STATE OF NEW YORK

11671

IN ASSEMBLY

September 2, 2026

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Tapia) -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to enacting the "drug and special watch due process act"

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

Section 1. Short title. This act shall be known and may be cited as the "drug and special watch due process act".

§ 2. The correction law is amended by adding a new section 137-a to read as follows:

§ 137-a. Drug and special watches. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Drug or special watch" means any placement, detention, confinement, observation, temporary isolation, dry cell placement, or substantially similar restriction imposed upon an incarcerated individual based upon a belief that such incarcerated individual has ingested contraband or is carrying or concealing contraband within the gastrointestinal tract or rectum, regardless of the terminology used by the department to describe such placement.

(b) "Non-invasive internal contraband detection technology" means a body scanner, radiological imaging device, or other non-invasive technology, approved by the commissioner of health for use pursuant to this section, that is capable of detecting, imaging, or otherwise indicating the presence or absence of a foreign object or contraband within the gastrointestinal tract or rectum.

(c) "Scan" means an examination conducted through the use of non-invasive internal contraband detection technology.

(d) "Negative scan" means the result of a scan that does not indicate the presence of contraband or a foreign object within the gastrointestinal tract or rectum.

(e) "Positive scan" means the result of a scan that indicates the presence of contraband or a foreign object within the gastrointestinal tract or rectum.

(f) "Inconclusive scan" means the result of a scan from which the presence or absence of contraband or a foreign object cannot reliably be determined.

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

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2. Grounds for investigation and requirement of scan. (a) No incarcerated individual shall be placed on a drug or special watch unless there is probable cause, based upon specific and articulable facts, to believe that such incarcerated individual has ingested contraband or is carrying or concealing contraband within the gastrointestinal tract or rectum. The officer or employee asserting such probable cause shall document in writing, prior to placement whenever practicable:

(i) the specific facts and circumstances giving rise to such belief;

(ii) the date and time such facts or circumstances were observed or reported;

(iii) the source of such information, provided that information identifying a confidential source may be withheld from the incarcerated individual where disclosure would create a substantial risk to the safety of any person; and

(iv) the name and title of such officer or employee making such determination.

(b) A generalized suspicion, the incarcerated individual's disciplinary history, prior drug-related conduct, reputation, or presence in a particular housing unit or area, without additional individualized facts, shall not independently constitute probable cause under paragraph (a) of this subdivision.

(c) (i) Prior to placement on a drug or special watch, an incarcerated individual shall be examined using non-invasive internal contraband detection technology.

(ii) The department shall ensure prompt access to non-invasive internal contraband detection technology at every correctional facility operated by the department, whether through equipment maintained at a correctional facility, transportation to another correctional facility, transportation to an appropriate medical facility, or another method approved by the commissioner of health.

(iii) The temporary unavailability or malfunction of scanning equipment shall not, on its own, constitute grounds for placement on a drug or special watch.

3. Effect of scan results and authorization of placement. (a) Where a scan produces a positive result, the superintendent or acting superintendent may authorize placement of the incarcerated individual on a drug or special watch.

(b) (i) A negative scan shall create a presumption that the placement of the incarcerated individual on a drug or special watch is not warranted.

(ii) No incarcerated individual whose initial scan produces a negative result shall be placed on a drug or special watch except where the superintendent or acting superintendent personally determines in writing that extraordinary circumstances, supported by specific and articulable facts, establish probable cause notwithstanding such negative scan. Such written determination shall:

(1) identify such extraordinary circumstances relied upon;

(2) explain why such extraordinary circumstances overcome such negative scan result; and

(3) state the date and time of such determination and the name and title of the person authorizing placement of the incarcerated individual on a drug or special watch.

(c) An inconclusive scan shall not be deemed a positive scan. Where an initial scan results in an inconclusive scan, the department shall, where medically appropriate, conduct a second scan. If such second scan also results in an inconclusive scan, the incarcerated individual may be

placed on special watch provided that the superintendent or acting superintendent personally determines in writing that extraordinary circumstances, supported by specific and articulable facts, establish probable cause notwithstanding the negative scan.

4. Notice and procedural protections. (a) Immediately upon placement of an incarcerated individual on a drug or special watch, the department shall provide such incarcerated individual with written notice stating:

(i) that such incarcerated individual has been placed on a drug or special watch;

(ii) the specific factual basis for such placement;

(iii) the result of the initial scan;

(iv) where applicable, the extraordinary circumstances relied upon to override a negative scan;

(v) the date and time such placement commenced;

(vi) such incarcerated individual's right to request a subsequent scan pursuant to subdivision five of this section; and

(vii) the circumstances requiring termination of such placement on a drug or special watch.

(b) An incarcerated individual shall be provided opportunity to make an oral or written statement contesting the factual basis for continued placement on a drug or special watch. Any such statement shall be included in the record of such placement and considered during any review of continued confinement.

(c) No adverse inference shall be drawn from an incarcerated individual's exercise of any right provided by this section.

5. Continued placement; right to subsequent scanning; mandatory termination. (a) An incarcerated individual placed on a drug or special watch shall have the right to request a new scan after twenty-four hours of such placement and during each twenty-four-hour period of continued placement. The department shall inform the incarcerated individual of such right upon initial placement and at least once during each subsequent twenty-four-hour period.

(b) Upon such request under paragraph (a) of this subdivision, the department shall provide a new scan as soon as practicable, unless a documented determination is made by a licensed health care professional that the requested form of scanning is medically contraindicated. Where one form of scanning is medically contraindicated, the department shall make reasonable efforts to provide another form of non-invasive internal contraband detection technology approved by the commissioner of health.

(c) Notwithstanding any other provision of law, where any scan performed after initial placement on a drug or special watch results in a negative scan, such drug or special watch shall terminate immediately.

(d) Where a subsequent scan remains positive, continued placement on a drug or special watch shall be permitted only for so long as probable cause continues to exist and only in accordance with all limitations imposed by this section and section one hundred thirty-seven of this article.

(e) Placement on a drug or special watch shall terminate immediately upon the earliest occurrence of any of the following:

(i) the superintendent or acting superintendent is no longer satisfied that probable cause exists to believe that the incarcerated individual has ingested or internally concealed contraband;

(ii) all suspected contraband has been recovered and there is no independent probable cause to believe additional contraband remains within the incarcerated individual's body;

(iii) a licensed health care professional determines that continued placement on a drug or special watch presents a risk to the incarcerated individual's physical or mental health that cannot reasonably be mitigated while such placement continues; or

(iv) continued placement on a drug or special watch would violate subdivision twenty-three of section two of this chapter or subdivision six of section one hundred thirty-seven of this article.

(f) Where contraband is recovered but the department asserts that additional contraband remains within the incarcerated individual, continued placement on a drug or special watch shall require a new scan. A negative result on such new scan shall require immediate termination of the drug or special watch pursuant to paragraph (c) of this subdivision.

6. Application of limitations on segregated confinement. (a) Any drug or special watch or temporary isolation imposed pursuant to this section shall be subject to subdivision twenty-three of section two of this chapter and subdivision six of section one hundred thirty-seven of this article.

(b) A drug or special watch shall not be excluded from the definition of segregated confinement under this chapter solely because the department characterizes such placement as investigatory, administrative, temporary, non-disciplinary, protective, for purposes of contraband detection, or by any other designation.

(c) Nothing in this section shall be construed to create an exception to any limitation or prohibition established pursuant to subdivision twenty-three of section two of this chapter or subdivision six of section one hundred thirty-seven of this article.

7. Documentation and records. (a) The department shall create and maintain a record for each placement of an incarcerated individual on a drug or special watch. Such record shall include, at a minimum:

(i) the correctional facility at which such placement occurred;

(ii) the specific factual basis for the initial determination of probable cause;

(iii) whether each scan resulted in a positive scan, negative scan, or inconclusive scan;

(iv) any written determination overriding an initial negative scan and the extraordinary circumstances relied upon;

(v) each medical assessment or recommendation concerning continued placement on such drug or special watch;

(vi) the date and time such drug or special watch began;

(vii) the date and time such drug or special watch ended;

(viii) the total duration of such placement; and

(ix) whether contraband was recovered.

(b) Records required by this subdivision shall be maintained for not less than six years.

§ 3. The commissioner of corrections and community supervision and the commissioner of health shall take all actions necessary for the implementation of this act, including the promulgation of rules and regulations and the approval, procurement, installation, or identification of appropriate non-invasive internal contraband detection technology, on or before the effective date of this act.

§ 4. 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 effective date.