

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 Assem-
bly, do enact as follows:

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

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

5 § 137-a. Drug and special watches. 1. Definitions. For the purposes of
6 this section, the following terms shall have the following meanings:

7 (a) "Drug or special watch" means any placement, detention, confine-
8 ment, observation, temporary isolation, dry cell placement, or substan-
9 tially similar restriction imposed upon an incarcerated individual based
10 upon a belief that such incarcerated individual has ingested contraband
11 or is carrying or concealing contraband within the gastrointestinal
12 tract or rectum, regardless of the terminology used by the department to
13 describe such placement.

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

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

22 (d) "Negative scan" means the result of a scan that does not indicate
23 the presence of contraband or a foreign object within the gastrointesti-
24 nal tract or rectum.

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

28 (f) "Inconclusive scan" means the result of a scan from which the
29 presence or absence of contraband or a foreign object cannot reliably be
30 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

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

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

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

10 (ii) the specific factual basis for such placement;

11 (iii) the result of the initial scan;

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

14 (v) the date and time such placement commenced;

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

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

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

24 (c) No adverse inference shall be drawn from an incarcerated individ-
25 ual's exercise of any right provided by this section.

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

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

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

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

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

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

53 (ii) all suspected contraband has been recovered and there is no inde-
54 pendent probable cause to believe additional contraband remains within
55 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.