

STATE OF NEW YORK

5355--A

2025-2026 Regular Sessions

IN ASSEMBLY

February 13, 2025

Introduced by M. of A. TAPIA, MEEKS, SHRESTHA, KELLES, GALLAGHER, GONZALEZ-ROJAS, DAVILA, BURROUGHS, CRUZ, TAYLOR, REYES, FORREST, TORRES -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

3 § 12. Discipline of certain serious misconduct. 1. Definitions. For
4 the purposes of this section, the following terms shall have the follow-
5 ing meanings:

6 (a) "serious misconduct" shall mean: an act of excessive use of force;
7 an act of false reporting regarding one or more acts of excessive use of
8 force; an intentional failure to report an act of excessive use of
9 force; an inappropriate sexual relationship or contact with an incarcer-
10 ated person or person under community supervision; or an intentional
11 failure to report an inappropriate sexual relationship or contact with
12 an incarcerated person or person under community supervision.

13 (b) "employee" shall mean anyone employed by the department with the
14 title of "correction officer" or "correction sergeant".

15 2. Acts of misconduct. Notwithstanding any other provision of law,
16 when an employee is alleged to have committed an act of serious miscon-
17 duct then the disciplinary process that may be applied to such employee
18 shall be governed by the provisions of this section.

19 3. Disciplinary action. A person holding a position as described in
20 paragraph (a), (b) or (c) of this subdivision shall not be removed from
21 their position or otherwise subjected to any disciplinary penalty

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

LBD04463-03-6

1 authorized pursuant to this section; provided, however, that such person
2 may be removed or otherwise subjected to a disciplinary penalty author-
3 ized pursuant to this section for serious misconduct after a hearing
4 upon stated charges pursuant to this section. This subdivision shall
5 apply to:

6 (a) a person holding a position by permanent appointment in the
7 competitive class of the classified civil service; or

8 (b) a person holding a position by permanent appointment or employment
9 in the classified service of the state, who was honorably discharged or
10 released under honorable circumstances from the armed forces of the
11 United States, including (i) having a qualifying condition as defined in
12 section one of the veterans' services law, and receiving a discharge
13 other than bad conduct or dishonorable from such service, or (ii) being
14 a discharged LGBT veteran, as defined in section one of the veterans'
15 services law, and receiving a discharge other than bad conduct or
16 dishonorable from such service, having served therein as such member
17 in time of war as defined in section eighty-five of the civil service
18 law, or who is an exempt volunteer firefighter as defined in the general
19 municipal law, except when such person holds the position of private
20 secretary, cashier or deputy of any official or department; or

21 (c) an employee holding a position in the non-competitive class other
22 than a position designated in the rules of the state civil service
23 commission as confidential or requiring the performance of functions
24 influencing policy, who since such employee's last entry into service
25 has completed at least five years of continuous service in the non-com-
26 petitive class in a position or positions not so designated in the rules
27 as confidential or requiring the performance of functions influencing
28 policy.

29 4. Pre-hearing and hearing procedure. An employee holding a position
30 as described in paragraph (a), (b) or (c) of subdivision three of this
31 section who at the time of questioning appears to be a potential subject
32 of disciplinary action for an act or acts of serious misconduct shall
33 have right to representation by such employee's certified or recognized
34 employee organization under article fourteen of the civil service law
35 and shall be notified in advance, in writing, of such right. An employee
36 holding a position as described in paragraph (a), (b) or (c) of subdivi-
37 sion three of this section who is designated managerial or confidential
38 under article fourteen of the civil service law, shall have, at the time
39 of questioning, where it appears that such employee is a potential
40 subject of disciplinary action for an act of serious misconduct, a right
41 to representation and shall be notified in advance, in writing, of such
42 right. If representation is requested, a reasonable period of time shall
43 be afforded to obtain such representation. If the employee is unable to
44 obtain representation within a reasonable period of time, then the
45 department may proceed with questioning the employee. A hearing officer
46 appointed for the purposes of this section shall determine if a reason-
47 able period of time was or was not afforded. In the event the hearing
48 officer finds that a reasonable period of time was not afforded then any
49 and all statements obtained from such questioning, as well as any
50 evidence or information obtained as a result of such questioning shall
51 be excluded. A person against whom removal or other disciplinary action
52 is proposed shall be provided written notice and shall be furnished a
53 copy of the charge or charges proffered against such person and shall be
54 allowed at least eight days for answering such charges in writing. The
55 hearing upon such charges shall be held by a hearing officer, selected
56 by the commissioner or the commissioner's designee, within thirty busi-

1 ness days of the employee obtaining representation, or within thirty
2 business days of the employee being notified of the hearing if the
3 employee chooses not to obtain representation, unless, with good cause,
4 the commissioner or the commissioner's designee determines additional
5 time is needed to conduct the hearing. The hearing officer shall be
6 vested with all the powers of the commissioner and shall make a record
7 of such hearing, which shall, along with such officer's recommendation,
8 be referred to the commissioner for review and final determination. The
9 hearing officer shall, upon the request of the employee against whom
10 charges are proffered, permit such employee to be represented by coun-
11 sel, or by a representative of a recognized or certified employee organ-
12 ization, and shall allow them to summon witnesses on their behalf. The
13 burden of proving serious misconduct shall be upon the department and
14 shall be by a preponderance of evidence. Compliance with technical rules
15 of evidence shall not be required.

16 5. Penalties. (a) If the employee is found guilty of a charge or
17 charges of serious misconduct, the recommended penalty or punishment may
18 consist of any combination of the following:

19 (i) a letter of reprimand;
20 (ii) removal from work location and transfer;
21 (iii) a fine to be deducted from the salary or wages of such employee;
22 (iv) probation for a specified period, provided any further violation
23 can lead to termination;
24 (v) suspension without pay;
25 (vi) demotion in grade and title; or
26 (vii) dismissal from the service and loss of accumulated leave cred-
27 its.

28 (b) Provided, however, that the time during the pendency of the hear-
29 ing, in which an employee is suspended without pay, may be considered as
30 part of the penalty.

31 6. Post-hearing procedure. The final determination of the commis-
32 ioner on the recommendation from the hearing officer shall be made within
33 ten business days of receipt of such recommendation unless, with good
34 cause, the commissioner determines additional time is needed to make a
35 recommendation. If the employee is acquitted of all charges, such
36 employee shall be restored to their position with full pay for the peri-
37 od of suspension less the amount of any unemployment insurance benefits
38 that may have been received. If such employee is found guilty of one or
39 more of the charges, a copy of the charges, the employee's written
40 answer, a transcript of the hearing, and the final determination of the
41 commissioner shall be filed in the bureau of labor relations and the
42 employee's personnel file. A copy of the transcript of the hearing
43 shall, upon request of the affected employee, be furnished to such
44 employee without charge.

45 7. Appeal. When an employee believes they are aggrieved by a penalty
46 of fine, probation, suspension, demotion or dismissal from service
47 imposed pursuant to this section, such employee may make an application
48 to the appropriate court in accordance with the provisions of article
49 seventy-eight of the civil practice law and rules.

50 8. Termination. Notwithstanding any other provision of law, the
51 commissioner, in the commissioner's discretion, may terminate the
52 employment of any employee who is convicted of a crime committed during
53 the time such employee is employed by the department whenever the
54 commissioner determines that the continued employment of such person
55 would not be in the best interest of the department. Notwithstanding the
56 foregoing, no employee shall be terminated pursuant to this section

1 unless such employee shall first have been furnished with a written
2 statement of the reasons for such determination and afforded an opportu-
3 nity by the commissioner, or the commissioner's designee, to make an
4 explanation and to submit facts in opposition thereto.

5 9. Reporting. The department shall produce an annual report which
6 shall be made publicly available on the department's website and shall
7 be provided to the temporary president of the senate, the speaker of the
8 assembly, and the chairs of the senate and assembly corrections commit-
9 tees. Such report shall contain the following information:

10 (a) the number of employees subject to discipline for serious miscon-
11 duct under this section disaggregated by type of discipline as stated in
12 paragraph (a) of subdivision five of this section;

13 (b) the number of employees who have been terminated by the commis-
14 sioner for engaging in serious misconduct;

15 (c) the number of employees who have been terminated by the commis-
16 sioner disaggregated by:

17 (i) serious misconduct offenses, as defined in paragraph (a) of subdivi-
18 vision one of this section;

19 (ii) correctional facility;

20 (iii) job title; and

21 (iv) demographics, including race, gender, and age;

22 (d) the number of employees that obtained legal representation for
23 their hearing;

24 (e) the number of employees found guilty of serious misconduct under
25 this section that had a previous record of allegations and/or discipline
26 for serious misconduct; and

27 (f) the demographics, including race, gender, and age, of the victims
28 of serious misconduct by an employee who was found guilty of serious
29 misconduct under this section.

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

33 (h) who has been dismissed from private employments because of habitu-
34 ally poor performance[-]; or

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

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

39 1. Appointment or promotion from eligible lists. Appointment or
40 promotion from an eligible list to a position in the competitive class
41 shall be made by the selection of one of the three persons certified by
42 the appropriate civil service commission as standing highest on such
43 eligible list who are willing to accept such appointment or promotion;
44 provided, however, that the state or a municipal commission may provide,
45 by rule, that where it is necessary to break ties among eligibles having
46 the same final examination ratings in order to determine their respec-
47 tive standings on the eligible list, appointment or promotion may be
48 made by the selection of any eligible whose final examination rating is
49 equal to or higher than the final examination rating of the third high-
50 est standing eligible willing to accept such appointment or promotion;
51 provided further, however, that an individual's name shall be suspended
52 from the eligible list pending the outcome of the review of the appli-
53 cant's qualifications pursuant to subdivision four of section fifty of
54 this article. Appointments and promotions shall be made from the eligi-
55 ble list most nearly appropriate for the position to be filled.

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

3 1. The commissioner [~~of corrections and community supervision~~] shall
4 have the superintendence, management and control of the correctional
5 facilities in the department and of the incarcerated individuals
6 confined therein, and of all matters relating to the government, disci-
7 pline, policing, contracts and fiscal concerns thereof. [~~He or she~~] The
8 commissioner shall have the power and it shall be [~~his or her~~] the
9 commissioner's duty to inquire into all matters connected with said
10 correctional facilities. [~~He or she~~] The commissioner shall make such
11 rules and regulations, not in conflict with the statutes of this state,
12 for the government of the officers and other employees of the department
13 assigned to said facilities, and in regard to the duties to be performed
14 by them, and for the government and discipline of each correctional
15 facility, as [~~he or she~~] the commissioner may deem proper, and shall
16 cause such rules and regulations to be recorded by the superintendent of
17 the facility, and a copy thereof to be furnished to each employee
18 assigned to the facility. [~~He or she~~] With due consideration for overall
19 safety and security, the commissioner shall also have the power to place
20 reasonable limits or restrictions on the items an employee may bring
21 into a correctional facility or community supervision office when
22 reporting for duty, that can pose a threat or be used as a weapon. The
23 commissioner shall also prescribe a system of accounts and records to be
24 kept at each correctional facility, which system shall be uniform at all
25 of said facilities, and [~~he or she~~] the commissioner shall also make
26 rules and regulations for a record of photographs and other means of
27 identifying each incarcerated individual received into said facilities.
28 [~~He or she~~] The commissioner shall appoint and remove, subject to the
29 civil service law, subordinate officers and other employees of the
30 department who are assigned to correctional facilities, unless such
31 employee is accused of serious misconduct in which case such employee
32 shall be subject to disciplinary proceedings pursuant to section twelve
33 of this chapter.

34 § 5. This act shall take effect on the thirtieth day after it shall
35 have become a law; provided, however, that section one of this act shall
36 take effect upon the expiration of the current collective bargaining
37 agreement that governs impacted employees of the department of
38 corrections and community supervision; provided further, however, that
39 the commissioner of corrections and community supervision shall notify
40 the legislative bill drafting commission upon the expiration of the
41 current collective bargaining agreement that governs impacted employees
42 of the department of corrections and community supervision in order that
43 the commission may maintain an accurate and timely effective data base
44 of the official text of the laws of the state of New York in furtherance
45 of effectuating the provisions of section 44 of the legislative law and
46 section 70-b of the public officers law; provided further, however, that
47 notwithstanding any other provision of law to the contrary, once these
48 provisions take effect they cannot be abrogated, amended, enhanced or
49 modified in any way by future collective bargaining.