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:

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

§ 12. Discipline of certain serious misconduct. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "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; an inappropriate sexual relationship or contact with an incarcerated person or person under community supervision; or an intentional failure to report an inappropriate sexual relationship or contact with an incarcerated person or person under community supervision.

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

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 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

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

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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

(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 such employee's 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. Pre-hearing and hearing 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 such employee's 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 such person 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 the commissioner's designee, within thirty busi-

ness days of the employee obtaining representation, or within thirty business days of the employee being notified of the hearing if the employee chooses not to obtain representation, unless, with good cause, the commissioner or the commissioner's designee determines additional time is needed to conduct the hearing. 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 such officer's 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 them to summon witnesses on their behalf. The burden of proving serious misconduct shall be upon the department and shall be by a preponderance of evidence. Compliance with technical rules of evidence shall not be required.

5. Penalties. (a) 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.

6. Post-hearing procedure. 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 unless, with good cause, the commissioner determines additional time is needed to make a recommendation. If the employee is acquitted of all charges, such employee shall be restored to their 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, the employee's 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 such employee without charge.

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

8. Termination. Notwithstanding any other provision of law, the commissioner, in the commissioner's discretion, may terminate the employment of any employee who is convicted of a crime committed during the time such employee is employed by the department 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 such employee shall first have been furnished with a written statement of the reasons for such determination and afforded an opportunity by the commissioner, or the commissioner's designee, to make an explanation and to submit facts in opposition thereto.

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

(a) the number of employees subject to discipline for serious misconduct under this section disaggregated by type of discipline as stated in paragraph (a) of subdivision five of this section;

(b) the number of employees who have been terminated by the commissioner for engaging in serious misconduct;

(c) the number of employees who have been terminated by the commissioner disaggregated by:

(i) serious misconduct offenses, as defined in paragraph (a) of subdivision one of this section;

(ii) correctional facility;

(iii) job title; and

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

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

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

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

§ 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~~] **The commissioner** shall have the power and it shall be [~~his or her~~] **the commissioner's** duty to inquire into all matters connected with said correctional facilities. [~~He or she~~] **The commissioner** 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~~] **the commissioner** 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. [~~He or she~~] **With due consideration for overall safety and security, the commissioner 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. The commissioner** 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~~] **the commissioner** 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~~] **The commissioner** shall appoint and remove, subject to the civil service law, subordinate officers and other employees of the department who are assigned to correctional facilities**, unless such employee is accused of serious misconduct in which case such employee shall be subject to disciplinary proceedings pursuant to section twelve of this chapter**.

§ 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.