to be deducted from the salary or wages of such employee;

(iv) probation for a specified period, provided any further violation can lead to termination;

(v) suspension without pay;

(vi) demotion in grade and title; or

(vii) dismissal from the service and loss of accumulated leave credits.

(b) Provided, however, that the time during the pendency of the hearing, in which an employee is suspended without pay, may be considered as part of the penalty. The final determination of the commissioner on the recommendation from the hearing officer shall be made within ten business days of receipt of such recommendation. If the employee is acquitted of all charges, he or she shall be restored to his or her position with full pay for the period of suspension less the amount of any unemployment insurance benefits that may have been received. If such employee is found guilty of one or more of the charges, a copy of the charges, his or her written answer, a transcript of the hearing, and the final determination of the commissioner shall be filed in the bureau of labor relations and the employee's personnel file. A copy of the transcript of the hearing shall, upon request of the affected employee, be furnished to him or her without charge.

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

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

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

(h) who has been dismissed from private employments because of habitually poor performance[~~.~~]; or

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

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

1. Appointment or promotion from eligible lists. Appointment or promotion from an eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list who are willing to accept such appointment or promotion; provided, however, that the state or a municipal commission may provide, by rule, that where it is necessary to break ties among eligibles having the same final examination ratings in order to determine their respective standings on the eligible list, appointment or promotion may be made by the selection of any eligible whose final examination rating is equal to or higher than the final examination rating of the third highest standing eligible willing to accept such appointment or promotion**; provided further, however, that an individual's name shall be suspended from the eligible list pending the outcome of the review of the applicant's qualifications pursuant to subdivision four of section fifty of this article**. Appointments and promotions shall be made from the eligible list most nearly appropriate for the position to be filled.

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

1. The commissioner [~~of corrections and community supervision~~] shall have the superintendence, management and control of the correctional facilities in the department and of the incarcerated individuals confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. He or she shall have the power and it shall be his or her duty to inquire into all matters connected with said correctional facilities. He or she shall make such rules and regulations, not in conflict with the statutes of this state, for the government of the officers and other employees of the department assigned to said facilities, and in regard to the duties to be performed by them, and for the government and discipline of each correctional facility, as he or she may deem proper, and shall cause such rules and regulations to be recorded by the superintendent of the facility, and a copy thereof to be furnished to each employee assigned to the facility. **With due consideration for overall safety and security, he or she shall also have the power to place reasonable limits or restrictions on the items an employee may bring into a correctional facility or community supervision office when reporting for duty, that can pose a threat or be used as a weapon.** He or she shall also prescribe a system of accounts and records to be kept at each correctional facility, which system shall be uniform at all of said facilities, and he or she shall also make rules and regulations for a record of photographs and other means of identifying each incarcerated individual received into said facilities. He or she shall appoint and remove, subject to the civil service law, subordinate officers and other employees of the department who are assigned to correctional facilities.

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

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