

STATE OF NEW YORK

5355

2025-2026 Regular Sessions

IN ASSEMBLY

February 13, 2025

Introduced by M. of A. TAPIA -- read once and referred to the Committee on 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:

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. Definition. For the
4 purposes of this section, the term "serious misconduct" shall mean: an
5 act of excessive use of force; an act of false reporting regarding one
6 or more acts of excessive use of force; an intentional failure to report
7 an act of excessive use of force; the introduction of a cellular device,
8 controlled substance, marihuana or other significantly incapacitating
9 substance to an institution of the department; or an inappropriate sexu-
10 al relationship or contact with an incarcerated person or person under
11 community supervision.

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

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

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

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

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

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

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

1 sel, or by a representative of a recognized or certified employee organ-
2 ization, and shall allow them to summon witnesses on their behalf. The
3 burden of proving serious misconduct shall be upon the department.
4 Compliance with technical rules of evidence shall not be required.

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

11 (i) a letter of reprimand;
12 (ii) removal from work location and transfer;
13 (iii) a fine to be deducted from the salary or wages of such employee;
14 (iv) probation for a specified period, provided any further violation
15 can lead to termination;
16 (v) suspension without pay;
17 (vi) demotion in grade and title; or
18 (vii) dismissal from the service and loss of accumulated leave cred-
19 its.

20 (b) Provided, however, that the time during the pendency of the hear-
21 ing, in which an employee is suspended without pay, may be considered as
22 part of the penalty. The final determination of the commissioner on the
23 recommendation from the hearing officer shall be made within ten busi-
24 ness days of receipt of such recommendation. If the employee is acquit-
25 ted of all charges, such employee shall be restored to their position
26 with full pay for the period of suspension less the amount of any unem-
27 ployment insurance benefits that may have been received. If such employ-
28 ee is found guilty of one or more of the charges, a copy of the charges,
29 the employee's written answer, a transcript of the hearing, and the
30 final determination of the commissioner shall be filed in the bureau of
31 labor relations and the employee's personnel file. A copy of the tran-
32 script of the hearing shall, upon request of the affected employee, be
33 furnished to such employee without charge.

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

39 7. Termination. Notwithstanding any other provision of law, the
40 commissioner, in the commissioner's discretion, may terminate the
41 employment of any employee who is convicted of a crime whenever the
42 commissioner determines that the continued employment of such person
43 would not be in the best interest of the department. Notwithstanding the
44 foregoing, no employee shall be terminated pursuant to this section
45 unless such employee shall first have been furnished with a written
46 statement of the reasons for such determination and afforded an opportu-
47 nity by the commissioner, or the commissioner's designee, to make an
48 explanation and to submit facts in opposition thereto.

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

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

54 (i) who has been disciplined for an act of serious misconduct as set
55 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.

§ 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

1 current collective bargaining agreement that governs impacted employees
2 of the department of corrections and community supervision in order that
3 the commission may maintain an accurate and timely effective data base
4 of the official text of the laws of the state of New York in furtherance
5 of effectuating the provisions of section 44 of the legislative law and
6 section 70-b of the public officers law; provided further, however, that
7 notwithstanding any other provision of law to the contrary, once these
8 provisions take effect they cannot be abrogated, amended, enhanced or
9 modified in any way by future collective bargaining.